**IN THE SUPREME COURT OF OHIO**

| | | |
|---|---|---|
| COLUMBUS BAR ASSN. | : | Case No. 2021-0224 |
| | : | |
| Relator, | : | |
| -vs- | : | A practice-of-law case |
| | : | |
| NATALIE J. BAHAN | : | |
| | : | |
| Respondent. | : | |

---

**RESPONDENT'S OBJECTIONS TO THE FINDINGS AND RECOMMENDATIONS OF THE BOARD OF PROFESSIONAL CONDUCT WITH BRIEF IN SUPPORT**

---

**Tim Steinhelfer (99877)**
THE STEINHELFER FIRM, LLC
116 E. Court Avenue
Bellefontaine, Ohio 43311
(937) 900-0025
tim@ohiocivilappeals.com
*Counsel of Record for Respondent*

**Colleen H. Briscoe (20568)**
BRISCOE LAW OFFICES, L.P.A.
7582 S. Goodrich Square
New Albany, Ohio 43054
(614) 224-4149
chbriscoelaw@gmail.com
*Counsel of Record for Relator*

**Kent R. Markus (16005)**
**Thomas Edward Zani (71175)**
COLUMBUS BAR ASSOCIATION
175 S. Third Street, Suite 1100
Columbus, Ohio 43215
(614) 340-2053
kent@cbalaw.org
thomas@cbalaw.org

**Nita Lorene Hanson (84342)**
DINSMORE AND SHOHL, LLP
191 Nationwide Blvd., Suite 300
Columbus, Ohio 43215
(614) 628-6927
nita.hanson@dinsmore.com
*Co-counsel for Relator*

## TABLE OF CONTENTS

TABLE OF CONTENTS ........................................ i

TABLE OF AUTHORITIES ........................................ ii

OBJECTIONS TO THE REPORT OF THE BOARD OF PROFESSIONAL CONDUCT ........................................ 1

STATEMENT OF FACTS ........................................ 1

ARGUMENT ........................................ 11

CONCLUSION……………………………………………………………………………28

PROOF OF SERVICE…………………………………………………………………..29

## TABLE OF AUTHORITIES

**Cases**

*Akron Bar Assn. v. DiCato*, 130 Ohio St.3d 394; 2011-Ohio-5796; 958 N.E.2d 938………...12

*Akron Bar Assn. v. Shinese,* 143 Ohio St.3d 134, 2015-Ohio-1548, 34 N.E.3d 910………….27

*Berry v. Schmitt*, 688 F.3d 290, 294 (6th Cir. 2012)……………………………….14, 15, 16, 17

*Boos v. Barry*, 485 U.S. 312, 322, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988)…………………….19

*Bridges v. California*, 314 U.S. 252, 270-271; 62 S.Ct. 190; 86 L.Ed. 192 (1941)……………..19

*Butterworth v. Smith*, 494 U.S. 624, 110 S. Ct. 1376, 108 L. Ed. 2d 572 (1990)……………...16

*Baumgartner v. United States*, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525 (1944)…………..18

*Columbus Bar Assn. v. Reibel*, 69 Ohio St.2d 290, 432 N.E.2d 165 (1982)…………………..26

*Cornelius v. NAACP Legal Defense & Educational Fund*, 473 U.S. 788, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985)………………………………………………………………………...…18

*Dayton Bar Assn. v. Rogers*, 116 Ohio St.3d 99, 2007-Ohio-5544, 876 N.E.2d 923…………26

*Disciplinary Counsel v. Adelstein*, 160 Ohio St.3d 511, 2020-Ohio-3000, 159 N.E.3d 1126…………………………………………………………………………...26

*Disciplinary Counsel v. Bozanich*, 95 Ohio St.3d 109, 2002-Ohio-1939, 766 N.E.2d 145…...24

*Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870, 909 N.E.2d 1271….…14

*Disciplinary Counsel v. Gardner,* 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425……………………………………………………………………….14, 20, 21

*Disciplinary Counsel v. Grimes*, 66 Ohio St.3d 607, 614 N.E.2d 740 (1993)…………………26

*Disciplinary Counsel v. Proctor*, 131 Ohio St.3d 215, 2012-Ohio-684, 963 N.E.2d 806…….,12

*Disciplinary Counsel v. Pullins,* 127 Ohio St.3d 436, 2010-Ohio-6241, 940 N.E.2d 952……12

*Erie-Huron Cty. Bar Assn. v. Bailey*, 161 Ohio St.3d 146, 2020-Ohio-3701, 161 N.E.3d 590……………………………………………………………………….26

*Florida Bar v. Went-For-It, Inc*., 515 U.S. 618, 115 S. Ct. 2371, 132 L. Ed. 2d 541 (1995)…..16

*Garrison v. Louisiana*, 379 U.S. 64, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964)………………..…16

*Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991)…...16

*In re Primus*, 436 U.S. 412, 98 S. Ct. 1893, 56 L. Ed. 2d 417 (1978)………………………….16

*Landmark Communications v. Virginia*, 435 U.S. 829, 98 S. Ct. 1535, 56 L. Ed. 2d (1978)….16

*Martin v. Struthers*, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313 (1943)……………………….18

*Meyer v. Grant*, 486 U.S. 414, 424, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988)……..…………..19

*Mills v. Alabama*, 384 U.S. 214, 86 S. Ct. 1434, 1437, 16 L. Ed. 2d 484 (1966)………………16

*Milkovich v. Lorain Journal Co*., 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)……..…15

*NAACP v. Claiborne Hardware Co*., 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982)..18

*Roth v. United States*, 354 U. S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957)………………..16

*Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)…………………...24

*Standing Comm. v. Yagman*, 55 F.3d 1440 (9th Cir. 1995)……………..…………………..…15

**Constitutional Provisions**

Constitution, Article I, Section 11…………………………………………………….……14

First Amendment…………………………..……………………………………..passim

**Statutes**

18 U.S.C. § 2265(d)(3)…………………………………………………………………………6

**Rules**


Civ.R. 26(B)(3)……………………………………………………………………..25

DR 1-103 (former)……………………………………………………………………24

DR 7-106(C)(6) (former)..........................................................................................12

DR 8-102(B) (former)...............................................................................................12

Gov. Bar R. IV, §2…………………………………………………………………passim

Gov. Bar R. V, §13(C)(5)…………………………………………………………...26, 27

Kentucky Professional Conduct Rule 8.2(a)………………………………………………15

Ohio Rules of Professional Conduct, Preamble, §6………………………………………17

Prof.Cond.R. 3.5(a)(6)…………………………………………..…………………12, 13

Prof.Cond.R. 8.2(a)……………………………………………………………….....12, 13

Prof.Cond.R. 8.3……………………………………………………………...………24

Prof.Cond.R. 8.4(d)………………………………………………………………….passim

Prof.Cond.R. 8.4(h)…………………………..……………………………………………13

S.Ct.Prac.R. 1.06(G)…………………………………………………..…………………25


**Secondary Authority**


Calvin D. Williams, *Cleveland Divison of Police General Police Order: De-Escalation*………22

Mike Dewine, *Policing in the 21st Century*……………………………………………….22

## OBJECTIONS TO THE REPORT OF THE BOARD OF PROFESSIONAL CONDUCT

**I. Attorney Bahan's speech is not sanctionable as violative of Gov. Bar R. IV, § 2.**

**II. Attorney Bahan's contact with law enforcement is not prejudicial to the administration of justice.**

**III. Attorney Bahan's consumption of a glass of wine with supper eleven years ago is not prejudicial to the administration of justice.**

**IV. The panel violated Attorney Bahan's due process rights by precluding testimony from her fact witnesses.**

**V. The Board's recommended sanction is unwarranted.**

## STATEMENT OF FACTS

### Factual Background

In the interests of clarity, the factual background is set forth in chronological order to the extent possible.

#### A. Attorney Bahan Drinks a Glass of Wine with Supper Eleven Years Ago prior to a Home Visit.

Attorney Bahan testified that in or around 2010, during her first several months actually practicing law in what was her first GAL appointment, she consumed a single glass of wine with supper prior to performing a surprise home visit to a mother's home, which was requested by father's attorney. Attorney Bahan testified that though she now knows such conduct is inappropriate, at the time, she was not so aware, having come from an auditing and accounting background before the Great Recession, a setting wherein such conduct was not only permitted, but encouraged. HT, 383:8-25; 384:1-10.

Relator presented a single witness in support of its allegations regarding this incident. According to retired Judge C. Douglas Chamberlain, sometime, approximately nine to fourteen years ago, a litigant in a family law case alleged that Attorney Bahan had consumed alcohol prior to a home visit. Judge Chamberlain could not remember the name of the case, the parties involved, or even the attorneys involved. He further admitted that his search of the docket did not reveal any resignation or withdraw as GAL, and that it could be possible that Attorney Bahan stayed on the case until the end, that it went to trial, and that he approved her fees upon the conclusion of the case. HT, 260:20-25; 261:10-19; 263:7-25; 264:1-25; 265:1-2. Judge Chamberlain further testified that he appointed Attorney Bahan as guardian ad litem for children's services cases subsequent to the glass of wine incident, and that he would not have done so if he did not feel she was competent to handle those duties. HT, 265:3-15.

**B. Attorney Bahan Calls Law Enforcement over a Stolen iPad.**

On or about Sunday, February 19, 2017, after 10:00 p.m., Respondent called the Logan County Sheriff's Office to report that her son (18 at the time) had taken her iPad without permission and crawled out a bedroom window of the residence with it to leave the scene. HT, 237:6-13; 246:12-17. Though the Board makes much of the fact that the responding deputy perceived Attorney Bahan to be intoxicated that particular Sunday evening, that same deputy, the Relator's sole witness on the incident, also

testified that Attorney Bahan did the right thing by calling law enforcement. HT, 247:2-23.

**C. Attorney Bahan Roasts a Judge at the 2018 Logan County Bar Association Holiday Party.**

On or about December 8, 2018, Respondent attended the Logan County Bar Association's ("LCBA") annual holiday party. Relator's own witnesses Attorney Miranda Warren and Magistrate Natasha Kennedy both testified that Attorney Bahan did not appear angry when she arrived. HT, 146:7-8; 179:2-4. These witnesses further testified that those in attendance were strictly limited to members of the LCBA and their "spouse if they had one." HT, 148:23-25; 178:3-16. Relator's witnesses Bridget Hawkins and retired Judge C. Douglas Chamberlain both testified that Respondent did not appear intoxicated when she arrived. HT, 110:6-17; 259:11-15.

During the party, the then-incumbent Logan County Common Pleas Court judge ("WTG") received a "mock award" during what he described as a "roast." See Relator's Exhibit 3.

Respondent became angry when WTG was awarded, and "mumbled" "foul names" "under her breath," such as "piece of shit" and "asshole." HT, 111:7-16; 112:16-20; 180:7-25. There is conflicting testimony about the volume of Attorney Bahan's speech, though Respondent does not view her volume as material to the objections set forth herein.

Attorney Bahan testified that that she was "shocked, appalled [and] disgusted" about "the appropriateness of what was going on." HT, 340:2-17. She was also "upset with the bar association for glorifying that behavior." HT, 343:23-25; 344:1. Though the panel severely limited testimony (HT, 339:1-25) as to why WTG was being roasted in the first place[1], Attorney Bahan was able to testify that she was "was pretty much attempting to mirror what it was [WTG] did on the record in an open courtroom." HT, 344:18-20. The record reflects that it was obvious to the Relator's witnesses as well that Attorney Bahan's moral outrage concerned fact that the LCBA was making light of what Attorney Bahan perceived to be WTG's misconduct. HT, 149:24-25; 150:1-2; 180:7-8; 181:10-20.

The witnesses were unanimous in testifying that WTG did not react in any manner to Attorney Bahan's comments; rather, he kept speaking length uncowed by her comments. HT, 113:11-17; 125:11-13; 147:25; 148:1-3.

**D. Attorney Bahan Calls Law Enforcement over a Missing Vehicle.**

On or about Saturday, May 4, 2019, Respondent and her husband attended a charitable equestrian event in rural Logan County, Ohio. See Relator's Exhibit 7, admitted at HT, 289:9-10. Respondent's cell phone battery died during the event. HT, 348:13-14. Respondent had a disagreement with her husband, her husband told her he was leaving, she later searched for her husband unsuccessfully and discovered that her

---

[1] Profanely degrading a female pro se litigant struggling with addiction

car was not parked where it had been; nor was it anywhere in sight. HT, 204:18-25; 210:11-25; 211:1-4; 347:10-24. Thereupon, at approximately 9:16 p.m., she borrowed a stranger's cell phone to call the Logan County Sheriff's Office for assistance. Id.; HT, 348:8-14; accord with Exhibit 7. Once Respondent located her husband, she instructed him to call the Logan County Sheriff's Office to inform them that no assistance was needed, which he in fact did at approximately 9:26 p.m. HT, 348:23-25; 349:1-2; accord with Exhibit 7. Despite this, deputies arrived at Attorney Bahan's residence nearly two hours later "to check on her well-being." HT, 204:9-14. Nothing being criminally amiss, the deputies cleared the call. Id.

On or about May 8, 2019, WTG contacted the Logan County Sheriff's Office and spoke directly with the responding deputy about the incident, then attached the call log of the incident (Relator's Exhibit 7) to the 124-page initiating grievance in this matter, Relator's Exhibit 3. HT, 208:5-25; 209:1-11.

<u>**Procedural History**</u>

**A. The initiating grievance, scheduling orders, the probable cause dismissals, and the certified complaint.**

On or about April 25, 2019, Attorney Natalie Bahan filed with the clerk of this Court an Affidavit of Disqualification pursuant to R.C. 2701.03, seeking to disqualify WTG from a felony criminal matter for bias and prejudice. See Respondent's Exhibit A, admitted at HT, 455:3-4. The bias and prejudice alleged included specific incidents of long-term sexual harassment, as well as an ex parte communication initiated by WTG

regarding a pending motion to disqualify Attorney Bahan in the underlying felony criminal case. Exhibit A. The ex parte communication is evidenced by a letter written by WTG on Logan County Common Pleas Court letterhead. Id.

On or about May 8, 2019, WTG submitted a 124-page response to the Chief Justice of this Court (the initiating grievance in this matter), stating, inter alia, "Once again, I request that you take the appropriate action to investigate Ms. Bahan's behavior." Relator's Exhibit 3, p. 1; also see HT, 5:7-9. With regard to Attorney Bahan's allegation of long-term sexual harassment, WTG stated, "Her accusation is repulsive and repugnant to me as I do not see her in the light she has cast; not even in the least, and never have." Exhibit 3 at p. 2. He further called Attorney Bahan "mentally unstable," and "unfit to practice." Id. at p. 2, 4.

Attached to WTG's response letter were domestic violence civil protection orders ("CPOs") and petitions, which the Relator Columbus Bar Association later filed unredacted with the Board of Professional Conduct for online publication, ostensibly in violation of 18 U.S.C. § 2265(d)(3), a federal statute prohibiting online publication of the identity or location of a domestic violence CPO petitioners, or at least in violation of this state's public policy to protect the confidentiality of the very same petitioners.

On or about May 20, 2019, WTG filed a Judgment Entry recusing himself from the underlying criminal matter, stating, inter alia, "the Court is concerned that there is a legitimate reason that a visiting judge be appointed in this case due to there having

been an ex parte communication between the Judge and the Professional Standards Committee." Respondent's Exhibit B.

On or about June 22, 2019, WTG announced his resignation from the bench after serving two and a half years of his six-year term.

On or about November 25, 2019, Relator mailed to Respondent its Complaint, alleging 13 rule violations, set forth as five separate counts.

On or about December 16, 2019, the probable cause panel entered an Order dismissing four of the alleged rule violations contained in the original Complaint.

On or about December 18, 2019, Relator filed its Complaint alleging nine rule violations set forth as four separate counts.

On or about January 17, 2020, Respondent filed her Answer to the Complaint.

On or about January 31, 2020, the panel entered an Order, which states, in pertinent part, "The parties shall exchange fact and expert witness lists and expert reports on or before March 18, 2020."

On or about February 14, 2020, Respondent filed her superseding Amended Answer.

On or about April 1, 2020, the panel entered an Order, which states, in pertinent part:

> "The panel chair conducted a prehearing telephone conference with counsel on April 1, 2020. As a result of this telephone conference the May 13-14 hearing dates and the dates set forth in the prehearing

> schedule established on January 31, 2020 are vacated. The following new dates are established:
> 1. The parties shall exchange fact and expert witness lists and expert reports on or before June 5, 2020.
> 2. Relator is granted leave to file an amended complaint on or before June 5, 2020.
> * * *
> 5. The parties shall file final witness lists * * * on or before July 21, 2020."

On or about June 4, 2020, Relator Columbus Bar Association filed a Motion to Extend Deadlines of April 1, 2020 Panel Chair Order, requesting that the deadlines in the April 1, 2020 Order be vacated to allow Relator to obtain a fourth alcohol assessment of Respondent. See Report at fn. 1 (citing the two OLAP evaluations resulting in no finding of alcohol use disorder); accord with Relator's June 4, 2020 Motion and Respondent's June 8, 2020 Response thereto (citing the third private evaluation finding no alcohol use disorder).

On or about July 14, 2020, the panel entered an Order, which states, in pertinent part:

> "1. Relator's June 24, 2020 Motion for referral of Respondent to an expert evaluator is overruled.
> * * *
> 3. Relator shall file any amended complaint on or before August 28, 2020.
> * * *
> 7. The parties shall file final witness lists, hearing exhibits, and stipulations on or before October 20, 2020."

On or about October 20, 2020 at approximately 11:24 a.m., Respondent filed her witness list, setting forth thirteen fact witnesses.

On or about October 20, 2020 at approximately 4:33 p.m., Relator filed its witness list, setting forth ten fact witnesses.

**B. The Evidentiary Hearing and Report**

On or about October 27-28, 2020, an evidentiary hearing was held via video teleconference before a three-member panel of the Board of Professional Conduct. See Findings of Fact, Conclusions of Law and Recommendation of the Board of Professional Conduct ("Report") at ¶1.

During the Hearing, Relator agreed to dismiss Count Three in its entirety, which alleged two rule violations. Report at ¶37. Thereupon, the panel unanimously dismissed Count Three. Id.

Upon the close of Relator's case in chief, the panel unanimously dismissed Count Four of the Amended Complaint, which alleged two rule violations. HT, 332:11-25; 333:1-5; accord with Report at ¶38.

On or about December 18, 2020, both parties filed written summations as requested by the panel.

On or about February 12, 2021, the Board of Professional Conduct filed its Report, recommending Attorney Bahan be sanctioned with a six-month stayed suspension and costs of the proceeding for a single violation of Gov. Bar R. IV, §2 and a

single violation of Prof.Cond.R. 8.4(d). The panel unanimously dismissed the alleged violations of Prof.Cond.R. 8.4(h), finding that Attorney Bahan's conduct did not adversely reflect on her fitness to practice law.

The Board found that although Attorney Bahan's speech "occurred at a party and was in no way related to the practice of law," "publicly and profanely berating a sitting common pleas court judge" is a sanctionable violation of Gov. Bar R. IV, §2, requiring lawyers to maintain a respectful attitude towards the courts. See Report at ¶14, 56.

The Board further found Attorney Bahan violated Prof.Cond.R. 8.4(d) (conduct prejudicial to the administration of justice) "by contacting law enforcement to report minor trivial incidents," and by conducting an intentional surprise home visit during her very first case as a guardian ad litem after consuming a glass of wine with supper approximately eleven years ago. See Report at ¶59-61; accord with HT, 329:9-18; 330:19-22 (all alleged incidents in Count Two of the Complaint shall be construed by panel to allege two rule violations in their totality).

In support of its recommended sanction, the Board credited Respondent with two mitigating factors: absence of a dishonest or selfish motive, and free and full disclosure and a cooperative attitude during the disciplinary process. Report at ¶40. The Board recognized that former Magistrate W. Thomas Minihan and retired Judge Mark O'Connor provided testimony favorable to the Respondent competence and

professionalism, but declined to credit Attorney Bahan with the mitigating factor of evidence of good character or reputation, drawing a distinction between reputation and competence. The Board did not address former Magistrate Daniel LaRoche's favorable character testimony. See HT, 446:14-25; 447:1-9.

On or about February 18, 2021, this Court issued its show cause order.

Because Attorney Bahan's conduct merits no sanctions from this Court, Respondent now respectfully states these Objections to the Report of the Board of Professional Conduct and Brief in Support.

## ARGUMENT

### I. Attorney Bahan's speech is not sanctionable as violative of Gov. Bar R. IV, § 2

Gov. Bar R. IV, §2 provides, in full:

> "It is the duty of the lawyer to maintain a respectful attitude *toward the courts*, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges and Justices, not being wholly free to defend themselves, are peculiarly entitled to receive the support of lawyers against *unjust* criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit a grievance to proper authorities. *These charges should be encouraged and the person making them should be protected*."

(Emphasis added).

#### A. Attorney Bahan did not violate Gov.Bar R. IV because her speech was not directed "towards the courts." (The textual/constitutional avoidance argument)

Respondent's research reveals that this Court has never sanctioned an attorney for a violation of Gov. Bar R. IV, §2 that was not also tethered to a violation of the Ohio

Rules of Professional Conduct or the Ohio Code of Judicial Conduct. All of the cases cited by the Board where this court sanctioned an attorney for a violation of Gov. Bar R. IV, §2 are for conduct also violative of the Ohio Rules of Professional Conduct or the Ohio Code of Judicial Conduct.

In *Disciplinary Counsel v. Pullins*, this Court imposed an indefinite suspension on an attorney whose conduct violated Gov. Bar R. IV, §2; former DR 7-106(C)(6) (prohibiting undignified or discourteous conduct that is degrading to a tribunal when appearing in a professional capacity before that tribunal), and former DR 8-102(B) (prohibiting intentionally false accusations against a judge) during a four-year course of harassment. 127 Ohio St.3d 436, 2010-Ohio-6241, 940 N.E.2d 952. Attorney Pullins's improper speech was contained in legal filings.

In *Disciplinary Counsel v. Proctor*, this Court imposed a six-month suspension on an attorney whose speech violated Gov. Bar R. IV, §2; Prof.Cond.R. 3.5(a)(6) (prohibiting lawyers from engaging in undignified or discourteous conduct degrading to a tribunal); and Prof.Cond.R. 8.2(a) (prohibiting recklessly false statements concerning the integrity of a judicial officer). 131 Ohio St.3d 215, 2012-Ohio-684, 963 N.E.2d 806. Attorney Proctor's improper speech was made in his court filings, while acting in a representative capacity as an attorney.

In *Akron Bar Assn. v. DiCato*, this Court imposed a six-month stayed suspension on an attorney who telephoned a judge's bailiff and called the judge a "lying cheating

bitch" in violation of Prof.Cond.R. 3.5(a)(6); 8.2(a) and 8.4(h). 130 Ohio St.3d 394; 2011-Ohio-5796; 958 N.E.2d 938. No Gov. Bar R. IV violation was alleged or found. *Id*. Attorney DiCato's improper speech was while acting in a representative capacity as an attorney. *Id*.

The probable cause panel determined that there was no probable cause to believe Attorney Bahan "engage[d] in undignified or discourteous conduct that is degrading to a tribunal," in violation of Prof.Cond.R. 3.5(a)(6). The Board's finding that she was disrespectful *towards the courts* in her speech at the 2018 is precarious. Its obvious problem is that the term "tribunal" is broader than and encompasses the term "court." All courts are tribunals, but not all tribunals are necessarily courts. The term "tribunal" encompasses both courts that have contempt power, and legislative committees that do not. It therefore follows that because Attorney Bahan did not engage in undignified or discourteous conduct degrading to a tribunal, she also did not engage in such conduct towards a court. Simply put, WTG is not a "court" regardless of setting or context.

Attorney Bahan's comments were not directed towards any court. On this purely textual basis, the Board erred in finding a violation of Gov. Bar IV, §2, and the violation should be dismissed.

### B. Attorney Bahan's Speech is Constitutionally Protected.

The First Amendment provides, in full:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of

> speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution, Article I, Section 11 provides, in full:

> "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted."

Relator interprets Gov.Bar. R. IV, §2 so broadly as to proscribe any offensive language used to criticize a judge. Such a broad expansion of the rule, with its weighty constitutional implications, would likely have been widely noticed in a state of our size, discussed by the bar, and challenged long before now. But this Court has never expanded Gov. Bar R. IV, §2 in this manner. It should decline to do so today.

Attorneys may still "freely exercise free speech rights and make statements supported by a reasonable factual basis, even if the attorney turns out to be mistaken." *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870, 909 N.E.2d 1271, ¶31, citing *Disciplinary Counsel v. Gardner,* 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425, ¶31.

State regulation of speech is "especially problematic when the speech is made by attorneys, who are often the citizens best situated to criticize government abuse." *Berry v. Schmitt*, 688 F.3d 290, 294 (6th Cir. 2012). In *Berry*, Attorney Berry attended a hearing of a commission of the Kentucky legislature and then wrote the commission a letter

criticizing its closure of the hearing to the public, stating that the practice could cause the public to think that "the deck was stacked." *Id*. The legislative commission then complained of the letter to the Kentucky Bar Association Inquiry Commission, which issued a letter of warning to attorney Berry that his conduct violated Kentucky Professional Conduct Rule 8.2(a) "by publicly implying that the Legislative Ethics Commission did not conduct its review appropriately." *Id*. at 294-95.

After exhausting his state remedies, Attorney Berry sought relief in federal court, and then appealed the district court's summary judgment in favor of the bar. *Id*. In finding Attorney Berry's statements well within the protections of the First Amendment, the Sixth Circuit first focused on the classically political nature of the speech, then held that "statements impugning the integrity of a judge may not be punished unless they are capable of being proved true or false; statements of opinion are protected by the First Amendment unless they 'imply a false assertion of fact.'" *Id*. at 303, adopting *Standing Comm. v. Yagman*, 55 F.3d 1440, 1438 (9th Cir. 1995), quoting *Milkovich v. Lorain Journal Co*., 497 U.S. 1, 19, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990). If the factual basis for the speaker's statement is known or disclosed, it can only be read as the speaker's "personal conclusion about the information presented, not a statement of fact." *Yagman* at 1438-39.

Under the standard set forth by the Sixth Circuit in *Berry*, Attorney Bahan's speech at the 2018 LCBA holiday party is not sanctionable. Importantly, it is classic

political speech. "There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991). Speech concerning public affairs is "at the core of the First Amendment," *Butterworth v. Smith*, 494 U.S. 624, 632, 110 S.Ct. 1376, 108 L.Ed.2d 572 (1990), because it is the "essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964).

"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Landmark Communications v. Virginia*, 435 U.S. 829, 838, 98 S.Ct. 1535, 56 L.Ed.2d 1, quoting *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966). The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U. S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957).

The strong protections provided for political speech activities are robust even in the context of the regulation of lawyers. See *Florida Bar v. Went-For-It, Inc*., 515 U.S. 618, 634, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995) ("There are circumstances in which we will accord speech by attorneys in public issues and matters of legal representation the strongest protection our Constitution has to offer."); also see *In re Primus*, 436 U.S. 412, 432, , 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) (holding that punishing a lawyer for political

expression “must withstand the 'exacting scrutiny applicable to limitations on core First Amendment rights'”).

Attorney Bahan made comments regarding an incumbent elected judge to an insular group of interested people regarding that group’s sanctioning what she perceived as conduct that reflected poorly on the judge’s commitment to access to equal justice under the law. See Ohio Rules of Professional Conduct at Preamble, §6 (“lawyer shall seek improvement in the law, ensure access to the legal system * * *). Any objective listener would perceive her speech to mean “we should not be rewarding this conduct.” Her speech is classically political in nature.

The second important factor under *Berry* that brings Attorney Bahan’s speech within the ambit of the First Amendment’s protections is that her comments constituted statements of opinion, the factual basis for which was plain as day to all in attendance. She directed profanity at the former judge during the roast because he was being roasted for directing profanity at a female pro se litigant who struggled with addiction. Her use of profanity in this situation was a rhetorical device of moral suasion. This Court may find that device to be imprudent, but as discussed in greater detail below, the wisdom of her commentary should play no role in free speech analysis. WTG gave a long-winded acceptance speech. The factual basis for Attorney Bahan’s statements of opinion was objectively clear. This is borne out by the record. Will the lesson of this case be that when a male judge uses profane speech to degrade a pro se female litigant,

he is given an award, but when a female attorney uses similar language to criticize his misconduct, her license to practice law is at risk?

The right to verbally confront the morality of one's attitudes or conduct is not limited to tactful commentary. "The right [of free speech] extends to the aggressive and disputatious as well as to the meek and acquiescent." *Martin v. Struthers*, 319 U.S. 141, 149, 63 S.Ct. 862, 87 L.Ed. 1313 (Murphy, J., concurring). "Speech does not lose its protected character * * * simply because it may embarrass others * * *." *NAACP v. Claiborne Hardware, Co.*, 458 U.S. 886, 910, 921, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982).

Nor should this Court's freedom of speech analysis depend on the Board's judgment of the wisdom or prudence of a given communication. "Strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases." *Id*. at 928. "One of the prerogatives of American citizenship is the right to criticize public men and measures -- and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." *Baumgartner v. United States*, 322 U.S. 665, 673-74, 64 S.Ct. 1240, 88 L.Ed. 1525 (1944).

"In a face-to-face encounter there is a greater opportunity for the exchange of ideas and the propagation of views[.]" *Cornelius v. NAACP Legal Defense & Educational Fund*, 473 U.S. 788, 798, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). "The most effective, fundamental, and perhaps economical avenue of political discourse [is] direct one-on-

one communication." *Meyer v. Grant*, 486 U.S. 414, 424, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988). Nor do hurt feelings affect the free speech analysis.

The content of speech cannot be censored to protect the feelings of the targeted individual or the sensibilities of the public. "As a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment.'" *Boos v. Barry*, 485 U.S. 312, 322, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988). Judges, as citizens and participants in the administration of justice, are entitled to no exemption from these burdens of the First Amendment. Indeed, it would be antithetical to the American tradition. "[A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect." *Bridges v. California*, 314 U.S. 252, 270-271; 62 S.Ct. 190; 86 L.Ed. 192 (1941).

What member of the Ohio judiciary would cower to comments such as those made by Attorney Bahan at the 2018 holiday party roast? The witnesses were unanimous in their testimony that WTG certainly did not. He kept talking at length uncowed and undeterred. Our system of justice is not put at risk if these out-of-court opinion statements are not censored. The legal profession can express displeasure at such profanity while at the same time feeling pride in belonging to a society that allows

its expression. The judiciary is not so fragile. It is the First Amendment that needs this Court's protection.

The facts upon which Attorney Bahan's opinion speech is based are neither false nor demeaning. Indeed, it was impliedly understood by those present that WTG was receiving the award for his own improvident conduct. Finally, where the intended listeners were the Logan County Bar Association (attorneys), the concerns related to maintaining public perception of the integrity of the judiciary are markedly diminished in this insular group of interested people. Indeed, inherent in the First Amendment's freedom of speech protections is a commensurate freedom to listen to speech on topics of concern. There could be no more interested group in the propriety of giving the "Elvis Award" to WTG his conduct than the Logan County Bar Association from whence the award came.

Finally, should the Court decide that Attorney Bahan's speech was directed at a court and may was plausibly false or demeaning, this matter must then be sent back to the panel for further evidentiary proceedings. In addition to the improper exclusion of fact witness testimony discussed in section IV of this brief, the panel committed a prejudicial evidentiary error when it precluded testimony about why WTG was being roasted/awarded in the first place. Without this information, this Court cannot conduct a *Gardner* analysis, which requires consideration of whether the attorney had "a factual basis for making the statements, considering their nature and the context in which they

were made." *Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425, at ¶26. This error was invited by Relator's repeated and strenuous objections to any testimony on the issue.

Because Attorney Bahan's right to freely criticize the misconduct of an incumbent elected judge is safeguarded by both the United States and Ohio constitutions, her conduct at the 2018 LCBA holiday party merits no formal discipline from this Court.

**II. Attorney Bahan's contact with law enforcement is not prejudicial to the administration of justice.**

Count Two of the certified complaint is a Frankenstein's monster of allegations reaching back over ten years entitled "multiple additional incidents related to alcohol use." Notably, the Board found that "At Relator's request, Respondent was evaluated by the Ohio Lawyers' Assistance Program in *Bahan I*. That evaluation took place in 2017, a time that was subsequent to or contemporaneous with many of the incidents alleged by Relator in its complaint. Respondent underwent a second evaluation at relator's request following her August 2019 deposition and prior to the filing of the complaint in this matter. Neither evaluation resulted in a determination that Respondent has an alcohol problem or a recommendation that she enter an OLAP contract." Report at fn. 1.

The essence of the alleged Prof.Cond.R. 8.4(d) violation is that Attorney Bahan "improvidently, while intoxicated, contacted law enforcement over trivial matters." See

Report a ¶31. Both deputies' testimony that they prefer to get such calls sooner rather than later, coupled with that the distastefully published domestic violence CPOs, demonstrate a legitimate underlying reason for Attorney Bahan to call law enforcement sooner rather than later. The Board's determination that Attorney Bahan's contact with law enforcement is prejudicial to the administration of justice is against the manifest weight of the evidence.

Deputy Wood testified that in his opinion, Attorney Bahan "did the right thing" by contacting law enforcement. Deputy Reames likewise saw no problem with Attorney Bahan's contact with law enforcement. These deputies do not want citizens (even attorneys) to wait for fear that the circumstances may deteriorate. Indeed, their testimony is consistent with the modern trend that supports early officer involvement and de-escalation. See, e.g., Chief Calvin D. Williams, *Cleveland Divison of Police General Police Order: De-Escalation*, http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018De-Escalation.pdf?id=12397 (accessed March 7, 2021); also see Mike Dewine, *Policing in the 21st Century*, https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Law-Enforcement-Training-Publications/Policing-in-the-21st-Century-Resource-Guide (accessed March 7, 2021).

If the deputies had a reasonable suspicion that Attorney Bahan was guilty of making false alarms or misuse of 911, they could have filed a Complaint. If they had

probable cause to believe she was guilty of either of those offenses, they could have made an arrest. They did neither. Attorney Bahan's conduct was neither illegal nor unethical. Nor was it prejudicial to the administration of justice.

Finally, the panel committed an evidentiary error by precluding factual testimony from William Branan Jr. and William Branan III. Respondent's former counsel complied with all deadlines that had not been vacated regarding the disclosure of witnesses. Respondent was nonetheless inexplicably precluded from offering testimony on factual matters from these two witnesses, even though Relator traveled to Bellefontaine, Ohio and interviewed one of them at length several months before the Hearing.

A woman has the right to call law enforcement to report a crime or in an emergency situation. The chilling conclusion of the Board that Attorney Bahan's contact with law enforcement was sanctionable as prejudicial to the administration of justice is unsupported by the record and should be overturned.

**III. Attorney Bahan's consumption of a glass of wine with supper eleven years ago is not prejudicial to the administration of justice.**

Sometime around 2010, Attorney Bahan conducted an intentionally unannounced home visit by Ms. Bahan in her capacity as a court-appointed guardian ad litem. Because the litigant mother was not home yet, Attorney Bahan and her husband went to supper at a restaurant. Attorney Bahan had a glass of wine with supper. She thereafter made the home visit. Embarrassed, she apologized to Judge

Chamberlain when he asked her about this incident. Critically, Judge Chamberlain continued to appoint Attorney Bahan as guardian ad litem in children's services cases for several years after the incident. He testified he would not have done so if he did not feel she was competent to handle the responsibilities. This makes sense given the weighty constitutional rights implicated in children's services cases. See *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

Though there is no statute of limitations on professional misconduct, due process and evidentiary concerns regarding lost evidence and faded memories are still implicated. In *Disciplinary Counsel v. Bozanich*, 95 Ohio St.3d 109, 2002-Ohio-1939, 766 N.E.2d 145, his Court found that a seven-year delay was not a reasonable time in which to report a judge's misconduct to investigatory authorities under former DR 1-103 (now Prof.Cond.R. 8.3).

The testimony of Relator's sole witness on this incident that he does not know whether Respondent withdrew from the case, what parties were involved, an approximate timeframe (or even decade) of the incident, or even any of the attorneys involved, shows that the clear and convincing evidence standard was not met. The event was not prejudicial to the administration of justice. Judge Chamberlain did not think so at the time. The new Attorney Bahan apologized to Judge Chamberlain at the time, continued to serve as a guardian, then moved on with her life. For ten years, no one mentioned the peccadillo until Attorney Bahan filed an affidavit of disqualification

seeking to protect of her client's constitutional rights in a felony matter. The glass of wine was not prejudicial to the administration of justice in 2010. The glass of wine did not become more prejudicial with age.

**IV. The panel violated Attorney Bahan's due process rights by precluding testimony from her fact witnesses.**

Every deadline for the disclosure of witnesses set by the panel, except for the October 20, 2020 deadline was vacated by the panel. These deadlines were vacated primarily at the request of the Relator, who sought additional time to obtain a fourth alcohol evaluation, and to file an amended complaint, which never came to be. Both parties complied with the October 20, 2020 deadline. This case, being filed prior to the July 1, 2020 amendments to the Ohio Rules of Civil Procedure, is not governed by the new mandatory initial disclosure provisions now found at Civ.R. 26(B)(3). See, e.g., S.Ct.Prac.R. 1.06(G) ("A rule shall be presumed to be prospective in its operation unless expressly made retrospective). There was no mandatory initial disclosure of witnesses. Respondent complied with the sole deadline that was not vacated for the disclosure of witnesses, but was nonetheless improperly prevented from having her witnesses testify to any of the disputed facts of the case. Respondent sets forth that this is prejudicial error necessitating remand should the Court find there may otherwise be reason to sustain the Board's Report in any manner.

## V. The Board's recommended sanction is unwarranted.

The board recommends a six-month stayed suspension, though its cases in support are not analogous. Respondent sets forth that the recommended sanction is not appropriate, and respectfully requests a downward deviation from the Board's recommendation in the eventuality that this Court sustains any rule violation, on par with the public reprimand issued in *Columbus Bar Assn. v. Reibel*, 69 Ohio St.2d 290, 432 N.E.2d 165 (1982); *Disciplinary Counsel v. Grimes*, 66 Ohio St.3d 607, 614 N.E.2d 740 (1993); and *Erie-Huron Cty. Bar Assn. v. Bailey*, 161 Ohio St.3d 146, 2020-Ohio-3701, 161 N.E.3d 590 (as it relates to Respondent Kenneth Richard Bailey), cases much more analogous to the factual scenario of this case than those cited in the Board Report.

Notably, the board erred in failing to credit Attorney Bahan with the mitigation factor "character or reputation," because, although the Board conceded that retired Judge Mark O'Connor and retired Magistrate W. Thomas Minihan provided favorable testimony as to Respondent's competence, the Board drew a distinction between "competence" and "character." This contravenes this Court's treatment of the factor set forth at Gov. Bar R. V, §13(C)(5). See *Disciplinary Counsel v. Adelstein*, 160 Ohio St.3d 511, 2020-Ohio-3000, 159 N.E.3d 1126, ¶28 (two client's testimony to attorney's "competence" was positive character evidence within the meaning of Gov. Bar R. V, §13(C)(5)); *Dayton Bar Assn. v. Rogers*, 116 Ohio St.3d 99, 2007-Ohio-5544, 876 N.E.2d

923, ¶17 (letters attesting to attorney's "competence and professionalism" considered in mitigation).

In light of this Court's precedent, the distinction drawn by the Board in this case appears arbitrary. Judge Mark O'Connor, a well-respected retired judge who served over 26 years on the bench testified to Respondent's competence and professionalism. Retired magistrate and current Guantanamo Bay legal observer W. Thomas Minihan provided similar testimony. Though not mentioned by the Board, former Magistrate Daniel LaRoche also testified to Respondent's competence and professionalism. Respondent should be credited with the mitigating factor at Gov. Bar R. V, §13(C)(5). Their testimony regarding her competence and professionalism is especially entitled to weight in this case where, a key issue is whether Attorney Bahan can has the ability to maintain a respectful attitude toward courts. She does.

Attorney Bahan is also entitled to a reduction in Board costs commensurate with the overall results of this proceeding. In *Akron Bar Assn. v. Shinese*, the panel unanimously dismissed eight of seventeen alleged violations, and this Court dismissed an additional alleged violation on Shinese's objections. 143 Ohio St.3d 134, 2015-Ohio-1548, 34 N.E.3d 910, ¶26. This Court held that "based on the dismissal of more than half the alleged violations, we find that only $4,000 of the $9,571.08 expenses incurred in connection with these proceedings should be taxed to Shenise. Id. This case started with 13 alleged violations, which the probable cause panel whittled down to nine. The

Board found her guilty of two. Respondent respectfully submits that taxing the entire costs to her is inconsistent with precedent.

## CONCLUSION

WHEREFORE, Respondent NATALIE J. BAHAN respectfully requests that this Honorable Court sustain these objections to the Report of the Board of Professional Conduct, dismiss the Complaint at its costs, and grant whatever further relief it deems equitable and just.

DATED this _9_ day of March, 2021.

Respectfully Submitted,

**__/s/Tim Steinhelfer_________________**
Tim Steinhelfer (99877)
THE STEINHELFER FIRM, LLC
116 E. Court Avenue
Bellefontaine, Ohio 43311
tim@ohiocivilappeals.com
*Attorney for Respondent*

PROOF OF SERVICE

This is to certify that pursuant to Civ.R. 5(B), I served a true copy of the foregoing *Objections with Brief in Support*, via email, this _9_ day of March, 2021 upon the following:

Colleen H. Briscoe (20568)
chbriscoelaw@gmail.com

Nita Lorene Hanson (84342)
nita.hanson@dinsmore.com

Kent R. Markus, Esq. (16005)
Kent@cbalaw.org

Thomas Edward Zani (71175)
thomas@cbalaw.org
*Attorneys for Relator*

**___/s/Tim Steinhelfer _________**
Tim Steinhelfer (99877)
*Attorney for Respondent*