



# 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.

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



# Ohio Board of Professional Conduct

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**APPLICABLE RULES:** Gov.Bar R. V

### QUESTION PRESENTED:

May a lawyer 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?

### ANALYSIS:

#### *Background*

A lawyer has filed a grievance against the judge presiding over a client's case. The lawyer is considering the filing of an affidavit of disqualification pursuant to R.C. 2701.03 with the Supreme Court seeking the removal of the judge from the case. The lawyer asserts that her client has a constitutional right to an impartial adjudicator and believes it is necessary to include information about the filing of the grievance in the affidavit of disqualification.

#### *Gov.Bar R. V(8)*

Gov.Bar R. V(8) establishes when proceedings and documents related to the investigation of a grievance remain confidential and when they become public. Grievances, proceedings, documents, and deliberations are confidential until the Board

of Professional Conduct determines that probable cause exists and certifies a formal complaint. Gov.Bar R. V(8)(A)(1). Once a complaint is certified by a probable cause panel, subsequent proceedings and documents filed in the case become public. While a lawyer or judge under investigation by disciplinary authorities may waive confidentiality of the proceedings, the waiver does not extend to documents or deliberations expressly designated as confidential under the rule. Gov.Bar R. V(8)(A)(1)(b).

Gov.Bar R. V(8)(A)(1)(b) ensures that preliminary misconduct investigations of judges and lawyers are protected from public disclosure, ensuring that unverified allegations do not result in reputational damage to the lawyer or judge. In *In re Disqualification of Krueger*, 74 Ohio St.3d 1267 (1995), the affiant-lawyer stated in her affidavit of disqualification that she intended to file a disciplinary complaint against the judge. The Court cautioned that under the predecessor rule to Gov.Bar R. V(8) "disciplinary complaints remain private until and unless formal proceedings begin before the [Board of Professional Conduct]." *Id.* at 1268. Similarly, in *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246, the Court emphasized that "the rules safeguarding the confidentiality of the grievance process apply not only to participants in the [disciplinary] process, but to all attorneys."

### *Disciplinary Cases*

The Supreme Court has consistently emphasized a lawyer's duty to uphold the confidentiality of the disciplinary grievance process, reinforcing the application of Gov.Bar R. V(8) in cases where a lawyer files an affidavit of disqualification.

The intentional disclosure of grievance related information about a judge in an affidavit of disqualification case was at issue in *Disciplinary Counsel v. Pullins*, 2010-Ohio-624. The lawyer was ultimately sanctioned for statements he made in an affidavit of disqualification he filed against a judge and for other professional misconduct. In his affidavit the lawyer revealed that he had previously filed three separate grievances against the judge due to the judge's alleged refusal to follow the law and that the judge had violated the Code of Judicial Conduct.

The Supreme Court has also addressed a lawyer's duty to uphold the confidentiality of the grievance process in other contexts. For example, in *Disciplinary Counsel v. Oviatt*, 2018-Ohio-5091, the lawyer violated the confidentiality of the grievance

process by referencing and attaching portions of a grievance he had filed against appellate judges to a filing he submitted to a common pleas court. Similarly, the judge in *Ohio State Bar Assn. v. Evans*, 2013-Ohio-4992 was disciplined for violating the predecessor to Gov.Bar R. V(8) for removing a public defender from 64 cases due to a conflict that had arisen between the lawyer and the judge and for implying in his entries that the lawyer was the subject of a disciplinary investigation.

*Grievance Not Relevant to Disqualification Determination*

Although disclosure of a grievance is prohibited, it has no bearing on a judge's disqualification. A former Chief Justice stated that a judge is not disqualified "solely because a party or counsel in a pending case has filed a grievance against the judge." *Krueger* at 1268. To hold otherwise would invite parties to file disciplinary grievances solely to disqualify a judge, promoting forum-shopping and disrupting the orderly administration of judicial proceedings. *In re Disqualification of Eighth Dist. Court of Appeals*, 2017-Ohio-2840, ¶ 6. Moreover, "[t]he disclosure by a lawyer that a grievance has been filed alleging the same facts as are set forth in an affidavit of disqualification provides no additional information that will aid the Chief Justice in determining whether disqualification is appropriate." *Pullins* at ¶ 15.

Disciplinary grievances and affidavits of disqualification serve separate and distinct purposes. The removal of a judge is based on direct evidence of bias, partiality, or misconduct relevant to the case at hand. *In re Disqualification of Russo*, 2005-Ohio-7146. Thus, the reference of the filing of a grievance in an affidavit of disqualification is not only prohibited by Gov.Bar R. V(8), but is also irrelevant to the disqualification analysis.