

# In the Indiana Supreme Court

In the Matter of: Patricia L. Martin,  
Respondent

Supreme Court Case No.  
20S-DI-25



## Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Christopher L. Burnham, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Disciplinary Complaint," and the briefs of the parties, the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

**Facts:** Respondent represented "Husband" in ongoing post-dissolution litigation involving Husband's marriage to "First Wife." In August 2018, a domestic dispute between Husband and "Second Wife" led to criminal charges against Second Wife and Husband's petition for marital dissolution from Second Wife. Respondent also represented Husband in this dissolution action.

Counsel for First Wife issued notice of a deposition of Second Wife. Respondent knew Second Wife was represented by counsel in the dissolution case and in the criminal case; however, neither Respondent nor First Wife's counsel informed either of Second Wife's attorneys of the deposition. At the deposition Respondent and First Wife's counsel elicited incriminating testimony from Second Wife and testimony about subjects relevant to the dissolution case, and Respondent later contacted the prosecutor and provided her with a copy of Second Wife's deposition.

**Violation:** Respondent seeks review of the hearing officer's conclusion that she violated Indiana Professional Conduct Rule 4.2, which provides that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order." Respondent argues that the deposition was conducted in the post-dissolution case involving Husband and First Wife, that Second Wife was not a party to that case, and that Second Wife was not being represented by counsel in that case. However, Rule 4.2 protects "a person" and not just a party. Moreover, all three underlying cases involved overlapping subject matter, and Second Wife was a party to the other two cases. By her own admission Respondent knew in advance that the deposition likely would touch upon subject matter relevant to the dissolution case and the criminal case (*see* Tr. at 166-67), and it is undisputed that the questioning of Second Wife at the deposition in fact did touch upon such subjects. Respondent also admitted that use of the deposition was not limited to the

proceeding between Husband and First Wife but could also be used against Second Wife in the dissolution proceeding between her and Husband. (Id. at 176).

Nonetheless, Respondent argues that “the matter” referenced in Rule 4.2 should be read narrowly to mean the specific proceeding in which the deposition was taken rather than the subject matter of the representation. Respondent’s interpretation finds no direct support in the text of the Rule itself, which earlier references “the subject of the representation,” or the commentary to the Rule. Respondent’s interpretation also runs directly contrary to the purpose of the Rule, which we agree with the Commission is aimed at protection of the rights of a represented person with respect to the subject of the representation and not merely the protection afforded in any given proceeding. *See Matter of Baker*, 758 N.E.2d 56, 58 (Ind. 2001) (citing “the need to prevent lawyers from taking advantage of laypersons and to preserve the integrity of the lawyer-client relationship”). This need is equally important whether the representation involves the same proceeding, a different proceeding, multiple proceedings, or no proceeding at all.

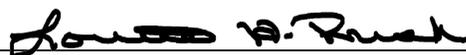
Finally, Respondent suggests that her questioning of Second Wife at the deposition was authorized by law because Respondent had a duty to protect Husband’s interests at the deposition noticed by First Wife’s counsel. But we agree with the hearing officer’s conclusion that this argument presents a false choice. “Respondent could have protected the rights of her client without disrespecting the rights of a third person by simply informing [Second Wife’s] counsel that a deposition had been scheduled.” (Hearing Officer’s Report at 17).

For these reasons, the Court finds that Respondent violated Professional Conduct Rule 4.2 as charged.

**Discipline:** The hearing officer recommended that Respondent receive a public reprimand or, at most, a short suspension. We have imposed a public reprimand for similar misconduct in other cases. *See Matter of Edwards*, 894 N.E.2d 552 (Ind. 2008); *Matter of Litz*, 894 N.E.2d 983 (Ind. 2008); *Baker*, 758 N.E.2d at 58. Having considered the record materials before us, the briefs of the parties, and Respondent’s lack of prior discipline, we agree that a public reprimand is appropriate here as well. Accordingly, for Respondent’s professional misconduct, the Court imposes a **public reprimand**.

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged with the Court’s appreciation.

Done at Indianapolis, Indiana, on 4/29/2021.



Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.