Ohio Board of Professional Conduct

Disciplinary Case Statistics
2023-2025

Supreme Court Decisions
(excluding defaults and reinstatements)

2023	2024	2025
22	44	19

Sanction Imposed
(excluding defaults)

	2023	2024	2025
Public reprimand	3	5	3
Term suspension	16	28	15
Indefinite suspension	3	6	1
Disbarment	0	5	0
Dismissal	0	0	0

Court Action on Board-Recommended Sanction

	2023	2024	2025
Imposed recommended sanction	18 (82%)	37 (84%)	13 (68%)
Modified recommended sanction	4 (18%)	7 (16%)	6 (32%)
· Increased	2	3	5
· Decreased	2	3	1

Court Action on Consent to Discipline Cases
(cases in which the Board recommended acceptance)

	2023	2024	2025
Accept with public reprimand	3	3	2
Accept with term suspension	1	3	3
Rejected and remanded	0	0	0

Default Cases

	2023	2024	2025
Total defaults certified to SCO	6	1	5
Interim suspension imposed	4	0	5
Indefinite suspension imposed	0	4	2

Ohio Board of Professional Conduct

Disciplinary Case Statistics
2023-2025

Respondent with Prior Discipline

(includes discipline for misconduct and suspensions for non-compliance with CLE or attorney registration requirements.)

2023	2024	2025
4 (18%)	14 (32%)	2 (11%)

License Reinstatements

	2023	2024	2025
Upon application	9	8*	5
Upon petition:			
· Granted	2	2	1
· Denied	0	0	1
· Withdrawn	0	0	0

*One application for reinstatement was denied.

Judicial Misconduct Cases (Board Dispositions)

(includes all cases involving violations of the Code of Judicial Conduct when the respondent was a judicial officer or candidate at the time the misconduct occurred.)

	2023	2024*	2025
Total	5	4	3
Rule V cases	3	3	3
Judicial campaign misconduct (expedited)	2	1	0
Dismissals	1	0	0

Miscellaneous Disciplinary Dispositions

	2023	2024	2025
Resignations with discipline pending accepted	9	11	11
Resignations with discipline pending denied	0	0	0
Interim remedial suspension imposed	2	2	1
Child support default suspension imposed	0	1	2
Interim felony suspension imposed	12	1	8
Impairment suspension imposed	2	1	0
Reciprocal discipline imposed	2	5	5

Ohio Board of Professional Conduct

Disciplinary Case Statistics
2023-2025

Top Six Disciplinary Offenses of 2025

(based on total number of grievances opened for investigation and primary misconduct alleged)

	2025
1. Neglect/failure to protect client's interest	20%
2. Judicial misconduct	8%
3. Excessive fee	6%
4. Misrepresentation/False Statement	5%
5. Personal Misconduct	4%
6. Failure to Maintain Funds in Trust	4%

	2023	2024	2025
Active Registered Attorneys	43,246	44,226	42,962
Awards to Victims of Lawyers by Lawyers' Fund for Client Protection	$749,942	$744,986	$633,885

	2023***	2024	2025
Total Grievances Filed	**4,151**	**4,052**	**4,306**
Disciplinary Counsel (ODC)	3,114 (75%)	3092 (76%)	3715(86%)
Certified Grievance Committees (CGC)	1,037 (25%)	960 (24%)	588 (14%)
Dismissed after initial review by ODC	312 (8%)	354 (9%)	374 (9%)
Dismissed after initial review by CGC	334 (8%)	324 (8%)	392 (9%)
Total Grievances Investigated*	**3,505**	**3,374**	**3,537**
Opened for Investigation by ODC	2,802 (68%)	2738 (68%)	3341 (78%)
Opened for Investigation by CGC	703 (17%)	636 (16%)	196 (5%)
New complaints filed with the Board	**45**	**45**	**44**

* Percentages based on total grievances

*** 2023 totals do not reflect missting reports from Portage grievance committee.

Case Law Update
Case Summaries

Dayton Bar Ass'n v. Baker, 2026-Ohio-2673

In September 2023, Baker inadvertently transferred $550 to a Zachary Reynolds ("ZR") in Illinois. She had intended to transfer the money to her husband, also named Zachary Reynolds. When she discovered her error, she contacted ZR by email, text, and LinkedIn. She also contacted ZR's wife and several of ZR's colleagues. One of the emails indicated, "If you do not return the ill gotten funds within 24 hours, collection, garnishment, and all available recovery methods will commence, including notifying your employer of your conduct." When ZR received the email, he believed he was the target of a scam and replied that Baker can follow appropriate channels to recoup her funds. Baker continued to send emails to ZR and his colleagues, including one to his employer inquiring whether ZR's conduct was consistent with the company's values. Two weeks later, the funds were withdrawn from ZR's account and returned to Baker. ZR then filed a grievance against Baker. In turn, Baker filed a civil lawsuit against ZR alleging conversion, defamation per se, and defamation per quod. The complaint went through various stages and venues. ZR incurred over $21,000 in fees defending the case filed by Baker.

The Supreme Court adopted the Board's findings of fact but ordered that Baker be suspended for two years, with one-year conditionally stayed.

Columbus Bar Ass'n v. Cable, 2026-Ohio-89

In 2022, Bayshore contacted Cable and offered to market his legal services and refer clients to him for $75 per client matter. Cable also entered into a similar agreement with LMS and agreed to pay $250 or $300 for every client that was referred to him. Non-lawyer representatives of both companies contacted accident victims and referred them to "preferred network" attorneys, like Cable. Despite knowing that his clients were being contacted by a solicitation firm, he allowed his clients to sign agreements, which stated they had not been solicited. One of Cable's objections focused on relator's reliance on information contained in her opening argument. The Court sustained the argument finding, "Any opinions expressed by counsel in an opening statement or closing argument that are unsupported by clear and convincing record evidence should have no bearing on that calculus."

The Supreme Court adopted the Board's findings of misconduct but imposed a one-year suspension, fully stayed. The Court also ordered that Cable complete one-year of monitored probation.

Disciplinary Counsel v. Collins, 2025-Ohio-5393

In 2021 and 2022, approximately 90% of Collins' practice was court-appointed work. He utilized office-management software that included both time-management and calendaring features. He did not, however, utilize the time-management feature of the software to maintain contemporaneous records or notes of the time he had spent working on his court-appointed cases, nor did he carefully track the daily total of the work he had performed in three counties. Accordingly, when he submitted fee application forms to various courts for payment of his services, he estimated the time spent on the cases by reviewing the docket, pleadings, etc. This practice led Collins to file numerous incorrect or false fee application forms on which he certified the hours listed on the forms. Despite the high number of hours billed, relator was unable to prove that Collins – or another attorney on his behalf – did not work the hours. Collins voluntarily reimbursed three counties a total of $19,695.50. He later reimbursed an additional $3,114.75.

The Supreme Court adopted the Board's findings of fact and ordered that Collins receive a fully stayed two-year suspension.

Cincinnati Bar Ass'n v. Eppley, 2026-Ohio-2047

In 2021, NLPA referred Ricky Thompson to Eppley to pursue post-conviction remedies in Tennessee. Eppley agreed to represent Thompson for a $15,000 fee, even though he was not licensed to practice law in Tennessee. In March 2022, Eppley charged an additional $6,000 for a motion for judicial release. Respondent did not deposit any of the funds in his trust account, nor did he maintain any records of client funds in his possession. Eppley did not perform any significant work on the case until April 2022 and did not begin looking for a Tennessee attorney to assist him until October 2022. After learning that he would have to pay an attorney in Tennessee between $3,000 and $10,000 to assist him in being admitted PHV to Tennessee, Eppley started drafting documents for Thompson to file pro se. Between August 2022, and January 2023, Thompson's fiancée reached out to Eppley multiple times, but Eppley did not timely respond. In a second matter, Eppley charged a client a $20,000 fee for a property matter but failed to deposit the money in his trust account. He also did not return calls. In November 2022, the client terminated Eppley; however, Eppley did not return the client's fees until nearly two years later. Finally, Eppley misrepresented the status of his firm and who was employed there. The firm is named "Eppley Law Group," but Eppley was the only attorney at the firm. Further, Eppley did not remove the name and picture of an attorney who had left the firm

from the firm's website until more than a year after the attorney left.

The Supreme Court adopted the Board's findings of fact but ordered that Eppley be suspended for two years, with the suspension stayed on conditions.

Medina Cty. Bar Ass'n v. Hall, 2026-Ohio-629.

Hall was appointed to represent Charles Beekman, a homeless person, against charges of threatening domestic violence. At the arraignment, the court ordered that Beekman could be released if he provided a residential address. Following Beekman's arraignment, Hall filed a jury demand and discovery request without consulting Beekman. However, he made no effort to determine whether Beekman remained in jail. Later, Hall filed a motion for an expedited change-of-plea hearing without obtaining Beekman's consent. The court denied Hall's motion, but modified Beekman's bail conditions, allowing him to be released without providing a residential address. Later, Beekman submitted to a court-ordered competency examination, which recommended that he receive 30 days inpatient treatment. Hall failed to object to the recommendation even though Beekman had already served 28 days of the maximum 30-day sentence.

The Supreme Court adopted the Board's findings of fact and ordered that Hall receive a conditionally stayed, six-month suspension.

Disciplinary Counsel v. Harvey, 2026-Ohio-2047

In 2019, shortly before starting law school, Harvey began working for Wiseman Law Office as an assistant and investigator. In March 2020, he applied to administer the estate of Jason Sheppard, with his boss, Britt Wiseman, as the attorney for the estate. Five days later, Harvey deposited $230,022.62 into the estate checking account and immediately began using autopay to pay personal utility bills. Harvey also wrote numerous checks to himself. On some of the checks, he wrote in the memo line, "atty fee," "executor fee," or "fiduciary fee." The supposed fees were neither earned by Harvey nor approved by the probate court. Over two years and eight months, Harvey made 53 autopayments totaling $22,570.03 and wrote 32 checks totaling $203,260 for unearned administrator fees. While serving as administrator, Harvey also applied to take the bar exam. On his application, Harvey failed to answer questions or provide information aimed at determining whether he had breached any fiduciary duties. Harvey was eventually charged criminally. He pleaded guilty to one count of theft by deception and was sentenced to 60 months of

community control. In its opinion, the Court discusses the aggravating and mitigating factors at length and why it did not agree with the parties, panel, or board.

The Supreme Court adopted the Board's findings of fact but ordered that Harvey be permanently disbarred.

Disciplinary Counsel v. Juhola, 2025-Ohio-5663

Juhola served as the guardian of the estates of Bradford Woelfel and Todd McDaniel. In January 2023, Juhola transferred $20,000 from Woelfel's account to McDaniel's account. In February 2023, he transferred another $5,000. Juhola used the entire $25,000 to pay for McDaniel's housing at an assisted living facility. Juhola explained that he had a "cash flow" problem due to delays in selling some of McDaniel's stock. He did not record any transfers between Woelfel and McDaniel in paperwork that he filed with the court. In October 2023, Juhola also transferred $70,000 from Woelfel's account to another client's account – Jarvis. The money was used to make a cash offer on a condo that would suit Jarvis's needs. In November 2023, the bank reported the transfer from Woelfel's account to Jarvis's account to Adult Protective Services. The next day, the probate court held a hearing to determine whether Juhola should be removed as guardian of Woelfel's estate. Juhola testified that he had never transferred funds from Woelfel's account to any other person except Jarvis, even though he had previously transferred funds to McDaniel. Juhola later disclosed the transfers to McDaniel.

The Supreme Court adopted the Board's findings of fact but ordered that Juhola be suspended for two years, with eighteen months stayed on conditions.

Cleveland Metro. Bar Ass'n v. McGaffick, 2026-Ohio-2397

In April 2024, after "dabbling" in pornography, McGaffick began searching the internet for "legitimate hookups." After exchanging text messages with an individual whom he believed was an escort, he drove 60 miles to meet the woman, only to discover that he had been communicating with an undercover law enforcement agent. McGaffick was arrested and charged with first-degree misdemeanor counts of engaging in prostitution and possession of criminal tools. He pleaded no contest and was found guilty, sentenced to suspended jail terms, and ordered to pay a $500 aggregate fine and costs. He was also ordered to serve one year of probation, complete 20 hours of community service, and complete an online prostitution-prevention course. Relator recommended a 12-month stayed suspension, partially because McGaffick was "invested with the public trust"

since he was on a list of attorneys eligible to serve as an acting judge at the time of his misconduct. The Court rejected this argument because McGaffick's last service as a judge was nine years before his misconduct.

The Supreme Court adopted the Board's findings of fact and ordered that McGaffick be publicly reprimanded.

Disciplinary Counsel v. Mollica, 2025-Ohio-5372

In 2021, approximately 90% of Mollica's practice was court-appointed work. During 2021, Mollica used a software program to record his time, though he did not use it effectively. Typically, he entered his time at the end of the day, but sometimes he waited a day or two. At his disciplinary hearing, Mollica testified that his software automatically recorded the current date as the entry date, unless he overrode it. He did not always override dates, leading to hours/tasks being recorded on the wrong dates. He did not verify whether the dates in the system were correct before transferring the dates to fee application forms, which he submitted to various courts for payment of his court-appointed services. Relator's investigation did not uncover any evidence proving that Mollica intentionally inflated the time billed for his legal service, and Mollica was adamant that he had worked all the hours that he billed, just on different dates. Mollica voluntarily reimbursed five counties a total of $10,197.

The Supreme Court adopted the Board's findings of fact and ordered that Mollica receive a fully stayed one-year suspension.

Disciplinary Counsel v. VanBibber, 2026-Ohio-1271

VanBibber agreed to represent Matthew Casto in a custody matter. Casto was set for a settlement conference on July 25, 2023, and a final hearing on August 31, 2023. VanBibber failed to appear for the July 25, 2023 hearing, and when questioned about why he did not appear, he provided false or inconsistent information to the court and relator. VanBibber also agreed to a final hearing date for another client on August 31, 2023, even though Casto's was set for the same day. In the process of trying to have one of the August 31 hearings continued, VanBibber provided false information to the court. Further, when neither hearing was continued, VanBibber failed to appear at the *Casto* hearing. The magistrate in Casto brought the matter to the attention of relator; however, VanBibber initially failed to cooperate in the investigation. In a third count, VanBibber was retained

to represent Joshua Miller in a child-support modification case. Miller was in a relationship with J.H., and VanBibber was aware of that relationship. Nevertheless, one evening, VanBibber sent J.H. message through Snapchat asking her to engage in sexual relationship with him. J.H. declined and told Miller. The messages made Miller upset, but he felt as if he could not terminate the representation because the hearing was only a week away. Relator also filed a fourth count against VanBibber but moved to dismiss the count before the disciplinary hearing.

The Supreme Court adopted the Board's findings of fact and ordered that VanBibber receive a two-year suspension.

Disciplinary Counsel v. Wallace, 2026-Ohio-112

Wallace represented J.W. in a parenting dispute. During their first meeting on Friday, August 19, Wallace asked J.W. numerous questions to the effect of, "How serious are you about getting what you want with your daughter?" and "How far would you be willing to go to get what you wanted?" J.W. replied that she would do whatever she needed to do. Similar conversations occurred on the following day (Saturday), including a conversation where Wallace told J.W. that he had "connections" and that he used to supervise the juvenile judge who would be presiding over her case. Later on Saturday, Wallace asked J.W. to come to his office, which she did. Wallace and J.W. discussed the case for 15-20 minutes before Wallace redirected the conversation to what J.W. was willing to do to demonstrate her "seriousness." He then instructed her to leave her belongings and led her to his personal office which had a desk and a couch. As they were walking down the hallway, Wallace asked J.W. how many tattoos she had. When J.W. showed Wallace a tattoo on her lower back, he noticed a phone in her back pocket. He pulled the phone out saying, "These things make me nervous." Thereafter, the conversation about "seriousness" continued. J.W. asked what would happen if she did "the thing," to which Wallace replied that her case would get priority. Approximately a month later, J.W. terminated Wallace's representation.

The Supreme Court adopted the Board's findings of fact and ordered that Wallace be suspended for one year, with six months conditionally stayed.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Rudduck*, Slip Opinion No. 2026-Ohio-1126.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2026-OHIO-1126

DISCIPLINARY COUNSEL *v.* RUDDUCK.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Rudduck*, Slip Opinion No. 2026-Ohio-1126.]

Judges—Alleged misconduct—Alleged violations of Code of Judicial Conduct based on judge's personal Facebook activity—Jud.Cond.R. 4.1(A)(3) violates First Amendment to United States Constitution because it is a content-based restriction on political speech and does not satisfy strict scrutiny—Complaint dismissed.

(No. 2025-0203—Submitted March 11, 2025—Decided April 2, 2026.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2024-015.

KENNEDY, C.J., authored the opinion of the court, which DEWINE, DETERS, HAWKINS, and SHANAHAN, JJ., joined. FISCHER, J., dissented, with an opinion. BRUNNER, J., did not participate.

KENNEDY, C.J.

{¶ 1} Respondent, John William Rudduck ("Rudduck"), of Wilmington, Ohio, Attorney Registration No. 0006233, was admitted to the practice of law in Ohio in 1976, and his attorney registration is currently inactive.

{¶ 2} In a June 2024 complaint, relator, disciplinary counsel, charged Rudduck, then a Clinton County Common Pleas Court judge, with violating the Code of Judicial Conduct based on his activity on his personal Facebook page through which he endorsed his son, Brett Rudduck, for a seat on the Clinton County Municipal Court. Rudduck was tagged in Facebook posts endorsing Brett, shared many of those posts, and in one instance, posted a lengthy essay defending himself and members of his family, including Brett, on his Facebook page.

{¶ 3} A panel of the Board of Professional Conduct found that Rudduck had committed the charged misconduct and recommended that this court publicly reprimand him and order him to remove all posts referred to in the panel's report within ten days of the court's decision. The board adopted the panel's findings of fact, conclusions of law, and recommended sanction. The parties jointly waived any objections. However, we note that "as the ultimate arbiter of misconduct and sanctions in disciplinary cases, this court is not bound by factual and legal conclusions drawn by either the panel or the board." *Disciplinary Counsel v. Kelly*, 2009-Ohio-317, ¶ 11.

{¶ 4} Before us is the question whether Rudduck's Facebook activity while serving as a judge violated Jud.Cond.R. 1.2 (requiring a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary), 1.3 (prohibiting a judge from abusing the prestige of his or her judicial office to advance the personal or economic interests of the judge or others), and 4.1(A)(3) (prohibiting a judge from publicly endorsing or opposing a candidate for another public office).

{¶ 5} Starting with Jud.Cond.R. 4.1(A)(3), we conclude that the rule prohibits "speech that is 'at the core of our First Amendment freedoms'—speech about the qualifications of candidates for public office," *Republican Party of Minnesota v. White*, 536 U.S. 765, 774 (2002), quoting *Republican Party of Minnesota v. Kelly*, 247 F.3d 854, 861 (8th Cir. 2001). And as a content-based restriction on political speech, the bar against judges endorsing judicial candidates does not withstand strict scrutiny, as it is not narrowly tailored to serve a compelling state interest, *see Disciplinary Counsel v. Grendell*, 2025-Ohio-5239, ¶ 25, 80. We therefore hold that Jud.Cond.R. 4.1(A)(3) violates the First Amendment to the United States Constitution and, therefore, a violation of the rule cannot serve as a basis for discipline. And because the violation of Jud.Cond.R. 1.2 found by the board in this case was premised on its finding of a violation of Jud.Cond.R. 4.1(A)(3), the Jud.Cond.R. 1.2 violation also cannot serve as a basis for discipline.

{¶ 6} Further, upon a review of the facts and our caselaw, we conclude that Rudduck's Facebook activity did not violate Jud.Cond.R. 1.3.

{¶ 7} For these reasons, we dismiss the complaint.

Facts and Procedural History

{¶ 8} Rudduck served as a judge in Clinton County for 39 years; his final term ended on December 31, 2024. At all times relevant to this case, Rudduck had a personal Facebook account and his profile identified him as a Clinton County Common Pleas Court judge. His Facebook page was set to be a public profile, meaning anyone could access his page and view its content.

{¶ 9} When a user logs into Facebook, he or she lands on a homepage, and on that homepage is a "feed" that contains a list of posts from "friends," groups that the user is in, and pages that the user follows. Facebook Help Center, *Your Home Page*, https://www.facebook.com/help/753701661398957?helpref=related_topics (accessed Dec. 19, 2025) [https://perma.cc/BAP3-WWK3]. The parties stipulated that when a user is "tagged" in a Facebook post by another person, that post may

appear on the user's Facebook page, depending on the user's privacy settings, and may be viewed by friends and others who visit the user's page. The parties also stipulated that a user may "share" a post appearing on the user's feed to distribute that post to friends and other groups.

{¶ 10} Rudduck's relevant Facebook activity falls into three categories: (1) sharing posts that his son Brett tagged him in, (2) sharing posts by nonfamily individuals, and (3) posting his own content on his Facebook page.

Posts that Brett tagged Rudduck in and Rudduck then shared

{¶ 11} In 2023, Brett decided to run in the Republican primary for a seat on the Clinton County Municipal Court that opened due to the death of the sitting judge. Brett's opponents in the primary were David Henry and Judy Gano.

{¶ 12} During his campaign, Brett wrote seven posts and tagged Rudduck in them, and those posts appeared on Rudduck's Facebook page.

{¶ 13} The first post included two photos of five children wearing Brett's campaign shirts and holding his campaign signs. In the first picture, the children are standing in a row, smiling, and holding the signs above their heads. In the second picture, the children appear to be roughhousing while holding the signs. The caption to the pictures read: "Expectations vs Reality . . . . I live it. I get it. Let me know if you would like a sign before they are all spoken for! (or destroyed)." (Ellipsis in original.) Rudduck shared the post.

{¶ 14} The second post contained a photo showing Brett in a suit with his wife and their three children, who are wearing Brett's campaign shirts. The caption read: "As I am famously known for, I turbo-talked my way through my Five-Minute Speech at the Republican-Hosted event last night. Mangled-Messaging aside . . . it's still a start." (Ellipsis in original.) Rudduck shared the post and commented: "I heard [that] one candidate in an opening statement said the 'sole qualification' the other two candidates had to be Judge was their last name. Should I consider that a complement or an insult?"

{¶ 15} A third post was a photo of Brett in a Cincinnati Reds jacket kneeling behind a red campaign sign. The photo was captioned, "The Perfect Day for Rudduck Red!" Rudduck shared the post.

{¶ 16} The fourth post contained a photo of Brett, his wife, and their three children wearing campaign shirts and inserting pretend ballots into a homemade ballot box. Brett captioned the post, "Don't forget about Early Voting!!!" Rudduck shared the post.

{¶ 17} The fifth post was posted in response to a 27-second video of Henry, one of Brett's opponents, speaking at a campaign event. Henry claimed that he was the only candidate not related to a judge. Brett's rebuttal post to the video stated:

> While most of the recent attacks on me have been unrelentingly personal in nature, the more civil and appropriate criticism has tended to be centered around my lack of relevant qualifications.
>
> As the elected law director for the city of Wilmington, I hired David Henry as my assistant law director and city prosecutor because I obviously found him undoubtedly qualified for the position. I also firmly believe he is qualified to be a judge.
>
> When Mr. Henry began his campaign claiming the other two candidates believed their "sole qualification" for being a judge was their "last name," I was stunned.
>
> When he later encouraged an individual in a private text message to publicly share misleading and unflattering information, I was shocked.
>
> When he declined to respond to my attempt to discuss the error, I was disappointed.

> I encourage you to view the video and then review a brief summary of my actual qualifications by clicking the link below and in the comments.
>
> Vote BRETT RUDDUCK for judge on May 2.

(Capitalization in original.) Rudduck shared Brett's rebuttal post.

{¶ 18} A sixth post included a photo of two gymnasts, one balancing on the other's hand, wearing Brett's campaign shirts. The photo was captioned: "One thing that is true in both one's judicial philosophy and elite gymnastics? BALANCE is Key." (Capitalization in original.) Rudduck shared the post.

{¶ 19} Brett's seventh post showed a photo of his wife behind a campaign sign. Rudduck shared the post.

Rudduck's sharing of posts from nonfamily individuals

{¶ 20} Other people made posts about Brett's campaign on Facebook that Rudduck shared or that otherwise appeared on his page.

{¶ 21} Monika Davis posted a picture of Brett's campaign flyer beside a statement of Brett's accomplishments and affiliations, and she captioned the photo "Vote Brett Rudduck for Municipal Court Judge this May! Share and vote." Rudduck shared the post.

{¶ 22} Rick Crabtree posted a photo of Brett's campaign signs in front of a home. The photo was captioned as follows:

> A friend of ours is running for judge. It's so different knowing a person running for an elected position personally, and knowing he is a good person. Brett did our adoption when I adopted Addy and we've been friends since. Love this guy.
>
> Good luck Brett Rudduck, we're rooting for you. Looking forward to rocking those t-shirts.

> Words I never even thought of saying before but here we are, life is good.

Rudduck shared the post.

{¶ 23} Tyler McCollister posted a photo of Brett's campaign sign captioned, "Representing in Blanchester." Rudduck shared the post.

{¶ 24} Seth Cunningham wrote a lengthy post discussing his personal relationship with Brett, outlining Brett's characteristics, and explaining why he endorsed Brett to be the municipal-court judge. The stipulations do not say that Rudduck shared the post, but it appeared on his Facebook page.

{¶ 25} Justina Davidson responded to a post on Rudduck's Facebook page by commenting: "So glad I got to listen to Brett's speech! Now I know for sure that I will be voting for Brett Rudduck for Municipal Court Judge!" Brett responded to the comment, "[Thank you], young lady!"

Rudduck's posts

{¶ 26} On April 25, 2023, Rudduck posted a link to a WNEWSJ.com biography entitled "Clinton Co. Municipal Court Judge candidate: Brett Rudduck—Wilmington News Journal." Brett's headshot appeared next to the text.

{¶ 27} On April 26, 2023, within a week of the primary election, Rudduck posted a screenshot showing that Brett's Facebook account had been restricted because his activity "didn't follow [Facebook's] Community Standards." Rudduck wrote: "No—this is not the message I woke up to today—but rather my son. I understand if folks complain about account activity, Facebook places restrictions on free speech. Odd this would occur just before election day and without just cause."

{¶ 28} Craig Dawley commented on the post, stating: "This means you're a rebel. . . . I put a post on Facebook about a vac case tractor and the[y] fact check[ed] it. Said there wasn't correct information haha." Rudduck replied:

> No Craig—not me. Not my son. Not anyone in my family. My son is running for election and his opposition has apparently convinced [Facebook that] his posts do not meet community standards. I hope the community we know disagrees. He is investigating the reason for the ridiculous action taken and I am sure will keep people informed—if allowed to update. This is serious stuff going on in Clinton County.

{¶ 29} The same day that Brett's Facebook account was restricted, Rudduck authored and posted to his Facebook page a lengthy four-part essay. Some background is needed before we set forth the essay here.

{¶ 30} Rudduck testified at his disciplinary hearing that he had granted a foreclosure against a person named Tony Thomas, whose family was subsequently evicted from their home. According to Rudduck, Thomas bore a grudge against him and used social media to post "[h]orrific things" about him. For example, Thomas posted that Rudduck should go to prison and described what would happen to him in prison. Thomas also maligned Rudduck's wife, brother, and nephew. And he accused Brett of abusing his children, being a child pornographer, and colluding with the police department to avoid charges. Rudduck said that these accusations appeared on a website that Thomas administered with Darrell Petrey. According to Rudduck, Henry, one of Brett's opponents in the primary, relied on a taped telephone conversation between Brett and Petrey to suggest that Brett had been using illicit drugs.

{¶ 31} Rudduck testified that his posts were made in response to Thomas's posts. He said: "[I wanted] to show the public that I'm proud—given the firestorm that ha[d] occurred . . . during this period of time, the damage in mental health that

was happening to my family, I wanted to indicate to them that I was proud of my son."

{¶ 32} Rudduck's four-part essay, which acknowledges the campaign and defends Brett against various accusations, reads as follows:

> There are more important things in life than winning an election. Faith, family, friends, community, reputation, and honesty, to name a few. Since 1985 when I first ran for judicial office, these "more important things" have been a cornerstone of our community. We now live in a different era.
>
> I have previously called the Ohio Supreme Court before posting this message to the community. A representative of the Supreme Court advised me the only way to respond to misleading information in judicial campaigns is through free speech. Just today, Facebook restricted my son, Brett Rudduck, from exercising his right to free speech by precluding him from posting on Facebook, citing a violation of "community standards" without any explanation or details a mere five days from Election Day. Given Brett is precluded from posting, in defense of my family's integrity and reputation and for the benefit of the community, I am exercising my right to free speech to set some records straight.
>
> This message will be long; many will not read it because of its length, but those who do, please understand the purpose is not about "winning an election" but rather to counter a narrative and to reveal facts and personal information known only by a few. Truth is always the best antidote for lies. But on social media, it is hard to discern the truth and even harder to discern whether truth is still paramount in our society!

Throughout the latest judicial campaign, the entire Rudduck family, not just the candidate running for office, has been targeted and attacked. I am all too familiar with these attacks, as you will learn if you read this entire message. But on sites such as Citizens Arrest of Clinton County, Ohio, administered by Darrell Petrey and Tony Thomas, and Wilmington Ohio Crime Concerns, my wife is being called an alcoholic; my brother is being maligned for his work as a Superintendent at Clinton Massie; my nephew is being characterized cruelly and maliciously. And my son, well, the number of attacks he has shouldered since 2018 by Mr. Petrey and Mr. Thomas and others in less public ways would be impossible to quantify.

While most of the participants on these sites are earnest in their desire to make our community better, the divisive messages allowed to be shared on the sites are more harmful than they may realize. Folks with different views are sometimes blocked from commenting, just as my son experienced today, and cannot defend themselves. The record needs to be corrected.

PART ONE—Allegations of child abuse

Mr. Thomas and Mr. Petrey posted pictures of my son playing with his two young boys in his own backyard on some of these sites with allegations that my son was throwing hammers at them and needed to be investigated for child abuse. In fact, Mr. Thomas contacted the police department and Children's Services, explicitly seeking an investigation for child abuse be conducted. Mr. Thomas was unwilling to share the identity of the person taking the pictures, how they were obtained, or any other information to confirm his charges. Therefore, no investigation was pursued.

These allegations would be laughable to most, but they fed into the idea authority figures in our county were not investigating elected public officials for criminal behavior, a theory Mr. Thomas especially was advancing. When no one in authority acted upon the lies, the attacks became more volatile, vulgar, and targeted, as those attending regular Wilmington City Council sessions should attest.

The lies and pictures were even posted on the Wilmington Police Department Facebook page by a police officer named Scott Baker while he was on paid suspension from the department. Those posts are still on the official page. This act alone caused our entire family unbelievable stress, pain, and distress.

PART TWO—Taped audio phone conversation

On September 8, 2022, Judge Michael Daugherty suddenly passed away; the community mourned and came together to support his entire family. My son was heartbroken. On September 22, 2022, my son called Mr. Petrey, a high school classmate and administrator of one of the sites that controlled postings, in a second attempt to have the images of his children removed. Brett also wanted to notify him of death threats made against Brett contained in comments on a specific post moderated by Mr. Petrey.

Drug usage issues surfaced quickly in this taped fifteen-minute conversation, which I first listened to this week. I learned my son was admittedly drunk, and I knew he was still mourning the death of Judge Daugherty in the midst of the unwarranted attacks on himself and his family. He knew Mr. Petrey was taping the phone conversation but emotionally and embarrassingly used language that offended his Mother, me, and I am sure most who listened to the recording.

Mr. Petrey declined to remove the posts, ultimately switching the subject of the conversation to the alleged widespread corruption he believed he, Mr. Thomas and his followers were uncovering throughout the county. I am proud my son went on to defend the reputations of those other elected public officials Mr. Petrey and Mr. Thomas were and are still trying to destroy. Brett also indicated early in the conversation he was proud he "had not used a single drug" for one-and-one-half years.

In 2003, my son was diagnosed with ADHD [Attention Deficit Hyperactivity Disorder] and prescribed Adderall. This legal, prescription drug is and was a standard treatment for individuals diagnosed with ADHD. My son has been using this legally prescribed medication ever since. Throughout the entire period, despite having some concerns about the treatment, several physicians continued to treat Brett's condition by prescribing Adderall. More recently, one particular physician, a clinical psychiatrist, specifically indicated he would never prescribe Adderall for ADHD, a position Brett eventually adopted.

In 2021, my son sought treatment to wean himself from this addictive drug, Adderall. A recent article in The Atlantic titled "Why adult ADHD is so complicated" ably expresses the concerns of individuals who are prescribed this legal drug. Neither our family nor Brett ever attempted or desired to keep his battle with ADHD and his use of Adderall a secret; we also gratefully shared the good news his treatment was successful, as he has not used Adderall for the time period he mentioned in the tape recording. Given their close working relationship, Brett shared this very personal information regarding his treatment with Mr. Henry.

Recently, someone provided Mr. Henry with the taped telephone conversation via private message to his judicial candidate's Facebook account. In response, through a private message now shared on social media, Mr. Henry indicated he would be sending the taped conversation to both law enforcement authorities and the Ohio Supreme Court "the next day," implying there was something decidedly criminal about my son's statement of not using "a single drug" for one-and-one-half years. Mr. Henry specifically characterized that "single drug" as "illicit."

In listening to the audio recording, I understand how members of the public could jump to the conclusion that Brett was admitting to using something other than his previously prescribed Adderall. However, with Mr. Henry's prior personal knowledge of Brett's medical treatment for ADHD, it makes one question the purpose of Mr. Henry encouraging the recipient of the private message to "share your findings with everyone you speak with so the public is aware." Mission accomplished?

Brett attempted to contact Mr. Henry to address Mr. Henry's now public, private message. Mr. Henry never responded. As Brett proudly stated in the recorded private conversation, he has been off Adderall for nearly two years. No one addicted to drugs, legal or illegal, especially those who have recovered, should be stigmatized or afraid to seek treatment or punished for doing so. I fear people will be deterred from seeking help given the small but vocal intent of fostering anger and division.

PART THREE—Allegations against family

I will not spend much time considering the suggestion my son needs to be criminally investigated for throwing hammers at his

sons or any other allegations that constantly emerge on social media. But those posts are still out there and should be taken down. Nor will I address the reported number of DUIs for which I have somehow escaped prosecution (or have been convicted of, last reported to be twelve in number) other than to say I have never been stopped for a DUI nor had lunch at a local restaurant three times a week with my son where we allegedly staggered out, cross-eyed and drove back to work. As for my wife, she seldom drinks and is most certainly not an alcoholic. My brother has been in the education field all his life. He served the East Clinton and Clinton Massie school districts with distinction, leaving each in exceptional shape before being elected to serve on the state Board of Education. And my nephew, well on his way to recovering from his current diagnosis of Hodgkin's Lymphoma, is a man with such a bright future undeserving of being attacked and thrust into this judicial campaign—no wonder good people do not want to run for public office.

PART FOUR—Mr. Thomas's foreclosure

Concerning Mr. Thomas, while I can't speak to his motivation for attacking our family, I granted what is called a Summary Judgment in foreclosure, resulting in the eviction of Mr. Thomas from his home, a decision he has repeatedly claimed was unjust and criminal. The central allegations made by the bank included Mr. Thomas had failed to make his mortgage payments over a period of years. In Summary Judgment proceedings, we need not have record hearings where testimony is provided IF facts are undisputed. The case can be resolved on the legal filings only. That is what happened in the foreclosure case. It was undisputed Mr.

Thomas did not make his payments for a period of years. Privately retained legal counsel represented Mr. Thomas and chose not to appeal the court's Judgment finding Mr. Thomas should be evicted.

Since that day, Mr. Thomas has filed multiple disciplinary complaints against me and my son, all summarily rejected by the Ohio Supreme Court. He has repeatedly maligned my character and my son's character on social media and denigrated my service as a military policeman in the U.S. Army from 1971-1973. If you are a Marine, please know every chance he gets, Mr. Thomas uses the opportunity to promote his service to our country as an argument supporting his claims and to bolster his credibility.

Unless good people stand up for the truth when it is objectively demonstrated, I fear our democracy is in danger. I never expected it to be an issue in our beloved county, but it is clearly here and caused division which pains most of us.

CONCLUSION

I began this message by stating there are more important things in life than winning an election. I advised my son I would "go public" with these things regardless of the political consequences for him or me because I felt I had a duty to speak out to inform the public of things that transcend this election cycle and need to be stopped. This became even more necessary when Facebook inexplicably blocked him from posting. Social media can be a great force for good, as was demonstrated when my wife's dog was lost, only to be found with the unbelievable help of the community; it can also cause great harm and personal pain if used indiscriminately and is immune from any form of accountability.

(Capitalization in original.)

Disciplinary proceedings

{¶ 33} In June 2024, disciplinary counsel filed a complaint alleging that Rudduck had violated Jud.Cond.R. 1.2, 1.3, and 4.1(A)(3). Disciplinary counsel and Rudduck entered into stipulations of facts.

{¶ 34} After a hearing, the panel found by clear and convincing evidence that Rudduck had violated these rules and it recommended that Rudduck receive a public reprimand based on the charged violations and the aggravating and mitigating factors it found applicable. The panel further recommended that Rudduck be ordered to remove the posts at issue from his Facebook page. The board adopted the panel's findings of fact, conclusions of law, and recommended sanction.

{¶ 35} The parties do not contest the board's finding that Rudduck's Facebook activity included a judge's endorsement of a candidate for another political office in violation of Jud.Cond.R. 4.1(A)(3), that that same conduct constituted a violation of Jud.Cond.R. 1.2, and that Rudduck's lengthy Facebook essay abused the prestige of his judicial office in violation of Jud.Cond.R. 1.3. Nor has Rudduck claimed that his speech was protected by the First Amendment to the United States Constitution.

{¶ 36} We ordinarily decide only those questions presented by the parties. *Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C.*, 2024-Ohio-4989, ¶ 15. But this is not an ordinary case.

{¶ 37} Importantly, only this court has the authority to regulate matters relating to the practice of law in Ohio. Ohio Const., art. IV, § 2(B)(1)(g). Only this court is charged with promulgating "rules governing the admission to the practice of law and discipline of persons so admitted." Ohio Const., art. IV, § 5(B). "[I]t is this court, not the board"—and not the parties—"that is the ultimate arbiter of

the facts of the case, the law that applies to the facts, and the discipline that should be imposed." *Disciplinary Counsel v. Warner*, 2024-Ohio-551, ¶ 9.

{¶ 38} However, our power to regulate the practice of law is not absolute. *Shimko v. Lobe*, 2004-Ohio-4202, ¶ 27. "This court may no more disregard or infringe upon the constitutional rights of our citizens in the exercise of its regulatory functions than may any other branch of government." *Id*. The "'[r]ules adopted by this court in an administrative capacity must comply with the state and federal constitutions like any other rules.'" *Id.*, quoting *Christensen v. Bd. of Commrs. on Grievances & Discipline*, 61 Ohio St.3d 534, 537 (1991).

{¶ 39} "Because it is our own rule[s] that [are] at issue, we are obligated in the first instance to ensure that the rule[s] comport[] with constitutional guarantees." *In re Application of Jones*, 2018-Ohio-4182, ¶ 34 (DeWine, J., concurring in judgment only). Consequently, we consider whether Rudduck's actions implicate the First Amendment and must draw our own conclusion regarding whether he may be disciplined for violating the judicial-conduct rules.

Law and Analysis

The prohibition on endorsements by judges

{¶ 40} Jud.Cond.R. 4.1(A)(3) provides, "A judge or judicial candidate shall not . . . [p]ublicly endorse or oppose a candidate for another public office." The word "endorse" means "to express definite approval or acceptance of . . . : support or aid explicitly by or as if by signed statement : vouch for." *Webster's Third New International Dictionary* (2002). "'Endorsement' connotes an expression or demonstration of approval or support." *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 763 (1995) (plurality opinion).

{¶ 41} The board found that Rudduck violated Jud.Cond.R. 4.1(A)(3) and that by violating Jud.Cond.R. 4.1(A)(3), Rudduck also violated Jud.Cond.R. 1.2 by posting on Facebook about Brett's campaign. That latter rule requires a judge to "act at all times in a manner that promotes public confidence in the independence,

integrity, and impartiality of the judiciary, and [to] avoid impropriety and the appearance of impropriety."

{¶ 42} Lastly, Jud.Cond.R. 1.3 prohibits a judge from "abus[ing] the prestige of judicial office to advance the personal or economic interests of the judge or others." In its report, the board premised a violation of this rule, in part, on Rudduck's "effort to address allegations made against Brett and to rehabilitate Brett's character just days before the election."

{¶ 43} The board's conclusion that Rudduck violated these rules, then, is based in whole (Jud.Cond.R. 4.1(A)(3) and 1.2) or in part (Jud.Cond.R. 1.3) on its finding that Rudduck endorsed his son's political campaign. Mindful that we are the ultimate arbiter of the facts and the law in a disciplinary case, we ask first whether Rudduck's Facebook activity in fact included endorsements in violation of the Code of Judicial Conduct.

{¶ 44} At his disciplinary hearing, Rudduck denied that he had endorsed his son's candidacy for office or that he had intended to endorse Brett's campaign. In support of his denial, he noted that he had never told anyone to vote for Brett and maintained that all he had done was show support for his son who was being attacked on social media.

{¶ 45} As noted above, an endorsement is an expression of approval or support. It does not appear that any court has squarely addressed the question whether sharing or reposting a candidate's campaign-related post on social media constitutes an endorsement of that candidate for office. Nonetheless, "sharing a video on social media often implies an endorsement of the content shared." *Davis v. Cisneros*, 744 F.Supp.3d 696, 737, fn. 16 (W.D.Tex. 2024).

{¶ 46} Looking at the context of Rudduck's Facebook activity, we conclude that Rudduck endorsed his son's judicial campaign by sharing and commenting on Brett's campaign-related content. *See Bland v. Roberts*, 730 F.3d 368, 386 (4th

Cir. 2013) (liking a political candidate's campaign page on Facebook "is the Internet equivalent of displaying a political sign in one's front yard").

{¶ 47} A reasonable person would believe that Rudduck approved and supported his son's candidacy for judge. Both Rudduck's name and Brett's campaign material were displayed prominently next to each other on Rudduck's Facebook page, and the posts depict Brett's campaign in a positive light. For example, Rudduck shared pictures of his family, including young children, wearing campaign attire and with campaign yard signs. He also shared a news article about Brett's candidacy. And Rudduck's comments plainly supported Brett when he thanked a constituent for her support and when he defended Brett against political attacks and against Facebook's decision to restrict Brett's Facebook account right before election day.

{¶ 48} Rudduck did not have to say "I endorse Brett" or "Vote for Brett" to get across his approval of Brett's candidacy. No reasonable person would believe that Rudduck did not intend to support his son's campaign when he shared positive campaign-related content. We therefore conclude that Rudduck's Facebook activity was an endorsement of Brett's candidacy for judge.

{¶ 49} Having decided that Rudduck endorsed his son's campaign, we turn next to the question whether this court may prohibit a sitting judge from publicly endorsing a candidate for political office. That analysis begins with the First Amendment to the United States Constitution.

The First Amendment

{¶ 50} The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech." That prohibition applies to the states through the adoption of the Fourteenth Amendment. *Stromberg v. California*, 283 U.S. 359, 368 (1931) ("the conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech").

{¶ 51} "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Fed. Election Comm.*, 558 U.S. 310, 339 (2010). Therefore, "[t]he First Amendment '"has its fullest and most urgent application" to speech uttered during a campaign for political office,'" *id*., quoting *Eu v. San Francisco Cty. Democratic Cent. Commt*., 489 U.S. 214, 223 (1989), quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971), as that helps safeguard the "right of citizens to choose who shall govern them," *McCutcheon v. Fed. Election Comm.*, 572 U.S. 185, 227 (2014) (plurality opinion). Because "political speech must prevail against laws that would suppress it," laws burdening political speech are subject to strict scrutiny. *Citizens United* at 340. That means that the law must be narrowly tailored to further a compelling governmental interest. *Id.*

{¶ 52} In addition, the State "'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Reed v. Gilbert*, 576 U.S. 155, 163 (2015), quoting *Chicago Police Dept. v. Mosley*, 408 U.S. 92, 95 (1972). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.*

{¶ 53} Jud.Cond.R. 4.1(A)(3) burdens core political speech by prohibiting endorsements by judges, i.e., "speech about the qualifications of candidates for public office," *White*, 536 U.S. at 774; *see also Eu* at 222-224 (banning endorsements of primary candidates burdens freedom of speech); *Sanders Cty. Republican Cent. Commt. v. Bullock*, 698 F.3d 741, 745 (9th Cir. 2012) ("political speech—including the endorsement of candidates for office—is at the core of speech protected by the First Amendment"). Jud.Cond.R. 4.1(A)(3) is also a

content-based prohibition on speech—it prohibits a judge from expressing approval for or opposition to a candidate for another political office.

{¶ 54} Consequently, strict scrutiny applies in determining whether the rule violates the First Amendment. We therefore ask whether Jud.Cond.R. 4.1(A)(3)'s bar against judges endorsing other candidates for public office is narrowly tailored to serve a compelling state interest.

> A narrowly tailored regulation is one that actually advances the state's interest (is necessary), does not sweep too broadly (is not overinclusive), does not leave significant influences bearing on the interest unregulated (is not underinclusive), and could be replaced by no other regulation that could advance the interest as well with less infringement of speech (is the least-restrictive alternative).

Republican Party of Minnesota v. White, 416 F.3d 738, 751 (8th Cir. 2005) (en banc).

Jud.Cond.R. 4.1(A)(3)

{¶ 55} Canon 4 of the Code of Judicial Conduct provides that "[a] judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." The canon itself identifies the state interests it advances: ensuring the independence, integrity, and impartiality of the judiciary.

{¶ 56} We start with impartiality. In *Grendell*, we recognized that there is a compelling state interest in ensuring against judges who are biased for or against a particular party to a case before them. *Grendell*, 2025-Ohio-5239, at ¶ 32. We also acknowledged the compelling state interest in preventing the *appearance* of judicial bias for or against a party. *Id*. at ¶ 48. But it is not obvious that a prohibition on endorsing or opposing a candidate for public office meaningfully advances

either of those interests. Both come into play only when the endorsed or opposed candidate for public office is also a party to a case before the judge or likely will be. In any case, Jud.Cond.R. 4.1(A)(3) sweeps in much more speech than endorsements or opposition aimed at parties to a particular case—it bars speech by a judge about all candidates for public office (other than speech about the judge him or herself or about his or her own opponent). It therefore prohibits a judge from endorsing or opposing candidates who would likely never be litigants before the judge, such as candidates for another judicial seat or family members of the judge. That is important here; it is highly unlikely that Rudduck would have heard a case in which his son was a party—Jud.Cond.R. 2.11(A)(2) requires a judge to disqualify him- or herself in a proceeding when the judge knows that a party or an attorney in the proceeding is within the third degree of relationship to the judge. Therefore, to the extent Jud.Cond.R. 4.1(A)(3) advances the State's interest in ensuring an impartial judiciary and the public confidence in an impartial judiciary, it is vastly overinclusive.

{¶ 57} Nor is a prohibition on a judge's endorsement of or opposition to candidates for public office the least restrictive alternative. As we noted in *Grendell* with regard to Jud.Cond.R. 3.2 (which prohibited judges from voluntarily appearing before a governmental body, except in certain circumstances), there are a variety of alternatives that are less restrictive on speech than a ban on speech, including the mandatory recusal of a judge when his or her "impartiality might reasonably be questioned," Jud.Cond.R. 2.11(A), and the removal of a judge who refuses to recuse in an affidavit-of-disqualification proceeding under R.C. 2701.03 and other statutes. *See Grendell* at ¶ 42-43. "Subsequent recusal"—or disqualification—"is a far less restrictive means than a broad-reaching, upfront prohibition." *Id.* at ¶ 43.

{¶ 58} According to the dissent, subsequent recusal is not a viable less restrictive alternative, and the dissent presents a hypothetical in which all judges on

a county's court of common pleas publicly endorse a candidate for county prosecutor, who subsequently wins office. Dissenting opinion, ¶ 122. The judges would have to recuse in any case brought by the prosecutor, the dissent says, thereby "reduc[ing] the workload for those judges and requir[ing] the inefficient and potentially costly appointment of visiting judges." *Id.*

{¶ 59} However, "'[t]he First Amendment does not permit the State to sacrifice speech for efficiency.'" *Natl. Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 775 (2018), quoting *Riley v. Natl. Fedn. of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795 (1988). And the proponent of enforcing a restriction on speech must do more than "show that a proposed less restrictive alternative has some flaws," *Ashcroft v. Am. Civ. Liberties Union*, 542 U.S. 656, 669 (2004), or imposes some cost.

{¶ 60} In any case, the dissent's hypothetical is unlikely to occur. The Code of Judicial Conduct bars judges from engaging in extrajudicial activities that "will interfere with the proper performance of the judge's judicial duties," Jud.Cond.R. 3.1(A), or that "will lead to frequent disqualification of the judge," Jud.Cond.R. 3.1(B). So the conduct at issue in the dissent's hypothetical is already covered by the judicial-conduct rules.

{¶ 61} And the dissent underestimates how demanding the strict-scrutiny standard is. In fact, in the First Amendment context, the United States Supreme Court has "held only once that a law triggered but satisfied strict scrutiny—to uphold a federal statute that prohibited knowingly providing material support to a foreign terrorist organization." *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 484 (2025). And the case in which the law was upheld "involved an unusual application of strict scrutiny," *id.*, because the Court's analysis relied on the deference due to the executive branch's evaluation of the facts in the realm of national security and foreign affairs. Our rule banning public endorsements by

judges is not like those "truly extraordinary circumstances," *id.* at 485, in which a ban on fully protected speech is constitutional.

{¶ 62} Next we consider the State's interest in ensuring the independence of the judiciary. Judicial independence includes the structural independence of the judiciary as one of the three branches of power in the tripartite-government scheme created by the Ohio Constitution. But in *Grendell*, we rejected the idea that limits on judges' speech were needed to maintain the separation of powers—"a speech restriction doesn't protect against one branch of government *exercising the power* of another" (emphasis in original), *Grendell*, 2025-Ohio-5239, at ¶ 53. Maintaining structural independence "is not the sort of state interest that can be used to justify a restriction on speech," *id.* at ¶ 57.

{¶ 63} Then there is the independence of the judge him or herself. The United States Court of Appeals for the Sixth Circuit has said that a state has a "compelling interest in keeping its judges above the partisan fray of trading political favors." *Winter v. Wolnitzek*, 834 F.3d 681, 691 (6th Cir. 2016). Judges "are supposed to follow the rule of law—no matter current public opinion, no matter the views of the political branches, no matter the views of the parties that support them." *Id.* at 695. The Sixth Circuit panel in *Winter* went on to hold that Kentucky's version of Jud.Cond.R. 4.1(A)(3) withstood strict scrutiny because "[a] ban on such endorsements . . . guards against the risk that, once a judge is elected, he will not be able to (and he will not be perceived as being able to) referee disputes involving elected officials he did or did not endorse." *Id.* at 691-692. In doing so, however, the panel adopted an extremely narrow construction of Kentucky's endorsement-ban provision, distinguishing endorsements from "expressions of agreement with a political party's platform or another candidate's views," *id.* at 691. The panel found unconstitutional a related Kentucky provision that prohibited judicial candidates from making speeches for or against a political party or candidate. *Id.* at 689-690. A different Sixth Circuit panel later applied *Winter* in

holding that Jud.Cond.R. 4.1(A)(3) is constitutional. *Platt v. Bd. of Commrs. on Grievances & Discipline of Ohio Supreme Court*, 894 F.3d 235, 263 (6th Cir. 2018).

{¶ 64} A judge's personal independence is necessarily closely related to the judge's impartiality. And we have already rejected the proposition that a ban on endorsing or opposing a candidate for public office is narrowly tailored to advance the State's interest in ensuring judicial impartiality and the appearance of impartiality. Our analysis there applies equally here: Jud.Cond.R. 4.1(A)(3) is overinclusive in that it bans speech about candidates who will never be parties before the judge and there are less restrictive alternatives, such as recusal and disqualification. Seeking to uphold a judge's personal independence from other political actors is no different. We therefore disagree with the Sixth Circuit's conclusion in *Platt* that the rule's ban on endorsements by judges is constitutional.

{¶ 65} Lastly, we consider the State's interest in maintaining the integrity of the judiciary. We have recognized that the State's interest in judicial integrity is compelling. *In re Judicial Campaign Complaint Against O'Toole*, 2014-Ohio-4046, ¶ 26; *see also Williams-Yulee v. Florida Bar*, 575 U.S. 433, 445 (2015) (recognition of same by the United States Supreme Court). Corruption is the antithesis of integrity, *see Black's Law Dictionary* (12th Ed. 2024) (entry for "corruption"), so maintaining judicial integrity involves preventing judicial corruption. Importantly, the United States Supreme Court "has recognized only one permissible ground for restricting political speech: the prevention of 'quid pro quo' corruption or its appearance." *Fed. Election Comm. v. Cruz*, 596 U.S. 289, 305 (2022).

{¶ 66} Quid pro quo corruption is the exchange of an official act for something of value. *McCutcheon*, 572 U.S. at 192 (plurality opinion). And we understand that "[a]n endorsement is a thing of value: it may attract voters' attention, jumpstart a campaign, give assurance that the candidate has been vetted,

or provide legitimacy to an unknown candidate and indicate that he or she is capable of mounting a successful campaign." *French v. Jones*, 876 F.3d 1228, 1240 (9th Cir. 2017). But when campaign-speech regulations have been upheld as targeting quid pro quo corruption, "the speaker is not using speech to persuade action, but rather as a means of compelling action from a voter or candidate through reward, coercion, blackmail, bribery, or other corrupt methods." *Garten Trucking, L.C. v. Natl. Labor Relations Bd.*, 139 F.4th 269, 278 (4th Cir. 2025). The ban on endorsements by judges does not regulate that type of speech.

{¶ 67} In any case, Jud.Cond. 4.1(A)(3) is not narrowly tailored to advance the State's interest in maintaining judicial integrity and preventing judicial corruption. Jud.Cond.R. 4.1(A)(3) is not limited to prohibiting the endorsement of or opposition to a candidate for public office that amounts to corruption or that leads to the appearance of corruption. Instead, this ethics rule is overinclusive and restricts political speech when there is no quid pro quo exchange of something of value for an official act by the judge. An endorsement is not inherently corrupt—"'endorsements often are exchanged between political actors on a quid pro quo basis,'" *Platt*, 894 F.3d at 263, quoting *Winter*, 834 F.3d at 691. That is, endorsements are much more commonly made without the promise of an official act in exchange. Further, there are less restrictive alternatives: Jud.Cond.R. 4.1(A)(3) could have been drafted to restrict only endorsements that involve corruption or create the appearance of corruption. It was not.

{¶ 68} For these reasons, Jud.Cond.R. 4.1(A)(3) is not narrowly tailored to serve the State's interest in maintaining judicial independence, integrity, and impartiality. Simply put, the rule sweeps too broadly and chills an unacceptable amount of core political speech. Since Jud.Cond.R. 4.1(A)(3) cannot survive strict scrutiny, we decline to enforce it in this case.

{¶ 69} In addition, the board found that Rudduck's public endorsements of Brett violated Jud.Cond.R. 1.2, which, again, states that "[a] judge shall act at all

times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." The board relied on Comment [5] to this rule, which states that an appearance of impropriety involves a reasonable perception that a judge has violated the Code of Judicial Conduct. It therefore wrote in its report, "Having concluded that [Rudduck] violated Jud.Cond.R. 4.1(A)(3), we also conclude that [Rudduck] violated Jud.Cond.R. 1.2."

{¶ 70} We have determined that Jud.Cond.R. 4.1(A)(3) is unconstitutional, so a violation of it cannot serve as the predicate for finding that Rudduck also violated Jud.Cond.R. 1.2. And to the extent that Jud.Cond.R. 1.2 prohibits the public endorsement of or opposition to a candidate for public office, it is unconstitutional in that it restricts core political speech without sufficient justification. The same analysis applies to the board's finding of a violation of Jud.Cond.R. 1.3, to the extent that finding was premised on Rudduck's endorsement of Brett. However, the board found that Rudduck violated Jud.Cond.R. 1.3 for other reasons, and we turn to those now.

Jud.Cond.R. 1.3

{¶ 71} Jud.Cond.R. 1.3 states that "[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." The board concluded that Rudduck's four-part essay violated Jud.Cond.R. 1.3 by using the prestige of his judicial office to advance his and Brett's personal interests. The board noted in its report, "[Rudduck's] judicial philosophy was under attack, several members of his family were under attack, the election was only days away, and Facebook was the most effective way to quickly spread his message to his followers."

{¶ 72} In his essay, Rudduck mentioned his judicial office twice: first, in the introduction when he referred to his first campaign for judicial office, and

second, when he noted that he had ruled against Thomas in his foreclosure case and explained why.

{¶ 73} Jud.Cond.R. 2.10(E) expressly permits a judge to "respond directly or through a third-party to allegations in the media or elsewhere concerning the judge's conduct in a matter," so long as it does not impair the fairness of a pending or impending proceeding, *see* Jud.Cond.R. 2.10(A). So to the extent that the board relied on Rudduck's statements in response to "attacks" on his "judicial philosophy" to find that he violated Jud.Cond.R. 1.3, that reliance was improper. Further, because Rudduck was permitted under Jud.Cond.R. 2.10(E) to respond to allegations about his conduct in Thomas's foreclosure case, his reference to his judicial office in that circumstance was not an abuse of the prestige of his judicial office under Jud.Cond.R. 1.3.

{¶ 74} That leaves only Rudduck's reference to his prior judicial campaign. That, by itself, is not enough to demonstrate an abuse of the prestige of his judicial office. Comment [1] to Jud.Cond.R. 1.3 gives the archetypal example of when a judge abuses the prestige of his or her judicial office: "it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials." *See Disciplinary Counsel v. Doherty*, 2020-Ohio-1422 (concluding that a judge violated Jud.Cond.R. 1.3 by stating that she was a judge multiple times while interacting with an officer after a traffic accident); *Disciplinary Counsel v. Gonzalez*, 2020-Ohio-3259 (same while interacting with an officer during a traffic stop); *Disciplinary Counsel v. Williams*, 2017-Ohio-9100 (same while interacting with an officer during a traffic stop).

{¶ 75} Other disciplinary cases in which we have found violations of Jud.Cond.R. 1.3 involved circumstances in which judges inappropriately intervened in cases to further their personal interests. Recently, in *Disciplinary Counsel v. Kegley*, 2025-Ohio-910, the judge violated Jud.Cond.R. 1.3 by using his status as a judge to secure the release of his son from custody, even though his son's

release was contrary to the bond schedule the court had adopted. The judge expressly identified himself as a judge in his interaction with a corrections officer at the jail. Similarly, in *Disciplinary Counsel v. Goulding*, 2020-Ohio-4588, the judge violated Jud.Cond.R. 1.3 by ordering the release on bond of the boyfriend of his friends' daughter. The boyfriend was facing felony child-pornography charges, and his case was assigned to a different judge. In *Disciplinary Counsel v. Marshall*, 2019-Ohio-670, the judge violated Jud.Cond.R. 1.3 by making clear his status as a judge while injecting himself into his juvenile daughter's speeding case. And in *Disciplinary Counsel v. Hale*, 2014-Ohio-5053, the judge violated Jud.Cond.R. 1.3 by unilaterally dismissing a speeding ticket for his personal attorney.

{¶ 76} *Disciplinary Counsel v. Oldfield*, 2014-Ohio-2963, is instructive here. This court dismissed an allegation that the judge in that case violated Jud.Cond.R. 1.3 by merely saying that she was a judge during a traffic stop. The evidence in the case was contradictory, but according to the judge, she told an officer that she was a judge in response to the question whether she was a lawyer, and she told another officer that she was not seeking special treatment because she was a judge. This court found that those circumstances were insufficient to prove by clear and convincing evidence that the judge had abused the prestige of her judicial office, and we dismissed the count alleging a violation of Jud.Cond.R. 1.3.

{¶ 77} Here, Rudduck made the following statement in his essay before embarking on his defense of himself and his family: "There are more important things in life than winning an election. Faith, family, friends, community, reputation, and honesty, to name a few. Since 1985 when I first ran for judicial office, these 'more important things' have been a cornerstone of our community. We now live in a different era."

{¶ 78} Applying an objective standard, *see Oldfield* at ¶ 5, this statement does not create in reasonable minds a perception that Rudduck was improperly using his judicial position to gain favor. He merely mentioned his position in the

context of what was otherwise constitutionally protected speech defending himself and his family from allegations of wrongdoing on social media.

{¶ 79} Lastly, to the extent that the board found that Rudduck violated Jud.Cond.R. 1.3 by giving Brett a public endorsement, we reject that finding because, as discussed above in our analysis of Jud.Cond.R. 4.1(A)(3), such an application of Jud.Cond.R. 1.3 would violate the First Amendment.

{¶ 80} Thus, for lack of clear and convincing evidence, we dismiss the count alleging that Rudduck violated Jud.Cond.R. 1.3.

A Word of Caution

{¶ 81} Lastly, although we conclude that Rudduck did not violate Jud.Cond.R. 1.2, 1.3, or 4.1(A)(3), that does not mean that we approve of his conduct. We recognize that it is highly unlikely that Rudduck would have heard a case in which his son was an attorney or a party in the matter. Nonetheless, judges are held to the highest standard of ethical conduct, *Warner*, 2024-Ohio-551, at ¶ 22, and judges must be cognizant of how their actions appear to the public. That may mean that a judge should forgo making some public statements even if those statements would constitute protected free speech. And here, it would have been far more prudent for Rudduck to have abstained from posting about his son's candidacy on social media and thereby avoided any question of the propriety of his actions.

Conclusion

{¶ 82} Judges do not give up their First Amendment right to engage in political speech simply by assuming office. *See Grendell*, 2025-Ohio-5239, at ¶ 24. While we acknowledge that the State has a compelling interest in maintaining judicial independence, integrity, and impartiality, Jud.Cond.R. 4.1(A)(3) sweeps too broadly and restricts political speech beyond what is necessary to uphold those state interests. We therefore conclude that applying the rule against Rudduck would unconstitutionally infringe on his First Amendment rights.

{¶ 83} Additionally, we conclude that Rudduck's Facebook activity did not violate Jud.Cond.R. 1.2 or 1.3.

{¶ 84} Accordingly, we dismiss the complaint against Rudduck.

Judgment accordingly.

FISCHER, J., dissenting.

{¶ 85} Today, this court, by majority vote, discards as facially unconstitutional Ohio's longstanding judicial anti-endorsement rule set forth in Jud.Cond.R. 4.1(A)(3), which prohibits judges and judicial candidates from publicly endorsing or opposing a candidate for another public office. No party to this action has argued that the anti-endorsement rule in Jud.Cond.R. 4.1(A)(3) is unconstitutional under the First Amendment to the United States Constitution; in fact, the parties *jointly waived* their right to file *any* objections to the findings of fact, conclusions of law, and recommended sanction of the Board of Professional Conduct. Nevertheless, without any input from, or notice to, the parties involved, the judges and judicial candidates in Ohio's 88 counties, the members of the Ohio bar, or the public at large, the court reaches its conclusion by going against established First Amendment case law.

{¶ 86} This court has the ultimate authority in Ohio over the practice of law and disciplinary actions and the exclusive authority to promulgate rules governing the practice of law. *See* Ohio Const., art. IV, § 2(B)(1)(g); Ohio Const., art. IV, § 5(B); *State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Commt.*, 2019-Ohio-5157, ¶ 26 ("this court is the ultimate arbiter of attorney discipline" and has "the unique and complete responsibility . . . to regulate all matters related to the practice of law"). In short, this court has the first and last word when it comes to the Code of Judicial Conduct, and no one can stop this court from changing its rules, as it does today. But just because this court has the power to do something does not mean that it should, especially in the manner it does in this case. By

effectively striking a rule from the Code of Judicial Conduct in a disciplinary action—with no public notice and comment or briefing from the parties—this court casts aside its typical rulemaking process.

{¶ 87} The majority's opinion also comes as a surprise because it decides a federal constitutional issue—one that this court has never confronted—without the benefit of briefing and rejects well-reasoned decisions of several United States Courts of Appeals upholding state anti-endorsement restrictions on judges and judicial candidates against First Amendment challenges. *See Platt v. Bd. of Commrs. on Grievances & Discipline of the Ohio Supreme Court*, 894 F.3d 235, 263 (6th Cir. 2018) (Ohio); *Wolfson v. Concannon*, 811 F.3d 1176, 1186 (9th Cir. 2016) (Arizona); *Winter v. Wolnitzek*, 834 F.3d 681, 691-692 (6th Cir. 2016) (Kentucky); *Wersal v. Sexton*, 674 F.3d 1010, 1028 (8th Cir. 2012) (Minnesota).

{¶ 88} Even if this court had before it a First Amendment challenge to Jud.Cond.R. 4.1(A)(3), I would hold that respondent John William Rudduck's First Amendment rights are not a defense to the disciplinary action at issue here. I would adopt the board's findings of fact, conclusions of law, and recommended sanction. Because the court instead dismisses the complaint against Rudduck, I respectfully dissent.

I. The Anti-Endorsement Rule and the First Amendment

{¶ 89} Relator, disciplinary counsel, charged Rudduck, in part, with a violation of Jud.Cond.R. 4.1(A)(3), which prohibits a judge from publicly endorsing or opposing another person for a public office. Jud.Cond.R. 4.1(A)(3) aligns with Model Rule 4.1(A)(3) of the American Bar Association's Model Code of Judicial Conduct. *See* American Bar Association, *Model Code of Judicial Conduct* (2020), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_4/ (accessed Feb. 3, 2026). The board found that Rudduck had committed that violation and recommended that he be publicly reprimanded.

And after we, in accordance with Gov.Bar R. V(17)(A), ordered the parties to "show cause why the recommendation of the board should not be confirmed by the court," Rudduck and disciplinary counsel filed a joint waiver of objections consistent with Gov.Bar R. V(17)(B)(3). Nevertheless, the majority has sua sponte raised an argument to strike Jud.Cond.R. 4.1(A)(3) as facially unconstitutional. Sua sponte raising the argument is wrong procedurally, and striking the rule is wrong substantively.

A. The Parties Jointly Waived Objections

{¶ 90} As noted above, this court is the ultimate arbiter of attorney discipline, and it is not required to adopt the sanction recommended by the board. *Disciplinary Counsel v. Sarver*, 2020-Ohio-5478, ¶ 30; citing *Cincinnati Bar Assn. v. Powers*, 2008-Ohio-4785, ¶ 21. And to ensure consistency in disciplinary sanctions and to protect the public, "'we examine each case individually and impose the discipline we believe appropriate based on the unique circumstances of each case.'" *Toledo Bar Assn. v. Hales*, 2008-Ohio-6201, ¶ 21, quoting *In re Disciplinary Action Against Ruffenach*, 486 N.W.2d 387, 390 (Minn. 1992); *see also Mahoning Cty. Bar Assn. v. Macala*, 2024-Ohio-3158, ¶ 46. But our disciplinary authority is not unlimited.

{¶ 91} This court promulgated Gov.Bar R. V to establish the procedures for evaluating and adjudicating attorney-discipline matters. *See* Gov.Bar R. V(2)(A). And under Gov.Bar R. V(27)(A), attorney-discipline proceedings are subject to the Rules of Civil Procedure. Gov.Bar R. V and the civil rules govern the parties equally, and we will not disregard those rules, even when they limit our review. *See Disciplinary Counsel v. Mancino*, 2018-Ohio-3017, ¶ 13, 18 (Fischer, J., concurring) (because Gov.Bar R. V provides no mechanism for reviewing counts that were unanimously dismissed by a panel of the board, this court was constrained from considering the dismissed allegations); *Ackman v. Mercy Health W. Hosp., L.L.C.*, 2024-Ohio-3159, ¶ 19 (this court will not disregard the Rules of Civil

Procedure).

{¶ 92} Our disciplinary proceedings are adversarial in nature. After the board serves a respondent with a certified complaint in which a relator alleges specific misconduct committed by the respondent, Gov.Bar R. V(10)(E) and V(11), the respondent has an opportunity to file an answer responding to those allegations, Gov.Bar R. V(12)(D). Thereafter, a three-member panel of the board conducts a formal hearing that is governed by the Rules of Civil Procedure and the Rules of Evidence. *See* Gov.Bar R. V(12)(C) and (F) and V(27)(A). The panel then determines whether the matter should be dismissed or whether the respondent is guilty of misconduct and should be sanctioned. Gov.Bar R. V(12)(G) and (I). If the panel finds misconduct, it must submit a report of its findings of fact, conclusions of law, and recommended sanction to the director of the board. Gov.Bar R. V(I). The board then reviews the matter, and if it determines that a sanction is warranted, it must file with this court a certified report of its findings of fact, conclusions of law, and recommended sanction. Gov.Bar R. V(12)(J) and (K). The respondent then has an opportunity to explain "why the report of the [b]oard [should] not be confirmed and a disciplinary order entered." Gov.Bar R. V(17)(A). The respondent may (1) file objections to the board's report, Gov.Bar R. V(17)(B)(1), (2) file a no-objection brief in support of the recommended sanction of the board, Gov.Bar R. V(17)(B)(2)(i), or (3) join with the relator in filing "a joint waiver of objections," Gov.Bar R. V(17)(B)(3). If the parties file a joint waiver, "the case [is] immediately . . . submitted" to this court for consideration. *Id.*

{¶ 93} Although we must independently review the board's report, as in any adversarial proceeding, we are limited to considering the arguments raised and briefed by the parties, *see Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C.*, 2024-Ohio-4989, ¶ 15; *Disciplinary Counsel v. Gaul*, 2023-Ohio-4751, ¶ 11. The parties are responsible for raising their own arguments in a timely manner and must bear the costs of their own mistakes. *See Jones v. Cleveland*

Clinic Found., 2020-Ohio-3780, ¶ 24. We have warned parties in disciplinary cases that we will not review objections unaccompanied by supporting arguments. *See Gaul* at ¶ 11 ("we reluctantly consider the arguments [raised by the respondent in his posthearing brief filed with the board] that have been incorporated by reference [in his brief filed in this court], though we have no intention to do so in other cases going forward" because S.Ct.Prac.R. 16.02(B)(4) requires the parties' briefs to contain arguments relevant to their positions); *Disciplinary Counsel v. Hoover*, 2024-Ohio-4608, ¶ 19, fn. 2 (following *Gaul*). To hold otherwise is to (1) render unnecessary the three types of responses to our show-cause orders permitted under Gov.Bar R. V(17)(B), (2) disregard the requirements set forth in the Rules of Practice of the Supreme Court, *see* S.Ct.Prac.R. 16.02, and (3) ignore principles of party presentation and judicial restraint, *see Epcon* at ¶ 14-16.

{¶ 94} Nevertheless, while the majority acknowledges that Rudduck has not raised any constitutional argument challenging Jud.Cond.R. 4.1(A)(3), the majority sua sponte raises and adjudicates a First Amendment facial constitutional challenge to Jud.Cond.R. 4.1(A)(3). Majority opinion, ¶ 35-39. The majority overlooks the fact that any constitutional issue was explicitly waived by the parties' filing their joint waiver of objections.

{¶ 95} Generally, when a party fails to timely raise an issue before a court, that issue is deemed forfeited and an untimely argument raising the issue is reviewed only for plain error. *See Ohio Power Co. v. Burns*, 2022-Ohio-4713, ¶ 40. When an issue is forfeited in a case governed by the civil rules, such as an attorney-discipline case, *see* Gov.Bar R. V(27)(A), a plain-error review is "'sharply limited to the *extremely rare case* involving *exceptional* circumstances where the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself' " (emphasis added in *Goldfuss*), *Ohio Power Co.* at ¶ 40, quoting *Goldfuss v. Davidson*, 1997-Ohio-401, ¶ 28; *Jones* at ¶ 24 (plain-error review is not provided for in the Rules of Civil Procedure).

{¶ 96} Waiver, however, is different from forfeiture. *See State v. Rogers*, 2015-Ohio-2459, ¶ 20-21. A waiver is an intentional relinquishment or abandonment of a known right or privilege. *State v. Blackburn*, 2008-Ohio-1823, ¶ 17; *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Constitutional rights can be and often are waived, and such waivers are generally found to be valid when they are made in writing. *See Blackburn* at ¶ 17. There is no path for reviewing a waived issue. *See United States v. Jimenez*, 512 F.3d 1, 7 (1st Cir. 2007) ("Not even plain-error review is available to a party who has waived a claim of error.").

{¶ 97} Here, disciplinary counsel alleged in his complaint that Rudduck violated three rules of the Code of Judicial Conduct, including Jud.Cond.R. 4.1(A)(3) (a judge shall not publicly endorse or oppose a candidate for another public office). Rudduck, in his answer, denied those allegations. At the hearing, Rudduck did not challenge the constitutionality of Jud.Cond.R. 4.1(A)(3); rather, he maintained that his actions did not violate that rule. He also did not challenge the constitutionality of Jud.Cond.R. 4.1(A)(3) in his posthearing brief but merely reiterated the arguments that he made at the hearing. But when given a final opportunity to challenge the Jud.Cond.R. 4.1(A)(3) violation by objecting to the board's report, Rudduck chose to waive in writing his right to object. Thus, Rudduck intentionally relinquished any objections related to the board's conclusion that he violated Jud.Cond.R. 4.1(A)(3), including constitutional objections, and we must treat that waiver as we would any other intentional relinquishment of a right. Because this issue was waived, we cannot review it.

{¶ 98} To review a waived issue is to turn precedent on its head. Unlike the situations in *Gaul* and *Hoover*, in which the parties at least raised an objection to the board's report by referencing arguments made in posthearing briefs, here, the parties *waived* any objections to the board's report. It is inconsistent to tell parties that we will not review objections that incorporate by reference arguments made in posthearing briefs but then independently raise and review objections that were not

raised by the parties at all. Promoting a more restrictive review by this court in a disciplinary case in which the parties filed objections, *see Gaul*, 2023-Ohio-4751, at ¶ 11, and *Hoover*, 2024-Ohio-4608, at ¶ 19, fn. 2, than in a case in which the parties waived objections makes any objection rule superfluous.

{¶ 99} And contrary to the majority's position, we should exercise judicial restraint and "not decide constitutional questions unless it is absolutely necessary to do so," *Epcon*, 2024-Ohio-4989, at ¶ 17. "Constitutional judgments . . . are justified only out of the necessity of adjudicating rights in particular cases . . . ." *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973), citing *Marbury v. Madison*, 5 U.S. 137, 178 (1803). "Indeed, 'Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary.'" *Epcon* at ¶ 17, quoting *Hall China Co. v. Public Util. Comm.*, 50 Ohio St.2d 206, 210 (1977). We have long held that "[c]onstitutional questions will not be decided until the necessity for a decision *arises on the record before the court.*" (Emphasis added.) *State ex rel. Herbert v. Ferguson*, 142 Ohio St. 496 (1944), paragraph two of the syllabus. When a constitutional issue is waived, there is no need to decide it, because the party has intentionally relinquished the right to have the court resolve that issue. We must honor the party's decision, perhaps through gritted teeth, and not pursue the waived issue.

{¶ 100} Our having ultimate authority over attorney discipline does not change this result. We are bound by the rules that we have promulgated, until those rules are challenged by a party in a case or until we decide to revisit them through our rulemaking authority. But the majority suggests that when any justice on this court believes that a rule we promulgated is unconstitutional, even when no party has raised that argument, the court must act swiftly to analyze the rule in order to ensure that it comports with constitutional guarantees. Majority opinion at ¶ 35-39. This, the majority says, is because our "power to regulate the practice of law is not absolute" and our rules "'"must comply with the state and federal constitutions

like any other rules.""" *Id.* at ¶ 38, quoting *Shimko v. Lobe*, 2004-Ohio-4202, ¶ 27, quoting *Christensen v. Bd. of Commrs. on Grievances & Discipline*, 61 Ohio St.3d 534, 537 (1991). The majority, quoting an opinion concurring in judgment only, asserts that sua sponte raising the waived and unbriefed First Amendment issue is appropriate because we "'are obligated in the first instance to ensure that the rule[s] comport[] with constitutional guarantees.'" (Bracketed text in original.) *Id.* at ¶ 39, quoting *In re Application of Jones*, 2018-Ohio-4182, ¶ 34 (DeWine, J., concurring in judgment only).

{¶ 101} Notwithstanding that a separate opinion is not binding authority, the separate opinion in *In re Application of Jones* does not stand for the proposition that this court may, whenever it pleases, sua sponte raise and adjudicate waived constitutional issues in disciplinary proceedings. While the majority in *In re Application of Jones* did not rule on the constitutionality of the professional-conduct rule at issue in that case, relying instead on the plain language of the rule to resolve the case, *In re Application of Jones* at ¶ 11, 14-23, the constitutional challenge had been raised and briefed by the parties, *see id.* at ¶ 11. The separate opinion in *In re Application of Jones* did not concoct its own constitutional argument out of thin air as the majority opinion does today.

{¶ 102} Obviously, the rules that we promulgate must comply with the state and federal constitutions and we have an obligation to ensure that the rules are constitutional. But that does not mean that we may disregard the proper avenues by which the rules may be challenged. We necessarily consider the constitutionality of a rule during our rulemaking process, and before we adopt or revise a disciplinary rule, the public is permitted and encouraged to weigh in on the rule through public comment. And we may analyze a rule when deciding a disciplinary case in which the rule is challenged by the parties. By ignoring the proper avenues of review in this case, the majority renders meaningless our rulemaking process and our briefing requirements.

{¶ 103} Nevertheless, the majority maintains that we can justify this departure from precedent and our rules and procedures and ignore the doctrines of party presentation, waiver, constitutional avoidance, and judicial restraint to decide this waived issue because "this is not an ordinary case," majority opinion at ¶ 36. It is true that there are situations "in which a modest initiating role for a court is appropriate." *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020). But it is impossible to say that this court takes on a "modest initiating role" by raising, arguing, and adjudicating an unbriefed, unraised constitutional issue that has never been resolved by this court when the parties waived all objections to the board's report. This case does not fit the bill to permit such unchecked and unwelcome interference. *See State ex rel. GateHouse Media Ohio Holdings II, Inc. v. Columbus Police Dept.*, 2025-Ohio-5243, ¶ 41 (in mandamus case in which the relator bears the burden of establishing a right to the requested relief, the issue of which version of a statute applies is not a necessary determination that should sua sponte be raised by the court). We should not become advocates and raise issues sua sponte for the parties, even in a disciplinary case, especially when the parties actively waived their objections.

{¶ 104} But even assuming for the sake of argument that it is proper for this court to sua sponte raise and address a constitutional issue that was *waived* by the respondent, it should do so only in the extremely rare case involving exceptional circumstances in which the error rises to the level that if left uncorrected would undermine the legitimacy of the entire disciplinary process. *See Ohio Power Co.*, 2022-Ohio-4713, at ¶ 40; *Jones*, 2020-Ohio-3780, at ¶ 24; *Goldfuss*, 1997-Ohio-401, ¶ 28. The majority does not explain how failing to address a First Amendment argument challenging the validity of one judicial-conduct rule—an argument that was concocted solely by justices of this court and that was unbriefed and explicitly waived by the parties—would undermine the very legitimacy of this court's disciplinary process, especially when the recommended sanction in this case is a

public reprimand, which is the least-severe sanction that this court can impose, *see* Gov.Bar R. V(12)(A). Despite what the majority says, this is not an extraordinary case, majority opinion at ¶ 36.

{¶ 105} This is a disciplinary action that can affect Rudduck's license to practice law, and he has a property interest in that license. *See State v. Gideon*, 2020-Ohio-6961, ¶ 12 (state regulation of occupations through a licensing process give rise to protected property interests). Such an interest is protected only against deprivations without due process of law. *See Ohio Academy of Nursing Homes, Inc. v. Barry*, 56 Ohio St.3d 120, 126 (1990). And here, Rudduck received due process of law. Rudduck, who is an attorney and who is also represented by attorneys, fully participated in the disciplinary proceedings and has never raised First Amendment concerns to challenge the alleged judicial-conduct violations. And furthermore, he explicitly waived any objections to the board's report. There is no deprivation of due process here that would warrant extraordinary intervention and advocacy by this court.

{¶ 106} The failure to resolve an unraised and unbriefed First Amendment challenge to one of the judicial-conduct rules charged in a disciplinary case does not undermine the legitimacy of the underlying disciplinary process itself. The mere existence of a novel constitutional issue in a case does not elevate the status of that case to the extremely rare, extraordinary case that overcomes application of the forfeiture doctrine, let alone the waiver doctrine. Indeed, we have refused to consider criminal defendants' unbriefed constitutional arguments when their freedom and even their lives were at stake. *See*, *e.g.*, *State v. Roberts*, 2017-Ohio-2998, ¶ 85 (refusing to consider a criminal defendant's Sixth Amendment claim in a death-penalty case because it was raised for the first time during oral argument). And we have held that a party's having failed to raise a double-jeopardy issue did not undermine the legitimacy of the underlying judicial process such that we were required to review that forfeited issue. *See Risner v. Ohio Dept. of Natural*

Resources, Ohio Div. of Wildlife, 2015-Ohio-3731, ¶ 25-27. There is no support for the assertion that the First Amendment issue raised by the majority must be resolved to ensure the legitimacy of the disciplinary process.

{¶ 107} Furthermore, this is not an extraordinary case in which intervention is needed because the unraised error could result in extreme penalties or sanctions that could undermine the legitimacy of this court's disciplinary process. Here, the board recommended that Rudduck be subject to public reprimand, which, again, is the least-severe sanction that this court can impose, *see* Gov.Bar R. V(12)(A). And Rudduck is no longer a judge; he retired in 2024. There is no evidence that Rudduck is licensed in another state, which would trigger reciprocal discipline elsewhere if he were disciplined by this court. While attorney discipline is certainly a serious matter, it is hard to perceive this case as being high stakes when even Rudduck did not feel compelled to challenge the board's report filed in this court—he waived his right to object. For these reasons, this case is not a rare and extraordinary case that could undermine the entire disciplinary process without this court's intervention.

{¶ 108} Indeed, the only case that I could find in which this court sua sponte raised a constitutional issue that was not raised or briefed by the parties was in the expedited election case *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035. In a four-to-three decision, this court justified addressing a constitutional issue that had not been raised or briefed by the parties by explaining that the parties could be forgiven for failing to brief the issue, because our case law in the prior year had (allegedly) diverted from well-settled law in an expedited elections matter. *Id.* at ¶ 14. The majority in *Maxcy* determined that although briefing by the parties would be helpful, it would be "impractical or impossible . . . given the compressed time frame of an expedited election case." *Id.* The majority explained that it was only "[i]n these circumstances [that the court's] prudential policy against addressing arguments not raised by the parties [was] not a barrier to addressing and remedying

a clear mistake before it [was] repeated again." *Id.* Silence, the alternative, was not appropriate, because that would permit the county boards of elections to follow the (allegedly) erroneous case law when the court could simply "return to [its] near-century of jurisprudence regarding how to address" the issue in that case. *Id.*

{¶ 109} The *Maxcy* court's rationale for addressing an unraised and unbriefed constitutional issue does not apply in this case. Unlike the parties in *Maxcy*, the parties in this case cannot be absolved from failing to raise the constitutional issue raised, analyzed, and adjudicated by the majority. Rudduck should have known of the First Amendment issue and raised it, given that the United States Court of Appeals for the Sixth Circuit grappled with this exact question in *Platt* in 2018, *see Platt*, 894 F.3d at 263, a case issued nearly five years before the alleged misconduct occurred in this case, more than six years before the panel held its disciplinary hearing, and more than six and a half years before the disciplinary proceedings reached this court. But Rudduck decided not to pursue the issue or file any objections to the board's report, as evidenced by the joint waiver of objections.

{¶ 110} And unlike in *Maxcy*, this court cannot justify raising the First Amendment issue sua sponte here—especially without first ordering the parties to brief the issue—because we have never addressed the issue. And the majority's conclusion that Jud.Cond.R. 4.1(A)(3) is facially unconstitutional is at odds with decisions from three federal courts of appeals. *See Platt* at 263 (Sixth Circuit); *Wolfson*, 811 F.3d at 1186 (Ninth Circuit); *Winter*, 834 F.3d at 691-692 (Sixth Circuit); *Wersal*, 674 F.3d at 1028 (Eighth Circuit). Thus, this is not a situation in which we are merely returning to the jurisprudence in effect before a recent departure; the majority advocates for a drastic change in the law—striking a judicial-conduct rule that this court promulgated—based entirely on a constitutional argument that was never raised or briefed but was instead actively waived.

{¶ 111} And also unlike *Maxcy*, this is not an expedited elections case; it is a disciplinary proceeding. We are not on an expedited schedule that would require us to sua sponte raise and decide an important constitutional issue without having the parties weigh in. This case has been pending for over a year, and Rudduck is no longer on the bench and has retired from the practice of law in Ohio. Thus, there is no justification for raising this issue sua sponte or for not seeking guidance from disciplinary counsel, who has a duty to investigate and prosecute allegations of misconduct by judicial officers and attorneys, *see* Gov.Bar R. V(4)(A), and Rudduck, who would bear the burden of establishing that Jud.Cond.R. 4.1(A)(3) is unconstitutional, *see State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 2006-Ohio-5512, ¶ 34 (the party challenging the constitutionality of a statute carries the burden of proof).

{¶ 112} As this court has recognized time and again, "justice is *far better* served" when this court has the benefit of briefing and argument before it makes a final determination. (Emphasis added.) *Sizemore v. Smith*, 6 Ohio St.3d 330, 333, fn. 2 (1983). By sua sponte raising a constitutional challenge and concocting its own argument to strike Jud.Cond.R. 4.1(A)(3) as facially unconstitutional, the majority takes up its sword and carves a path for Rudduck on an unraised, unbriefed, and affirmatively *waived* constitutional issue. In doing so, the majority rejects the principles of party presentation, judicial restraint, and constitutional avoidance. *See Epcon*, 2024-Ohio-4989, at ¶ 15, 17 (courts "should ordinarily decide cases based on issues raised by the parties" and "should not decide constitutional questions unless it is absolutely necessary to do so"). And it forgets that this court has said: "We will not search the record or formulate legal arguments on behalf of the parties, because we do not sit as self-directed boards of legal inquiry and research, but preside essentially as arbiters of legal questions presented and argued by the parties before us." (Cleaned up.) *GateHouse Media*, 2025-Ohio-5243, at ¶ 36.

{¶ 113} I cannot condone the majority's actions in this case. We must show restraint and decide only the issues that are properly before us. If this court wants to remove Jud.Cond.R. 4.1(A)(3) from the Code of Judicial Conduct, then it should initiate proceedings under our rulemaking authority to amend the Code of Judicial Conduct. If this court wants to rule on the constitutionality of Jud.Cond.R. 4.1(A)(3), then it should wait for a case in which the issue has been properly presented. At the most, this court could use this case as a vehicle to encourage future litigants to raise this issue. But this court should not fabricate an opportunity to review the constitutionality of Jud.Cond.R. 4.1(A)(3) in this case. The public and the bar deserve better from this court.

{¶ 114} For these reasons, I would not address the First Amendment issue sua sponte, especially without at least giving the parties involved notice and an opportunity to brief the issue. *See Maxcy*, 2018-Ohio-4035, at ¶ 28 (Fischer, J., dissenting) (recognizing the failure of the majority to order supplemental briefing before deciding a constitutional issue sua sponte). Thus, I would not address the constitutionality of Jud.Cond.R. 4.1(A)(3) and would simply independently review the board's findings of fact and determine whether they meet the elements of the alleged judicial-conduct violations, and if so, determine the appropriate sanction.

B. The Anti-Endorsement Rule Does Not Violate the First Amendment

{¶ 115} Even though I would not reach the issue of the constitutionality of Jud.Cond.R. 4.1(A)(3), because the issue was not raised and was affirmatively waived by Rudduck, I am compelled to respond to the majority's flawed constitutional analysis. For purposes of a First Amendment analysis, I will assume that Jud.Cond.R. 4.1(A)(3) is a content-based restriction on the political speech of judges and judicial candidates and that to be constitutional, the restriction must survive strict scrutiny. *See Disciplinary Counsel v. Tamburrino*, 2016-Ohio-8014, ¶ 18 (recognizing that "Jud.Cond.R. 4.3 is a content-based regulation of political speech and therefore must withstand strict scrutiny"); *Republican Party of*

Minnesota v. White, 536 U.S. 765, 774 (2002) (applying strict scrutiny to a provision in a state's judicial code of conduct that prohibited a judicial candidate from announcing his or her views on disputed legal or political issues); *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) (plurality opinion) ("A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest."); *but see Siefert v. Alexander*, 608 F.3d 974, 983 (7th Cir. 2010) (refusing to apply strict scrutiny to a judicial anti-endorsement rule by distinguishing a public endorsement by a judge from an announcement by a judicial candidate of his or her views on disputed legal or political issues, which was the type of speech at issue in *White*). Applying the strict-scrutiny test, Jud.Cond.R. 4.1(A)(3) must be narrowly tailored to serve a compelling state interest. *See White* at 774.

{¶ 116} The Code of Judicial Conduct is premised on the unique governmental role of the judiciary, whose authority "'turns almost exclusively on its credibility and the respect warranted by its rulings.'" *In re Judicial Campaign Complaint Against O'Toole*, 2014-Ohio-4046, ¶ 22, quoting *Carey v. Wolnitzek*, 614 F.3d 189, 194 (6th Cir. 2010). The Preamble to the Code of Judicial Conduct sets forth the State's interest in maintaining "[a]n independent, fair, and impartial judiciary" and provides that "judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." Jud.Cond.R., Preamble [1]. The State's interests in promoting judicial integrity and public confidence in the judiciary are without a doubt compelling state interests. *See O'Toole* at ¶ 26, quoting *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 848 (1978) ("'There could hardly be a higher governmental interest than a State's interest in the quality of its judiciary.'").

{¶ 117} Canon 4 of the Code of Judicial Conduct provides: "A judge or judicial candidate shall not engage in political or campaign activity that is

inconsistent with the independence, integrity, or impartiality of the judiciary." As a general matter, the rules in Canon 4 "are intended to ensure that judges and judicial candidates campaign in a way that fosters and enhances respect for, and confidence in, the judiciary." *O'Toole* at ¶ 25. Therefore, "Ohio has a compelling interest in ensuring that 'judicial campaigns are run in a manner so as not to damage the actual and perceived integrity of state judges and the bar.'" *Id.* at ¶ 26, quoting *Berger v. Ohio Supreme Court*, 598 F.Supp. 69, 75 (S.D.Ohio 1984).

{¶ 118} In striking Jud.Cond.R. 4.1(A)(3) under a strict-scrutiny analysis, the majority identifies three state interests laid out in Canon 4—promoting judicial impartiality, integrity, and independence—and concludes that Jud.Cond.R. 4.1(A)(3) is not narrowly tailored to advance those interests. With respect to the State's interests in judicial impartiality and independence, the majority reasons that Jud.Cond.R. 4.1(A)(3) is overinclusive because it prohibits a judge from endorsing or opposing candidates who would likely never be litigants before the judge and because less restrictive alternatives exist, including mandatory recusal or disqualification of a judge. Majority opinion at ¶ 56-57 (impartiality) and ¶ 62-64 (independence).

{¶ 119} The majority's strict-scrutiny analysis strays too far from the United States Supreme Court's decision in *White*, 536 U.S. 765. In *White*, the Court held that Minnesota's announce clause in its judicial code of conduct, which prohibited a judicial candidate from announcing his or her views on disputed legal or political issues, violated the First Amendment. *Id.* at 768-770. In reaching its holding, the Court considered whether Minnesota's announce clause was narrowly tailored to serve Minnesota's interest in promoting judicial impartiality—meaning a lack of bias toward a particular party in a proceeding. *Id.* at 775-776. The Court reasoned that the announce clause was "barely tailored" to serve Minnesota's interest in promoting judicial impartiality "inasmuch as it [did] not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*."

(Emphasis in original.) *Id.* at 776. Here, Ohio's judicial anti-endorsement rule is aimed at restricting a judge from publicly expressing his or her opinion regarding a particular person, i.e., a candidate, and it does not restrict a judge's ability to speak on issues. *See Wersal*, 674 F.3d at 1026 ("the endorsement clause does not regulate speech with regard to any underlying issues, and thus the candidates are free to state their positions on these issues, in line with *White*"); *compare Disciplinary Counsel v. Grendell*, 2025-Ohio-5239, ¶ 34 (analogizing Jud.Cond.R. 3.2's ban on judges voluntarily testifying before a legislative body to the announce-clause restriction at issue in *White*, because both deal with restricting judicial speech on issues).

{¶ 120} Unlike Minnesota's announce clause that was at issue in *White*, which targeted judicial campaign speech on disputed legal or political issues, Ohio's judicial anti-endorsement rule is aimed not at restricting judges' speech in their own campaigns but at preventing judges from publicly inserting themselves into the campaigns of others. When a judge participates in another person's political campaign, "a judge's impartiality can be put into question, and the public can lose faith in the judiciary's ability to abide by the law and not make decisions along political lines." *Wolfson*, 811 F.3d at 1184. The Sixth Circuit determined in *Winter* that Kentucky's judicial anti-endorsement rule was not overinclusive, because it did not prohibit speech against an opponent and banned only the endorsement of a candidate in a different race. *Winter*, 834 F.3d at 691-692. Therefore, I would hold that Jud.Cond.R. 4.1(A)(3) is not fatally overinclusive.

{¶ 121} The majority also reasons that Jud.Cond.R. 4.1(A)(3) does not offer the least restrictive means to further the State's interest in promoting judicial independence and impartiality, because a judge who endorses another candidate may recuse if that endorsement could cause the judge's independence or impartiality to be questioned later in a case before the judge. Majority opinion at ¶ 57 (impartiality) and ¶ 64 (independence). "But recusal is no answer at all . . . ." *Wolfson* at 1186. In rejecting a First Amendment challenge to Arizona's judicial

anti-endorsement rule, the United States Court of Appeals for the Ninth Circuit reasoned in *Wolfson* that "[a] rule requiring judges to recuse themselves from every case where they endorsed or campaigned for one of the parties could 'disable many jurisdictions' and cripple the judiciary." *Id.*, quoting *Williams-Yulee*, 575 U.S. at 454-455. Similarly, the United States Court of Appeals for the Eighth Circuit in *Wersal* upheld Minnesota's judicial anti-endorsement rule against a First Amendment challenge by determining that the rule was narrowly tailored to serve Minnesota's compelling interests of preserving impartiality and the appearance of impartiality. *Wersal* at 1028. In doing so, the Eighth Circuit rejected the notion that judicial recusals offered a less restrictive alternative to prohibiting judicial endorsements, reasoning that "recusal would be an unworkable remedy because candidates and judges would be free to endorse individuals who would become frequent litigants in future cases, such as county sheriffs and prosecutors." *Id.* at 1027-1028, citing *Siefert*, 608 F.3d at 987.

{¶ 122} Allowing judges and judicial candidates to endorse candidates in other political races, so long as they recuse themselves from any proceeding involving that endorsee or that endorsee's opponent, could have an immobilizing effect on the judicial system in Ohio. For instance, consider the situation in which all the sitting judges on a court of common pleas publicly endorse a candidate for county prosecutor and then that candidate is eventually elected and sworn into office. A rule requiring all judges on that court to recuse themselves on every single case brought by that prosecutor would substantially reduce the workload for those judges and require the inefficient and potentially costly appointment of visiting judges. *See Bauer v. Shepard*, 620 F.3d 704, 713 (7th Cir. 2010) ("the politician-judge will be disqualified so often that he will have the equivalent of a paid vacation, while other judges must work extra to protect litigants' entitlement to expeditious decisions"). And if judges refuse to recuse themselves from cases involving a party whom they have endorsed, then the public will be left with serious

doubts regarding the ability of those judges to remain impartial.

{¶ 123} Frequent judicial recusals would also seriously interfere with Ohio's system of electing judges. In Ohio, the election of judges is a constitutionally mandated process. *See* Ohio Const., art. IV, § 6(A). A judge's recusal often means that a visiting judge (i.e., a retired judge or a judge from another court) is appointed to preside over a matter. Thus, a rule encouraging judicial recusals would undermine the voters' right to elect their judges.

{¶ 124} The majority reasons that frequent judicial recusals will not be more likely to occur in the absence of Jud.Cond.R. 4.1(A)(3), because other provisions in the Code of Judicial Conduct will curtail that result. In support of that assertion, the majority cites Jud.Cond.R. 3.1(A) (prohibiting judges from engaging in extrajudicial activities that would interfere with judicial duties) and Jud.Cond.R. 3.1(B) (prohibiting judges from engaging in activities that would lead to frequent disqualification). Majority opinion at ¶ 60. But as seen in this very disciplinary action, that is not the case. Here, the majority found that Rudduck could not be disciplined for publicly endorsing his son's judicial campaign under either Jud.Cond.R. 1.2 (requiring a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary) or Jud.Cond.R. 1.3 (prohibiting a judge from abusing the prestige of the judicial office to advance the personal or economic interests of the judge or others), because doing so would infringe on Rudduck's First Amendment rights. *Id.* at ¶ 70, 79.

{¶ 125} I do not underestimate the rigorous nature of the strict-scrutiny analysis, as the majority contends, *id.* at ¶ 61. The majority points out that the United States Supreme Court has only once held that a law survived strict scrutiny in the First Amendment context, citing *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 484 (2025). *Id.* As I have pointed out, however, the federal courts of appeals that have considered whether judicial anti-endorsement rules survive strict scrutiny have held that they do. *See Platt*, 894 F.3d at 263 (Sixth Circuit); *Wolfson*,

811 F.3d at 1186 (Ninth Circuit); *Winter*, 834 F.3d at 691-692 (Sixth Circuit); *Wersal*, 674 F.3d at 1028 (Eighth Circuit). I am concerned that the majority's restrictive position here will eventually call into question other rules that have the effect of restricting the speech of lawyers and judges.

{¶ 126} With respect to the State's interest in promoting judicial integrity, the majority reasons that there is "'only one permissible ground for restricting political speech: the prevention of 'quid pro quo' corruption or its appearance.'" Majority opinion at ¶ 65, quoting *Fed. Election Comm. v. Cruz*, 596 U.S. 289, 305 (2022). The majority then reasons that Jud.Cond.R. 4.1(A)(3) is not narrowly tailored to prevent corruption or the appearance of corruption, because it does not, by its terms, prohibit only those endorsements that amount to corruption or the appearance of corruption. *Id.* at ¶ 67.

{¶ 127} The majority's reliance on *Cruz* for the State's interest in promoting judicial integrity is puzzling. *Cruz* dealt with federal campaign-finance restrictions on the repayment of a federal-office candidate's personal loans to his campaign from campaign funds raised after an election. *Cruz* at 293. *Cruz* has nothing to do with state limits on judges' speech to promote judicial integrity. To be clear, judicial integrity is "a state interest of the highest order." *White*, 536 U.S. at 793 (Kennedy, J., concurring). "The power and the prerogative of a court to [elaborate principles of law in the course of resolving disputes] rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity." *Id.*

{¶ 128} Endorsements, by their very nature, are often the result of political back-scratching "'exchanged between political actors on a quid pro quo basis.'" *Winter*, 834 F.3d at 691, quoting *Siefert*, 608 F.3d at 984. In other words, handing out a political endorsement is rarely a selfless act. Because endorsements are almost always the result of quid pro quo politics, a judicial anti-endorsement rule is narrowly tailored to a state's "compelling interest in preventing judges from

becoming (or being perceived as becoming) part of partisan political machines." *Id.*

{¶ 129} The majority also fails to identify the scope of the State's interests in prohibiting endorsements by judges and judicial candidates. The comments to the Code of Judicial Conduct help clarify the intended reach of the rules. *See Platt*, 894 F.3d at 249 ("as with every provision of the Code [of Judicial Conduct, Jud.Cond.R.] 4.1(A)(3)'s intended reach is clarified by comments, advisory opinions, and staff letters"). In keeping with the State's interests in promoting judicial integrity, independence, and impartiality, Jud.Cond.R. 4.1(A)(3) is specifically concerned with preventing judges from suggesting to the public that they endorse the political campaign of a family member. Comment [5] to Jud.Cond.R. 4.1 provides that "[a] judge or judicial candidate must not become publicly involved in, or publicly associated with, a family member's political activity or campaign for public office." Comment [5] further explains that "[t]o avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity."

{¶ 130} The State's interest in having judges avoid implying to the public that they endorse the candidacy of their relatives, as outlined in Comment [5] to Jud.Cond.R. 4.1, is precisely the issue in Rudduck's case, and the board specifically identified Comment [5] in its decision. Rudduck used a public Facebook account, which identified him as "Judge at Clinton County Common Pleas Court" to share multiple posts regarding his son's campaign for a seat on the Clinton County Municipal Court.

{¶ 131} I would hold that the judicial anti-endorsement rule in Jud.Cond.R. 4.1(A)(3) does not violate the First Amendment, because it is narrowly tailored to serve the State's compelling interests in promoting the integrity, independence, and

impartiality of its judiciary. I would also hold that enforcement of Jud.Cond.R. 4.1(A)(3) in this disciplinary action does not violate Rudduck's First Amendment rights. I would uphold the board's determination that Rudduck's use of his Facebook page to post and share information about his son's judicial campaign amounted to Rudduck's publicly endorsing his son, in violation of Jud.Cond.R. 4.l(A)(3). I would therefore also adopt the board's determination that Rudduck's public endorsement of his son violated Jud.Cond.R. 1.2, which requires a judge to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary."

II. Jud.Cond.R. 1.3 and Rudduck's Facebook "Essay"

{¶ 132} The board also determined that Rudduck's conduct violated Jud.Cond.R. 1.3, which provides: "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." The basis for the board's determination that Rudduck's conduct violated Jud.Cond.R. 1.3 was a lengthy four-part essay that Rudduck posted to his Facebook page, mainly defending his son against varying personal attacks after Facebook froze his son's account in the days just prior to the election.

{¶ 133} In declining to adopt the board's findings and conclusions, the majority applies Jud.Cond.R. 2.10(E), which allows a judge to "respond directly or through a third-party to allegations in the media or elsewhere concerning the judge's conduct in a matter." *See* majority opinion at ¶ 73. But only one part of Rudduck's four-part essay addressed allegations related to Rudduck's own judicial conduct in a matter. The bulk of Rudduck's essay, as Rudduck conceded, was spent defending his son.

{¶ 134} Rudduck testified that the "genesis" for his essay was his desire to defend his son from defamatory statements. While I can certainly understand Rudduck's frustration as a parent and his perceived need to defend his son in light of the social-media attacks against him, Rudduck's essay contained highly personal

information about his son, including his son's medical history and his son's having been drunk while mourning the death of another judge, and addressed unfounded allegations that his son had abused his children. Rudduck posted his essay on a public Facebook account that identified him as a judge. Rudduck admitted that (1) the essay he posted just days prior to the election in which his son was running contained information that could influence a voter, (2) he posted the essay at a time when his son's Facebook account was restricted, and (3) by using his own Facebook account to refute the attacks against his son, Rudduck could get the message out quickly.

{¶ 135} I agree with the board's finding that Rudduck's four-part essay was intended to defend his son's character for purposes of his son's election. I also agree with the board's finding that Rudduck abused the prestige of his judicial office to advance his son's personal interests. Therefore, I would adopt the board's conclusion that Rudduck's conduct violated Jud.Cond.R. 1.3.

III. The Majority's Word of Caution Is All Bark and No Bite

{¶ 136} Finally, the majority follows its analysis with a "word of caution," noting that although it will not discipline Rudduck for his conduct, it does not "approve of his conduct." Majority opinion at ¶ 81. The majority's disapproving of a judge's conduct while at the same time refusing to discipline that judge is essentially abdicating this court's role in disciplinary matters. The majority warns all judges that they "should forgo making some public statements even if those statements would constitute protected free speech." *Id.* Without the prospect of potential discipline, however, the majority's warning to judges is nothing more than a hollow threat. "[J]udges are held to the highest possible standard of ethical conduct." *Ohio State Bar Assn. v. McCafferty*, 2014-Ohio-3075, ¶ 16. That is precisely why we have the Code of Judicial Conduct. Chipping away at our judicial-conduct rules will inevitably mean lowering our ethical standards. As attorneys and judges, we agree to be bound by ethical rules in exchange for the

privilege to practice law.

IV. Conclusion

{¶ 137} The majority goes too far in striking the judicial anti-endorsement rule set forth in Jud.Cond.R. 4.1(A)(3) as a violation of the First Amendment. Rudduck waived all objections to the board's report and has never raised a First Amendment challenge to Jud.Cond.R. 4.1(A)(3). At the very least, the parties deserve to have the opportunity to brief this First Amendment issue. And furthermore, the majority could have easily resolved Rudduck's disciplinary action on a narrower, as-applied basis. If a majority of the members of this court believe that the judicial anti-endorsement rule should be set aside or modified, then they should follow the court's process for amending the Code of Judicial Conduct. Doing so would not only avoid abdicating our role as arbiter and taking on the role of advocate by raising constitutional issues on behalf of the parties (and ignoring principles of party presentation, judicial restraint, and constitutional avoidance in the process) but would allow for public notice of the proposed amendment and a public-comment period during which any member of the public could weigh in on the proposed amendments. Seeking public feedback is an important part of this court's rulemaking process.

{¶ 138} In sum, I would adopt the board's findings of fact and conclusions of law with respect to Rudduck's conduct, and I would adopt the board's recommended sanction. Because the court does otherwise, I respectfully dissent.

Joseph M. Caligiuri, Disciplinary Counsel, for relator.

Montgomery Jonson, L.L.P., George D. Jonson, and Lisa M. Zaring, for respondent.

Ohio Board of Professional Conduct

OPINION 2026-01
Issued April 10, 2026

Limited Scope Representation Through the Drafting of Pleadings for Pro Se Litigants

SYLLABUS: A lawyer, providing legal services through a limited scope representation, may engage in the drafting of pleadings and other case documents for a client proceeding pro se in litigation when the lawyer files a notice of limited appearance pursuant to Civ.R. 3. Lawyers may provide standardized form legal documents to clients proceeding pro se in litigation without giving notice to opposing counsel or courts.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.

Ohio Board of Professional Conduct

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APPLICABLE RULES: Prof.Cond.R. 1.1, 1.2, 1.3, 3.3, 3.4, 4.1, and 8.4.

QUESTIONS PRESENTED:

1). Whether a lawyer may engage in "ghostwriting" for pro se litigants without disclosing the lawyer's involvement to either the court and/or opposing counsel during active litigation.

2). Whether a lawyer may provide standardized form legal documents, pleadings, and other court filings for pro se litigants without disclosing the lawyer's involvement to either the court and/or opposing counsel during active litigation.

3). Whether a lawyer violates Civ.R. 11 when engaging in "ghostwriting."

ANALYSIS:

"Ghostwriting," as defined by other jurisdictions, consists of a lawyer providing legal services, typically through the drafting of pleadings or other case documents, to a pro se litigant, when the lawyer's identity will not be disclosed to the court, the lawyer will not make a formal appearance in the litigation, and the lawyer will not sign the pleadings or case documents filed with the court. *See, e.g.,* Az. Op. 34 (June 24, 2009). The Rules of Professional Conduct and the Civil Rules of Procedure do not expressly permit "ghostwriting" in the manner described above. Lawyers, may, however, provide limited

legal services to pro se litigants if reasonable under the circumstances and communicated to the client, preferably in writing, and otherwise referred to as "limited scope representation." Prof.Cond.R 1.2(c). Limited scope representation permits a lawyer and client to agree to discrete services that will be provided by the lawyer with other necessary tasks left to be performed by the client proceeding pro se. Drafting services provided by a lawyer to the client with the intention the lawyer will not sign and file a pleading or other case document is a type of permissible limited scope representation. For example, a lawyer and client might agree that the lawyer will only draft the complaint or answer for a civil lawsuit, while the client will sign and file the pleading, make all court appearances, engage in discovery, and participate in settlement negotiations.

Notice of Limited Appearance – Civ.R. 3(B)

Litigants always retain the right to represent themselves in legal proceedings. When exercising this right, pro se litigants may choose to seek legal advice or limited litigation assistance from a lawyer. Unless there is a specific law or procedural rule, as in Ohio, that mandates disclosure, pro se litigants are not obligated to reveal to the court or opposing parties that they have received legal assistance from a lawyer. *See* ABA Op. 07-446 (May 5, 2007).

The Supreme Court adopted amendments to the Ohio Civil Rules of Procedure on July 1, 2018 to better enable lawyers assisting clients in need of some, but not all, of the legal services typically required to litigate a civil case. The amendments were drafted in response to the Supreme Court's 2015 Access to Justice Task Force recommendation to increase the availability of lawyers willing to provide limited scope representation to clients wishing to proceed in a matter pro se. [1]

Lawyers, even when providing legal services in a limited scope representation, are required to obey the rules of a tribunal. Prof.Cond.R. 3.4(c). The 2018 amendment to Civ.R. 3(B) mandates that a lawyer retained to assist a pro se litigant through a limited scope representation file a notice of limited appearance, served upon all parties and counsel, that includes the scope of services the lawyer is providing to the pro se litigant. When the services have been completed, the lawyer is required to file a notice of

[1] https://www.supremecourt.ohio.gov/docs/Publications/accessJustice/finalReport.pdf (Retrieved April 5, 2026).

completion of limited appearance that permits the lawyer to withdraw from the matter without seeking leave of court. Civ.R. 3(B).

A lawyer's use of a notice of limited appearance removes the ethical concerns that are traditionally associated with "ghostwriting" by lawyers. By formally appearing in litigation on a permissible and limited basis, with full disclosure to the court, parties, and opposing counsel pursuant to Civ.R. 3, a lawyer avoids directly implicating Prof.Cond.R. 3.3(a)(making a false statement of fact to a tribunal), Prof.Cond.R. 4.1(b)(making a false statement of material fact to a third person), and Prof.Cond.R. 8.4(c)(engaging in dishonesty, fraud, deceit, and misrepresentation) when providing drafting services to a client proceeding pro se.

Civ.R. 11

The Board cannot directly address the question whether providing drafting services to pro se litigants constitutes a Civ.R. 11 violation because the Board's advisory opinion authority is limited to questions concerning the Rules of Professional Conduct, the Code of Judicial Conduct, and the Rules for the Government of the Bar and Judiciary. Gov.Bar R. V(2(D). However, neither Prof.Cond.R. 1.2(c) nor Civ.R. 3(B) requires the drafting lawyer who files a notice of limited appearance to also sign any pleading or other filing in addition to the pro se litigant.

The Board is unaware of any Ohio state court interpretation of Civ.R. 11 that requires a lawyer to sign a pleading that the lawyer drafted but intended to be signed and filed only by the pro se litigant. Because Ohio state courts have not yet addressed the application of Civ. R. 11 in the context of limited scope representation, attorneys should assess whether providing limited drafting services in compliance with Prof.Cond.R. 1.2(c) and Civ.R. 3(B) is being undertaken to circumvent the requirements of Civ.R. 11. Given the lack of judicial guidance, the Board advises lawyers preparing documents for filing by pro se litigants to generally adhere to Civ.R. 11. This includes ensuring that filings are supported by good cause, are not submitted for purposes of delay, and do not contain scandalous or inappropriate content. This practice can assist in preventing the imposition of sanctions against pro se litigants who are subject to Civ.R. 11 when signing pleadings drafted by a lawyer. Lawyers should counsel a pro se client about Civ.R. 11 and the consequences of violating the rule. *See also* R.C. 2323.51 (frivolous conduct in filing civil claims.)

Providing Standardized Legal Forms to Pro Se Clients

Some lawyers who provide legal services in a limited scope representation, particularly in the legal services sector, provide standardized legal forms for completion and filing to pro se clients and other persons. For the purposes of this advisory opinion, a "standardized legal form" is a prewritten legal document template with fixed, standardized language, that includes blanks or limited fields to be filled by the filing party to litigation. The use of standardized legal forms is widespread, and the forms are readily available to clients and others from a multitude of sources, including the Internet and even courts. Lawyers are permitted to provide standardized legal forms to clients proceeding pro se, or to other individuals, and may also direct such clients or individuals to resources that supply these forms.

The widespread use of standardized legal forms raises the question whether a lawyer's provision of a standardized legal form to a pro se litigant requires the lawyer to file a notice of limited appearance under Civ.R. 3. The Board suggests that providing a standardized legal form to a pro se litigant for his or her completion, signature, and filing, does not implicate the notice requirements contemplated by Civ.R. 3.

Ohio Board of Professional Conduct

OPINION 2026-02

Issued June 5, 2026

Use of a Separately Registered Trade Name or DBA by a Law Firm

SYLLABUS: An Ohio law firm organized as a limited liability company, limited liability partnership, or other permissible legal entity may use a separately registered trade name or fictitious name (DBA) in marketing, advertising, signage, and public-facing communications without appending the required entity designation to every instance of the trade name, provided that the full legal entity name, including the entity designation, is disclosed within the same medium in which the trade name appears, such as in the footer of letterhead, websites, and printed advertisements.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.

Ohio Board of Professional Conduct

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OPINION 2026-02

Issued June 5, 2026

Use of a Separately Registered Trade Name or DBA by a Law Firm

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APPLICABLE RULES: Prof.Cond.R. 7.5

QUESTION PRESENTED:

> Whether a law firm organized as a limited liability company or other designated entity that has registered a trade name or fictitious name (DBA) with the Ohio Secretary of State must append the entity designation (e.g., "LLC") to every public use of that trade name in marketing, advertising, and public-facing communications.

ANALYSIS:

Background

Ohio law firms may be organized under a formal legal entity name that includes a corporate legend or descriptive designation (entity designation) as required by Prof.Cond.R. 7.5 and Gov.Bar R. III. Law firms may also register a separate DBA or trade name with the Ohio Secretary of State for use in firm marketing and on websites, letterhead, printed advertisements, business cards, and signage.

Prof.Cond.R. 7.5 and the 2020 Rule Amendment

Prior to June 17, 2020, Prof.Cond.R. 7.5 prohibited lawyers or law firms from practicing under a trade name. The Supreme Court of Ohio amended Prof.Cond.R. 7.5, effective June 17, 2020, which removed the prohibition. As a consequence, a lawyer or law firm may permissibly practice under a trade name in lieu of a traditional firm name that includes the name or surnames of a lawyer or lawyers in the firm, as long as the trade name complies with the Rules of Professional Conduct and the Rules for the Government of the Bar. *See* Adv. Op. 2020-11.

Prof.Cond.R. 7.5 requires that the name of a professional corporation or association, legal clinic, limited liability company, or limited liability partnership "contain symbols indicating the nature of the organization as required by Gov.Bar R. III." Gov.Bar R. III(2) requires that the name of a legal professional association or legal clinic end with the legend "Co., LPA" and that the name of a corporation, limited liability company, or limited liability partnership include a descriptive designation as required by R.C. 1701.05(A), 1706.07, or 1776.82, respectively.

Advisory Opinion 2020-11

Adv. Op. 2020-11 addressed a law firm that "intends to be formally identified by the use of a trade name." The opinion defined a trade name as "a name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates." Citing Black's Law Dictionary (11th Ed., 2019.) The Board held that a firm using a trade name as its formal legal name must include a corporate legend or descriptive designation. For instance, if a law firm decides to operate as a limited partnership and wishes to use the trade name "The Polaris Firm," it must ensure the proper entity designation is included. In this case, the full legal entity name should read "The Polaris Law Firm Co., LPA." The 2020 advisory opinion did not expressly address the question presented here in which a law firm uses a separately registered trade name or DBA as a secondary marketing name.

Prior to the Supreme Court's 2020 amendment of Prof.Cond.R. 7.5, Board staff provided written guidance in a staff opinion letter on the application of Prof.Cond.R. 7.5(a) and Gov.Bar R. III to law firm logos and abbreviated firm names in marketing communications. (Board Staff Letter 6/19/2015). Staff advised that a unique firm logo, using only letters, graphics, or a shortened name of the firm may forgo the entity-

designation requirement, so long as the letterhead, website, advertisement or marketing material using the logo visibly displays in another location the full name of the firm with the corporate legend or descriptive designation. The staff letter's guidance is directly relevant to the question at issue because it addresses the practice of law firms using a name other than their formal legal entity name in marketing and communications.

Based on the foregoing, the Board concludes that a law firm may use a separately registered trade name or DBA in marketing, advertising, signage, and public-facing communications without appending the entity designation to every instance of the trade name, provided that the full legal entity name, including the required entity designation, is disclosed within the same medium in which the trade name appears, such as in the footer of letterhead, websites, and printed advertisements. Below are usage examples and guidance to help ensure compliance with Prof.Cond.R. 7.5 and Gov.Bar R. III.

Websites. The trade name may appear in the header, logo, or other prominent location without the corporate legend or description designation appended. The full legal entity name with the required entity designation should appear in the footer or another visible location on the website.

Letterhead. The trade name may appear as the prominent firm identifier on letterhead. The full legal entity name with entity designation should appear elsewhere on the letterhead, such as in the address block or footer.

Printed Advertisements. The trade name may be used as the advertised firm name. The full legal entity name with the entity designation should appear in the footer or another visible location within the same advertisement.

Business Cards. The trade name may appear as the primary firm identifier on business cards. The full legal entity name with the entity designation should appear somewhere on the card, most likely in the address or contact information.

Articles, Blog Posts, and Web Content. The first reference to the firm in any article, blog post, or web content should use the full legal entity name with the entity designation. All subsequent references in the same piece may use the trade name alone.

Signage. Given space and design limitations, a law firm's exterior or interior signage may display the trade name without entity designation.

Ohio Board of Professional Conduct

OPINION 2026-03
Issued October 2, 2026

Lawyer's Indemnification of Client for Losses Arising from Representation

SYLLABUS: A lawyer may not agree to indemnify a client for losses, damages, or claims arising out of the lawyer's representation. The indemnification agreement creates a conflict between the lawyer's personal and financial interests and the interests of the client and interferes with the lawyer's required exercise of independent professional judgment. A lawyer's agreement to indemnify a client for losses, damages, or claims arising out of the lawyer's representation constitutes prohibited financial assistance to a client.

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APPLICABLE RULES: Prof.Cond.R. 1.7, 1.8, 2.1.

QUESTIONS PRESENTED:

1). Is it ethically permissible for a lawyer to agree to indemnify a client for losses, damages, or claims arising out of the lawyer's provision of legal services?

2). May a lawyer agree to indemnity obligations that are not covered by the lawyer's professional malpractice insurance?

3). Is a nonconsentable conflict created by the indemnity obligation due to the lawyer's personal financial exposure?

ANALYSIS:

Background

Institutional and governmental clients increasingly include defense and indemnification provisions in engagement letters and outside counsel guidelines that require lawyers to indemnify, defend, and hold the client harmless from specified losses, costs, and claims arising from the lawyer's representation. *Client Indemnification*

Agreements—Look Before You Leap, Bloomberg Law (May 2, 2017) (discussing indemnification provisions in outside counsel guidelines and their potential to expand counsel's liability beyond that otherwise imposed by law). However, most clients expect their counsel to carry malpractice insurance while some institutional clients may agree to restrict indemnification to amounts covered by insurance. In response to a request to enter into an indemnification agreement, some lawyers have advised clients that such an agreement is unnecessary because lawyers remain liable for their malpractice even without one. *Id*.

Whether a lawyer may indemnify a client for losses arising from his or her representation of the client is an issue of first impression in Ohio. The issue is not directly addressed by Supreme Court rule, Ohio case law, or Board Advisory opinion. For purpose of this opinion, the personal liability imposed by the indemnification agreement could exceed the standards imposed by legal malpractice under common law.

Conflict of Interest and Informed Consent

Prof.Cond.R. 1.7(a)(2) prohibits a lawyer from representing a client if "there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited * * * by a personal interest of the lawyer." A lawyer must consider whether personal interests will materially limit his or her ability to represent the client. A lawyer's financial interests are obviously a personal interest that a lawyer must take under consideration when examining potential conflicts. Under an indemnification agreement, a lawyer may be exposed to liability that exceeds the lawyer's personal financial resources and the limits available through malpractice insurance. Consequently, the indemnification obligation described in the questions presented creates a situation in which the lawyer's financial and personal interests are adverse to the client's interests, giving rise to a material limitation conflict under Prof.Cond.R. 1.7(a)(2).

Prof.Cond.R. 1.7(b)(1) permits a lawyer to seek the client's informed consent to a material limitation conflict only if the lawyer believes that he or she will be able to provide competent and diligent representation to the client notwithstanding the conflict. However, in the Board's view, the lawyer's personal and financial interests created by the indemnification agreement result in a material limitation conflict of such magnitude

that the lawyer should not seek the client's informed consent to the conflict. Notwithstanding any waiver obtained from the client, other ethical considerations compel the conclusion that a lawyer may not ethically enter into the indemnification agreement.

Independent Professional Judgment

Under the indemnification agreement, the lawyer assumes a financial obligation that is dependent, at least in part, upon the consequences of the lawyer's own independent professional judgment. *See* Prof.Cond.R. 2.1 (in representing a client, a lawyer shall exercise independent professional judgment). Thus, the agreement may impair or prevent the lawyer's unfettered exercise of his or her independent professional judgment. For example, the lawyer may be less willing to recommend an aggressive but legally appropriate strategy if the strategy increases the possibility of a claim by a third party for which the lawyer could be financially responsible. Similarly, the lawyer may be hesitant to advise the client about whether to pursue a claim, accept a settlement, disclose an error, or seek additional counsel, if the consequence of the advice could increase the lawyer's financial exposure.

Prohibited Financial Assistance

The proposed indemnification provision raises additional concerns under Prof.Cond.R. 1.8(e) that prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation, subject to limited exceptions like the advancement of litigation expenses subject to repayment by the client.

The proposed indemnification provision goes beyond the limited financial assistance permitted by Prof.Cond.R. 1.8(e). The provision does not merely advance a litigation expense. Instead, it requires the lawyer to assume financial responsibility for losses, liabilities, or claims arising from the representation, including losses that may exceed available malpractice insurance, could not reasonably be foreseen at the outset of the engagement, and may not be identified until after the lawyer has completed the representation. The indemnification agreement effectively functions as a financial guarantee that the lawyer will use the lawyer's own resources to protect the client from possible financial consequences associated with the lawyer's representation.

Accordingly, the Board concludes that the indemnification agreement would constitute prohibited financial assistance under Prof.Cond.R. 1.8(e).

Ethical Guidance in Other Jurisdictions

At least one jurisdiction has addressed the issue of client indemnification by a lawyer. The Maryland State Bar Association Ethics Committee considered an indemnification clause in a bank's retainer agreement that required a lawyer to indemnify and hold harmless the bank and its officers, directors, and employees from all claims arising out of the lawyer's representation of the bank. Md. Ethics Comm. Op. 2010-03. The opinion characterized the indemnification clause as "quite broad and [would] cause an attorney who signs it to assume substantial liability well beyond the value of the engagement as it indemnifies the [b]ank for matters outside the control of the attorney." Specifically, the lawyer was asked to indemnify the bank against any loss associated with "procedures" or steps required of various parties (including the lawyer) while performing services for the bank under the Protecting Tenants at Foreclosure Act of 2009. The opinion concluded that such a clause "create[s] a potential conflict" under that state's Rule 1.7, "as an attorney's interest in avoiding personal liability or cost under the indemnification may affect the attorney's independence of judgment to an extent that would be prohibited by the Rule." *Id*.

Ohio Board of Professional Conduct

OHIO ETHICS GUIDE

Artificial Intelligence
for Lawyers and Judicial Officers



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NOTE: Ethics Guides address subjects on which the staff of the Ohio Board of Professional Conduct receives frequent inquiries from the Ohio bench and bar. Ethics Guides provide nonbinding advice from Board staff and do not reflect the views or opinions of the Board of Professional Conduct, Commissioners of the Board, or the Supreme Court of Ohio.

Introduction

This Ethics Guide provides nonbinding Board staff guidance regarding the ethical use of AI tools by Ohio lawyers and judicial officers under the Ohio Rules of Professional Conduct and the Code of Judicial Conduct.

The Ethics Guide does not endorse any particular AI product or service and does not address compliance with non-ethics law (such as copyright, privacy, or data protection.) Judges and lawyers may also consult the Supreme Court of Ohio's Artificial Intelligence Resource Library for additional education materials and nonbinding external resources.

Key Terms

For purposes of this Ethics Guide:

- **Artificial Intelligence**: Artificial intelligence or "AI" refers to "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments." Nat'l Artificial Intelligence Initiative Act of 2020, Div. E, sec. 5002(3) (2021).
- **Generative AI or Gen AI**: Generative AI refers to a type of AI that can generate new content, including text, images, audio, video, and software code in response to a user's prompts and questions. Gen AI tools that produce new text are prediction tools that generate a statistically probable output when prompted by the user. Gen AI tools are self-learning and therefore keep and use the information with which they are prompted to train the AI for future users. ABA Formal Op. 512.
- **Hallucination**: Gen AI systems are known to occasionally "hallucinate" results, meaning that they can generate inaccurate, fictitious, or nonsensical results that are plausible or seemingly credible.
- **Prompt**: "Prompt" refers to the natural-language or other content (including text, documents, and other data) that a user provides to a Gen AI tool to specify the task and guide the tool's generated response.

Lawyers

Generative artificial intelligence tools (hereinafter "AI Tools") are increasingly becoming integrated into the practice of law. Properly used, AI-enabled platforms can streamline legal workflows such as legal research, contract drafting and review, discovery, and large-scale document analysis. When AI tools are used in an ethical manner by lawyers, it can improve the efficiency and consistency of repeatable tasks, allowing lawyers to devote more time to the exercise of independent professional judgment, decision-making, client advice and counseling.

The Ohio Rules of Professional Conduct do not prohibit lawyers from using artificial intelligence tools to assist them in providing legal services to clients. However, lawyers who integrate AI tools into their practices must exercise caution while remaining cognizant that the tools do not possess the same experience, degree of understanding, and judgment as a human lawyer when interpreting and applying the nuances associated with the interpretation and application of the law to a legal problem. Like any technology, AI tools must be used in a manner consistent with a lawyer's ethical obligations under the Rules of Professional Conduct.

Competency

Like other technology adopted by lawyers in the last several decades (email, the Internet, online legal research databases, cloud-based data storage, and smartphones) and incorporated in the majority of legal practices, AI is rapidly becoming a standard tool for practicing lawyers.



Prof.Cond.R. 1.1 prohibits a lawyer from "handl[ing] a legal matter that the lawyer knows or should know he or she is not competent to handle[,]" and further provides "[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." A lawyer's competence extends to the technology and other tools used by a lawyer when providing legal services to clients. While lawyers are not required to use AI in their legal practices, a lawyer's duty of competence requires that they keep abreast of changes to the practice of law, including the benefits and risks associated with relevant technology. Prof.Cond.R. 1.1, cmt. [8]. AI can now be correctly defined as a "relevant technology" to the practice of law. The rapid evolution of AI tools available to legal practices necessitates that a lawyer attend continuing education seminars, consult other lawyers and experts proficient in AI, and engage in a degree of self-study in order to comply with Prof. Cond.R. 1.1.

More importantly, lawyers choosing to use AI must develop the necessary skills and knowledge to competently use the technology as well as recognize that not all AI tools are specifically designed or intended for use by lawyers. A lawyer using AI in his or her practice must ensure that the work product generated by AI is accurate, coherent, and reliable and does not compromise the quality of the legal representation of the client or the lawyer's advocacy before a tribunal. A lawyer's misunderstanding of the capabilities and limitations of an AI product or an overreliance on generated results can lead to negative outcomes for both the lawyer and client. At a minimum, a lawyer should be able to understand how the AI tool they choose to use in their practice functions, the potential for the AI tool to produce hallucinations, and what datasets it uses or trains upon to generate responses to a user's prompts.

Competent use of any AI tool also requires human review to check the facts, legal citations, and propositions of law included in court filings and summaries of case-related information. In short, a lawyer should never rely solely on the output of an AI tool without independently verifying it against the original source materials.

Client Confidentiality

When using AI tools, lawyers must maintain the confidentiality of information related to the representation of a client. Prof.Cond.R. 1.6. Comment [19] to Prof.Cond.R. 1.6 notes that, "[w]hen transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients." The comment further states that a lawyer "must act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer * * * *." Prof.Cond.R. 1.6, cmt. [18]. In the context of AI use, the rule requires lawyers to avoid directly or inadvertently disclosing sensitive client information through AI platforms. AI tools use information from user prompts to train their model and may use the same information in response to other users' prompts. Consequently, a lawyer must carefully assess each AI tool utilized to ensure that the confidentiality of client information is maintained. Lawyers should always ascertain if the AI tool they plan to use shares information with third parties, uses stored data to train upon, and has adequate security measures to keep inputted information and data safe from inadvertent access.

Some AI platforms, particularly free or public versions, do not treat user prompts or AI-generated results as confidential. A close review of the terms of service of some AI products may reveal that the information provided by the user becomes the property of the AI vendor and will be used to train the AI product. Numerous AI vendors explicitly state in their terms of service that information submitted via public interfaces may be utilized and disclosed at their discretion. D.C. Eth. Op. 388.

Because lawyers have an ethical duty to make reasonable efforts to prevent the unauthorized or improper disclosure of client information, only AI tools offered with adequate security measures and other confidentiality safeguards should be used when client-related information is disclosed (or information possibly leading to the identity of a client.) Regardless of the AI tool utilized, lawyers should always anonymize client information and refrain from inputting details that could lead to the discovery of the client's identity. In some matters, lawyers should consider obtaining a client's informed consent before inputting any client-related information into an AI tool. N.M. Adv. Op. 2024-04. For example, even if the lawyer is not referring to a particular client in a prompt, information shared via the prompt, even as a hypothetical, may inadvertently reveal information that could lead to the disclosure of the client if the information is revealed in response to another user's prompt. *See, e.g.* ABA Formal Op. 480 (cautioning lawyers' use of hypotheticals through columns or blogs.)

Attorneys who intentionally or inadvertently enter client-related information or even their own work-product into AI platforms, especially free or complimentary services, risk breaching ethical obligations related to client confidentiality.

Best Practices for Maintaining Client Confidentiality

- Do not disclose client-related information to an AI tool without carefully reviewing the vendor terms of service, privacy policy, and security practices.
- Use only commercially available AI tools that explicitly indicate that they do not store, train upon, or share information provided via user prompts or generated results, *e.g.*, Westlaw / Lexis AI / AI enterprise products.
- A lawyer should "consult with IT professionals or cybersecurity experts to the extent necessary for the lawyer or law firm to ensure that any AI tool in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols."[1]



Client Communication

Lawyers must reasonably consult with clients about the means by which their objectives will be accomplished. Prof.Cond.R. 1.4(a)(2); ABA Formal Op. 512. This obligation arises in situations in which an attorney is required to inform clients about the use of artificial intelligence to assist in delivering legal services. *See* N.M. Adv. Op. 2024-004. Nevertheless, the use of AI-generated legal research in the course of handling a client's matter does not, in and of itself, necessitate disclosure to the client. Of course, a lawyer should always respond to a client's questions about whether the lawyer is using AI tools in providing legal services to the client. Prof.Cond.R. 1.4(a)(4) (A lawyer shall * * * promptly comply with reasonable requests for information.) Overall, disclosure to the client about the lawyer's planned AI use is more likely to be required if the use will materially affect how the lawyer's representation of the client will be conducted, the degree that AI will be used to produce the final work product, if client-related information will be shared through an AI tool, and if the client will be separately billed for AI-related expenses.

For example, a firm representing a buyer in a $300M acquisition plans to use generative AI to draft the initial stock purchase agreement and disclosure schedules, suggest negotiation strategies, and review third-party contracts for risks. Disclosure of the lawyer's AI use may be advisable since it shifts the traditional drafting process from lawyer-produced to AI-generated documents, with the lawyers focusing on reviewing and editing. In the example, the scope of the communication with the client should include, at a minimum, what tasks the AI will assist with (*e.g.*, clause generation, summarization, drafting support) and what tasks will remain exclusively the purview of the lawyers. The firm should reassure the client that it remains ethically responsible for all work product and will exercise independent professional judgment when completing the legal services provided, even with the assistance of AI.

Lastly, it is important to consider discussing with the client the possible risks and benefits of the use of unique AI legal tools, especially more sophisticated tools that provide contract analysis and drafting. At times, clients might ask their lawyer not to use AI tools during their case, and the lawyer should respect this request.

Preserving the Lawyer's Independent Professional Judgment

A lawyer is required to use his or her independent professional judgment when providing legal services to clients. Prof.Cond.R. 2.1. This is especially true when a lawyer uses AI tools to provide legal services to clients. AI can serve as a starting point for legal tasks such as providing an initial analysis of a legal issue or for the creation of initial drafts of legal documents. Notwithstanding the advantages of AI technology, lawyers are always responsible for using their own professional judgment and cannot rely only on AI tools to carry out duties that require their experience and expertise. ABA Formal Op. 512. More importantly, a lawyer's professional judgment should never be delegated to AI and always remains the responsibility of the lawyer.

A lawyer's overreliance on AI tools may interfere with the lawyer's ability to properly counsel and advise clients through the application of his or her independent professional judgment. For example, if an inexperienced lawyer relies exclusively on an AI tool to guide his or her decision-making and critical analysis of a client's matter, the lawyer is impermissibly allowing AI to replace or supplant his or her independent professional judgment.

AI expert Judge Scott Schlegel, Louisiana Fifth Circuit Court of Appeal, argues when using AI tools in furtherance of providing legal services, it is simply not enough to have a "human in the loop" to "review" the AI generated work product.[2] This is an oversimplification that ignores the quality and experience level of the human oversight necessary when reviewing AI work product.[3] The level of expertise of the "human in the loop" significantly affects how AI can or should be used in a legal practice.[4]

The experience level of the lawyer, his or her knowledge of the area of law, and the understanding of the limitations of AI tools, will largely determine the extent to which the lawyer may rely on AI generated output. In all situations, AI tools should be viewed as a supplemental tool in a legal practice that always requires human review.

Fees

The use of AI by lawyers may significantly reduce the amount of time a lawyer typically spends on a variety of legal services traditionally provided to clients. The reduction in the amount of time a lawyer spends on a matter by using AI is a cost-savings that should ultimately benefit clients. "When that basis for billing the client has been agreed to, the economies associated with the result must inure to the benefit of the client." ABA Formal Op. 379. While AI tools can assisting lawyers in working more efficiently, this increase in productivity should never lead to a dishonest exaggeration of the hours a lawyer claims to have worked. Fla. Bar Op. 2024-1.

A lawyer may not charge or collect an excessive fee and all fees must be reasonable based on the consideration of the nonexclusive eight factors set forth in Prof.Cond.R. 1.5(a) (time and labor required, preclusion of other employment, customary fee, amount involved and results obtained, time limitations, nature and length of client relationship, experience, reputation, and ability of the lawyer, and a fixed or contingent fee.) It is axiomatic that lawyers may bill only for the time actually spent on a client matter and not the time the task *would* have taken without AI. For example, if a lawyer traditionally spends 15-20 hours drafting an uncomplicated will and trust for a client, but the use of AI tools has reduced the actual time spent to 8 hours, then the lawyer may only charge the client 8 hours of billable time.

Some legal commentators have suggested that as lawyers increasingly adopt AI technology into their practices, the legal industry may transition away from hourly billing and toward flat or alternative fee models for legal services.[5] However, flat or alternative fees must still be "reasonable". If an AI tool significantly lowers the time and effort needed to complete a legal task, it may be unreasonable for a lawyer to continue to charge the same flat fee as before.

In most situations, the cost to the lawyer to use a standard AI tool will be considered overhead that may not be separately billed to a client.

However, there may be situations where lawyers may charge clients for the reasonable cost of sophisticated AI tools that require the lawyer to pay a fee per each use, like predictive case or jury analysis tools. In these instances, the expense should be clearly explained in the engagement letter consistent with Prof.Cond.R. 1.5. *See also* ABA Formal Op. 93-379 (lawyers may pass on reasonable charges for "photocopying, computer research, * * * and similar items" rather than absorbing the expenses as overhead.)

Candor to Tribunal / Avoiding Hallucinations in Court Filings

AI products operate differently from traditional internet search engines, which offer precise results based on constantly updated databases. The data available to an AI product is confined to its training datasets. Instead of retrieving information, AI generates new content by statistically predicting the next word in a sequence. As a result, every AI product may produce hallucinations that appear correct but are inaccurate.

Since the widespread release of commercially available AI tools, several lawyers in other jurisdictions have either been sanctioned by federal or state courts or disciplined by state disciplinary boards for providing fictitious citations and propositions of law in briefs and other court filings.[6] As of the date of publication, AI is currently not a reliable substitute for traditional legal research that uses commercial legal search engines or printed case reporters and can imperil lawyers who solely rely on it. In short, conducting legal research using general and publicly accessible AI tools is not a best use case given the current state of the technology.

The underlying ethical misconduct of some lawyers who have been sanctioned in other jurisdictions implicate the corresponding Ohio rules Prof. Cond.R. 3.1 and 3.3. Taken together, these rules require a lawyer using AI to draft court filings or conduct legal research to assume full responsibility for ensuring that the court filings are accurate, non-misleading, and grounded in law and fact. Under Prof.Cond.R. 3.3(a), a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. The filing of documents with fictious case citations, quotes, or propositions of law implicates Prof.Cond.R. 3.3(a), 8.4(c), 8.4(d) and will likely constitute a false representation of law knowingly made by the lawyer to a court. Prof.Cond.R. 3.3, cmt.[4]. Additionally, an AI hallucinated case citation, argument, or proposition of law used in support of a defense or assertion of an issue inherently has no basis in law or fact, and would correctly be deemed frivolous, thereby implicating Prof.Cond.R. 3.1.

When a lawyer decides to employ AI in his or her legal practice, it is imperative that any work product generated by the AI tool be verified for accuracy by the lawyer. A lawyer's duties of competence and diligence require verification of AI generated results by the cross-checking of case citations, quotes, propositions of law, and holdings offered by the AI tool. Prof.Cond.R. 1.1, 1.3. If a lawyer subsequently becomes aware that a court filing contains a hallucination of law or fact, it is imperative that he or she immediately notify the court and opposing counsel of the error. Failure to do so not only exposes the lawyer to potential sanctions by the court but may also result in a referral to disciplinary authorities. See *State v. Coleman*, 2026-Ohio-965 (lawyer sanctioned $2,000 and referred to Office of Disciplinary Counsel for submission of court filings with hallucinated facts and quotations not found in the record.)

Verification of AI generated results is also strongly recommended when using AI to summarize case pleadings, briefs, and deposition and trial transcripts. The same degree of verification of original source material for legal research should be conducted when using AI as a summary tool.

Finally, a lawyer must always comply with a court's local rules or standing orders relating to both the use and disclosure of AI tools. Prof.Cond.R. 3.4.



Several Ohio courts have adopted both measures to regulate AI use by lawyers and parties. One Ohio common pleas judge requires lawyers to certify "that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—will be checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the Court."[7] A lawyer must always check, and keep abreast of any rules, orders or other court procedures implemented in the jurisdiction in which the lawyer is practicing.

Supervision of Lawyers, Staff, and AI-Related Vendors

Supervising lawyers with managerial responsibility in a law firm must make reasonable efforts to ensure that the firm lawyers and nonlawyer assistants comply with the Rules of Professional Conduct. This necessitates the implementation of appropriate internal policies and procedures and regular instruction and supervision of staff. Prof.Cond.R. 5.1, 5.3. Failing to take these steps may result in the supervising lawyer being held ethically responsible for the misuse of AI by other lawyers or staff that violates the Rules of Professional Conduct. *See* N.M. Adv. Op. 2024-004.

A lawyer's ethical duties regarding supervision apply equally to nonlawyers "both within and outside of the law firm." ABA Formal Op. 498 (2021); Fla. Bar Op. 07–2. The fact that an AI tool is managed and operated by a third-party does not obviate the need to ensure that its actions are consistent with the lawyer's own professional and ethical obligations. Fla. Bar Op. 24-01. Thus, when contemplating the appropriate use of generative AI, lawyers should consider whether a vendor provided AI tool can satisfy the lawyer's ethical obligations under the Rules of Professional Conduct to the same extent as a human hired to complete the same tasks. Lawyers must also ensure that any nonlawyer vendor is adequately supervised and bound by the confidentiality obligations consistent with Prof. Cond.R. 5.3 and 1.6. *See* Ohio Adv. Op. 2017-05. If a lawyer uses content produced with the assistance of a generative Al tool, just as any other time a lawyer is being assisted by a nonlawyer, there is a professional responsibility to verify the accuracy and content of the work product in accordance with Prof.Cond.R.

5.3.

Judges

Artificial intelligence is increasingly being used by judges for legal research and drafting, document management, scheduling, translation, case file summarization, data analytics, and other court operations. While the Code of Judicial Conduct does not expressly address artificial intelligence, a judge must ensure that any use of AI in carrying out judicial duties complies with the Code's ethical requirements.

Judicial AI Competence

Judges are obligated to perform their judicial duties competently and diligently. Jud.Cond.R. 2.5(A). Like the ethical duty of competence required of lawyers, competence for judges means the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the performance of judicial responsibilities. Jud.Cond.R. 2.5, cmt.[1]. In the context of artificial intelligence, a judge's technological competence includes a sufficient understanding of the technology being used, its capabilities, limitations, and the risks associated with relying upon it in the performance of both judicial and administrative duties.

As the use of AI tools by both lawyers and judges becomes more common, a judge should maintain a degree of competence with emerging AI technology to better ensure that its use in a court setting is consistent with applicable law, the Rules of Evidence, the Code, and court rules and policies. Mich. Ethics Op. JL-155. AI tools should not be used in chambers or court operations unless the judge has determined that a tool can be used without violating the Code or court rules. A judge's technological competence can be maintained by keeping abreast of changes in the relevant technology of AI, attending presentations about AI use in courts, and conferring with peers who have integrated AI into their judicial rules.

A judge's understanding about the potential applications of artificial intelligence by legal professionals and litigants coming before the court is also essential. Judges who possess a degree of competence in AI are better able to scrutinize court filings and offered evidence for improper AI use that can raise both legal and ethical issues.

Independent Judicial Decision-Making

Judicial decision-making relies on the exercise of the core judicial functions of judgment and discretion that cannot be replicated by an AI tool. "Furthermore, "[a] judge [is obligated to] hear and decide matters assigned to the judge * * * *." Jud.Cond.R. 2.7.(Emphasis added.) While Jud. Cond.R. 2.7 supports the requirement that a judge has a "duty to sit" and to avoid frivolous reasons to recuse from a case, the rule can also be construed to reinforce judge's duty to decide a case using his or her own independent professional judgment, better characterized as independent judicial decision-making. This ethical obligation supports the conclusion that a judge should never use AI to decide the ultimate conclusion or decision in a case. W.VA Adv. Op. 2023-22.

Another underlying purpose of Jud.Cond.R. 2.7 is that litigants are entitled to an opportunity to be heard by the trier of fact. If a judge delegates his or her own independent judicial decision-making to an AI tool, then the judge has abdicated his or her "duty to sit" and as a consequence, a litigant is denied an opportunity to be heard by the judge. Instead, the litigant's case is decided by AI.

Judicial reliance on an AI tool to reach the ultimate decision in a case raises obvious transparency and ethical concerns. "The human element of justice—the belief that an experienced judge is carefully considering all aspects of a case—is deeply ingrained in public consciousness."[8] A judge's duty to uphold the public's confidence in the independence, integrity, and impartiality of the judiciary is eroded when a judge delegates or abdicates the core judicial function of decision-making to an AI tool. Jud.Cond.R. 1.2.

Legal Research and Writing

The same commercial or free AI tools available to the public and lawyers are also available to judges. The same caveats for lawyers apply when a judge or his or staff use public, and perhaps free, AI tools that do not maintain the degree of confidentiality required for judicial functions and are prone to produce hallucinations. For judges and staff, it is recommended that the use of AI in legal research only be performed using print case reporters or reliable legal research databases like Lexis and Westlaw that have incorporated AI features, but use defined datasets containing officially published and legal decisions, current statutory law, and reliable secondary sources.

Verification of AI results when conducting legal research is also recommended when using commercial AI tools. As previously noted, legal research is currently not a best use case for the use of AI and even results generated by commercial legal databases must be reviewed, verified, and scrutinized by the judge and his or her staff.

AI tools are frequently used by lawyers to produce first drafts of a variety of legal documents. But in a judicial context, a judge should avoid using AI to produce the first draft of a decision or order, especially in light of the judge's need to exercise independent judicial decision-making.

Several jurisdictions outside of Ohio have begun using AI tool that can review legal motions and use a judge's writing style to reach conclusions and draft tentative rulings.[9] Judges using the tool are required to review and edit drafts before adopting the AI generated rulings. At least one commentator described the use of the software as "problematic", finding that an "AI-generated tentative ruling could predispose a judge before they conduct [their own] legal analysis.[10] For the multitude of reasons discussed in this Ethics Guide, judges are advised to avoid using AI to produce the first draft of a decision, especially in light of the need for judges to exercise independent judicial decision-making.

AI is not the equivalent of human intelligence, "especially the intelligence [and wisdom] we expect from judges."[11] As Judge Schlegel has pointed out, there is a significant risk that a less experienced judge becomes merely a reviewer of AI-generated drafts rather than an author of legal reasoning.[12] AI is better reserved as a supplemental tool for experienced judges or staff who can test, refine, or reject the system's output based on their own expertise, education, and professional judgment.[13] Overreliance on AI by inexperienced judges can undermine the independent judicial reasoning that legitimizes judicial decision-making.[14]

There are additional concerns for judges utilizing AI for legal research and initial drafts of decisions. Like lawyers, judges have fallen victim to AI-generated hallucinations when the final work product has not been adequately reviewed prior to filing or publication. In 2025, two federal district judges withdrew opinions after attorneys identified serious errors, including misstated case outcomes, incorrect parties, unasserted allegations, and fabricated or misattributed quotations. One of the judges later disclosed that an intern had used ChatGPT in the drafting process.[15] The other judge had a strict policy in place against the unauthorized use of AI by staff in the drafting of legal opinions.

Another concern is that AI tools may "produce answers that feel authoritative, even when they are wrong." And while these systems may not be specifically trained to do it, they will often work very hard to support the position implied by your question. If [a judge's] prompt signals a conclusion, the [AI] tool tends to build an argument around it rather than challenge it."[16] While similar results may be beneficial for lawyers who rely on an AI tool to enhance or support a legal argument, the same type of results are detrimental to independent judicial decision-making.

AI use by judges and staff for legal research and writing requires verification of all work-product. A judge should treat AI like a first-year law clerk and double-check all citations, propositions of law, and quotes in the record if any AI tool has been used. It is recommended that judges permitting AI use in their chambers determine which AI tools may permissibly be used for legal research and writing.

Impartially and Fairness

Judges using AI for research should always be mindful of the requirements in Jud.Cond.R. 2.2 (a judge shall perform all duties of judicial office fairly and impartially) and Jud.Cond.R. 2.3 (a judge shall perform the duties of judicial office without bias or prejudice).

One of the major concerns with the use of AI tools by judges is that AI relies on data created by humans that can promote stereotypes, reinforce prejudices, or exhibit unfair biases about a party. In response to a user's prompt, the AI tool can enhance or copy these biases into the response or output. For example, if the issue in a case involves a defective consumer product, but commentators, columnists, blogs, and prior court decisions favor the defendant corporation over consumers, the results generated by AI through a prompt entered by the judge may be skewed in favor of the corporation.

Ex Parte Information

"A judge shall not investigate facts in a matter independently, and shall only consider the evidence presented and any facts that may be properly noticed." Jud.Cond.R. 2.9(C). Judge's using general AI tools like Chat-GPT to research legal issues may be exposed to information that would be considered an ex parte communication. Datasets in AI contain human created data that contain facts that are outside of the record and may include information about parties, facts from news sources, statistical data, and other information that has not been offered into evidence or subject to review by the parties.

Board staff have routinely advised judges that they should not rely on the Internet to conduct investigations of parties, witnesses, or facts in dispute due to the danger that the research may expose the judge to information not contained in the record that results in the judge having "knowledge of disputed facts" requiring their disqualification. Jud. Cond.R. 2.11(A). *See also* Jud.Cond.R. 2.9, cmt.[6] (the prohibition against investigating facts in a matter extends to information available in all mediums, including electronic.) The same guidance applies equally to a judge's use of AI tools.

External Influences

Similar to the issues with the receipt of improper ex parte communications, a judge must also not "permit * * * other interests or relationships to influence [his/her] judicial conduct or judgement." Jud.Cond.R. 2.4(B). An independent judiciary requires that a judge decide cases according to the law and facts, and not other interests. Public confidence in the judiciary is eroded when a judge's independent judicial decision-making is perceived to be subject to external influences. Jud.Cond.R. 2.4, cmt.[1].

While Jud.Cond.R. 2.4 is typically applied in the context of influence generated by public clamor or fear of criticism, family, social, political, financial, or other interests, the current state of AI technology may legitimately be considered a type of external influence if used during judicial decision-making. AI results are heavily influenced by human generated data, the prompts entered by other users, and the results generated by AI in response to prompts and may constitute other "interests." In short, Jud.Cond.R. 2.4 requires a judge to guard against exposure to AI results that may improperly influence his or her judicial decision-making.



Confidentiality

Judges and their staff must be mindful of Code restrictions regarding the confidentiality of case information when using AI tools. Jud.Cond.R. 3.5 (a judge shall not knowingly disclose or use nonpublic information.) Judges must carefully safeguard information that is designated as confidential or private pursuant to the law, statute, court rules, or the Rules of Superintendence of the Courts of Ohio. Failure to maintain confidentiality of certain information may erode the public's confidence in the judiciary. Jud.Cond.R. 1.2.

Best practices include not inputting any case related confidential or sensitive information via a prompt into general or free public AI tools that do not ensure absolute confidentiality or security of prompts and train their model on data provided via prompts. In addition, any information that may be inputted that reveals or suggests the judge's judicial mental process in a case may prejudice the outcome of a pending or impending matter. Jud.Cond.R. 2.10. For example, an early draft of a decision or order may be used by the AI tool to produce results for parties in the case using similar prompts to prepare a motion or brief on the same issue, thus potentially affecting the outcome of the case.

Others Uses of AI in the Courtroom

Other permissible and ethical uses of AI not discussed in detail in this Ethics Guide include, but are not limited to:

- Conducting research and provide summaries of depositions, exhibits, briefs, motions, and pleadings.
- Editing, proofreading, and reviewing draft opinions for spelling and grammatical accuracy.
- Assisting the court in determining if party filings have misstated the law or failed to include relevant legal authorities.
- Examining court operations data and routine administrative processes to identify potential efficiency improvements.
- Organizing and managing case documents effectively.[17]

Endnotes

1 California State Bar, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (2023).

2 Schlegel, *Beyond "Human in the Loop": Experience Matters in Legal AI Usage*, [sch]Legal Tech (December 4, 2024).

3 *Id.*

4 *Id.*

5 Palmer, *Be Reasonable, People! AI's Impact on Legal Fees, Illinois State Bar Ass'n Standing Comm. On Artificial Intelligence & the Practice of Law, (January 2025).*

6 *Mata vs. Avianca, Inc.*, 2023 U.S. Dist. LEXIS 108263, 2023 WL 4114965 (S.D.N.Y. June 22, 2023); *People v. Crabill*, 2023 Colo. Discipl. LEXIS 64 (Colo. O.P.D.J, Nov. 22, 2023).

7 https://cp.cuyahogacounty.gov/media/3728/jjr-certificate-re-generative-artificial-intelligence.pdf

8 Schlegel, *"AI in Judicial Chambers: Are we Ready for Tech-Assisted Judges?"*, [sch]Legal Tech (October 14, 2024).

9 *Los Angeles Courts Pilot AI Tool to Help Judges Draft Rulings*; https://www.governing.com/artificial-intelligence/los-angeles-courts-pilot-ai-tool-to-help-judges-draft-rulings

10 *Id.*

11 Greenstein, *AI and a Judge's Ethical Obligations,* The Judge's Journal (February 3, 2020).

12 Schlegel, *supra* at 5.

13 *Id.*

14 *See generally* Schlegel, *"The Social Contract and AI-Driven Judicial Opinions,"* [sch]Legal Tech (April 15, 2025).

15 Los Angeles Courts Pilot AI Tool to Help Judges Draft Rulings, https://www.reuters.com/legal/government/two-us-judges-withdraw-rulings-after-attorneys-question-accuracy-2025-07-29/

16 Schlegel, *"When the Tool Shapes the Thinking,"* [sch]Legal Tech (August 25, 2025).

17 *Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers*, 26 The Sedona Conference Journal 1 (2025).



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What is in a "Client File" that must be turned over to the client/replacement counsel on request

The "client file" consists of all papers and property to which the client is entitled. This includes all materials acquired or prepared for the purpose of representing the client and other materials that might prove beneficial to the client, such as correspondence, investigatory documents, expert reports for which the client has paid, filed or unfiled pleadings and briefs, materials obtained in discovery, physical evidence, and depositions transcripts.

The file includes both tangible documents and electronically stored documents.

But a client is not entitled to all materials possessed by the lawyer – such as the lawyer's work product. As a general rule, the client is not entitled to the lawyer's notes but is entitled to notes regarding facts about the client's case as well as notes about legal theories asserted, strategies employed, and analysis that may be reasonably necessary to the client's representation.

Items that may not be reasonably necessary to the client's representation and, therefore, not considered client files or papers include:

1) Lawyer's notes to himself regarding his mental impressions, thoughts, ideas, or questions.
2) Lawyer's notes, research, firm documents, internal memoranda generated for the lawyer's own purposes.
3) Internal office management memoranda such as personnel assignments or conflicts of interest checks.
4) Drafts of pleadings, briefs, or letters.
5) The lawyer's own assessment of the client
6) Documents shielded from disclosure under state law or by a court protective order (e.g. designated as "*counsel's eyes only*."

If a lawyer's notes include both items reasonably necessary to a client's representation and items not reasonably necessary, a lawyer may either redact from the notes those items not reasonably necessary or may

prepare a document for the client that includes only those items reasonably necessary to the client's representation.

Electronic notes of conversations with the client, adjusters, witnesses and/or recordings of telephone calls with those people are not necessarily required to be turned over, but they must be reviewed to determine if they contain information reasonably necessary to the continued representation of the client. For example, notes or documents which reflect the current status of settlement negotiations must be turned over or put into a document which contains the necessary information. The same with notes or conversations which identify witnesses, liens, etc.

The file must be turned over in the same manner it was maintained or in an accessible format if the file was stored digitally.

Any expense incurred – such as copy costs incurred by the lawyer in providing the client file – must be borne by the lawyer.

(Rule 1.16 ORPC)

(Ohio Advisory Opinion 2019-6)

(Ohio Ethics Guide – Client File Retention. 2016 Board of Professional Conduct)

(ABA Informal Opinion, 1376)

(Ohio Advisory Opinion 2010-2)

Client File Document Retention Policy

During the course of our work for you on this matter, our office will create and maintain a paper file and an electronic file. Some documents may exist in both files, some in one or the other.

When our work for you on this matter is concluded, we will:

1) send you a "closing letter" stating that the representation has ended; and

2) return to you all original documents you have provided to us during the course of the representation.

It is our policy to remove and destroy from the paper file all documents that are publicly available. This includes pleadings that have been filed with the court, news articles, etc. We also remove and destroy from the paper file duplicates of documents we also have in electronic form. This may include expert reports, deposition transcripts, discovery responses, medical records, etc. In some cases, a protective order is entered by the court, which requires the return or destruction, at the conclusion of the case, of certain documents produced during the case. If such an order is entered by the court in your case, you will be made aware of it at the time of the order. We will obey any such order and return or destroy the documents as required by the order.

The remainder of our file will be maintained for seven years from the date of the closing letter we send to you. If you want to review the file or obtain a copy of part or all of it, you may do so by sending a written request to one of the attorneys managing your file or their legal assistants. We will provide you with a paper copy of all paper documents in your file and an electronic copy of all documents maintained electronically in your file. If you cannot access our email file electronically, a paper copy of our emails will be provided. This will be provided to you without cost. If you request paper copies of documents we maintain electronically, other than email, we will charge you commercially reasonable copy charges.

On or after the seventh anniversary of our closing letter to you, at a time convenient to us, we will destroy the remaining file in a manner designed to ensure confidentiality. If we believe there is a reason to maintain the file for a longer period, we may do so.

If you have any questions about this policy, please contact us to discuss your questions or concerns. By accepting our representation in this matter, you agree to the terms of this policy.

Rules for Government of the Bar, Rule V

Section 2. (A) Jurisdiction and Powers of the Board.

(A) Exclusive Jurisdiction. Except as otherwise expressly provided in rules adopted by the Supreme Court, all grievances involving alleged misconduct by judicial officers or attorneys, proceedings with regard to the alleged mental illness, alcohol and other drug abuse, or disorder of a judicial officer or attorney, proceedings for the discipline of judicial officers, attorneys, persons under suspension or on probation, and proceedings for the reinstatement to the practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule. The Board shall have authority to certify, recertify, and decertify grievance committees in accordance with section 5 of this rule. The Board shall not have jurisdiction to review complaints alleging misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

Section 4. Office of Disciplinary Counsel

(A) Disciplinary Counsel. With the approval of the Supreme Court, the Board, by majority vote, shall appoint a disciplinary counsel who shall perform all of the following duties:

(6) Dismiss any grievance alleging misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

Section 5. Certified Grievance Committees.

(A) Board Certification. Except for a grievance that is referred by the director or Office of Disciplinary Counsel due to a conflict of interest, a certified grievance committee shall not have the authority to investigate allegations of misconduct against any of the following:

(3) An attorney or judicial officer solely engaging in speech or conduct protected by the United States and Ohio Constitutions, including Article I,

Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

Section 9. Filing and Investigation of Grievances.

(A) Referral by Board. The Board may refer to a certified grievance committee or the Office of Disciplinary Counsel any matter filed with it for investigation as provided in this section. The Board shall not refer any grievance alleging misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

(B) Power and Duty to Investigate; Dismissal without Investigation.

(2) A grievance shall be dismissed without investigation if the grievance alleges misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution. A certified grievance committee shall not dismiss a grievance without investigation unless bar counsel has reviewed the grievance.

Section 10. Requirements for Filing a Complaint.

(B)When Filing Complaint Is Barred. No complaint shall be filed by disciplinary counsel or a certified grievance committee if the complaint alleges misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

Section 11. Probable Cause Determinations; Certification and Service of Complaints

(A) Probable Cause Panels. The Board shall establish two probable cause panels to review each complaint filed with the Board. The chair of the Board shall designate three commissioners to serve on each panel and shall designate one attorney or judge commissioner as chair. Upon review solely of the complaint and any materials submitted with the complaint pursuant to section 10 of this rule, the

probable cause panel shall make an independent determination of whether probable cause exists for the filing of a complaint. The panel shall dismiss any complaint or investigation alleging misconduct based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.

Section 12. Proceedings Before the Board on Certified Complaints.

(G) Authority of Hearing Panel; Dismissal. If, at the end of the evidence presented by the relator or of all evidence, a unanimous hearing panel finds that the evidence is insufficient to support a charge or count of misconduct, or that it is based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution, the panel shall order on the record or in its report that the complaint or count be dismissed.

(J) Review by Entire Board. The Board shall dismiss the complaint if the allegation of misconduct is based solely on speech or conduct protected by the United States and Ohio Constitutions, including Article I, Section 6 of, or the First Amendment to, the United States Constitution as well as Article I, Section 11 or Article II, Section 12 of the Ohio Constitution.