

In the Indiana Supreme Court



In the Matter of: Robert W. Gray,
Respondent

Supreme Court Case No.
21S-DI-44

Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Clayton C. Miller, 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: In 2019, pursuant to a conditional agreement for discipline, we suspended Respondent from the practice of law in Indiana for 30 days with automatic reinstatement for misconduct involving Respondent's Indiana-based law firm and its patent work with inventors. *Matter of Gray*, 126 N.E.3d 805 (Ind. 2019). At the time, Respondent was also consensually excluded from practice before the United States Patent and Trademark Office (USPTO) without an admission of misconduct. Respondent wound down his Indiana law firm and relocated to Florida, where he created another company, The Inventor's Platform (TIP), under the alias Nickolas Farbacks.

TIP's operations closely paralleled Respondent's previous Indiana business arrangements and shared many of the same infirmities. Acting under his alias, Respondent contracted with and directed paralegals, attorneys, and others to provide services—including legal services—to TIP clients. TIP's contracts with its customers generally forbade them from contacting the contract attorneys, and TIP paid those attorneys only a fraction of the attorney fees collected from the customers. Clients' provisional patent applications were often drafted by nonlawyer TIP personnel without appropriate attorney supervision.

Additionally, while Respondent was excluded from practicing before the USPTO, he supervised contract attorneys' patent work, answered any questions they had about the patent work, and discouraged them from communicating with the clients. Finally, during the course of the Commission's investigation into Respondent's Florida conduct, Respondent made several misrepresentations, inaccurately depicting himself as a passive instead of an active participant in TIP.

The hearing officer found Respondent's conduct violated the following Indiana Professional Conduct Rules:

- 8.1(a): Knowingly making a false statement of material fact to the Disciplinary Commission in connection with a disciplinary matter.

8.4(a): Attempting to violate the Rules of Professional Conduct, knowingly assisting another to do so, or doing so through the acts of another.

8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respondent seeks review of the hearing officer's findings and conclusions.

Violations: The Commission carries the burden of proof to demonstrate attorney misconduct by clear and convincing evidence. Admis. Disc. R. 23(14)(g). And while the review process in disciplinary cases involves a de novo examination of all matters presented to the Court, a hearing officer's findings nevertheless receive emphasis due to the unique opportunity for direct observation of witnesses. *See Matter of Gabriel*, 120 N.E.3d 189, 190 (Ind. 2019).

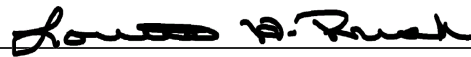
We have considered the parties' arguments regarding each of the charged violations in this case. Upon careful review of the record before us, we find sufficient support for the hearing officer's material findings and his ultimate conclusions. Accordingly, we find Respondent violated Professional Conduct Rules 8.1(a), 8.4(a), and 8.4(c).

Discipline: Respondent urges us to impose a 30- to 60-day suspension with automatic reinstatement for any misconduct found. But given Respondent's prior discipline for similar misconduct and the dishonesty involved in this case, we agree with the Commission that a suspension without automatic reinstatement is warranted.

For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law in this state for a period of not less than 90 days, without automatic reinstatement, effective immediately.** Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(18). Reinstatement is discretionary and requires clear and convincing evidence of the attorney's remorse, rehabilitation, and fitness to practice law. *See* Admis. Disc. R. 23(18).

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 10/4/2022.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.