

SURVEY OF INDIANA LAW OF PROFESSIONAL RESPONSIBILITY (2023–2024)

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INTRODUCTION

From July 1, 2023, through July 1, 2024, the Indiana Supreme Court handed down five per curiam decisions imposing sanctions for violations of professional responsibility or judicial conduct rules.¹ The three attorney discipline decisions detail one lawyer's ethical transgressions involving widespread neglect, abandonment, and malfeasance of vulnerable clients;² another lawyer's misconduct in improperly questioning a represented witness without notifying the witness's counsel;³ and a government lawyer's ethical violations in making a disparaging, public pretrial statement about a professional under investigation by the lawyer.⁴

In the two judicial discipline decisions, the Court discussed the factors warranting serious discipline and illuminated the ethical peril that arises when incoming judges fail to appreciate the obligations assumed with the new judicial role.⁵ During the survey period, the Indiana Commission on Judicial Qualifications also resolved another matter with a Public Commission Admonitions in lieu of filing formal charges against a former judicial officer who acted outside the expectations of the judicial role.⁶

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1. *In re Cichowicz*, 213 N.E.3d 1022 (Ind. 2023); *In re Rokita*, 219 N.E.3d 733 (Ind. 2023); *In re Moreno*, 222 N.E.3d 948 (Ind. 2023); *In re Trapp*, 222 N.E.3d 940 (Ind. 2023); *In re Norrick*, 233 N.E.3d 403 (Ind. 2024).

2. *In re Moreno*, 222 N.E.3d at 948.

3. *In re Trapp*, 222 N.E.3d at 941–42.

4. *In re Rokita*, 219 N.E.3d at 734. Because a proceeding involving the same official is currently pending, this matter will be discussed in a future survey period when the new matter is concluded.

5. *In re Cichowicz*, 213 N.E.3d at 1024; *In re Norrick*, 233 N.E.3d at 406–07.

6. The Indiana Commission on Judicial Qualifications admonished a former judge for providing a loan to a litigant to pay a judgment on a legal matter that was pending before the judicial officer. PUBLIC ADMONITION OF FORMER JUDGE REX KEPNER OF THE BENTON CIRCUIT COURT, IND. COMM'N ON JUD. QUALIFICATIONS (May 17, 2024), <https://www.in.gov/courts/ojar/files/jqc-admonition-kepner-2024-0517.pdf>.

I. ATTORNEY DISCIPLINE CASES

The Preamble to Indiana’s Rules of Professional Conduct recognizes that “[l]awyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.”⁷

That relationship encompasses many roles for lawyers—client representatives, officers of the Court, and public citizens—and bestows on lawyers a “special responsibility for the quality of justice.”⁸ And while the Preamble does not create substantive requirements for lawyers, it sets the tone for attorney regulation in this State. Against this aspirational backdrop, the Rules of Professional Conduct divide lawyers’ ethical responsibilities into eight sections.⁹ The first five sections set forth lawyers’ ethical responsibilities in the various roles they perform in the legal system: 1) as client representatives, 2) as advisors, 3) as advocates, 4) when interacting with third parties, and 5) as supervisors.¹⁰ The remaining three sections pertain to public service, advertising, and misconduct, respectively.¹¹

The Court’s attorney discipline cases during this survey period specifically offer guidance to lawyers about the ethical duties owed to clients, third parties, and to the legal system as an advocate. But in a broader sense, the opinions cast the Court’s beliefs regarding the factors that interfere with the quality of justice, which warrant public (and more severe) sanctions.

A. *Duty to Clients* – In re Moreno

Critical to fulfilling one’s duty to a client are the lawyer’s ethical responsibilities to provide competent and diligent representation,¹² to keep the client reasonably informed about the status of the legal matter,¹³ and to not set an unreasonable fee.¹⁴ In the most significant attorney discipline case during the survey period, *In re Moreno*, the Court found not only had the respondent lawyer failed to fulfill these basic duties for eleven immigration clients, but he also engaged in deceitful behavior and effectively abandoned his legal practice, leading to adverse consequences for several clients.¹⁵ The Court determined that this conduct warranted the severest disciplinary sanction—disbarment.¹⁶

7. IND. RULES OF PRO. CONDUCT pmbl., para 13 (2024).

8. *Id.* pmbl., para 1.

9. *See generally id.*

10. *Id.* 1–5.

11. *Id.* 6–8.

12. *Id.* 1.1, 1.3.

13. *Id.* 1.4.

14. *Id.* 1.5.

15. *In re Moreno*, 222 N.E.3d 948 (Ind. 2023).

16. *Id.*

Moreno was initiated after the Disciplinary Commission filed an eleven-count disciplinary complaint against the respondent lawyer, following its investigation of twelve grievances, by eleven clients and one attorney, who recounted multiple, similar episodes of the lawyer's neglect and unethical behavior towards clients and their legal matters.¹⁷ During the investigation of those grievances, the lawyer failed to respond to the Disciplinary Commission's lawful demands for information about those grievances, leading to show-cause proceedings and, ultimately, an indefinite suspension for repeated noncooperation with the disciplinary process.¹⁸

The respondent lawyer's lack of cooperation continued during the litigation, as he failed to submit an Answer to the Disciplinary Commission's Complaint.¹⁹ The hearing officer granted the Commission's motion for a judgment on the complaint, and the Court approved the hearing officer's report on the factual findings and conclusions of law.²⁰

The Court determined that the respondent lawyer had engaged in a pattern of neglect and malfeasance in the immigration matters for eleven clients and had failed to cooperate with the disciplinary process.²¹ The Court detailed in its opinion some of the more egregious situations:

- "Client 1," a Korean national who was married, retained the respondent to prepare a permanent residency application, paid him \$5,410, and provided the respondent with all necessary documentation.²² After that, Client 1 attempted without success to contact the respondent numerous times by email or phone for an update on her application's status.²³ During this time, the respondent changed his email address without notifying Client 1.²⁴ When she was unable to reach the respondent, Client 1 contacted the United States Citizenship and Immigration Services (USCIS) and learned that the respondent had not submitted her application.²⁵ Client 1 subsequently filed a grievance with the Disciplinary Commission and hired successor counsel.²⁶ A few days later, USCIS informed Client 1 that it received her application, even though her new attorney had not prepared or submitted any documentation to USCIS.²⁷ Later, USCIS requested additional

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 949.

26. *Id.*

27. *Id.*

evidence from Client 1 regarding her husband's signature on a form that he was not authorized to submit.²⁸ Successor counsel confirmed with Client 1's husband that he never signed nor submitted this form.²⁹ Successor counsel also contacted the respondent numerous times to obtain Client 1's file but was unsuccessful.³⁰

- "Client 4" retained and paid the respondent \$5,000 to draft U-visas for his family and for some temporary work visas.³¹ Client 4's last contact with the respondent was in December 2021, when the respondent falsely told Client 4 that his pending applications were progressing with the USCIS.³² However, the respondent never drafted or submitted any documents to the USCIS on Client 4's behalf.³³ Client 4 never heard from the respondent after December 2021.³⁴
- "Client 7" was the respondent's landlord for his law practice.³⁵ Client 7 retained the respondent to represent his sister in an immigration matter on an oral flat fee agreement.³⁶ The respondent abruptly dissolved his law practice, resulting in a landlord-tenant lawsuit.³⁷ Upon receiving notice of the suit, the respondent threatened a "noisy withdrawal" from Client 7's sisters' case.³⁸ The respondent then sent Client 7 an invoice for additional fees of over \$10,000.³⁹
- "Client 8" agreed to pay the respondent \$8,000 for legal services in immigration and consular matters involving the National Visa Center and made a deposit of \$4,000.⁴⁰ Client 8 asked the respondent to prepare a written fee agreement, which the respondent agreed to draft but never provided to the client.⁴¹ Also, Client 8 wished to renew his Employment Authorization Card and paid the respondent an additional \$400 to prepare the application.⁴²

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

Later, the respondent demanded an additional \$1,050 for work that Client 8 already paid for.⁴³ Soon after, Client 8 lost all contact with the respondent and learned that the respondent had closed his practice.⁴⁴ Client 8 managed to arrange an in-person meeting with the respondent and learned that the respondent had not prepared any paperwork for his matters.⁴⁵ Shortly after that meeting, Client 8 learned that the respondent allegedly renewed Client 8's Employment Authorization Card and had his new card.⁴⁶ The respondent demanded an additional \$4,225 in exchange for the card and further told Client 8 that if he did not pay the additional sum, the respondent would file a collections lawsuit and file a complaint with the USCIS.⁴⁷

The Court found that the respondent's conduct towards these clients and seven others, as well as his conduct during the Commission's investigation, violated the following Indiana Professional Conduct Rules:

Rule 1.1: Failing to provide competent representation;

Rule 1.3: Failing to act with reasonable diligence and promptness;

Rule 1.4: Failing to keep a client reasonably informed about the status of a matter and respond promptly to reasonable requests for information;

Rule 1.5(a): Making an agreement for, charging, or collecting an unreasonable fee;

Rule 1.16(d): Failing to protect a client's interests upon termination of representation;

Rule 8.1(b): Failing to timely respond to the Commission's demands for information;

Rule 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and

Rule 8.4(d): Engaging in conduct prejudicial to the administration of

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

justice.⁴⁸

In its evaluation of the appropriate sanction, the Indiana Supreme Court focused on the harm caused by the respondent and his exploitation of vulnerable clients, noting that:

Respondent wholly abandoned his law practice, neglected and lied to his vulnerable clients, retained unearned funds, repeatedly failed to cooperate with the Commission's investigations, and ultimately defaulted on his disciplinary proceedings.⁴⁹

Such factors led the Court to conclude that the respondent was no longer entitled to the privilege to practice law, and the Court ordered him disbarred.⁵⁰

B. Ethical Duties as Advocates and to Third Persons – In re Trapp

“As a representative of clients, a lawyer performs various functions . . . [a]s advocate, a lawyer asserts the client's position under the rules of the adversary system.”⁵¹ Although lawyers are expected to be skilled advocates for their clients, they also have duties to the legal system itself and to maintain the integrity of that system.⁵² In balancing these interests, the Rules of Professional Conduct place some limits on advocacy to preserve the legitimacy of the legal system.⁵³

Professional Conduct Rule 3.3 is one such rule, which requires candor from lawyers to tribunals.⁵⁴ Specifically, this rule prohibits lawyers from 1) 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;” 2) knowingly failing to disclose to the tribunal legal authority from the jurisdiction that is “directly adverse to the position of the client and not disclosed by opposing counsel;” and 3) “offer[ing] evidence the lawyer knows to be false.”⁵⁵

Additionally, besides the ethical duties owed to clients and to the legal system, lawyers, as officers of the Court, bear some ethical responsibilities to third parties to help maintain fairness and integrity in the legal system.⁵⁶ *In re Trapp* illustrates the consequences when a lawyer falls short of fulfilling these

48. *Id.* at 950.

49. *Id.*

50. *Id.*

51. IND. PROF. COND. R. 2.

52. *Id.* 5, 11, 12.

53. *See id.* 3.1–3.9.

54. *Id.* 3.3.

55. *Id.*

56. 222 N.E.3d 940 (Ind. 2023); *see* IND. PROF. COND. R. 4.1–4.4.

ethical responsibilities.⁵⁷

In *Trapp*, the Court again had occasion to address misconduct involving a violation of Indiana Professional Conduct Rule 4.2.⁵⁸ Popularly known as the “attorney-bypass rule,” Rule 4.2 prohibits a lawyer, when representing a client, from communicating with a person the lawyer knows to be represented by another lawyer about the subject matter of the representation unless the lawyer has the other lawyer’s consent.⁵⁹ In 2021, the Indiana Supreme Court clearly defined the scope of Rule 4.2 *In re Martin*, holding that Rule 4.2’s prohibition against questioning a represented individual is not limited to representation in a specific proceeding; rather, it applies to any related proceeding if the questioning pertains to the subject matter of the representation.⁶⁰ In *Trapp*, the Court reaffirmed that Rule 4.2 applies to collateral proceedings involving the same subject matter and discussed how a lawyer’s attempts to conceal a violation through false statements warrant a more significant sanction.⁶¹

The respondent in *Trapp* was retained by “Husband” to represent him in a consolidated marital dissolution and protective order proceeding (“Divorce Case”) and a criminal proceeding (“Criminal Case”) arising from a domestic dispute with “Wife.”⁶² Husband and Wife each filed protective order petitions against one another, but Wife’s protective order petition was the only one granted in April 2019.⁶³ An agreed provisional order was entered around the same time in the dissolution case, with some remaining issues to be decided, such as the valuation of marital assets and the division of the marital estate.⁶⁴ The marital assets included some firearms that allegedly had been used during the domestic dispute, but that had not been located by the police.⁶⁵

Although the respondent was aware that Wife was represented by counsel in the Divorce Case, she subpoenaed Wife to submit to a taped statement for the Criminal Case without notifying Wife’s counsel.⁶⁶ During the taped interview, the respondent questioned Wife about the domestic dispute and “asked her several questions about the firearms and other marital property over the objection of the deputy prosecutor, who referenced the Divorce Case and Wife’s right to have her counsel present.”⁶⁷

Wife’s counsel later confronted the respondent about her line of questioning at the interview, and the respondent stated, “We asked zero questions about the divorce case.”⁶⁸ Wife’s counsel then filed a motion for an order to produce the

57. See *In re Trapp*, 222 N.E.3d 940 (Ind. 2023).

58. *Id.* at 943.

59. IND. PROF. COND. R. 4.2.

60. *In re Martin*, 166 N.E.3d 345 (Ind. 2021).

61. *In re Trapp*, 222 N.E.2d at 943.

62. *Id.* at 942.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

taped statement, to which the respondent filed an objection, incorrectly reporting that Wife's Counsel had received one month's notice of the statement and that the taped statement was not relevant to issues in the Divorce Case.⁶⁹ The trial court issued an order to produce the tape and informed the respondent that she "should be prepared to discuss Rule of Professional Conduct 4.2 and its comments at the final dissolution hearing."⁷⁰ The following day, the respondent emailed the recorded statement to Wife's counsel but remained on the Divorce Case.⁷¹ Wife's new counsel filed a motion to disqualify the respondent from the Divorce Case due to the respondent's improper questioning of Wife without counsel present.⁷² Before the trial court ruled on that motion, Husband retained successor counsel, and the respondent withdrew her appearance.⁷³

The Disciplinary Commission filed a disciplinary complaint, alleging that the respondent violated Professional Conduct Rule 3.3(a)(1) (knowingly making a false statement of fact or law to a tribunal), Rule 4.2 (improperly communicating with a person the lawyer knows to be represented by another lawyer in the matter), and Rule 8.4(d) (engaging in conduct prejudicial to the administration of justice).⁷⁴ After an evidentiary hearing, the hearing officer found that the respondent had violated all three rules and recommended a thirty-day suspension with automatic reinstatement.⁷⁵

The respondent filed a petition to review with the Court, challenging those findings. While acknowledging the Rule 4.2 violation, the respondent disagreed that the evidence supported the hearing officer's findings that she violated Rules 3.3(a)(1) and 8.4(d).⁷⁶ Specifically, the respondent argued the hearing officer gave insufficient credit to her testimony that she made a scrivener's error when she averred in a pleading that Wife's counsel had been given a month's notice of the taped statement.⁷⁷

The Court found the respondent's argument unpersuasive, noting that it was disinclined to counter the hearing officer's determination that the respondent was not a credible witness.⁷⁸ The Court further pointed out the respondent failed to explain why she never corrected the false statement (caused by the alleged scrivener's error), "which Rule 3.3(a)(1) also required her to do."⁷⁹ As to the respondent's challenge of the hearing officer's findings that the respondent made other false statements to the trial court, the Court declined to reweigh testimony and noted that the respondent's argument had little circumstantial

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 943.

77. *Id.*

78. *Id.*

79. *Id.*

support in the record and was “undercut by Respondent’s contemporaneous pattern of deception in her communications with Wife’s counsel.”⁸⁰ The Court further went on in a footnote to rebuke the respondent for her argument that her dishonesty towards opposing counsel should have no bearing on the Rule 3.3(a)(1) violation.⁸¹ The Court believed otherwise, stating:

Respondent’s argument that dishonesty toward opposing counsel is not encompassed within Rule 3.3, while true, misses the point. Respondent’s broader pattern of deception is probative of her *mens rea* underlying the statements to The Court that are subject to Rule 3.3 and undercuts her assertions of inadvertence and lack of knowledge.⁸²

Further, the Court found that the respondent’s conduct caused prejudice to the administration of justice, thereby violating Rule 8.4(d), as her conduct unduly prolonged the Divorce Case, required the trial court and Wife’s counsel to spend additional resources to produce the taped statement, and led Husband to have to find new counsel.⁸³

While the Court recognized that it has typically imposed public reprimands for similar violations of Rule 4.2, the Court opined that the respondent’s dishonesty warranted a more severe sanction.⁸⁴ The lasting message from *Trapp* for practitioners is that attempts to conceal an ethical violation, rather than address the transgression directly, will be considered by the Court and likely will result in a more severe sanction.

II. JUDICIAL DISCIPLINE CASES

Akin to Indiana’s Rules of Professional Conduct, the Indiana Code of Judicial Conduct starts with a Preamble that sets the tone for the regulation of judicial conduct in the State.⁸⁵ The Preamble recognizes that:

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

80. *Id.*

81. *Id.*

82. *Id.* at 943 n. 2.

83. *Id.* at 943.

84. *Id.* at 944.

85. See IND. PROF. COND. R. pmbl.

as a public trust and strive to maintain and enhance confidence in the legal system.⁸⁶

To maintain that confidence, judicial officers are reminded in the Preamble “to avoid both impropriety and the appearance of impropriety” and to aspire to conform their conduct to enhance public confidence in the judiciary’s “independence, impartiality, integrity, and competence.”⁸⁷ The two judicial discipline decisions issued during this survey period involved judges recently elected to their positions and highlight the damage to public confidence when judges fail to appreciate the heightened responsibilities of the judicial role.⁸⁸

A. Failure to Supervise – In re Norrick

New judges and judicial officers taking on different responsibilities often face unanticipated challenges as they transition into these roles. Two such issues are navigating potential conflicts of interest and effectively supervising a new staff. There are, however, ethical implications if a judge shirks the responsibility to maintain public confidence in the impartiality of the judiciary or neglects supervision of staff in a manner that leads to incompetence in the processing of legal orders.⁸⁹

In re Norrick illustrates the ethical harm that arises when a new judge fails to appreciate the responsibilities of the changed legal role.⁹⁰ In *Norrick*, the Indiana Supreme Court approved a Conditional Agreement for Discipline between the Indiana Commission on Judicial Qualifications and the respondent judge, imposing a forty-five-day suspension without pay on the judge for 1) failing to supervise staff in the processing of orders, which resulted in the appearance that the judge had presided over cases that he or his son was the attorney of record; 2) failing to supervise staff in the processing of criminal cases, which led to delays and the involuntary dismissal of sixteen criminal cases; and 3) issuing an ex parte change of custody order without giving the opposing party notice or an opportunity to respond.⁹¹ As the Court detailed in its per curiam opinion, the judge’s failures “began the day he assumed office, damaged the administration of justice and public trust in the judiciary,” and “caused individual harm to dozens of alleged victims, witnesses, and criminal

86. *Id.* pmbl., para. 1.

87. *Id.* pmbl., para. 2.

88. See *In re Cichowicz*, 213 N.E.3d 1022, 1023–24 (Ind. 2023); *In re Norrick*, 233 N.E.3d 403, 406–07 (Ind. 2024).

89. See IND. PROF. COND. R. 1.2 (requiring a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary); *id.* 2.5 (requiring a judge to perform judicial and administrative duties competently, diligently, and promptly); and *id.* 2.12(A) (requiring a judge to ensure that court staff act in a manner consistent with the judge’s obligations under the Code of Judicial Conduct).

90. *In re Norrick*, 233 N.E.3d at 403–04.

91. *Id.*

defendants whose cases were dismissed or delayed because Respondent, through his staff, failed to update warrants, set trial dates, and reflect the outcome of hearings.”⁹²

The judge was elected in November 2020, and took the Circuit Court bench on January 1, 2021.⁹³ Although the respondent had served as a town court judge for fifteen years before his election to Circuit Court, that judicial service was in a part-time capacity.⁹⁴ While serving as a town court judge, the respondent also maintained a private law practice in which he represented Landmark Accounts as a client.⁹⁵ After taking the Circuit Court bench, Respondent’s attorney-son took over the representation of Landmark Accounts.⁹⁶

Although the respondent had advised the Circuit Court 5 staff about the conflict of interest and instructed them to transfer cases involving Landmark Accounts or his son to a magistrate, between January 20, 2021, and April 13, 2022, electronic case dockets showed that the respondent presided over twenty-seven cases in which the respondent’s son and Landmark Accounts was a client.⁹⁷ From those cases, sixty-six orders were signed using the respondent’s signature stamp, including orders granting the respondent’s withdrawal as Landmark Accounts’ counsel.⁹⁸ Additionally, the chronological case summaries for several Landmark Accounts cases on the public online case docket listed the respondent as the presiding judicial officer even though the magistrate presided over the cases.⁹⁹

The matter first came to the Judicial Qualifications Commission’s attention in April 2022, following a complaint alleging that the respondent was presiding over cases in which his son served as counsel and in which the respondent previously served as counsel.¹⁰⁰ Two months later, the respondent submitted a self-report to the Commission, acknowledging that orders were issued reflecting that he presided over Landmark Accounts’ cases and that he failed to take appropriate measures to prevent these errors by court staff.¹⁰¹

While the Judicial Qualifications Commission was investigating the Landmark Accounts matter, the Commission received a report that “there were criminal cases in Respondent’s court with missing case entries and orders.”¹⁰²

92. *Id.* at 404.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* Although the respondent was aware that his staff was using his signature stamp, he did not make any effort to review the staff’s work to ensure that they were properly affecting orders disqualifying him from Landmark Accounts cases. *See* Disciplinary Complaint, *In re Norrick*, 233 N.E.3d 403 (Ind. 2024) (No. 24S-JD-35) (available on <https://public.courts.in.gov/MyCase#>).

99. *In re Norrick*, 233 N.E.3d at 404.

100. *Id.*

101. *Id.*

102. *Id.*

Subsequent investigation by the Commission uncovered approximately forty criminal cases from January 1, 2021, to March 31, 2023 with missing entries and orders.¹⁰³ The missing materials included warrants that had not been updated accurately, jury trials that had not been set, and hearings in which there was no entry or order to indicate what occurred or whether a future hearing was needed.¹⁰⁴ The missing items and subsequent failure to set dates ultimately led to the dismissal of sixteen cases because the defendants were not tried within the deadlines set under Criminal Rule 4(C).¹⁰⁵

During the investigation, the Judicial Qualifications Commission also discovered a pattern of delay in orders being issued on criminal cases in respondent's court.¹⁰⁶ The respondent received reports, from other judges and the prosecutor's office, notifying him about these delays and warning him that his lead criminal court reporter was four or five weeks behind in updating case entries.¹⁰⁷ Despite these notifications, the respondent "failed to undertake any efforts to review criminal cases, including whether an appropriate entry or order had been made or whether the matter had been scheduled for a future court date."¹⁰⁸ Delays in issuing warrants ranged from thirty days to sixteen months on cases involving allegations of various violent crimes against victims.¹⁰⁹

In April 2023, the respondent submitted a second self-report about a court employee erroneously affixing the judge's electronic signature to an ex parte custody order.¹¹⁰ In May 2022, the judge had ordered temporary joint legal and physical custody of the minor child to both parents, but, on April 12, 2023, one of the parties moved for emergency custody and requested an expedited hearing.¹¹¹ That same day, an order granting a modification of custody was issued, with the respondent's electronic signature affixed by court staff.¹¹² The respondent attempted to remedy the error by granting a motion to correct error five days later.¹¹³ The April 2023 emergency modification of custody was, however, the second order erroneously issued by the respondent in that case.¹¹⁴ Previously, he had issued an erroneous order in April 2022 that granted temporary custody to one party.¹¹⁵

The Judicial Qualifications Commission and Respondent Norrick agreed that Respondent's conduct was prejudicial to the administration of justice and violated the following rules of the Indiana Code of Judicial Conduct:

103. *Id.* at 405.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 405–06.

111. *Id.* at 406.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

Rule 1.2: Requiring judges to avoid impropriety and to act at all times in a manner promoting public confidence in the judiciary's integrity;

Rule 2.5(A): Requiring judges to perform judicial and administrative duties competently, diligently, and promptly; and

Rule 2.12(A): Requiring judges to supervise court staff to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.¹¹⁶

In evaluating whether to accept the parties' proposed agreement to a forty-five-day suspension without pay, the Court noted that the scope of the respondent's misconduct was pervasive, "impact[ing] multiple facets of his caseload and management duties"¹¹⁷ In addition to damaging the public's perception of the judiciary with the sixty-six erroneously issued orders in Landmark Accounts' cases (which gave the perception that the respondent was presiding over cases in which he or his son appeared), the respondent's pattern of failing to take action in criminal cases led to the dismissal of sixteen cases when defendants were not brought to trial in a timely fashion.¹¹⁸ The Court stressed the significant harm caused by the respondent's neglect, remarking that:

Not only does this harm the administration of justice generally, but it also individually harms the witnesses and alleged victims who cooperated in the prosecution of those actions. Several of the cases with missing entries involved domestic battery in the presence of a child, strangulation, and residential entry. And despite being made aware of these delays and omissions by multiple people, including his fellow judges, Respondent failed to take any corrective action until the Commission began receiving complaints.¹¹⁹

The Court noted that "[s]uspensions longer than thirty days 'reflect extremely serious judicial misconduct, just shy of what might warrant removal from office'" and remarked that the respondent's actions and inactions warranted a severe sanction.¹²⁰ The Court then weighed the respondent's misconduct against the administrative failures and delays committed by the judges in *In re Kouros* (removal for possessing over 200 files with missing case entries after previous unsuccessful efforts by others to remediate situation),¹²¹ *In re Hawkins* (sixty-day suspension for a pattern of excessive delays in PCR rulings, which

116. *Id.*

117. *Id.* at 406–07.

118. *Id.* at 407.

119. *Id.*

120. *Id.* at 406–07 (quoting *In re Freese*, 123 N.E.3d 683, 688 (Ind. 2019).

121. *In re Kouros*, 816 N.E.2d 21 (Ind. 2004).

led in one case to a two-year delay in releasing a defendant from prison),¹²² and *In re Brown* (removal for various mismanagement, delays, and dereliction of duties on cases, including the delayed release from jail of ten defendants).¹²³

Although the Court noted that the proposed sanction was less than the *Kouros*, *Hawkins*, and *Brown* sanctions after contested hearings, the Court credited the respondent for accepting responsibility.¹²⁴ The Court also pointed out that the other cases involved claims that the judges misled the Commission or failed to provide accurate information to the Court, which was not present in the respondent's matter.¹²⁵

Ultimately, the Court approved the parties' agreement to a forty-five-day suspension but expressed grave concerns about the respondent's conduct.¹²⁶ The deciding factor for the Court appeared to be the respondent's willingness to attend additional education and to meet with a mentor judge to improve his case management and supervision skills.¹²⁷

Two lasting impressions can be gleaned from *Norrick*. First, even if a judge is new to the role, pervasive and systemic administrative failures and lack of oversight can, and will, lead to a severe sanction, especially if actual harm results. Second, demonstrating a willingness to improve a deficient administrative skill (which led to the ethical violation), through additional training or mentoring, will be given serious consideration by the Court when deciding a sanction.

B. Failure to Shed Prior Roles Upon Taking Judicial Office – In re Cichowicz

If *In re Norrick* serves as a reminder to judges of the ethical peril arising from abdicating supervisory responsibilities, *In re Cichowicz* demonstrates the harm to public perception of the judiciary when an incoming judge fails to appreciate a judge's obligation to avoid even the appearance of impropriety.¹²⁸ In *Cichowicz*, the Court imposed a forty-five-day suspension without pay to the respondent judge for continuing to serve in a fiduciary position for a non-family member after taking office, failing to disclose his role as a trustee of a charitable foundation from which he ultimately obtained funds for court refurbishment projects, and abusing the prestige of office by employing a family member's business for some of those projects.¹²⁹

Like the judge in *Norrick*, the respondent judge's misconduct in *Cichowicz* began when he took office.¹³⁰ Prior to taking the bench, the respondent began

122. *In re Hawkins*, 902 N.E.2d 231 (Ind. 2009).

123. *In re Brown*, 4 N.E.3d 619 (Ind. 2014).

124. *In re Norrick*, 233 N.E.3d at 408–09.

125. *Id.*

126. *Id.* at 409.

127. *Id.*

128. *In re Cichowicz*, 213 N.E.3d 1022, 1023 (Ind. 2023).

129. *Id.*

130. *Id.*

representing a wealthy, elderly man in 2013 on a marital dissolution matter.¹³¹ The elderly man had two estranged adult children at the time and was the beneficiary of several valuable family trusts and the sole trustee of a 501(c)(3) charitable trust (“Cartwright Foundation”).¹³² In the years that followed, the client named the respondent as the client’s attorney-in-fact and a co-trustee of the Cartwright Foundation.¹³³ The client subsequently resigned from the foundation, leaving the respondent as the sole trustee.¹³⁴ After consulting with independent counsel, the client also named the respondent as the beneficiary and successor trustee of the client’s multimillion-dollar family trust.¹³⁵ The client later amended the trust to include the respondent’s family as beneficiaries.¹³⁶

Although the respondent took the Probate Court bench on January 1, 2019, he continued to act as the elderly client’s attorney-in-fact and performed fiduciary duties on the client’s behalf.¹³⁷ In February 2019, while he was still the sole trustee of the Cartwright Foundation, the respondent attended a meeting of a 501(c) charitable organization (“Friends of the JJC”) created to raise funds to support the Probate Court and Juvenile Justice Center.¹³⁸ At that meeting, the respondent proposed renovating space in the Juvenile Justice Center to create a new courtroom, using funds from an anonymous source.¹³⁹ The respondent intended to use funds from the Cartwright Foundation to fund the project; the only member of the Friends of the JJC aware of the donation’s source was an attorney who was newly elected to the board.¹⁴⁰

In his role as trustee, the respondent issued a \$100,000 check from the Cartwright Foundation’s bank account in April 2019 to the attorney-board member’s law firm, and the firm then issued checks totaling \$100,000 to the Friends of the JJC.¹⁴¹ At the respondent’s recommendation, the Friends of the JJC then contracted with a general contractor to complete the renovation project without utilizing any formal bidding process.¹⁴² At no point were the other board members of the Friends of the JJC or the county commissioners informed of the source of the donation or that the respondent served as the sole trustee of the charitable foundation making the donation.¹⁴³

In the spring of 2019, the respondent sought to renovate breakrooms in the courthouse, using some of the funds the Cartwright Foundation had already

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 1023–24.

donated to the Friends of the JJC.¹⁴⁴ Again, without engaging in a formal bidding process, the respondent asked his father if the father's tile company could complete the renovation.¹⁴⁵ Respondent's father agreed, and the father's ceramic company was paid approximately \$24,800 from the Friends of the JJC.¹⁴⁶

In 2020, the respondent sought to purchase new vehicles to be used by the Court Appointed Special Advocate program.¹⁴⁷ Employing the same plan he utilized for funding the courtroom project, the respondent issued a \$60,000 check from the Cartwright Foundation to the attorney-board member's law firm, and the firm then issued a check to the Friends of the JJC.¹⁴⁸ The Friends of the JJC then purchased the vehicles from a car dealership owned and operated by the respondent's father.¹⁴⁹

The Judicial Qualifications Commission and Respondent Cichowicz submitted a Conditional Agreement for Discipline for consideration by the Court, agreeing that the respondent violated the following Code of Judicial Conduct provisions by:

Rule 1.2: Failing to avoid impropriety and to act at all times in a manner promoting public confidence in the judiciary's integrity;

Rule 1.3: Abusing the prestige of office to advance the private interests of another;

Rule 3.1(C): Engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; and

Rule 3.8: Serving in a fiduciary position for a person who is not a member of the judge's family.¹⁵⁰

When considering whether to accept the parties' proposed Conditional Agreement, as with *Norrick*, the Court again placed great emphasis on the fact that the respondent's misconduct in *Cichowicz* "began as soon as he assumed judicial office."¹⁵¹ The Court noted that the respondent's "misconduct permeated his entire four-year career as [a] probate judge" and "his act of keeping the source of funds anonymous suggest[s] the misconduct was willful, undermining the integrity of the judiciary."¹⁵² Looking at prior disciplinary

144. *Id.* at 1024.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

cases in which judges were disciplined for an inappropriate appointment to a friend,¹⁵³ improperly continuing a fiduciary relationship with a non-family member,¹⁵⁴ or engaging in judicial acts that gave the appearance of partiality to friends or family members,¹⁵⁵ the Court determined that the proposed forty-five-day suspension was within the range of sanctions previously given for similar misconduct.

The lasting impression from the *Cichowicz* case is a lesson about the danger of not appreciating the elevated ethical responsibilities of the judicial role. Although attorneys are often tasked with spearheading projects, negotiating deals, or bringing stakeholders together for capital projects, judges must be mindful of the duty to maintain judicial independence, integrity, and impartiality when considering close involvement in such projects. As illustrated in *Cichowicz*, funding a court improvement project through a plan to keep the source anonymous, especially when the judge holds the purse strings for the donating source, creates an appearance of impropriety. Such plans are similarly flawed when a judge utilizes the services/businesses of a family member or friend to complete a court project. Transparency is fundamental to maintaining a positive public perception of the judiciary, and *Cichowicz* demonstrates that attempts to circumvent such guardrails will be treated harshly in judicial discipline sanctions.

CONCLUSION

In the current survey period, the Indiana Supreme Court reaffirmed the ethical responsibilities lawyers bear to clients, to third parties, and to the judicial system. The attorney discipline decisions highlight that the breadth of harm caused and acts of deceit are two factors that the Court finds significantly aggravating to warrant more severe sanctions. The judicial discipline decisions show a similar trend, with the Court imposing severe sanctions, even on judges new to the bench, when the misconduct is widespread, causes actual harm to court participants, and seriously damages public perception of the judiciary.

153. *In re Freese*, 123 N.E.3d 683 (Ind. 2019) (suspending judge for 45 days without pay for appointing an unqualified friend as trustee of a trust and then was negligent when friend later stole over \$500,000 of funds from the estate).

154. *In re Hammond*, 559 N.E.2d 310 (Ind. 1990) (suspending judge for 90 days without pay for partially maintaining a fiduciary relationship with a former client after taking the bench and used her judicial office to advance the interests of that former client).

155. *See In re Funke*, 757 N.E.2d 1013 (Ind. 2001) (suspending judge for 15 days without pay because of judge's actions regarding protective orders involving a company in which his parents had a property interest); *In re Jacobi*, 715 N.E.2d 873 (Ind. 1999) (suspending judge for 5 days without pay for granting an ex parte temporary restraining order when he was close friends with the requesting attorney and the attorney's family for many years).