

# **Government Lawyer Ethics**

## **Legal & Ethics Conference**

**November 16, 2023**

**Hon. Gary L. Miller**

**Marion Superior Court**

**Gary.Miller@indy.gov**

DO YOU SWEAR TO DEAL WITH THE TRUTH, THE WHOLE TRUTH, AND NOT TRY TO OBFUSCATE THE TRUTH IN ORDER TO WIN?

DEPENDS ON YOUR DEFINITION OF "TRUTH"...

WHY THERE ISN'T A SWEARING-IN OF THE LAWYERS

# Sources for Ethics Limitations

## **Indiana Rules of Professional Responsibility**

### **Indiana Statutes**

*(IC4-2-6 et seq)*

### **Indiana State Commission Rules**

*(42 IAC 1 et seq)*

### **Office of Inspector General**

The O-I-G's law enforcement officers have full police powers and conduct investigations into allegations of ethics violations and criminal conduct by state workers.

# IRPC 5.1

## Responsibilities of a Partner or Supervisory Lawyer

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.**
  
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.**

# IRPC 5.1

## Responsibilities of a Partner or Supervisory Lawyer

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:**
  - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

# **IRPC 5.2**

## **Responsibilities of a Partner or Supervisory Lawyer**

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.**
  
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.**

# **IRPC 5.3**

## **Responsibilities Regarding Nonlawyer Assistants**

**With respect to a nonlawyer employed or retained by or associated with a lawyer:**

- (a) a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;**
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and**

- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:**
- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or**
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

**Who is the Client?**

# **IRPC1.13**

## **Organization as Client**

**(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.**

**(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization....**

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# **IRPC 1.6**

## **Confidentiality of Information**

**A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).**

# **Benefiting from confidential information**

**42 IAC 1-5-10**

**A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.**

**Confidentiality**  
**and the**  
**Client from Hell**

# Commentary

**(16) A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.**

# **OTHER PROVISIONS of IAC**

- IC 4-2-6-17 Use of state property**
- 42 IAC 1-5-1 Gifts; travel expenses; waivers**
- 42 IAC 1-5-2 Donor restrictions**
- 42 IAC 1-5-3 Honoraria**
- 42 IAC 1-5-4 Political activity**
- 42 IAC 1-5-5 Moonlighting**
- 42 IAC 1-5-6 Conflicts of interest; decisions and voting**
- 42 IAC 1-5-7 Conflicts of interest; contracts**
- 42 IAC 1-5-8 Additional compensation**
- 42 IAC 1-5-9 Bribery**
- 42 IAC 1-5-10 Benefiting from confidential information**
- 42 IAC 1-5-11 Divulging confidential information**
- 42 IAC 1-5-12 Use of state property**
- 42 IAC 1-5-13 Ghost employment**
- 42 IAC 1-5-14 Post-employment restrictions**
- 42 IAC 1-5-15 Nepotism**

# **IRPC 1.7**

## **Conflict of Interest: Current Clients**

**(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:**

- (1) the representation of one client will be directly adverse to another client; or**
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

# **IRPC 1.7**

## **Conflict of Interest: Current Clients**

**(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:**

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent, confirmed in writing.**

# **IRPC 1.11**

## **Special Conflicts of Interest for Former and Current Government Officers and Employees**

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:**
- (1) is subject to Rule 1.9(c); and**
  - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing to the representation.**

# IRPC 1.11

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  - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing to the representation.

**(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person....**

# IRPC 1.11

## Special Conflicts of Interest for Former and Current Government Officers and Employees

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
- (1) is subject to Rules 1.7 and 1.9; and
  - (2) shall not:
    - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

- (ii) negotiate for private employment with any  
person who is involved as a party or  
as lawyer for a party in a matter in  
which the lawyer is participating  
personally and substantially, except  
that a lawyer serving as a law clerk  
to a judge, other adjudicative officer,  
or arbitrator may negotiate for  
private employment as permitted by  
Rule 1.12(b) and subject to  
the conditions stated in Rule 1.12(b).**

**(e) As used in this Rule, the term “matter” includes:**

**(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and**

**(2) any other matter covered by the conflict of interest rules of the appropriate government agency.**

# IAC Conflicts

**Do not enter into a state contract which might financially benefit you.**

**Do not make a decision at work or vote on an issue which might financially benefit you.**

**(or your family or friends!)**



## Lawyer reprimanded in utility ethics scandal

By John Russell, [john.russell@indystar.com](mailto:john.russell@indystar.com)

10:23 p.m. EST February 6, 2014



(Photo: Charlie Nye)

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The Indiana Supreme Court has publicly reprimanded Scott Storms, the former top lawyer at the Indiana Utility Regulatory Commission, for negotiating a job for himself with Duke Energy Corp. while considering a sensitive matter worth hundreds

# In re Storms

**2 N.E.3d 681 (Ind. 2014)**

- **GC and ALJ at IURC was involved with matters and hearings involving Duke Energy**
- **he intended to screen matters involving Duke so that he could apply**
- **Chairman of IURC told Lawyer that he was not to screen off Duke cases or apply, later the Chair gave consent and screened cases from GC**
- **Inspector General filed a complaint with the Ethics Commission, alleging violation conflict of interest rules by participating in IURC decisions involving Duke during the Relevant Period.**
- **fine of over \$12,000 and banishment from any future state employment.**

# Public Reprimand

Respondent violated Indiana Professional Conduct Rule 1.11(d), which states: "Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee . . . shall not . . . negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially . . . ."

**State merit employees may be terminated for cause by an appointing authority, the appointing authority's designee, or the ethics commission. Ind. Code § 4-15-2-34.**

## IURC lawyer asks for relaxed ethics rules

John Russell, [john.russell@indystar.com](mailto:john.russell@indystar.com)

5:44 p.m. EDT May 5, 2014



(Photo: Provided/2008 file)

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In a case that raises questions about the revolving door between Indiana utilities and state regulators, an attorney with the Indiana Utility Regulatory Commission is seeking permission to take a job with a large water utility without a required one-year cooling-off period.

Gregory R. Ellis, an administrative law judge for the IURC, is asking the state Ethics Commission whether he can accept a job as director of government affairs with Indiana American Water Co.

# Former Indiana legislator agrees to plead guilty to fraud in casino corruption scheme

By Isabella Volmert | AP

November 10, 2023 at 2:26 p.m. EST

INDIANAPOLIS — A former Indiana lawmaker has agreed to plead guilty to a federal charge alleging that he accepted promises of lucrative employment from a gaming company during his time in public office, federal prosecutors said Friday.

# **State v. Romero**

**578 N.E.2d 673 (Ind.1991)**

**Romero employed a former deputy prosecutor as his counsel. The State's objection to the former prosecutor's appearance as defense counsel was overruled, and Romero was acquitted in a second jury trial. The State appealed on reserved questions of law.**

# **State v. Romero**

**578 N.E.2d 673(Ind.1991)**

The policy considerations underlying the rule are:

- (1) the treachery of switching sides;**
- (2) the safeguarding of confidential governmental information from future use against the government;**
- (3) the need to discourage government lawyers from handling particular assignments in such a way as to encourage their own future employment in regard to those particular matters after leaving government service; and**
- (4) the professional benefit derived from avoiding the appearance of evil.**

**Courts owe a duty to themselves, to the public, and to the legal profession. The due and orderly administration of justice, the honor of the legal profession, and the dignity of the court forbid such practice. The attorney must not transgress, and the court must not permit it to be done. An observance of the rule will prevent the dishonest practitioner from fraudulent conduct and will prevent the honest practitioner from putting himself in a questionable position.**

# **Commentary to 1.11**

**A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7.**

**In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.**

**This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service.**

**On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government.**

**The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.**

**[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules.**

# **IRPC 3.8**

## **Special Responsibilities of a Prosecutor**

**The prosecutor in a criminal case shall:**

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;**
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;**
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;**
- (d) make timely disclosure to the defense ...**

**(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.**

# Georgetown University

School of Law

It is to be known that Letters were conferred  
by the Council of Georgetown School of Law on the recommendation of the Faculty  
in pursuance of the authority in these respects lawfully vested in it

**Holly Raines**

and was accordingly admitted to the same thereby

In Testis of  
Juris Doctor  
Renee Ann Latta

with all the Rights, Privileges and Immunities thereunto appertaining  
by the Council of Georgetown School of Law on the twenty third day of May  
in the year of our Lord One thousand nine hundred and Twenty five



*[Handwritten Signature]*  
Dean

*[Handwritten Signature]*  
2025

Thursday, November 27, 2014

# Conviction Reversed; Prosecutor Knowingly Used Perjured Testimony

By Legal Profession Prof

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The Indiana Court of Appeals had [reversed](#) a burglary conviction based on its conclusion that the prosecution knowingly used perjured testimony.

The case involved the robbery of a Dollar General in December 2012.

# Commission urges discipline for former Marion County prosecutor

Michael W. Hoskins September 30, 2011

KEYWORDS

ATTORNEY DISCIPLINE, CARL

BRIZZI, COURTS, DISCIPLINARY COMMISSION, DISCIPLINE, GOVERNMENT, INDIANA SUPREME COURT, PROSECUTORS



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## RELATED NEWS AND OPINION

Commission urges discipline for former Marion County prosecutor

Brizzi disciplinary case poses 'actual prejudice'

The Indiana Supreme Court's Disciplinary Commission wants the state's highest court to find former Marion County Prosecutor Carl Brizzi committed misconduct when he made statements about two high-profile cases he handled as prosecutor. The commission indicated that Brizzi should have known that his comments could impact public perception and deprive defendants of fair trials.

# **In Re Brizzi**

**962 N.E.2d 1240 (2012)**

- **Prosecutor comments that “he would not trade all the money and drugs in the world for the life of one person, let alone seven, that Turner deserved the ultimate penalty for this crime, that the evidence was overwhelming, and that it would be a travesty not to seek the death penalty.**
- **engaged in attorney misconduct by making public statements as a prosecutor that had a substantial likelihood of materially prejudicing adjudicative proceedings and a substantial likelihood of heightening public condemnation of the criminal defendants.**

***In re Rokita***

***In re Hill***

***In re Sendak***

***In re Modisett***

**A state employee may not participate in any decision if the state employee knows that he or she has a financial interest in the matter. Ind. Code § 4-2-6-9(a)(1)**

# **Ghosh v. Ind. State Ethics Comm'n**

**930 N.E.2d 23 (Ind. 2010)**

**The employee conducted environmental inspections, traveling from his home-based office to inspection sites. The employee owned an interest in a gas station and frequently purchased gasoline for his state-issued vehicle, using his state-issued gasoline credit card, from that gas station. The employee was terminated for ethics violations for violating the conflict of economic interests' provision of the ethics code for state employees**

**The Ethics Commission has exclusive jurisdiction to interpret the State Ethics Code.**

**Certain persons must file financial disclosures.**

**Certain persons must file conflicts of interest disclosures (you, a member of your family, a business org)**

**ASK Questions**

**Exercise Common Sense**