In the
Indiana Supreme Court

CASE NO. 53S00-1104-DI-244

IN THE MATTER OF)
)
DAVID E. SCHALK)
Attorney Number 15551-53)

MOTION TO CLARIFY PUBLISHED ORDER

Comes now David Schalk and moves the Court to clarify the "Published Order" issued in this matter on April 15, 2013.

The Court wrote:

> **Discipline: Respondent's illegal attempt at a drug sting without the assistance of law enforcement, aggravated by his complete lack of any insight into his misconduct and his repeated and unfounded attacks on those involved in his criminal case and this disciplinary proceeding, demonstrate Respondent's need for a substantial period of suspension followed by a rigorous reinstatement proceeding before resuming practice.**

The "illegal attempt" and "lack of insight into his misconduct"

David Schalk respectfully moves this Court to show him the flaw in the legal analysis he has been presenting over the years, most recently in his "Amended Brief of Respondent" submitted to the Indiana Supreme Court in this matter. Mr. Schalk also respectfully asks for elaboration of the legal analysis underlying this Court's implied conclusion in its April 15, 2013 "Published Order" that his belief in the lawfulness of his actions on June 25, 2007 was unreasonable. Another way of explaining this would be to say how he could have foreseen that his actions would someday be deemed to have been illegal by The Indiana Supreme Court. Neither the Disciplinary Commission, nor the Indiana Court of Appeals, nor the trial court shared whatever insight they might have had into where lies the flaw in David Schalk's legal

analysis. Only the Indiana Court of Appeals, which completely ignored David Schalk's analysis and published an opinion implying that he presented meritless arguments which would not even have occurred to him, presented any legal analysis at all. David Schalk explained in detail why the Court of Appeal's analysis is so thoroughly devoid of merit that it might fairly be characterized as absurd. The definition of "law enforcement officer" is found to be substantive law granting exclusively to law enforcement officers license to commit what, for everyone else, are crimes. I do not think the Indiana Supreme Court has adopted this police-state point of view, or adopted the reasoning of the Opinion however it might characterized it, partly because the opinion of the Court of Appeals flies in the face of the cherished and time-honored principles which give value to, and hope for the longevity of our state and federal constitutions; and partly because under the rationale of the Opinion I committed no criminal offense since I was a bona fide, duly appointed, sworn and credentialed law enforcement officer. Sheriff Jim Young appointed me and Monroe County Clerk Pat Haley administered the oath installing me into the office of Deputy Monroe County Sheriff "until such time as he shall be replaced." Jim Young had the power to appoint me to an indefinite term, and no sheriff had revoked my credentials prior to June 25, 2007. The record before the Indiana Supreme Court in this matter contains my letter to Sheriff Kennedy detailing the discreet and reserved manner in which I have proudly lived these past twenty-eight years as a sworn officer of the law, and how my status could be very useful if hazardous chemicals were ever to be dumped in Monroe County, Indiana. I am utterly mystified by the Indiana Supreme Court's implied finding that my belief on June 25, 2007 in the legality of my actions was unreasonable. This Court was correct in writing that I have "a complete lack of any insight" into the wrongfulness of my acts. I hereby move the Court, I humbly beg the Court, to bestow upon me the insight to which it has

achieved but which still eludes me and, I think, everyone else who knows about this case. Without that information, I am effectively disbarred since the insight which continues to elude me is a prerequisite to the reinstatement of my license to practice law. I must have insight into the wrongfulness of my acts and be remorseful in order to for my license to be reinstated.

". . . repeated and unfounded attacks on those involved in his criminal case and the disciplinary case"

David Schalk does not know of even one isolated instance of his having ever having made an unfounded attack on anyone involved in his criminal case or anyone involved in the disciplinary case. There is a related statement in the "Published Order." It says, "(3) Respondent made false statements or statements with reckless disregard for their truth regarding the integrity of the judges of the trial court and Court of Appeals." Again, David Schalk has no way of knowing what the Indiana Supreme Court means by this. He doesn't remember it and he can't find it in the record. David Schalk respectfully moves the Court to state every instance of these kinds of attacks and statements that it identified before issuing its "Published Order." Otherwise, David Schalk is effectively disbarred since reinstatement depends on his realizing the wrongfulness of the unfounded attacks, false statements, or statements made with reckless disregard for their truth which are mentioned as general accusations but not specified in the "Published Order."

The "Published Order" also states:

> **Facts in aggravation include: (1) Respondent solicited others to commit a criminal act, which put them at risk of arrest or physical danger; (2) Respondent has no appreciation for the wrongfulness of his conduct; (3) Respondent made false statements or statements with reckless disregard for their truth regarding the integrity of the judges of the trial court and Court of Appeals; (4) Respondent's assertions that his criminal prosecution was based upon vindictiveness by law enforcement authorities is frivolous; and (5) Respondent improperly interfered with the discovery process in the disciplinary proceeding.**

"(1) Respondent solicited others to commit a criminal act, which put them at risk of arrest or physical danger."

The record leaves no doubt that the people involved in the incident on June 25, 2007 had used and probably dealt drugs together for years. LE called David Schalk that June morning to say she intended to purchase marijuana from the State's witness in one hour. It was abundantly clear at the trial that David Schalk had nothing whatsoever to do with LE's intentions that day. Mr. Schalk asked her as she sat on the witness stand at his trial why she called to say she planned to "get some weed from Pablo" in one hour. She thought, and responded that she didn't know. Other testimony made it crystal clear that David Schalk had no influence over her decision. It was a week prior to the scheduled Class A felony trial and David Schalk, in the parlance of football, threw a Hail Mary pass by trying to persuade LE to take the purchased contraband to the police for use in fleshing out the circumstances of the case during the presentation of Chad Pemberton's case in chief. The informant, being a drug dealer, had access to illegal drugs and was very motivated to keep the police happy. He had been sent on a mission to compromise Chad Pemberton so Mr. Pemberton could be coerced into testifying against Carlton White, who was about to be put on trial. David Schalk had a reasonable, good-faith belief at the time that possessing the marijuana for the purpose of taking it to the police would have been lawful. That is what the State's witness had done and he was being rewarded for it. David Schalk respectfully submits that a fair reading of the record shows he did not solicit anyone to buy drugs; he just tried to divert the planned purchase into police custody. He reasonably believed that following his advice would have transformed the intended and eventual criminal act into something legally benign and also helpful to the administration of justice.

(2) Respondent has no appreciation for the wrongfulness of his conduct

That is certainly true. David Schalk asked this Court to praise him for his dedication to

his client, and for steadfastly upholding the Constitution of the State of Indiana as the enduring framework for regulating society in Indiana. He doesn't understand why the Indiana Supreme Court has not seized this opportunity to reassert the rule of law as opposed to the "rule by law," which is what we have when judges find people guilty of crimes without evaluating or even acknowledging what they say in their defense. He moves this honorable Court to help him understand lest his license be permanently lost.

(3) Respondent made false statements or statements with reckless disregard for their truth regarding the integrity of the judges of the trial court and Court of Appeals

David Schalk cannot think of even one single statement he ever made regarding the integrity of the judges of the trial court or the Court of Appeals that was false, or made with reckless disregard for the truth. David Schalk respectfully moves the Court to divulge all instances of such statements that the Court identified prior to issuing the suspension order so he will have an opportunity to realize their wrongfulness and be remorseful about what he said or wrote.

(4) Respondent's assertions that his criminal prosecution was based upon vindictiveness by law enforcement authorities is (sic) frivolous

David Schalk moves the Court say how it arrived at that conclusion. David Schalk believes his prosecution was improper, and that the impropriety is partly due to its vindictiveness. Law enforcement authorities definitely were angry. If the Court explains its reasoning on this topic, it might be possible for David Schalk to see the wrongfulness of his assertion and experience remorse.

(5) Respondent improperly interfered with the discovery process in the disciplinary proceeding.

David Schalk is unaware of ever having improperly interfered with the discovery process, in these or any other proceedings. He is also unaware of this or any similar allegation ever before having been made in a license suspension order without the Supreme Court saying what exactly

it was that the respondent did. In addition to respectfully moving this honorable Court to divulge its reason or reasons for this finding, he also asks if the Court can cite one other published suspension or disbarment order with only bald, general allegations and no accompanying specific facts. Mr. Schalk thinks this is unprecedented but wants to make sure. The important thing here is for David Schalk to know what the Indiana Supreme Court found that he did or said that improperly interfered with the discovery process in the disciplinary proceedings. He can't experience remorse in the absence of anything about which to feel remorseful. He has no idea what he might have done that could have caused the Court to find that he "improperly interfered with the discovery process." If the Court tells him, he might gain insight into the wrongfulness of his act and be remorseful. If the Court won't tell him, his license is lost permanently because insight into the wrongfulness of his acts and remorse are prerequisites for reinstatement.

Respectfully submitted,

David E. Schalk
Attorney Number 15551-53

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, I served a copy of this document by First Class U.S. Mail, postage pre-paid on:

Seth T. Pruden
Supreme Court Disciplinary Commission
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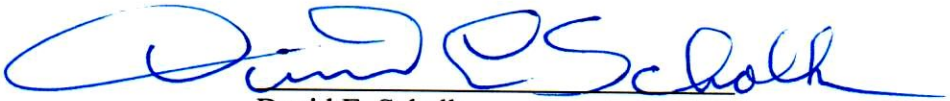
Indianapolis, IN 46204



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