

SURVEY OF INDIANA LAW OF PROFESSIONAL RESPONSIBILITY (2024–2025)

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INTRODUCTION

From July 1, 2024, through July 1, 2025, the Indiana Supreme Court decided a few noteworthy cases relevant to the law of professional responsibility. In *Matter of Wruble*, the court considered whether the “offensive personality” clause of the Oath of Attorneys may serve as a charging theory in attorney disciplinary cases.¹ In *Seabolt v. State*, the court discussed the objective observer standard for disqualification of judges.²

During the relevant period, the court issued three other disciplinary opinions. One of these opinions involved a significant judicial disciplinary matter. The other two were notable per curiam opinions, involving attorney disciplinary matters.

I. *WRUBLE*: OFFENSIVE PERSONALITY

In July 2024, the Indiana Supreme Court approved an agreement in which an attorney admitted to violating the “offensive personality” clause in the Oath of Attorneys.³ However, one member of the court dissented to the use of the

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1. 236 N.E.3d 677 (Ind. 2024).

2. 240 N.E.3d 1249 (Ind. 2024).

3. *Wruble*, 236 N.E.3d at 678; IND. ADMIS. DISC. R. 22. Under this rule, each applicant to the practice of law is required to “take and subscribe” to the following oath or affirmation:

I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or

“offensive personality” clause as a charging theory,⁴ and three other members of the court indicated that they would be open to considering whether a disciplinary charge could be based solely on a violation of the Oath if the issue were presented in a case where the question would be decisive.⁵

In *Wruble*, the Indiana Supreme Court held that the respondent attorney violated the “offensive personality” clause of the Oath.⁶ After the respondent’s representation of his client ended, the client left a one-star review on the respondent’s Google page in which the client complained of poor communication and representation by the respondent.⁷ The respondent responded to this Google review by making multiple profane and derogatory demands that the client remove the one-star review.⁸ The client refused, and the respondent posted damaging information about the client relating to the subject of representation.⁹ The Commission charged the respondent with impermissibly revealing information relating to the representation under Rule 1.9(c) and violating the Oath of Attorneys under Admission and Discipline Rule 22.¹⁰ Ultimately, the Commission reached a conditional agreement with the respondent in which the respondent stipulated to violating both rules.¹¹ The Indiana Supreme Court accepted the conditional agreement.¹² Despite approval of the conditional agreement, three members of the court expressed reservations in a concurring opinion about using the Oath of Attorneys as a charging theory in attorney disciplinary cases.¹³ Further, one member of the court dissented against the use of the Oath of Attorneys as a charging theory in attorney disciplinary cases.¹⁴

In his concurring and dissenting opinion, Justice Slaughter agreed with the court that the conditional agreement between the Commission and the respondent attorney should be accepted for the respondent’s violation of Rule 1.9(c) because the respondent attorney impermissibly revealed a former client’s

law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God.

Id.

4. *Wruble*, 236 N.E.3d at 678–79 (Slaughter, J., concurring in part and dissenting in part).

5. *Id.* at 678 (Molter, J., concurring).

6. *Id.* at 677 (majority opinion).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 678 (Molter, J., concurring).

14. *Id.* at 678–79 (Slaughter, J., concurring in part and dissenting in part).

information related to the representation on social media.¹⁵ However, Justice Slaughter departed from the court's acceptance of the Oath of Attorneys as a stipulated disciplinary charge.¹⁶ Justice Slaughter explained:

To be clear, my objection is not that this charge lacks factual support; Wruble's personality during this episode was indeed offensive. I am concerned, rather, with interpreting our oath of attorneys to impose minimal standards that warrant sanctions for those whose conduct falls short. The oath is broad and aspirational, and it lacks the specific standards found in other rules—or in the myriad primary and secondary authorities refining those rules.¹⁷

Justice Slaughter conceded that the respondent attorney did in fact exhibit an offensive personality, but he concluded that the Oath of Attorneys should not be used as a disciplinary charge due to its “inherently subjective” nature.¹⁸ Justice Slaughter reasoned:

My specific concern is with the ever-present threat that lawyers will face charges for whatever the commission deems an “offensive personality”—an inherently subjective assessment that risks a dangerous slippery slope. The rules contemplate a wide range of permissible lawyer conduct that runs the gamut from amiable to aggressive, milquetoast to militant, passive to pugnacious. Unpopular lawyers or those with disfavored clients may be especially vulnerable to enforcement overreach. The better enforcement practice, in my view, is for the commission to avoid “offensive personality” charges altogether and to ground charges against those deserving of professional sanction (like Wruble) in one or more targeted professional-conduct rules.¹⁹

By emphasizing his concern of the Commission's potential “enforcement overreach,” Justice Slaughter highlights that the Disciplinary Commission's purpose is twofold. First, under Indiana Admission and Discipline Rule 23, the

15. *Id.* at 678. Indiana Rule of Professional Conduct 1.9(c) provides:

A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) Use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) Reveal information relating to the representation except as these Rules would permit or require with respect to a client.

16. *Wruble*, 236 N.E.3d at 678–79 (Slaughter, J., concurring in part and dissenting in part).

17. *Id.*

18. *Id.* at 679.

19. *Id.*

Disciplinary Commission is given the power to protect the public, the courts, and other members of the bar from misconduct on the part of certain attorneys.²⁰ Second, the Disciplinary Commission has a duty to protect attorneys from “unwarranted claims of misconduct.”²¹ In his dissent to the use of the Oath of Attorneys as a charge, Justice Slaughter reminds the Commission that it should protect attorneys from “unwarranted claims of misconduct”²² that might be leveled against unpopular attorneys or attorneys who represent disfavored clients.²³

In the separate concurring opinion written by Justice Molter and joined by Chief Justice Rush and Justice Massa, Justice Molter agreed that the conditional agreement between the Disciplinary Commission and the respondent attorney should be accepted because “the parties’ agreement that Respondent [Attorney] violated Rule of Professional Conduct 1.9(c) is independently sufficient to support their agreed discipline on these facts.”²⁴ However, Justice Molter noted his openness to considering the question of whether an attorney could be sanctioned under the Oath of Attorneys.²⁵ In his concurring opinion, Justice Molter explained:

I remain open to considering the question Justice Slaughter’s partial dissent identifies. That is, whether an attorney can be sanctioned for violating the oath that Admission and Discipline Rule 22 requires attorneys “take and subscribe to,” including its promise to “abstain from offensive personality.” Or whether instead such a violation must be independently grounded in another rule ²⁶

These two concurring/dissenting opinions make clear that the majority of the Indiana Supreme Court remains open to addressing the question whether the “offensive personality” clause in the Oath of Attorneys should be used by the Disciplinary Commission as a charging vehicle in attorney disciplinary cases.

A. A Brief History of Offensive Personality in Indiana

In his concurring/dissenting opinion, Justice Slaughter cautions that the “offensive personality” charge risks a “dangerous slippery slope” toward

20. Indiana Admission and Discipline Rule 23(I)(1)(c) provides that “[t]he procedures set forth in this Rule shall be employed and construed to protect the public, the courts and the members of the bar of this State from misconduct on the part of attorneys, and to protect attorneys from unwarranted claims of misconduct.”

21. *Id.*

22. *Id.*

23. *Wruble*, 236 N.E.3d at 679 (Slaughter, J., concurring in part and dissenting in part).

24. *Id.* at 678 (Molter, J., concurring).

25. *Id.*

26. *Id.*

“enforcement overreach.”²⁷ As pointed out, Justice Slaughter’s warning aligns with the Disciplinary Commission’s duty to protect attorneys from unwarranted claims of misconduct. Before examining the question of whether the Commission should use the Oath as a vehicle for disciplinary charges against attorneys, it makes sense to examine how the use of the Oath in disciplinary charges came to be.

The first mention of “offensive personality” in Indiana cases dates back to the nineteenth century, but “offensive personality” was not used as a basis for attorney discipline at that time.²⁸ In 1964, the Indiana Supreme Court found that an attorney violated the Oath of Attorneys, and specifically, the “offensive personality” clause, in a case styled as *In re Disbarment of Holovachka*.²⁹ In this case, the court found that a prosecuting attorney failed to report income that the prosecuting attorney received in exchange for his protection, kickbacks, and bribes from illegal gambling and prostitution syndicates, and the court found that this prosecuting attorney failed to pay taxes to the federal government on these funds.³⁰ However, these activities were not the basis for the finding that the prosecuting attorney engaged in offensive personality. Instead, the court found the prosecuting attorney “was guilty of offensive personality” when he obstructed the investigation of a U.S. Senate Committee into his use of his office as prosecutor and his position as head of a syndicated gambling operation to harm a local labor union.³¹ In addition, the court found that the prosecuting attorney committed a violation of the offensive personality clause when he abusively refused “to honor the subpoena of the Commissioner [of the disbarment proceeding].”³² The *Holovachka* court concluded:

[The prosecuting attorney’s] own words, spoken in a rage, to the officer serving the legal process of the Commissioner appointed by this Court, were that he had no intention of honoring the subpoena to appear at the hearing. It is further uncontradicted that [the prosecuting attorney] ordered the officer serving the process off the premises. It would be hard to envision a more flagrant case of offensive personality than that here exhibited in utter definance [sic] of legal process and authority of this Court.³³

27. *Id.* at 679 (Slaughter, J., concurring in part and dissenting in part).

28. *See, e.g., Ex parte Walls*, 73 Ind. 95 (1880) (finding an attorney seeking readmission to the practice of law in Indiana engaged in “offensive personality” in the presentation of his case); *Redman v. State*, 28 Ind. 205 (1867) (upholding a criminal court’s ruling to prohibit attorney from cross-examining witness due to attorney’s violation of his duty to refrain from offensive personality and to maintain the respect due to the courts).

29. 198 N.E.2d 381, 393–94 (Ind. 1964).

30. *Id.* at 389.

31. *Id.* at 393.

32. *Id.* at 394.

33. *Id.*

The court concluded that the prosecuting attorney's refusal to cooperate with the United States Senate Select Committee's hearing (and thereby obstructing these Committee hearings) and the prosecuting attorney's utter defiance of the disbarment proceedings were flagrant examples of the prosecuting attorney's offensive personality.³⁴ Here, the Indiana Supreme Court's finding of offensive personality aggravates the underlying charges of failure to report and pay taxes to the federal government and adds weight to the court's finding that the prosecuting attorney was concealing his protection of illegal activity in exchange for kickbacks.

In 1971, the Indiana Supreme Court adopted Indiana Admission and Discipline Rule 23 and created the present-day Disciplinary Commission.³⁵ After *Holovachka*, the present-day Disciplinary Commission did not charge an attorney with violating the "offensive personality" clause of the Oath of Attorneys until after 1995. The Disciplinary Commission began to consider charging the "offensive personality" clause due to the Indiana Supreme Court's use of the "offensive personality" clause as a professional standard against an attorney who engaged in abusive, insulting behavior towards an opposing party in a case.³⁶ However, in *Burns*, the Disciplinary Commission did not charge the respondent attorney with violating the "offensive personality" clause. Instead, the Disciplinary Commission charged the respondent attorney with

using a means in representing a client that had no substantial purpose other than to embarrass, delay or burden a third party in violation of Ind. Professional Conduct Rule 4.4; committing a criminal act, to wit: Intimidation, that reflects adversely on his fitness as a lawyer, in violation of Prof.Cond.R. 8.4(b); and engaging in conduct prejudicial to the administration of justice, in violation of Prof.Cond.R. 8.4(d).³⁷

34. *Id.*

35. See Historical Notes to Indiana Admission and Discipline Rule 23. The Historical Notes to Rule 23 outlines that the Disciplinary Commission was created by Rule 23 on June 23, 1971. Before June 23, 1971, the attorney general of Indiana or a disciplinary commission appointed by the Indiana Supreme Court could institute an original action with the Indiana Supreme Court to disbar, suspend, or discipline attorneys in the state of Indiana. Rule 23 changed this procedure by creating a standing Disciplinary Commission that has the authority to investigate and prosecute attorneys for misconduct and to file a complaint for disciplinary action with the Indiana Supreme Court.

36. *In re Burns*, 657 N.E.2d 738 (Ind. 1995).

37. *Id.* at 739. Indiana Rule of Professional Conduct 4.4(a) provides: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." Rule 4.4 was amended in January 2005 to include a paragraph (b). Indiana Rule of Professional Conduct 8.4(b) states that "It is professional misconduct for a lawyer to . . . to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Indiana Rule of Professional Conduct 8.4(d) declares that "It is professional misconduct for a lawyer . . . to engage in conduct that is prejudicial to the administration of justice."

The Disciplinary Commission based these charges on statements that the respondent attorney made to the opposing party, a former attorney who was no longer practicing.³⁸ The former attorney represented himself during the lawsuit that the respondent handled for his client.³⁹ During a recess of a pre-trial conference, the respondent attorney threatened the former attorney:

Let me . . . let me warn you about something. If you file anything with the bankruptcy court against me, I'll be asking for attorney fees and punitive damages. You have my word on it, . . . And the next time you write my client a letter, I'm not going to file anything with the Court; I'm going to come over to your house and I'm going to hit you in the head with a baseball bat. Now, you may not be practicing law, but you know better than that. If I ever find out you wrote my client a letter again or sent him anything, you've got me to deal with. Do you understand: You better understand it right now, because I'm not going to tell you a second time. Now, that's my promise to you, right here on the record. I'm going to come over to your house and beat you half to death with a baseball bat.⁴⁰

According to the court, the respondent attorney continued to threaten the former attorney when the respondent attorney directed the former attorney to cease his direct communication with the respondent attorney's client:

BURNS [RESPONDENT ATTORNEY]: You'll communicate through me or you won't communicate at all. Do you understand me?

FORMER ATTORNEY: Are you threatening me physically?

BURNS: Oh, you've got it. You are exactly correct. I'm threatening you physically. You'll either follow the rules or you'll have to deal with me. Do you understand? And if I have to tell you that again, you're going to go out of here in a hospital van. Don't press your luck, . . . Don't press your luck. Because you're not going to like me if I'm angry. You won't walk away from it. I guarantee you. Don't look grave to me, because if you do, you're a . . . (obscenity). I swear to God.

FORMER ATTORNEY: You'd better kill me.

BURNS: Oh, believe me, I will. Believe me, I will. And I will get a medal for it.⁴¹

38. *Burns*, 657 N.E.2d at 739.

39. *Id.*

40. *Id.*

41. *Id.*

The Indiana Supreme Court found that the respondent attorney violated Rule 4.4 and Rule 8.4(d) but declined to find that the respondent attorney committed the crime of intimidation in violation of Rule 8.4(b).⁴² In discussing the appropriate sanction, the Indiana Supreme Court noted that the respondent attorney's conduct raised questions as to his fitness as an attorney, explaining:

[T]he aggressive nature of the comments and acts made by Respondent in this case clearly goes beyond acceptable standards of professionalism. It was contrary [to] the Oath of Attorneys which requires abstention from offensive personality; it undermines public confidence in and respect for the legal system; and it is prejudicial to the administration of justice. Respondent's professional misconduct warrants a period of suspension.⁴³

The court suspended the respondent attorney for a period of thirty days due to his "abusive, insulting, and threatening behavior."⁴⁴

After the Indiana Supreme Court's application of the "offensive personality" clause in *Burns*, the Disciplinary Commission began to see it as a possible charge in certain attorney discipline cases—not always with success. In 2001, the Indiana Supreme Court approved an agreement between the Disciplinary Commission and the respondent attorney in *Matter of Coons*.⁴⁵ In *Coons*, the respondent admitted he violated the Oath of Attorneys when he inquired about his client's sexual practices, inquired whether she had ever considered becoming a prostitute, suggested that she wear provocative clothing to the bar, and asked her to show him her breasts.⁴⁶

However, the court declined to find that two respondents violated the "offensive personality" clause in the Oath of Attorneys in *Matter of Britton*⁴⁷ and in *Matter of Carnahan*.⁴⁸ In *Britton* and *Carnahan*, the court did not comment on whether it approved or disapproved of the Disciplinary Commission's use of the "offensive personality" clause as a charging theory in attorney disciplinary cases. But it appears that the court only accepted the "offensive personality" clause charge when the respondent and the Disciplinary Commission agreed to the charge. It appears from these more recent cases that

42. *Id.*

43. *Id.* at 740 (suspending the respondent attorney for a period of thirty days).

44. *Id.*

45. 751 N.E.2d 678 (Ind. 2001).

46. *Id.* at 679.

47. See 131 N.E.3d 145 (Ind. 2019) (entering judgment for the respondent and finding Commission failed to prove violations of conduct prejudicial to the administration of justice under Rule 8.4(d) and violation of the offensive personality clause in the Oath of Attorneys under Indiana Admission and Discipline Rule 22).

48. See 163 N.E.3d 280 (Ind. 2021) (entering judgment for the respondent and finding Commission failed to prove that the respondent violated the offensive personality clause of the Oath of Attorneys under Indiana Admission and Discipline Rule 22).

the Indiana Supreme Court is reticent to use the “offensive personality” clause as grounds for a disciplinary charge, especially after its discussion on “offensive personality” as a charge in *Wruble*. Together, *Burns* and *Wruble* suggest that the court might be conflicted on the use of the “offensive personality” clause and should consider looking for another way to address the issue of character and fitness to practice in attorney disciplinary cases.

B. Fitness to Practice

After the *Wruble* discussion by the members of the Indiana Supreme Court, the question arises whether there is a better enforcement practice, as suggested by Justice Slaughter, “to avoid ‘offensive personality’ charges altogether and to ground charges against those deserving of professional sanction . . . in one or more targeted professional-conduct rules.”⁴⁹ The question is whether the Indiana Rules of Professional Conduct should include a new “more targeted” professional conduct rule. Such a rule could address when an attorney’s conduct “clearly goes beyond acceptable standards of professionalism” and “draws question as to his fitness as an attorney.”⁵⁰

There might be times when a lawyer’s conduct “clearly goes beyond acceptable standards of professionalism”⁵¹ and has not violated the current rules under the Indiana Rules of Professional Conduct. These fitness and character questions might not violate a specific rule in the Indiana Rules of Professional Conduct but run underneath certain attorney disciplinary cases because the attorney’s conduct “undermines public confidence in and respect for the legal system.”⁵²

In addition to attorney discipline cases, the court examines the character and fitness of lawyers in other contexts. The court examines the character and fitness of applicants to be admitted to the practice of law in Indiana.⁵³ The court also requires suspended attorneys seeking reinstatement to the practice of law in Indiana to demonstrate that the attorney “can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence”⁵⁴ In *Matter of Gutman*, the court reasoned that the fitness element in an attorney reinstatement includes an examination of the character and fitness of the attorney seeking reinstatement.⁵⁵ The *Gutman* court explained:

49. *In re Wruble*, 236 N.E.3d 677, 679 (Ind. 2024) (Slaughter, J., concurring in part and dissenting in part).

50. *In re Burns*, 657 N.E.2d 738, 740 (Ind. 1995).

51. *Id.*

52. *Id.*

53. IND. ADMIS. DISC. R. 12 (requiring applicants to the practice of law in Indiana to have the requisite moral character and fitness to be admitted to practice law in the state of Indiana).

54. IND. ADMIS. DISC. R. 23(18)(b)(3)(vii).

55. 599 N.E.2d 604 (Ind. 1992).

We agree with the view that this examination is a balancing process in which on one side of the scale we place the seriousness of the misconduct and on the other, Petitioner's subsequent conduct and his present character. . . . The more serious the misconduct, the greater its negative impact on future rehabilitation and eventual reinstatement, the greater Petitioner's burden of proof to overcome the implication of unfitness which is conjured by the misconduct. . . . The seriousness of past misconduct is unquestionably an important consideration which cannot be eliminated by subsequent exemplary conduct.⁵⁶

Because character and fitness are integral parts of admission and discipline process in Indiana, the court should consider amending the Indiana Rules of Professional Conduct to include a rule directed at egregious types of character and fitness issues that are not covered by the current Indiana Rules of Professional Conduct. A rule amendment would emphasize that attorneys have a continuing duty to refrain from conduct that reflects adversely on their character and fitness to practice as lawyers.

Several states have a rule that targets a lawyer's "fitness to practice," including Alabama, Colorado, Kansas, Massachusetts, New York, Ohio, and Washington.⁵⁷ All of these states have similar language in their fitness-to-practice rules. Ohio Rule of Professional Conduct 8.4(h) provides that "It is professional misconduct for a lawyer . . . to engage in any other conduct that adversely reflects on the lawyer's fitness to practice law."⁵⁸

In 2013, the Ohio Supreme Court considered the use of Rule 8.4(h) when the charged misconduct, namely commingling funds, was covered by other provisions of the Ohio Rules of Professional Conduct.⁵⁹ In *Bricker*, the Ohio Supreme Court held:

Prof. Cond. R. 8.4(h) is a catchall provision. In order to find a violation

56. *Id.* at 608 (internal citations omitted).

57. See ALA. RULES OF PRO. CONDUCT r. 8.4(g) (prohibiting lawyers from engaging in any other conduct that adversely reflects on his fitness to practice law); COLO. RULES OF PRO. CONDUCT r. 8.4(h) (prohibiting lawyers from engaging in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law); KAN. RULES OF PRO. CONDUCT r. 8.4(g) (prohibiting lawyers from engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law); MASS. RULES OF PRO. CONDUCT r. 8.4(h) (prohibiting a lawyer from engaging in any other conduct that adversely reflects on his or her fitness to practice law); N.Y. RULES OF PRO. CONDUCT r. 8.4(h) (prohibiting a lawyer from engaging in any other conduct that adversely reflects on the lawyer's fitness as a lawyer); OHIO RULES OF PRO. CONDUCT r. 8.4(h) (prohibiting a lawyer from engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law); WASH. RULES OF PRO. CONDUCT r. 8.4(n) (prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law). See also Jon J. Lee, *Catching Unfitness*, 34 GEO. J. LEGAL ETHICS 355, 387 (2021) (for in-depth discussion of fitness-to-practice rules).

58. OHIO RULES OF PRO. CONDUCT r. 8.4(h).

59. *Disciplinary Couns. v. Bricker*, 997 N.E.2d 500 (Ohio 2013).

of Prof. Cond. R. 8.4(h), there must be clear and convincing evidence that the lawyer has engaged in misconduct that adversely reflects on the lawyer's fitness to practice law, even though that conduct is not specifically prohibited by the rules, or there must be proof that the conduct giving rise to a specific rule violation is so egregious as to warrant an additional finding that it adversely reflects on the lawyer's fitness to practice law.⁶⁰

Thus, the *Bricker* court placed two limits on the use of Ohio's fitness-to-practice rule under Rule 8.4(h). First, when the lawyer's misconduct reflects adversely on the lawyer's fitness to practice law and there is not a specific rule that prohibits this misconduct.⁶¹ Second, when the lawyer's misconduct (even though it is specifically prohibited by other rules) is so egregious that it "warrant[s] an additional finding" that the lawyer's misconduct reflects adversely on the lawyer's fitness to practice law.⁶²

Ten years later, the Ohio Supreme Court found that the respondent violated the Ohio fitness-to-practice rule under Rule 8.4(h) in *Disciplinary Counsel v. Blakeslee*.⁶³ As outlined previously in *Bricker*, the Ohio Supreme Court found that the respondent violated Rule 8.4(h) by engaging in conduct that adversely reflects on the lawyer's fitness to practice law, even though the respondent's conduct was not prohibited by any other rule.⁶⁴ In *Blakeslee*, the respondent put feces in an empty Pringles can, drove twenty minutes from his home to a victim-advocates center, and threw the Pringles can containing the feces into the parking lot of the victim-advocates center.⁶⁵ The Ohio Supreme Court found that the respondent committed a pattern of misconduct because the respondent admitted that he threw feces-filled Pringles cans on at least ten other occasions.⁶⁶ In addition, the court highlighted that the respondent's conduct was directed at the director of the victim-advocates center and her colleagues because the respondent knew the director for twenty years, the respondent drove past the clearly marked building twice before throwing the Pringles can, and threw the Pringles can on his way to a court hearing when the director of the victim-advocate center was likely to attend and ultimately, did, attend the hearing.⁶⁷

The Ohio Supreme Court concluded that the respondent intentionally put the Pringles can in the parking lot of the victim-advocate center and that the respondent, who viewed the whole incident as a "prank," lacked "sufficient insight into the motivation for his inappropriate behavior to effectuate positive

60. *Id.* at 506.

61. *Id.* at 505.

62. *Id.* at 506.

63. 235 N.E.3d 416 (Ohio 2023).

64. *Id.* at 419.

65. *Id.* at 418.

66. *Id.* at 419.

67. *Id.* at 423.

change.”⁶⁸ The Ohio Supreme Court suspended the respondent for one year with six months stayed on the condition he refrain from further misconduct.⁶⁹ The court explained that the respondent’s “admittedly bizarre behavior [] falls far short of the standard of conduct expected of lawyers and tends to bring the legal profession into disrepute.”⁷⁰ This case demonstrates that some attorney misconduct reflects adversely on the practice of law even when there is not another specific rule violation in the Rules of Professional Conduct.

Adoption of a rule like Ohio’s fitness-to-practice rule in Indiana would address the concerns raised by the Indiana Supreme Court by effectively putting attorneys on notice of conduct falling under the rule, and mirroring requirements on attorney conduct that already exist in Indiana. The Ohio Supreme Court’s first limitation of the fitness-to-practice rule in *Bricker* addresses Justice Slaughter’s concerns of “enforcement overreach” by limiting the use of the fitness-to-practice rule to situations that are not covered by other rules. The second limitation imposed by the Ohio Supreme Court—restricting application to situations in which violations of other Rules of Professional Conduct are “egregious”—would permit the Indiana Supreme Court to find that a lawyer engaged in conduct reflecting adversely on the lawyer’s fitness to practice law, as in *Burns*, where the lawyer threatened to beat an opposing party “half to death with a baseball bat.”⁷¹ If Indiana adopted a fitness-to-practice rule, these limitations could be outlined in comments to the proposed fitness-to-practice rule to guide attorneys and disciplinary authorities on the use of a proposed fitness-to-practice rule. In addition, an Indiana fitness-to-practice rule, analogous to Rule 8.4(h) of the Ohio Rules of Professional Conduct, would remind lawyers of their continuing duty to refrain from conduct that reflects adversely on their fitness to practice law in all situations.

II. *SEABOLT V. STATE*: DISQUALIFICATION

In August 2024, the Indiana Supreme Court explored the conflicting tension between the judicial officer’s duty to preside over a case and a judicial officer’s duty to disqualify.⁷² *Seabolt v. State* involved four petitioners who had filed for post-conviction relief before the same judge.⁷³ Each petitioner asked the judge to disqualify herself from hearing their respective post-conviction cases under Indiana Rule for Post-Conviction Remedies 1(4)(b)⁷⁴ because the judge had

68. *Id.*

69. *Id.*

70. *Id.*

71. *In re Burns*, 657 N.E.2d 738, 739 (Ind. 1995).

72. *Seabolt v. State*, 240 N.E.3d 1249 (Ind. 2024).

73. *Id.* at 1253.

74. Indiana Rule for Post-Conviction Remedies 1(4)(b) provides:

Within ten days of filing a petition for post-conviction relief under this rule, the petitioner may request a change of judge by filing an affidavit that the judge has a

previously granted a request to recuse in another post-conviction case with similar concerns.⁷⁵ The *Seabolt* petitioners claimed that their request to disqualify the judge involved the same issues as in *Royer*.⁷⁶ Despite these similarities, the judge denied all four petitioners' requests for her disqualification in their respective cases.⁷⁷ On appeal, the Indiana Supreme Court had to decide "whether a judge's decision to recuse from a prior case disqualifies her from presiding over these cases because they all present the same concerns that led her to recuse in the prior case."

A. Royer Disqualification

To set the stage for *Seabolt*, it is important to understand the judge's recusal in *Royer*. The Indiana Supreme Court summarized *Royer*:

Andrew Royer was the petitioner in the previous case, and he sought post-conviction relief to set aside his 2005 murder conviction. He alleged that "systemic" police and prosecutorial misconduct had produced an "epidemic" of wrongful convictions in Elkhart County, including his own. Shortly after Royer first made these allegations, his attorney held a press conference amplifying them through comments that the judge concluded violated the Rules of Professional Conduct. That led the judge, who is a former Elkhart County deputy prosecutor, to not only enjoin the attorney's further public comments about the case, but also to remark that the attorney's comments were "defamatory."⁷⁸

Royer filed a "Motion for Recusal Pursuant to Indiana Post-Conviction Rule 1 § 4(B)."⁷⁹ In this motion, Royer asked the judge to recuse herself for two reasons:

The first was that he would be calling many witnesses with whom the judge worked when she was a deputy prosecutor and some of whom remained social acquaintances. And she could not be expected to remain

personal bias or prejudice against the petitioner. The petitioner's affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. A change of judge shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice. For good cause shown, the petitioner may be permitted to file the affidavit after the ten day period. No change of venue from the county shall be granted. In the event a change of judge is granted under this section, the procedure set forth in Ind. Administrative Rule 21 shall govern the selection of a special judge.

75. *Seabolt*, 240 N.E.3d at 1254 (citing *State v. Royer*, 166 N.E.3d 380 (Ind. Ct. App. 2021)).

76. *Id.* at 1252.

77. *Id.* at 1253.

78. *Id.* at 1252.

79. *Id.* at 1254.

impartial either when evaluating their credibility or when evaluating Royer's allegations of systemic police and prosecutorial misconduct and spanned the judge's own time as a deputy prosecutor. Second, Royer believed the judge's characterization of his attorney's comments as "defamatory" reflected that she had rejected his allegations of "system[ic]" police and prosecutorial misconduct before she heard any evidence.⁸⁰

The judge granted Royer's motion to disqualify her from hearing his post-conviction relief petition, and the case was reassigned to a special judge who found that many of Royer's allegations of misconduct were well-founded.⁸¹ This special judge granted Royer's petition for post-conviction relief, vacating his conviction.⁸²

B. The Seabolt Petitioners

After Royer's successful overturning of his conviction, the four petitioners in the *Seabolt* case filed their respective petitions for post-conviction relief before the same judge who recused in Royer's case.⁸³ Royer's attorney also represented the four *Seabolt* petitioners, and like Royer, they alleged that "'systemic' misconduct" has caused "an 'epidemic' of wrongful convictions."⁸⁴ Their intended witnesses, "former law enforcement officers and prosecutors," previously worked or currently associate with the judge.⁸⁵

Like Royer, all four petitioners asked the judge to recuse under Indiana Rule for Post-Conviction Remedies 1(4)(b) and "gave essentially the same two overarching reasons for questioning the judge's impartiality as Royer argued."⁸⁶ The Indiana Supreme Court summarized their arguments for the judge's disqualification as:

First, they argued the judge—who was an Elkhart County deputy prosecutor from 1998 to 2002—is deeply entangled with the evidence they intend to develop and introduce. The petitioners all intend to call as witnesses many police officers and prosecutors with whom the judge worked—some of whom the petitioners believe remain the judge's social acquaintances—to prove the petitioners' wrongful convictions resulted from what they characterize as rampant police and prosecutorial misconduct that was ongoing during the judge's time as a deputy prosecutor. The petitioners also plan to seek discovery directly

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 1253.

84. *Id.*

85. *Id.*

86. *Id.* at 1257.

from the judge and possibly call her as a witness related to her knowledge of facts . . . , whether she was involved in a *Brady* violation that Seabolt claims contributed to her wrongful conviction, and her general knowledge of the practices in the prosecutor's office that relate to the petitioners' claims of misconduct. The petitioners anticipate calling two of the judge's Elkhart County judicial colleagues as witnesses. And they intend to call the judge's ex-husband as a witness because they claim he was a former Elkhart County reserve officer with extensive knowledge of the misconduct they allege and has provided an affidavit and recorded interview alleging systemic misconduct.

Second, the petitioners argued that in Royer's case the judge characterized their theory of the case as "defamatory," which suggests that she has pre-judged their allegations of systemic misconduct leading to an epidemic of wrongful convictions before hearing any evidence.⁸⁷

The judge denied all four petitioners' requests to disqualify her and certified each order denying these requests for interlocutory appeal.⁸⁸ On interlocutory appeal, the Indiana Court of Appeals affirmed the judge's orders, denying the request for the judge to recuse.⁸⁹ The four petitioners sought transfer to the Indiana Supreme Court, which was granted.⁹⁰ The four cases were consolidated into a single Indiana Supreme Court opinion which would decide all four issues.⁹¹

C. Two Competing Duties: Duty to Preside vs. Duty to Recuse

The Indiana Supreme Court framed the discussion of the four interlocutory appeals as an exploration of "the interplay between the duty to preside and the duty to recuse."⁹² These competing duties are found in the Indiana Code of Judicial Conduct. Rule 2.7 of the Indiana Code of Judicial Conduct requires that "[a] judge shall hear and decide matters assigned to the judge, except when disqualification is required under Rule 2.11 or other law."⁹³ Comment One to Rule 2.7 provides:

Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must

87. *Id.*

88. *Id.* at 1257–58.

89. *Id.* at 1258.

90. *Id.*

91. *Id.*

92. *Id.*

93. IND. JUD. COND. R. 2.7.

be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.⁹⁴

To further explain the court's position on a judicial officer's duty to preside, the Indiana Supreme Court cited to *Zavodnik v. Harper*—a case involving a “prolific, abusive litigant.”⁹⁵ This “prolific, abusive litigant” represented himself in numerous cases at the trial and appellate level.⁹⁶ In this particular case, the trial court dismissed the litigant's claim for failure to prosecute the case under Indiana Trial Rule 41(E), and the Indiana Court of Appeals dismissed his appeal for failure to file a brief or pay the filing fee.⁹⁷ This litigant sought transfer to the Indiana Supreme Court, which was denied.⁹⁸ In its opinion denying transfer, the court provided some guidance on how to handle litigants who employ abusive tactics, including “unrelenting attempts” to remove judicial officers “for alleged bias, prejudice, or misconduct by the judge.”⁹⁹

In *Zavodnik*, the court made two observations on the issue of disqualification. First, the court pointed out that judicial officers have a duty to preside over cases unless disqualification is mandatory under Rule 2.11 of the Indiana Code of Judicial Conduct.¹⁰⁰ The court further explained that “judges presiding over a case are not required to disqualify themselves as a result of a litigant's unfounded accusations, abusive tactics, or attempts to manipulate the system.”¹⁰¹ Second, the court explained:

The law starts with the presumption that a judge is unbiased and unprejudiced. A judge's exposure to evidence through judicial sources is generally insufficient to establish bias. The fact that a litigant has appeared before a judge in prior cases does not establish bias or prejudice. Prejudice is not inferred from adverse judicial rulings. Mandatory disqualification requires a showing of a personal, individual bias against the litigant.¹⁰²

In *Seabolt*, the court further explained that this duty to preside is a default

94. IND. JUD. COND. R. 2.7 cmt. 1.

95. 17 N.E.3d 259 (Ind. 2014).

96. *Id.* at 262.

97. *Id.* at 261–62.

98. *Id.*

99. *Id.* at 269.

100. *Id.*

101. *Id.*

102. *Id.*

position for judicial officers:

That duty not only promotes efficiency by spreading cases more evenly among judges and avoiding a subsequent judge needlessly duplicating the work of a previous judge, but it also promotes public trust in our judicial system. . . . Without the duty to preside, the system may appear too easily gamed. Some judges might avoid difficult or controversial cases, and the parties may seem able to delay cases unfairly through judicial disqualification or to steer their cases to judges they perceive as more favorable.¹⁰³

Next, the court noted that the competing duty of mandatory disqualification was “just as important as the duty to preside” because a judicial officer “cannot preside over cases when recusal is mandatory.”¹⁰⁴ The *Seabolt* court pointed out that disqualification is mandatory “when either a judge subjectively doubts their impartiality, or, . . . when an objective observer, familiar with all the relevant circumstances, would have a reasonable basis for doubting the judge’s impartiality.”¹⁰⁵ In short, a judicial officer is required to recuse or disqualify in two circumstances involving personal bias or prejudice. First, the judicial officer must disqualify when the judicial officer has a subjective belief that the judicial officer cannot be impartial due to personal bias or prejudice.¹⁰⁶ Second, the judicial officer must disqualify when an objective observer (familiar with all the circumstances) has a reasonable basis to doubt the judicial officer’s impartiality due to personal bias or prejudice.¹⁰⁷ The *Seabolt* court, then, defines personal bias or prejudice as

one that “stems from an extrajudicial source—meaning a source separate from the evidence and argument presented at the proceedings[.]” A judge is not personally biased or prejudiced merely because they have formed judgments about proceedings over which they have presided. After all, that is their job.¹⁰⁸

D. Objective Observer Standard

The Indiana Supreme Court then applied the “objective observer” standard to address whether the judge who recused herself in Royer’s case had a mandatory duty to disqualify herself in the four *Seabolt* petitioners’ cases. Because the judge did not subjectively doubt her ability to be impartial and ruled

103. *Seabolt v. State*, 240 N.E.3d 1249, 1258 (Ind. 2024).

104. *Id.*

105. *Id.* (internal citation omitted).

106. *Id.*

107. *Id.*

108. *Id.* at 1259 (internal citation omitted).

accordingly, the court instead applied the “objective observer standard.”¹⁰⁹ The question for the court was whether an objective observer who was familiar with all the facts and circumstances would have a reasonable basis to doubt the judicial officer’s impartiality due to personal bias or prejudice.¹¹⁰

In answering this question of the “objective observer” standard, the *Seabolt* court first noted that the mere fact that a judge formerly worked as a prosecutor does not require recusal.¹¹¹ Second, the fact that a judge is acquaintances or friends with a party, attorney, or witness does not provide “a cognizable basis for questioning the ability of that judge to be impartial in presiding over that proceeding.”¹¹² Finally, the fact that a judge made a statement about the conduct of an attorney representing a party to a case before the judge as a violation of the Rules of Professional Conduct did not require recusal.¹¹³

However, the *Seabolt* court did not focus on these individual propositions as the reason the judge was required to disqualify herself in these four cases. Instead, the court held that the judge was required to disqualify in these four petitioners’ cases because she had made a determination in Royer’s case that recusal was mandatory on the same or similar concerns as were later raised by the four petitioners.¹¹⁴ The court explained:

What is different about these appeals—and this is critical to our holding—is that the judge already decided in Royer’s case that recusal was *mandatory*. So while viewing each of the petitioners’ various concerns in isolation may not warrant recusal, the judge herself already concluded that their overarching concerns about her entanglement with the evidence and her remark about their attorney’s comments do require recusal. And an objective observer who knows the judge previously concluded she had a duty to recuse could thus reasonably doubt her impartiality in these cases. That objective observer could reasonably ask: What changed since the judge decided she was required to recuse in Royer’s case?¹¹⁵

The lesson to be learned from *Seabolt* is that a judge who recuses from a case based on concerns, like systemic police and prosecutorial misconduct, might be required to recuse from other cases when the prior case involves these same issues and concerns. After *Seabolt*, the circumstances of a judge’s recusal may have important implications for future disqualification. A judge’s recusal in a prior case might now furnish a reason for future disqualification when the same concerns arise in other cases, unless the judge can provide an explanation

109. *Id.* at 1262–63.

110. *Id.* at 1263.

111. *Id.* at 1262.

112. *Id.* at 1263.

113. *Id.* at 1262.

114. *Id.* at 1263.

115. *Id.*

of how circumstances have changed that would satisfy the reasonable questions of an objective observer.

E. Application of Seabolt to Rule 2.11

The *Seabolt* court analyzed the recusal of judges under Indiana Rule of Post-Conviction Remedies 1(4)(b), which requires a judge to recuse when an objective observer has a “rational inference of bias or prejudice” on the part of the judge in a particular case.¹¹⁶ Rule 2.11 of the Indiana Code of Judicial Conduct provides similar language to Rule 1(4)(b) of the Indiana Rules of Post-Conviction Remedies and imposes a duty on judges to disqualify themselves, as outlined in *Seabolt*.¹¹⁷ Indiana Code of Judicial Conduct Rule 2.11(A)(1) provides:

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

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.¹¹⁸

Under the *Seabolt* analysis, Indiana judges should keep in mind that the objective observer standard applies to Rule 2.11 of the Indiana Code of Judicial Conduct.¹¹⁹ In other words, a judge who recuses from a prior case based on concerns about the judge’s personal bias or prejudice might have to recuse from subsequent cases when the prior case involves the same issues and concerns about the judge’s personal bias or prejudice when an objective observer who knows the judge previously concluded that he or she had a duty to recuse in the prior case could reasonably doubt the judge’s impartiality in subsequent related cases.

III. MISCELLANEOUS ETHICS CASES

The Indiana Supreme Court decided three other noteworthy misconduct cases in 2024 and 2025. *Matter of Hawkins* involved judicial misconduct and was resolved by an agreement between the respondent judge and the Indiana Commission on Judicial Qualifications with a thirty-day suspension from the bench.¹²⁰ The other two misconduct cases involved attorney misconduct. *Matter*

116. IND. P-C.R. 1(4)(b).

117. IND. JUD. COND. R. 2.11.

118. *Id.* 2.11(A)(1).

119. *See Seabolt*, 240 N.E.3d at 1259.

120. 251 N.E.3d 1062 (Ind. 2025) (per curiam).

of *Pearson* is an attorney misconduct case that was tried before a hearing officer and resulted in the disbarment of the attorney.¹²¹ The second attorney misconduct case, *Matter of Miller*, was resolved by an agreement between the respondent attorney and the Indiana Disciplinary Commission.¹²²

A. Judicial Misconduct—Matter of Hawkins

In February 2025, the Indiana Supreme Court decided *Matter of Hawkins*.¹²³ The court found that the respondent judge engaged in judicial misconduct when he sexually harassed court employees during his tenure as a judge.¹²⁴ In his agreement with the Indiana Commission on Judicial Qualifications, the respondent judge agreed that he had harassed one court employee (“Employee #1”) for over thirteen years by subjecting her to unwanted physical contact, including hugging and rubbing her shoulders, commenting on her physical appearance, and asking her “Shall we have a threesome?”¹²⁵

When the respondent judge introduced himself to another court employee (“Employee #2”), the respondent judge rubbed Employee #2’s shoulder without her consent and stared at her chest.¹²⁶ The following day, the respondent judge tried to hug, put his arm around, and kiss Employee #2.¹²⁷ Employee #2 physically pushed the respondent judge away.¹²⁸

The respondent judge harassed a third court employee (“Employee #3”) while she was kneeling to help set up equipment in the courtroom.¹²⁹ The respondent judge made a comment to Employee #3 about being “on her hands and knees.”¹³⁰ Employee #3 interpreted this comment as a sexual comment and felt uncomfortable with the respondent judge.¹³¹

Finally, the respondent judge harassed a fourth court staff member (“Employee #4”). In 2024, the respondent judge hugged and kissed Employee #4’s head or cheek when she returned from a trip overseas.¹³² According to the court, the respondent judge “habitually hugged people with whom he came into contact, including court staff and others around the courthouse” during his tenure as a judge.¹³³

The Indiana Supreme Court found that the respondent judge’s acts of sexual harassment violated three rules under the Indiana Code of Judicial Conduct:

121. 251 N.E.3d 535 (Ind. 2025) (per curiam).

122. 240 N.E.3d 155 (Ind. 2024) (per curiam).

123. *Hawkins*, 251 N.E.3d at 1062.

124. *Id.* at 1063.

125. *Id.*

126. *Id.* at 1064.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

- Rule 1.2, requiring judges to act all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety;
- Rule 2.3(B), prohibiting judges from manifesting bias or prejudice or engaging in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status socioeconomic status, or political affiliation, in the performance of judicial duties; and
- Rule 2.8(B), requiring judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity.¹³⁴

The court explained, “sexual harassment by a judge is particularly reprehensible because it abuses the power imbalance between judges and subordinate judicial employees.”¹³⁵ The court pointed out that the respondent judge’s sexual harassment spanned over sixteen years and, as a result, had a negative effect on the integrity of the judiciary.¹³⁶ But the court noted that there was a more specific harm than this to the integrity of the judiciary because the respondent judge’s sexual harassment was directed at “specific court employees” who were made to feel uncomfortable and violated by his actions.¹³⁷

The court concluded: “[O]ur own rules require judges to avoid even the appearance of impropriety. . . . Respondent’s misconduct was serious, included repeated physical advances toward employees despite their express rejections, and was an abject abuse of his position and power.”¹³⁸ For his misconduct, the court suspended the respondent judge for a period of thirty days.¹³⁹

134. *Id.* at 1064–65. Indiana Code of Judicial Conduct Rule 1.2 requires that judges “shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Indiana Code of Judicial Conduct Rule 2.3(B) provides:

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

Indiana Code of Judicial Conduct Rule 2.8(B) reads: “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.”

135. *Hawkins*, 251 N.E.3d at 1065.

136. *Id.*

137. *Id.*

138. *Id.* at 1065–66.

139. *Id.* at 1066.

B. Attorney Misconduct—Matter of Pearson

In 2025, the Indiana Supreme Court disbarred an attorney in *Matter of Pearson* for his “sheer depravity” when the respondent engaged in improper sexual relations with three clients.¹⁴⁰ The court described that there is a spectrum of improper sexual relations with clients, ranging from an isolated exercise of poor judgment, which causes no harm beyond that inherent in an improper sexual relationship itself, to the predatory nature of attorneys who exploit vulnerable clients for their own sexual gratification.¹⁴¹

The respondent in *Pearson* had improper sexual relations with three vulnerable clients. In its opinion, the court summarized the respondent’s sexual encounters with these three clients as follows:

“Client 1,” an 18-year-old woman dealing with substance abuse disorder and a history of sexual abuse, was arrested on drug charges in late 2015. Respondent was appointed as her public defender in early 2016. Respondent’s visits with Client 1 initially occurred at the county jail, and later at Respondent’s home office after Client 1 was released on her own recognizance. Soon, Respondent began scheduling the meetings after business hours, and these meetings all followed the same general pattern. Respondent wore casual clothing such as shorts and a T-shirt, offered Client 1 bourbon from a fancy bottle—despite her being underage to consume alcohol—and told Client 1 that he was stressed and “horny” and needed a release. During the first such meeting, Respondent approached Client 1 with an erection visible through his clothing and stood close to her face. At Respondent’s urging, Client 1 performed oral sex on him. Subsequent after-hours meetings included oral and vaginal sex. Client 1 testified that, while none of these encounters involved an explicit use of force or lack of consent, she “felt compelled because of the situation.” Respondent and Client 1 also exchanged explicit photos and texts, including messages where Respondent asked Client 1 if she was interested in a “threesome” with another woman.¹⁴²

Client 2, like Client 1, was also battling a substance abuse disorder and some of the charges she faced involved drug possession. Respondent initially met with Client 2 and her husband at Respondent’s home office. About one week later, Client 2 met with Respondent a second time after hours at his solo practice office. Client 2 brought her two young stepchildren with her for that meeting because her husband was unable to go and she felt uncomfortable meeting with Respondent alone.

140. 251 N.E.3d 535, 538 (Ind. 2025) (per curiam).

141. *Id.*

142. *Id.* at 536.

Respondent placed the children in a nook with a television and offered Client 2 a glass of dark liquor poured from a fancy bottle, which Client 2 declined. Respondent briefly discussed the cases before quickly turning the conversation to sex, telling Client 2 “sex can relieve stress and I can help you with that.” . . . Respondent then led Client 2 to another room away from her children, sat Client 2 in a chair, removed his penis from his pants, placed his arms on the chair, and encouraged Client 2 to perform oral sex on him. Client 2 testified she was unable to stand up from the chair because of how Respondent was positioned. Client 2 proceeded to perform oral sex. She testified that she did so “[b]ecause I was a vulnerable drug addict that was in a lot of trouble and . . . I thought if I did that I would get out of some of my trouble.”¹⁴³

Unlike Client 1 and Client 2, the respondent and Client 3 started their intimate relationship prior to the representation.

In March 2017, Client 3—who also has a history of substance use and sexual abuse—was charged in an initial case with drug offenses. Client 3 retained Respondent, who was an associate with Starkes Law Office at the time, to represent her and paid a \$750 retainer. Client 3 was charged with additional drug offenses in a second case in April 2017. Respondent agreed to represent her in that case as well, and although no separate retainer was paid up front, Client 3 believed she would owe additional fees for that representation.

At some point thereafter, Client 3 met Respondent at his home. Respondent poured Client 3 a glass of brown liquor from a fancy bottle, which she drank. She has little memory of what happened next. Client 3 eventually woke up naked in Respondent’s bed and saw Respondent emerging naked from the bathroom and wiping his genitals with a towel. Client 3 believed intercourse had occurred because of how her own genitals felt. She asked Respondent if he would get in trouble for having sex with a client, and Respondent told her it was okay because they had been intimate prior to the representation.

Still later, after Respondent’s employment with Starkes Law Office ended, the office sent Client 3 a letter informing her that Respondent had left and that she still owed the firm \$739.78. Client 3 responded by writing a letter to Starkes evincing her belief that Respondent had written off these fees in exchange for Client 3 having sex with him. Starkes gave the letter to Respondent and told him to take care of it.¹⁴⁴

143. *Id.* at 536–37.

144. *Id.* at 537.

Based on these facts, the Indiana Supreme Court found that the respondent violated Indiana Rule of Professional Conduct 1.8(j) by having sexual relations with Clients 1 and 2 and violated Rules 1.7(a) and 8.4(d) “in connection with his representation of Client 3 by engaging in a concurrent conflict of interest and accepting sexual favors as payment for legal services.”¹⁴⁵ The court concluded that the respondent’s “pattern of predatory behavior and the sheer depravity” required that he be disbarred.¹⁴⁶ The court reasoned that some forms of improper sexual relations with clients are more “insidious” than others.¹⁴⁷

The court outlined a spectrum of cases involving improper sexual relations with clients.¹⁴⁸ The court described the low end of this spectrum as “isolated lapses in judgment that cause no additional harm beyond that inherent in the violation itself.”¹⁴⁹ The *Pearson* court pointed to the *Matter of Tsoutsouris* as an example of this end of the spectrum for improper sexual relations with a client.¹⁵⁰ The *Pearson* court explained that the lawyer in *Tsoutsouris* had a brief consensual sexual relationship with a client that did not harm the representation of the client, so the *Tsoutsouris* court only imposed a “thirty-day suspension with automatic reinstatement.”¹⁵¹

The *Pearson* court described the other end of the spectrum as “predatory.”¹⁵² The court pointed to several cases as examples of this predatory conduct:

For example, we suspended a criminal defense attorney for at least one year, without automatic reinstatement, after he attempted to arrange a tryst with a woman arrested for prostitution in order to trade sex for legal services.¹⁵³ We accepted the resignation (and its attendant five-year minimum suspension) of an attorney who solicited sexual favors

145. *Id.* at 538. Indiana Rule of Professional Conduct 1.8(j) prohibits lawyers from having “sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.” Indiana Rule of Professional Conduct 1.7(a) provides:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Indiana Rule of Professional Conduct 8.4(d) declares that “It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice.”

146. *Pearson*, 251 N.E.3d at 538–39.

147. *Id.* at 538.

148. *Id.*

149. *Id.*

150. *Id.* (citing *In re Tsoutsouris*, 748 N.E.2d 856 (Ind. 2001)).

151. *Id.*

152. *Id.*

153. *Id.* (citing *In re Hollander*, 27 N.E.3d 278, 279 (Ind. 2015)).

from a client in exchange for a discount on attorney fees and later offered to represent the client for free if she did not report his misconduct to Commission.¹⁵⁴ And we imposed the ultimate sanction of disbarment on an attorney who repeatedly exchanged legal services for sexual favors from vulnerable individuals, including a 17-year-old girl.¹⁵⁵

In disbaring the respondent in *Pearson*, the court concluded that the respondent's depraved conduct "align[ed] his case in severity" at the end of the spectrum with the latter case, *Matter of Wood*.¹⁵⁶

C. Attorney Misconduct—Matter of Miller

The final case discussed from the survey period is *Matter of Miller*.¹⁵⁷ The respondent in *Miller* worked for the Department of Child Services (DCS) as a staff attorney.¹⁵⁸ As such, the respondent prepared and filed Child in Need of Services (CHINS) petitions.¹⁵⁹ Between April 2022 and April 2023, the respondent signed thirty-eight CHINS petitions with the names of family case managers (FCMs) without their knowledge.¹⁶⁰ After discovering these false signatures, DCS terminated the respondent for his misconduct.¹⁶¹ The *Miller* court acknowledged that "Respondent drafted the petitions based on facts contained in documents prepared by the FCMs; the FCMs attended the initial hearings on the CHINS petitions with Respondent; and the FCMs testified regarding the information contained in the CHINS petitions."¹⁶² The respondent only falsified the FCMs' signatures.¹⁶³

The court found that the respondent violated Indiana Rule of Professional Conduct 3.3(a)(1) by knowingly making a false statement to a tribunal, Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and Rule 8.4(d) by engaging in conduct prejudicial to the administration of justice.¹⁶⁴ He was suspended from the practice of law for 120

154. *Id.* (citing *In re Clark*, 201 N.E.3d 201, 201–02 (Ind. 2023)).

155. *Id.* (citing *In re Wood*, 489 N.E.2d 1189, 1190–91 (Ind. 1986)).

156. *Id.*

157. 240 N.E.3d 155 (Ind. 2024) (per curiam).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* Indiana Rule of Professional Conduct 3.3(a)(1) prohibits lawyers from "knowingly . . . mak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Indiana Rule of Professional Conduct 8.4(c) provides, "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Indiana Rule of Professional Conduct

days with automatic reinstatement.¹⁶⁵ The Indiana Supreme Court approvingly quoted the dissent from *Matter of Robison* to emphasize the severity of the respondent's misconduct in *Miller*:

Much of our legal system is predicated on the authenticity and reliability of signatures. For a lawyer to affix a false signature is a deception that gravely undermines public trust, respect, and confidence in the legal profession. Such inexcusable misconduct is not justified or excused by considerations of client convenience, expediency, or lack of personal gain. Affixing a false signature is manifestly dishonest and an absolute ethical transgression.¹⁶⁶

The *Miller* court noted that the respondent's false signatures on the CHINS petitions "had the potential for significant injury due to the fundamental interests at stake in CHINS proceedings."¹⁶⁷ Because of the pattern of misconduct for over a year, the court concluded that the respondent should receive a more severe sanction than in *Robison* and approved the agreement for a suspension of 120 days.¹⁶⁸

CONCLUSION

During this survey period, the Indiana Supreme Court addressed several interesting issues in judicial and attorney ethics. In *Wruble*, the court raised the question of whether "offensive personality" for the Oath of Attorneys is merely aspirational or whether it can be a basis for a disciplinary charge. In *Seabolt*, the court clarified when judicial officers must disqualify under the objective observer standard. In *Hawkins* and *Pearson*, the court found that sexual harassment and sexual misconduct cannot be tolerated by the Indiana bar. Finally, the court reiterated that any filing with the court must be trustworthy in *Miller*. The Indiana Supreme Court expects the members of the Indiana judiciary and the Indiana bar to maintain the highest standards of dignity and honor.

8.4(d) states that "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice."

165. *Miller*, 240 N.E.3d at 156.

166. *Id.* (quoting *In re Robison*, 985 N.E.2d 336, 336 (Ind. 2013) (Dickson, C.J., dissenting)). In *Robison*, the respondent attorney received a public reprimand for signing the co-personal representative's name on a number of documents and forwarded these documents to be signed by the second co-personal representative. *Robison*, 985 N.E.2d at 336 (majority opinion). When confronted by the second co-personal representative, the respondent attorney admitted he signed for the first co-personal representative. *Id.*

167. *Miller*, 240 N.E.3d at 156.

168. *Id.*