[Cite as *State ex rel. Grendell v. Geauga Cty. Bd. of Commrs.*, 2026-Ohio-4328.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

STATE OF OHIO ex rel. JUDGE TIMOTHY GRENDELL, Relator, - vs - GEAUGA COUNTY BOARD OF COMMISSIONERS, et al., Respondents.	**CASE NO. 2025-G-0028** Original Action for Writ of Mandamus

PER CURIAM OPINION AND JUDGMENT ENTRY

Decided: November 2, 2026
Judgment: Petition granted in part and denied in part

Jay F. Crook, Jay F. Crook, Attorney at Law, L.L.C., 37093 Euclid Avenue, Willoughby, OH 44094 (For Relator).

John T. McLandrich, *Frank H. Scialdone*, and *Jillian Eckart*, Mazanec, Raskin & Ryder Co., L.P.A., 100 Franklin's Row, 34305 Solon Road, Cleveland, OH 44139 (For Respondent, Geauga County Board of Commissioners).

James R. Flaiz, pro se, Geauga County Prosecutor, 231 Main Street, Third Floor, Chardon, OH 44024 (Respondent).

PER CURIAM.

{¶1} Relator, Judge Timothy Grendell ("Relator"), filed a petition for writ of mandamus against Respondents, Geauga County Board of Commissioners ("Geauga"), and James R. Flaiz, Geauga County Prosecuting Attorney. Relator seeks a writ of mandamus ordering Respondents (1) to file a motion in the Geauga County Court of

Common Pleas for the appointment of outside counsel and approval of fees pursuant to R.C. 305.14 and (2) to take all necessary steps to provide for the appointment and payment of outside counsel. This matter is before the Court on Geauga's and Relator's cross-motions for summary judgment.

{¶2} Upon review of the record and the applicable law, we find that there are no genuine issues of material fact and that Relator and Geauga are each entitled to summary judgment in part. Specifically, we find as follows:

{¶3} (1) Relator has established a clear legal right to Respondents' filing of a joint application in the common pleas court for the appointment of outside counsel pursuant to R.C. 305.14(A), a clear legal duty on Respondents' part to file such an application, and that he has no adequate remedy at law. Pursuant to governing precedent, mandamus is a proper means to compel an application for the appointment of outside counsel where an abuse of discretion has been shown. The record in this case establishes that Respondents abused their discretion. In particular, Geauga refused to make application for Relator; Flaiz had an arguable conflict of interest precluding his representation of Relator; and Respondents exhibited partiality by filing a joint application to appoint outside counsel for other individuals.

{¶4} (2) Relator has not established a clear legal right to the appointment of outside counsel or to the approval and payment of outside counsel's fees and expenses. Those matters are beyond the proper scope of this mandamus action. Rather, upon the filing of the joint application, the common pleas court, in its discretion, may approve or deny it. In the event the common pleas court approves the application, the statute

provides that Geauga may fix appointed counsel's compensation and pay it, along with reasonable expenses, from the county treasury upon Geauga's allowance.

{¶5} Therefore, we grant in part and deny in part (1) Relator's motion for summary judgment, (2) Geauga's cross-motion for summary judgment, and (3) Relator's petition for writ of mandamus. We order Respondents to file a joint application for the appointment of outside counsel in the Geauga County Court of Common Pleas pursuant to R.C. 305.14(A).

I. BACKGROUND

A. Disciplinary Proceeding

{¶6} Relator is the judge of the Geauga County Court of Common Pleas, Probate and Juvenile Divisions. Geauga is the board of county commissioners. Carolyn Brakey, Esq., James W. Dvorak, and Ralph Spidalieri are the county commissioners. Flaiz is the county prosecutor.

{¶7} On November 10, 2022, the Office of Disciplinary Counsel filed a four-count complaint against Relator in the Board of Professional Conduct (case no. 2022-045) charging him with violating the Code of Judicial Conduct, namely Jud.Cond.R. 1.2, 1.3, 2.2, 2.4(B), 2.9(A), 2.10(A), and 2.11, and the Rules of Professional Conduct, namely Prof.Cond.R. 8.4(d). Count 1 involved Relator's handling of a custody-dispute matter in which he ordered two children to be held in juvenile detention after they refused visitation with their father. *Disciplinary Counsel v. Grendell*, 2025-Ohio-5239, ¶ 3, 100. Count 2 involved Relator's handling of a separate custody matter. Count 3 concerned a presentation Relator made at a political meeting as well as actions he took leading up to

and after the meeting. *Id*. at ¶ 3, 59. Count 4 involved Relator's testimony at an Ohio House committee meeting. *Id*.

{¶8} The law firm of Montgomery Jonson was assigned to represent Relator pursuant to the Ohio Judges Liability Self-Insurance Program ("OJLSIP"), which provided $10,000 in coverage. Relator also purchased supplemental coverage of $20,000 through the Ohio Bar Liability Company ("OBLIC").

{¶9} On November 30, 2022, Relator, by Montgomery Jonson, filed an answer to disciplinary counsel's complaint. On December 16, 2022, disciplinary counsel filed an amended complaint. On December 23, 2022, Relator filed an answer to the amended complaint.

{¶10} By letter dated July 28, 2023, Montgomery Jonson notified Relator as follows:

> As of this past month's bill, we have exceeded the limits provided by the Judges Liability Program and OBLIC. We would be pleased to continue representing you in these matters. In order to do so, we need to open a new direct-bill file. Our hourly rate for judges who exhaust their coverage is $200/hour. As always, we bill in six-minute increments and send our bills monthly.
>
> The current amount due, in excess of the coverage limit for all of the individual matters, is $25,544.50. We understand that you are able to make a payment of $12,000 on that invoice and are willing to make monthly payments of $10,000 until the outstanding balance is paid. We agree with that arrangement.
>
> If this letter accurately memorializes our agreement, please counter sign this letter and return it to us within 15 days.

{¶11} On August 1, 2023, Relator countersigned the letter.

{¶12} On September 5, 2023, disciplinary counsel filed a preliminary witness list that included Flaiz as a potential fact witness for Counts 1 and 3.

{¶13} On October 4, 2023, Respondents filed a joint application for appointment of counsel in the Geauga County Common Pleas Court (case no. 2023 MISC 60). Respondents requested authorization for Geauga to employ Attorney Todd Raskin at the rate of $250 per hour to represent 12 people who requested counsel relating to the Board of Professional Conduct case. According to Relator, two individuals were no longer county employees at the time of the request. On the same date, the common pleas court granted the joint application. On October 31, 2023, the common pleas court amended its judgment entry to add a thirteenth person to the list of people that Attorney Raskin was authorized to represent. Twelve of the 13 people who requested counsel, including Flaiz, were included on disciplinary's counsel preliminary witness list.[1]

{¶14} The Board of Professional Conduct held a hearing on disciplinary counsel's amended complaint on February 26-27, March 4-7 and 29, and April 23-24, 2024. Prior to the hearing, the Board granted disciplinary counsel's motion to dismiss Count 2 of its amended complaint. Flaiz, among others, testified at the hearing.

{¶15} On October 4, 2024, the Board filed its report in the Supreme Court of Ohio (case no. 2024-1409) setting forth its findings of fact, conclusions of law, and recommendation. The Board found, by clear and convincing evidence, that Relator committed the charged violations. The Board recommended that Relator be suspended for 18 months with six months stayed on certain conditions.

{¶16} On October 9, 2024, the Supreme Court ordered Relator to file objections and a brief within 20 days.

1. Only Judge Carolyn Paschke does not appear on the preliminary witness list.

{¶17} On October 11, 2024, Attorney Funk filed a notice of appearance on behalf of Relator and a stipulation for an extension of time to file Relator's objections and brief.

{¶18} On October 22, 2024, Relator submitted a "Request for Board of County Commissioners' Action" to Geauga. Therein, Relator sought (1) the retention of Montgomery Jonson to represent Relator in the Board of Professional Conduct case; (2) the retention of Attorney Stephen Funk of Roetzel & Andress to represent Relator in the Supreme Court case at the rate of $300 per hour; (3) payment of Montgomery Jonson's invoices and costs; and (4) the approval of the probate/juvenile court's "Supplemental Appropriation Request" for the payment of Roetzel & Andress' invoices going forward.

{¶19} On November 14, 2024, Relator submitted a "Supplemental Appropriation Request" of $300,000 to Geauga.

{¶20} On November 18, 2024, Relator, by Attorney Funk, filed objections and a supporting merit brief in the Supreme Court of Ohio.

{¶21} By December 10, 2024, Montgomery Jonson's invoices totaled $228,110.81. Mongomery Jonson had addressed its invoices to the "Geauga County Court of Common Pleas."

{¶22} On January 7, 2025, Geauga held a meeting at which they addressed Relator's requests. The meeting minutes record the following discussion:

- Ms. Brakey stated that the section of the Ohio Revised Code 2744.07 (A)(1) that was cited in the request refers to any civil action or proceeding which contains an allegation for damages, and this is not a civil action, this is a disciplinary proceeding and there is no allegation for damages, as Judge Grendell's legal law license or his ability to continue as a Judge, this is inconsistent with the request.

- Mr. Spidalieri noted that this request was reviewed by outside legal counsel. Mr. Morgan [county administrator] explained that the response is that the Board has the authority to provide the funds but no requirement to provide

the funds, and the request for outside counsel is actually to seek a joint application for outside counsel.

- Ms. Brakey stated that because the request came after the fees have already been incurred, the Board had no ability to decide the choice of or rate for the attorney hired.

- Mr. Spidalieri stated that the Supreme Court appoints counsel to this matter and the Commissioners do not have negotiating rights. It is the Supreme Court making the appointment.

- Mr. Morgan agreed that the Supreme Court appointed this outside counsel for him to this case, adding that we have never received anything from the Court and what may have been signed off on prior to that decision being made. Mr. Morgan stated that Ms. Brakey is correct that this discussion should have taken place two years ago when the counsel was getting to the point that the Supreme Court funds were running out and who would then be responsible for the rest of the costs.

- Mr. Spidalieri added that Judge Grendell stated that the bills were not coming to the Commissioners and were surprised by the bills showing up at the Courts office at a later date and that was a miscommunication, along with the cost of the bills, that the $300,000.00 was extreme and Judge Grendell wanted to assist in reducing the amount.

- Mr. Spidalieri added that one way or another, we will need to reach a settlement, whether we pay now or pay after a suit is filed against us. The attorneys were appointed by the Supreme Court and they want to be paid.

- Mr. Spidalieri stated that the Supreme Court ordered it, and they are billing for it, and how we pay for it is yet to be figured out.

- Ms. Brakey added that at best, it is the Commissioners' discretion whether to pay for it and feels it sets a dangerous precedent for taxpayers to be subsidizing an elected official's wrongdoing. If we are forced to do it by the court, that is one thing, but voluntarily paying the legal fees at this time sets a dangerous precedent.

- Mr. Spidalieri stated that Mr. Grendell is an employe of the county that was put into this predicament and that he is entitled to legal representation, and he (Mr. Spidalieri) is not legal counsel on this and not an attorney and won't comment on how this is going to go and one way or another, but this will show its head again.

- Ms. Brakey stated that it is a gray area that Judge Grendell is an employee of the county, as he is partially paid by the state and partially paid by the

county. Does this statue say what he it does, it does not, and a first-year law student could figure that out.

- Mr. Dvorak added that if we are made to pay for a portion of it through the court, he will wait for that day.

{¶23} Following discussion, Geauga denied Relator's requests by a 2-to-0 vote, with Commissioner Spidalieri abstaining.

{¶24} On February 13, 2025, the Supreme Court heard oral argument on Relator's objections.

{¶25} On November 21, 2025, the Supreme Court issued its decision overruling Relator's objections in part and sustaining them in part. *Grendell*, 2025-Ohio-5239, at ¶ 2. Regarding Count 1 (the child custody case), the Supreme Court found that Relator violated Jud.Cond.R. 1.2 (promoting confidence in the judiciary), 2.2 (impartiality and fairness), and 2.11 (disqualification). *Id.* at ¶ 2, 184. The Board of Professional Conduct had also found that Relator violated Prof.Cond.R. 8.4(d), which generally prohibits attorneys from "engag[ing] in conduct that is prejudicial to the administration of justice." *Grendell* at ¶ 184, fn. 8. The Supreme Court determined that such conduct was "encompassed within the violations" the Court had already found; therefore, the Court stated it was "unnecessary to make an additional finding of a violation of Prof.Cond.R. 8.4(d)." *Id*.

{¶26} Regarding Count 3 (the political meeting), the Court found that disciplinary counsel failed to satisfy strict scrutiny in response to Relator's as-applied First Amendment challenge to Jud.Cond.R. 1.2, 1.3, and 2.10(A) (judicial statements on pending and impending cases). *Id*. at ¶ 87, 89. With respect to Relator's conduct during

and after the meeting, the Board failed to establish violations of Jud.Cond.R. 1.2 and 1.3 by clear and convincing evidence. *Id*. at ¶ 99.

{¶27} Regarding Count 4 (legislative testimony), the Court found that Relator's conduct did not violate Jud.Cond.R. 1.3 (avoiding abuse of the prestige of judicial office). The Court did not discipline Relator for violating former Jud.Cond.R. 3.2 (appearances before governmental bodies and consultation with government officials), finding the restriction to be "a content-based speech restriction in violation of the First Amendment to the United States Constitution." *Id*. at ¶ 6.

{¶28} The Supreme Court suspended Relator from the practice of law in Ohio for 18 months with 12 months stayed on the condition that he committed no further misconduct and immediately suspended Relator from judicial office without pay. *Id.* at ¶ 228.

{¶29} On January 20, 2026, the Supreme Court declined to reconsider its decision. *01/20/2026 Case Announcements*, 2026-Ohio-154.

{¶30} On June 8, 2026, the Supreme Court of Ohio granted Relator's application to be reinstated to the practice of law. *06/08/2026 Case Announcements*, 2026-Ohio-2121.

B. These Proceedings

{¶31} On July 29, 2025, Relator filed a petition against Respondents in this Court. Therein, Relator requested "[t]he issuance of a writ of Mandamus ordering the Geauga County Board of Commissioners and Geauga County Prosecuting Attorney to file a Motion for Appointment of Outside Counsel and Approval of Fees under O.R.C. 305.14, based on his conflict of interest and to immediately take all necessary steps to provide for

the appointment and payment of outside local counsel Montgomery Jonson / Stephen Funk by the Geauga County Court of Common Pleas." Alternatively, Relator requested "[t]he issuance of a Writ of Procedendo the Geauga County Court of Common Pleas [sic] to issue an order approving the expenditure of funds for the bills accrued by the mandated and appointed defense counsel, Montgomery Jonson at the trial stage and a further order authorizing the Appointment of Stephen Funk at $300.00 per hour as counsel for the filing of objections, briefs, preparation for legal proceedings and presentation of oral argument before the Ohio Supreme Court."

{¶32} On August 19, 2025, this Court filed an alternative writ setting forth a case management schedule.

{¶33} On September 25, 2025, Respondents filed a Civ.R. 12(B)(6) motion to dismiss Relator's petition, which Relator opposed.

{¶34} On December 8, 2025, this Court granted Respondents' motion to dismiss in relation to Relator's procedendo claim and overruled the motion in relation to Relator's mandamus claim.

{¶35} On December 19, 2025, Respondents filed an answer to Relator's petition.

{¶36} On December 24, 2025, we issued a scheduling order regarding discovery and dispositive motions.

{¶37} On March 13, 2026, we granted the motion of Respondents' counsel to withdraw from representing Flaiz only.

{¶38} On July 6, 2026, Geauga filed a motion for summary judgment. Relator filed a brief in opposition on August 13, 2026, and Geauga filed a reply brief on August 20, 2026.

{¶39} On July 7, 2026, Relator filed a cross-motion for summary judgment. Geauga filed a brief in opposition on August 4, 2026, and Relator filed a reply brief on August 18, 2026.

{¶40} Flaiz has not filed his own dispositive motion or responded to the other parties' cross-motions.

II. STANDARD OF REVIEW

A. Mandamus

{¶41} "Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. "'The function of mandamus is to compel the performance of a present existing duty as to which there is a default.'" *State ex rel. Willis v. Sheboy*, 6 Ohio St.3d 167, 168 (1983), quoting *State ex rel. Fed. Homes Properties, Inc. v. Singer*, 9 Ohio St.2d 95, 96 (1967). "To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Gadell-Newton v. Husted*, 2018-Ohio-1854, ¶ 6.

B. Summary Judgment

{¶42} Geauga and Relator have filed cross-motions for summary judgment on Relator's mandamus claim. Summary judgment is proper when (1) "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to

judgment as a matter of law"; and (2) "it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." Civ.R. 56(C).

{¶43} A party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 1996-Ohio-107, ¶ 18. "If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied." *Id*. "However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." *Id.*

III. THE PARTIES' ARGUMENTS

{¶44} Geauga asserts three main arguments. First, Geauga argues that, as a matter of law, Relator cannot establish a clear legal right or a clear legal duty that would compel Respondents to authorize payment of Relator's legal fees incurred in his disciplinary proceeding. According to Geauga, a disciplinary action against a judge is not "public business coming before" the "county officer," and a judge defending his law license does not constitute an interest in his "official capacity." R.C. 305.14(A). In addition, parties generally pay their own attorney fees in legal proceedings absent legal authority or a contract permitting fee-shifting. Second, Geauga argues that Relator's petition is

barred under the doctrine of laches to the extent he incurred legal fees before he requested funds from Geauga or filed this action. Third, Geauga argues that Relator is not entitled to have attorney fees paid because he did not follow the statutory process to procure outside counsel.[2]

{¶45} Relator argues that he is entitled to payment of his legal fees because the disciplinary complaint named him as a party in his official capacity, Flaiz was Relator's statutorily-mandated counsel, and Flaiz had a conflict of interest.

IV. LAW

A. Statutory Authority

{¶46} The Supreme Court of Ohio has explained that "R.C. 309.09(A), 305.14(A), and 305.17 set forth the process through which county officials, including judges, may procure outside legal counsel." *State ex rel. O'Diam v. Greene Cty. Bd. of Commrs.*, 2020-Ohio-3503, ¶ 13. First, R.C. 309.09(A) provides:

> The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, *all other county officers* and boards, and all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties. *The prosecuting attorney shall* prosecute and *defend all suits and actions that any such officer*, board, or tax-supported public library directs or *to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code*.

(Emphasis added.)

{¶47} Thus, "[p]ursuant to R.C. 309.09(A), the prosecuting attorney 'has the statutory responsibility and authority to advise, prosecute, and defend county officers and

2. Geauga also asserts that Relator "conclusively admitted" certain facts pursuant to Civ.R. 36 because Relator untimely responded to Geauga's requests for admission. Relator has not addressed Geauga's assertion. Since the purportedly admitted facts do not affect our disposition, we do not otherwise address Geauga's assertion.

boards as specified.'" *State ex rel. Hamilton Cty. Bd. of Commrs. v. Hamilton Cty. Court of Common Pleas*, 2010-Ohio-2467, ¶ 22, quoting *State ex rel. O'Connor v. Davis*, 139 Ohio App.3d 701, 706 (9th Dist. 2000).

{¶48} Second, R.C. 305.14(A) provides:

> The court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer *in any matter of public business coming before such board or officer, and in the* prosecution or *defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity*.

(Emphasis added.)

{¶49} Thus, "R.C. 305.14 provides an exception to the R.C. 309.09 prohibition [against employing outside counsel] by allowing a common pleas court to authorize the board of county commissioners to employ legal counsel besides or in addition to the prosecuting attorney 'upon the application of the prosecuting attorney and the board of county commissioners.'" *State ex rel. Gains v. Maloney*, 2004-Ohio-2658, ¶ 13.

{¶50} Upon the filing of an application, "R.C. 305.14(A) then grants discretion to the court of common pleas," providing that the court "'*may authorize*'" the board to employ legal counsel. (Emphasis in original.) *State ex rel. Dreamer v. Mason*, 2011-Ohio-2318, ¶ 20, quoting R.C. 305.14(A). "[T]he board's appointment of special counsel pursuant to a joint application under R.C. 305.14(A) has no viability until the common pleas court approves the application, and special counsel cannot be paid until the approval occurs." *Hamilton Cty.* at ¶ 33.

{¶51} Third, "R.C. 305.17 provides that the board 'shall fix the compensation of all persons appointed or employed under [R.C. 305.14].'" *O'Diam*, 2020-Ohio-3503, at ¶ 14.

Thus, "[t]he board of county commissioners fixes the compensation of all persons appointed or employed pursuant to R.C. 305.14, and that compensation, along with reasonable expenses, is paid from the county treasury upon allowance by the board. R.C. 305.17." *Dreamer* at ¶ 17.

{¶52} The Supreme Court succinctly summarized the statutory process as follows: "In broad outline, the statutory scheme sets forth the following process for county officials to procure outside representation." *O'Diam* at ¶ 15. "Normally, the county prosecuting attorney will represent any county official in any matter related to the official's public business. R.C. 309.09(A)." *Id*. "But if the prosecuting attorney cannot adequately represent the official, the prosecuting attorney and the board should apply to the court of common pleas, which may authorize the board to employ outside counsel. R.C. 305.14(A)." *Id*. "Upon such authorization, the board has the authority to employ and fix the compensation of that counsel. R.C. 305.17." *Id*.

B. Precedent

{¶53} In *State ex rel. Corrigan v. Seminatore*, 66 Ohio St.2d 459 (1981), the Supreme Court discussed when mandamus relief is available to compel compliance with R.C. 305.14(A). In that case, the prosecuting attorney brought an action against certain members of a county board. *Id*. at 460. The prosecutor refused to represent those members or request that other counsel be provided pursuant to R.C. 305.14. *Id*. at 460-461. The common pleas court appointed counsel for the county board but without the prosecutor's and board of commissioners' joint application. *Id*. at 461.

{¶54} On appeal, the Supreme Court found that the common pleas court's judgment was correct. *Id*. at 472. The Court explained that "[u]nder ordinary

circumstances, the common pleas court should not authorize the appointment of counsel for any county board or officer, even with respect to an action pending in the court, unless an application for such appointment is made by both the prosecuting attorney and the board of county commissioners." *Id*. at 463. However, where "either the prosecuting attorney or the board of county commissioners refuses to afford counsel to a county board in defense of an action pending against the members of that board, mandamus would be an appropriate remedy to compel the prosecuting attorney and the board to make application to the common pleas court, *because failure to do so constitutes an abuse of discretion*." (Emphasis added.) *Id*. at 463-464.

{¶55} The Court held that "application by both the prosecuting attorney and the board of county commissioners is a prerequisite to authorization by a court of common pleas pursuant to R.C. 305.14 of appointment of other counsel to represent a county officer, *except where* the prosecuting attorney has a conflict of interest and refuses to make application." (Emphasis added.) *Id.* at paragraph one of the syllabus. In that instance, "notwithstanding the express language of R.C. 305.14(A), the common pleas court may act to appoint counsel . . . even in the absence of the joint application specified in R.C. 305.14(A) . . . ." *Hamilton Cty.*, 2010-Ohio-2467, at ¶ 28, citing *Seminatore* at paragraph one of the syllabus.

{¶56} In *State ex rel. Stamps v. Automatic Data Processing Bd. of Montgomery Cty.*, 42 Ohio St.3d 164 (1989), the Supreme Court explained the scope of its *Seminatore* holding. In *Stamps*, the county auditor filed a mandamus complaint in the Supreme Court against the prosecutor, the board of commissioners, and several others, in which he requested, among other relief, an order requiring the respondents to apply for the

appointment of special counsel. *Id*. at 164-165. The respondents argued, in relevant part, that they had no duty to apply for or appoint special counsel for the auditor because "those decisions are discretionary under R.C. 305.14." *Id*. at 166.

{¶57} The Supreme Court denied the writ. *Id*. at 168. The Court determined that "contrary to [the auditor's] argument, the *Seminatore* court did not find that the prosecutor and board of county commissioners had a *duty* to apply for appointment of special counsel under the statute." (Emphasis in original.) *Id*. at 167. "Rather, *Seminatore* stated that the failure to apply for appointment in that situation would constitute an 'abuse of discretion.'" *Id*., quoting *Seminatore* at 463-464. The Court explained that "while [*Seminatore*] does not find a duty on the prosecutor's part, *Seminatore* does recognize mandamus as a means to compel an application for special counsel where an abuse of discretion has been shown." *Id*. The Court stated that "[a]n abuse of discretion implies more than an error in judgment. It connotes a decision motivated by '"'perversity of will, passion, prejudice, partiality, or moral delinquency.'"'" *Id*., quoting *State ex rel. Commercial Lovelace Motor Freight, Inc., v. Lancaster*, 22 Ohio St.3d 191, 193 (1986). Applying that standard, the Supreme Court determined that "[t]he circumstances surrounding [the prosector's] refusal to request special counsel for [the auditor] suggest that this decision did not result from these motives. Thus, mandamus cannot be granted on this basis." *Id*.

{¶58} In *State ex rel. Hillyer v. Tuscarawas Cty. Bd. of Commrs.*, 1994-Ohio-13, the Supreme Court held that a court of appeals properly issued a writ of mandamus ordering a board of county commissioners to file an application in the common pleas court for the appointment of outside counsel to represent a county court judge in his dispute

with the board where (1) "the prosecutor would have had an arguable conflict of interest precluding his representation" of the judge, and (2) the board of county commissioners had "refused to make the application to the court of common pleas." *Id*. at ¶ 13.

{¶59} In *State ex rel. Trumbull Cty. Bd. of Elections v. Trumbull Cty. Bd of Commrs.*, 2010-Ohio-2281 (11th Dist.), this Court had occasion to apply *Seminatore* and *Stamps*. In that case, the county board of elections appealed the common pleas court's judgment denying its request for the appointment of outside counsel. *Id*. at ¶ 1. The issue was whether the board of elections was statutorily entitled to outside counsel to assist in its dispute with the board of county commissioners regarding the discontinuation of health insurance coverage for members of the board of elections. *Id*. We reversed, determining that both the prosecutor and board of commissioners had conflicts of interest. *Id*. at ¶ 2. We explained:

> The Board of Commissioners was the opposing side and thus had a conflict of interest. The prosecutor was statutory counsel for the opposing side; the prosecutor attempted to mediate the dispute by delivering messages from one board to the other; the prosecutor sided with the position of the Board of Commissioners; the prosecutor refused to represent the Board of Elections; and, the prosecutor admitted that he had a conflict of interest.

Id. at ¶ 22.

{¶60} We further determined that "a prosecutor cannot deny a county officer outside counsel on the basis that he believes the Board of Elections members are not entitled to health insurance." *Id*. at ¶ 23. This was because "[t]he ultimate decision on the merits of the issue raised by the county officer or board is not the standard for appointment of outside counsel where there is a conflict of interest." *Id*. at ¶ 24. "Rather, appointment is based upon: (1) whether (a) the matter is one of public business coming before the county officer or (b) the county officer directs a prosecution or defense of an

action or proceeding in which the county officer is a party or has an interest in his official capacity; and (2) whether the prosecutor has a conflict of interest. R.C. 305.14(A)." *Id*. In applying *Stamps*, we determined, "[c]onsidering the prosecutor's conflict of interest and partiality and the fact that the suit was brought in the Board of Elections members' official capacities, the failure to file the application for appointment of outside counsel constitutes prejudice and partiality and thus an abuse of discretion." *Id*. at ¶ 25, citing *Stamps* at 167.

V. ANALYSIS

A. Clear Legal Right/Duty

{¶61} We first consider whether Relator has a clear legal right and Respondents have a clear legal duty. As stated, Relator requests "[t]he issuance of a writ of Mandamus ordering [Geauga] and [Flaiz] [1] to file a Motion for Appointment of Outside Counsel and Approval of Fees under O.R.C. 305.14, based on [Flaiz's] conflict of interest and [2] to immediately take all necessary steps to provide for the appointment and payment of outside local counsel Montgomery Jonson / Stephen Funk by the Geauga County Court of Common Pleas."

1. Joint Application

{¶62} Based on the above authority, we find that Relator has established a (1) clear legal right to the filing of a joint application in the common pleas court for the appointment of outside counsel pursuant to R.C. 305.14(A) and (2) a clear legal duty on Respondents' part to file a joint application.

{¶63} As an initial matter, we note that no Ohio court has addressed whether R.C. 309.09(A) and 305.14(A) apply to a judge's disciplinary proceeding. Geauga cites cases from other jurisdictions addressing similar issues. For instance, in *Sanders v. State*, 166

Wash.2d 164 (2009), the Washing Supreme Court determined that the state attorney general was not required to defend a state supreme court justice regarding ethics violations. *Id*. at ¶ 2. In *Board of Chosen Freeholders of Burlington Cty. v Conda*, 164 N.J. Super. 386 (1978), a New Jersey court determined that a judicial officer was not entitled to reimbursement for legal expenses incurred in his defense of disciplinary proceedings. *Id*. at 400. However, the authority upon which the court relied in those cases is materially distinguishable from Ohio law; therefore, we decline to follow them.[3]

(a) R.C. 309.09

{¶64} As stated, R.C. 309.09(A) provides, in relevant part, that "[t]he prosecuting attorney shall prosecute and defend all *suits and actions* that any *[county] officer* . . . directs or to which it is a *party*, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code." (Emphasis added.)

{¶65} Geauga does not dispute Relator's assertion that he is a "county officer," and the Supreme Court of Ohio has held that a judge of a division of the court of common pleas, like Relator, is a "county officer" for purposes of R.C. 309.09(A). *Maloney*, 2004-Ohio-2658, at ¶ 12 (probate judge); *see* 1998 Ohio Atty.Gen.Ops. No. 98-005, at 2-27 (juvenile judge). Geauga also does not dispute Relator's assertions that his disciplinary proceeding is a "suit" or an "action" to which he is a "party." The Supreme Court of Ohio has stated that "[a] disciplinary proceeding is neither a criminal nor a civil proceeding." *Disciplinary Counsel v. Hunter*, 2023-Ohio-4168, ¶ 16. However, given the broadness of

3. Although not binding authority, the OJLSIP policy in the record (ORM-04, effective Mar. 26, 2025), appears to anticipate the statutes' application. Specifically, § III.A.8.provides that "[a] Named Designee may request approval from ORM [Office of Risk Management] to be represented by the designated legal counsel for the jurisdiction of the Named Designee (i.e., city attorney, county prosecutor)."

the statutory phrase "all suits and actions," we find that Relator's disciplinary proceeding qualifies.

{¶66} Accordingly, we find that Flaiz had a statutory duty to defend Relator in his disciplinary proceeding. Consequently, outside counsel for Relator may only be employed at Geauga's expense as provided in R.C. 305.14.

(b) R.C. 305.14(A)

{¶67} As stated, R.C. 305.14(A) provides:

> The court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, *may authorize* the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer [1] *in any matter of public business coming before such board or officer,* and [2] *in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity*.

(Emphasis added.)

{¶68} We acknowledge that Relator's disciplinary proceeding has concluded. However, in *Seminatore*, 66 Ohio St.2d at 465 (1981), the Supreme Court stated that "R.C. 305.14 confers power upon the common pleas court to authorize the appointment of legal counsel other than the prosecuting attorney to represent a county board or officer in a pending action . . . ." (Emphasis added.) In addition, the Supreme Court has held that "in mandamus actions, we are not restricted to considering facts and circumstances at the time a proceeding is instituted, but we consider the facts and conditions at the time we determine whether to grant the writ." *State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.*, 2000-Ohio-13, ¶ 41. Here, at the time Relator requested counsel, his disciplinary proceeding was pending before the Supreme Court of Ohio.

{¶69} Geauga argues that pursuant to R.C. 305.14(A), the disciplinary action against Relator was not "public business coming before" him and that Relator's interest in defending his law license was not an interest in his "official capacity." According to Geauga, the disciplinary proceeding was a private matter involving Relator's personal license to practice law.

{¶70} Relator counters that the disciplinary complaint was served on him in his official capacity at the probate/juvenile court; the allegations against him directly related to his actions as a judge; and the complaint's caption demonstrate that he was named in his official capacity.

{¶71} R.C. Ch. 305 does not define the terms "public business" or "official capacity." In the context of the Public Records Act, the Supreme Court of Ohio has defined "public business" to mean the "business of the government," i.e., "matters within the purview of [a public body's] duties, functions and jurisdiction." *White v. King*, 2016-Ohio-2770, ¶ 21. "Official capacity" means "[t]he capacity in which an officeholder is expected or permitted to exercise the powers and duties of the office." *Black's Law Dictionary* (12th Ed. 2024).

{¶72} The Supreme Court of Ohio has disciplined judges for misconduct occurring during the performance of their judicial duties. For instance, in *Disciplinary Counsel v. Terry*, 2016-Ohio-563, a common pleas judge was "convicted of felony offenses arising from actions taken in his official capacity as a judge," i.e., accepting payments and other things of value in exchange for favorable judicial action. *Id*. at ¶ 17. The Supreme Court characterized the judge's misconduct as occurring "in the performance of his core judicial

duties." *Id*. *See also* Jud.Cond.R. 2.2 ("A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." (Emphasis deleted.)

{¶73} As stated, Relator was found to have violated Jud.Cond.R, 1.2 (promoting confidence in the judiciary), 2.2 (impartiality and fairness), and 2.11 (disqualification), *Grendell*, 2025-Ohio-5239, at ¶ 2, 184, which apply to "all fulltime judges." Jud.Cond.R. Application, § I(A). A "judge, within the meaning of [the] code, is a lawyer who is authorized to perform judicial functions within a court . . . ." Jud.Cond.R., Application, § I(B).

{¶74} Despite the foregoing authority, we need not apply it in this mandamus action. This is because the factors in R.C. 305.14(A) are for the common pleas court to address in determining whether to approve or deny a joint application. *See Trumbull Cty.*, 2010-Ohio-2281, at ¶ 24 (11th Dist.) (the common pleas court's "appointment is based upon" the factors in R.C. 305.14(A)); *Stark Cty. Treasurer ex rel. Ferrero v. Stark Cty. Court of Common Pleas*, 2011-Ohio-433, ¶ 22 (5th Dist.) ("In interpreting R.C. 305.14(A), we find that the General Assembly intended the [common pleas] court to play this role"). By contrast, this mandamus action is limited to determining whether Respondents abused their discretion and, thus, whether they must be ordered to *file* a joint application. *See Seminatore*, 66 Ohio St.2d at 464.

(c) Abuse of Discretion

{¶75} Respondents do not have a general statutory duty to file an application for the appointment of outside counsel. *See Stamps*, 42 Ohio St. 3d at 167. However, mandamus is a proper means to compel an application where an abuse of discretion has been shown. *See id*. The lack of application constitutes an abuse of discretion where

there is a conflict of interest and a refusal to make an application. *Trumbull Cty.*, 2010-Ohio-2281, at ¶ 20 (11th Dist.); *see Hillyer* 1994-Ohio-13, at ¶ 13. Abuse of discretion can also be shown by a decision motivated by "'perversity of will, passion, prejudice, partiality, or moral delinquency.'" *Stamps* at 167, quoting *Commercial Lovelace*, 22 Ohio St.3d at 193; *e.g., Trumbull Cty.* at ¶ 25.

{¶76} There can be no dispute that Geauga refused to make application for the appointment of outside counsel. Therefore, the issue is whether Relator has established (1) a conflict of interest and/or (2) perversity of will, passion, prejudice, partiality, or moral delinquency.

{¶77} Relator argues that Flaiz had a conflict of interest because he was a witness in Relator's disciplinary proceeding. We acknowledge that a conflict typically arises when the prosecuting attorney is faced with representing two county boards or officers whose interests are adverse. *In re Retaining Vorys Sater Seymour & Pease L.L.P. as Special Counsel*, 2011-Ohio-640, ¶ 64 (7th Dist.). While this case does not present that factual scenario, it is not the sole situation that may create a conflict of interest.

{¶78} Prof.Cond.R. 3.7, entitled "Lawyer as Witness," provides:

> (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless one or more of the following applies:
>
> > (1) the testimony relates to an uncontested issue;
> >
> > (2) the testimony relates to the nature and value of legal services rendered in the case;
> >
> > (3) the disqualification of the lawyer would work substantial hardship on the client.
>
> (b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or 1.9.

> (c) A government lawyer participating in a case shall not testify or offer the testimony of another lawyer in the same government agency, except where division (a) applies or where permitted by law.

{¶79} The Comment to Prof.Cond.R. 3.7 explains that "[c]ombining the roles of advocate and witness can prejudice the tribunal and the opposing party and *can also involve a conflict of interest between the lawyer and client*." (Emphasis added.) "[I]n determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer also must consider that the dual role may give rise to a conflict of interest that will require compliance with Rule 1.7 or 1.9."

{¶80} Prof.Cond.R. 1.7 addresses "Conflict of Interest; Current Clients," and Prof.Cond.R. 1.9 addresses "Duties to Former Clients." Prof.Cond.R. 1.7 provides:

> (a) *A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies*:
>
> > (1) the representation of that client will be directly adverse to another current client;
> >
> > (2) *there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited* by the lawyer's responsibilities to another client, a former client, or a third person or *by the lawyer's own personal interests*.
>
> (b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:
>
> > (1) the lawyer will be able to provide competent and diligent representation to each affected client;
> >
> > (2) each affected client gives informed consent, confirmed in writing;
> >
> > (3) the representation is not precluded by division (c) of this rule.
>
> (c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

> (1) the representation is prohibited by law;
>
> (2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

(Emphasis added.)

{¶81} Geauga does not dispute Relator's contention that Flaiz had a conflict of interest, nor does Geauga contend that an exception or waiver applies. Based on the above authority, we find that Flaiz had an arguable conflict of interest that precluded his representation of Relator. *See Hillyer*, 1994-Ohio-13, at ¶ 13.

{¶82} The record also demonstrates partiality. *See Stamps*, 42 Ohio St.3d at 167; *Trumbull Cty*., 2010-Ohio-2281, at ¶ 25 (11th Dist.). "Partiality" means "[b]ias or favoritism toward one person, side, or thing over others; an undue inclination to favor one side of a dispute over others." *Black's Law Dictionary* (12th Ed. 2024). As stated, in September 2023, disciplinary counsel filed a preliminary witness list that included Flaiz and many others. In October 2023, Respondents filed a joint application for the appointment of counsel to represent 12 of these people, including Flaiz himself.

{¶83} Accordingly, Relator has established that Respondents abused their discretion in refusing to file a joint application.

(d) Geauga's Arguments

{¶84} Geauga's arguments do not compel a contrary conclusion. For instance, Geauga argues that mandamus should not issue in "doubtful cases," citing *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165 (1977). The Supreme Court did not use the phrase "doubtful cases" in *Taylor*. Rather, the Court stated that "mandamus and prohibition are extraordinary remedies, to be issued with great caution and discretion and only when the

way is clear." *Id*. at 166. We acknowledge that some Ohio appellate courts have attributed the "doubtful-cases" phrase to *Taylor*. *See, e.g., Barber v. McFaul*, 2003-Ohio-6948, ¶ 6 (8th Dist.); *State ex rel. Aliane v. Sheward*, 2003-Ohio-6554, ¶ 6 (10th Dist.). To the extent that *Taylor* stands for that proposition, Geauga has not adequately explained how it should apply in a summary judgment exercise.

{¶85} Similarly, Geauga argues that it is "impossible" for Relator to "clearly and convincingly establish a clear legal right and clear legal duty." Clear-and-convincing-evidence would be the required standard of proof in the event this mandamus action proceeded to trial. *See Husted*, 2018-Ohio-1854, at ¶ 6. However, original actions in this Court "generally proceed in accordance with the Ohio Rules of Civil Procedure." Eleventh Dist.Loc.R. 101(B)(1). "Civ.R. 56 merely requires that the trial court determine whether there are any genuine issues of material fact to be tried, not whether one party or the other will satisfy its burden of proof when the case eventually comes to trial." *King v. Hazen*, 2006-Ohio-4823, ¶ 59 (11th Dist.). By contrast, "[a]pplication of the clear-and-convincing-evidence standard 'presupposes a weighing of the evidence, which a trial court should not undertake at summary judgment.'" *Environmental Sols. & Innovations, Inc. v. Edge Eng. & Science, LLC*, 2023-Ohio-2605, ¶ 12 (1st Dist.), quoting *Wigton v. Univ. of Cincinnati Physicians, Inc.*, 2021-Ohio-3576, ¶ 13 (1st Dist.). The facts in this case are not materially in dispute. And crucially, we have located no existing Ohio authority excluding, as a matter of law, Relator's disciplinary proceeding from the operation of R.C. 309.09(A) and 305.14(A).

2. Appointment, Approval, and Payment

{¶86} Although Relator has established a clear legal right to Respondents' *filing* of a joint application, Relator has *not* established a clear legal right to the appointment of outside counsel or to the approval and payment of counsel's fees and expenses.

{¶87} As stated, upon the filing of the application, "R.C. 305.14(A) then grants discretion to the court of common pleas," providing that the court "'*may authorize*'" the board to employ legal counsel. (Emphasis in original.) *Dreamer*, 2011-Ohio-2318, at ¶ 20; *see Vorys*, 2011-Ohio-640, at ¶ 45 (7th Dist.) ("the common pleas court has the threshold discretion to accept or deny the application for outside counsel pursuant to R.C. 305.14(A)"); *Stark Cty. Treasurer*, 2011-Ohio-433, at ¶ 22 (5th Dist.) ("under R.C. 305.14(A), authorization of outside counsel when a conflict of interest exists is at the [common pleas] court's discretion"). Mandamus will not lie to control judicial discretion. *State ex rel. Rashada v. Pianka*, 2006-Ohio-6366, ¶ 3. Thus, such matters are beyond the scope of this mandamus action.

{¶88} In the event the common pleas court approves Respondents' joint application, R.C. 305.17 then requires Geauga to fix appointed counsel's compensation and pay such compensation, along with reasonable expenses, from the county treasury upon Geauga's allowance. *See Dreamer* at ¶ 17. However, the appointment of counsel under R.C. 305.14(A) "has no viability until the common pleas court approves the application, and . . . counsel cannot be paid until the approval occurs." *Hamilton Cty.*, 2010-Ohio-2467, at ¶ 33.

B. Adequate Remedy

{¶89} We next consider whether Relator has an adequate remedy at law to compel Respondents' filing of a joint application.

{¶90} "An adequate remedy at law is one that is 'complete, beneficial, and speedy.'" *State ex rel. Kerns v. Simmers*, 2018-Ohio-256, ¶ 10, quoting *State ex rel. Natl. Elec. Contrs. Assn., Ohio Conference v. Ohio Bur. of Emp. Servs.*, 1998-Ohio-281, ¶ 15. In *Seminatore*, the Supreme Court held, in relevant part, that when "the prosecuting attorney or the board of county commissioners refuses to afford counsel to a county board in defense of an action pending against the members of that board, *mandamus would be an appropriate remedy* . . . ." (Emphasis added.) *Seminatore*, 66 Ohio St.2d at 463. Although Relator is a county officer, this holding applies equally to him.

{¶91} Accordingly, Relator has established that he has no adequate remedy at law to compel the filing of a joint application.

C. Laches

{¶92} We next consider Geauga's argument that Appellant's mandamus claim is barred by the doctrine of laches.

{¶93} "An application for a writ of mandamus must be made within a reasonable time after the alleged wrongful act occurred." *State ex rel. Madden v. Windham Exempted Village School Dist. Bd. of Edn.*, 42 Ohio St.3d 86, 90-91 (1989). "The elements of a laches defense are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Citizens for Responsible Green Govt. v. Green*, 2018-Ohio-3489, ¶ 16.

{¶94} Geauga argues that Relator "unreasonably delayed in asserting his purported right to have counsel appointed"; Relator has no "legitimate excuse for delay" and did not request the approval of representation or the fixing of compensation before "he incurred the vast majority of fees"; and Geauga is prejudiced because it could not "review the choice of counsel" or fix their compensation pursuant to R.C. 305.17.

{¶95} Geauga's "unreasonable delay" argument misapprehends the first element of laches. Respondents' wrongful act, i.e., their refusal to file a joint application in the common pleas court, occurred during Geauga's meeting held on January 7, 2025. Relator's assertion of his right, i.e., his filing of this mandamus action, occurred on July 29, 2025. Geauga's argument, by contrast, involves the timing of Relator's request for outside counsel, which is not the proper focus of a laches defense.

{¶96} We also reject Geauga's prejudice argument. As stated, R.C. 305.17 gives the commissioners the power to "fix the compensation of all persons appointed or employed under" R.C. 305.14(A). Thus, Geauga has fiscal control over the amount of legal expenses it may bear under R.C. 305.14(A) in the event the common pleas court approves Respondents' joint application. As one court has noted, the board of commissioners and the prosecutor "are not required to 'agree' to the appointment or payment of fees." *State ex rel. Dreamer v. Mason*, 2010-Ohio-4110, ¶ 48 (8th Dist.), *rev'd on other grounds*, 2011-Ohio-2318. As another court has noted, even though the board sets compensation, "the common pleas court, exercising its discretion when reviewing an application, can look into practical matters such as cost to the county." *Vorys*, 2011-Ohio-640, at ¶ 81 (7th Dist.).

D. Statutory Process

{¶97} Finally, we consider Geauga's argument that Relator's mandamus claim is barred because he failed to follow the statutory process for the appointment of counsel pursuant to R.C. 305.14(A).

{¶98} Geauga relies on the Supreme Court of Ohio's decision in *O'Diam*, 2020-Ohio-3503. In *O'Diam*, the Supreme Court denied a probate judge's request for a writ of mandamus to enforce his order requiring the board of county commissioners to pay his legal fees and expenses incurred in a dispute over the probate court's facilities. *Id*. at ¶ 4, 35. The Court characterized the issue before it as "whether Judge O'Diam is entitled to outside counsel at the county's expense when he did not use the process set forth in R.C. 309.09(A), 305.14(A), and 305.17." *Id*. at ¶ 11. Instead of utilizing the statutory process, Judge O'Diam "claim[ed] that his inherent authority as a judge entitles him to force the county to pay any legal expenses arising out of his official duties." *Id*. at ¶ 12. The Supreme Court rejected Judge O'Diam's claim, holding, in relevant part, "the inherent powers of the courts do not license a judge to thwart the otherwise constitutional statutory processes for hiring counsel set forth in R.C. 309.09(A), 305.14(A), and 305.17"; "[j]udges cannot simply demand that the taxpayers pay for their every wish without complying with the lawful processes set forth by the General Assembly"; and the prosecutor's "alleged conflict" did not "justify ignoring the statutory process." *Id*. at ¶ 12, 24, 32.

{¶99} We find *O'Diam* to be distinguishable. Unlike in *O'Diam*, Relator has not requested that we order Geauga to pay his legal fees and expenses based on his inherent authority as a judge. Rather, Relator has invoked R.C. 309.09(A) and 305.14(A). In addition, in *O'Diam*, unlike in the present case, "neither the board nor the prosecuting

refused to ask the court of common pleas to authorize outside counsel. Rather, they were in the process of finding such counsel." *Id*. at ¶ 24. As one court has noted, "[i]t is inconsistent for respondents to stand in the way of proper procedural performance under R.C. 305.14(A) while arguing that relators' writ of mandamus must fail because the particulars of R.C. 305.14(A) were not followed." *Dreamer*, 2010-Ohio-4110, at ¶ 50 (8th Dist.), *rev'd on other grounds*, 2011-Ohio-2318.

{¶100} Accordingly, *O'Diam* does not bar Relator's mandamus claim. To the extent Relator may have imperfectly invoked the statutory process, we believe the common pleas court may consider such facts, in its discretion, in considering Respondents' joint application.

VI. Conclusion

{¶101} Respondents are ordered to file a joint application to the Geauga County Court of Common Pleas pursuant to R.C. 305.14(A), which confers discretion on that court to approve or deny the joint application. Matters for the common pleas court's consideration include whether Relator's disciplinary proceeding constitutes (1) a "matter of public business coming before such . . . officer" or (2) an "action or proceeding in which such . . . officer is a party or has an interest, in its official capacity." Matters for the common pleas court's consideration may also include (1) practical matters, such as cost to the county and/or (2) whether Relator properly utilized the statutory process to obtain outside counsel.

{¶102} For the foregoing reasons, Relator's motion for summary judgment, Geauga's cross-motion for summary judgment, and Relator's petition for writ of mandamus are each granted in part and denied in part.

JOHN J. EKLUND, J.; CAROL ANN ROBB, J., Seventh Appellate District, sitting by assignment; MARK A. HANNI, J., Seventh Appellate District, sitting by assignment; concur.

JUDGMENT ENTRY

For the reasons stated in the per curiam opinion of this court, Relator's motion for summary judgment, Geauga's cross-motion for summary judgment, and Relator's petition for writ of mandamus are each granted in part and denied in part. Respondents are ordered to file a joint application for the appointment of outside counsel in the Geauga County Court of Common Pleas pursuant to R.C. 305.14(A).

Costs to be taxed against the parties equally.

JUDGE JOHN J. EKLUND,
concurs

JUDGE CAROL ANN ROBB,
Seventh Appellate District, sitting by assignment,
concurs

JUDGE MARK A. HANNI,
Seventh Appellate District, sitting by assignment,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.