

A. Factual Background

1. In March 2019, the Indiana Supreme Court Disciplinary Commission filed a disciplinary complaint against Attorney General Hill alleging that he had committed conduct which violated Indiana Professional Conduct Rules 8.4(b) and 8.4(d), as well as Indiana Admission and Discipline Rule 22.

2. On February 14, 2020, the hearing officer for this matter issued a detailed 36-page report finding that Attorney General Hill violated Indiana Professional Conduct Rules 8.4(b) and 8.4(d), but finding for him on Indiana Admission and Discipline Rule 22.

3. Subsequently, Attorney General Hill petitioned this Court for review of the hearing officer's finding and conclusions that he violated Indiana Professional Conduct Rules 8.4(b) and 8.4(d).

4. On May 11, 2020, this Court issued its ruling concluding that Attorney General Hill violated Indiana Professional Conduct Rules 8.4(b) and 8.4(d), and affirming that he did not violate Indiana Admission and Discipline Rule 22.

5. This Court further held that:

[f]or [Hill]'s professional misconduct, the Court suspends [Hill] from the practice of law in this state of a period of 30 days, beginning May 18, 2020. [Hill] shall not undertake any new legal matters between service of this opinion and the effective date of the suspension, and [Hill] shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the period of suspension, provided there are no other suspensions then in effect, [Hill] shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

In the Matter of Curtis T. Hill, Jr., No. 19S-DI-156 at 19 (Ind. May 11, 2020).

6. While this Court's Order succinctly addressed the length of Attorney General Hill's suspension from the practice of law as well as the conditions upon which he will be automatically reinstated following the conclusion of his suspension, it was silent as to the effect of the suspension on Attorney General Hill's ability to perform any of the duties and responsibilities of the Office of Attorney General.

7. The Order also left open the issue of whether the suspension from the practice of law equates to not being duly licensed to practice law in Indiana, in which event he would no longer meet the statutory qualifications required to be the Attorney General.

8. disqualifying the Attorney General from performing his duties and responsibilities, and thereby creating a vacancy in the office.

9. Given the suspension begins in just six (6) days, on May 18, 2020, this motion is particularly exigent.

10. The position of the Indiana Attorney General is a state office with significant duties and responsibilities, and therefore the clarification being asked of this Court is of great public importance for the interests of both the State of Indiana and its citizens.

B. This Court's Power and Authority

11. Article 7, Section 4 of the Indiana Constitution provides that this Court has original jurisdiction regarding the "admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; . . . supervision of the

exercise of jurisdiction by the other courts of the State; and insurance of writs necessary or appropriate in aid of its jurisdiction.”

12. Rule 4(B) of the Indiana Rules of Appellate Procedure provides that this Court has exclusive jurisdiction over “[m]atters relating to the practice of law including . . . [t]he discipline and disbarment of attorneys admitted to the practice of law; and [t]he unauthorized practice of law (other than criminal prosecutions therefor).”

13. Furthermore, this Court has inherent authority to issue opinions, even *sua sponte*, “wherein questions are presented which directly concern this Court” *In re Judicial Interpretation of 1975 Senate Enrolled Act No. 441*, 332 N.E.2d 97 (Ind. 1975) (*sua sponte* declaring a newly enacted statute to be unconstitutional as it impinged on the Court’s exclusive constitutional powers to regulate the practice of law).

14. This Court also has the ability to “adopt rules of procedure governing the conduct of litigation in our judicial system.” *Augustine v. First Federal Sav. & Loan Ass’n of Gary*, 384 N.E.2d 1018, 1020 (Ind. 1979).

C. Clarification is Necessary as to Whether the Suspension of Attorney General Hill’s Law License Means that He is not “Duly Licensed to Practice Law” as Required by Statute

15. Under Indiana law, the attorney general “shall be a citizen of and duly licensed to practice law in Indiana.” Ind. Code § 4-6-1-3 (emphasis added).

16. When interpreting a statute, the first step is to give its words their “plain meaning and consider the structure of the statute as a whole.” *ESPN, Inc. v.*

Univ. of Notre Dame Police Dep't, 62 N.E.3d 1192, 1195 (Ind. 2016). “If possible, every word must be given effect and meaning, and no part should be held to be meaningless if it can be reconciled with the rest” *Id.* at 1199 (quoting *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011)).

17. In this Court’s order suspending Attorney General Hill for thirty (30) days, it suspended him “*from the practice of law*” and further provided that Attorney General Hill “shall be automatically reinstated *to the practice of law*” *In the Matter of Curtis T. Hill, Jr.*, No. 19S-DI-156 at 19 (Ind. May 11, 2020).

18. Indiana Code Title 4, Article 6 delineates the duties and powers that the attorney general must perform while he holds the office. Specifically, Indiana Code § 4-6-2-1 provides that:

The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

19. Any person serving as the Attorney General who is suspended from the practice of law cannot perform *any* of the above-listed statutory obligations, because an attorney who has been suspended from the practice of law is expressly forbidden from providing legal services of any kind while the attorney’s law license is suspended. *See* Ind. Admission and Discipline Rule 23(26)(b)(1) (prohibiting a suspended attorney from “*practic[ing] law, represent[ing] clients, or maintain[ing] a presence or occupy[ing] an office where the practice of law is conducted*”).

20. The qualification to be attorney general is not simply that the attorney general be “duly licensed” but that the attorney general be “duly licensed to practice law in Indiana.” Ind. Code § 4-6-1-3. What is not clear under Indiana law is what happens when the Attorney General is not duly authorized to practice law, and thus, unable to fulfill his statutory duties and responsibilities.

21. This Court, under similar circumstances, held that a suspension from the practice of law prohibits an attorney who is an elected official from performing any of his or her duties or responsibilities. In *In re Appointment of Temporary Prosecuting Attorney*, 834 N.E.2d 656, 657 (Ind. 2005), this Court noted that:

[A] county prosecuting attorney’s duties are concerned with representing the State of Indiana, primarily in criminal matters, although there are many statutes requiring her to perform duties with reference to the practice of law in various fields, both civil and criminal. *State ex rel. Indiana State Bar Association v. Moritz*, 244 Ind. 156, 191 N.E.2d 21 (1963). Accordingly, Ms. Winkler’s suspension from the practice of law renders her disqualified from performing the duties of a prosecuting attorney. *Matter of Catt*, 672 N.E.2d 410 (Ind. 1996).

Therefore, Ms. Winkler must be suspended from the performance of her duties as prosecuting attorney during her period of suspension from the practice of law, and her pay for services as prosecuting attorney should be discontinued during her period of suspension.

See also In re Szilagyi, 969 N.E.2d 1007 (Ind. 2012) (finding that “suspension from the practice of law render[ed] [the attorney] disqualified from performing the duties of a prosecuting attorney” and necessitating his “suspen[sion] from the performance of his duties as prosecuting attorney during his suspension from the practice of law . . .”).

22. Attorney General Hill's proposal that one of his deputies will perform his required legal duties during his suspension is not expressly allowed under Indiana law. While an Attorney General can hire deputies to assist him, *see* Ind. Code § 4-6-1-4, nowhere in the Indiana Code has the Attorney General been given authority to name a deputy to assume his statutory duties and powers. In other words, Indiana law expressly allows the Attorney General's authority to flow to his deputies, but there is no provision allowing a deputy to ascend to the role of Attorney General.

23. Accordingly, the Governor concludes that based upon Attorney General Hill's current inability to perform his statutory duties, and the lack of a statutory provision affirmatively providing him with the ability to name his interim successor, it is an important clarification for this Court to provide as to whether a vacancy has been created in the Office of the Attorney General.

D. The Interest of the Governor

24. The Indiana Constitution directs the Governor to name a successor whenever there is a vacancy in a state office. Indiana Constitution, Article 5, Section 18, specifically provides:

When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any Court; the Governor shall fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified.

Id. (emphasis added).

25. This constitutional duty is also codified in statute. Indiana Code § 3-13-4-3 provides, in part, that “[a] vacancy that occurs in a state office other than by resignation or death shall be certified to the governor by the circuit court clerk of the county in which the officer resided.” Ind. Code § 3-13-4-3(d).

26. Given that the Governor has a duty under both the Indiana Constitution and the Indiana Code to appoint a successor should a vacancy occur in any state office, the Governor has a strong interest in determining whether the suspension of an Attorney General’s law license, for any period of time, creates a vacancy and obligates him to name a new person to serve as the Attorney General for the remainder of the current term.

WHEREFORE, the Governor of the State of Indiana, Eric J. Holcomb, by his counsel, respectfully requests that the Court:

- (a) Grant the Governor’s request to intervene in the Attorney Discipline Action of Curtis T. Hill, Jr., for the limited purpose of clarifying whether Attorney General Hill’s thirty (30) day suspension from the practice of law creates a vacancy under Article 5, Section 18 of the Indiana Constitution and/or Indiana Code § 3-13-4-3(d); and
- (b) In the event of a vacancy involving Attorney General Hill, order that the Clerk of the Elkhart Circuit Court immediately certify such vacancy as required by Indiana Code § 3-13-4-3(d).

Respectfully Submitted,

/s/ Joseph R. Heerens

Joseph R. Heerens No. 11973-49
Sharon M. Jackson No. 10397-98
J. Michael Nossett No. 32089-32

(317) 232-4567
200 W. Washington St., Rm. 206
Indianapolis, Indiana 46204

CERTIFICATE OF SERVICE

A copy of this Motion has been served on this date, May 12, 2020, on the following persons and entities by electronic service through the Indiana E-Filing System in accordance with Indiana Trial Rule 86(G)(3)(a):

Donald J. Lundberg
Lundberg Legal
P.O. Box 19327
Indianapolis, IN 46219
don@lundberglegal.com

James Voyles
Jennifer Lukemeyer
One Indiana Square
211 N. Pennsylvania St., Suite 2400
Indianapolis, IN 46204

Seth T. Pruden, Disciplinary Commission
Angie L. Ordway, Disciplinary Commission

/s/ Joseph R. Heerens _____

Joseph R. Heerens No. 11973-49
Sharon M. Jackson No. 10397-98
J. Michael Nossett No. 32089-32

(317) 232-4567
200 W. Washington St., Rm. 206
Indianapolis, Indiana 46204