



Ohio Board of Professional Conduct

2023-2025 ETHICS UPDATE

Presented by

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Ohio Board of Professional Conduct

2023-2025

ADVISORY OPINIONS

**(AND OTHERS I JUST THINK
ARE STILL NOTEWORTHY)**





Ohio Board of Professional Conduct

OPINION 2020-11 Issued October 2, 2020 Trade Name Used as Law Firm Name

SYLLABUS: A lawyer or law firm may use a trade name as a law firm name that does not reference the name or surname of the lawyer or lawyers or describe the nature of the legal services provided. A trade name used by a lawyer or law firm as a law firm name cannot be false, misleading, or nonverifiable. A trade name that implies certain results, expediency, or a connection to a governmental, nonprofit, or charitable organization is inherently false or misleading. A lawyer or law firm using a trade name and organizing as a legal professional association, corporation, legal clinic, a limited liability company, or a limited partnership must comply with Gov.Bar R. III, §2 and carry the appropriate corporate legend or designation with the trade name.





Ohio Board of Professional Conduct

**OPINION 2021-02 ISSUED APRIL 9, 2021 WITHDRAWS ADV. OP. 2001-03
LOAN FROM FINANCIAL INSTITUTION TO ADVANCE COSTS AND EXPENSES OF LITIGATION**

SYLLABUS: A LAW FIRM MAY OBTAIN A LOAN FROM A FINANCIAL INSTITUTION TO ADVANCE COSTS AND EXPENSES OF LITIGATION IN A PERSONAL INJURY MATTER ACCEPTED ON A CONTINGENT FEE BASIS. THE LAW FIRM MAY DEDUCT THE INTEREST, FEES, AND COSTS OF THE LOAN FROM A CLIENT'S SETTLEMENT OR JUDGMENT AS AN EXPENSE OF LITIGATION, PROVIDED CERTAIN CONDITIONS RELATED TO THE LAWYER'S COMMUNICATION WITH THE CLIENT AND WRITTEN CONTINGENT FEE AGREEMENTS ARE SATISFIED.





Ohio Board of Professional Conduct

OPINION 2021-04 ISSUED JUNE 11, 2021

COMPETITIVE KEYWORD ONLINE ADVERTISING SYLLABUS:

A LAWYER OR LAW FIRM **MAY NOT PURCHASE THE NAME OF ANOTHER LAWYER OR LAW FIRM** FOR USE IN COMPETITIVE KEYWORD ONLINE ADVERTISING.





Ohio Board of Professional Conduct

OPINION 2022-05

LAWYER NOTARIZATION OF AFFIDAVIT OF CLIENT

SYLLABUS: A LAWYER MAY NOTARIZE AN AFFIDAVIT OF A CLIENT THAT WILL BE FILED IN A PENDING MATTER AND REPRESENT THE CLIENT AT A SUBSEQUENT HEARING OR TRIAL IN THE MATTER. IF QUESTIONS ARISE AS TO THE EXECUTION OF THE AFFIDAVIT OR THE IDENTITY OF THE AFFIANT, THEN THE COURT MUST HOLD A HEARING TO DETERMINE IF A LAWYER MUST BE DISQUALIFIED UNDER PROF.COND.R. 3.7.

* * *

[HTTPS://APP.PROOF.COM/](https://app.proof.com/) \$25 PER NOTARIZATION CAN BE DONE ONLINE.





Ohio Board of Professional Conduct

OPINION 2023-01

ISSUED FEBRUARY 3, 2023

WITHDRAWS 2004-13

JUDGE SOLICITING DONATIONS FOR SPECIALIZED DOCKET COURT

SYLLABUS: A JUDGE MAY NOT SIGN A LETTER SOLICITING LOCAL BUSINESSES TO DONATE ITEMS FOR USE AS PROGRAM REWARDS AND INCENTIVES FOR PARTICIPANTS IN A SPECIALIZED DOCKET COURT. A COURT EMPLOYEE, AT THE DIRECTION OF A JUDGE, MAY NOT SOLICIT LOCAL BUSINESSES TO DONATE ITEMS FOR USE AS PROGRAM REWARDS AND INCENTIVES FOR PARTICIPANTS IN A SPECIALIZED DOCKET COURT.





Ohio Board of Professional Conduct

OPINION 2023-02

SOLICITATION OF CLIENTS BY NONPROFIT LEGAL AID LAWYERS

SYLLABUS: A NONPROFIT LEGAL AID LAWYER MAY ENGAGE IN DIRECT IN-PERSON SOLICITATION OF AN INDIVIDUAL WHO MAY BENEFIT FROM REPRESENTATION WHEN THE LAWYER WILL RECEIVE NO FEE OR REMUNERATION IN CONNECTION WITH THE REPRESENTATION. A NONPROFIT LEGAL AID LAWYER MAY SEND A DIRECT MAIL SOLICITATION TO INDIVIDUALS FACING LEGAL ACTION, SO LONG AS THE LAWYER VERIFIES THAT THE INDIVIDUAL HAS BEEN SERVED PRIOR TO SENDING THE LETTER AND THE LAWYER WILL RECEIVE NO FEE OR REMUNERATION IN CONNECTION WITH THE REPRESENTATION.





Ohio Board of Professional Conduct

OPINION 2023-03

APPLICATION OF CODE OF JUDICIAL CONDUCT TO MAYOR'S COURT MAGISTRATES

SYLLABUS: A MAYOR'S COURT MAGISTRATE IS NOT SUBJECT TO THE CODE OF JUDICIAL CONDUCT. A MAYOR'S COURT MAGISTRATE MAY SEEK AND HOLD AN ELECTED OFFICE. A MAYOR'S COURT MAGISTRATE MAY SEEK AND HOLD A LEADERSHIP POSITION IN A LOCAL OR STATE POLITICAL PARTY.





Ohio Board of Professional Conduct

OPINION 2023-04 Issued June 9, 2023 **Compliance with Subpoena Duces Tecum for Former Client's File**

SYLLABUS: A lawyer in receipt of a subpoena duces tecum for a former client's file must promptly notify the former client of the request and seek the client's informed consent to the disclosure of client information contained in the file. If the former client gives consent to comply with a subpoena duces tecum for the client's file, the lawyer's disclosure of the client's information should be made only to the extent that the lawyer believes is reasonably necessary to comply with the subpoena. If the former client chooses to challenge a subpoena, the lawyer must assert all reasonable claims to limit the disclosure of client information related to the former representation, including, but not limited to, the serving of written objections on the issuing party, the filing of a motion to quash, and the appeal of an adverse court ruling. If the former client cannot be timely located, the lawyer must assert all reasonable claims to limit the disclosure of client information related to the former representation in response to the subpoena, including, but not limited to, serving objections on the issuing party and filing a motion to quash.





Ohio Board of Professional Conduct

OPINION 2023-05 Appearance of a Lawyer Affiliated with the Law Firm of a Judge's Spouse

SYLLABUS: The Code of Judicial Conduct does not mandate a judge's disqualification when a lawyer employed by, associated with, or in partnership with the judge's spouse appears before the judge. The determination of whether a judge's impartiality may be reasonably questioned or whether an interest of the judge's spouse may be substantially affected by the outcome of the proceeding is to be made on a case-by-case basis. A judge should disclose to the parties the spouse's employment with the law firm even if there may be no basis for disqualification.





Ohio Board of Professional Conduct

OPINION 2023-06 Child Support Enforcement Agency Staff Attorney's Prior Service as a Child Support Enforcement Agency Administrative Hearing Officer

SYLLABUS: Absent informed consent, confirmed in writing of all parties, a Child Support Enforcement Agency [hereinafter CSEA] staff attorney may not represent the state in any action involving a CSEA matter in which that staff attorney issued administrative orders as a CSEA administrative hearing officer. However, other law may prohibit the CSEA staff attorney's representation even with the consent of all parties. A CSEA staff attorney is not barred from representing the state in an action solely because a party in the action is a person who once appeared before that staff attorney in a different matter while the staff attorney served as an administrative hearing officer.





Ohio Board of Professional Conduct

OPINION 2023-07 Issued August 4, 2023

Discharged Lawyer's Solicitation of Former Client

SYLLABUS: With rare exception, a discharged lawyer may not solicit a former client to continue a client-lawyer relationship after the client has retained a new lawyer in the matter.





Ohio Board of Professional Conduct

OPINION 2023-08 Issued August 4, 2023 **Departing Lawyer Reimbursing Firm for Advertising Costs**

SYLLABUS: The Rules of Professional Conduct prohibit a law firm from adding a clause to its standard employment contract requiring a departing lawyer to pay the firm the quantum meruit value of work completed prior to the lawyer's departure, plus 25 percent of the overall recovery of attorney fees on any transferred cases to reimburse the firm for its advertising costs. The addition of 25 percent of the overall recovery of attorney fees is an impermissible restriction on the departing lawyer's right to practice after termination of the employment relationship. The additional fee is also an impermissible division of attorney fees by lawyers not in the same firm.





Ohio Board of Professional Conduct

OPINION 2023-09 Issued October 6, 2023 Withdraws Adv. Op. 1996-02

Opposing Counsel's Preparation of Application to Settle a Minor's Claim SYLLABUS: A lawyer representing a tortfeasor may prepare the

application to settle a minor's claim in probate court when the plaintiff minor and the minor's parents/guardians are unrepresented by counsel. The lawyer should inform the minor and the minor's parents in writing that the lawyer is retained by the tortfeasor, that the lawyer does not represent the minor or parents/guardians, that the lawyer prepared the requisite court forms, and that the minor and parent/guardian have the right to secure their own independent counsel. The lawyer must make the same disclosures when appearing before the probate court. A lawyer representing a tortfeasor may not give legal advice to an unrepresented plaintiff minor or the minor's parents.





Ohio Board of Professional Conduct

OPINION 2023-10 Issued October 6, 2023 Withdraws Adv. Op. 1995-12 **Lawyer's Obligation When Letter of Protection Issued to Medical Services Provider**

SYLLABUS: A lawyer, with a client's consent, may prepare a letter of protection that guarantees that proceeds from a future settlement or judgment will be withheld to pay a medical services provider. A lawyer may decline to follow a client's instruction not to pay medical care providers from proceeds obtained by settlement or award when the client entered into a written agreement to pay the provider from the proceeds through a letter of protection. A lawyer must hold disputed funds involving two or more persons with a lawful interest in the funds in a lawyer's trust account until the dispute is resolved.





Ohio Board of Professional Conduct

OPINION 2023-11 Issued October 6, 2023 **Nonlawyer Employee Bonus Plan**

SYLLABUS: A lawyer may not pay a bonus to a nonlawyer staff member based solely on the staff member receiving a positive online review. The Board recommends that the holding in this opinion be applied prospectively.





Ohio Board of Professional Conduct

OPINION 2023-12 Issued December 8, 2023

Charging Lien in a Contingent Fee Agreement Based on Highest Settlement Offer

SYLLABUS: A lawyer may not offer a contingent fee agreement that requires the client to give the lawyer a charging lien for a percentage of the highest settlement offer made prior to termination of the client-lawyer relationship.





Ohio Board of Professional Conduct

OPINION 2023-13 Issued December 8, 2023

Settlement Agreement Prohibiting a Lawyer's Disclosure of Information Contained in a Public Record

SYLLABUS: A settlement agreement that prohibits a lawyer's disclosure of a publicly accessible government record or the information contained therein is an impermissible restriction on the lawyer's right to practice. A lawyer may not participate in either the offer or acceptance of a settlement agreement that includes a prohibition on a lawyer's disclosure of the same. However, due to the complexity of exemptions contained in state or federal law, not all requests to prohibit disclosure will be a violation of Prof.Cond.R. 5.6(b). A lawyer is not required to abide by a client's decision to settle a matter if the settlement is conditioned on a restriction to practice and must withdraw from the representation. The Board recommends that the holding in this opinion be applied prospectively.





Ohio Board of Professional Conduct

OPINION 2024-01 Issued February 2, 2024 Withdraws Adv. Op. 92-17

In-House Lawyer Representation of Corporation's Customers

SYLLABUS: In most circumstances, a corporation's in-house lawyer should avoid providing legal representation to a corporation's customers on matters relating to issues which the corporation has previously provided general services.

APPLICABLE RULES: Prof. Cond. R. 1.7, 1.13, 5.4, 5.5, 7.2, 7.3

QUESTION PRESENTED: May a lawyer, who is employed as in-house counsel for a corporation that provides tax consulting services, privately represent customers of the corporation in legal proceedings with tax officials concerning matters related to issues on which the corporation has provided services?





Ohio Board of Professional Conduct

OPINION 2024-02 Issued February 2, 2024 Withdraws Adv. Op. 2006-5

Communication While Serving in a Dual Role as Guardian ad Litem and Attorney

SYLLABUS: A lawyer appointed to serve in a dual role as a child's attorney and guardian ad litem may not communicate with a represented person without permission of counsel. If the communication is authorized by law or court order, or the communication is solely to obtain information about how to contact the child or to schedule an appointment with the child, then a lawyer appointed in a dual role may contact a represented person without permission of counsel.

APPLICABLE RULES: Prof.Cond.R. 4.2

QUESTIONS PRESENTED: May a lawyer appointed to serve in a dual role as a child's lawyer and guardian ad litem communicate with a represented person without permission of counsel?





Ohio Board of Professional Conduct

OPINION 2024-03 Issued April 5, 2024 **Withdraws Adv. Op. 1995-07**

Propriety of Fee Agreement Permitting Conversion from an Hourly Rate to a Contingent Fee

SYLLABUS: It is improper for a lawyer to enter into a fee agreement where the client agrees to pay an hourly rate until settlement or collection of judgment at which time the lawyer may choose between charging the hourly fee or receiving a total fee equal to a percentage of the settlement or judgment depending upon whichever results in the larger fee to the lawyer.

This is what was withdrawn...

OPINION 95-7 SYLLABUS: It is improper for an attorney to enter a fee agreement whereby the client agrees to pay an hourly rate until settlement or collection of judgment at which time the attorney chooses between keeping the hourly fee or receiving a total fee equal to one third of the settlement or recovery depending upon whichever results in the larger fee to the attorney.





Ohio Board of Professional Conduct

OPINION 2024-04 Issued June 7, 2024

Fee Mediation or Arbitration Between Departed Lawyer and Former Law Firm

SYLLABUS: The mandatory fee mediation or arbitration for lawyer fee disputes set forth in Prof.Cond.R. 1.5(f) applies only to fee disputes arising between lawyers who are not in the same firm at the outset of the representation of a client and who enter into a fee agreement to divide fees pursuant to Prof.Cond.R. 1.5(e). Fee disputes between a lawyer who has departed the firm and the lawyer's former firm are not governed by the mandatory fee arbitration or mediation process in Prof.Cond.R. 1.5(f).

Note: Comment 8 to Rule 1.5 already provides:

[8] Division (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.





Ohio Board of Professional Conduct

OPINION 2024-05 Issued October 4, 2024, Withdraws Adv. Op. 1993-11

Lawyer's Receipt of Inadvertently Sent Information Obtained Through Public Records Request

SYLLABUS: A lawyer who submits a records request to a public agency is required to notify the agency if the lawyer knows or reasonably knows the agency's response includes information related to representation of a client that was inadvertently sent to the lawyer. There is no ethical obligation for the lawyer to refrain from reviewing the inadvertently sent information, sharing the information with the lawyer's client, or communicating with the lawyer's client about the receipt of the information.

APPLICABLE RULES: Prof.Cond.R. 1.4, 3.4,.4.4, 8.4





Ohio Board of Professional Conduct

OPINION 2024-06 Issued December 13, 2024 Withdraws Adv. Op. 1989-34 Judicial Disqualification When Counsel for Party Represents Judge in Other Matter SYLLABUS:

Absent a waiver by the parties, a judge must recuse himself or herself from cases in which a party is represented by a lawyer who is concurrently representing the judge in another matter. The duty to disqualify does not extend to other lawyers in the same law firm or public office as the lawyer who is representing the judge.

OPINION 2024-07 Issued December 13, 2024 Withdraws Adv. Op. 1987-023 Disqualification When Judicial Campaign Opponent Appears Before Judge

SYLLABUS: A judge is not required to recuse from a matter in which the judge's campaign opponent represents a party before the judge unless the judge's impartiality may be reasonably questioned.





Ohio Board of Professional Conduct

OPINION 2025-01 Issued April 4, 2025 Withdraws Adv. Op. 1998-02 Lawyer's Disclosure of Disciplinary Grievance Filed Against Judge

SYLLABUS: A lawyer may not disclose in an affidavit of disqualification filed with the Supreme Court that the lawyer or her client has filed a disciplinary grievance against the judge when the grievance has not been certified as a formal complaint by the Board of Professional Conduct.





Ohio Board of Professional Conduct

OPINION 2025-02 Issued April 4, 2025 Withdraws Adv. Op. 2004-08 Acquiring Mortgage Against Client's Real Property to Secure Legal Fee

SYLLABUS: A lawyer may acquire a mortgage against a client's real property to secure the payment of legal fees provided the terms of the agreement satisfy the requirements of Prof.Cond.R. 1.8(a).

Prof.Cond.R. 1.8(a) requires that the terms of a business transaction between a lawyer and client be

- 1) fair and reasonable;
- 2) 2) that the client be advised in writing of the opportunity to seek independent legal counsel; and
- 3) 3) the client give informed consent, in a writing signed by the client, to the transaction. Prof.Cond.R. 1.8(a)(1)-(3).





Ohio Board of Professional Conduct

OPINION 2025-03 Issued June 13, 2025 Alteration of Judicial Decisions and Entries by Court Staff

SYLLABUS: A judge must maintain administrative control over the contents of any written decision, opinion, judgment entry, or journal entry. Administrative control includes ensuring that, after the judge has signed or approved the document for filing, court staff do not make unilateral modifications to the document without the judge's further review and approval. The Board recommends that the holding of this advisory opinion be applied prospectively.





Ohio Board of Professional Conduct

WWW.BPC.OHIO.GOV/ETHICS-GUIDES

[CORPORATE ETHICS \(2022\)](#)

[EXTRAJUDICIAL ACTIVITIES \(2022\)](#)

[LIMITED SCOPE REPRESENTATION \(2020\)](#)

[TRANSITION FROM THE PRACTICE OF LAW
TO THE BENCH GUIDE \(2017\)](#)

[SWITCHING FIRMS GUIDE \(2017\)](#)

[SUCCESSION PLANNING GUIDE \(2017\)](#)

[CLIENT FILE RETENTION GUIDE \(2016\)](#)





Ohio Board of Professional Conduct

2023-2025 ETHICS DEVELOPMENTS & CASE LAW UPDATE





Ohio Board of Professional Conduct

Diversion – Coming Soon to Ohio...?

Rule 9 ABA Model Rules for Lawyer Disciplinary Enforcement

A. Grounds for Discipline. It shall be a **ground for discipline** for a lawyer to:

- (1) violate or attempt to violate the [State Rules of Professional Conduct], or any other rules of this jurisdiction regarding professional conduct of lawyers;
- (2) engage in conduct violating applicable rules of professional conduct of another jurisdiction;
- (3) willfully violate a valid order of the court or the board imposing discipline, willfully fail to appear before disciplinary counsel for admonition pursuant to Rule 10(A)(5), willfully fail to comply with a subpoena validly issued under Rule 14, or knowingly fail to respond to a lawful demand from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.





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- B. **Lesser Misconduct.** Lesser misconduct is conduct that does not warrant a sanction restricting the respondent's license to practice law. Conduct shall not be considered lesser misconduct if any of the following considerations apply:
- (1) the misconduct involves the **misappropriation of funds**;
 - (2) the misconduct results in or is likely to result in **substantial prejudice to a client or other person**;
 - (3) the **respondent has been publicly disciplined in the last three years**;
 - (4) the **misconduct is of the same nature** as misconduct for which the respondent has been disciplined **in the last five years**;





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- (5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent;
- (6) the misconduct constitutes a "serious crime" as defined in Rule 19(C); or
- (7) the misconduct is part of a pattern of similar misconduct.





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Diversion Continued...

Rule 11 ABA Model Rules for Lawyer Disciplinary Enforcement

A. Evaluation. The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity. If the lawyer is not subject to the jurisdiction of the court, the matter shall be referred to the appropriate entity in any jurisdiction in which the lawyer is admitted. If the information, if true, would not constitute misconduct or incapacity, the matter may be referred to the central intake office, or to any of the component agencies of the comprehensive system of lawyer regulation established by Rule 1, or dismissed. If the lawyer is subject to the jurisdiction of the court and the information alleges facts which, if true, would constitute misconduct or incapacity, disciplinary counsel shall conduct an investigation. Upon the conclusion of an investigation, disciplinary counsel may:

- (a) dismiss;
- (b) refer respondent, in a matter involving lesser misconduct, to the Alternatives to Discipline Program, pursuant to Rule 11(G); or
- (c) recommend probation, admonition, the filing of formal charges, the petitioning for transfer to disability Inactive status, or a stay.





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G. Alternatives to Discipline Program.

(1) Referral to Program. In a matter involving **lesser misconduct as defined in Rule 9(B)**, prior to the filing of formal charges, disciplinary counsel may refer respondent to the Alternatives to Discipline Program. The Alternatives to Discipline Program may include fee arbitration, arbitration, mediation, law office management assistance, lawyer assistance programs, psychological counseling, continuing legal education programs, ethics school or any other program authorized by the court.

(2) Notice to Complainant. Pursuant to Rule 4(B)(6), the complainant, if any, shall be notified of the decision to refer the respondent to the Alternatives to Discipline Program, and shall have a reasonable opportunity to submit a statement offering any new information regarding the respondent. This statement shall be made part of the record.

(3) Factors. The following factors shall be considered in determining whether to refer a respondent to the program:

- (a) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations listed in the complaint is likely to be no more severe than reprimand or admonition;
- (b) whether participation in the program is likely to benefit the respondent and accomplish the goals set forth by the program;
- (c) whether aggravating or mitigating factors exist; and
- (d) whether diversion was already tried.





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(4) Contract. Disciplinary counsel and the respondent shall negotiate a contract, the terms of which shall be tailored to the individual circumstances. In each case, the contract shall be signed by the respondent and the disciplinary counsel. The contract shall set forth the terms and conditions of the plan for the respondent and, if appropriate, shall identify the use of a practice monitor and/or a recovery monitor and the responsibilities of the monitor(s). The contract shall provide for oversight of fulfillment of the contract terms. Oversight includes reporting of any alleged breach of contract to the disciplinary counsel. The contract shall also provide that the respondent will pay all costs incurred in connection with the contract. The contract shall include a specific acknowledgment that a material violation of a term of the contract renders voidable the respondent's participation in the program for the original charge(s) filed. The contract may be amended upon agreement of the respondent and disciplinary counsel. If a recovery monitor is assigned, the contract shall include respondent's waiver of confidentiality so that the recovery monitor may make necessary disclosures in order to fulfill the monitor's duties under the contract.

(5) Effect of Non-participation in the Program. The respondent has the right not to participate in the Alternatives to Discipline Program. If the respondent does not participate, the matter will proceed as though no referral to the program had been made.

(6) Status of Complaint. After an agreement is reached, the disciplinary complaint shall be held in abeyance [dismissed] pending successful completion of the terms of the contract.





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(7) Termination.

(a) Fulfillment of the Contract: The contract is automatically terminated when the terms of the contract have been fulfilled. Successful completion of the contract constitutes a bar to any further disciplinary proceedings based upon the same allegations.

(b) Material Breach: A material breach of the contract shall be cause for termination of the respondent's participation in the program. After a material breach, disciplinary proceedings may be resumed or reinstituted.





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(7) Termination.

(a) Fulfillment of the Contract: The contract is automatically terminated when the terms of the contract have been fulfilled. Successful completion of the contract constitutes a bar to any further disciplinary proceedings based upon the same allegations.

(b) Material Breach: A material breach of the contract shall be cause for termination of the respondent's participation in the program. After a material breach, disciplinary proceedings may be resumed or reinstituted.





Ohio Board of Professional Conduct

Attacks on the Judiciary: Resources

Key Ohio Case

Disciplinary Counsel v. Gardner Six-month suspension for knowingly making false accusations about a judge in an appellate brief; **no First Amendment protection from discipline even when expressing an opinion that a judge is corrupt during court proceedings when the attorney knows the opinion has no factual basis or is reckless**





Ohio Board of Professional Conduct

Accusations of Bias and Corruption

Disciplinary Counsel v. Cramer

Indefinite suspension for knowingly or recklessly making false statements concerning the integrity of judicial officers in admin of her mother's probate estate

- Respondent made knowingly or recklessly false statements about the integrity of judicial officers in the administration of her mother's probate estate.
- SCO quoted *Gardner* decision saying:
“Because lawyers ‘possess, and are perceived by the public as possessing, special knowledge of the workings of the judicial branch of government’ we have recognized that ‘[their] statements made during court proceedings are ‘likely to be received as especially authoritative.’” *Gardner* at ¶ 22.
- Respondent received an indefinite suspension for this and other significant misconduct.





Ohio Board of Professional Conduct

Accusations of Bias and Corruption

Cleveland Metro Bar v. Morton

One year suspension, six months stayed for conduct degrading to a tribunal and false or reckless statements concerning integrity of judicial official;

Respondent filed a Memorandum in Support of Jurisdiction with the OSC that impugned the integrity of multiple justices.

- Relying on its prior ruling in *Disciplinary Counsel v. Gardner*, the OSC found Respondent's statements were made with knowledge or reckless disregard of their falsity and were not protected free speech.

"The United States Supreme Court has held that '[i]t is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to "free speech" an attorney has is extremely circumscribed..'" Gardner at ¶ 14.

- Justices Kennedy and DeWine would overrule *Gardner* and adopt the actual malice standard in *New York Times v. Sullivan*.





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Toledo Bar Assn. v. Yoder

Two-year suspension, six months conditionally stayed for false statements about a magistrate and others

In representing maternal grandparents seeking custody of their grandchildren, respondent made false and undignified statements about a magistrate

- He claimed the magistrate's decision "was the most absolutely insane decision [he had] ever encountered in almost 40 years" and was not what "a normal, competent magistrate would have done."
- *Gardner* decision cited:
- "An attorney may be sanctioned for making accusations of judicial impropriety that a reasonable attorney would believe are false." *Gardner* at ¶ 31.
- Respondent received a two-year suspension with six months conditionally stayed for this and other serious misconduct.





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Affidavits of Disqualification

Disciplinary Counsel v. Pullins Indefinite suspension for filing false and disrespectful statements in affidavits of disqualification.

Disciplinary Counsel v. Shimko (2012) One year stayed suspension for falsely accusing trial judge of dishonesty and harboring improper motives for his rulings.

Measure twice and cut once.

'When you strike at a king, you must kill him.' Ralph Waldo Emerson

"You come at the king, you best not miss." Omar Little (played by Michael K. Williams) in The Wire





Ohio Board of Professional Conduct

Judicial Discipline

Social Media/Ex Parte Communication Misconduct

Disciplinary Counsel v. Berry **Six-month stayed suspension** for sending inappropriate Facebook messages and videos to a court employee

Disciplinary Counsel v. Celebrezze

Pending: DR judge had undisclosed romantic relationship with court receiver and mediator

Disciplinary Counsel v. Porzio **Six-month conditionally stayed suspension** for ex parte communication with a party after opposing party excused from the courtroom

Ohio State Bar Assn. v. Winkler **Public reprimand** for making inaccurate comments on Facebook about a pending guardianship case

Disciplinary Counsel v. Winters **Six-month conditionally stayed suspension** for ex parte communications on Facebook





Ohio Board of Professional Conduct

Judicial Discipline

Social Media/Ex Parte Communication Misconduct

Disciplinary Counsel v. Berry **Six-month stayed suspension** for sending inappropriate Facebook messages and videos to a court employee

Happy Sweetest Day, BTW!! I'm hosting my 16 year old "SUN'S" Video Game Party. With Coeds here Daddy's gonna stay hunkered down in my bedroom, and with earplugs!! 🎮🎮🎮🎮

Awwww-thank you!! Wow a bunch of 16 year old boys sounds like a headache for sure!! 🤔 goodluck!!

And, Girls. Don't want or need any Grandkids, at least, Not Yet!! 🙄🙄🙄🙄🙄🙄

Hahaha-that's hilarious!!!! 🤣



Hey, come down to visit today or soon. I may have an "Offer you can't Refuse"!!

10/30/19, 1:33 PM

Ted N Berry removed a message

10/31/19, 6:54 AM

Sorry-I got busy yesterday-had to do a motion in Berkowitz courtroom yesterday afternoon 🙄

I just "liked" some pics on your Facebook page. I Hope you don't mind, and I'm not "Trolling" you!! 😊



10/27/19, 3:57 PM





Ohio Board of Professional Conduct

Judicial Discipline

Social Media/Ex Parte Communication Misconduct

Ohio State Bar Assn. v. Winkler **Public reprimand** for making inaccurate comments on Facebook about a pending guardianship case

The comments were about an ongoing guardianship case and were not accurate.

- Respondent also authorized a court employee to give inaccurate information about a pending guardianship case to a news reporter.

Facebook posts to Rob

Rob McCulloch you're just mad because we had to intercede and take care of your mother when you did not. You were living in your Mothers house in deplorable conditions. I am glad a nice neighbor called Senior services and we got your Mother into a safe , Clean and healthy care facility. God only knows what would have happened to her if a Good Samaritan neighbor had not reported this elder abuse. The home photos in evidence don't lie. Anyone in the public can look at them as they are part of your Mother's case file.

Hamilton County Probate Court, Judge Ralph Winkler

You lost your case because you were wrong . You interviewed this poor woman with dementia with leading and suggestive questions to try to prove you weren't wrong. However, you were wrong for not taking proper care of your mother . When you did make it to Court you often reeked of alcohol . Plus, You also missed many hearings for unknown reasons. Don't try to blame my Court or Magistrate Coes for your shortcomings as a son , I am glad your neighbor reported this to the Authorities. Your mother could have died or suffered needlessly if my Court didn't help her .





Ohio Board of Professional Conduct

Judicial Discipline

Courtroom /Independent Investigation Misconduct

Disciplinary Counsel v. Bachman Six-month suspension for magistrate who jailed a woman for disrupting a trial

Disciplinary Counsel v. Carr Indefinite suspension for failing to abide by COVID-19 admin order, using capias warrants and jail to compel payment of fines, and lack of decorum.

Disciplinary Counsel v. Grendell **Pending:** Probate and Juvenile judge accused of jailing two minors who refused visitation with their father; Board rec. 18 mo./6 mo. Stayed





Ohio Board of Professional Conduct

Judicial Discipline

Disciplinary Counsel v. Hoover

- Municipal court judge jailed multiple defendants who could not pay fines and costs despite applicable law to the contrary.
- Respondent repeatedly engaged in discourteous conduct accusing one defendant of “screwing” with the court when the defendant was unable to pay the fines and costs within 30 days.
- Respondent received an 18-month suspension, with six-months conditionally stayed, and an immediate suspension from judicial office without pay for the duration of the suspension.





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Judicial Discipline Continued

Disciplinary Counsel v. Lemons

- Probate and juvenile court judge conducted a home inspection in a matter pending before his court.
- Respondent observed dirty and unsafe conditions and entered an emergency order placing minor children in temporary custody.
- Respondent failed to disclose the home visit to the parents who were incarcerated and also failed to recuse himself from the case.
- Respondent received a public reprimand.

Disciplinary Counsel v. O'Diam Conditionally stayed six-month suspension for failing to be patient, dignified or courteous to witness





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Judicial Discipline Continued

Disciplinary Counsel v. Repp

Municipal court judge had an undignified, improper, and discourteous demeanor toward a criminal defendant and his girlfriend in his courtroom.

Girlfriend was quietly observing the proceedings when respondent ordered her to submit to a drug test.

Respondent found the girlfriend in direct contempt of court and sentenced her to 10 days when she refused.

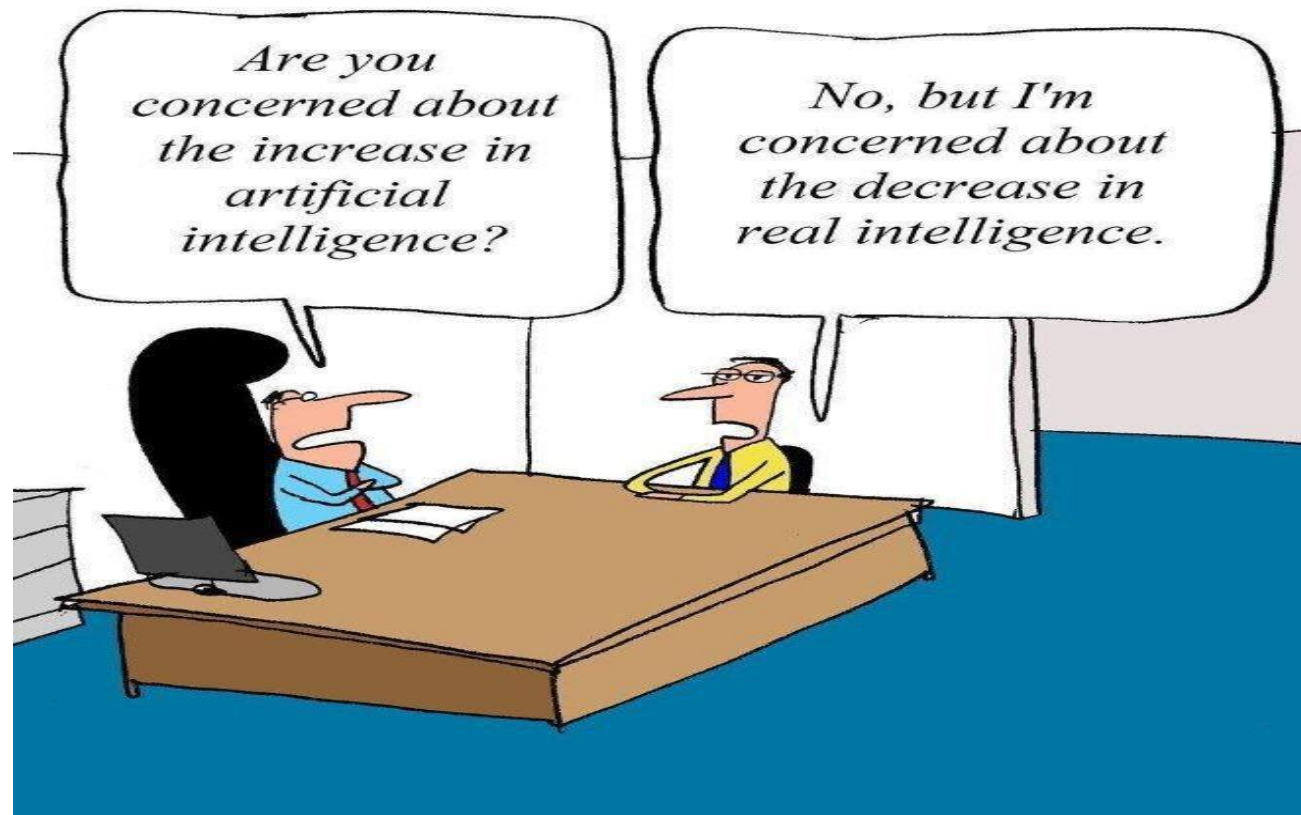
Respondent received a one-year suspension from the practice of law and from judicial office without pay.





Ohio Board of Professional Conduct

Artificial Intelligence





Ohio Board of Professional Conduct

Artificial Intelligence

AI is “[t]o powerful not to use.” - NCSC - *Fundamentals of AI in the U.S. Court System* (8/28/24)

- Bar Exam Passage by ChatGPT-4 in the 90th percentile (2023).
- 44 % of all legal tasks performed by lawyers can be automated by AI.
– Goldman Sachs – March, 2023
- 10% -21% of Law Firms using AI in some aspect of the practice of law.
- Using AI is lawyer “key skill” – now being taught in most law schools.
- Job performance may be measured by how well an employee is delegating tasks to AI.
- Every lawyer will have or need an “AI assistant” in five years.





Ohio Board of Professional Conduct

Artificial Intelligence

“AI allows lawyers to provide better, faster, and more efficient legal services to companies and organizations. The end result is that lawyers using AI are better counselors for their clients.”

ABA, Report on House of Delegates Resolution No. 112 (Aug. 12–13, 2019)





Ohio Board of Professional Conduct

Artificial Intelligence

Do NOT use “free” AI Services. If it’s free? YOU are the product. Large language models (LLM) read what is submitted to them in order to continue learning. Raises confidentiality and privilege waiver issues.

Paid for AI:

- Westlaw and Lexis AI
 - CoCounsel
 - AI.Law
-





Ohio Board of Professional Conduct

Artificial Intelligence

ORPCs implicated by attorney's use of artificial intelligence

Rule 1.1 Competence – Use technology competently

Rule 1.4 Consult with client about means by which client's objectives are to be accomplished
(disclose if you're going to use AI in a client's representation)

Rule 3.3 Candor to a Tribunal – AI can “hallucinate” and create false cases – check it's work!

Rule 5.3 Duty to Supervise Non-lawyers – AI can fall into this category –

**→ DO YOUR RESEARCH ON AI COMPANIES AND ONLY USE REPUTABLE SERVICES
THAT MAINTAIN CONFIDENTIALITY**





Ohio Board of Professional Conduct

Artificial Intelligence

- *People v. Crabill* (Colorado, 2023)

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Zachariah C. Crabill (attorney registration number 56783) for **one year and one day, with ninety days to be served and the remainder to be stayed** upon Crabill's successful completion of a twoyear period of probation, with conditions. The suspension took effect November 22, 2023. In April 2023, a client hired Crabill to prepare a motion to set aside judgment in the client's civil case. Crabill, who had never drafted such a motion before working on his client's matter, **cited case law that he found through the artificial intelligence platform, ChatGPT. Crabill did not read the cases he found through ChatGPT or otherwise attempt to verify that the citations were accurate.**

Rule 11 Cases

- *In re Neusom* (M.D. FL, 2024)
- *Mata v. Avianca, Inc.* (S.D. N.Y, 2024)
- *Park v. Kim* (United States 2d. Cir., 2024)
- *Smith v. Farwell* (Mass., 2024)





Ohio Board of Professional Conduct

Artificial Intelligence

ABA Formal Opinion 512 July 29, 2024

Generative Artificial Intelligence Tools

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.





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CASE-RELATED STATISTICS THROUGH 2023

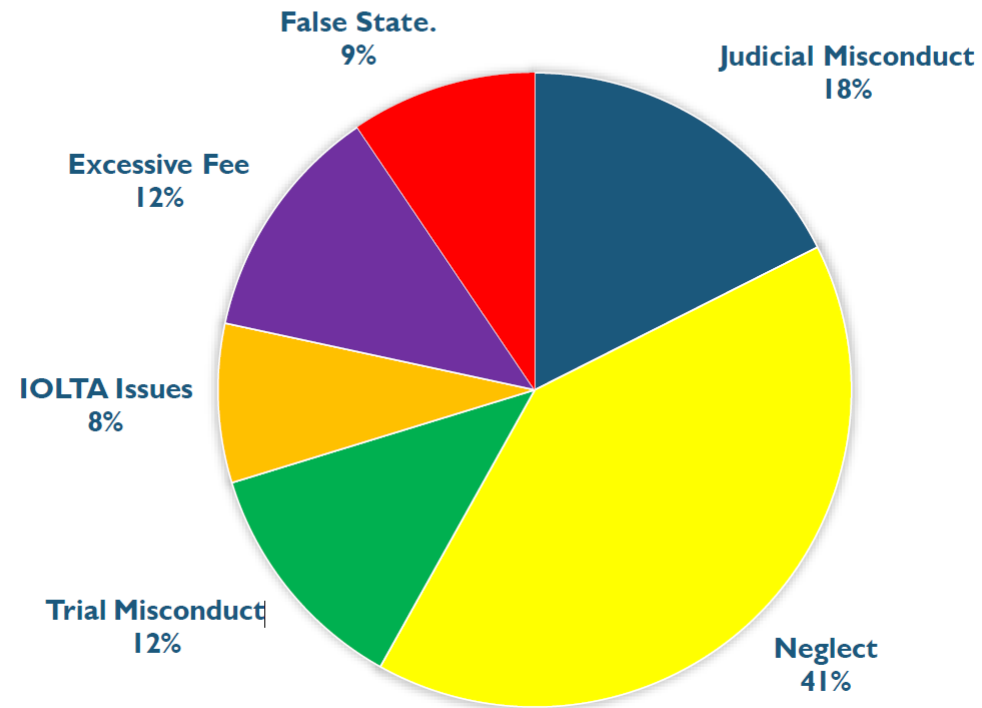




Ohio Board of Professional Conduct



COMMON GROUNDS FOR DISCIPLINE (2023)





Ohio Board of Professional Conduct

Disciplinary Case Statistics 2021-2023

Top Five Disciplinary Offenses of 2023

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

1. Neglect/failure to protect client's interest
2. Judicial misconduct
3. Excessive fee
4. Misrepresentation/False Statement
5. Trial misconduct/IOLTA (tie)

2023
30%
13%
9%
7%
6%





Ohio Board of Professional Conduct

Miscellaneous Disciplinary Dispositions

Resignations with discipline pending accepted
Resignations with discipline pending denied
Interim remedial suspension imposed
Child support default suspension imposed
Interim felony suspension imposed
Impairment suspension imposed
Reciprocal discipline imposed

2021	2022	2023
12	9	9
0	0	0
3	3	2
1	0	0
3	8	12
0	0	2
4	2	2





Ohio Board of Professional Conduct

Judicial Misconduct Cases (Board Dispositions)

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

Total

Rule V cases

Judicial campaign misconduct (expedited)

Dismissals

2021	2022	2023*
4	4	5
3	3	3
1	1	2
0	1	1

* Two judicial misconduct cases were pending as of 12/31/2023.





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2023-2024 ETHICS UPDATE

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