AZ JUDICIAL CONFERENCE

Hot Topics in Judicial Ethics

HOT TOPICS IN JUDICIAL ETHICS

HOT TOPICS IN JUDICIAL ETHICS

(2026 Judicial Conference)

Hon. Bryan B. Chambers
Hon. Delia R. Neal
Hon. Scott Silva
April P. Elliott

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Which One Is Real?

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Pick the Real Judicial Ethics Matter

A. A judge was caught in a hot mic situation, when he, the prosecutor, and the court clerk discussed how two defendants needed to be killed using the code term "train station" from the TV series *Yellowstone*.

B. A part-time pro tem judge who did criminal defense work resigned and agreed not to seek judicial office in the future after she hired someone to plant contraband on a law enforcement officer prior to his testimony. In her response, she cited an episode of *Better Call Saul* as the inspiration for her actions.

C. A judge was suspended for performing "spiritual" marriages at the courthouse for polygamous couples, having previously appeared himself on the reality show – *Seeking Sister Wives*.

3

00:00 00:19

Busted: Recording captures Kansas judge and prosecutor talking about killing couple

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Responding to Complaints & When to Self-Report

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2025 Annual Report

- 668 complaints were filed in 2025
- 5 public reprimands
- 8 warning letters
- 16 advisory letters
- 4 other public dispositions
- Superior Court judicial officers accounted for 63% of the complaints, followed by Limited Jurisdiction judicial officers at 29%.
- Family law (28%), criminal (26%), and civil (15%) are the three areas which encompass the most complaints.

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If When You Get a Judicial Conduct Complaint

- The Flowchart of the Commission complaint process is in your materials.
- Vast majority of the complaints are dismissed without the need for a response from the judicial officer. First time you are likely aware is when you receive the dismissal order and a copy of the complaint in the mail.
- However, no discipline will be imposed without first affording the judge an opportunity to respond to the complaint.

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If Asked to Respond

- Respond promptly or request an extension of time.
- Be direct and to the point, but address any rules cited in the transmittal letter.
- Consider the complainant's perspective.
- Watch your tone and avoid personal attacks ("24-hour rule").
- Acknowledge mistakes.

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To Self-Report or Not To Self-Report

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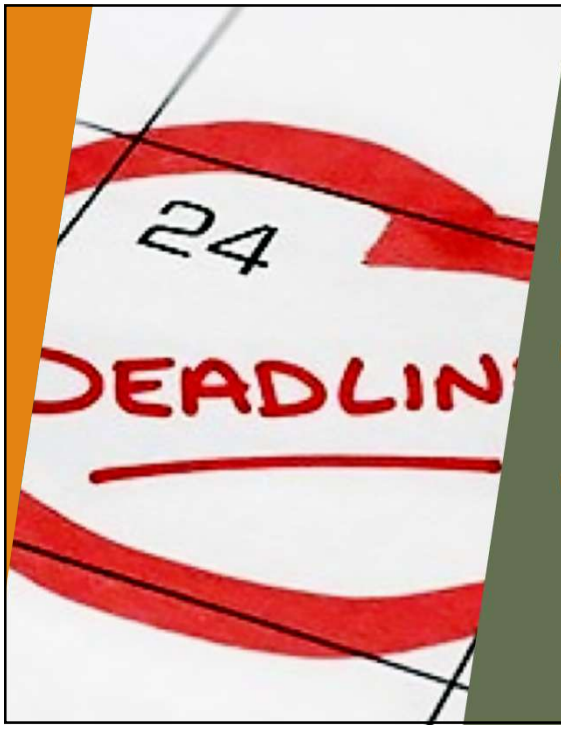

60 Day Violations

- Handout with general information on delayed rulings in your materials.
- Don't forget that the clock starts ticking from when it is deemed submitted, not the initial filing date.
- Options for minor violations of the 60 Day rule.

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Keeping Out of Trouble

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Judicial Ethics Advisory Committee

- 5 year average of number of inquiries per year - 186 (2021 – 2025)
- Number of Inquiries in 2025 - 151
- Informal advice / Formal written opinions
- In 2025, the five most frequent areas of inquiry
  - Disqualification
  - Duty to Report
  - Donations / Gifts
  - Attendance at Events
  - Service on a Board / Group

- The Judicial Ethics Advisory Committee can be reached at: aelliott@courts.az.gov

  (Inquiry should pertain to your own prospective conduct)

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JEAC Ethics Opinions

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Also still available on the CJC's website, but without the search feature

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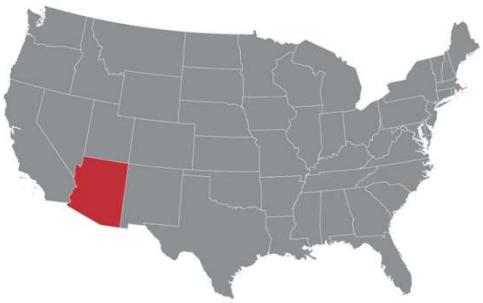

Trends in Judicial Ethics – both in Arizona and Nationally

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Disqualification

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Recent Amendment to Comment 5 to Rule 2.11

A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. "Reasonably" under this comment is an objective standard and means that an objective, disinterested, fully informed observer would consider the information relevant to a motion to disqualify. A judge need not recuse simply because a party files such a motion or requests recusal based on the information disclosed; disqualification is only required as set forth in subsection (A). In addition, a waiver under subsection (C) is not required unless the disclosure involves one of the circumstances described in paragraphs (A)(2) through (A)(6) or is such that an objective, disinterested, fully informed observer would reasonably question the judge's impartiality.

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- Most frequent area of inquiry to the JEAC
- Ethics Opinions
  - 98-02: Disqualification Considerations When Complaints are Filed Against Judges
  - 96-14: Limitations on Disqualification Requirement
- Issues with Over-Disqualification (Rule 2.7)
- Special Considerations for Disqualification in Rural Communities

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Artificial Intelligence

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Competency in Technology

Recent amendment to Comment 1 of Rule 2.5.

"Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office, including the use of, and knowledge of the benefits and risks associated with, technology relevant to service as a judicial officer."

Applicable to the use of AI

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Artificial Intelligence

- Confidentiality Concerns
  - Understand how the application stores and/or shares information with third-parties
  - Inadvertent Disclosure of Non-Public Information
- Plagiarism Concerns
  - Creating facts and/or law
- Responsibility to Decide under Rule 2.7

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Florida judge is accused of sharing 'objectively unrealistic' fake recording with editorial board

BY DEBRA CASSENS WEISS

MAY 13, 2025, 12:08 PM CDT

A judge in Broward County, Florida, is facing ethics charges for citing a book she never read and providing a fake recording she didn't fully review or vet to bolster her claim that the judiciary has an image crisis.

The judge, Judge Lauren Peffer of Broward County, Florida, referenced the book when trying to obtain an endorsement from the South Florida Sun Sentinel during her 2024 judicial election campaign, according to a May 9 notice of ethics charges.

She supplied the fake recording, purportedly of a conversation involving two Florida Supreme Court justices, when the newspaper's editorial board questioned the book's claims.

The e-book was written and self-published by a fired technology officer who had worked for Florida's Ninth Judicial Circuit. It was titled: *The Ninth Circus Court of Florida, My 30-Year Job from Hell!*

Cautionary Tale of Using AI in a Campaign

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Speech Restrictions Invalidated

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Disciplinary Counsel v. Grendell (Ohio Supreme Court 2025)

- Judge testified, without being subpoenaed, before a Ohio legislative committee in support of the "Truth in COVID Statistics Bill," in part as a judge, and in part as a private citizen.
- Ohio Board of Professional Conduct found that the judge's testimony abused the prestige of judicial office to advance the interests of a family member (his wife who had proposed the bill) and violated Rule 1.3.
- Also found the testimony violated Rule 3.2 which provides that a judge shall not appear voluntarily at a public hearing before a legislative body unless it is connection with the law, the legal system or the administration of justice.

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Grendell cont'd

- Majority concluded Rule 3.2 is a content-based restriction on speech.
- Not narrowly tailored as it "sweeps in almost all public testimony, regardless of whether that testimony has anything to do with a case that is likely to come before the judge."
- Both overinclusive and underinclusive
  - "By sweeping in a wide variety of protected speech that has no relation to the State's compelling interest in protecting judicial impartiality, the restriction is vastly overinclusive."
  - "Vastly underinclusive" because "cases about laws that concern the law, the legal system, or the administration of justice are far more likely to arise in a judge's courtroom than cases about other types of laws, but the provision allows testimony about the former and not the latter."

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Grendell cont'd

- Rule 3.2 is vague and chills judges' speech.
  - Code has more narrowly tailored means to protect the State's interest in protecting against a judge's bias such as Rule 2.10(B) and recusal under Rule 2.11.
- Just as Rule 3.2 " . . . is not narrowly tailored to protect judicial impartiality, it is not narrowly tailored to protect the appearance of impartiality."
- Rejected a separation of powers argument as a compelling state interest served by Rule 3.2.

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Disciplinary Counsel v. Rudduck (Ohio Supreme Court 2026)

- Judge had entered into a stipulation for discipline with the Ohio Board of Professional Conduct regarding his conduct in endorsing his son's candidacy for a municipal court position.
- Involved the judge's personal, but public Facebook account that identified him as a judge. The judge's son was running for election to a different court.
- Judge shared posts written by his son related to his son's campaign, as well as posts by other individuals about his son's campaign. One of those posts included a photo of his son, along with the caption, "Vote Brett Rudduck for Municipal Court Judge this May! Share and vote."
- Judge also posted an essay that defended his son against allegations of criminal activity and other misconduct, and claimed these alleged falsehoods were instigated by an individual who bore a grudge against the judge from prior litigation.

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Rudduck cont'd

- Ohio Board found the Judge improperly endorsed his son in violation of Rule 4.1(A)(3) of the Code – a judge shall not publicly endorse or oppose a candidate for another public office. Board also found violations of Rules 1.2 and 1.3.
- Ohio Supreme Court, *sua sponte*, found Rule 4.1(A)(3) burdens core political speech and is a content-based prohibition on speech.
- Found the rule to be vastly overinclusive. Acknowledged there is a compelling state interest in judicial impartiality and the appearance of impartiality. However, the Court stated that it was not obvious that a prohibition on endorsing or opposing a candidate for public office meaningfully advanced either of those interests as those interests 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.

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Rudduck cont'd

- Subsequent recusal or disqualification is a far less restrictive means than a broad prohibition.
- Dissent argued the majority's strict scrutiny analysis strayed too far from the U.S. Supreme Court's decision in *Republican Party v. White*, noting that Ohio's judicial anti-endorsement rule is aimed at preventing judges from publicly inserting themselves into the campaigns of others as such participation can put the judge's impartiality into question "and the public can lose faith in the judiciary's ability to abide by the law and not make decisions along party lines."
- In 2018, the Sixth Circuit upheld the endorsement ban finding it narrowly tailored to the state's "compelling interest in preventing judges from becoming (or being perceived as becoming) part of partisan political machines." *See Platt v. Ohio Board of Commissioners on Grievances and Discipline*, 894 F. 3d 235.
- By finding Rule 4.1(A)(3) unconstitutional, the Court rejected the Board's findings that Rules 1.2 and 1.3 were also violated.

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Rudduck cont'd

Although it found that there was not sanctionable conduct, the Court stated that "does not mean that we approve of his conduct."

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Rudduck cont'd

"Judges are held to the highest standard of ethical conduct . . . 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."

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Rudduck cont'd

The dissent referred to the majority's "Word of Caution" as:

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The Future?

- Unknown if there will be a domino effect on other states.
- Arizona's Rules 3.2 and 4.1(A)(3) are identical to Ohio's and remain in full force and effect for now.

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Social Media - Again

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Refresher on Social Media Ethics

- Permitted, but understand it is an ethical minefield.
- Code applies in all mediums – in person, written, telephonic, electronic.
- Judge's participation in social media should be done with caution and constant vigilance.
- While some provisions of the Code may prohibit only public statements, anything you post, even if your settings are set to private, can become public. Your assumption should be anything you post is or will become public.
- Using a pseudonym does not shield you from ethics liability, although there may be cybersecurity reasons to use a pseudonym.

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Rule of Thumb: 'Don't publish anything you wouldn't want in the national news.'

1. Your media may be private, but your connections are not. How well do you know or trust your social media connections (or *their* connections)?
2. Jokes and sarcasm do not translate well in social media, especially if someone is not 'in' on the joke.
3. Best to assume everything you say will be interpreted in the *worst* possible way.
4. The public does not know what types of cases you preside over, and people will make assumptions about your political and legal views.

Your primary duty is to promote public confidence in the judiciary, and everything you publish should be with that goal in mind.

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HYPOTHETICALS

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"That elected official should be impeached and removed from office."

Can she do this?

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"That elected official should be impeached and removed from office."

Does this make a difference?

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Other Questions to Consider

- Is this protected free speech?
- Does it matter what kind of cases the judge presides over?
- What if the judge's social media account is set to "private"?

See Rule 1.2 Public Confidence, Rule 4.1(3) Political Activity

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Can he do this?

42

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Other Questions to Consider

- Is this protected free speech?
- What if the judge's judicial status wasn't known on the account?
- Does it matter what kind of cases the judge presides over?
- What if the judge's social media account is set to "private"?

See Rule 1.2 Public Confidence, Rule 3.1(C) Extrajudicial Activities

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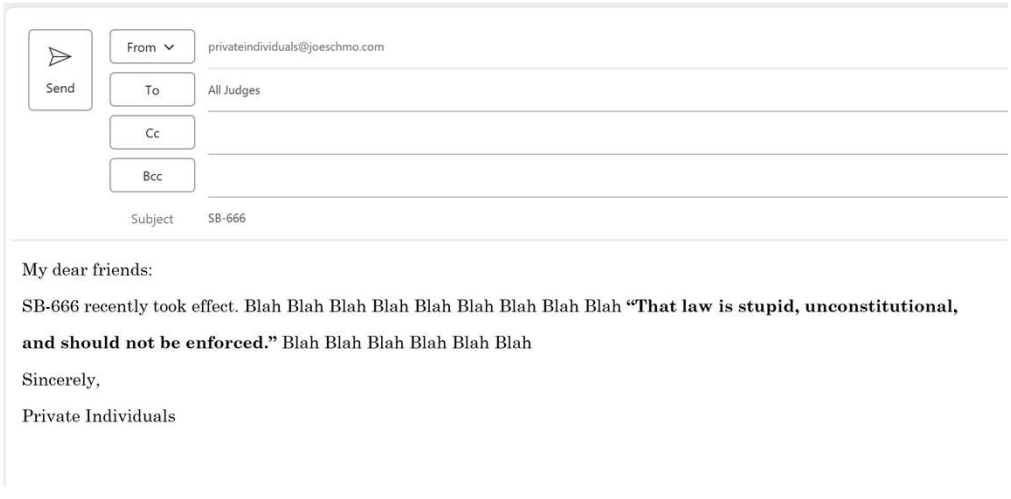

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Other Questions to Consider

- Does it matter what kind of cases the judge presides over?
- Does it matter that it was sent from a private email account?
- Does it matter that it was only sent to 20 people?

See Rule 1.2 Public Confidence, Rule 2.2 Impartiality, Rule 2.10(A) Judicial Statements

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Which One Is Real?

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Which one is real?

A. A judge resigned and agreed not to seek judicial office in the future for his conduct in selling campaign themed underwear out of his truck in the courthouse parking lot, referring to them as "Judge _____ Barely Legal Briefs."

B. A judge was reprimanded for retaliating against a family law litigant who had filed a judicial conduct complaint against her by posting fake negative reviews on the litigant's Etsy site.

C. A judge was suspended and must cease being a judge, in part, for dressing up as Elvis Presley while conducting court business on October 31st, which included playing Elvis music from his phone as he entered the courtroom.

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QUESTIONS AND FINAL COMMENTS

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THE END

No judges were harmed in the making of this presentation.

THANK YOU!

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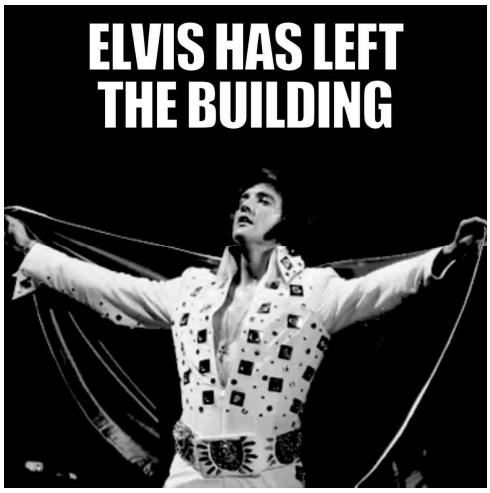

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ARIZONA CODE OF JUDICIAL CONDUCT

Arizona Supreme Court
Rule 81, Rules of the Supreme Court,

Amended as of January 1, 2026

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ARIZONA CODE OF JUDICIAL CONDUCT

CONTENTS

Preliminary Sections

[The index and page numbers are not part of the official version of the code.]

PREAMBLE

An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts 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.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This code establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the code. The code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

This code consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the code. An application section establishes when the various rules apply to a judge or judicial candidate.

The canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The rules in the code are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

The black letter of the rules is binding and enforceable. It is not intended, however, that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

"Economic interest" means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

"Independence" means a judge's freedom from influence or controls other than those established by law.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

"**Judge"** means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee, or pro tempore judge.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

"Knowingly," "knowledge," "known," and **"knows"** means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.3.

"**Presiding judge of a court of record**" means a presiding judge of the superior court in a county, a chief judge of the court of appeals, or the chief justice.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections, recall elections, and retention elections.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

APPLICATION

The Application section establishes when the various rules apply to a judge or judicial candidate.

PART A. Applicability of this Code.

(1) The provisions of the code apply to all judges. Parts B through D of this section identify exemptions that apply to part-time judges.

(2) The provisions of Canon 4 apply to judicial candidates.

Comment

1. The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Arizona judicial branch, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. The code does not apply to administrative law judges or administrative hearing officers in this state unless expressly made applicable by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. See Arizona Judicial Ethics Advisory Committee, Opinion 92-03 (January 31, 1992).

2. The determination of which category of judicial service and, accordingly, which specific rules apply to an individual judicial officer, depends upon the nature of the particular judicial service.

3. Arizona has what are often called "problem-solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules governing problem-solving courts, or protocols for problem-solving courts known and consented to by the participants, specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on "problem-solving" courts shall comply with this code except to the extent local rules or protocols provide and permit otherwise. See Rule 2.9, Comment 4.

PART B. Retired Judge Available for Assignment.

A retired judge available for assignment to judicial service need not comply with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business or remunerative activities), 3.12 (compensation for extrajudicial activities),

3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general).

PART C. Continuing or Periodic Part-Time Judge.

A judge who serves part-time on a continuing or periodic basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply:

(1) except while serving as a judge with Rules 2.10(A) and (B) (judicial statements); or

(2) at any time with Rules 3.4 (appointments to governmental positions), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), 4.2 (political and campaign activities of judicial candidates in public elections), 4.3 (activities of candidates for appointive judicial office), 4.4 (campaign committees), and 4.5 (activities of judges who become candidates for nonjudicial office).

Additionally, such a judge shall not practice law in the specific court on which the judge serves or in any court subject to the appellate jurisdiction of the specific court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Comment

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Rules of Professional Conduct.

PART D. Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, state statute, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(1) A pro tempore part-time judge is not required to comply:

(a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

(b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9

(service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

Comment

1. The restrictions of Part D apply to the members of a pro tempore part-time judge's law firm.

2. The purpose of Part D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

3. The language of Part D is intended to allow, at a minimum, the following current practices:

(a) A lawyer sits as a part-time pro tempore judge for one family law trial and during this time appears in the family law divisions as a lawyer in other matters.

(b) A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.

(c) A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.

(d) A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in a satellite court in one community and otherwise appears in the main court

located in a different community on all variety of matters, but does not appear in any proceeding in the satellite court.

(e) A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.

(f) A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.

(g) These comments replace Advisory Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993) dealing with ethical constraints on lawyers serving as pro tempore judges.

PART E. Time for Compliance by New Judges.

A person to whom this code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (appointments to fiduciary positions) and 3.11 (financial, business, or remunerative activities) apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the code becomes applicable to the judge.

Comment

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

RULE 1.1. Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.

RULE 1.2. Promoting Confidence in the Judiciary

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.

Comment

1. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

2. A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

3. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

4. Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

5. Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

6. A judge should initiate and participate in activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.

7. A judge may respond to or issue statements in connection with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation. Consistent with Rules 4.1 and 4.3 regarding judicial campaigns, a judge's response or statement at any time that counters attacks on the judge's actions, character, or reputation may serve to restore or maintain public confidence in the judiciary, subject to the requirements of Rule 2.10, paragraph (A).

RULE 1.3. Avoiding Abuse of the Prestige of Judicial Office

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.

Comment

1. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

2. A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use judicial letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

3. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, by recommending qualified candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

4. A judge who writes or contributes to publications of for-profit entities should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

RULE 2.1. Giving Precedence to Judicial Duties

The judicial duties of a judge take precedence over all of a judge's other activities.

Comment

1. To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

2. Judicial duties are those prescribed by law. In addition, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

3. A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

RULE 2.3. Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but

not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

1. A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

2. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

3. Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socio-economic status, or political affiliation.

4. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.

RULE 2.4. External Influences on Judicial Conduct

(A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(B) A judge shall reasonably cooperate with other judges and court officials in the administration of court business.

(C) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Comment

1. Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office, including the use of, and knowledge of the benefits and risks associated with, technology relevant to service as a judicial officer.

2. A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

3. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

4. In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

5. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Article 6, Section 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause "remains pending and undetermined for sixty days after it has been submitted for decision." These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02 (April 25, 2006).

RULE 2.6. Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce any party into settlement.

Comment

1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

2. The steps that are permissible in ensuring a self-represented litigant's right to be heard according to law include but are not limited to: providing brief information about the

proceeding and evidentiary and foundational requirements; modifying the traditional order of taking evidence; attempting to make legal concepts understandable; explaining the basis for a ruling; and making referrals to any resources available to assist the litigant in preparation of the case. The steps listed in this comment are illustrative of what a judge *may* do; it is not a violation of this Code for a judge not to take any such steps. Self-represented litigants are still required to comply with the same substantive law and procedural requirements as represented litigants.

3. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

4. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7. Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

Comment

1. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

2. A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct. See Advisory Opinion 98-02.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Comment

1. The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

2. Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. See Arizona Judicial Ethics Advisory Committee Opinion 01-01 (reissued January 22, 2003). This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) A judge may engage in ex parte communications when serving on problem-solving courts, if such communications are authorized by protocols known and consented to by the parties or by local rules.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

2. Whenever the presence of a party or notice to a party is required by this rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

3. The proscription against communications concerning a proceeding includes communications with persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

4. When serving on problem-solving courts, such as mental health courts or drug courts, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. See Application, Part A, Comment 3.

5. A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

6. The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic.

7. A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

8. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

9. A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

10. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

RULE 2.10. Judicial Statements

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party in writing, via social media or broadcast media or otherwise to allegations in the media or elsewhere concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.

(F) Subject to the requirements of paragraph (A), a presiding judge of a court of record is authorized to make statements and provide statistics about another judge's administrative performance in calendar and caseload management.

Comment

1. This rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

2. This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

3. Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair

allegations or attacks upon the judge's character or reputation. Consistent with Rules 4.1 and 4.3 regarding judicial campaigns, a judge's response or statement at any time that counters attacks on the judge's actions, character, or reputation may serve to restore or maintain public confidence in the judiciary, subject to the requirements of paragraph (A).

RULE 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest, as defined by this code or Arizona law, in the subject matter in controversy or in a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous four years made aggregate contributions to the judge's campaign in an amount that is greater than the amounts permitted pursuant to A.R.S. § 16-905.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer in the preceding four years who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the

proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep reasonably informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Comment

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

2. A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

3. The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

4. The fact that a lawyer in a proceeding is affiliated with a law firm with which a member of the judge's family is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or a member of the judge's family is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

5. A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. "Reasonably" under this comment is an objective standard and means that an objective, disinterested, fully informed observer would

consider the information relevant to a motion to disqualify. A judge need not recuse simply because a party files such a motion or requests recusal based on the information disclosed; disqualification is only required as set forth in subsection (A). In addition, a waiver under subsection (C) is not required unless the disclosure involves one of the circumstances described in paragraphs (A)(2) through (A)(6) or is such that an objective, disinterested, fully informed observer would reasonably question the judge's impartiality.

6. "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(6)(a); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

RULE 2.12. Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

(C) A judge shall require staff, court officials, and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.

Comment

1. A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the code if undertaken by the judge.

2. Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

1. Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

2. Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative. Arizona's anti-nepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481.

RULE 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

1. "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15. Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(E) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Comment

1. Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

2. A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16. Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

1. Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

2. Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE

RULE 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment

1. To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

2. Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

3. Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

4. While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even

as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

5. The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.

RULE 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials.

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's interests or when the judge is acting in a fiduciary capacity.

Comment

1. Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

2. In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

3. In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3. Acting as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment

A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4. Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

1. Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

2. A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5. Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

1. In the course of performing judicial duties a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

2. This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

RULE 3.6. Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

(C) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

Comment

1. A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

2. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

3. When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

4. This rule does not prohibit a judge's national or state military service.

RULE 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.

(5) making or soliciting recommendations to such a public or private fund-granting organization or entity in connection with its fund-granting programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono legal services.

(C) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

(3) Participate in programs concerning the law or which promote the administration of justice.

Comment

1. The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

2. Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

3. Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organi-

zations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

4. Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

5. In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

6. A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.

RULE 3.8. Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

A judge should recognize that other restrictions imposed by this code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Comment

1. This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(2) and D(2).

RULE 3.10. Practice of Law

A judge shall not practice law. A judge may represent himself or herself and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

Comment

1. A judge may act as his or her own attorney in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(1)(b) and D(1)(b).

3. Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to judge. Arizona Judicial Ethics Advisory Committee Opinion 00-07 (December 20, 2000).

4. This rule does not prohibit the practice of law pursuant to military service.

RULE 3.11. Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this code.

Comment

1. Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

2. As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this rule.

3. A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

4. To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

RULE 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Comment

1. A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

2. Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

(C) A judge shall report the acceptance of any gift, loan, bequest, or other thing of value as required by Rule 3.15.

Comment

1. Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

2. Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances but may require public reporting.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

4. Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

5. If a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

6. Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other rules of this code, including Rules 4.2 and 4.3.

RULE 3.14. Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

Comment

1. Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

2. Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this code.

3. A judge must determine whether acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity.

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15. Financial Reporting Requirements

(A) A judge shall file annually the financial disclosure statement required by A.R.S. § 38-542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.

(B) Reports made in compliance with this rule shall be filed as public documents in the office designated by law.

Comment

1. The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion of the information that must be included on the annual financial disclosure statement mandated by A.R.S. § 38-542 or other applicable law. A judge is obligated to disclose fully and accurately all information requested on the annual disclosure statement and does not fulfill the statutory obligation by reporting only the information required by Rules 3.12, 3.13, and 3.14. Applicable law requires sufficient disclosure of the financial interests of and gifts to a judge and members of his or her household to promote judicial accountability and integrity.

2. To avoid needless repetition of disclosure requirements, the Arizona judiciary deems compliance with the substantive legal requirement as sufficient to meet the ethical obligations of a judge and thus incorporates them in this code.

3. Reimbursement of expenses from a judge's employer need not be reported under Rule 3.14(C) or Rule 3.15.

RULE 3.16. Conducting Weddings

(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(C) A judge shall not advertise his or her availability for performing wedding ceremonies.

(D) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) A judge or a judicial candidate shall not do any of the following:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or another candidate for public office;

(3) publicly endorse or oppose another candidate for any public office;

(4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.

(5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;

(6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;

(8) use court staff, facilities, or other court resources in a campaign for judicial office;

(9) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(10) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

(C) Except as prohibited by this code, a judge may:

(1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and

(2) purchase tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.

Comment

General Considerations

1. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

2. When a person becomes a judicial candidate, this canon becomes applicable to his or her conduct. A successful judicial candidate is subject to discipline under the code for violation of any of the rules set forth in Canon 4, even if the candidate was not a judge during the period of candidacy. An unsuccessful judicial candidate who is a lawyer and violates this code may be subject to discipline under applicable court rules governing lawyers.

Participation in Political Activities

3. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

4. Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. Paragraph (A)(3) does not prohibit a judge or judicial candidate from making recommendations in complying with Rule 1.3 and the related comments. These rules do not prohibit candidates from campaigning on their own behalf or opposing candidates for the same judicial office for which they are running.

5. Paragraph (A)(3) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

6. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

7. Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To

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 the judge or judicial candidate endorses any family member's candidacy or other political activity.

8. Judges and judicial candidates retain the right to participate in the political process as voters in all elections. For purposes of this canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate and is not prohibited by paragraphs (A)(2) or (A)(3).

Statements and Comments Made During a Campaign for Judicial Office

9. Subject to paragraph (A)(9), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is permissible for someone else, including another judge, to respond if the allegations relate to a pending case.

10. Paragraph (A)(9) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

11. Paragraph (A)(9) must be read in conjunction with Rule 2.10, which allows judges to make public statements in the course of their official duties.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

12. The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

13. Paragraph (A)(10) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

14. The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

15. A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

16. Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(10) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(10), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2. Political and Campaign Activities of Judicial Candidates

(A) A judicial candidate shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

RULE 4.3. Campaign Standards and Communications

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;

(B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial

candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;

(C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;

(D) Use the term "judge" when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words "elect" or "vote," in prominent lettering, before the judicial candidate's name or the word "for," in prominent lettering, between the name of the judicial candidate and the term "judge";

(E) Use the term "re-elect" when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;

(F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;

(G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college, or other educational institution;

(H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate's employment history and descriptions of work-related titles or positions;

(I) Make a false or misleading statement about an opponent's personal background or history;

(J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

Comment

1. A judicial candidate must be scrupulously accurate, fair, and honest in all statements made by the candidate and his or her campaign committee. This rule obligates the candidate and the committee to refrain from making statements that are false or misleading or that omit facts necessary to avoid misleading voters.

2. A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she used the title "judge" without identifying the court on which the judge currently serves.

3. Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does

not violate this rule, the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks and request the third party to cease and desist.

RULE 4.4. Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this code and other applicable law. See generally A.R.S. § 16-901 *et seq*.

(B) A judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Comment

1. Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(6). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept lawful financial contributions or in-kind contributions.

2. Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.

3. During the campaign, the candidate and his or her campaign committee should consider whether a contribution may affect the independence, integrity, and impartiality of the judge. The judicial candidate and his or her campaign committee should be aware that contributions could create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

RULE 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this code.

Comment

1. In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before

him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

2. The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

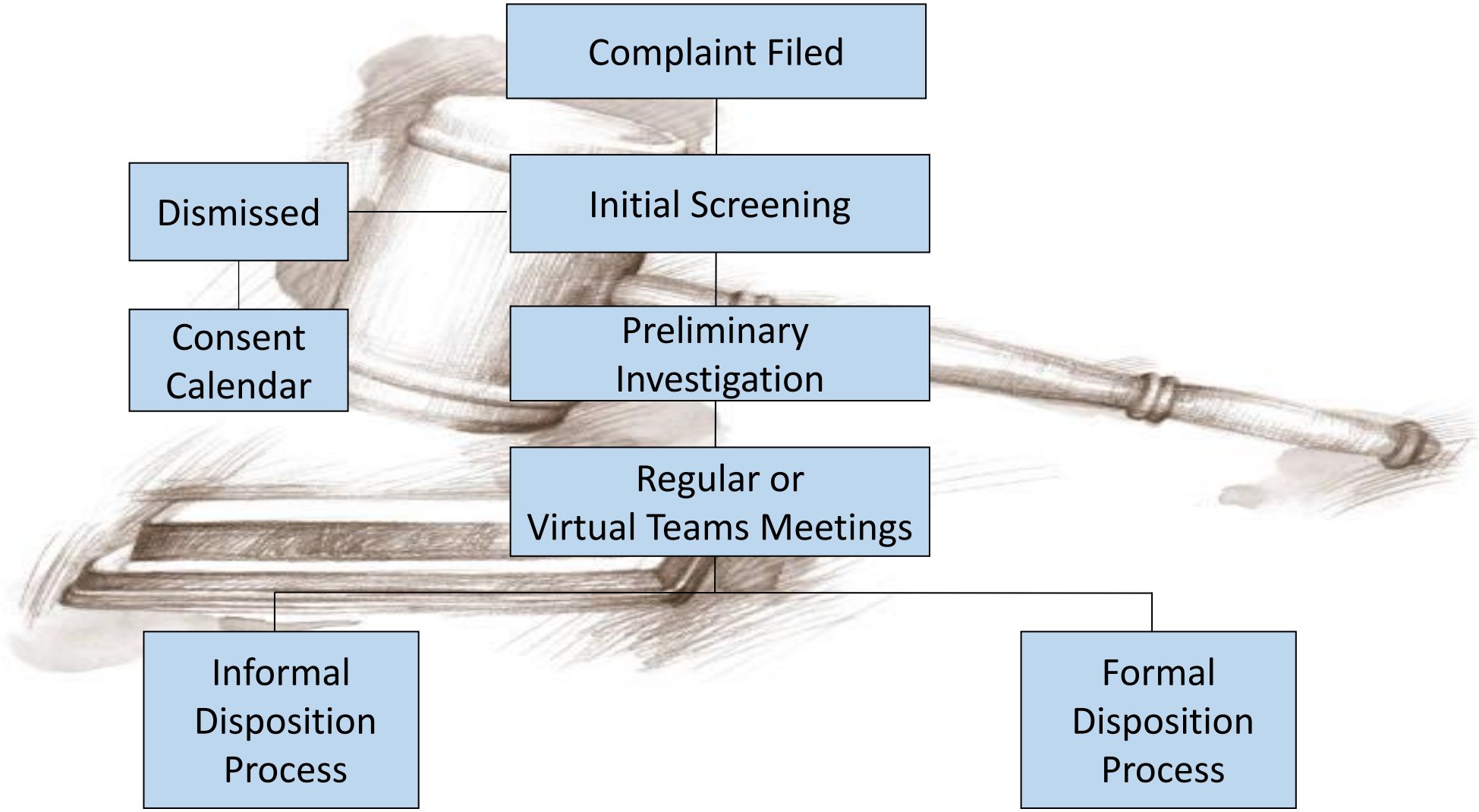
NOTES

INDEX TO THE CODE OF JUDICIAL CONDUCT

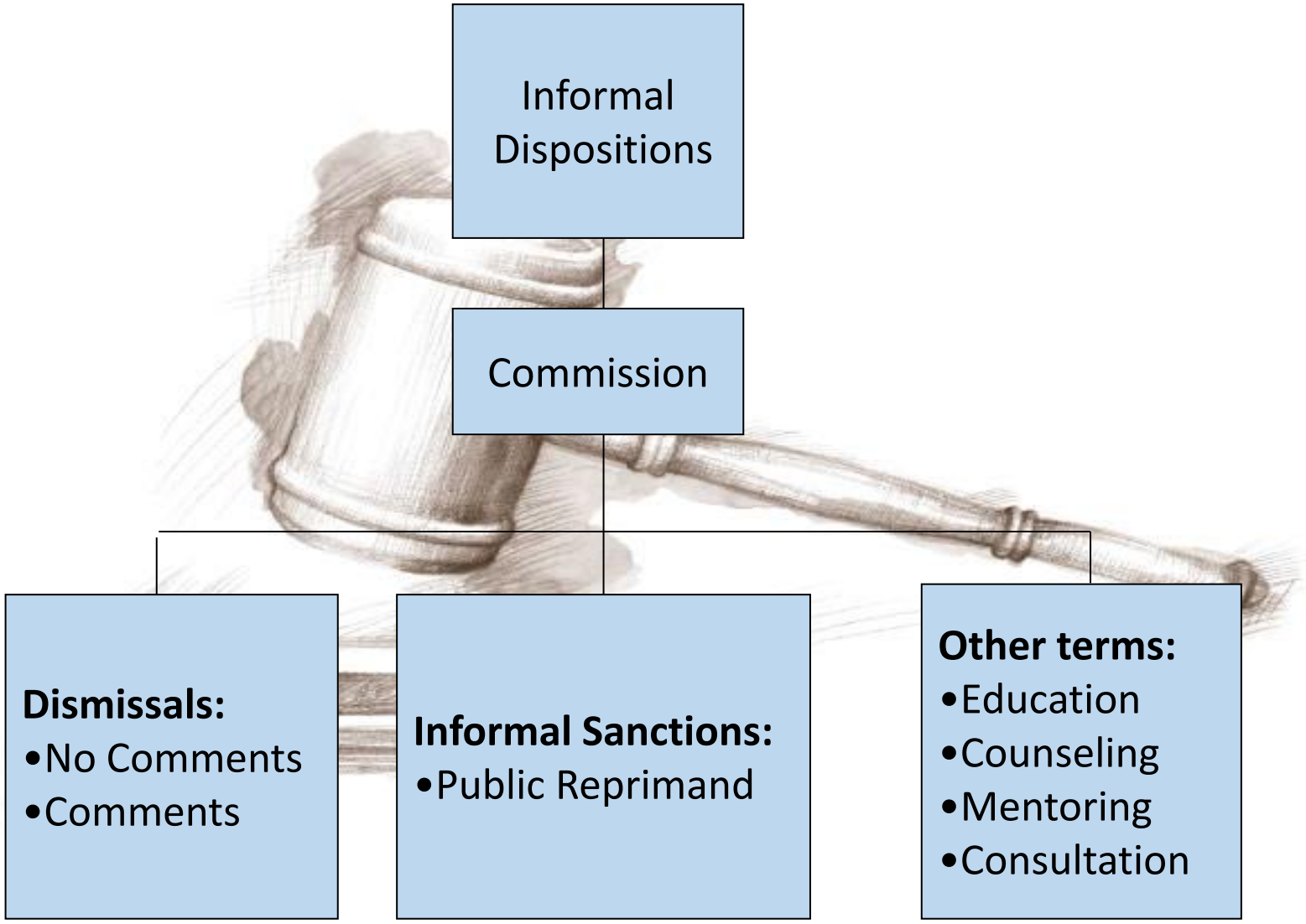
(Revised May 3, 2010)

This index is not a part of the official version of the code adopted by the Arizona Supreme Court. No representations are being made as to its completeness and suggestions for subject classifications are welcome at any time.

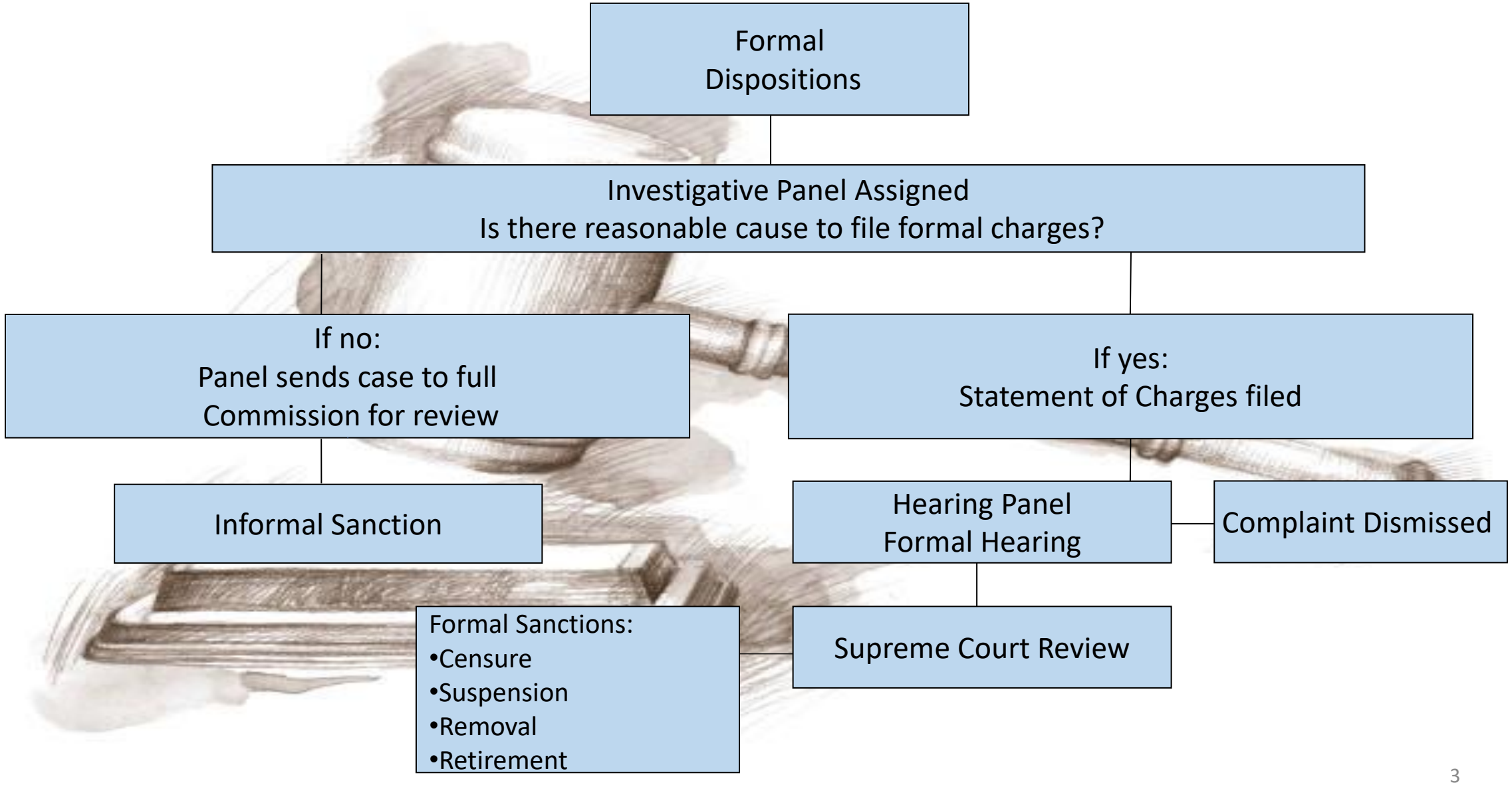
Complaint Process



Informal Process



Formal Process



Delayed Rulings – 60 Day Rule

1. Relevant Authorities

Arizona Constitution

Article 2, Section 11: Justice in all cases shall be administered openly, and without unnecessary delay.

Article 6, Section 21: Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period."

Statutory

A.R.S. § 12-128.01:

(A) A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such superior court judge or commissioner has been physically disabled during the preceding sixty days or that good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

(C) Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.

A.R.S. § 11-424.02**:**

(A) A justice of the peace or a justice of the peace pro tempore shall not receive his salary unless such justice either certifies that no cause before such justice remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such justice of the peace has been physically disabled during the preceding sixty days or that good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

(C) Any person who issues or causes to be issued any check, warrant or payment to a justice of the peace or a justice of the peace pro tempore knowing that, pursuant to this section, such justice should not receive his salary is guilty of a class 3 misdemeanor.

Rules of the Arizona Supreme Court

Rule 91(e): Every matter submitted for determination to a judge of the superior court for decision shall be determined and a ruling made not later than sixty days from submission thereof, in accordance with Section 21, Article VI of the Arizona Constitution. Each superior court clerk shall report to the Administrative Director of the Courts, in writing, on the last day of March, June, September and December, in each year, all matters in that court submitted for decision sixty days or more prior to the date of such report and remaining undecided on the date of the report. The report shall contain the title of each action or proceeding, the matter submitted, the judge to whom submitted, and the date of submission.

Code of Judicial Conduct

Rule 2.5(A): "A judge shall perform judicial and administrative duties competently, diligently, and promptly."

Judicial Ethics Advisory Committee

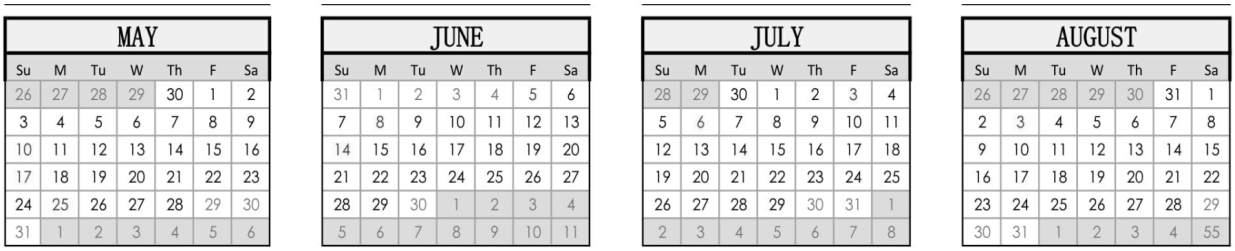
Adv. Op. 06-02 Prompt Disposition of Judicial Matters:

- A violation of the 60-day mandate is not a *per se* Code violation. Similarly, ruling within 60 days does not preclude a finding of an ethical violation. In determining whether a judge has violated the Code, "the chief inquiry is whether the delay was reasonable under the particular circumstances, which requires a case-by-case review of the facts and circumstances."
- "Under some circumstances, such as when urgent medical treatment is at issue, or in child custody matters, a determination made at the end of sixty days might not qualify as 'prompt.' . . . In other circumstances, such as complex business contracts, a determination made after sixty days may well be 'prompt' from an ethical standpoint, even if the judge risks being denied a paycheck."
- "An ethical violation might not be found where circumstances reveal an excusable, unintentional delay, a delay that occurred for reasons beyond the judge's control, or a delay about which the judge neither knew nor could have reasonably been expected to know. The latter situation might arise where a judge has no control over clerical staff and does not receive notice of a filing due to clerical error." However, judges have a duty to monitor and supervise cases so as to reduce or eliminate avoidable delay.
- Other relevant factors include "the duration of delay from the date the case was ripe for decision, the administrative and judicial workload of the judge, the judge's other assignments, and whether the judge has displayed a pattern of unreasonably delaying matters."

- Judges must supervise staff and require that staff observe the same standards of diligence applicable to judges. It is relevant "what a judge knew or should have known given the extent of his or her control, or lack thereof, over a court administrator or clerk."

2. Examples

Constitutional and statutory provisions discuss "submitted" matters, although "submitted" is not defined. The 60 days does not run from the date of the original motion, but rather when the matter is first ready for a ruling.



MAY

Su	M	Tu	W	Th	F	Sa
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

JUNE

Su	M	Tu	W	Th	F	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4
5	6	7	8	9	10	11

JULY

Su	M	Tu	W	Th	F	Sa
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5	6	7	8	9	10	11
12	13	14	15	16	17	18
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26	27	28	29	30	31	1
2	3	4	5	6	7	8

AUGUST

Su	M	Tu	W	Th	F	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	55

Examples:

1. Party 1 files motion on May 5. Party 2 has 10 business days to file a response (deadline of May 19). Party 2 files their response on May 19. Party 1 has 5 business days to file a reply (deadline of May 27). Party 1 files the reply on May 22. This is the first day that the matter would be ready for a ruling, and sixty days can be calculated from May 22 – the deadline to rule would be July 21.
2. Assume the dates from Example 1, except that the court decides they need to hear oral argument from the parties before ruling. The court should review the matter to determine that this is necessary as soon as possible, but cannot wait to make this decision past July 21. (The actual oral argument date can be set past the initial sixty-day deadline.) The court issues a minute entry on June 5 setting oral argument for June 26. At the oral argument on June 26, the court takes the matter under advisement. The sixty days now runs from this date so the ruling would be due by August 25.

3. General Considerations

- Be aware that if you wait until Day 59 to look at a matter and then decide oral argument should be set, this can give the appearance that the judge is only setting oral argument to reset the 60-day clock. You may have not realized that you

needed oral argument until that day, and the setting may be legitimate, however, just be aware that there may be a perception you have gamed the system.

- There is no duty to self-report delayed rulings. However, self-reporting can be viewed as mitigating.
- Please be aware of the approximate length of time that it takes for your court to get the ruling processed and filed after you issue the ruling. The date the ruling is filed is the date that the public sees and uses that date to evaluate whether the ruling was timely. For example, you write the ruling on Day 58 and give to your clerk, It takes your clerk 6 days to process the ruling and have it be officially filed in the court rile. Thus, to the public, they perceive the ruling as being issued on Day 64 and late.
- Advice on how to submit amended salary certifications can come from the Chief Justice's Office.

Arizona Supreme Court
Judicial Ethics Advisory Committee

ADVISORY OPINION 96-14
(November 21, 1996)

Limitations on Disqualification Requirement

Issues

1. Should a judge be disqualified because a litigant brings charges against the judge concerning his or her handling of a pending case?

   Answer: No.

2. Should a judge be disqualified because a party to litigation is an employee of the court system?

   Answer: No, with qualifications.

Facts

The presiding judge of a large metropolitan court is concerned about the number of times he has been required to seek the assistance of judges from other counties because local judges have felt obligated to disqualify themselves. Two new instances have arisen. In the first, unhappy litigants are suing judges or making claims against them as a predicate to bringing suit and then filing these documents in the pending litigation. In the second, judges have disqualified themselves when court personnel are parties.

Discussion

Canon 3E(1) requires that "a judge disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." There is both a subjective and objective component to this requirement. If a judge believes that he or she cannot act fairly, disqualification is required. The more difficult assessment is the objective one, whether one external to the case might reasonably question the judge's impartiality. Understandably, judges tend to err on the side of safety and to judge the reasonableness of questioned impartiality from the standpoint of the most darkly suspicious member of the public. That is not the test. Rather, it is "whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought [or disqualification contemplated] would entertain a significant doubt that justice would be done in the case." *Pepsico, Inc. v. McMillan*, 764 F.2d 458, 460 (7th Cir. 1985). Judges should not act hastily in manufacturing reasons to avoid judging. It is the real, not the chimerical, appearance of bias and prejudice that disqualifies.

That a judge has been sued by the litigant would ordinarily appear a real basis for disqualification. But the "objective, disinterested observer fully informed" would know that the suit or claim was brought by the party, often self represented, either as a tactical means

to require disqualification where real grounds for disqualification under our procedural rules could not be established or as some benighted effort to intimidate the judge. As put by Shaman, Lubet & Alfini, *Judicial Conduct and Ethics* § 4.06 (2d ed. 1995):

> Where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party should not be able to engage in "judge-shopping" by manufacturing bias or prejudice that previously did not exist. Accordingly, it is not improper for a judge to refuse recusal where a party or the party's lawyer has verbally abused the judge or even threatened the judge with violence. Threats and insults that occur in court are not extrajudicial, and therefore usually cannot be the basis of disqualification. This is also the rule even where the verbal abuse occurs outside of court, if it is connected to a court proceeding. In fact, if a party has caused or provoked judicial anger, he or she ordinarily will not be heard to complain about it. That a party yells at a judge, writes a judge a nasty letter, or even files a complaint against a judge will not usually require the judge to be disqualified on account of bias or prejudice.

That an employee of the court system is a litigant, standing alone, does not mandate disqualification of a judge. The judge will have to assess the closeness of the relationship between the judge and the court employee to determine whether the disinterested observer would reasonably fear injustice. But given the hundreds of employees of a large superior court, it would be a rare instance when a judge from another county would be required to assuage the disinterested observer's fears.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3E(1) (1993).

Other References

Pepsico, Inc. v. McMillan, 764 F.2d 458, 460 (7th Cir. 1985).

Shaman, Lubet & Alfini, *Judicial Conduct and Ethics*, § 4.06 (2d ed. 1995).

Arizona Supreme Court
Judicial Ethics Advisory Committee

ADVISORY OPINION 98-02
(March 24, 1998)

Disqualification Considerations When Complaints Are Filed Against Judges

Issue

Is a judge ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct?

Answer: No.

Facts

A litigant filed a complaint against the judge with the Commission on Judicial Conduct during the course of pending litigation. The litigant then requested that the judge disqualify himself because of the pending complaint. When the judge refused to do so, the litigant claimed he could not receive a fair hearing due to the judge's alleged bias and the pending complaint.

Discussion

The determination of the issue presented here is an elaboration of the issues considered in Opinion 96-14 in which we concluded that a judge is not automatically disqualified when a litigant files a lawsuit against the judge in a pending case.

It is not unusual for an attorney or a litigant to request a change of judge prior to or during a trial or other court proceeding under the statute and rules governing disqualification in civil and criminal cases. A.R.S. §12-409; Rule 42(f)(2), Ariz. R. Civ. P.; and Rule 10.1(a), Ariz. R. Crim. P. While the civil and criminal rules differ as to the specific grounds required to support a change of judge for cause, the broadest provision of each rule permits the allegation of specific facts demonstrating prejudice on the part of the judge as the reason why an impartial trial or proceeding cannot be obtained. Occasionally, however, a party or a lawyer for a party will file a complaint against the judge with the Commission on Judicial Conduct and then claim that the judge cannot be impartial because of the complaint.

While a motion for a change of judge for cause is determined by a neutral judge, the Code of Judicial Conduct places a continuing and affirmative duty on the judge to recuse himself or herself from any proceeding in which his or her "impartiality might reasonably be questioned." This affirmative ethical standard may require considerable introspection and intellectual honesty on the part of the judge during any phase of a court proceeding regardless of whether a complaint has been filed with the Commission.

Canon 3E deals with the issue of disqualification and provides that a judge must disqualify himself or herself whenever the judge's impartiality might reasonably be questioned. The canon describes a number of situations in which a judge's impartiality would reasonably be questioned, and in those situations recusal is mandatory. The canon makes it clear, however, that the requirement of disqualification is not limited to the situations described in the canon.

The situations described in Canon 3E generally cover instances where: (a) a judge has a personal bias or knowledge of disputed facts in a proceeding, (b) a judge has previous service as an attorney or is a material witness in the proceeding, (c) a judge has a financial interest in the proceeding, or (d) a judge has a family relationship with someone involved in the proceeding. One should note that the non-exhaustive list of circumstances requiring disqualification found in Canon 3E does not include a litigant or an attorney's decision to file a complaint against the judge; rather, they involve the relationship between a judge and the subject matter of a pending proceeding or its participants.

The mere fact that a complaint has been made against a judge alleging the judge is biased and cannot be impartial does not require automatic disqualification or recusal by the judge. If this were so any party or attorney could easily disrupt court proceedings at any time by filing a complaint against the judge. As noted by Shaman, *et.al*. in *Judicial Conduct and Ethics*, § 4.06 (2d ed. l995): "Where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party should not be able to engage in 'judge-shopping' by manufacturing bias or prejudice that previously did not exist." *See also* Calif. Op. 45 (January 23, 1997).

It is also clear that judicial bias or prejudice must stem from an extrajudicial source and not from the judge's rulings or enforcement of orders in the pending case. Generally the judge's attitude or relationship with a litigant's attorney in the case will not be grounds for disqualification although this may be a matter of degree. (*See* Vento, Annotation, *Disqualification of a Judge for Bias Against Counsel for a Litigant*, 54 ALR5th 575; *see also*, *Miller v. Superior Court*, 244 Ariz. Adv. Rep. l9, 938 P.2d 1128 (App. l997), where the Court of Appeals held that a judge need not recuse himself in a pending legal matter where the judge had reported an attorney's conduct in the underlying action to the Arizona State Bar.) Additionally, any complaint of bias against a judge by a litigant or an attorney under the code must be supported by specific facts and circumstances sufficient for a reasonable person who is uninvolved in the proceeding to make a determination of whether the judge's impartiality might reasonably be questioned.

Of course, if the judge against whom a complaint is filed believes the circumstances described in the complaint are true and show that the judge's impartiality might reasonably be questioned, the judge must recuse himself or herself. Also, if, for whatever reason, the judge develops a personal bias that would inhibit the judge's ability to remain impartial and deal fairly with the parties, the judge must recuse himself or herself.

The most difficult situation is where a judge believes that the specific allegations in a complaint are untrue yet still believes he or she can continue to act with impartiality in the proceedings. Here the judge must apply the standard of objective reasonableness. It is not a question of whether the judge thinks he or she can be objective, but rather would an objective, disinterested observer reasonably question the impartiality of the judge. In Opinion 96-14, we wrote as follows:

> The more difficult assessment is the objective one, whether one external to the case might reasonably question the judge's impartiality. Understandably, judges tend to err on the side of safety and to judge the reasonableness of questioned impartiality from the standpoint of the most darkly suspicious member of the public. That is not the test. Rather, it is "whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought (or disqualification contemplated) would entertain a significant doubt that justice would be done in the case." Judges should not act hastily in manufacturing reasons to avoid judging. It is the real, not the chimerical, appearance of bias and prejudice that disqualifies. [Citation omitted.]

The objective standard clearly requires disqualification when any of the factual conditions described in Canon 3E are present. But as one legal scholar has noted, this is not the only requirement of this standard:

> The objective standard appears to require disqualification not only when there is in fact impropriety, but also when there is an appearance of impropriety. Indeed, it has been stated that avoiding the latter is "as important to developing public confidence in the judiciary as avoiding impropriety itself." The appearance of impropriety may sometimes bar trial by judges who have no actual bias and would do their very best to weigh the scales of justice equally between contending parties.

Abramson, *Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct (2d ed. 1992)* at 15,16.

But even when considering disqualification because of an appearance of impropriety, there are reasonable standards to apply.

> The appearance of impropriety standard requires recusal "not merely when the judge's impartiality might somehow be questioned, but only when it may *reasonably* be questioned" . . . Contrary to some authority, then, if a motion to recuse includes allegations that the judge knows are false and erroneous, the judge should recuse himself only if the motion raises reasonable issues of impartiality, not merely because the litigant or counsel makes the allegations and therefore believes in their reasonableness.

Id. at 16. Again, the test is whether an objective, disinterested, fully informed observer would reasonably question the impartiality of the judge.

Thus, a judge faced with a complaint is not automatically disqualified from the case; however, a careful analysis must be undertaken by the judge which involves both subjective and objective components. The following guide may be helpful to the analysis:

1. Has the complaint previously been presented under the statutes and rules governing removal of a judge for cause and ruled upon by a neutral judge? If so, the judge may usually rely on such ruling and the party will have a remedy by appeal if appropriate.

2. Does the complaint allege bias based upon the judge's rulings in the pending case or the judge's perceived attitude toward counsel for a litigant? If the complaint arises out of previous adverse rulings in the course of the proceedings or from enforcement of court orders, then recusal is generally not warranted. If the complaint concerns the judge's perceived attitude toward a litigant's lawyer, this also, is generally not a basis for recusal.

3. Does the complaint lack merit on its face and appear to be a tactical maneuver designed merely to remove the judge from the particular case? If so, recusal is generally not warranted. In fact many complaints are dismissed by the commission after an initial contact with the judge. *Bulletin* at 1.

4. Does the complaint cause any actual personal bias that will interfere with the judge's impartiality? If so, the judge must recuse himself or herself.

5. Does the complaint allege specific facts and information regarding matters extrajudicial to the pending proceeding as the basis for the complaint? If so, does the complaint, even if believed by the judge to be untrue or erroneous, contain specific facts which would cause a reasonable person to question the judge's impartiality or create an appearance of impropriety to a reasonable person if the judge remains on the case? If the answer is yes, the judge must recuse himself or herself. Here the judge must take into account the risk of injustice to the parties in the particular case and the risk of undermining public confidence in the judicial process.

In conclusion, a judge is not automatically disqualified from sitting in a proceeding merely because the judge is made aware that an attorney or a party has filed a complaint against him or her with the Commission on Judicial Conduct. A careful analysis of Canon 3E and reflection on the principles outlined in this opinion should provide the guidance necessary for making the correct decision.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3E (1993).

Legal References

Arizona Revised Statutes § 12-409.

Arizona Rules of Civil Procedure, Rule 42(f)(2).

Arizona Rules of Criminal Procedure, Rule 10.1(a).

Arizona Judicial Ethics Advisory Committee, Opinion 96-14 (Nov. 21, 1996).

Arizona Judicial Conduct and Ethics Bulletin, January 1993 at 1.

California Committee on Judicial Ethics, Opinion 45 (Jan. 23, 1997).

Miller v. Superior Court, 244 Ariz. Adv. Rep. 19, 938 P. 2d 1128 (App. 1997).

Other References

Leslie W. Abramson, *Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct (2d ed. 1992).*

Jeffrey M. Shaman, Steven Lubet & James J. Alfini, *Judicial Conduct and Ethics,* § 4.06 (2d ed. 1995).

Carol Schultz Vento, Annotation, *Disqualification of Judge for Bias Against Counsel for Litigant*, 54 ALR5th 575.

SLIP OPINION NO. 2025-OHIO-5239

DISCIPLINARY COUNSEL *v.* GRENDELL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Grendell*, Slip Opinion No. 2025-Ohio-5239.]

Judges—Misconduct—Violations of the Code of Judicial Conduct—No discipline imposed for violation of Jud.Cond.R. 3.2 because that rule's broad restriction on testimony and consultation with government officials is a content-based speech restriction in violation of First Amendment to United States Constitution—18-month suspension, with 12 months conditionally stayed, and immediate suspension from judicial office without pay for duration of disciplinary suspension.

No. 2024-1409—Submitted February 13, 2025—Decided November 21, 2025.

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2022-045.

DEWINE, J., authored the opinion of the court, which KENNEDY, C.J., and DETERS, HAWKINS, and SHANAHAN, JJ., joined. FISCHER, J., concurred in part and dissented in part, with an opinion joined by EDELSTEIN, J. CARLY M. EDELSTEIN, J., of the Tenth District Court of Appeals, sat for BRUNNER, J.

DEWINE, J.

{¶ 1} Judge Timothy J. Grendell of the Probate and Juvenile Divisions of the Geauga County Court of Common Pleas is charged with multiple violations of the Code of Judicial Conduct and Rules of Professional Conduct across three counts. A panel of the Board of Professional Conduct found by clear and convincing evidence that Judge Grendell committed the charged violations. The panel recommended that Judge Grendell be suspended from the practice of law for 18 months with six months stayed.

{¶ 2} The board adopted the panel's report and recommendation and filed it with this court. Judge Grendell raises seven objections to the board's findings of fact and conclusions of law. We have considered the board's findings and recommendation and have independently reviewed the entire record, including the testimony in this matter and the transcripts of the underlying proceedings that form the basis of the charges. Based on our review of the record, we overrule Judge Grendell's objections in part and sustain them in part. We find that Judge Grendell violated the Code of Judicial Conduct and suspend him from the practice of law in Ohio for 18 months with 12 months stayed.

{¶ 3} Each of the three counts in this case originates from a distinct set of facts. A fourth count (Count 2) was dismissed by the panel before Judge Grendell's hearing. We address the counts in the following order. Count 4 ("the legislative testimony") involves Judge Grendell's testimony at an Ohio House committee meeting. Count 3 ("the Tea Party event") concerns a presentation Judge Grendell made at a political meeting. Count 1 ("the Glasier matter") involves Judge

Grendell's handling of a difficult custody dispute that had been transferred to the juvenile division from the local domestic-relations division.

I. COUNT 4: THE LEGISLATIVE TESTIMONY

{¶ 4} We first take up the board's conclusion that Judge Grendell violated the Code of Judicial Conduct by voluntarily testifying before a legislative committee. The board found a violation of Jud.Cond.R. 3.2, which provides in relevant part: "A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official," unless the testimony is "[i]n connection with matters concerning the law, the legal system, or the administration of justice" or "[i]n connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties." The board also determined that Judge Grendell violated Jud.Cond.R. 1.3, which states: "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."

{¶ 5} "[A]s the ultimate arbiter of misconduct and sanctions in disciplinary cases, [we are] not bound by factual and legal conclusions drawn by either the panel or the board." *Disciplinary Counsel v. Kelly*, 2009-Ohio-317, ¶ 11. Rather, we are "free to exercise our independent judgment as to evidentiary weight and applicable law." *Id.* Disciplinary counsel must prove a violation of the rules by clear and convincing evidence. *Disciplinary Counsel v. Jackson*, 1998-Ohio-474, ¶ 12; Gov.Bar R. V(12)(I).

{¶ 6} We reject the board's conclusion that by testifying, Judge Grendell abused the prestige of his judicial office for his personal benefit or for the benefit of others in violation of Jud.Cond.R. 1.3. And because we conclude that Jud.Cond.R. 3.2's broad restriction on testimony and consultation with government officials regarding all but a few topics is a content-based speech restriction in violation of the First Amendment, we will not discipline Judge Grendell for violation of that provision.

A. Facts

{¶ 7} COVID-19 and its consequences dominated policy discussions in the General Assembly in the spring of 2020. One bill that emerged was House Bill 624 ("H.B. 624"). That bill was designed to require the government to report and release additional COVID-19 statistics. According to its proponents, it would require local health officials and healthcare providers to provide more complete COVID-19 testing numbers to the Ohio Department of Health and require the department to release more detailed daily figures regarding COVID-19 testing, hospitalization, and deaths. H.B. 624's primary sponsor was Representative Diane Grendell, Judge Grendell's wife.

{¶ 8} Judge Grendell testified before the Ohio House State and Local Government Committee in favor of H.B 624. He did so voluntarily—that is, he testified without being subpoenaed. As Judge Grendell put it, he "primarily" testified in his capacity as a judge, "but also as a citizen of the state of Ohio."

{¶ 9} Judge Grendell began his testimony by identifying what he understood to be a major problem in Ohio: a lack of complete information on COVID-19. The way he saw it, the Ohio Department of Health's daily statistics "release[d] half the facts to the public, the scary half of the facts: cumulative numbers of confirmed cases, cumulative numbers of hospitalized patients, cumulative numbers of alleged or suspected COVID deaths." He testified that by releasing only the "scary half of the facts," the Department of Health contributed to an unnecessary "atmosphere of fear" that made it harder for Ohioans to return to normal life. He drew comparisons between COVID-19 and past flu outbreaks to demonstrate his point.

{¶ 10} Judge Grendell cited reports of people failing to seek or delaying medical treatment from "fear of going to the doctor." He spoke about an increase in opiate-related deaths and several instances of suicide in Geauga County. He said his court never closed during the COVID-19 outbreak, partially due to an increase

in cases as a result of the outbreak. He specifically mentioned that juvenile "unruly cases ha[d] gone up," that "mental health civil commitments ha[d] increased," and that "domestic violence cases [were] on the uptick." And Judge Grendell noted that he and some fellow common-pleas-court judges were "putting together a letter trying to remind people of their civic duty of jury duty, and assuring them that if they [came] to court to perform jury duty, their lives [would] not be placed at risk."

{¶ 11} According to Judge Grendell, H.B. 624 was a step in the right direction. He argued: "As Ohio struggles to return to normal, Ohioans need to know the current number of hospitalizations, the actual number of daily deaths, and [the] number of cases currently requiring medical treatment," and "House Bill 624 will make sure that Ohioans have ready access to all of those important facts." Judge Grendell concluded his testimony by taking a couple questions from the committee about the State's COVID-19-testing regime.

{¶ 12} In support of its conclusion that Judge Grendell abused the prestige of his judicial office to advance the interests of a family member in violation of Jud.Cond.R. 1.3, the board simply pointed to the fact that his wife—Representative Diane Grendell—was the primary sponsor of H.B. 624. It found that "there [was] no other plausible reason for [Judge Grendell] to provide the testimony he provided except to promote his own, and his wife's, personal interests." The board did not elaborate on what those personal interests might be.

{¶ 13} To support its conclusion that Judge Grendell violated Jud.Cond.R. 3.2 by testifying on a matter that did not involve the legal system, the board advanced three rationales. First, the board noted that the Ohio Judicial Conference did not include H.B. 624 in any of its biweekly newsletters or in its list of bills that it identified as impacting the judiciary. The board acknowledged that the Judicial Conference's apparent lack of interest in H.B. 624 is not dispositive, but it characterized it as strong evidence that Judge Grendell's testimony "was motivated by the personal interests and agendas of himself and his wife, rather than by

concerns about the impact of the bill on the judiciary." Second, the board called into question the accuracy of Judge Grendell's testimony. It opines that because he testified "with no quantitative data to back up his claim[s]," Judge Grendell's testimony about how COVID-19 affected the judiciary "was tenuous, at best." And third, according to the board, "less than one minute of [Judge Grendell's] 18 minute and 55 second testimony was spent talking about information related to the court." Putting these three rationales together, the board concluded that Judge Grendell's "testimony to the legislative committee was not 'in connection with matters concerning the law, the legal system, or the administration of justice.' " Board Report at ¶ 260, quoting Jud.Cond.R. 3.2.

B. Objections

{¶ 14} Judge Grendell presents two objections to the board's findings and recommendation regarding his legislative testimony. First, he argues that imposing sanctions on him for testifying before the General Assembly would violate his right to free speech under the First Amendment to the United States Constitution and Article I, Section 11 of the Ohio Constitution. Second, he argues that his testimony did not violate Jud.Cond.R. 1.3 or 3.2. We partially agree with Judge Grendell's second argument and fully agree with his first. Because we generally dispose of cases without reaching constitutional issues if we can, *Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife*, 2015-Ohio-3731, ¶ 29, we consider his arguments in reverse order.

1. Judge Grendell's testimony did not abuse the prestige of his office for personal or economic reasons, but it did extend beyond matters concerning the law, the legal system, and the administration of justice, and beyond matters about which he acquired knowledge or expertise in the course of his judicial duties

{¶ 15} We begin with Judge Grendell's argument that he did not violate either rule. We agree that he did not violate Jud.Cond.R. 1.3. The board's finding

that "there [was] no other plausible reason for [Judge Grendell] to provide the testimony he provided except to promote his own, and his wife's, personal interests" is wrong. One plausible reason for Judge Grendell to testify in support of H.B. 624 would be that he is a concerned judge and citizen and he simply thought it would be good for the State and the judiciary. Another would be that he had specific insight to share that he acquired through his work as a judge and former legislator. Both are plausible reasons based on the record in this case, despite the board's conclusory finding otherwise. And the fact that the board cannot articulate what personal interests Judge Grendell's testimony could have served—beyond merely implying that testifying in support of a bill that his wife sponsored is promoting their personal interests—is telling. Jud.Cond.R. 1.3 does not prohibit judges from testifying for or against bills simply because their spouses are sponsors of those bills. Because the board offered nothing more to support its finding that Judge Grendell "abuse[d] the prestige of [his] judicial office to advance the personal or economic interests of" himself or Representative Grendell, we conclude that he did not violate Jud.Cond.R. 1.3.

{¶ 16} However, Judge Grendell's testimony did go beyond Jud.Cond.R. 3.2's prohibition on voluntary legislative testimony that is not "[i]n connection with matters concerning the law, the legal system, or the administration of justice" or "matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties." It is true that some of Judge Grendell's testimony related to legal matters and his experiences as a judge. For example, his testimony about assuring potential jurors of their safety was related to the legal system. And regardless of the board's misgivings about the factual basis for it, his testimony about an increased caseload due to COVID-19 was information that he acquired in the course of his judicial duties. But the bulk of his testimony was unrelated to the law, the legal system, the administration of justice, or his knowledge and expertise acquired as a judge.

{¶ 17} Judge Grendell spent almost all his time testifying about the inadequacies of COVID-19 reporting and why he thought these inadequacies made it impossible for Ohioans to make informed decisions about their own lives. He discussed varied topics such as opiate-related deaths, suicides, the rates at which people were seeking medical care, business and school closures, and the similarities and differences between COVID-19 and past flu outbreaks. The entirety of the question-and-answer portion of his testimony consisted of his talking about the State's COVID-19-testing regime and how it could be improved. These are important topics that are worthy of discussion in the General Assembly. But because the topics were not connected with "the law, the legal system, or the administration of justice" or "matters about which [he] acquired knowledge or expertise in the course of [his] judicial duties," Jud.Cond.R. 3.2 prohibited Judge Grendell from testifying about them. We therefore conclude that Judge Grendell violated Jud.Cond.R. 3.2.

2. Jud.Cond.R. 3.2 is unconstitutional because it violates the First Amendment

{¶ 18} Judge Grendell's testimony went beyond what Jud.Cond.R. 3.2 allows, so we must consider his argument that Jud.Cond.R. 3.2 violates his free-speech rights. He contends that Jud.Cond.R. 3.2 is unconstitutional because it is facially overbroad in that it restricts too much constitutionally protected speech.

{¶ 19} Judge Grendell centers his argument on the First Amendment to the United States Constitution, although he also references Article I, Section 11 of the Ohio Constitution. Because his briefing is focused almost exclusively on his federal constitutional argument, we will take up that argument first.[1] And because we hold that Jud.Cond.R. 3.2 does not pass scrutiny under the First Amendment,

1. When both a federal and a state constitutional claim have been fully developed, there is a strong argument that this court should ordinarily consider the state claim first. *See, e.g.*, Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 178-190 (2018). But in this case, because the state argument is undeveloped, we find it prudent to first take up the federal claim. *See State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 32.

we find it unnecessary to reach the largely unbriefed issue of whether the restriction also violates Article I, Section 11 of the Ohio Constitution.

i. Jud.Cond.R. 3.2 is a content-based restriction on speech that can be upheld only if it survives strict scrutiny.

{¶ 20} As long as codes of conduct for lawyers and judges have been around, courts have been grappling with their relationship to the First Amendment. On the one hand, Ohio has an interest in "promot[ing] and maintain[ing] '[a]n independent, fair, and impartial judiciary' . . . to ensure 'the greatest possible public confidence in [the] independence, impartiality, integrity, and competence' of judges," and it furthers that interest with its Code of Judicial Conduct for judges. (Third and fourth bracketed text in original.) *In re Judicial Campaign Complaint Against O'Toole*, 2014-Ohio-4046, ¶ 23, quoting Jud.Cond.R., Preamble [1] through [3]. The same can generally be said about rules prescribing ethical standards for lawyers. *E.g.*, *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1074-1075 (1991). But on the other hand, lawyers and judges do not give up their First Amendment right to free speech just because they chose to pursue a career in law. In fact, the Code of Judicial Conduct itself acknowledges that the rules are subordinate to First Amendment requirements, cautioning that the rules "are rules of reason that should be applied consistent with constitutional requirements." Jud.Cond.R., Scope [5].

{¶ 21} Certain restrictions on the First Amendment–protected speech of lawyers and judges "cannot be justified by Ohio's interest in maintaining a competent and impartial judiciary." *O'Toole* at ¶ 43. The State's interest in protecting the integrity of legal institutions "is an insufficient reason 'for repressing speech that would otherwise be free.'" *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 841-842 (1978), quoting *New York Times v. Sullivan*, 376 U.S. 254, 272-273 (1964). In other words, restrictions on lawyers' and judges' speech that cannot survive ordinary First Amendment scrutiny cannot stand.

{¶ 22} The landmark case about how the First Amendment interacts with judicial codes of conduct is *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). In *White*, a candidate for judicial office argued that his right to free speech was violated by the Minnesota Code of Judicial Conduct's "announce clause," which prohibited a judicial candidate, including an incumbent judge, from "announc[ing] his or her views on disputed legal or political issues." *White* at 768-770. Rather than employ some special test in the context of a code of judicial conduct, the United States Supreme Court simply conducted a normal First Amendment analysis— whether the announce clause could survive strict scrutiny. *See id.* at 774-775; *see also Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) ("we hold today what we assumed in *White*: A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest"). The Court held that the Minnesota provision prohibiting judicial candidates from announcing their views on disputed legal and political issues violated the First Amendment. *White* at 788.

{¶ 23} We did something similar in *O'Toole*. In that case, we considered whether a rule in the Ohio Code of Judicial Conduct that prohibited a judicial candidate from saying things that were true but misleading violated the First Amendment. *O'Toole*, 2014-Ohio-4046, at ¶ 1-2. After describing the ordinary First Amendment test for such a speech restriction, *id.* at ¶ 19-20, we held that the rule violated the First Amendment "because it chill[ed] the exercise of legitimate First Amendment rights," *id.* at ¶ 42, and could not "be justified by Ohio's interest in maintaining a competent and impartial judiciary," *id.* at ¶ 43.

{¶ 24} And although *White* was the first United States Supreme Court decision to strike down a rule in a code of judicial conduct, the Supreme Court has long held that the First Amendment applies the same to speech restrictions for legal professionals as it does to speech restrictions for everyone else. *See Garrison v. Louisiana*, 379 U.S. 64, 64-67 (1964) (holding that the actual-malice standard from

New York Times v. Sullivan applied to attorney speech critical of the judiciary); *see also Jenevein v. Willing*, 493 F.3d 551, 557-558 (5th Cir. 2007) (applying strict scrutiny to speech restrictions on elected judges). All this to say: there is no special test for speech restrictions on judges. Thus, what follows is an ordinary First Amendment analysis.

{¶ 25} The First Amendment prohibits the government from "abridging the freedom of speech." U.S. Const., amend. I. That means that, "[a]s a general matter, government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *O'Toole* at ¶ 19. Such restrictions are called content-based restrictions. We know a restriction is content based when it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Content-based restrictions violate the First Amendment unless they can survive strict scrutiny—that is, they "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* And of course, that goes for content-based restrictions on judges' speech in the Code of Judicial Conduct, too. *See O'Toole* at ¶ 20; *White*, 536 U.S. at 774-775; *Williams-Yulee*, 575 U.S. at 444.

{¶ 26} Jud.Cond.R. 3.2 is a content-based restriction. It prohibits judges from testifying before the General Assembly about all but a few topics. In other words, Jud.Cond.R. 3.2 applies to judges' speech "because of the topic discussed or the idea or message expressed," *Reed* at 163. Therefore, as disciplinary counsel acknowledges, Jud.Cond.R. 3.2 can be upheld only if it survives strict scrutiny.[2]

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2. It is true that this court adopted Jud.Cond.R. 3.2 under its Article IV, Section 5(B) power to make rules governing the practice of law. But that power gives us the authority to reconsider the constitutionality of rules at any time—including in an appropriate case. *See O'Toole*, 2014-Ohio-4046, at ¶ 43-45. The general restriction on voluntary legislative testimony entered our rules as part of the now-superseded Code of Judicial Conduct in 1973, prior to the United States Supreme Court's decision in *White*. *See* Canon 4(B) of the 1973 Code of Judicial Conduct, 36 Ohio St.2d xxvi. The restriction was carried over with some modifications with the adoption of the current Code of

ii. The restriction is not narrowly tailored to serve a compelling state interest

{¶ 27} Disciplinary counsel asserts three compelling state interests for Jud.Cond.R. 3.2: "(1) the maintenance of an independent, fair, and impartial judiciary; (2) public confidence in the independence, impartiality, integrity, and competence of judges; and (3) the separation of powers between the judicial branch and the legislative and executive branches." We take up these interests one at a time.

{¶ 28} ***Judicial Impartiality.*** We start with the maintenance of an independent, fair, and impartial judiciary. Although disciplinary counsel uses "independent, fair, and impartial" as a phrase with a vague, collective meaning, it is clear that the state interest at issue is one of judicial impartiality. Disciplinary counsel argues that the provision serves a compelling state interest because "[a] judge who offers testimony in favor of a particular bill may find himself unable to preside impartially over a matter involving that bill."

{¶ 29} In *White*, the United States Supreme Court recognized that a state could have a compelling interest in judicial impartiality. *See White*, 536 U.S. at 775-776. But in doing so, it made clear that impartiality in this context means impartiality in its "root meaning"—that is, "the lack of bias for or against either *party* to the proceeding." (Emphasis in original.) *Id.* at 775. Thus, it found that the Minnesota provision prohibiting judicial candidates from announcing their views on disputed *issues* a poor fit for this interest:

> We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in

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Judicial Conduct in 2009. We have never disciplined a judge for violating Jud.Cond.R. 3.2—and we are unaware of disciplinary counsel ever charging a judge under the provision—so this case represents our first opportunity to consider the constitutionality of the provision in the context of an adversary proceeding.

> this sense. Indeed, the clause is barely tailored to serve that interest *at all*, inasmuch as it does not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*. To be sure, when a case arises that turns on a legal issue on which the judge (as a candidate) had taken a particular stand, the party taking the opposite stand is likely to lose. But not because of any bias against that party, or favoritism toward the other party. *Any* party taking that position is just as likely to lose. The judge is applying the law (as he sees it) evenhandedly.

(Emphasis in original.) *Id*. at 776-777.

{¶ 30} The Court also considered two less common meanings of impartiality. It noted that "[i]t is perhaps possible to use the term 'impartiality' in the judicial context . . . to mean lack of preconception in favor of or against a particular *legal view*." (Emphasis in original.) *Id.* at 777. But it concluded that while "[i]mpartiality in this sense may well be an interest served by the announce clause, . . . it is not a *compelling* state interest, as strict scrutiny requires." (Emphasis in original.) *Id.* It explained that "[a] judge's lack of predisposition regarding the relevant legal issues in a case has never been thought a necessary component of equal justice," because, "[f]or one thing, it is virtually impossible to find a judge who does not have preconceptions about the law." *Id.* For example, it would be almost impossible to find a judge who does not have preconceived views about the "'interpretation of the sweeping clauses of the Constitution and their interaction with one another.'" *Id.*, quoting *Laird v. Tatum*, 409 U.S. 824, 835 (1972) (separate memorandum of Rehnquist, J.).

{¶ 31} The Court then acknowledged that another (though also not common) meaning of impartiality "might be described as open-mindedness." *Id.* at 778. That "sort of impartiality seeks to guarantee each litigant, not an *equal*

chance to win the legal points in the case, but at least *some* chance of doing so." (Emphasis in original.) *Id.* "This quality in a judge demands, not that he have no preconceptions on legal issues, but that he be willing to consider views that oppose his preconceptions, and remain open to persuasion." *Id.* Although the Court did not decide whether such impartiality was a compelling state interest, it quickly dismissed any notion that the announce clause was actually designed to serve such an interest. *Id.* at 778-780. It explained that judges take any number of positions both before and after they are on the bench and that the announce clause covered such an "infinitesimal portion of the public commitments to legal positions" that it was implausible that this could be the object of the prohibition. *Id.* at 779.

{¶ 32} *White* makes clear that a state has a compelling state interest in protecting judicial impartiality under the "root meaning" of the term that encompasses "the lack of bias for or against either *party* to the proceeding." (Emphasis in original.) *Id.*, 536 U.S. at 775. There is no compelling state interest, however, in guaranteeing parties judges who have a "lack of predisposition regarding the relevant legal issues in a case." *Id.* at 777. And to the extent that the asserted state interest is one of judicial open-mindedness, we conclude, as the Supreme Court did in *White*, that that interest is not relevant here. Just as in *White*, the restriction in Jud.Cond.R. 3.2 encompasses only an "infinitesimal portion of the public commitments to legal positions" that a judge might undertake over the course of a career, *id.* at 779.

{¶ 33} In addition to establishing that judicial impartiality is a compelling state interest, disciplinary counsel also must establish that the restriction is narrowly tailored to serve that compelling interest. A content-based speech restriction is not narrowly tailored to achieve a compelling state interest unless it is the least restrictive means of achieving that interest. *O'Toole*, 2014-Ohio-4046, at ¶ 30. Disciplinary counsel must be able to show that Jud.Cond.R. 3.2 "does not

'unnecessarily circumscrib[e] protected expression.' " (Bracketed text in original.) *White* at 775, quoting *Brown v. Hartlage*, 456 U.S. 45, 54 (1982). He falls short.

{¶ 34} As in *White*, the restriction on testimony before a public body "is barely tailored to serve" the interest in preventing party bias "at all," *id.* at 776. In many respects, the restriction at issue here is equivalent to the restriction found unconstitutional in *White*: it too prevents a judge from taking a position on "disputed legal or political issues," *id.* at 768. The only difference is that Jud.Cond.R. 3.2's restriction applies only to public testimony and communications with government officials. But this narrowing does nothing to save the provision, because the narrowing has virtually no connection to the State's interest in protecting against party bias.

{¶ 35} The restriction sweeps in almost all public testimony, regardless of whether that testimony has anything to do with a case that is likely to come before the judge. This disciplinary proceeding highlights the overbreadth of the provision. Had H.B. 624 become law, there is virtually no possibility that Judge Grendell would have had a case involving the law—which concerned the reporting duties of local health officials and the Ohio Department of Health—come before him in his capacity as a probate- and juvenile-court judge. There is no reason, then, to think that Jud.Cond.R. 3.2 would have protected against party bias in Judge Grendell's situation or in a host of other applications.

{¶ 36} And Jud.Cond.R. 3.2 not only prohibits judges from voluntarily testifying before "an executive or a legislative body or official" unless the testimony relates to a few select topics; it also prohibits judges from "consult[ing] with" executives and legislators except about those same few topics. Under the provision, a judge could not share with a legislator his views on school funding, highway improvements, tax policy, or any number of important civic issues. It's hard to imagine that such restrictions do anything to advance the State's interest in ensuring against judges who are biased for or against a particular party.

{¶ 37} By sweeping in a wide variety of protected speech that has no relation to the State's compelling interest in protecting judicial impartiality, the restriction is vastly overinclusive. Disciplinary counsel seeks to partially address the overinclusivity problem by arguing that judges are free to "speak freely in support of or [in] opposition to legislative or executive interests in private" and "may also support or oppose such issues in public" if done in conformance with the Code, and that Jud.Cond.R. 3.2 will not chill speech because "[a] judge will have little difficulty determining when the judge speaks at a public hearing or consults with other government bodies and must paint within the lines drawn by Jud.Cond.R. 3.2." But none of that is clear from Jud.Cond.R. 3.2 itself. And disciplinary counsel's attempt to narrow the restriction highlights a related constitutional problem with Jud.Cond.R. 3.2—one of vagueness. Judges know and talk to executives and legislators. Sometimes they talk about current issues. How are judges supposed to know when their conversations go beyond merely talking about the issues and cross the line into "consult[ing]" about them? To avoid any disciplinary actions, many judges would probably choose to avoid these conversations altogether. The First Amendment disfavors rules that chill speech, *see O'Toole*, 2014-Ohio-4046, at ¶ 41-43, and it does not allow the Code of Judicial Conduct to chill judges into avoiding meaningful conversations about current issues with their elected representatives—and in Judge Grendell's case, his wife. *See Winter v. Wolnitzek*, 834 F.3d 681, 690 (6th Cir. 2016) (conduct code banning judicial candidates from making speeches for or against a political candidate or organization violated First Amendment because it prohibited them from speaking on "disputed legal and political subjects").

{¶ 38} Jud.Cond.R. 3.2 is also underinclusive—it makes exceptions for speech the prohibition of which would also further the interests that disciplinary counsel contends are compelling. "[U]nderinclusiveness can raise 'doubts about whether the government is in fact pursuing the interest it invokes, rather than

disfavoring a particular speaker or viewpoint.'" *Williams-Yulee*, 575 U.S. at 448, quoting *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, 802 (2011). Disciplinary counsel argues that a judge who testifies in favor of a bill will not be, or will appear not to be, impartial when adjudicating "a matter involving that bill." Disciplinary counsel does not explain what he means by "a matter involving [a] bill," but it seems evident that there are two possibilities. First, a case might come before the judge that challenges the constitutionality of a bill passed by the General Assembly. Second, a case could come before the judge when the judge is asked to apply legislation about which he or she has testified—for example, a judge who testifies about criminal-sentencing reform might be asked to apply a criminal-sentencing law.

{¶ 39} Jud.Cond.R. 3.2 is a poor fit for either situation. If the concern is about a judge having to apply a law about which he testified, why allow judges to testify in favor of a bill "concerning the law, the legal system, or the administration of justice"? Cases about laws that concern the law, the legal system, or the administration of justice are far more likely to arise in a judge's courtroom than cases about other types of laws, but the provision allows testimony about the former and not the latter. Under the provision, a juvenile-court judge could testify about a bindover law that the judge would be likely to administer every day but not about a tax law change that could never conceivably come to the judge's courtroom.

{¶ 40} The provision, in other words, has the effect of allowing judges to testify about laws that are the most likely to be implicated in a proceeding in a judge's courtroom but not about those that are much less likely to be implicated in a proceeding before the judge. So if the point of the provision is that a judge cannot be impartial in applying a law that the judge has testified about, the provision is vastly underinclusive.

{¶ 41} On the other hand, one might conclude that the purpose of the provision is to prevent a judge from testifying about legislation that the judge may

later be asked to assess the constitutionality of. The problem here is that the provision is not narrowly tailored to address such a concern.

{¶ 42} As an initial matter, it seems unlikely that such a problem could arise very often. The provision sweeps in all Ohio judges, and for most judges it would seem unlikely that most legislative bills would ever be subject to a challenge in their courtroom. And for those judges who are likely to hear such a challenge, there is a much more narrowly tailored means available to protect the State's interest in protecting against party bias—one that is already part of the Code of Judicial Conduct. Jud.Cond.R. 2.10(B) provides that "[a] judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office." Thus, to the extent that a judge's public testimony involves a matter that is likely to come in front of the judge, Jud.Cond.R. 2.10(B) prohibits the judge from making any pledge, promise, or commitment—in a legislative hearing or any other setting—that would be inconsistent with the impartial performance of the judge's duties.

{¶ 43} But that's not all. Jud.Cond.R. 2.11(A) requires a judge to recuse from a case when his "impartiality might reasonably be questioned." So if a judge's testimony might lead one to reasonably question a judge's impartiality in a case that actually comes before the judge, the judge is required to recuse. And if the judge refuses, a litigant can file an affidavit with the chief justice of this court requesting the judge's disqualification. *See, e.g.*, Ohio Const., art IV, § 5(C) ("The chief justice of the supreme court . . . shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof."); R.C. 2701.03 (creating a procedure for a party to ask the chief justice to disqualify a common-pleas-court judge); R.C. 2101.39 (same, for a probate-court judge). Subsequent recusal is a far less restrictive means than a broad-reaching, upfront prohibition. And recusal in such cases will not create the problem that the Court foresaw in

Williams-Yulee, where a "rule requiring recusal in every case in which a lawyer or litigant made a campaign contribution would disable many jurisdictions." *Williams-Yulee*, 575 U.S. at 435-436. To the contrary, it will be the rare case in which legislation (not "concerning the law, the legal system, or the administration of justice," Jud.Cond.R 3.2) about which a judge has testified ends up the subject of a challenge in the judge's courtroom. Put simply, Jud.Cond.R 3.2 is not the least restrictive means of achieving the State's interest in judicial impartiality.

{¶ 44} Because Jud.Cond.R. 3.2 is vague, overinclusive, underinclusive, and not narrowly tailored to serve the State's compelling interest in judicial impartiality, it cannot be justified on the basis of protecting the State's interest in an impartial judiciary.

{¶ 45} ***Public Confidence.*** Disciplinary counsel's second asserted compelling state interest is "public confidence in the independence, impartiality, integrity, and competence of judges."

{¶ 46} In *Williams-Yulee*, the United States Supreme Court found that Florida had a compelling state interest in protecting public confidence in the integrity and impartiality of the judiciary that could be protected by prohibiting judges and candidates from personally soliciting campaign funds. *Williams-Yulee*, 575 U.S. at 445-448. The Court noted that "'the spectacle of lawyers or potential litigants directly handing over money to judicial candidates' " could diminish public confidence in the impartiality of the judiciary. *Id.* at 447, quoting *In re Fadeley*, 310 Ore. 548, 565 (1990). Thus, it found a ban on direct judicial solicitations of campaign contributions to be "one of the rare cases in which a speech restriction withstands strict scrutiny." *Id.* at 444.

{¶ 47} Because "most donors are lawyers and litigants who may appear before the judge they are supporting," the *Williams-Yulee* Court explained, "it is the regrettable but unavoidable appearance that judges who personally ask for money may diminish their integrity." *Id.* at 434. This is because "a judge in deciding cases

may not follow the preferences of his supporters or provide any special consideration to his campaign donors." *Id.*

{¶ 48} The compelling state interest that the Supreme Court identified in *Williams-Yulee* is closely related to the one that the Court identified in *White*. In *White*, the Court identified a compelling state interest in protecting against judges who were actually biased for or against a party. In *Williams-Yulee*, the Court found a compelling state interest in protecting against the *appearance* of this same kind of impropriety—that is, protecting against the appearance of judges who were actually biased for or against a party.

{¶ 49} Here, disciplinary counsel does not make any argument of the sort advanced in *Williams-Yulee*. He simply asserts that "even if the judge could be impartial, litigants and members of the public could not have confidence in the impartiality of a judge who publicly supported or opposed legislation that later comes before that judge." He also contends that "this concern is by no means limited to that particular legislation the judge supported or opposed."

{¶ 50} In making these arguments, disciplinary counsel runs head first into contrary United States Supreme Court precedent. As the Court held in *White* in rejecting a similar argument, "since avoiding judicial preconceptions on legal issues is neither possible nor desirable, pretending otherwise by attempting to preserve the 'appearance' of that type of impartiality can hardly be a compelling state interest either," *White*, 536 U.S. at 778. Just as Jud.Cond.R. 3.2's restriction is not narrowly tailored to protect judicial impartiality, it is not narrowly tailored to protect the *appearance* of that impartiality. Disciplinary counsel cannot meet "the narrow tailoring of strict scrutiny . . . by deploying an elusive and overly-broad interest in avoiding the 'appearance of impropriety,'" *Jenevein*, 493 F.3d at 560. Further, all the over- and underinclusivity and vagueness problems we have already identified apply equally to the asserted "appearance" state interest. Thus, Jud.Cond.R. 3.2

cannot be justified on the basis of protecting the State's interest in maintaining public confidence in an impartial judiciary.

{¶ 51} ***Separation of powers.*** That brings us to the third compelling state interest asserted by disciplinary counsel: protecting the separation of powers. We note at the outset that the United States Supreme Court has never recognized protecting the separation of powers as the type of compelling state interest that could justify a restriction on speech.

{¶ 52} Indeed, it seems odd to even suggest that such an interest is one that could justify a speech restriction. The separation of powers is protected by the structural design of our Constitution, under which Ohioans have delegated the legislative power to the General Assembly, the executive power to various executive officers, and the judicial power to the courts. *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, ¶ 30. By constitutional design, "[e]ach branch of government 'can exercise such power, and such only, as falls within the scope of the express delegation.'" *Id.* at ¶ 32, quoting *Scovill v. Cleveland*, 1 Ohio St. 126, 134 (1853). Fundamentally, the separation of powers is about prohibiting government officials of one branch from exercising the powers of another branch.

{¶ 53} But by its nature, a speech restriction doesn't protect against one branch of government *exercising the power* of another. Rather, it limits communications between the branches of government. It is a strange notion that the State would have a compelling interest that would justify limiting a right explicitly guaranteed by our Constitution (free speech) in the name of maintaining the structural guarantees implicit in the same Constitution.

{¶ 54} Indeed, our system of separation of powers depends on communication between and healthy debate among the branches of government. Presidents and governors lobby the legislature. Legislatures criticize and investigate the executive branch. Judges have regular communications with

prosecutors and other executive-branch attorneys who appear in their courtrooms. And judicial opinions often serve as a form of communication with the other branches of government.

{¶ 55} In arguing that the separation of powers presents a compelling state interest that can justify a speech restriction, disciplinary counsel insists that "[t]he judiciary . . . cannot assert any control over the '"performance of duties that are purely legislative in character and over which such legislative bodies have exclusive control."'" Disciplinary counsel's answer brief at 4, quoting *Toledo v. State*, 2018-Ohio-2358, ¶ 27, quoting *State ex rel. Grendell v. Davidson*, 1999-Ohio-130, ¶ 15. That's true. But speech by itself is not an exercise of power. A judge who voluntarily testifies before a legislative committee is asserting no more control over the General Assembly than the attorney general asserts over this court when he files an amicus brief. There are simply no separation-of-powers concerns in this case.

{¶ 56} The only authority disciplinary counsel cites for the proposition that the separation of powers is a compelling state interest in the context of a speech restriction is a decision from the Arkansas Supreme Court. *See Griffen v. Arkansas Judicial Discipline & Disability Comm.*, 355 Ark. 38, 51 (2003). And notably, that court concluded that the Arkansas rule at issue, which contained a prohibition on legislative testimony similar to the one in Jud.Cond.R. 3.2,[3] failed strict scrutiny. *See id.* at 60. We do not find the Arkansas Supreme Court's decision persuasive on the question of whether separation of powers is a compelling state interest that can justify a restriction on speech.

3. The Arkansas provision at issue in *Griffen* provided: "A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests." *Griffen* at 45, citing Arkansas Code of Judicial Conduct, Canon 4(C)(1).

{¶ 57} We conclude that Jud.Cond.R. 3.2 is not narrowly tailored to further the first two compelling state interests advanced by disciplinary counsel. We also conclude that the third asserted compelling state interest—protecting the separation of powers—is not the sort of state interest that can be used to justify a restriction on speech.

{¶ 58} Because Jud.Cond.R. 3.2 cannot survive strict scrutiny, we decline to enforce it in this case. Our decision today, however, does not mean that we endorse testimony by judges at public hearings on matters not connected with their judicial roles. There are good reasons why judges should tread with caution before embroiling themselves in the day-to-day workings of the state legislature. But whether we may discipline someone for engaging in constitutionally protected conduct is a far different question than whether such conduct is a good idea.

II. COUNT 3: THE TEA PARTY EVENT

{¶ 59} The board concluded that Judge Grendell committed multiple disciplinary violations related to a presentation that he made at a Geauga County Tea Party meeting and to actions he took leading up to and after the meeting.

A. Facts

{¶ 60} By June of 2019, there was a long-running feud between Judge Grendell and Geauga County Auditor Charles Walder.

{¶ 61} Walder became the county auditor in April 2018. As auditor, it is his duty to maintain the county treasury and to disburse funds when a county entity makes a purchase. R.C. 319.16. So when Judge Grendell's court buys something, it submits evidence of that purchase to Walder and Walder pays the bill from the county treasury. Before Walder became auditor, this process was simple and uneventful. But Walder determined that the processes in place were inadequate to protect the county treasury, so he implemented additional procedures shortly after he took office. Walder began requiring more evidence of the court's purchases before he would pay than the court had previously provided. And he demanded

that all communication between the court and his office go through his chief compliance officer.

{¶ 62} These new procedures created friction between the court and the auditor. They created delays in payment that led to several incidents, including Walder kicking court staff out of the public area of his office, Walder filing allegations of falsifying documents against court staff, Walder and Judge Grendell sending strongly worded letters to each other, and Judge Grendell requesting a legal opinion from the county prosecutor, who in turn requested an opinion from the attorney general. Things got bad enough that Judge Grendell filed a mandamus action against the auditor for his refusal to pay the court's bills. We ultimately granted him a writ of mandamus and ordered Walder to pay the contested bills. *State ex rel. Grendell v. Walder*, 2022-Ohio-204, ¶ 70.

{¶ 63} The delays persisted and the probate court found them unacceptable—so rather than wait for Walder to mail checks to vendors, Judge Grendell asked him to give the checks to court staff so that they could send them to the vendors. That made a new process for the court: it would submit evidence of purchases to the auditor, the auditor would approve the purchases and write checks to pay for them, court staff would go to the auditor's office to review the documentation related to the checks (purchase orders, invoices, etc.) and sign for and pick up the checks, and then court staff would send the checks to the vendors. But the friction continued, and further incidents followed.

{¶ 64} The worst of the incidents occurred on June 27, 2019. That morning, court staff Kim Laurie and Seth Miller went to the public portion of the auditor's office to ask about a vendor who had not yet been paid.[4] When they arrived, auditor staff provided Laurie and Miller with a stack of documents to review so that they could sign for and take several checks to send to vendors. While they reviewed the

4. The court and the auditor's office are in the same building. So the June 27 incident took place both inside of and just outside of that building.

materials and began signing, Walder's administrative assistant emerged from the back of the office and told Laurie and Miller that they needed to leave because they were causing a disturbance. Confused, Laurie asked if Miller could finish reviewing the documents and signing for the checks. The administrative assistant told them no. According to Laurie, she then asked if they could take the documents back to their office to finish reviewing and signing them and the administrative assistant said yes. Miller later said that to diffuse the awkward situation, as he and Laurie left, he joked, "Well, maybe we won't bring them back."

{¶ 65} Laurie and Miller returned to their offices. Miller continued to review the materials from the auditor and sign for the checks. As he reviewed and signed, Officer Bernakis of the Chardon City Police Department entered Laurie's office and asked her if she had stolen documents from the auditor. One of the auditor's staff had called the police and reported the documents stolen by Laurie and Miller. Shocked, Laurie explained what had happened, and she took Officer Bernakis to Miller's office. Miller had nearly finished reviewing and signing, and the three of them then went into the courtroom to explain the situation to Judge Grendell and to ask him what to do. He told Miller to finish reviewing and signing the documents and then return them. Miller finished, and Officer Bernakis escorted him back to the auditor's office to return the documents. Laurie followed them shortly after.

{¶ 66} After they returned the documents, Laurie, Miller, and Officer Bernakis spoke outside on the sidewalk, where they were later joined by Chardon Police Lieutenant Troy Duncan. Lt. Duncan told Laurie and Miller to go back to their offices while he went to a meeting in the auditor's office to figure out what was going on between the auditor and the court, and that he would come back and talk to them afterwards. So they did.

{¶ 67} At the meeting were Lt. Duncan, Sheriff Scott Hildenbrand, Walder, and Walder's administrative assistant. They discussed the incidents that had

occurred between the court and the auditor's office over the prior several months, as well as the events from that day. Lt. Duncan and Sheriff Hildenbrand expressed skepticism about criminal charges being warranted, so they suggested inviting county prosecutor Jim Flaiz to get his opinion on the situation. Flaiz joined the meeting and advised Walder that any criminal charges would be misdemeanors that would need to be handled by the police prosecutor, Jim Gillette. Flaiz also opined that the auditor had the authority to exclude people from his office. They adjourned the meeting with a plan: Walder would write a letter to Judge Grendell telling him that his staff were not welcome in the auditor's office and would be considered trespassers if they came in, and Lt. Duncan would write a report about that day's incidents to give to Gillette for review.

{¶ 68} After leaving the meeting, Lt. Duncan returned to Laurie's and Miller's offices to update them. As he arrived, he received a call over his radio that Laurie and Miller were in the auditor's office. They had returned to turn in a few more signed purchase orders before the close of day. As Laurie and Miller entered the auditor's office, the auditor's staff retreated to the back and ignored them. Laurie and Miller stayed, perplexed, for a few moments, and just as they decided to leave, Lt. Duncan walked in. The three of them left the office and returned to the sidewalk where they had spoken earlier. They calmly discussed the situation for several minutes until Judge Grendell came outside, still wearing his robe. According to Lt. Duncan, the discussion with Judge Grendell was pleasant until he told Judge Grendell that Laurie and Miller would face trespass charges if they entered the auditor's office. At that point, Judge Grendell became understandably upset. According to Lt. Duncan, Judge Grendell said they can't do that, and yelled that if he needed to, he would issue a court order that allowed Laurie and Miller to enter the auditor's office to conduct court business and anyone who interfered with that order could be held in contempt—including law-enforcement officers. According to Laurie and Miller, Judge Grendell did not raise his voice; he was just

direct. After Judge Grendell made his point, he, Laurie, and Miller went back to their offices.

{¶ 69} Later that day, Judge Grendell went to the Chardon police station to talk to Chief of Police William Niehus. They had a direct conversation about what had happened that day and how things would move forward. Judge Grendell explained that his staff had a right to be in the public space in the auditor's office to conduct court business and that he would be entering an order that says so. And as he puts it, he expressed concern that if a police officer were to arrest court staff "for doing public business in a public place," the department could open itself up to liability under 42 U.S.C. 1983. After that short conversation, Judge Grendell left.

{¶ 70} That same day, Judge Grendell called Gillette—the police prosecutor who would handle any misdemeanor charges against Laurie and Miller. He explained everything that had happened. He specifically mentioned that he was going to put on an order making clear that his staff could conduct court business in the auditor's public office and that he was concerned that Chardon police officers would expose themselves to a § 1983 action if they falsely arrested Laurie or Miller. Gillette was not concerned. The call ended after two or three minutes.

{¶ 71} Several letters followed. To start, Walder sent Judge Grendell the letter that he had told the sheriff and the county prosecutor he would send. It informed Judge Grendell that Laurie and Miller were not permitted to enter the auditor's office and would face criminal trespassing charges if they did so. Judge Grendell responded with a letter to Walder that again explained his intended order and the consequences of violating the order. He also lamented that Walder's actions "may result in unnecessary federal litigation at county taxpayers' expense." Judge Grendell also sent a letter to Lt. Duncan. In that letter, Judge Grendell said that he apologized if Lt. Duncan "mistook [Judge Grendell's] explanation of the procedures [he] was going to take to assure that [his] Court personnel could still

conduct statutorily required official court business in a public area within a public office as a threat." He explained that his only intention had been to describe what processes he would need to take to "assure that the Court [could] provide vital services." Regardless, Judge Grendell asked Lt. Duncan to "please accept [his] apology if [he] offended [him] during [their] conversation."

{¶ 72} The fallout from the June 27 incident was not over. A local newspaper—the Geauga County Maple Leaf—picked up the story on July 11. It described the June 27 incident from multiple perspectives, including an unattributed account of the incident stating that Judge Grendell "angrily threatened Chardon Police Lt. Troy Duncan with arrest." It also obtained a video of the incident and shared an altered version of it online, splicing together different videos into one continuous stream and adding captions that were not on the original video. The Geauga County Tea Party took interest in the incident and invited Judge Grendell and Walder to a meeting to discuss what had happened that day. Judge Grendell accepted the invitation, but Walder declined, explaining that he was unsure about the status of a possible investigation into the incident.

{¶ 73} Judge Grendell opened his remarks at the Tea Party meeting by expressing regret that Walder had not accepted the invitation to attend. He said that he found Walder's explanation for declining questionable considering that Walder himself was not being investigated, and then he suggested that Walder would not be investigated "because he's protected by his buddy the county prosecutor." He then provided his perspective on the tension between his court and the auditor's office since Walder took office. And he walked through the events of June 27 step by step. He defended his actions along the way, explaining that his only intent was to allow his court staff to continue to do the court's work in public spaces. Toward the end of his remarks, he took a few questions. Audience members asked Judge Grendell what could be done about the "misfeasance" by the auditor. Judge Grendell explained that as the probate-court judge, he could file a mandamus action

to compel the auditor to perform his legal duty to pay the probate court's bills, but that he did not intend to do so, because that would just amplify an already politically charged fight between county entities. When pressed by the audience about what they could do, he simply told them that the supporting documentation of the events he had discussed was available to them and that there are actions that they could take, but that he was "just [there] just to tell [them] the facts." Judge Grendell concluded by presenting the video that the Maple Leaf had shared online. Before showing it, he described the alterations that had been made to it—that it contained several extended pauses and captions, neither of which were part of the original. He attributed these alterations to the auditor's office, saying that it had "doctored" the video.

{¶ 74} After the Tea Party meeting, Judge Grendell contacted Gillette and Chief Niehus once more each. Judge Grendell had heard a rumor that a special prosecutor had been appointed to investigate the June 27 incident sometime in late summer. According to Gillette, he had determined that no criminal charges were appropriate because he considered it an "internal political dispute." Flaiz, however, who had a contentious relationship with Judge Grendell, pushed for a special prosecutor. Gillette ultimately acquiesced, believing that any experienced prosecutor would conclude that no charges were warranted.

{¶ 75} Judge Grendell asked a friend to reach out to Gillette to see if a special prosecutor had been appointed. Gillette called Judge Grendell and left him a voicemail telling him that his office would not be taking any action against any employees of either the court or the auditor and characterizing the incident as a "closed investigation" in the police prosecutor's office. But he mentioned that Flaiz had requested that a special prosecutor be appointed to investigate the incident. After receiving this voicemail, Judge Grendell approached Chief Niehus at a fundraiser for the Chardon Rotary Club. He asked Chief Niehus whether a special prosecutor had been appointed to investigate the incident. When Chief Niehus told

him that Flaiz had appointed a special prosecutor, Judge Grendell simply walked away.

{¶ 76} The board determined that Judge Grendell, through his actions before and after the Tea Party meeting and by his public comments at the meeting, committed multiple violations of Jud.Cond.R. 1.2 and 1.3. Jud.Cond.R. 1.2 requires a judge to act "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." Jud.Cond.R. 1.3 prohibits a judge from "abus[ing] the prestige of judicial office to advance the personal or economic interests of [himself] or others." The board also found that Judge Grendell, through his remarks at the Tea Party meeting, violated Jud.Cond.R. 2.10(A)'s prohibition on statements that might interfere with a fair trial or hearing.

B. Objections

{¶ 77} Judge Grendell objects to the board's findings and recommendations regarding his remarks at the Geauga County Tea Party meeting and all the incidents before and after the meeting. With respect to the meeting, Judge Grendell argues that his remarks did not violate Jud.Cond.R. 1.2, 1.3, or 2.10(A) and that, regardless, imposing a disciplinary sanction would be unconstitutional as applied to those remarks.[5] And with respect to the other incidents, he argues that he didn't violate Jud.Cond.R. 1.2 or 1.3. The Tea Party meeting was the main event, so we will start our analysis there.

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5. The board did not consider any of Judge Grendell's constitutional arguments, "deeming them to be within the exclusive purview of the Supreme Court." Such forbearance was appropriate as to Judge Grendell's facial constitutional challenge to Jud.Cond.R. 3.2's prohibition on public testimony and consultation with executive- or legislative-branch officials. Because we promulgated the Code of Judicial Conduct, it is appropriate for us to consider in the first instance a facial challenge to a rule. But the board should have considered Judge Grendell's as-applied constitutional challenge relating to the Tea Party meeting. The Code of Judicial Conduct makes clear that its rules are "rules of reason that should be applied consistent with constitutional requirements." Jud.Cond.R., Scope [5]. And both the board and disciplinary counsel are bound to follow the state and federal Constitutions.

1. Imposing a disciplinary sanction on Judge Grendell for his remarks at the Tea Party meeting would violate his right to free speech

{¶ 78} Judge Grendell brings an as-applied challenge to the board's recommended sanctions for his comments at the Tea Party meeting. That means that he is not arguing that Jud.Cond.R. 1.2, 1.3, and 2.10(A) should be struck down as unconstitutional. Instead, he is arguing that the board's recommended sanctions would be unconstitutional as applied to his particular conduct here. In other words, he says that it would be unconstitutional to punish him under Jud.Cond.R. 1.2, 1.3, and 2.10(A) for his remarks at the Tea Party meeting. Relevant here, the Code of Judicial Conduct itself provides that its rules "are rules of reason that should be applied consistent with constitutional requirements." Jud.Cond.R., Scope [5].

{¶ 79} Jud.Cond.R. 1.2, 1.3, and 2.10(A) are very broad. Because our resolution of Judge Grendell's as-applied challenge does not affect the general validity of the rules, we proceed directly to that challenge. And again, because the briefing in this case focuses on the First Amendment and the First Amendment is determinative, we begin and end our constitutional analysis with that provision.

{¶ 80} The First Amendment protects the "freedom of speech." U.S. Const., amend. I. At the very core of the First Amendment's protection is political speech: speech about "'candidates [for public office], structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.'" *Hartlage*, 456 U.S. at 52-53, quoting *Mills v. Alabama*, 384 U.S. 214, 218-219 (1966). Because political speech is core First Amendment speech, restrictions that "burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United v. Fed. Election Comm.*, 558 U.S. 310, 340 (2010), quoting *Fed. Election Comm. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 464 (2007) (Roberts, C.J., separate opinion).

{¶ 81} There is no question that disciplinary counsel is seeking to punish Judge Grendell for core political speech: when it comes to the charges related to the Tea Party meeting, "this case involves punishment of pure speech in the political forum," *Gentile*, 501 U.S. at 1034. The Geauga County Tea Party invited both Judge Grendell and Walder to discuss the June 27 incident shortly after it was reported in the Geauga County Maple Leaf. Put simply, a group of civic-minded voters read in a local newspaper about a public dispute that involved multiple county elected officials and local law enforcement and invited the two main elected officials involved in the dispute to come explain themselves before a meeting of their political party. In a healthy act of democracy, engaged voters of Geauga County asked Judge Grendell to come speak with them in an inherently political context.

{¶ 82} Not only was the context of the meeting political. The content of Judge Grendell's remarks concerned "'the manner in which government is operated or should be operated, and . . . matters relating to political processes,'" *Hartlage* at 53, quoting *Mills* at 218-219. He discussed the relationship between his court and the auditor's office, their duties, how those duties were being carried out, and the friction between him and Walder and their respective staffs. He presented his version of the facts of the June 27 incident and his intentions behind his actions during and after the incident. And he explained what legal action he could (but would not) take—file a mandamus action against the auditor—and what actions the citizens attending the meeting could take. Because Judge Grendell's remarks at the Tea Party meeting were about the operations and processes of local government given in a political context, they are entitled to the strongest First Amendment protection. To put it simply, disciplinary counsel seeks to regulate speech in "an area in which the importance of First Amendment protections is 'at its zenith,'" *Meyer v. Grant*, 486 U.S. 414, 425 (1988), quoting *Grant v. Meyer*, 828 F.2d 1446, 1457 (10th Cir. 1987).

{¶ 83} Because Judge Grendell's remarks were core political speech, the government may only punish him for those remarks if it satisfies strict scrutiny. In other words, the government must justify its speech restriction with a compelling state interest and then must show that its application of the restriction in this case is narrowly tailored to serve that interest. *See, e.g.*, *TikTok, Inc. v. Garland*, 604 U.S. 56, 67-72 (2025) (holding that, as applied to the challengers, the government sufficiently justified its speech restriction and showed that the restriction was sufficiently tailored to the justification); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 25-40 (2010) (same); *Fed. Election Comm. v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 256-263 (1986) (holding that the government did not sufficiently justify its restriction on the challenger's speech because its interest in applying the restriction against the challenger was not a compelling interest).

{¶ 84} The board did not explain exactly how Judge Grendell violated Jud.Cond.R. 1.2, 1.3, and 2.10(A). It just summarily recommended sanctions after it found Judge Grendell's remarks at the Tea Party meeting "baseless and disparaging," "reckless and untrue," "biased," and "filled with inaccuracies and half-truths." Essentially, it appears that the board recommended punishing him because it found his remarks erroneous and misleading. But we cannot punish Judge Grendell for that reason.

{¶ 85} If a speaker does not knowingly lie or have reckless disregard as to whether what he is saying is true, his speech is protected by the First Amendment—even if it is erroneous or misleading. We recognized that in *O'Toole* when we held that a rule in the Ohio Code of Judicial Conduct violated the First Amendment by prohibiting a judicial candidate from saying things that were true but might be misleading. *O'Toole*, 2014-Ohio-4046, at ¶ 2, 42. That rule chilled an unjustifiable amount of protected speech—speech such as "innocent misstatements or . . . honest, truthful statements made in good faith but that could deceive some listeners." *Id.* at ¶ 42. That sort of speech is protected because "'erroneous statement[s are]

inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the "breathing space" they "need . . . to survive."'" (Second ellipsis in original.) *Hartlage*, 456 U.S. at 60, quoting *New York Times*, 376 U.S. at 271-272, quoting *Natl. Assn. for Advancement of Colored People v. Button*, 371 U.S. 415, 433 (1963). It is not uncommon for elected officials to mistakenly say something inaccurate or misleading. When they do, their opponents, journalists, and citizens are usually quick to point it out. That is the preferred First Amendment remedy: "more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

{¶ 86} Other than the board's conclusory statements in a single paragraph, neither it nor disciplinary counsel point to any evidence or provide any argument that Judge Grendell knowingly or recklessly misled the attendees of the Tea Party meeting. From what we can tell from the record, Judge Grendell simply gave his side of the story regarding the June 27 incident with the knowledge that was available to him at the time. Even if what he said was misleading, without more, he cannot constitutionally be punished for it.

{¶ 87} Perhaps recognizing that Judge Grendell cannot be punished for misleading political speech, disciplinary counsel takes a different approach. Rather than justify Jud.Cond.R. 1.2, 1.3, and 2.10(A) with a compelling state interest and arguing that the recommended sanctions are narrowly tailored to serve that interest, disciplinary counsel says that Judge Grendell "appears to contend that there must be an exception to discipline for the statements he made at a Tea Party meeting" and argues that Judge Grendell "has no categorical First Amendment right to freedom from discipline for statements if he simply casts them as opinion and makes them in public." Whether or not that argument is right, it was disciplinary counsel's burden to satisfy strict scrutiny in the face of Judge Grendell's as-applied First Amendment challenge.

{¶ 88} Disciplinary counsel did not meet his burden. He neither sets forth a compelling state interest to justify the speech restriction nor explains how restricting Judge Grendell's speech at the Tea Party meeting is tailored to meet that interest. Because he has not demonstrated a compelling interest or narrow tailoring in this case, he did not satisfy strict scrutiny.

{¶ 89} "'"[T]here is practically universal agreement that a major purpose of" the First Amendment "was to protect the free discussion of governmental affairs."'" *Arizona Free Ent. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 755 (2011), quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976), quoting *Mills*, 384 U.S. at 218. For this reason, restrictions that "inhibit robust and wide-open political debate without sufficient justification cannot stand." *Id.* "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison*, 379 U.S. at 74-75. Judge Grendell's as-applied challenge succeeds; we will not punish him for his remarks at the Tea Party meeting.

2. Disciplinary counsel has not established that a violation of Jud.Cond.R. 1.2 or 1.3 occurred before or after the Tea Party meeting

{¶ 90} The board also found rule violations for Judge Grendell's conduct before and after the Tea Party meeting. The board determined that Judge Grendell violated Jud.Cond.R. 1.2 seven times and Jud.Cond.R. 1.3 five times. Jud.Cond.R. 1.2 says 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." And 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, or allow[ing] others to do so."

{¶ 91} Start with Jud.Cond.R. 1.3. The board found that in the run up to the Tea Party meeting, Judge Grendell "abuse[d] the prestige of judicial office to advance the personal or economic interests of" Laurie and Miller in violation of Jud.Cond.R. 1.3 three times: (1) when he approached Lt. Duncan outside, in his

robe, and told him that he was going to put on an order saying that Laurie and Miller could enter the public auditor's office to do court business and that anyone who interfered with that order would be held in contempt; (2) when he visited Chief Niehus to explain his intended order and express concern about possible § 1983 liability if law-enforcement officers interfered with Laurie and Miller carrying out the court's business; and (3) when he called Police Prosecutor Gillette to do the same. The board found that after the Tea Party meeting, Judge Grendell violated Jud.Cond.R. 1.3 two more times: (4) when he reached out to Gillette to ask whether a special prosecutor had been appointed to investigate the June 27 incident; and (5) when he asked Chief Niehus the same at a rotary-club fundraiser. The board concluded that in each instance, he was throwing the weight of his judicial office around to influence a possible investigation into his staff. But the record indicates that he was not acting to advance the *personal or economic interests* of himself or others. Rather, he was acting in what he perceived to be the interests of the probate court.

{¶ 92} Recall what happened. Judge Grendell did not himself get involved in the June 27 incident until his staff was engaged with Lt. Duncan, who was explaining to them the possibility of criminal trespass charges against them if they again entered the auditor's office. And while the volume of his voice is in dispute, the content of what he said is not: Judge Grendell suggested that he would have to enter an administrative order saying that his staff was allowed to enter the public area of the auditor's office to do the court's business if the auditor tried to bar them from entering, and anyone violating that order would be in contempt of court. He then explained the intended order to Gillette and Chief Niehus. And he informed them about the police department's potential § 1983 liability to his staff if their right to conduct court business in public was wrongfully interfered with. Much later, he asked Gillette and Chief Niehus whether a special prosecutor had been appointed to investigate the June 27 incident, got simple answers from them, and left it at that

without further conversation. There is no indication that Judge Grendell was furthering any interest other than the court's interest in doing court business.

{¶ 93} The board's contrary conclusions were abrupt and made with little to no analysis. Again, Jud.Cond.R. 1.3 prohibits a judge from abusing the prestige of his office "to advance the *personal or economic* interests of the judge or others." (Emphasis added.) In each instance, the board concluded with little more than a single sentence that Judge Grendell's actions were driven by a desire to intimidate various law-enforcement officers and derail a possible investigation into his staff. *See* Board Report at ¶ 211 ("[Judge Grendell's] threats to use his contempt powers in an effort to intimidate Duncan and the Chardon police department from investigating potential criminal charges against [his] employees was . . . [a] violation of Jud.Cond.R. 1.3."); *id.* at ¶ 214 ("[Judge Grendell's] actions were for the intended purpose of squelching the police department's investigation of potential criminal charges against Laurie and Miller"); *id.* at ¶ 216 ("[Judge Grendell's] unprecedented visit to the Chardon police department and his threats to Chief Niehus regarding contempt charges against anyone who interfered with his order, and a potential federal lawsuit against the police department, violated . . . Jud.Cond.R. . . . 1.3"); *id.* at ¶ 217 ("[Judge Grendell's] contact with Gillette . . . violated Jud.Cond.R. . . . 1.3."); *id.* at ¶ 240 ("[Judge Grendell's] inquiries of Gillette and Niehus violated Jud.Cond.R[.] . . . 1.3"). Other than simply saying so, neither the board nor disciplinary counsel explain how Judge Grendell's actions show that he was using his judicial office to advance the interests of Laurie and Miller, rather than the interests of the court.

{¶ 94} When Judge Grendell was explaining his intended order and the potential for a § 1983 action to Chief Niehus, Gillette, and Lt. Duncan, he was doing so because of the threat of future criminal trespassing charges against his staff if they entered the auditor's public office—a threat that would prevent them from carrying out court business. The record does not indicate that Judge Grendell was

aware of any pending or impending charges against Laurie and Miller for conduct stemming directly from the June 27 incident at the time. So he could not have been acting to derail any such investigation. And there is no indication that Judge Grendell was furthering any interest at all when he subsequently asked Chief Niehus and Gillette whether a special prosecutor had been appointed. He merely asked a question and received an answer. Neither the Board Report nor disciplinary counsel offer any explanation as to how that violates Jud.Cond.R. 1.3—they just say that it does. We disagree. Asking a question, receiving an answer, and then disengaging generally doesn't further any interest other than simply gaining information.

{¶ 95} All this to say: disciplinary counsel has not established by clear and convincing evidence that Judge Grendell violated Jud.Cond.R. 1.3 by "abus[ing] the prestige of judicial office to advance the personal or economic interests of" Laurie and Miller before or after the Tea Party meeting.

{¶ 96} The same goes for Jud.Cond.R. 1.2. The board found that in the time before the Tea Party meeting, Judge Grendell violated Jud.Cond.R. 1.2—which requires judges to "act at all times in a manner that promotes the public confidence in the independence, integrity, and impartiality of the judiciary, and . . . avoid impropriety and the appearance of impropriety"—five times: (1) when he explained to Lt. Duncan his intended order and the consequences if anyone violated it; (2) when he explained the order and potential § 1983 liability to Chief Niehus; (3) when he did the same to Gillette; (4) when he sent his letter to Walder; and (5) when he sent his apology letter to Lt. Duncan. The board found that after the Tea Party meeting, Judge Grendell violated Jud.Cond.R. 1.2 twice more: (6) when he asked Gillette about the special prosecutor and (7) when he asked Chief Niehus about the special prosecutor. In each instance, the board concluded that Judge Grendell failed to avoid impropriety or the appearance of impropriety. But the record does not support those conclusions.

{¶ 97} The board's legal findings of rule violations were again conclusory and made with little analysis. It seems to have focused on Judge Grendell's explanations of his intended order and of potential § 1983 liability, repeatedly characterizing them as "threats" to various law-enforcement officials. To be sure, Judge Grendell can be faulted for embroiling himself in a messy political dispute with Walder. But we are hard-pressed to find that his actions constituted violations of Jud.Cond.R. 1.2. To start, there is nothing in the record that suggests that Judge Grendell's intended order would be improper. The court had business to do in the auditor's public office, and disciplinary counsel does not argue that it would be wrong for Judge Grendell to put on an order saying that court staff could conduct court business in a public place. Further, being held in contempt of court is a well-known consequence of violating a court order. Judges don't "threaten" people when they inform them that violating a court order would constitute contempt of court.

{¶ 98} With respect to a potential § 1983 action, Judge Grendell had no threat to make. Any possible § 1983 liability would arise from the violation of Laurie's and Miller's rights, not Judge Grendell's. If anybody could have made a threat of a future § 1983 action, it would have been Laurie or Miller. And finally, neither the Board Report nor disciplinary counsel explain what was improper about Judge Grendell merely asking Gillette and Chief Niehus whether a special prosecutor had been appointed. For all these reasons, disciplinary counsel failed to establish that Judge Grendell's actions constituted violations of Jud.Cond.R. 1.2.

{¶ 99} These conclusions do not mean that we condone Judge Grendell's actions following the June 27 incident. There are many things that he could have done differently. Even (and perhaps especially) when conducting court business, judges must be aware of how their actions are perceived publicly and privately. But we are not deciding whether Judge Grendell acted perfectly here. We are deciding whether disciplinary counsel has established by clear and convincing evidence that

Judge Grendell violated the Code of Judicial Conduct. We conclude that he has not.

III. COUNT 1: THE GLASIER MATTER

{¶ 100} The Glasier matter arose out of a highly contentious child-custody case that Judge Grendell agreed to accept from the domestic-relations court. The underlying issue was that three teenage children refused to see their father, despite an agreed judgment entry that provided for reunification of the children and their father. After unsuccessfully trying to achieve reunification through therapeutic counseling, Judge Grendell ordered two of the children to attend visitation with their father. When they refused to attend, Judge Grendell ordered that they be held in juvenile detention over a weekend. The board concluded that Judge Grendell committed a variety of disciplinary violations in his handling of the matter.

{¶ 101} Judge Grendell has raised various objections to the board's findings and legal conclusions, and we sustain in part and reject in part his objections. The board in large part premised its findings on its disagreement with Judge Grendell's interpretation and application of the law and with his discretionary decisions. But as we will explain, the ordinary remedy for a legal error committed by a judge is an appeal, not discipline. A legal error or an abuse of a judge's discretion is not by itself a sufficient basis for discipline; rather, to rise to the level of a disciplinary violation, there must be a showing that the judge willfully failed to follow the law. Thus, we sustain several of Judge Grendell's objections to the board's findings and legal conclusions. We conclude, however, that Judge Grendell did violate the Code of Judicial Conduct and sustain in part the board's conclusion that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11.

A. Facts

{¶ 102} The facts of the Glasier matter are complicated. They arise out of Judge Grendell's decision to accept the transfer of an extremely difficult child-custody matter from the domestic-relations court. The board's findings of

disciplinary violations center on its conclusion that on May 29, 2020, Judge Grendell improperly ordered two boys held in a juvenile detention center for refusing to attend visitation with their father. But it also found that he committed disciplinary violations (1) at a May 27, 2020 hearing in which he ordered the boys to attend visitation with their father, (2) at a June 1 proceeding that was held after the boys were released from the detention center, (3) through his handling of various matters in the case relating to diversion and unruly charges against the boys between June 1 and June 30, and (4) in connection with a GoFundMe web page that had been established to assist the boys' mother.

1. Background: Judge Grendell accepts a difficult case from the domestic-relations court

{¶ 103} Judge Grendell had never received a case from the domestic-relations court. One day in 2019, that changed. Domestic-relations-court judge Carolyn Paschke emailed Judge Grendell to ask if he would consider accepting the transfer of a "heavily contested" domestic-relations case that had been in the domestic-relations court since 2015. She explained that a clinical psychologist, Dr. Farshid Afsarifard, had "conducted a custody evaluation and found parental alienation." And while one year earlier the parties had entered into an agreed entry (the "Agreed Entry") intended to reunite the children with their father, the court had been unable to enforce the Agreed Entry because the "3 children [were] refusing to see their father or Skype with him." As a result, the father had been denied contact with his children. She implored Judge Grendell:

> We are out of resources and authority on this one. The fact that Dr. Afsarifard found parental alienation and dad has not been restored to any type of meaningful contact with the children is both alarming and disappointing. I was thinking that perhaps in Juvenile Court you might have the authority to require the children to meet

> with their father in a safe, therapeutic setting and further you might have the resources in place to reunify the father with the children in some meaningful way.

Judge Grendell agreed to accept the case. He later described it as one of the most difficult cases he ever presided over.

{¶ 104} The case that Judge Grendell agreed to accept involved Stacy Hartman and Grant Glasier, who had divorced in Florida in 2010. They had three minor children—a daughter born in 2003, a son born in 2004, and a son born in 2006. Under their 2010 judgment of dissolution of their marriage, Hartman was awarded primary custody of the children and Glasier had visitation rights. Hartman and the children subsequently moved to Ohio, and later, in an effort to have more time with his children, Glasier moved to Ohio as well.

{¶ 105} But in February 2017, an incident occurred that led the children to refuse to see Glasier. The Agreed Entry, which was entered into in August 2018, was designed to reunify the children with their father. Hartman and Glasier agreed that the children would begin reunification efforts with their father through a process that included individual counseling for Glasier and family counseling for Glasier and the children. The parties further agreed that "the ultimate goal through counseling is to implement the Court's standard parenting guidelines, at a minimum, with more to be allowed with recommendation by family counselor, parents and children." The Agreed Entry established "a goal of standard parenting being implemented within 180 days or as soon as determined by the family counselor."

{¶ 106} When Judge Paschke asked for Judge Grendell's help in 2019, the boys had not attended visitation with Glasier for a year and a half, despite the Agreed Entry. After agreeing to accept the case, Judge Grendell reviewed the report from the clinical psychologist, Dr. Afsarifard, that Judge Paschke had referred to in

her email. The report served as the premise of the Agreed Entry, with the Agreed Entry largely adopting Dr. Afsarifard's recommendations. In his report, Dr. Afsarifard wrote that "the children ha[d] been through a number of significant stressors and their interactions with their father had not always been rewarding." He explained that even though there was evidence that they had once had a good relationship with their father, they were unwilling to acknowledge as much, and "[t]hey were heavily entrenched in their view that their father was an abusive, alcoholic individual, who should be out of their lives." Dr. Afsarifard attributed some of the blame for the situation on the children's mother. He found it "obvious that [the children] had been empowered by their mother to 'make decisions' as to whether or not they wanted to have a relationship with their father." He noted that when asked directly, neither the mother nor her boyfriend "seemed to be willing to support an effort to reunify the children with their father." He also explained, "It is clear that based on some direct experience of their own with their father, and negative influence from their mother and [her boyfriend], the children have become seriously alienated from their father."

{¶ 107} Dr. Afsarifard recommended that the children remain in the custody of their mother, that the children participate in therapeutic visitation with their father, and that within 90 days of the commencement of the therapeutic work that consideration be given to extending the children's time with the father with the goal that within a few months, the children would have standard visitation time with their father. Dr. Afsarifard emphasized that this "process need[ed] to be supported by the children's mother" and that "[c]onsideration should be given to consequences for [her] if she d[id] not . . . support this plan." He also suggested that while "there [were] no clinical indications that [Glasier] had an alcohol abuse problem, he should abstain from drinking in order to remove any questions regarding this issue." He concluded by stating that none of the children's experiences with Glasier justified terminating his parental rights and that

"[a]llowing the children to make decisions that involve eliminating a parent out of their lives can have serious negative psychological consequences and should not be a consideration."

{¶ 108} After accepting the transfer in August 2019, Judge Grendell and his staff undertook to implement the Agreed Entry. Judge Grendell's magistrate arranged for therapeutic visitation to be facilitated by Ohio Guidestone, a service provider who often worked with the juvenile court. This effort was unsuccessful because the children refused to see their father and the provider was unwilling to force them to participate. When that didn't work, the court tried a different approach. The court's case manager met with the children, who expressed their adamant opposition to seeing their father. The case manager determined that it might be helpful to take some pressure off the children and work directly with the parents. At the case manager's suggestion, in December 2019, the magistrate issued an order suspending visitation and directing the parents to meet weekly with the case manager. Unfortunately, this effort proved to be unsuccessful as well.

{¶ 109} Glasier ultimately filed objections to the magistrate's order suspending visitation and also filed a motion to modify custody and child support. In support of his motion, he cited the failure to implement the terms of the Agreed Entry. He asserted that it was in the best interest of the children that he be named residential parent and legal custodian and that "if the children remain[ed] with [their mother], further alienation w[ould] just continue to occur."

{¶ 110} Judge Grendell held a status hearing on the motion and other related matters on January 28, 2020. At the hearing, Judge Grendell emphasized that he viewed the court's function as "to help facilitate both parents to encourage the children to have a loving and bonded relationship with both parents." He noted the difficulty of the situation and expressed the view that for reunification to be successful the family needed to work with a "high-priced" and "really skillful" therapeutic specialist. He opined that he did not think it would be helpful to force

the children to see their father until such a professional was in place. He also expressed his determination to achieve reunification, promising that if he needed to, he would "attend every damn visitation session for the first couple months" and that he was "not throwing in the towel."

{¶ 111} Following the January 28 hearing, Judge Grendell asked for assistance from court staff in identifying potential candidates to facilitate therapeutic visitation. Ultimately, he selected Dr. Stephen Neuhaus as the professional who was best suited to work with the family on reunification. Judge Grendell had prior experience with Dr. Neuhaus and considered him "the nuclear option for parental alienation matters," someone who "was able to get past the obstinance of the alienated juveniles and get the job done." Judge Grendell ordered the parents to split the $1,500 initial retainer for Dr. Neuhaus's services. Unfortunately, these efforts to restart therapeutic visitation stalled.

{¶ 112} On April 20, Judge Grendell conducted a telephonic hearing with the parents in which he inquired about the status of the work with Dr. Neuhaus. The hearing continued the next day with the parties appearing in person. Hartman represented that she was unable to afford the cost of Dr. Neuhaus's services, explaining that she was a stay-at-home mom who had not been employed since 2013 and that Dr. Neuhaus was not covered under her children's health insurance. She also told the court that they had tried reunification therapy, and it had not worked. Judge Grendell explored the idea of Glasier paying the full cost of the therapy, but Glasier resisted, telling the court that he believed that Hartman could afford the cost and that unless Hartman had some financial commitment, she would frustrate efforts to proceed with therapeutic visitation.[6]

{¶ 113} Judge Grendell also had some tough talk for both parents:

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6. According to Judge Grendell, he also considered having the court pay Hartman's share, but Dr. Neuhaus told him that that he wouldn't undertake the work unless both parties had a financial stake in the outcome.

> So, dad, you're going to have to cut the crap, the threats, and you're going to have to act like a grown-up father. And mom, you're going to have to act like a mother who wants the children to have a relationship with their father.

{¶ 114} Before the second day of the hearing, Judge Grendell conducted in-camera interviews with the children. Judge Grendell made an effort to connect with each of the children, asking them about their interests and their studies. All three children expressed an unwillingness to have a relationship with their father. The daughter was the most adamant, calling her father "[m]entally abusive, physically abusive, [and] religiously abusive." The daughter also expressed a strong resistance to family counseling, explaining that she had been better off since she had stopped going to therapy sessions. Judge Grendell explained that his role was "to uphold the parental rights of the parent and protect the best interests of the child." He told the daughter that the law did not allow children to make a unilateral decision not to see their father. He acknowledged that the situation with the daughter was more difficult because she would turn 18 in less than a year and be able to make her own decision about having a relationship with her father, but he told her that she would need to participate in the counseling process until then. After meeting with the children, Judge Grendell told the guardian ad litem, who had been present for the interviews, that he needed a few minutes to think about how to best proceed.

{¶ 115} Judge Grendell returned to the bench and heard from both parents. He then announced that he would adjust his order about Dr. Neuhaus because of Hartman's financial concerns. He ordered that Hartman pay $500 of the initial retainer and Glasier $1,000. He directed that the money be paid within 15 days and the therapy sessions be started as "immediately as possible thereafter."

2. The May 27 hearing

{¶ 116} Despite Judge Grendell's order, therapeutic visitation had not begun by the time the parties next appeared in front of him on May 27. The hearing date had initially been set on Glasier's motion to modify custody and child support, but the day before the hearing, Glasier contacted Hartman to say that he would not be going forward with the motion.

{¶ 117} Judge Grendell began the hearing by asking Glasier whether there had been progress with Dr. Neuhaus. Glasier told Judge Grendell that he had spoken to Dr. Neuhaus the day before and that Dr. Neuhaus had said that he did not think the treatment would be able to go forward because Hartman was unable to afford the cost. Judge Grendell asked Hartman if she had paid the $500 as he had ordered. Hartman replied that Dr. Neuhaus had agreed to let her pay $100 per month and that she had paid an initial $100 and would pay him that amount monthly.

{¶ 118} Glasier then explained that he planned to follow Dr. Neuhaus's recommendation and that he wanted to withdraw his motion for change of custody and support. Judge Grendell asked Glasier about his current visitation status, and Glasier responded that he had not seen his children in over three and a half years.

{¶ 119} At this point, Judge Grendell told Glasier he would convert his motion to modify custody into "an order seeking to enforce [his] right to parenting time with the children." Hartman tried to explain why she believed it would be inappropriate to allow Glasier to resume his parenting time with the children, reading a letter to the court in which she argued that the case was "not about the three children, parental alienation or visitation" but "about a man that needs to be in control." She also pointed to a recent guardian ad litem report, which she said recommended that everything should remain the same.

{¶ 120} Judge Grendell told Hartman that he was not going to relitigate the past. "We're not going backwards," he said. "[W]hat I care about under Ohio law

is that the children are best situated when they have a loving and bonded relationship with both parents, and it requires the opposite parent to encourage the children to have that loving and bonded relationship," he continued. He also intimated that Hartman was the reason why the boys had been refusing visitations with Glasier. He told Hartman, "The record in front of me does not speak well for your encouragement, ma'am."

{¶ 121} Judge Grendell found therapeutic visitations to be a lost cause in the case, telling Glasier: "That train's left the station. There ha[ve] been efforts by me and others to get you reconciliation and counseling. That would have been better for everybody including your children, but apparently that's just not going to happen."

{¶ 122} Judge Grendell then announced that Glasier would receive visitation with the two boys on alternating weekends, beginning that weekend. He directed that visitation transfers occur at the sheriff's office and that the court's constable would be present to ensure that the transfer went smoothly. He also explained that the constable would remain for the first hour of the visitation and that the boys would have the constable's cell-phone number and should call him if there was any issue during visitation. Judge Grendell told Hartman, "You will do everything positive to enforce [visitations], you will not fuel the children, you will not tell the children they should call you." And he warned her that any "shenanigans" would lead to "some serious discussion about jeopardizing one's custody in this case."

{¶ 123} Before Judge Grendell announced his visitation order, Hartman had told the court that in preparation for the hearing on the motion to modify custody she had prepared binders with evidence showing that she had "cooperated and . . . encouraged the children [to visit their father]." After announcing his decision, Judge Grendell told Hartman that she was welcome to give the court the binders

"as evidence . . . for the record." He also informed Glasier, "[Y]ou're welcome to object or not. There's probably a lot of hearsay in there." Glasier objected.

{¶ 124} Judge Grendell asked Hartman about the contents of the binders. Hartman responded that the binders contained "reports from the family counselor, the Guardian ad Litem reports," and "threats that were made during reunification therapy." Judge Grendell sustained Glasier's objection, saying "everything you have described to me, with rare exception, is hearsay and wouldn't be admissible unless there was a live body to testify to it." Nonetheless, he allowed Hartman to submit the binders for purposes of the record.

3. Attempted visitation and detention of the two boys

{¶ 125} Two days later—Friday, May 29—Hartman dropped off the boys with the constable as ordered. When Hartman left, the constable was convinced that the visitation would be successful because of the calm demeanor of the boys. But eventually the boys began fidgeting, and their nervousness became apparent. The older boy began indicating that he and his brother would not go with Glasier for the weekend.

{¶ 126} Worried that the visitation would fall through, the constable contacted Judge Grendell by telephone. Before the panel in this case, Judge Grendell said that he told the constable to call Hartman and tell her to again instruct the boys to attend the visitation. Judge Grendell testified that it was his recollection that the possibility of detaining the boys did not come up in this first call. But Judge Grendell's actions after the call with the constable suggest otherwise. After the call, Judge Grendell immediately called the juvenile court's director of probation to inform her that two children were being placed in detention for unruliness based on their refusal to attend visitation. Judge Grendell told the director that the children were not allowed contact with Hartman during the detention and that the detention would last from Friday night until noon on the following Monday, when he would hold a hearing on the matter.

{¶ 127} The constable's actions also suggest that Judge Grendell initiated the decision to detain the children on unruly charges. After the call with Judge Grendell, the constable called the sheriff's office. The constable testified that he could not remember why he called the sheriff's office but that the only reason he would call the sheriff's office at that time would be to take the boys into custody. A court case manager, who was at the attempted visitation, also testified that the constable had not mentioned detention before his first call with Judge Grendell.

{¶ 128} The constable entered the sheriff's office with the two boys, and a sheriff's deputy was summoned to assist the constable. The constable informed the sheriff's deputy that if the boys refused to attend the scheduled visitation with their father, they would be detained. The deputy later testified that he had been uncomfortable with the situation because he did not think that failing to attend visitation created probable cause to detain the boys.

{¶ 129} The constable then called Hartman on speaker phone from the sheriff's office. He informed Hartman that the boys were refusing to go with Glasier and that Judge Grendell had ordered the boys to be detained if they refused to go. Hartman tried to convince the boys to go with Glasier. The older boy said that he would rather be put in detention. The younger boy remained silent. Hearing the older boy's response, the constable told Hartman that the boys were going to be charged as unruly and detained. He then ended the call.

{¶ 130} After finishing the call with Hartman, the constable again called Judge Grendell, who authorized the detention of the boys. The constable and deputy filled out juvenile fact sheets for the boys. Under the section titled "Charge," the deputy wrote on the older boy's fact sheet: "Unruly Per Judge." The constable identified the younger boy's charge simply as "Unruly."

{¶ 131} The deputy transported the boys from the sheriff's office to a detention center. After dropping off the boys, the deputy filled out an incident report. In the report, he wrote that the constable had spoken with Judge Grendell

at the sheriff's office and that "[p]er Judge Grendell," he was to take the boys to the detention center. Judge Grendell directed that the boys be kept separate from the general population and separate from each other.

4. The June 1 post-detention proceedings

{¶ 132} The boys spent that weekend in the detention center with no communication with their parents, although their priest was allowed to visit. The following Monday, June 1, Judge Grendell ordered that the boys be brought to the juvenile court for a noon detention hearing. While the boys waited in a separate room, Judge Grendell and the two attorneys who were representing the boys met in the courtroom.

{¶ 133} Hartman had retained one of the attorneys to represent the boys, but Judge Grendell told him that the court would appoint him as counsel for one boy at the court's expense and that Hartman could use the money she was going to spend on him for Dr. Neuhaus's fees for reunification counseling. He appointed separate counsel for the other boy. After giving the attorneys some background on the child-custody case, Judge Grendell announced that he was going to process the case informally under Juv.R. 9(A), which allows the juvenile court "[i]n all appropriate cases" to avoid "formal court action" through "other community resources . . . to ameliorate situations brought to the attention of the court." He said, "I don't want unruly charges on these kids." Rather, his goal was that the children "have at least initially therapeutic visitation with their dad and . . . some counseling, [that] they would go through the Neuhaus process that [he had] tried to get them into." He also expressed frustration about what he viewed as Hartman's refusal to "embrac[e] the process and encourag[e] the children to have a relationship with [Glasier]." He stated that he intended to put on another order requiring Hartman to pay the remainder of her share of Neuhaus's retainer, explaining that "Neuhaus is convinced that if [Hartman] doesn't have some vig in the game, it's a waste of his time to try to do anything." He concluded by telling the attorneys that he had signed

an order releasing the children and requiring them to follow all parenting time as ordered. After leaving the courtroom, Judge Grendell told the police sergeant who had transported the boys from the detention facility to release them to their mother.

5. June 1 to June 30

{¶ 134} After the boys' release, their counsel filed an emergency motion in the court of appeals to stay the May 28 judgment entry ordering the boys to attend visitation with their father. Glasier filed with the juvenile court a motion "to vacate the order of May 28th, 2020 in favor of an order granting standard parenting time to begin September 4, 2020."

{¶ 135} Without Glasier asking, Judge Grendell appointed Glasier an appellate attorney "for the limited purpose of responding to the motion for stay." Judge Grendell signed off on Glasier's appellate counsel being paid his regular rate of $225 per hour, rather than the standard court rate of $40 per hour. Conversely, Judge Grendell denied Hartman's requests for appointment of counsel twice.

{¶ 136} Meanwhile, Judge Grendell continued his effort to handle the matter informally through diversion. A diversion contract was prepared under which the boys and their parents were required to "complete the therapeutic assessment from Dr. Neuhaus and follow all recommendations." Successful completion of the contract would mean that no formal court action would be taken against the boys and the formal complaint would be immediately sealed and expunged. The contract required the signatures of both parents. Hartman, however, refused to sign the contract, explaining later that she "didn't think [her] boys were guilty of anything."

{¶ 137} Following the court's unsuccessful attempt at diversion, the court's constable filed formal unruly charges against the boys on June 11. On June 30, 2020, Grendell dismissed without prejudice the unruly charges against the boys and referred the matter back to diversion pursuant to Juv.R. 9.

6. The GoFundMe web page

{¶ 138} On July 8, 2020, the court of appeals granted Hartman's emergency motion to stay the May 28 judgment entry ordering visitation with Glasier. The court of appeals further noted that after Hartman filed her notice of appeal, Glasier filed a motion in the trial court to vacate the May 28 visitation entry. The appellate court remanded the case to Judge Grendell to rule on Glasier's motion.

{¶ 139} The remand hearing occurred on July 23. Before the hearing, a friend of Hartman had created a GoFundMe web page to raise money for Hartman to retain counsel. The GoFundMe web page was titled "Honor roll students incarcerated by Judge Grendell" and displayed a photo of Hartman and the boys at the top of the page. The web page criticized Judge Grendell's handling of the case and the detention of the boys, characterizing his actions as "a complete mockery and abuse of our judicial system."

{¶ 140} Hartman appeared with counsel at the July 23 hearing; Glasier appeared pro se. Glasier explained that he had moved to vacate the May 28 order because after the boys refused to go with him and were put in detention, he "realize[d] that they absolutely are not going to go unless they have the therapy that they need and the counseling in order to reunite and . . . redevelop a relationship with [him]." Judge Grendell vacated the May 28 order but also noted that Glasier's motion sought other relief including eventual standard parenting time with the boys. Judge Grendell stated that it was going to require a full evidentiary hearing to decide whether it was in the best interest of the children to have parenting time with Glasier. After discussing scheduling with counsel, Judge Grendell set an evidentiary hearing to begin on October 12.

{¶ 141} Before he left the bench, Judge Grendell turned to the GoFundMe web page. He announced that he was prepared to enjoin Hartman, and anyone connected to Hartman, from using the names or likenesses of the boys "in anything with the public in connection with these proceedings." He said, "[Hartman] can

say anything she wants about me, but "[s]he cannot use [the boys'] names or likenesses in the context of these proceeding[s] or the [u]nruly proceedings because then it's harmful to the best interests of the children." Hartman's counsel told Judge Grendell that her client would follow the judge's instructions. Judge Grendell also said he was going to ask Hartman at the October 12 hearing to address why the clerk shouldn't "claw back" the funds raised through the GoFundMe web page and use that money to reimburse the county for her and her sons' court-appointed attorneys. Judge Grendell spent the last few minutes of the hearing addressing what he considered the "many false statements" in the GoFundMe web page.

{¶ 142} Five days after the hearing, Judge Grendell called Hartman's attorney and told her that the picture of the children was still on the GoFundMe web page and asked for an explanation. (Hartman's attorney later testified that the reason the image had not been immediately removed was because Judge Grendell had not yet issued an order memorializing what he had said at the July 23 hearing and she was waiting "to see exactly what it said.") After speaking with Judge Grendell, the attorney called Hartman and told her that the picture needed to be removed.

{¶ 143} Despite being scheduled at the July 23 hearing, the October 12 evidentiary hearing never occurred. Instead, on September 16, 2020, Judge Grendell transferred the matter back to the domestic-relations court. With that, Judge Grendell's involvement in the Glasier matter came to a close.

7. The board's findings

{¶ 144} In connection with the Glasier matter, disciplinary counsel charged Judge Grendell with violating Jud.Cond.R. 1.2, 2.2, 2.9(A), 2.11, 2.11(A)(7)(c), and Prof.Cond.R. 8.4(d). Jud.Cond.R. 1.2 requires judges to act 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." Jud.Cond.R. 2.2 requires judges to "uphold and apply the law, and [to] perform all

duties of judicial office fairly and impartially." Jud.Cond.R. 2.9(A) prohibits judges from "initiat[ing], receiv[ing], permit[ting], or consider[ing] ex parte communications," except in limited circumstances. Jud.Cond.R. 2.11(A) requires a judge to "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Division (7)(c) of Jud.Cond.R. 2.11(A) specifically requires the disqualification of a judge who "was a material witness concerning the matter [in controversy]." And Prof.Cond.R. 8.4(d) prohibits lawyers from "engag[ing] in conduct that is prejudicial to the administration of justice."

{¶ 145} The board found that Judge Grendell committed all the charged disciplinary violations in the Glasier matter. Specifically, the board found that Judge Grendell violated some combination of Jud.Cond.R. 1.2, 2.2, 2.9(A), and 2.11 and Prof.Cond.R. 8.4(d) in connection with (1) the May 27, 2020 hearing, (2) the attempted visitation and the detention of the boys, (3) the June 1 post-detention proceedings, and (4) his handling of the case from June 1 to June 30.

{¶ 146} The board did not specifically analyze how Judge Grendell's conduct violated any of the disciplinary rules charged. Rather, for each of the four relevant periods noted above, the board summarized Judge Grendell's conduct and his purported legal errors. Then, in a concluding, bare-bones summary paragraph, the board stated that it had concluded that Judge Grendell violated disciplinary rules. *See, e.g.*, Board Report at ¶ 100 ("The panel finds that [Judge Grendell's] actions during the May 27, 2020 hearing violated Jud.Cond.R. 1.2, 2.2, and 2.11, as well as Prof.Cond.R. 8.4(d).").

B. Objections

{¶ 147} Judge Grendell raises two objections in relation to the Glasier matter. First, Judge Grendell objects that the board improperly recommended sanctions for a violation that was not certified to the board, violating Gov.Bar R. V(11). Second, Judge Grendell objects that the board erred in finding that he

committed disciplinary violations in his handling of the Glasier matter. We sustain Judge Grendell's objections in part but conclude that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11 in connection with the Glasier matter.

1. Judge Grendell cannot be disciplined for misconduct that was not certified to the board

{¶ 148} Before a disciplinary matter is certified to the Board of Professional Conduct for a hearing, the disciplinary complaint is first investigated by a probable-cause panel. Gov.Bar R. V(11)(A). If the panel determines that there is probable cause for filing the complaint, it is certified to the board. *Id.* Any alleged violation for which probable cause has not been established is dismissed. *Id.*

{¶ 149} Judge Grendell posits that the board erred by premising its conclusions in the Glasier matter on findings that he failed to follow applicable law. He points out that the initial complaint against him alleged that he violated Jud.Cond.R. 1.1, which states that "[a] judge shall comply with the law." However, the probable-cause panel did not find probable cause that he violated Jud.Cond.R. 1.1, so that violation was dismissed and not certified to the board. We agree with Judge Grendell that it would be improper for the board to premise a disciplinary violation on a charge that was not certified to the board. Doing so violates basic due-process principles of fair notice and is inconsistent with the Rules for the Government of the Bar. *See, e.g.*, *Disciplinary Counsel v. Reinheimer*, 2020-Ohio-3941, ¶ 18-19 (rejecting on due-process grounds the board's findings that respondent committed rule violations that were not charged in the complaint).

{¶ 150} Judge Grendell points out that most of the board's findings in the Glasier matter were premised on its determination that Judge Grendell failed to follow or misapplied applicable law. Indeed, the section of the Board Report in which the board concluded that Judge Grendell committed disciplinary violations in connection with the Glasier matter is titled "Respondent's Failure to Follow the Law Applicable to the Case."

{¶ 151} Disciplinary counsel contends that the board was not precluded from disciplining Judge Grendell for his purported legal errors. Disciplinary counsel argues that even though the probable-cause panel dismissed the Jud.Cond.R. 1.1 charge ("[a] judge shall comply with the law"), other rules provide a basis for discipline. Specifically, disciplinary counsel cites Jud.Cond.R. 2.2: "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Also at issue is Prof.Cond.R. 8.4(d), a broad catchall provision that makes it misconduct for an attorney to "engage in conduct that is prejudicial to the administration of justice."

{¶ 152} We sustain Judge Grendell's objection in part. As an initial matter, the board cannot rely on the broad catchall provision in Prof.Cond.R. 8.4(d) to punish Judge Grendell for conduct that the probable-cause panel chose not to certify to the board. Any violation of the Code of Judicial Conduct might be considered to be conduct prejudicial to the administration of justice. But when the probable-cause panel has refused to certify a violation of a more specific provision, the board cannot rely on Prof.Cond.R. 8.4(d) to punish the judge for violation of the more specific provision that was not certified to it.

{¶ 153} As to Jud.Cond.R. 2.2, there is certainly some overlap between that provision and Jud.Cond.R. 1.1. Jud.Cond.R. 1.1 speaks of "comply[ing] with the law" and Jud.Cond.R. 2.2 of "uphold[ing] and apply[ing] the law." But they are not twins. Nor is one provision redundant of the other. They are separate provisions of the Code of Judicial Conduct, and they address different misconduct. Jud.Cond.R. 1.1 is titled "Compliance with the Law." It provides a general duty of a judge to comply with applicable laws. Jud.Cond.R. 2.2 is entitled "Impartiality and Fairness." It connects the duty of a judge to "uphold and apply the law" with the requirement that a judge "perform all duties of judicial office fairly and impartially."

{¶ 154} A violation of Jud.Cond.R. 2.2, then, requires more than noncompliance with the law; rather, to violate its terms, a judge must fail to "uphold and apply the law" and fail to "perform all duties of judicial office fairly and impartially." Thus, we agree with Judge Grendell that because he was not charged with a violation of Jud.Cond.R. 1.1, a finding that he failed to comply with Jud.Cond.R. 1.1's requirement that "[a] judge shall comply with the law" could not by itself be a basis for discipline.

{¶ 155} Rather, to discipline Judge Grendell for his purported legal errors, the board was required to find a violation of Jud.Cond.R. 2.2: "A judge shall uphold and apply the law, *and* shall perform all duties of judicial office fairly and impartially." (Emphasis added.)

2. The ordinary remedy for a legal error is an appeal

{¶ 156} As part of his objections, Judge Grendell contends that the board erred by finding disciplinary violations in his handling of the Glasier matter. Noting, once again, that the board's findings on the Glasier matter were primarily based on its findings that he failed to follow applicable law, Judge Grendell goes through each of the purported legal errors identified by the board and argues that he correctly applied the law. He also argues that even if he committed a legal error, discipline is not an appropriate remedy for a simple error in law.

{¶ 157} The ordinary remedy for a legal error is an appeal. The law can be complex, and trial judges must make a vast number of discretionary decisions, often with only limited time to reflect. We rely on appellate courts, not the disciplinary system, to correct ordinary legal errors. Thus, we have "long held that 'a mere mistake in the exercise of judicial discretion by a judge is not and should never be the cause or subject of a disciplinary proceeding under' the judicial-conduct rules." *Disciplinary Counsel v. Gaul*, 2023-Ohio-4751, ¶ 44, quoting *Mahoning Cty. Bar Assn. v. Franko*, 168 Ohio St. 17, 30 (1958). Nor are "honest mistakes or misapprehensions of law" grounds for discipline. *Franko* at 35. In that vein, "'[t]he

remedy for mistakes of law or fact in individual cases is by appeal, or certiorari, or other proper proceeding. A judge has a right to be wrong so far as any discipline by [a court is] concerned except as his decisions may be reversed or writs sustained.'" (Bracketed text in original.) *Gaul* at ¶ 44, quoting *In re Judges of Cedar Rapids Mun. Court*, 256 Iowa 1135, 1136 (1964).

{¶ 158} To discipline a judge for a legal error, more is required than a conclusion that the judge misinterpreted or misapplied the law. Even egregious judicial errors, if made in good faith, are not an occasion for discipline. As Comment [3] to Jud.Cond.R. 2.2 explains, "[w]hen applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this rule."

{¶ 159} Though a good-faith legal error is not grounds for discipline, we may appropriately discipline a judge for conduct that "demonstrate[s] a willful failure to follow the law," *Disciplinary Counsel v. Hoover*, 2024-Ohio-4608, ¶ 76. This standard is reflected in our Rules for the Government of the Judiciary, which provide that a "willful breach" of the Code of Judicial Conduct may be punished by judicial discipline. Gov.Jud.R. I(1). As the Michigan Supreme Court recently explained,

> [a] decision to willfully ignore the law is the antithesis of a decision made in "good faith." That is, a legal decision that is not made in "good faith" reasonably implies that a judge has knowledge of the law but refuses to acknowledge his or her duty or obligation to apply that law. This refusal cannot be considered faithful to the law.

In re Gorcyca, 500 Mich. 588, 617 (2017).

{¶ 160} Our caselaw is in accord with this general principle that a good-faith legal error is not a basis for judicial discipline, but a willful failure to follow

the law may be. In *Hoover,* we disciplined a judge for violations that involved judicial bias and a willful failure to follow the law in 16 separate cases in which the judge improperly threatened defendants with incarceration to collect fines and costs. *Hoover* at ¶ 186-187. In doing so, we noted that Hoover "ignored the applicable law," *id.* at ¶ 31, "did not make a good faith-effort to follow the law," *id.* at ¶ 43, 103, admitted that he did not follow an applicable statute because it "d[id] not work effectively for him," *id.* at ¶ 65, and "demonstrate[d] a willful failure to follow the law," *id.* at ¶ 76.

{¶ 161} In *Gaul*, we disciplined a judge for a variety of misconduct, including coercing defendants to plead guilty, making demeaning comments to criminal defendants and others in his courtroom, and improperly using his position as a judge to help a convicted criminal's effort to overturn a federal conviction. *Gaul*, 2023-Ohio-4751, at ¶ 4, 31-32. At the same time, however, we sustained Gaul's objection to a board finding that he had violated the Code of Judicial Conduct by improperly denying bond to a defendant. *Id.* at ¶ 42, 50, 97. We noted that while Gaul conceded to committing legal errors and had been reversed by the court of appeals, "[t]hese legal mistakes, despite their needing to be corrected on appeal, [did] not warrant disciplinary action." *Id.* at ¶ 47.

{¶ 162} Thus, our precedent establishes that while a good-faith legal error is not a basis for judicial discipline, a willful failure to follow the law may give rise to a disciplinary violation.

{¶ 163} The board found that Judge Grendell committed multiple legal errors in his handling of the Glasier matter. But as we explained in *Gaul*, "we cannot let the mound of [alleged] violations obscure our vision." *Id.* at ¶ 45. Rather, "[w]e must carefully comb through [the judge's] conduct and identify his exercises of judicial discretion that would be or were better dealt with through the appellate process and that do not amount to violations of the Code of Judicial Conduct or Rules of Professional Conduct." *Id.* Thus, we cannot follow the board's lead by

lumping together Judge Grendell's discretionary decisions and interpretations of law in various phases of the case and then simply announcing without analysis that there has been a violation of multiple disciplinary rules. In order to find a disciplinary violation, we must examine specific conduct and determine whether that conduct violates the terms of a specific disciplinary rule. In doing so, we are mindful that the rules in the Code of Judicial Conduct "should not be interpreted to impinge upon the essential independence of judges in making judicial decisions." Jud.Cond.R., Scope [5]. We are also cognizant that while "the rules [are] binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline." *Id.*, Scope [6].

3. We conclude that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11 in connection with the Glasier matter

{¶ 164} We turn now to Judge Grendell's objection that the board erred in finding that he committed disciplinary violations in connection with the Glasier matter. As we have previously noted, the board, for the most part, did not tie each of its findings of rule violations to specific conduct by Judge Grendell that constituted a violation of the applicable rule. Rather, its report sets forth Judge Grendell's conduct in various aspects of the case and then announces in a conclusory fashion that Judge Grendell's conduct constituted a violation of multiple rules. We have independently reviewed the record to determine if each charged violation is supported by Judge Grendell's conduct in the Glasier matter. Upon independent review, we conclude that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11.

i. Jud.Cond.R. 2.2

{¶ 165} Jud.Cond.R. 2.2 requires a judge to "uphold and apply the law, and . . . perform all duties of judicial office fairly and impartially." We conclude that Judge Grendell violated this rule based on his conduct surrounding his order that the boys be held in detention for their failure to attend visitation with their father.

{¶ 166} Throughout the disciplinary proceeding, Judge Grendell maintained that the unruly charges had been prepared by the constable on the constable's own initiative and that he had simply approved the boys' subsequent detention. The board concluded that Judge Grendell directed that the constable draft the charges. Judge Grendell has not made a separate objection to this finding, and we conclude that the board's finding is supported by the record.

{¶ 167} In Judge Grendell's view, there was a proper basis to detain the boys because they disobeyed their mother's order to attend visitation. He contends that by so doing, they fell within the statutory definition of an "unruly child." *See* R.C. 2151.022(A). That provision defines "unruly child" to "include[] . . . [a]ny child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient." Neither "wayward" nor "habitually disobedient" is defined by statute.

{¶ 168} Judge Grendell cites cases from the courts of appeals that demonstrate that children have been charged and adjudicated unruly for not complying with parental visitations. The caselaw bears out a pattern. In cases in which children have refused to attend court-mandated visitations with parents, unruly charges have been brought when the child (1) physically prevented the parent from exerting control, for example, by running away; (2) refused to attend visitation multiple times; or (3) both. *See Jones v. Jones*, 2021-Ohio-1498, ¶ 29 (4th Dist.) (refusing visitations multiple times); *Bohannon v. Bohannon*, 2020-Ohio-1255, ¶ 22 (9th Dist.) (taking the bus without permission to avoid parent and refusing visitations multiple times); *Doerman v. Doerman*, 2002-Ohio-3165, ¶ 9 (12th Dist.) (running away from home, being charged unruly, then continuing to refuse visitations); *In re Jennings*, 1997 WL 34967, *2, 5 (2d Dist. Jan. 31, 1997) (running away and leaving court-ordered visitation with parent without permission); *In re Puleo*, 1979 WL 208197, *1 (11th Dist. Oct. 9, 1979) ("habitually refusing to cooperate with visitation guidelines set down by the Court").

{¶ 169} We find nothing in the record that would support the filing of unruly charges against the boys. First, it is not clear from the record that the boys disobeyed an order from their mother to attend visitation. Hartman testified that before arriving at the sheriff's office, she had no need to order the boys to attend visitation because she did not believe they would refuse. Later, at Judge Grendell's direction, his constable called Hartman and asked her to tell the boys to attend visitation. But the record makes clear that this occurred after Judge Grendell had already told authorities at the juvenile facility that the boys were being detained. Further, even if we assume that Hartman did order the boys to attend visitation with their father, the record does not support a finding that they were "habitually disobedient."

{¶ 170} More significantly, though, even if we were to assume that unruly charges were warranted, there was no basis to take the boys into custody and detain them in the juvenile detention center. Judge Grendell stated that he made the decision to detain the boys based on Dr. Afsarifard's opinion that "the continuation of the termination of the relationship with the father . . . would cause . . . serious psychological harm." Juv.R. 6 limits the circumstances under which a child may be taken into custody. *See also* R.C. 2151.31(A)(3). And Juv.R. 7(A) states that a child who is taken into custody "shall not be placed in detention . . . prior to final disposition" except in limited circumstances. Relevant here, a court officer may take a child into custody when "[t]here are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm." Juv.R. 6(A)(3)(b); R.C. 2151.31(A)(3)(b). And a child who has been taken into custody may be placed in detention when necessary "[t]o protect the child from immediate or threatened physical or emotional harm." Juv.R. 7(A)(1)(a). Here, while Judge Grendell may have believed that the boys would suffer long-term emotional harm if they did not reconnect with their father, there is nothing to

suggest that the children were in "*immediate* danger from [their] surroundings," (emphasis added) Juv.R. 6(A)(3)(b). Indeed, Judge Grendell's constable later testified that the boys were not in any immediate danger—physical or emotional—when they were taken into custody at the sheriff's office.

{¶ 171} We are also troubled by Judge Grendell's order that the boys have no contact with their mother while in the juvenile detention center. Juv.R. 7(J) provides that "[a] child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter" and that a parent may visit "at reasonable visiting hours." Judge Grendell defended his no-contact order by asserting his authority under Juv.R. 13 to make temporary orders pending the hearing on the complaint. *See* Juv.R. 13(A) (allowing court to make temporary orders "as the child's interest and welfare may require"). But the only basis for the order that we can discern was Judge Grendell's belief that preventing the boys from talking to their mother would make it more likely that they would relent and agree to attend visitation with their father.

{¶ 172} Our disagreement with Judge Grendell's assessment of whether unruly charges were warranted, however, is not by itself a basis for discipline. Nor is our disagreement with his legal conclusion that there was a proper basis to take the boys into custody and detain them in the juvenile detention center. But here, the record shows more than good-faith errors of law. Rather, the picture that emerges is of a judge who had a strong belief that parental visitation was in the best interests of the children and who was legitimately frustrated by the failure of other means to achieve reunification between the boys and their father. But that frustration mounted to the point that Judge Grendell used the threat of detention—and when that failed, actual detention—in an attempt to coerce the boys to attend visitation with their father. He used his constable to orchestrate the filing of trumped-up charges and ordered the boys detained on those charges with little basis. In doing so, he willfully turned a blind eye to legal safeguards designed to protect

the best interests of children and avoid unnecessary detentions. We do not question Judge Grendell's good faith in believing that visitation with their father was in the children's best interests. But the means that he employed to accomplish that end evince both a conscious disregard for the law and a failure to impartially perform his duties. We conclude that his conduct constituted a violation of Jud.Cond.R. 2.2.

ii. Jud.Cond.R. 2.11

{¶ 173} Jud.Cond.R. 2.11(A) requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned. The record in this case demonstrates that Judge Grendell may have taken on the Glasier case with the best of intentions but that over the course of the case, he lost his objectivity to such an extent that he could no longer be impartial. At the May 27 hearing, for example, Judge Grendell sua sponte converted Glasier's motion to modify custody into a motion to enforce parenting time and then ruled on the motion without providing Hartman any chance to respond. At the very least, it is clear that after he improperly ordered the boys held in detention over the May 29 weekend, he could not continue to impartially adjudicate the custody proceedings involving the boys. Indeed, Judge Grendell's subsequent conduct in appointing an attorney for Glasier to defend his visitation order in the appellate court and ordering that attorney paid at well above the normal rate—while not appointing counsel for Hartman—further highlights that by this point, Judge Grendell had lost his ability to be fair and impartial. Thus, we hold that Judge Grendell violated Jud.Cond.R. 2.11 in connection with the Glasier matter.[7]

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7. The board purported to find a violation of both Jud.Cond.R. 2.11 and Jud.Cond.R. 2.11(A)(7)(c). Jud.Cond.R. 2.11(A) imposes a general duty on a judge to disqualify himself when his impartiality might reasonably be questioned. The board then, through "including but not limited to" language, detailed specific circumstances in which a judge's impartiality might reasonably be questioned and recusal required. One of these circumstances is set forth in Jud.Cond.R. 2.11(A)(7)(c), which states, "The judge was a material witness concerning the matter." Thus, properly understood, Judge Grendell's failure to recuse constitutes a single violation of Jud.Cond.R. 2.11, rather than a violation of two different rules.

iii. Jud.Cond.R. 1.2

{¶ 174} Jud.Cond.R. 1.2 requires judges to act 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." We conclude that the record supports a finding of a violation of Jud.Cond.R. 1.2. As we have explained, it is clear that as the Glasier matter progressed, Judge Grendell lost his ability to be fair and impartial. Improperly ordering two teenage boys to spend a weekend in detention is not an act that instills public confidence in the impartiality of the judiciary.

{¶ 175} Nor did Judge Grendell promote public confidence in the judiciary through his conduct in open court in connection with the GoFundMe web page that community members had set up to help raise money to allow Hartman to retain counsel after the boys had been held in detention. We are particularly troubled by his threat to "claw back" money raised through that page and use it to reimburse the county for the boys' appointed counsel. We are not aware of any basis for such a "claw back," and Judge Grendell's comments at the hearing appear to have been motivated more by his own anger at the page's negative portrayal of him than by a legitimate concern for the welfare of the children.

{¶ 176} Thus, we conclude that the record supports a finding that Judge Grendell violated Jud.Cond.R. 1.2 in connection with the Glasier matter.

iv. Jud.Cond.R. 2.9

{¶ 177} Jud.Cond.R. 2.9 generally prohibits a judge from engaging in ex parte communications except in limited circumstances. Among the exceptions are that a judge may make "an ex parte communication for scheduling, administrative, or emergency purposes, that does not address substantive matters or issues on the merits . . . provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication." Jud.Cond.R. 2.9(A)(1).

{¶ 178} The board made a single finding of a violation of Jud.Cond.R. 2.9(A). It did so in connection with Judge Grendell's handling of the June 1 post-detention hearing. Board Report at ¶ 143. The board stated that Judge Grendell conducted an "ex parte meeting" with the attorneys for the boys. It found that at the hearing, "[i]n blatant violation of Jud.Cond.R. 2.9(A)['s prohibition on ex parte communications, Judge Grendell] presented his biased version of the facts of the custody case to the two attorneys he had appointed to represent the boys in the unruly case." *Id.* at ¶ 136.

{¶ 179} We do not understand the board's conclusion that the hearing was ex parte. Both boys' attorneys were present, and because no formal charges had been filed there were no other parties to the case. While the board may believe that Judge Grendell was incorrect in his perception that Hartman was responsible for the boys' refusal to attend visitation with their father, Judge Grendell did not make an improper ex parte communication in conveying his assessment to the boys' attorneys.

{¶ 180} The only place in its report where the board made a finding of a Jud.Cond.R. 2.9 violation is in its conclusory paragraph listing rule violations arising out of the June 1 hearing. As part of its account of the GoFundMe web page, however, the board stated that Judge Grendell engaged in "yet another ex parte communication when he called [Hartman's attorney after the July 23 hearing] demanding to know why Hartman had not taken down the GoFundMe page." Board Report at ¶ 174. Thus, we also consider whether that communication constituted a violation of Jud.Cond.R. 2.9(A).

{¶ 181} Judge Grendell argues that the phone call was administrative in nature and provided neither party a procedural, substantive, or tactical advantage. He maintains that the purpose of the call was to check on why Hartman had not removed the boys' picture from the GoFundMe web page after her counsel had said at the hearing that Hartman would do so.

{¶ 182} We agree that the phone call did not provide a procedural, substantive, or tactical advantage to any party. Glasier was not disadvantaged by not being privy to the call. Nor is it clear that the communication concerned a substantive matter in the case. The call did not touch on any of the matters being litigated. And in making the call, Judge Grendell was ostensibly acting to protect the privacy of the juveniles. Perhaps Judge Grendell's call was motivated more by his dislike of the criticisms directed at him, as the board seemed to believe, than by his desire to protect the boys. But the focus of the rule is on whether the call concerned a substantive matter and whether it provided an advantage to either party.

{¶ 183} Based on the record before us, and considering the clear-and-convincing-evidence standard, we decline to find that the communication concerned a substantive matter in the case and constituted a willful breach of Jud.Cond.R. 2.9. *See* Gov.Jud.R. I(1) ("willful breach" of the Code of Judicial Conduct may be punished by judicial discipline). We caution, however, that simply because we do not find that the conduct meets the threshold for a disciplinary violation, does not mean that we approve of the conduct. By far the most prudent course would have been for Judge Grendell to avoid any question about the propriety of his conduct by engaging counsel for both parties in any conversation.

v. Code of Judicial Conduct violations in the Glasier matter

{¶ 184} Based on the foregoing, we conclude that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11 in connection with the Glasier matter.[8] We now

8. The board also found a violation of Prof.Cond.R. 8.4(d), which generally prohibits attorneys from "engag[ing] in conduct that is prejudicial to the administration of justice." Any violation of the Code of Judicial Conduct might be considered prejudicial to the administration of justice. The board did not, however, identify any specific conduct that violated Prof.Cond.R. 8.4(d) that was distinct from that encompassed by the other violations. Although in the past we have found violations of multiple rules for the same conduct, the better practice is to separately apply the disciplinary rules and give them independent force. Conclusory statements that the same conduct violated multiple rules does not give those rules the separate application they are due. And piling on general rule violations to expand the number of disciplinary charges for the same violation does not advance the ends of the disciplinary process. *See, e.g.*, *In re Discipline of Brussow*, 2012 UT 53, ¶ 1, fn. 1 (concluding that it would be unfair to punish an attorney for Utah's equivalent to Prof.Cond.R. 8.4

consider Judge Grendell's objections to the board's findings of aggravating and mitigating factors.

IV. AGGRAVATING AND MITIGATING FACTORS

{¶ 185} When determining the appropriate sanction for a disciplinary violation, this court considers the ethical duty that was violated, the injury that resulted, the aggravating and mitigating factors set forth in Gov.Bar R. V(13), and precedent from similar cases. *Disciplinary Counsel v. Oldfield*, 2014-Ohio-2963, ¶ 17.

{¶ 186} Gov.Bar R. V(13)(B) sets forth aggravating factors that "may be considered in favor of recommending a more severe sanction," and Gov.Bar R. V(13)(C) sets forth mitigating factors that "may be considered in favor of recommending a less severe sanction." The board found six aggravating factors: (1) a dishonest or selfish motive, (2) multiple offenses, (3) a pattern of misconduct, (4) the submission of false statements during the disciplinary process, (5) harm to vulnerable victims, and (6) refusal to acknowledge the wrongful nature of his conduct. The board found applicable two mitigating factors: (1) no prior disciplinary record and (2) evidence of good character and reputation. But it discounted the character and reputation evidence, concluding that the many letters attesting to Judge Grendell's good character should be accorded little weight because few of the character witnesses were familiar with the charges against Judge Grendell. After weighing the aggravating and mitigating factors, the board

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based solely on the violation of another rule); *In re Convisser*, 2010-NMSC-037, ¶ 32 ("piling on another rule violation that is only a more general means to condemn misconduct that specifically violated other rules would add little to the outcome of this proceeding"); *Iowa Supreme Court Attorney Disciplinary Bd. v. Netti*, 797 N.W.2d 591, 605 (Iowa 2011) (declining to find a violation of a more general prohibition after finding that attorney's conduct violated a specific prohibition in the rules); *In re Carpenter*, 2015 ND 111, ¶ 20 ("Unnecessary 'stacking' or 'piling on' of rule violations for the same conduct is discouraged."). Thus, because we believe the conduct encompassed by the board's Prof.Cond.R. 8.4(d) finding is encompassed within the violations that we have found, we find it unnecessary to make an additional finding of a violation of Prof.Cond.R. 8.4(d).

recommended that Judge Grendell be suspended from the practice of law for 18 months, with six months stayed. It also recommended that he complete eight hours of judicial-ethics education on the appropriate use of contempt powers.

{¶ 187} Judge Grendell objects that the board's recommendation is too harsh because it improperly analyzed the aggravating and mitigating factors. He asserts that the board made four errors in its identification of aggravating factors. First, he argues that disciplinary counsel failed to show that he had a dishonest or selfish motive because there was no evidence that he acted for personal advantage. Second, he argues that he did not engage in a pattern of misconduct or commit multiple offenses. Third, he argues that he did not intentionally submit false statements to disciplinary counsel. And fourth, he argues that he did acknowledge the wrongful nature of his conduct.

{¶ 188} Judge Grendell asserts that the board made two errors in its identification of mitigating factors. First, he argues that the board should have given more weight to his lack of disciplinary record. And second, he argues that the board should not have disregarded his many character letters.

A. We Sustain Judge Grendell's Objection as to the Dishonest-or-Selfish-Motive Aggravating Factor

{¶ 189} Gov.Bar R. V(13)(B)(2) identifies as an aggravating factor "[a] dishonest or selfish motive." The board found this aggravating factor present in all three matters. Because we find no violations as to the Tea Party event and the legislative testimony, we consider only the Glasier matter.

{¶ 190} The board concluded that Judge Grendell acted with a selfish motive because his conduct was motivated by a desire to "succeed where other courts had failed" in reuniting the boys with their father. It found that Judge Grendell acted "[s]elfishly" in "us[ing] the unruly charges and detention as coercive tools to achieve his desired outcome."

{¶ 191} Words in Ohio's rules of court, such as the Rules for the Government of the Bar, are given their plain and ordinary meaning. *See In re T.A.*, 2022-Ohio-4173, ¶ 16. Selfishness is exemplified by conduct taken for one's personal advantage with disregard for the rights of others. *See Webster's Third New International Dictionary* (2002) (defining "selfish" as "seeking or concentrating on one's own advantage . . . without regard for others" and "performed to benefit oneself esp. in disregard of the welfare of others"); *see also Gaul*, 2023-Ohio-4751, at ¶ 79 (declining to find selfish motive as an aggravating factor because although the judge "committed numerous rule violations, there [was] no proof in the record that he engaged in misconduct for his personal advantage or that he was excessively or exclusively concerned with himself").

{¶ 192} In concluding that Judge Grendell acted with a selfish motive because he sought to succeed where others had failed, the board went well beyond the ordinary understanding of the term. Tracking the common meaning of the term, we don't normally think of someone as acting selfishly unless he materially benefits himself while consciously disregarding how his actions affect others. A person acts selfishly, for example, when he takes the last two slices of cake even though he knows someone else wants one.

{¶ 193} But here, the board concluded that Judge Grendell had a selfish motive simply because he wanted to succeed where others had failed. We typically don't think of such behavior as selfish; indeed, it is something we often commend. Were the Wright brothers selfish in their desire to be the first to reach the skies? Sir Edmund Hillary to be the first to summit Mount Everest? A teenager who wants to be the first in her family to graduate from high school?

{¶ 194} One can certainly take issue with some of the decisions that Judge Grendell made (as we do), but nothing in the record indicates that he acted for his own personal advantage. "We must be careful to not confuse the effects of misconduct with the motive for the misconduct." *Gaul*, 2023-Ohio-4751, at ¶ 79.

The easiest—and most self-serving—course for Judge Grendell would have been simply to decline to accept the transfer of the case at all or to abandon his efforts at reunification once it became clear how difficult it would be to accomplish that goal. Judge Grendell may have been stubborn, misguided, and even flat wrong in his handling of the case, but there is nothing to suggest that he acted with a selfish motive.

{¶ 195} In addition, the board found that Judge Grendell's motive was dishonest, opining that he "dishonestly claim[ed] he was acting in the children's best interest." But we find nothing in the record that supports such a finding. There is no evidence that Judge Grendell did not subjectively believe that he was acting in the boys' long-term best interests. Thus, we sustain Judge Grendell's objection as to the "dishonest or selfish motive" aggravating factor.

B. We Sustain Judge Grendell's Objection as to the Pattern-of-Misconduct and Multiple-Offenses Aggravating Factors

{¶ 196} "A pattern of misconduct," Gov.Bar R. V(13)(B)(3), is an aggravating factor, as is "[m]ultiple offenses," Gov.Bar R. V(13)(B)(4). The board found that Judge Grendell committed multiple offenses because he committed "eleven rule violations involving three separate matters." In addition, the board found that Judge Grendell engaged in a pattern of misconduct because he committed multiple violations of the rules in each of the three matters. In light of our conclusion that Judge Grendell committed violations in a single matter, we sustain his objection as to the "pattern of misconduct" and "multiple offense" aggravating factors.

C. We Sustain Judge Grendell's Objection as to the False-Evidence Aggravating Factor

{¶ 197} Gov.Bar R. V(13)(B)(6) identifies as an aggravating factor "[t]he submission of false evidence, false statements, or other deceptive practices during the disciplinary process." The board found this factor applicable, concluding that

Judge Grendell had submitted "patently false" statements about the June 1 post-detention proceedings. Specifically, the board pointed to three statements by Judge Grendell:

> Respondent falsely stated that he conducted a detention hearing following the release of the Glasier boys from their weekend detention and said that he had even moved up the time of the hearing to minimize their time in detention. In his response to Relator's notice of intent, he falsely claimed that the boys attended the detention hearing on June 1, 2020 along with their mother and their counsel. In his answer to the amended complaint, Respondent stated that "Respondent ordered the handcuffs removed as soon as the boys entered the courtroom."

(Citations to record omitted.) Board Report at ¶ 270.

{¶ 198} As to the first statement, the board found Judge Grendell's statement to be false because in its view, he did not hold a detention hearing with the boys present and instead met with the attorneys in the courtroom and then ordered the boys released from custody. The falsity of Judge Grendell's statement turns on whether one considers the session with the attorneys to be a "hearing." The session occurred in the courtroom and was recorded. Whether the session could properly be termed a "hearing" seems to us more one of semantics than a basis for a disciplinary violation.

{¶ 199} The other two statements do present inaccuracies. The boys and their mother were never in the courtroom, and consequently, Judge Grendell did not order the boys' handcuffs removed as soon as they entered the courtroom. Judge Grendell explains that the inaccuracy was unintentional, that the board was able to review the full videotape of the proceeding, and that any inaccuracy in his

recollection was not material to the disciplinary proceeding. He notes that he "has consistently provided detailed statements and testimony in response to [disciplinary counsel's] letter of inquiry, in his response to the probable cause complaint, in his answers, at his deposition, and during his direct and cross-examinations at the hearings." And he suggests that "given [his] multiple and highly detailed statements . . . about this matter over a four-year period, it would not be unusual and unexpected to find some differences or inconsistencies."

{¶ 200} We have reviewed the entire record in this case. Throughout, Judge Grendell has provided detailed responses to the board and disciplinary counsel. Considering the volume of responses, we cannot conclude that the two isolated statements were the type of deliberate misrepresentations made with an intent to deceive such that they should be considered an aggravating factor.

D. We Sustain Judge Grendell's Objection as to the Refusal-to-Acknowledge-Wrongful-Conduct Aggravating Factor

{¶ 201} The board also found as an aggravating factor that Judge Grendell refused to acknowledge the wrongful nature of his conduct. In support of this finding, the board explained that Judge Grendell had maintained that he did not commit the charged violations. It acknowledged that a judge charged with a disciplinary violation has a right to defend himself, but it concluded that Judge Grendell's "claims that he did nothing wrong [were] untenable in light of his own testimony and the other evidence presented at the hearing." Judge Grendell objects, saying that his testimony during the disciplinary process demonstrates his remorse for detaining the boys.

{¶ 202} Gov.Bar R. V(13)(B)(7) identifies "[a] refusal to acknowledge wrongful nature of conduct" as an aggravating factor. At the same time, our rules provide for disciplinary matters to be handled in adversary proceedings. In an adversary proceeding, it is certainly appropriate for a respondent to mount a vigorous defense and to contest the charges against him.

{¶ 203} In regard to the detention of the boys, Judge Grendell testified:

> [T]his has been a terrible experience. I wish I had other options that night [the boys were detained]. . . . I wish we could have done something different. But that night, that was my decision. And [the detention] was permitted by statute and permitted by law.
>
> And . . . they weren't harmed. You know, I mean, not as harmed as much as I thought they would be [by being allowed to cut off contact with their father]. That was the thought process. There was no punishment.

{¶ 204} We are not convinced that Judge Grendell's posture during the proceedings amounted to anything more than defending his actions, something he was entitled to do. And indeed, we have ultimately agreed with many of Judge Grendell's legal arguments. This is not a case in which despite clear ethical violations, a judge has failed to acknowledge that he or she did anything wrong. Nor is it a case in which a judge has denied factual allegations despite strong evidence to the contrary. Rather, it is a case in which a judge has set forth nonfrivolous arguments in support of his legal determinations and discretionary decisions. We decline to adopt the board's findings as to this aggravating factor.

E. Judge Grendell's Lack of Prior Disciplinary Record Is a Mitigating Factor

{¶ 205} "The absence of a prior disciplinary record" is a mitigating factor. Gov.Bar R. V(13)(C)(1). The Board Report notes with one line that Judge Grendell has no prior disciplinary record. Judge Grendell objects that the board should have given more weight to this factor. How much weight the board gave this factor is speculative, but we would add to the board's sparse description that Judge Grendell has been a licensed attorney in Ohio since 1978 and has been a judge since 2011.

The length of his service to Ohio adds to the mitigating weight of the absence of a disciplinary record.

F. Judge Grendell's Character and Reputation Are Mitigating Factors

{¶ 206} "Character or reputation" is also a mitigating factor. Gov.Bar R. V(13)(C)(5). The board received almost 60 letters attesting to Judge Grendell's good character. The board found that the many letters established that Judge Grendell is respected as a jurist and member of his community. The board also noted that three character witnesses testified to his good reputation at the disciplinary hearing. The board, however, accorded little weight to the character testimony and letters because the board could not determine whether the witnesses and letter writers would have a different opinion of Judge Grendell's character if they were aware of the allegations against him.

{¶ 207} The board overly diminished the weight of these abundant testimonies to Judge Grendell's good character. A character witness's familiarity with the alleged violations is a point of consideration, but letters supporting Judge Grendell's character should not be disregarded merely because they fail to address the factual circumstances underlying the allegations. By including character or reputation as a mitigating factor, the rules contemplate that character and reputation will be considered separately from the misconduct that has been charged.

{¶ 208} Completely lacking from the Board Report as a mitigating factor are Judge Grendell's leadership roles in the judiciary. He has held roles in the Ohio Juvenile Judges Association, the Ohio Probate Judges Association, the National College of Probate Judges, and the Ohio Judicial Conference. He also is a veteran, with distinguished service in the United States Army Judge Advocate General Corps. And he started two educational programs in Geauga County: the Good Deeds program, which educates the community about probate, and Geauga Learn, which educates youth about agriculture, history, and government in Geauga County. These actions are laudable and have mitigating force.

{¶ 209} All told, there is a sizeable amount of character evidence that the board did not address in its report that should properly be considered as mitigating evidence.

V. THE APPROPRIATE SANCTION

{¶ 210} The board recommended an 18-month suspension with six months stayed. Judge Grendell argues that this sanction is too severe and does not comport with past disciplinary decisions by this court.

{¶ 211} We note at the outset that a departure from the board's recommended sanction is warranted by our previous determinations regarding Judge Grendell's other objections. While the board recommended a finding of violations across three separate matters, we have found violations in a single matter. The board found six aggravating factors, but we determine that only one, Gov.Bar R. V(13)(B)(8) ("[t]he vulnerability of and resulting harm to victims of the misconduct") applies. The board found two mitigating factors, Gov.Bar R. V(13)(C)(1) (absence of a prior disciplinary record) and (5) ("[c]haracter or reputation"), but failed to accord them their appropriate weight.

{¶ 212} In determining appropriate sanctions, we consider, among other things, "the sanctions imposed in similar cases." *Disciplinary Counsel v. Berry*, 2021-Ohio-3864, ¶ 14. No two disciplinary cases present identical facts, so there will often be considerable debate as to what is a similar case. Here, the facts that we find most salient in identifying comparable cases are (1) that Judge Grendell's violation resulted in the improper detention of two juveniles and (2) that Judge Grendell committed disciplinary violations in a single case.

{¶ 213} In recommending a suspension of 18 months with six months stayed, the board recommended the same sanction that we imposed in *Hoover*, 2024-Ohio-4608. Similar to this case, two of the disciplinary violations in *Hoover* involved wrongful confinements. One defendant was unlawfully jailed for seven

days; the other for four days. *Id.* at ¶ 213. But *Hoover* dealt with a much broader pattern of misconduct, spanning across 16 separate matters. *Id.* at ¶ 186.

{¶ 214} We also imposed an 18-month suspension with six months stayed in *Disciplinary Counsel v. Parker*, 2007-Ohio-5635, for conduct that included a wrongful detention order. *Parker* at ¶ 8, 130. But *Parker*, too, involved a much broader pattern of misconduct, encompassing more than 12 separate matters. *See id.* at ¶ 7-8, 10, 13, 19, 23, 37, 42, 49-53.

{¶ 215} The same goes for *Disciplinary Counsel v. Medley*, 2004-Ohio-6402, another case in which we imposed an 18-month suspension with six months stayed. *Medley* at ¶ 43. In *Medley*, the judge caused a "significant number" of people to be incarcerated through his systematic use of improper debt-collection procedures in small-claims court and committed 16 disciplinary-rule violations. *See id.* at ¶ 10, 13, 20, 26, 32, 37.

{¶ 216} A case that involved judicial misconduct in the context of the incarceration of juveniles is *Disciplinary Counsel v. Karto*, 2002-Ohio-61. The charges of judicial misconduct in *Karto* spanned across multiple cases. *See Karto* at ¶ 2-10. One of the cases involved two juveniles who were brothers. *Id.* at ¶ 5-6. The judge improperly sentenced one of the juveniles to serve 90 days in a detention center, even though the applicable statute did not provide for incarceration on the offenses charged. *Id*. at ¶ 5; Board Report in *Karto* (Supreme Court case No. 2001-0877) at 6. The "sole explanation" that the judge presented for the illegal sentence was that he had used an outdated rule book because the newer version had been stolen. *Karto* at ¶ 25. We also concluded that the judge engaged in misconduct when the juvenile, along with his brother, was brought before the judge on delinquency charges. *Id.* at ¶ 6-7, 26. The boys told the judge they were represented by counsel, but the judge conducted a detention hearing without counsel present, directing the boys to cross-examine the State's witness. *Id.* at ¶ 7. Following the hearing, the judge ordered that the boys be confined in the juvenile detention center

until an adjudicatory hearing could be held. *Id.* The judge also engaged in multiple improper ex parte communications regarding the juveniles. *Id.* at ¶ 6, 26. In addition to the misconduct involving the two juveniles, we found disciplinary violations in three other matters, all involving abuse of the judge's contempt powers. *Id.* at ¶ 18-19, 28. For this series of violations, we imposed a six-month suspension. *Id.* at ¶ 33.

{¶ 217} We imposed the same sanction in *Disciplinary Counsel v. Bachman*, 2020-Ohio-6732, a case, like the one at bar, that involved improper detention in a single case. *Id.* at ¶ 2, 37. In *Bachman*, a woman caused a disruption in the courthouse hallway, which Magistrate Bachman heard from the bench. *Id.* at ¶ 6. We explained what happened next:

> [The video] shows Bachman exiting the courtroom in his robe and running down the hallway in pursuit of K.J. He accosts her at the elevators and returns her to his courtroom. Once there, Bachman walks her through the crowded courtroom with his hand on her shoulder, places her in a seat in his jury box, and orders her not to move just before summoning the sheriff. Multiple sheriff's deputies soon arrive, and Bachman orders them to take K.J. into custody and to jail her for three days for contempt, causing her to cry and attempt to leave the jury box.
>
> The next 20 minutes of the video are difficult to watch. While K.J. resists being arrested and pleads with Bachman to explain why she is being jailed for three days, she is physically subdued by two deputies, threatened with being tased, and ultimately dragged from the jury box by several deputies. Bachman's only response is to increase her jail sentence to ten days. Not only is the chain of events set in motion by Bachman's

> misconduct physically and emotionally harmful to K.J., the incident exposed the sheriff's deputies and other court personnel to harm from a violent and unnecessary arrest on full display in front of a courtroom full of people who have no other choice but to sit silently and witness such a disturbing sight. Bachman then congratulates a deputy on an award the deputy had recently received and resumes the proceeding as if nothing out of the ordinary has just transpired. Meanwhile, the video footage shows, while K.J. continues protesting her arrest, she is dragged, yanked, pinned to a wall, and handcuffed to a chair. Before the video ends, over 20 deputies and members of the court staff are involved in jailing K.J.—all because of a scream of frustration in the hallway that lasted one second.

Id. at ¶ 29-30. The woman was incarcerated for two days of the ten-day sentence that Magistrate Bachman imposed before the presiding judge intervened and ordered her released from jail. *Id.* at ¶ 11.

{¶ 218} Like Judge Grendell, Magistrate Bachman caused harm to a vulnerable victim but had no prior discipline and presented evidence of his good character and reputation. *Id.* at ¶ 14. In *Bachman*, however, we found it significant that he refused to acknowledge any responsibility, noting that he was "utter[ly] indifferen[t] to the harm he caused [the victim] and the integrity of the judiciary." *Id.* at ¶ 31.

{¶ 219} Based on other cases involving judicial officers who committed misconduct in connection with a single matter, the board recommended that Magistrate Bachman receive a fully stayed suspension of six months. *Id.* at ¶ 3, 17. We determined, however, that a more severe sanction was "necessary to send a strong message to members of the judiciary, to deter similar violations in the future, and to make crystal clear to the public that this type of judicial misconduct will not

be tolerated." *Bachman* at ¶ 36. We imposed an actual six-month suspension on Magistrate Bachman. *Id.* at ¶ 37.

{¶ 220} Following *Bachman*, in *Disciplinary Counsel v. Repp*, 2021-Ohio-3923, we imposed a 12-month suspension with no stay on a judge who had wrongfully incarcerated someone who was not even a party to a proceeding before the judge. *Id.* at ¶ 2, 33. The judge sentenced a courtroom spectator to ten days in jail after the spectator had refused the judge's demand that she submit to a drug test. *Id.* at ¶ 13-14. In imposing the one-year suspension, we concluded that Judge Repp's conduct was "substantially more egregious" than the conduct in *Bachman*. *Id.* at ¶ 32. The spectator "did *absolutely nothing* to justify [Judge] Repp's attention in the courtroom—let alone his order that she be drug tested." (Emphasis in original.) *Id.* at ¶ 30. Further, she was not the only victim of Judge Repp's misconduct that day. He also directed highly inappropriate and prejudicial comments toward her boyfriend, who was a defendant who appeared by video from the Seneca County jail. *Id.* at ¶ 10-12.

{¶ 221} Judge Grendell argues that *Bachman* is an outlier, noting that in other cases we have imposed fully stayed suspensions for instances of abuse of judicial power that occur within a single proceeding. In *Disciplinary Counsel v. Hoague*, 2000-Ohio-340, we disciplined a judge who had been found guilty of misdemeanor coercion for an abuse of judicial power. *Id.* at ¶ 6, 9. After observing an erratic driver on the highway, the judge tracked down the identity of the car's owner and wrote the owner a letter. *Id.* at ¶ 1-2. The letter stated that a complaint had been filed with the highway patrol about the driver's reckless driving and the matter was under investigation. *Id.* at ¶ 2. The letter demanded that the owner contact the judge's office to avoid "further legal action being taken against [her]" and warned that if she failed to do so, the judge would "authorize the filing of any appropriate criminal and/or traffic charges, the seizure and impoundment of [her] motor vehicle and the issuance of a warrant for [her] arrest." *Id.* When the driver

responded to the letter by appearing in the courtroom, the judge "conducted an arrogant inquisition, finally threatening to contact [her] employer about [her] driving habits, a threat which he apparently later attempted to carry out." *Id.* at ¶ 13. We suspended the judge for six months but stayed the entire suspension. *Id.* at ¶ 15.

{¶ 222} In *Disciplinary Counsel v. Gaul*, 2010-Ohio-4831, we also imposed a six-month stayed suspension for a serious but "isolated" instance of misconduct. *Id.* at ¶ 77, 80. In that case, a judge had become upset because an elderly victim did not appear for a criminal prosecution. *Id.* at ¶ 4-8. To locate the witness, the judge instructed his bailiff to issue an amber alert and inform the media of the alert. *Id.* at ¶ 14. The media came to the judge's courtroom, but the alert was not ultimately issued because courtroom personnel learned that the witness had been found in a dialysis facility. *Id.* at ¶ 15-16, 57. After the media arrived in the courtroom, the judge directed "highly prejudicial and unnecessary comments . . . toward the defendant." *Id.* at ¶ 55.

{¶ 223} In *Disciplinary Counsel v. Elum*, 2016-Ohio-8256, we sanctioned a judge who interjected himself in a landlord-tenant dispute that was not on his docket. *Id.* at ¶ 2, 7. In multiple communications, the judge attempted to convince the landlord, who said she felt intimidated and bullied, to accept late payment from the tenant. *Id.* at ¶ 5-6. We adopted the board's recommendation of a one-year stayed suspension. *Id.* at ¶ 16. We noted that in other cases involving "an isolated incident of judicial misconduct," a lighter sanction was imposed. *Id*. at ¶ 14, citing *Hoague* and *Gaul*, 2010-Ohio-4831. But because this was Judge Elum's second disciplinary violation, we determined a stayed one-year sentence was appropriate. *Id.* at ¶ 14-16.

{¶ 224} Other cases follow a similar pattern of imposing a sanction that falls short of an actual suspension from the practice of law for judicial misconduct that occurs within the context of the handling of a single case. *See, e.g.*, *Disciplinary*

Counsel v. Porzio, 2020-Ohio-1569 (stayed six-month suspension imposed on magistrate for ex parte communications, profanity, and improper comments about a party's religion and ethnicity); *Disciplinary Counsel v. O'Diam*, 2022-Ohio-1370 (stayed six-month suspension imposed on judge who after estate beneficiary questioned why the judge's daughter was allowed to appear in front of him, summoned estate beneficiary to court and interrogated him under oath in a disparaging manner and then allowed his daughter to continue the interrogation); *Disciplinary Counsel v. McCormack*, 2012-Ohio-4309 (stayed one-year suspension imposed on magistrate who committed multiple violations over the course of four hearings in a single modification-of-child-support matter); *Disciplinary Counsel v. Medley*, 2001-Ohio-1592 (public reprimand imposed on judge for not recusing from case involving defendant who called the judge after being arrested and whom the judge picked up from the police station after booking). We have also sometimes imposed stayed suspensions for instances of judicial misconduct that spanned across multiple cases. *See Oldfield*, 2014-Ohio-2963 (public reprimand imposed on judge for not recusing from multiple cases involving an attorney with whom the judge was temporarily living and for whom the judge was a potential witness in a criminal prosecution); *Disciplinary Counsel v. Elum*, 2012-Ohio-4700 (stayed six-month suspension imposed on judge for misconduct in two cases involving profanity, interceding in an internal police investigation, and publicly disparaging the local police chief).

{¶ 225} A few conclusions are evident from the aforementioned precedent. First, the board's recommended sanction of 18 months with six months stayed—which is the same sanction imposed for violations that spanned multiple matters in *Hoover*, *Medley*, 2004-Ohio-6402, and *Parker*—is harsher than warranted in this case, which involves violations in a single matter. Second, our precedent in cases involving misconduct that occurs within a single matter would generally suggest that a stayed suspension is appropriate.

{¶ 226} On the other hand, *Bachman* and *Repp* make clear that even in matters involving misconduct within a single proceeding, an actual suspension sometimes may be warranted. Comparing this case to *Bachman*, we note that while Judge Grendell's actions were motivated by a desire to achieve what he believed to be a proper result, Magistrate Bachman's actions appear to have been motivated by little more than his own anger. And Magistrate Bachman not only inappropriately sent a person to jail on contempt charges, he also chased her in a court hallway and physically placed her in the jury box. But weighing in the other direction is that while Magistrate Bachman improperly detained one adult, Judge Grendell improperly detained two vulnerable children. Further, while Magistrate Bachman's outburst arose from a sudden fit of anger, Judge Grendell's decision to incarcerate the boys and leave them in detention over the weekend involved considerably more calculation and time for reflection.

{¶ 227} The punishment meted out in *Bachman* reflects the seriousness with which we treat misconduct that results in wrongful detention, particularly when that wrongful detention is ordered immediately and summarily, without any recourse to timely relief through the appellate process. While we determine it is appropriate to impose the same actual suspension as we imposed in *Bachman*, we also determine that this case warrants a somewhat more severe punishment because it involved the unjustified incarceration of two children. Thus, we conclude that Judge Grendell should be suspended from the practice of law for 18 months with 12 months stayed.

VI. CONCLUSION

{¶ 228} Timothy J. Grendell is suspended from the practice of law in Ohio for 18 months with 12 months stayed on the condition that he commit no further misconduct. If Judge Grendell fails to comply with the condition of the stay, the stay will be lifted and he will serve the entire 18-month suspension. Pursuant to Gov.Jud.R. III(7)(A), Judge Grendell is immediately suspended from judicial office

without pay for the duration of his disciplinary suspension. Costs are taxed to Judge Grendell.

Judgment accordingly.

FISCHER, J., joined by EDELSTEIN, J., concurring in part and dissenting in part.

{¶ 229} I concur in the court's conclusions that respondent, Judge Timothy Grendell, did not violate the Code of Judicial Conduct by his actions surrounding the Tea Party event set out in Count 3. However, regarding Count 4, which involved Judge Grendell's testimony before a state legislative committee, I must dissent from the court's conclusion that Judge Grendell violated Jud.Cond.R. 3.2. Instead, I would find that Judge Grendell did not violate that rule based on its plain language. Therefore, unlike the majority, I would not reach the constitutional issue concerning that rule.

{¶ 230} Finally, regarding Count 1, the Glasier matter, I dissent from the court's conclusion that Judge Grendell did not violate Prof.Cond.R. 8.4(d). It is clear that by wrongfully incarcerating two juveniles in that matter, Judge Grendell engaged in conduct that was prejudicial to the administration of justice. However, I agree with the court's conclusion that his conduct also constituted a violation of Jud.Cond.R. 1.2, 2.2, and 2.11, and I concur in the sanction imposed. Therefore, I concur in part and dissent in part.

I. THE LEGISLATIVE TESTIMONY

{¶ 231} Regarding Count 4, the Board of Professional Conduct found that Judge Grendell violated Jud.Cond.R. 3.2 and Jud.Cond.R. 1.3 when he voluntarily testified before a legislative committee on House Bill 624 ("H.B. 624"), which was sponsored by Representative Diane Grendell, Judge Grendell's wife, and which would have required the government to release certain statistics related to COVID-19. I concur in this court's conclusion that Judge Grendell did not violate

Jud.Cond.R. 1.3. However, I dissent from its conclusion that he violated Jud.Cond.R. 3.2. The court declines to discipline Judge Grendell for violating Jud.Cond.R. 3.2 because it holds that Jud.Cond.R. 3.2 is an unconstitutional content-based speech restriction in violation of the First Amendment. Because I would find that Judge Grendell did not violate Jud.Cond.R. 3.2, I would not reach the constitutional question.

{¶ 232} Jud.Cond.R. 3.2 states:

> A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except as follows:
>
> (A) In connection with matters concerning the law, the legal system, or the administration of justice;
>
> (B) In connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties;
>
> (C) When the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

Therefore, Jud.Cond.R. 3.2(A) allows judges to voluntarily testify at public hearings before executive or legislative bodies if their testimony is "[i]n connection with matters concerning the law." As defined by the Code of Judicial Conduct, "law" means "court rules, including [the Code of Judicial Conduct] and the Ohio Rules of Professional Conduct, *statutes*, constitutional provisions, and decisional law." (Emphasis added.) Code of Judicial Conduct, Terminology. The definition even cites Jud.Cond.R. 3.2 as one of the rules to which it applies. In other words, Jud.Cond.R. 3.2 expressly *allows* judges to voluntarily provide testimony "[i]n

connection with matters concerning" statutes.

{¶ 233} Judge Grendell's entire testimony was provided in support of H.B. 624, a bill that, if passed, would have become statutory law. Thus, it was clearly testimony that was provided "[i]n connection with matters concerning the law," as that term is defined in the Code of Judicial Conduct. Therefore, Judge Grendell did not violate Jud.Cond.R. 3.2.

{¶ 234} And because Judge Grendell did not violate Jud.Cond.R. 3.2, this court need not, and indeed should not, consider Judge Grendell's arguments regarding the constitutionality of Jud.Cond.R. 3.2. Under the constitutional-avoidance principle, "courts should not decide constitutional questions unless it is absolutely necessary to do so." *Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C.*, 2024-Ohio-4989, ¶ 17; *Ashland Global Holdings, Inc. v. SuperAsh Remainderman, Ltd. Partnership*, 2025-Ohio-2835, ¶ 34, quoting *Epcon* at ¶ 19 ("Under constitutional-avoidance considerations, 'we should not be deciding constitutional questions unless it is necessary to do so.'"); *State v. Talty*, 2004-Ohio-4888, ¶ 9 ("It is well settled that this court will not reach constitutional issues unless absolutely necessary."). And in this case, it is not necessary or advisable to reach the constitutional question because the matter can be resolved by merely applying the plain language of Jud.Cond.R. 3.2 to the facts. "It is a long-standing principle that '[c]onstitutional judgments . . . are justified only out of the necessity of adjudicating rights in particular cases,'" *Epcon* at ¶ 17, quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973), and the constitutional issue need not be decided to adjudicate the rights in this case. Therefore, I would adhere to this court's long-standing principle of constitutional avoidance and avoid addressing a constitutional question that it is unnecessary to resolve.

II. THE GLASIER MATTER

{¶ 235} Regarding Count 1, the Glasier matter, I dissent from the court's conclusion that Judge Grendell did not violate Prof.Cond.R. 8.4(d). Prof.Cond.R.

8.4(d) says, "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." It is clear in this case that Judge Grendell engaged in conduct that was prejudicial to the administration of justice.

{¶ 236} Judge Grendell incarcerated two juveniles without a sufficient legal basis to do so. In doing so, he violated Juv.R. 7(A), which states that a child who is taken into custody "shall not be placed in detention . . . prior to final disposition" except in limited circumstances. By not allowing the juveniles to contact their mother, he also violated Juv.R. 7(J), which states that "[a] child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter" and that a parent may visit "at reasonable visiting hours." The Board of Professional Conduct found that Judge Grendell's "claim that his order to detain the boys was in their best interest [was] patently facetious, contrary to law, and apparently motivated by his determination to 'not fail like the other courts did.'" Board Report, ¶ 120, quoting Judge Grendell's statement to the parties in the Glasier matter (the parents of the juveniles) at an April 20, 2020 hearing. The wrongful incarceration of two juveniles on "trumped-up charges," majority opinion, ¶ 172, clearly is prejudicial to the administration of justice. If such actions do not constitute a violation of Prof.Cond.R. 8.4(d), then it is hard to imagine what does.

{¶ 237} The majority opinion says that we should not find violations of multiple rules for the same conduct because each rule should be given a "separate application" and "piling on general rule violations to expand the number of disciplinary charges for the same violation does not advance the ends of the disciplinary process." *Id.* at ¶ 184, fn. 8. The implication of the majority opinion is that Prof.Cond.R. 8.4(d) cannot be enforced alongside another rule. In the past, this court has not shied away from finding a violation of Prof.Cond.R. 8.4(d) simply because the respondent's conduct also violated another rule. For example, in *Disciplinary Counsel v. Hoover*, 2024-Ohio-4608, we found that the respondent's

conduct in using demeaning language toward a person who failed to pay a fine violated both Jud.Cond.R. 1.2 and Prof.Cond.R. 8.4(d). *Id.* at ¶ 32. And in *Disciplinary Counsel v. Gaul*, 2023-Ohio-4751, which is cited several times in the majority opinion in this case, we found that the respondent had committed four violations of Prof.Cond.R. 8.4(d), and we found that each violation was accompanied by a violation of Jud.Cond.R. 1.2 as well as a host of other rule violations, *see id.* at ¶ 18, 22, 58, 69.

{¶ 238} Judge Grendell's actions in the Glasier matter clearly violated Prof.Cond.R. 8.4(d), and I will not ignore those violations simply because his conduct also violated Jud.Cond.R. 1.2, 2.2, and 2.11.

III. CONCLUSION

{¶ 239} I concur in the court's conclusions regarding Count 3. However, I dissent from the court's conclusion that Judge Grendell's conduct related to Count 4 violated Jud.Cond.R. 3.2, so, under the principle of constitutional avoidance, I would not reach the constitutional issue concerning that rule. Regarding Count 1, I concur in the court's conclusion that Judge Grendell violated Jud.Cond.R. 1.2, 2.2, and 2.11; however, I would also find that he violated Prof.Cond.R. 8.4(d). Nevertheless, I concur in the sanction imposed by the court. Accordingly, I concur in part and dissent in part.

Joseph M. Caligiuri, Disciplinary Counsel, and Martha S. Asseff, Assistant Disciplinary Counsel, for relator.

Roetzel & Andress, L.P.A., and Stephen W. Funk, for respondent.

[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.]

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.

Arizona Supreme Court
Judicial Ethics Advisory Committee

ADVISORY OPINION 14-01
(Revised August 5, 2014)

USE OF SOCIAL AND ELECTRONIC MEDIA BY JUDGES AND JUDICIAL EMPLOYEES

Overview

Many Arizona judges and judicial employees are using social and electronic media, including:

- Facebook and other social networking sites for personal use
- Websites, blogs, and social networking sites devoted to reelection campaigns or retention elections
- Websites, blogs, listservs, and other electronic sites devoted to legal issues
- Websites, blogs, and social networking sites designed for community outreach or educational purposes
- Twitter
- LinkedIn

Such uses raise ethical issues that judges and judicial employees must carefully consider to ensure compliance with the Arizona Code of Judicial Conduct and the Arizona Code of Conduct for Judicial Employees.

It is not possible to anticipate and address every ethical issue that may arise from the use of such media, especially given the inevitable development of new electronic platforms. The purpose of this advisory opinion is to address common existing uses. Judges and judicial employees are encouraged to seek guidance from the Judicial Ethics Advisory Committee (JEAC) regarding questions left unresolved by this opinion, using the process set forth in Rule 82, Rules of the Arizona Supreme Court.

Issues under the Arizona Code of Judicial Conduct

1. May a judge use LinkedIn?

LinkedIn[1] is a professional networking platform whose mission is to "connect the world's professionals to make them more productive and successful." The use of

[1] https://www.linkedin.com/.

LinkedIn to make professional recommendations raises potential ethical issues for judges under Rule 1.2 and Rule 1.3.[2]

Utah Informal Judicial Ethics Opinion 12-01 (August 31, 2012), discusses LinkedIn and concludes that a judge may not use the site to recommend a lawyer who regularly appears before him or her. We agree that such a use could reasonably call the judge's impartiality into question, in violation of Rule 1.2. It is also problematic for a judge to recommend the employment by clients of *any* professional by using the judge's position or title. Using the prestige of judicial office to advance the personal or economic interests of another violates Rule 1.3.

Other uses of LinkedIn and similar sites are permissible. Recommending a former law clerk to a specific prospective employer through LinkedIn, for example, would not violate Rule 1.3 as long as the recommendation clearly states it is for that purpose and is based on the judge's personal knowledge of the person being recommended. *See* Comment 2 to Rule 1.3 of the Arizona Code of Judicial Conduct.

2. May judges maintain blogs?

A judge's use of a blog may implicate Rule 2.10(A).[3] Judges must ensure that any statements they make will not negatively affect judicial proceedings, and they must avoid making statements that could be perceived as prejudiced or biased under Rule 2.3(A)[4] or Rule 3.6.[5] Additionally, Rule 3.1 prohibits judges from

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[2] Rule 1.2 Promoting Confidence in the Judiciary

"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."

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

"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."

[3] Rule 2.10(A) provides that "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing."

[4] Rule 2.3 Bias, Prejudice, and Harassment

Rule 2.3(A)

"A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

[5] Rule 3.6 Affiliation with Discriminatory Organizations
Comment 1

participating in activities that will necessitate frequent disqualification, which may affect the substance of a judge's blog postings.[6]

3. What ethical concerns relate to the personal use of Facebook?

The Arizona Code of Judicial Conduct does not prohibit the personal use of Facebook or other social networking sites, even when the site reveals the judge's professional status. Nevertheless, using Facebook to communicate with friends, family, and professional peers has potential ethical implications under Rules 2.4(B) and 2.4(C).[7]

A judge should avoid participating in or being associated with discussions about matters falling within the jurisdiction of his or her court. This extends to postings by others regarding high profile cases or legal issues that could come before the court. Such communications could give the impression that other people or

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"A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. . . . ."

[6] Rule 3.1 Extrajudicial Activities in General

"A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in judicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administrative of justice, or unless such additional use is permitted by law."

[7] Rule 2.4 External Influences on Judicial Conduct

Rule 2.4(B)

"A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."

Rule 2.4(C)

"A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge."

organizations are in a position to influence the judge. They could also raise concerns about the judge's impartiality.

The question arises whether disqualification is required in cases involving litigants or lawyers who are Facebook "friends" of the judge's (or the functional equivalent, including Twitter or Instagram followers).[8] Could it reasonably appear to a litigant or opposing counsel that the "friend" is in a position to influence the judge in a pending matter?

Rule 1.2 requires a judge to avoid not only impropriety, but also the appearance of impropriety. Comment 5 to Rule 1.2 provides, in part, that "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge."

Disqualification decisions must be guided by Rule 2.11.[9] The test is whether the judge's impartiality in a proceeding might reasonably be questioned. A judge must take into consideration all relevant facts and circumstances in determining whether grounds for disqualification exist in a particular case.[10]

The JEAC concludes that the Arizona Code of Judicial Conduct does not impose a per se disqualification requirement in cases where a litigant or lawyer is a "friend" or has a similar status with a judge through social or electronic networks. Judges must be mindful, though, of Rule 3.1(B), which requires them to avoid activities that will lead to frequent disqualification. If social or electronic media associations will necessitate frequent disqualification, the judge must consider whether continuing that relationship is appropriate.[11] *See also* Rule 2.7 ("A judge

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[8] This issue is addressed in ethics advisory opinions from other jurisdictions, many of which are cited in Formal Opinion 462 (Judge's Use of Electronic Social Networking Media) issued on February 21, 2013, by the American Bar Association Standing Committee on Ethics and Professional Responsibility. See also the list of relevant opinions at the end of this opinion.

[9] Rule 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ."

[10] Facebook permits categorization of "friends," including designations of individuals as "close friends." A person in the "close friend" category is more likely to trigger disqualification than a person appearing as one of many on a list of friends.

[11] It is insufficient to simply "de-friend" a lawyer or litigant while presiding over a case in which the individual is involved. The ethics switch is not so easily turned on and off. The fact that the judge was just recently associated with the lawyer or litigant poses the same ethical issues as an ongoing relationship.

shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.").

Another option, depending on the facts and circumstances of a given case, is for the judge to disclose on the record any such relationship, even if he or she believes there is no basis for disqualification. *See* Comment 5 to Rule 2.11. The parties can then decide if they wish to seek the judge's recusal. But if the facts and circumstances are such that the judge's impartiality might reasonably be questioned, the judge may not preside over the matter. "Personal bias or prejudice" in favor of or against a litigant or a litigant's lawyer cannot be remitted using the procedure set forth in Rule 2.11(C), and the "might reasonably be questioned" standard does not require a showing of actual bias or prejudice.

4. What other rules affect judges' use of social and electronic media?

Social and electronic media usage may also raise issues under Rules 2.9(A) and 2.9(C).[12] If, for example, a judge maintains a website, blog, or social media presence, litigants or lawyers may attempt to engage in ex parte communications. A judge using such platforms should take steps to guard against such communications. And pursuant to Rule 2.9(B), "If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

Rule 2.9(C) prohibits judges from independently investigating the facts of cases, except as otherwise provided by law. Judges must consider only the evidence presented by the parties and any facts properly subject to judicial notice. Comment 6 to Rule 2.9 provides that, "The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic." Judges must scrupulously avoid researching facts, litigants, or lawyers involved in matters pending before them through electronic or social media. *Cf.* Opinion No. 68 (Ethics of Internet Research of Facts by Trial Judges), Judicial Ethics Committee, California Judges Association (April 2013).

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[12] Rule 2.9 Ex Parte Communication

Rule 2.9(A)

"A judge shall not initiate, permit, or consider ex parte communications made to the judge, outside the presence of the parties or their lawyers concerning a pending or impending matter, except [as otherwise authorized by the rule]."

Rule 2.9(C)

"Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed."

As previously discussed in connection with Rule 2.3(A), a judge who uses social media must not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court. *See* Rule 2.10(A); *see also* Rule 4.1(A)(9) ("A judge or a judicial candidate shall not do any of the following: make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court"). Although nonpublic statements are only prohibited under Rule 2.10(A) if they might substantially interfere with a fair trial or hearing, it is prudent to assume that even postings intended only for friends and family may be more broadly disseminated through social and electronic media.[13]

A judge has a duty to ensure that court staff, court officials, and others subject to the judge's control refrain from making statements that the judge is prohibited from making.[14] *See also* Rule 2.12(A) ("A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code."). The next section of this opinion addresses the ethical rules specifically applicable to judicial employees.

The admonitions set forth in connection with Rule 2.11 (Disqualification) are equally applicable in connection with Rule 3.1 (Extrajudicial Activities in General) and Rule 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities).[15] A judge could "like" or "follow" a civic

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[13] "Due to the ubiquitous nature of information transmitted through the use of social media, judges and employees should assume that virtually all communication through social media can be saved, electronically re-transmitted to others without the judge's or employee's knowledge or permission, or made available later for public consumption." Opinion 112 (Use of Electronic Social Media by Judges and Judicial Employees), Committee on Codes of Conduct, Judicial Conference of the United States (March 2014), Section VI. Dignity of the Court.

[14] Rule 2.10 Judicial Statements on Pending and Impending Cases

Rule 2.10(C)

"A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B)."

[15] Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

"(A) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: . . . ."

organization's Facebook page, but must consider whether disqualification is required under Rule 2.11 should that organization appear as a litigant, and the judge must avoid making public statements prohibited by Rule 2.10. A judge must also ensure that he or she does not run afoul of Rule 4.1, discussed below, through social media associations with political organizations and activities.

A judge may not use nonpublic information acquired in a judicial capacity for personal purposes, *see* Rule 3.5,[16] which includes usage on social and electronic media. The terminology section of the Arizona Code of Judicial Conduct defines "nonpublic information" to mean "information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports."

5. Are there restrictions on judges "friending" elected officials or "liking" an election-related Facebook page?

Once again, the answers to such questions are fact-intensive. If, for example, a judge is a "friend" of an elected state representative's official Facebook page, a disqualification issue would likely arise only in connection with a case where the representative is a litigant, lawyer, witness, or other participant. Such a "friendship" is not an endorsement prohibited by Rule 4.1(A)(3).[17]

On the other hand, if the state representative is standing for reelection, the judge may not be a "friend" of the campaign committee's Facebook page or "like" that page, as such associations would indicate that the judge supports and is

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[16] Rule 3.5 Use of Nonpublic Information

"A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties."

[17] Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

Rule 4.1(A)

"A judge or a judicial candidate shall not do any of the following:

* * *

(3) publicly endorse or oppose another candidate for any public office;

* * *

(5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;

* * *"

endorsing that individual's reelection.[18] Similarly, a judge may not be a "friend" of or "like" another judge's reelection campaign Facebook page because Rule 4.1(A)(3) prohibits judges from endorsing another candidate for any public office.

It would also violate Rule 1.2 for a judge to be a "friend" of the local sheriff's (or other local law enforcement officials') Facebook page or to "like" such a page. Rule 1.2 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 shall avoid impropriety and the appearance of impropriety." Because the sheriff's office regularly participates in matters before most courts, such associations are ethically problematic.

It also bears mention that a judge or judicial candidate's campaign committee cannot engage in conduct that the judge is prohibited from engaging in. The judge or judicial candidate is responsible for ensuring that his or her campaign committee complies with all pertinent provisions of the Arizona Code of Judicial Conduct and other applicable law. *See* Rule 4.4(A).

Issues under the Arizona Code of Conduct for Judicial Employees

We next consider judicial employees' use of social and electronic media under the Arizona Code of Conduct for Judicial Employees. Many of the same issues and answers discussed above apply equally in this context.

1. May a judicial employee recommend a lawyer through LinkedIn?

Rule 1.2[19] prohibits a judicial employee from engaging in conduct involving the appearance of impropriety, and Rule 1.3[20] prohibits judicial employees from using their positions to secure special privileges for others. Based on these provisions, the JEAC concludes that judicial employees may not publicly recommend professionals on sites such as LinkedIn if they refer in any manner to their role with the court. Doing so would use the prestige of the employee's court

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[18] If a person clicks "like" on a Facebook page, his or her Facebook profile will reveal that he or she "likes" that other page.

[19] Rule 1.2 Promoting Confidence in the Judiciary

"A judicial employee 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."

[20] Rule 1.3 Abuse of Position

"Judicial employees shall not use or attempt to use their positions for personal gain or to secure special privileges or exemptions for themselves or any other person."

and position to advance the personal or economic interests of the recommended professional.

On the other hand, a judicial employee's recommendation of an individual sent to a specific prospective employer through LinkedIn does not violate Rule 1.3 as long as the recommendation is clearly stated as being for that purpose and is based on the employee's personal knowledge of the lawyer. Comment 2 to Rule 1.3 provides that "A judicial employee may provide a reference or recommendation for an individual based upon personal knowledge. The judicial employee may use court letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the court employment."

2. May judicial employees maintain blogs?

Rule 3.1[21] and Rule 2.11(A)[22] are relevant whenever a judicial employee engages in outside activities. A judicial employee's advocacy of particular legal positions on a blog or other electronic media could place the employee in a position

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[21] Rule 3.1 Outside Activities in General

Rule 3.1(A)

"A judicial employee shall conduct outside activities so as to avoid a negative effect on the court or the ability to perform court duties."

Rule 3.1(B)

"Except as provided by law or court rule, judicial employees shall not engage in any business, secondary employment or volunteer activity that:

* * *

(2) Is conducted during the judicial employee's scheduled working hours;

(3) Places the judicial employee in a position of conflict with the judicial employee's official role in the judicial department;

* * *

(5) Identifies the judicial employee with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or

(6) Requires use of court equipment, materials, supplies, telephone services, office space, computer time, or facilities."

[22] Rule 2.11 Personal Interests

Rule 2.11(A)

"A judicial employee shall manage personal and business matters so as to avoid situations that may lead to conflict, or the appearance of conflict, in the performance of the judicial employee's employment."

of conflict with his or her role in the judicial department. Judicial employees must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. *See* Rule 1.2. So, for example, depending on a judicial employee's duties, postings advocating abolition of the death penalty or particular positions on other controversial social issues could undermine the public's confidence that the court the employee works for will fairly and impartially rule in litigation regarding such matters brought before that court. Judicial employees must ensure that any statements they make will not negatively affect judicial proceedings under Rule 2.10(A) [23] and they must avoid making statements that could be perceived as prejudiced or biased under Rule 2.3. [24]

The best practice is for judicial employees to notify their supervisors if they have discussed a legal issue on social or electronic media that comes before his or her court. The supervisor can then determine whether the employee must withdraw from participation pursuant to Rule 2.11 or whether other remedial action is required.

3. What ethical concerns relate to judicial employees' use of Facebook?

The Arizona Code of Conduct for Judicial Employees does not prohibit judicial employees from using social networking sites such as Facebook or from identifying themselves as judicial employees on those sites. However, employees must be aware of potential ethical pitfalls in pursuing such activities.

A judicial employee's use of Facebook to communicate with professional peers, family, and/or friends may implicate Rules 1.2, 2.2,[25] and 2.4(B)[26] if, for

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[23] Rule 2.10(A) provides that "A judicial employee shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing."

[24] Rule 2.3 Bias, Prejudice, and Harassment

"A judicial employee shall perform court duties without bias or prejudice and shall not manifest bias or prejudice by words or conduct, or engage in harassment in the performance of court duties. . . . ."

[25] Rule 2.2 Impartiality and Fairness

"A judicial employee shall perform court duties fairly and impartially."

[26] Rule 2.4 External Influences on Court Duties

Rule 2.4(B)

"A judicial employee shall not permit family, social, political, financial, or other interests or relationships to influence the performance of court duties."

example, he or she discusses legal issues pending in the court where the employee serves. As with judges, judicial employees must also consider the effect of postings by others regarding high profile cases or legal issues likely to come before the employee's court. If a judicial employee is associated with such postings, it could give rise to a complaint that his or her conduct or judgment has been influenced by others. Depending on the nature of the posted material, it could also suggest that other people or organizations are in a position to influence the judicial employee's performance of his or her duties.

Questions also arise regarding judicial employees who are "friends" (or the functional equivalent) of litigants and lawyers through social and electronic media. Could it reasonably appear to an adverse litigant or lawyer that the "friend" is in a position to influence the judicial employee in performing his or her duties, or even to influence the judge? Rule 2.2 requires judicial employees to perform court duties fairly and impartially. Rule 1.2 requires judicial employees to avoid impropriety and the appearance of impropriety. Comment 5 to Rule 1.2 states, in part, that, "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judicial employee violated this code or engaged in other conduct that reflects adversely on the judicial employee's honesty, impartiality, temperament, or fitness."

The best practice is for judicial employees to notify their supervisors if they are Facebook "friends" (or the functional equivalent) with any litigant or lawyer in a pending matter over which the employee has any responsibility. Rule 2.11(E) states that "A judicial employee shall withdraw from any proceeding in which the employee's impartiality might reasonably be questioned due to a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." Judicial employees are expected to use reasonable means to know the persons with whom they are associated via electronic and social media and to monitor cases they are working on to ensure that no conflicts arise.

A conflict due to reasonably perceived "bias or prejudice" cannot be remitted under Rule 2.11(F). However, if withdrawal in a particular circumstance would cause unnecessary hardship, a judge or court manager could authorize the judicial employee to participate, subject to the requirements of Comment 2 to Rule 2.11.

4. What other rules affect judicial employees' use of social and electronic media?

If a judicial employee becomes aware of facts outside the official court record through social or electronic media (or otherwise), Rule 2.9(A)[27] directs the employee

[27] Rule 2.9 Communications with Judges

Rule 2.9(A)

"A judicial employee shall not communicate personal knowledge about the facts of a pending case to the judge assigned to the case."

not to communicate such knowledge to the judge assigned to the case. And, as directed by Rule 2.11(E), if the judicial employee is working on any proceeding in which he or she acquires personal knowledge of facts in dispute, the employee must withdraw from any involvement, subject to possible remittal of the disqualification following the procedure set forth in Rule 2.11(F).

Pursuant to Rule 2.10(A),[28] a judicial employee who uses social or electronic media must not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court. Although nonpublic statements are only prohibited if they might substantially interfere with a fair trial or hearing, it is prudent to assume that even postings intended only for friends and family may be more broadly disseminated through social and electronic media.[29]

Rule 2.11(A) could be implicated if, for example, a judicial employee maintained a blog on his or her own time addressing legal topics. Depending on the extent of any advocacy involved, the employee's extra-judicial conduct could conflict with his or her official duties. *See* Rule 2.2. Rule 1.2 also requires judicial employees to avoid impropriety and the appearance of impropriety. The test for the appearance of impropriety includes "whether the conduct would create in reasonable minds a perception that the judicial employee violated [the] code or engaged in other conduct that reflects adversely on the judicial employee's honesty, impartiality, temperament, or fitness."

A judicial employee must not use nonpublic information acquired in an official capacity for any personal purpose. See Rule 3.2.[30] This includes using such information on Facebook pages, websites, blogs, Twitter, or other electronic platforms. The terminology section of the Arizona Code of Conduct for Judicial Employees defines "nonpublic information" to mean "information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports and

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[28] Rule 2.10 Statements on Pending and Impending Cases

Rule 2.10(A)

"A judicial employee shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing."

[29] *See* Footnote 12, *supra.*

[30] Rule 3.2 Use of Nonpublic Information

"A judicial employee shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the employee's duties."

any information contained in records that are closed or confidential under Arizona Supreme Court Rule 123 or other law."

5. Are there restrictions on judicial employees "friending" elected officials or "liking" election-related sites?

A judge's personal staff, courtroom clerks, and court managers (all defined terms in the terminology section of the Arizona Code of Conduct for Judicial Employees) are subject to the same limitations as judges set forth in Canon 4 of the Code of Judicial Conduct.[31] See the discussion above regarding the ethical duties of judges under Canon 4 of the Arizona Code of Judicial Conduct.

For purposes of Rule 4.1,[32] judicial employees *other than* a judge's personal staff, courtroom clerks, and court managers, can discuss political issues on social and electronic media as long as they do not identify themselves as judicial employees and do not give the impression that the judiciary itself endorses any political candidate or supports any political cause. Of course, as previously discussed, other rules, such as Rule 2.11 and Rule 3.1, must also be considered in determining the propriety of activities a judicial employee engages in on his or her own time.

The question arises whether judicial employees, including members of a judge's personal staff, courtroom clerks, and court managers, who voluntarily participate[33] in a judge's or clerk's reelection campaign, can appear as a "friend" on

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[31] Rule 4.2 Personal Staff, Courtroom Clerks, and Managers

"In addition to the other sections of this canon, members of a judge's personal staff, courtroom clerks, and court managers shall be subject to the same political limitations as judges contained in Canon 4 of the Arizona Code of Judicial Conduct, except as provided in Rule 4.3 of this code [Elective Judicial Department Office], and may not hold any elective office."

[32] Rule 4.1 General [Political] Activities

"In general, a judicial employee may participate in any political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes, except when assigned to do so regarding measures to improve the law, the legal system, or the administration of justice."

[33] Rule 4.7 Judicial Campaign Activity

"Judicial employees, including members of a judge's personal staff, courtroom clerks, and court managers, may voluntarily participate in a judge's or clerk's campaign activities and may voluntarily contribute funds to a campaign, but only through a judge's or clerk's fund-raising committee. However, judges, elected clerks of the court, and court managers or supervisors shall not require subordinate judicial employees to participate in political activities or personally receive funds from judicial employees for any political purpose."

the campaign committee's Facebook page and/or be listed as a financial contributor on the campaign committee's website. It is the JEAC's opinion that the employee can be so listed as long as he or she is not identified as a judicial employee.

Nothing in the Code of Conduct for Judicial Employees prohibits judicial employees, including judges' personal staff, courtroom clerks, and court managers, from "liking" or "friending" most elected public officials' official websites as long as they are not identified as judicial employees. However, as indicated above, in discussing the Code of Judicial Conduct, it is inappropriate for a judicial employee to be a "friend" of a local law enforcement official's Facebook page or to "like" such a page for the same reasons judges may not engage in such conduct.

As to friending or liking the websites of political candidates, judicial employees *other than* a judge's personal staff, courtroom clerks, and court managers may do so subject to the restrictions set forth in Rule 4.1. A judicial employee should not identify him or herself as a judicial employee in so doing and should avoid conduct that may give the impression the employee's political activities are on behalf of the judiciary. Members of judges' personal staff, courtroom clerks, and court managers are subject to the same political limitations as judges contained in Canon 4 of the Code of Judicial Conduct, except as provided in Rule 4.3 (Elective Judicial Department Office).

Relevant Advisory Opinions on Social Media Issues from Other Jurisdictions

Opinion 112 (Use of Electronic Social Media by Judges and Judicial Employees), Committee on Codes of Conduct, Judicial Conference of the United States (March 2014).

Opinion 2013-14 (Judge's use of Twitter in re-election campaign), Florida Supreme Court Judicial Ethics Advisory Committee (July 30, 2013)

Opinion No. 68 (Ethics of Internet Research of Facts by Trial Judges), Judicial Ethics Committee, California Judges Association (April 2013)

Informal Opinion 2013-06 (Extrajudicial Activities; Electronic Social Media; Facebook), Connecticut Committee on Judicial Ethics (March 22, 2013)

Formal Opinion 462 (Judge's Use of Electronic Social Networking Media), American Bar Association Standing Committee on Ethics and Professional Responsibility (February 13, 2013)

Advisory Opinion No. 12-01 (Whether judges may utilize social media such as Facebook, Twitter, LinkedIn, and MySpace and, if so, the extent to which they may participate), Tennessee Judicial Ethics Committee (October 23, 2012)

Informal Opinion 12-01 (Judges' use of social media), Utah Judicial Council Ethics Advisory Committee (August 31, 2012)

Opinion 2012-07 (Judge Must Consider Limitations on Use of Social Media Networking Sites), Maryland Judicial Ethics Committee (June 12, 2012)

Opinion 2012-12 (Whether a judge may add lawyers who may appear before the judge as "connections" on the professional networking site, Linked In, or permit such lawyers to add the judge as their "connections" on that site?), Florida Supreme Court Judicial Ethics Advisory Committee (May 9, 2012)

Opinion 2011-6 (Facebook: using social networking web site), Massachusetts Supreme Judicial Court Committee on Judicial Conduct (December 28, 2011)

Judicial Ethics Opinion 2011-3 (Questions concerning a judge's use of social media), Oklahoma Judicial Ethics Advisory Panel (July 6, 2011)

Opinion 2010-7 (A judge may be a "friend" on a social networking site with a lawyer who appears as counsel in a case before the judge), Ohio Supreme Court Board of Commissioners on Grievances and Discipline (December 3, 2010)

Opinion 66 (Online Social Networking), California Judges Association Judicial Ethics Committee (November 23, 2010)

Opinion 2010-06 (Whether the Code of Judicial Conduct requires a judge who is a member of a voluntary bar association to "de-friend" lawyers who are also members on that organization's Facebook page and who use Facebook to communicate among themselves about that organization and other non-legal issues), Florida Supreme Court Judicial Ethics Advisory Committee (March 26, 2010)

Opinion JE-119 (Judges' Membership on Internet-Based Social Networking Sites, Ethics Committee of the Kentucky Judiciary (January 20, 2010)

Opinion 2009-20 (Issues concerning judges' use of social media), Florida Supreme Court Judicial Ethics Advisory Committee (November 17, 2009)

Opinion 17-2009 (Propriety of a magistrate judge being a member of a social networking site such as Facebook), South Carolina Judicial Department Advisory Committee on Standards of Judicial Conduct (October 2009)

Opinion 08-176 (Judges' use of Internet-based social networks), New York State Advisory Committee on Judicial Ethics (January 29, 2009)

Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees, Committee on Codes of Conduct, Judicial Conference of the United States (April 2010)