

**IN THE SUPREME COURT OF OHIO**

**THE STATE OF OHIO, ex rel.  
FAITH ANDREWS, CLERK OF  
COURTS FOR LAKE COUNTY, OHIO**

**CASE NO: 2022-0409**

Relator,

**ORIGINAL ACTION**

v.

**THE COURT OF COMMON PLEAS  
OF LAKE COUNTY, OHIO, et al.,**

Respondents.

**RELATOR'S MOTION FOR PROTECTIVE ORDER REGARDING PRIVILEGED  
PORTIONS OF COUNSEL'S INVOICES AND FOR AN ORDER PRECLUDING  
RESPONDENTS AND THEIR COUNSEL FROM MAKING CERTAIN  
EXTRAJUDICIAL STATEMENTS**

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Now comes Relator Faith Andrews, who pursuant to S.Ct.Prac.R. 4.01(A)(1) respectfully asks the Court for the following three forms of relief in this original action: (1) a protective order prohibiting the public disclosure of the narrative portions of the undersigned counsel’s future invoices for legal services pursuant to R.C. 149.43(A)(1)(v) and this Court’s precedent confirming the privileged nature of those portions; and confirming that Relator has not waived her privilege with respect to any of those portions; (2) a protective order prohibiting the disclosure of the narrative portions of the undersigned counsel’s invoices for legal services to the Respondents or any other Lake County employees other than those directly tasked with the review and payment of the invoices; and 3) an order consistent with Rule 3.6 of the Ohio Rules of Professional Conduct precluding Respondents or their counsel from making prejudicial extrajudicial statements to the press or others regarding the issues before this Court. The basis for Relator’s Motion is more fully set forth below.

**I. Introduction**

In her original action, Relator Faith Andrews – the duly elected Clerk of Lake County – seeks writs of prohibition and mandamus to prevent Respondents from constructively discharging her from her elected position and also from enforcing certain improper entries and orders. In the alternative, she seeks a writ of *quo warranto* to restore her to the public office that Respondents have effectively (and unlawfully) wrested from her. (*See generally* Relator’s Am. Compl.)

The judges of Lake County clearly do not like Ms. Andrews and have made no secret about their desire for her to be “removed from office.”<sup>1</sup> First, they presented her with defamatory *unfiled* journal entries, threatening her with contempt and arrest – as well as publication of the unfiled entries – if she failed to abide by them. (*See* Am. Compl. ¶¶ 14-38.) Most recently, they formally journalized a lengthy May 4, 2022 order that bars Ms. Andrews from her courthouse office except for one day a month, subjects her to administrative searches at any time, aims a security camera at her office door for no good reason, portrays her in a false light as prone to violence in the workplace, and otherwise repeatedly defames her without the opportunity to be heard or to respond.<sup>2</sup> (*See* Am. Compl. at ¶¶ 45-54.) A detailed recitation of the events leading to this original action can be found in Ms. Andrews’ First Amended Complaint filed on May 10, 2022, and is incorporated by reference here.

Because this case involves a number of elected officials in Lake County, it is not surprising that the local media has taken an interest in the matter. Unfortunately, counsel for Respondents have begun making advocacy statements to the press, thereby implicating Rule 3.6 of the Ohio Rules of Professional Conduct. And Lake County has improperly produced a complete, unredacted copy of the undersigned counsel’s first invoice for legal services – including counsel’s privileged narrative billing descriptions – contravening the Ohio Public Records Act and decades of precedent applying that Act. For the reasons described below, this Court should issue a

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<sup>1</sup> When Respondent Judge Lucci chastised Ms. Andrews in the courtroom in the presence of the other Respondents and two sheriff’s deputies, and provided to her the lengthy draft March Entry discussed in Ms. Andrews’ First Amended Complaint (*see* Am. Compl. ¶ 19), Judge Lucci remarked “you cannot be easily removed from office.”

<sup>2</sup> At the courtroom meeting described above in n.1, Respondent Judge Lucci said “This is not a negotiation. This is not a colloquy.” He did not afford Ms. Andrews any opportunity to address any of the contents of the draft March Entry he presented to her that day, when he told the sheriff’s deputies present to arrest her if she came to the courthouse at any time over the weekend.

protective order addressing the County's improper disclosure of privileged portions of Porter Wright's invoices for legal services provided to Ms. Andrews, as well as an order consistent with Rule 3.6 of the Ohio Rules of Professional Conduct imposing restrictions upon certain extrajudicial statements by Respondents and their counsel. Given the emergent nature of these issues, Ms. Andrews respectfully requests this Court's prompt attention to these matters.

**II. The Court Should Issue an Order Confirming that Privileged Portions of Relator's Counsel's Invoices for Legal Services Are Not Subject to Disclosure Under the Ohio Public Records Act, and that Ms. Andrews Has Not Waived Any Privilege.**

"In performing his various duties...it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." *Hickman v. Taylor*, 329 U.S. 495, 510 (1947). Furthermore, the attorney-client privilege, the oldest of the privileges for confidential communications, "is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, *which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure.*" *Upjohn v. United States*, 449 U.S. 383, 389 (1981) (emphasis added; quoting *Hunt v. Blackburn*, 128 U.S. 464 (1888)).

Here, the basic confidentiality and privacy necessary for Ms. Andrews to obtain full and adequate advice of counsel is threatened by the disclosure of the undersigned counsel's bills for legal services, including unredacted narrative portions, to the media. In this case, the undersigned counsel must submit their bills to the Lake County government for payment on their approved representation, but that should not result in the publication of the privileged portions of those bills in the media or their review by Ms. Andrews' adversaries in this proceeding.

This Court and other Ohio courts have long held that the narrative portions of an attorney's invoices to his or her clients are protected by the attorney-client privilege. *State ex rel. Anderson*

*v. City of Vermilion*, 134 Ohio St. 3d 120, 123, 2012-Ohio-5320 (“More specifically, we have held that the narrative portions of itemized attorney-billing statements containing descriptions of legal services performed by counsel for a client are protected by the attorney-client privilege.”) (citing *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011 Ohio 6009, 959 N.E.2d 524, ¶ 28-29 and *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor’s Office*, 133 Ohio St. 3d 139, 2012 Ohio 4246, 976 N.E.2d 877, ¶ 36); *see also State ex rel. Alley v. Couchois*, 2d Dist. No. 94-CA-30, 1995 WL 559973, at \*4 (Sept. 20, 1995) (holding that “narrative portions” of attorney bills that describe the legal services performed “represent communications from the attorney to the client about matters for which the attorney has been retained by the client”); *Shell v. Drew & Ward Co., L.P.A.*, 178 Ohio App.3d 163, 2008-Ohio-4474, 897 N.E.2d 201, at ¶20–28.

Consistent with the foregoing authority, the undersigned counsel – when first engaged by Lake County to represent Ms. Andrews in her dispute with Respondents – requested and received assurances that Porter Wright’s invoices relating to the firm’s representation of Ms. Andrews would be treated appropriately and confidentially. However, without prior notice to Ms. Andrews or the opportunity to be heard, the media obtained and published portions of Porter Wright’s initial bill on the internet and television. *See* Mark Naymik, WKYC Studios, *Lake County Clerk of Courts Faith Andrews’ legal defense cost taxpayers nearly \$34,000 in first month* (May 12, 2022).<sup>3</sup>

Lake County’s production of the complete, unredacted Porter Wright invoice was improper and unnecessary under Ohio’s Public Records Act, which includes a catch-all exemption

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<sup>3</sup>*Available at:* <https://www.wkyc.com/article/news/investigations/lake-county-clerk-of-courts-faith-andrews-legal-defense-cost-taxpayers-nearly-34000/95-9875e94d-30af-44b0-94f8-db4a1e35ba86> (last accessed May 16, 2022). The online version of Mr. Naymik’s article permitted readers to download a complete .pdf copy of Porter Wright’s invoice, including all narrative (and unredacted) billing descriptions. This Court’s Office of Public Information included a link to Mr. Naymik’s article in its compilation of Supreme Court Headlines for Friday, May 13, 2022.

from disclosure for information protected by the attorney-client privilege and other state or federal laws. R.C. 149.43(A)(1)(v). It would not have been difficult for Lake County to identify and apply this settled exception to public disclosure in light of the above-cited authority, particularly given that the Ohio Attorney General's *Sunshine Manual* – the well-known guidebook for Ohio agencies about the Public Records Act, which is freely available online<sup>4</sup> – specifically identifies this exemption applicable to the narrative portions of attorneys' billing statements to public offices. *See* 2022 Sunshine Manual at 44.

After Porter Wright's unredacted invoice was improperly disclosed, the undersigned Counsel of Record for Ms. Andrews immediately contacted the Lake County Prosecutor's office to discuss the matter, and were assured that Lake County would not produce unredacted versions of future invoices *if the Supreme Court issued an order to that effect*.

Accordingly, consistent with the Public Records Act and controlling precedent, Ms. Andrews respectfully asks this Court to issue a protective order providing that the narrative portions of Porter Wright's future invoices for legal services to Ms. Andrews will not be publicly disclosed, nor disclosed to her adversaries in this action. The narrative portion of counsel's invoice for legal services provides information as to the strategy, mental impressions, and privileged communications of Ms. Andrew's counsel, which for the reasons set forth above (and long recognized by the common law) should be protected as confidential. Ms. Andrews also asks the Court to confirm in its order that she has not waived or authorized any Lake County employee to waive her attorney-client privilege with the undersigned counsel or any other attorney with whom she may consult. Because Porter Wright will be issuing another invoice to Lake County after the

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<sup>4</sup> Available at: <https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Legal/Sunshine-Laws-Publications/2021-Sunshine-Manual.aspx> (last visited May 16, 2022).

end of the current month of May, Ms. Andrews respectfully asks the Court to act as soon as practicable on this request.

### **III. The Court Should Issue an Order Precluding Respondents and their Counsel from Making Prejudicial Extrajudicial Statements to the Press or Others.**

Ms. Andrews is concerned that the above-described publication of her counsel's bill, including the privileged narrative entries, is a part of continuing pattern of using the media against Ms. Andrews. Although Respondents have yet to formally answer or otherwise move in response to the original or amended complaint, Respondents' counsel have already begun to make their case against Ms. Andrews *in the press*. Indeed, the same reporter who was immediately on the spot to obtain an unredacted copy of Porter Wright's first invoice for legal services, previously published a wholly one-sided article which – although including a quote from Respondents' counsel – never even attempted to quote the other side of the story. See Mark Naymik, *Lake County Clerk of Courts Faith Andrews accused of mocking judges, mismanaging office*, WKYC Studios (quoting Respondents' counsel Kim Riley as saying “[Ms. Andrews] has no independent mission, duties, or discretion.”)<sup>5</sup> Ms. Riley was also quoted a number of times in a separate publication, with the Montgomery Jonson firm apparently providing the reporter a “statement on behalf of the court” that addresses a number of disputed issues in this proceeding, wrongly implying to readers that Ms. Andrews – unlike her predecessors in her elected office – does not “support” the courts’ “operations.” See Chad Felton, *Lake County Clerk of Courts files suit against Common Pleas Court*, The News-Herald (May 16, 2022).<sup>6</sup> From these and other apparent efforts to influence

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<sup>5</sup> Available at: <https://www.wkyc.com/video/news/investigations/lake-county-clerk-of-courts-faith-andrews-accused-of-mocking-judges-mismanaging-office/95-e4d4ce4f-13a4-40cb-8031-83cec2ed31a0> (last accessed May 16, 2022).

<sup>6</sup> Available at: <https://www.news-herald.com/2022/05/02/lake-county-clerk-of-courts-files-suit-against-common-pleas-court/> (last accessed May 16, 2022).

public opinion, there is a real risk of material prejudice to Ms. Andrews, an elected official, and to the tainting of the local jury pool – if any of the lawsuits against her that Respondents predict (and arguably encourage) are, in fact, filed.<sup>7</sup>

This Court long ago stated that “[l]egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.” *In re T.R.*, 52 Ohio St.3d 6, 22, 556 N.E.2d 439 (1990), (quoting *Bridges v. California*, 314 U.S. 252, 271 (1941)). In the same case, this Court acknowledged that limited “gag orders” have been appropriate to secure litigants’ confidentiality interests and the privacy interests of parties to sensational cases. *In re T.R.*, 52 Ohio St.3d at \*21 (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) and *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985)). As this Court explained in *In re T.R.*, “[i]n the presumptively open atmosphere of the adult criminal or civil trial, orders which are effectively prior restraints on the litigants have been frequently used” to ensure fair trials. *In re T.R.*, 52 Ohio St.3d at \*21 (citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 564 (1976), *Sheppard v. Maxwell*, 384 U.S. 333, 361 (1966), and *Florida Freedom Newspapers, Inc. v. McCrary*, 497 So.2d 652, 657 (Fla.App. 1986).) As such, this Court has approved of trial courts issuing appropriately limited gag orders and has disciplined attorneys for violating them. *State v. Grate*, 164 Ohio St.3d 9, 2020-Ohio-5584, ¶ 65); *Disciplinary Counsel v. Rohrer*, 124 Ohio St.3d 65, 2009-Ohio-5930, ¶ 24.

These principles are reflected in Rule 3.6 of the Ohio Rules of Professional Conduct, regarding trial publicity, which provides, subject to specific exceptions, that “[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an

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<sup>7</sup> In Respondents’ latest journalized Entry regarding Ms. Andrews, which is addressed in her First Amended Complaint, Respondents state that the County has been placed “on notice to preserve evidence” by legal counsel for multiple deputy clerks who apparently are considering legal action of some kind against Ms. Andrews. (May 4, 2022 Entry attached to the Affidavit of Faith Andrews in Support of her Am. Compl., at ¶ 54.)



extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” Ohio Prof.Cond.R. 3.6(a). As the Comment to that Rule provides, “[p]reserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved.” *Id.* at Comment [1]. Whether or not the issues in this case (or other cases that may subsequently be brought concerning Ms. Andrews) may be decided by a jury, Respondents’ effort to advocate through the media and to damage Ms. Andrews’ future electability is improper.

For the foregoing reasons, Ms. Andrews respectfully asks this Court to enter an order consistent with Rule 3.6(a) of the Rules of Professional Conduct precluding Respondents or their counsel from making any extrajudicial statement to a member of the press or to anyone else that will have a substantial likelihood of materially prejudicing this original action or any other adjudicative proceeding in which Ms. Andrews may be a party, including any suit that may be filed by any of Ms. Andrews’ current or former deputy clerks or any other Lake County employee.<sup>8</sup> *Accord, State v. Grate, supra*, 164 Ohio St.3d at 20 (“courts have a wide discretion in being able to protect the judicial process from influences that pose a danger to effective justice. \*\*\* This includes the authority to issue gag orders. Orders imposing restrictions on attorneys, parties, and witnesses are entitled to considerably more deference than a prior restraint on the press.”)

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<sup>8</sup> In their most recent Journal entry, Respondents encourage employees to contact the Judges regarding any and all grievances with Ms. Andrews. (See May 4, 2022 Order at ¶ 115) (“Any legal division employee under the direction or hiring authority of the Clerk of Courts who feels aggrieved, abused, or discriminated against by the Clerk of Courts may approach and complain to any judge of this court. The Clerk of Courts shall inform legal division employees by posting a notice with a copy of this Journal Entry in the clerk’s break room.”)

#### IV. Conclusion

For the foregoing reasons, Relator Faith Andrews respectfully but urgently asks the Court to enter the following orders:

- (1) a protective order prohibiting the public disclosure of the narrative portions of the undersigned counsel's future invoices for legal services pursuant to R.C. 149.43(A)(1)(v) and this Court's precedent confirming the privileged nature of those portions; and confirming that Relator has not waived her privilege with respect to any of those portions;
- (2) a protective order prohibiting the disclosure of the narrative portions of the undersigned counsel's invoices for legal services to the Respondents or any other Lake County employees, other than those directly tasked with the review and payment of the invoices; and
- 3) an order consistent with Rule 3.6 of the Ohio Rules of Professional Conduct precluding Respondents and/or their counsel from making prejudicial extrajudicial statements to the press or others regarding the issues before this Court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the following counsel for Respondents were served with the foregoing Motion via electronic mail on May 19, 2022:

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