# In the Indiana Supreme Court

In the Matter of: Mark Small,
Respondent

Supreme Court Case No.
19S-DI-647

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Court of Appeals
and Tax Court

## Published Order Revoking Probation and Imposing Suspension

On May 20, 2021, this Court entered an order suspending Respondent from the practice of law for a period of one year, all stayed subject to completion of at least three years of probation. Our order required as a condition of probation that Respondent not violate the Rules of Professional Conduct during his probation. Our order further provided that if Respondent violated the terms of his probation, his stayed suspension shall be actively served without automatic reinstatement.

On January 13, 2023, the Commission filed a verified motion to revoke Respondent's probation, asserting Respondent violated Professional Conduct Rules 1.3 and 1.4 in connection with his representation of an incarcerated client whose mother ("Mother") retained Respondent to file a petition for certiorari on her son's behalf. Respondent, by counsel, has filed a verified response.

The material facts are not in dispute. The petition for certiorari was due on March 3, 2022. Pursuant to United States Supreme Court Rule 13(5), an application for extension of this deadline could be granted for good cause and "must be filed . . . at least 10 days before the date the petition is due, except in extraordinary circumstances." Despite timely reminders from Mother, including one in which Mother specifically identified for Respondent the 10-day deadline for the extension request, Respondent failed to file an extension request by that deadline. Respondent did not file an extension request until March 3, the date the certiorari petition was due and the last date an extension request could be made based on "extraordinary circumstances." The extension request was denied, and no certiorari petition was filed on the client's behalf.

Mother texted Respondent on February 18 and February 24 asking for a copy of the extension request Respondent had indicated he would file. Respondent did not respond to either of these inquiries. Mother twice texted Respondent on March 8, once in the morning and once in the evening, asking that Respondent call her and expressing concern that she had not heard from Respondent. Respondent likewise did not respond to either of these inquiries. Respondent asserts he finally contacted Mother on March 10 to advise her the extension request was denied and no certiorari petition was filed. Respondent claims he offered to refund the $7,500 retainer

Mother had paid once he could obtain the funds, but Respondent makes no claim that he has actually refunded that money.

Respondent's characterization of this as a "single calendar error" ignores the litany of similar appellate errors and pattern of misconduct giving rise to his suspension and probation. *See Matter of Small*, 167 N.E.3d 1160 (Ind. 2021). Simply put, Respondent was placed on probation for the precise purpose of ensuring that his neglect of appellate matters would not continue. Respondent's attempted diminution of Mother's requests for information is similarly unavailing. The requests were reasonable under the circumstances, even if made by text message (a medium of communication Respondent apparently invited), and Respondent's failure to respond in any manner whatsoever during this critical three-week window—even simply to acknowledge receipt of the requests and advise when a response would be forthcoming—fell short of what our professional conduct rules require. Accordingly, the Court finds Respondent violated Professional Conduct Rules 1.3 and 1.4 and, hence, has violated the terms of his probation.

Being duly advised, the Court GRANTS the Commission's motion and revokes Respondent's probation. **Respondent shall be suspended from the practice of law for a period of not less than one year, without automatic reinstatement, beginning April 20, 2023.** Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and 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.

The costs of this proceeding are assessed against Respondent.

Done at Indianapolis, Indiana, on 3/16/2023.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.