

**In the
Indiana Supreme Court**

CASE NO. 53S00-1104-DI-244

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

EMERGENCY MOTION TO STAY EFFECTIVENESS OF SUSPENSION ORDER

Comes now David Schalk and moves the Court to stay the effectiveness of the “Published Order Finding Misconduct and Imposing Sanctions,” (hereinafter "Order") issued in this matter on April 15, 2013. The grounds for this motion are that (1) there is a substantial probability that the Order will be rescinded upon further investigation and consideration by this Court, (2) the hardship of the abrupt and unexpected termination of employment, and (3) the ongoing harm to David Schalk's reputation caused by the Indiana Supreme Court's publication of vague accusations of unspecified acts or omissions, along with the publication of the implied finding that the legal analysis David Schalk has been presenting for years is so lacking in merit as to be unreasonable.

David Schalk has also drawn the Court's attention to the fact that no court (and no one involved in the disciplinary proceedings) pointed out any flaw in the reasoning process that led David Schalk to believe his actions were lawful and appropriate on June 25, 2007. The logic of Mr. Schalk's analysis, in combination with the absence of any sensible, principled contrary analysis, reinforces David Schalk's belief that he was wrongfully convicted of misdemeanor attempted possession of marijuana. If Mr. Schalk's belief was reasonable, the rule of lenity and the void-for-vagueness doctrine would come into play, providing additional grounds for concluding that he was wrongfully convicted.

The Order does not specify even one instance of David Schalk making an unfounded attack on anyone, or one false statement or statement made with reckless disregard for the truth, or even a single instance of anything that a reasonable person would construe to have been improper

interference with the discovery process. There is no support for the Supreme Court's accusations in the record, or in reality.

David Schalk does not know why transfer was not granted in the Pemberton or the Schalk appeals. Perhaps some form of arbitrage was at play, resulting in the Indiana Supreme Court's directing its attention toward matters it deemed to be more pressing. The issues involved in those cases finally came before the Indiana Supreme Court in this matter, and Mr. Schalk was confident that a principled and scholarly analysis would be handed down, vindicating him and reaffirming the principles for which he stands. People reading the published Order don't get even an inkling of the fact that David Schalk presented a sensible legal analysis. They don't know what facts might have been thought to have constituted attacks, false or reckless statements, or interference with the discovery process. Some, no doubt, think the worst. Nobody would know that the facts clearly show that David Schalk did not induce anyone to buy marijuana, not that it would have been illegal to do so under the circumstances, but in reality Schalk tried in vain to get some people already on their way to purchase marijuana from the State's witness to take their purchase to the police for use as evidence at the Pemberton trial.

The published opinion upholding David Schalk's conviction, *Schalk v. State*, 943 N.E.2d 427 (2011), ignored his legal presentation entirely, substituted ridiculous arguments that would not have occurred to Mr. Schalk, made substantive law out of a definition, misstated the facts, and could be read as the first formal declaration that Hoosiers live in a society in which the police are above the law. We know that the Indiana Supreme Court did not adopt the views stated in the *Schalk* opinion. A convenient way to nullify that published opinion would be to grant transfer.

WHEREFORE, David Schalk respectfully moves the Court to vacate the April 15 suspension Order or else stay its effectiveness, and then delve more deeply into this case. There are issues of general import here, and setting things right for David Schalk and his son in itself would send a beneficial message to judges, prosecutors, and defense attorneys throughout the State.

Respectfully submitted,



David E. Schalk
Attorney Number 15551-53

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 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
30 South Meridian Street, Suite 850
Indianapolis, IN 46204



David E. Schalk
Attorney Number 15551-53

David E. Schalk
Attorney at Law
1706 South Olive Street
Bloomington, IN 47401

812-336-9093
812-360-1655 (cell)
812-336-9970 (fax)

schalk@schalk.net