



for the **RECORD**

NEWS FOR THE OHIO COURTS

Judicial 1st Amendment Protection - Be Careful!!!

Perceived restraint on judicial speech has been relaxed recently by the Ohio Supreme Court. Rule 1.4 of the Ohio Code of Judicial Conduct and two recent Court decisions have made clear that judges do not lose their right to freely voice their opinions, including political endorsements, once they take the oath of office.

Are the handcuffs off? Not entirely – common sense and other Judicial Conduct Rules require care to avoid conflicts of interest and speech that would indicate prejudicial attitudes toward persons or issues that are likely to appear or be litigated in your court.

So, what is one to do? Nothing - will be a good choice. Enjoy the knowledge that the Supreme Court has articulated what has always been the case – freedom to speak freely is one of the most powerful tenants of both the United States and Ohio Constitutions and cannot be limited by Rules of Judicial Conduct.

Wisdom would indicate restraint – the more that political speech you participate in, the more it is likely that your reputation for fairness and impartiality will be diminished, not enhanced. As a community leader there will be times when your opinion, advice and counsel should be voiced – just always be measured and thoughtful.

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Judge Tom Januzzi

First, an apology or caveat if you will. This article is to provide an awareness of a recent Supreme Court decision. Any opinions in this article about the meaning or effect of this case are of the author of the article and not any opinion of the Ohio Judicial Conference. I am a lowly retired Municipal Court Judge who has been honored and blessed to have presided over many domestic violence cases for 24 years in Oberlin, Ohio and presented the topic of domestic violence at New Judges Orientation for Municipal and County Judges for many years. Domestic Violence is a sensitive topic with diverse opinions on the subject. I bring this case to your attention for two reasons. First the issue in the case has resolved a contentious issue which has been percolating in the lower courts and courts of appeals for some time. And second because I believe it to be a relevant and useful case which has the potential to change the legal landscape for temporary separation of families experiencing domestic violence prior to the final decree terminating a marriage.

On December 23, 2025 the case of Z.J. v R.M. 2025-Ohio-5662 was decided by the Ohio Supreme Court. The case arose from a certified conflict among appellate districts concerning the proof required to obtain a Civil Stalking Protection Order based upon the offense of menacing by stalking. R.C.2903.214 provides in part:

(C) A person may seek relief under this section...by filing a petition with the court. The petition shall contain or state all of the following: ...an allegation that the respondent is eighteen years of age or older and engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order...

There was disagreement among the courts of appeals as to what must be shown under R.C. 2903.211 to obtain a civil stalking protection order under R.C. 2903.214. There is a dissent. I urge you to read the entire case including the dissenting opinion. The dissent will not be discussed in this article except as referenced in the majority opinion. Instead, the majority opinion, which is now the law of the State, will be set forth followed by a discussion as to how this case may impact persons accused of the offense of 2903.211; persons named and labeled as victims of the offense; and persons who may be considered victims of the crime of menacing by stalking who are experiencing discord with an intimate partner including a spouse as a result of unkindness, manipulation and control.

The following are direct quotes from the case of Z.J. v R.M. The opinion is straightforward and written so well that to restate or paraphrase the case or portions thereof would not serve any purpose other than to risk misinterpretation of an exceptionally written opinion. The opinion is also extremely useful for interpretation of other statutes discussing

proper and improper sentence structure as relates to statutory interpretation. The relevant portions of the opinion are:

“{¶ 1} We are asked to decide what a petitioner must show under R.C. 2903.211, the menacing-by-stalking statute, to obtain a civil stalking protection order. R.C. 2903.211(A)(1) sets out two possible injuries that can give rise to such an order—physical harm or mental distress. But Ohio’s courts of appeals have struggled in applying this provision when the alleged injury is mental distress. Some appellate courts have concluded that the petitioner must have actually experienced mental distress, while other appellate courts have held that as with physical harm, it is enough that the petitioner believes that the offender will cause him mental distress.

“{¶ 2} In this certified-conflict case from the Fifth District Court of Appeals, both that court and the trial court concluded that the menacing-by-stalking statute required the petitioner seeking the protection order to believe only that the offender would cause him mental distress. But the Fifth District acknowledged that its interpretation of the statute placed its decision in conflict with decisions from other courts of appeals.

“ {¶ 3} We now resolve this conflict by holding that a petitioner’s belief that an offender will cause him mental distress is grounds for showing a violation of the menacing-by-stalking statute to obtain a civil stalking protection order. We therefore affirm the Fifth District’s judgment.

{¶ 11} Before resolving the conflict, we must define its scope. Under R.C. 2903.214(C)(1), a person may petition a common pleas court for entry of a civil stalking protection order against a respondent who the person claims engaged in a violation of R.C. 2903.211 against the person to be protected by the order. For its part, R.C. 2903.211(A)(1) sets forth the conduct, mental state, and consequences of a person’s conduct that violate the menacing-by-stalking statute, stating: “No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person . . . or cause mental distress to the other person” The conflict here turns on what the verb “to believe” modifies. The conflict cases present two possible readings of R.C. 2903.211(A)(1).

{¶ 18} A statute that has been read two different ways by the courts of appeals requires careful parsing. Fortunately, the parsing of a statute is something we know how to do. When interpreting a statute, we do not ask “what did the general assembly intend to enact, but what is the meaning of that which it did enact.” *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus;

must rely on what the General Assembly has said,” *Jones v. Action Coupling & Equip., Inc.*, 2003-Ohio-1099, ¶ 12, and apply it as written, *Summerville v. Forest Park*, 2010-Ohio-6280, ¶ 18. Applying these principles to R.C. 2903.211(A)(1) reveals that the statute functions grammatically only if the verb “to believe” modifies both “physical harm” and “mental distress.”

{¶ 19} Despite its tangled syntax, the first sentence of R.C. 2903.211(A)(1) is simple—at least grammatically. It does not fit easily into one of the four traditional sentence structures. See *Chicago Manual of Style* 293-294 (17th Ed. 2017). It does not consist of a series of independent clauses that would make it a compound sentence, nor does it consist of an independent clause followed by one or more dependent clauses that would make it a complex sentence. See *id.* at 293. Rather, it comes closest to a simple sentence consisting of a subject, a verb, and an object. See *id.* The complexity arises though from a series of compound constructions, but the different components of the sentence rely on each other to convey their complete meaning and communicate a single idea. See *id.* {¶ 20} Reading the first sentence’s text illustrates this point. The subject (“no person”) and the verb (“shall knowingly cause”) are clear. But the object becomes more complex. It is tempting to follow the pattern of simplicity and identify the object as “another person,” but doing so leaves the clause incomplete— and the reader hanging. “Cause” is a transitive verb, Webster’s Third New International Dictionary (1986); as such, it requires an object to complete its meaning, and it “indicates what action the subject exerts on the object,” *Chicago Manual of Style* at 256-257. And it means “to serve as a cause or occasion of” something or “to effect by command, authority, or force.” Webster’s.

Thus, when R.C. 2903.211(A)(1) says that “[n]o person . . . shall knowingly cause another person,” the language and the syntax leave the reader asking: Cause another person to do what? Thankfully, R.C. 2903.211(A)(1) immediately supplies the answer by providing that the offender must not cause another person “to believe that the offender will cause” something. Without that language, the sentence’s initial clause is grammatically incomplete and meaningless.

{¶ 21} What is more, this structure matters because it guides the reader to the provision’s meaning in its entirety. The victim’s belief is the predicate result caused by the offender’s pattern of conduct. And because “to believe” is what gives the first sentence’s initial phrase grammatical integrity and meaning, “believe” must modify what comes after it.

{¶ 22} The back half of the first sentence then completes the front, explaining what it is that the offender must not cause the victim to believe. The back half begins by describing the victim’s belief as concerning “that the offender will” do

something. R.C. 2903.211(A)(1). Just as with the sentence's initial clause, the statutory text leaves the reader in suspense, waiting for clarification. And it is here that parallelism comes into play. While parallelism satisfies a reader's desire "for order and rhythm," it also communicates to a reader how ideas relate to each other, by phrasing parallel ideas in parallel grammatical constructions. Bryan A. Garner, *Garner's Modern English Usage*, 670-671 (4th Ed. 2016). The two clauses that describe what the offender might do begin with the same verb—"cause"—signaling both structural and substantive symmetry. Thus, by introducing both the clauses that communicate the prohibited results of the offender's actions in parallel form—"cause physical harm" and "cause mental distress"—the menacing-by-stalking statute's grammatical structure tells us that those two ideas are of equal importance. When the back half of the sentence is read in its entirety, the structure makes clear that what the offender must not cause the other person to believe is that the offender will cause the victim physical harm or mental distress.

{¶ 38} The dissent, too, would have us abandon grammatical and contextual coherence. The dissent focuses on the main clause of the second sentence of R.C. 2903.211(A)(1), arguing that the part of that clause describing the types of evidence that can be used to show "the other person's belief or mental distress" requires us to reach a different conclusion. See dissenting opinion, ¶ 53. Because the General Assembly used the word "or" between "belief" and "mental distress," R.C. 2903.211(A)(1)—the dissent claims—requires either a belief that physical harm will occur or actual mental distress to establish the offense of menacing by stalking. See *id.* {¶ 39} In reaching that conclusion, however, the dissent dismisses our grammatical analysis of the first sentence of R.C. 2903.211(A)(1) and it misapplies the rule of lenity to the second sentence. As we have emphasized above, a grammatically and contextually coherent reading of R.C. 2903.211(A)(1) is possible only when the words "believe" in the first sentence and "person's belief" in the second sentence are read as modifying both "physical harm" and "mental distress." To read the statute otherwise produces unsound and unworkable constructions. {¶ 40} The dissent then advances its troubled reading of R.C. 2903.211(A)(1)'s second sentence, concluding that that sentence is "incoherent and unambiguously self-contradictory," dissenting opinion at ¶ 65. The dissent draws our attention to the two clauses that make up that sentence. The first clause reads: "In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person . . . or mental distress to the other person. . ." R.C. 2903.211(A)(1). That clause thus refers to two potential beliefs that are sufficient for liability: a "belief that the offender will cause" (1) "physical harm to the other person" or (2) "mental distress to the other person." *Id.* The second clause in turn lists the types of evidence that can be used to show "the other person's belief or mental distress." *Id.* According to the dissent, the first clause recognizes that a belief in future mental distress is sufficient for liability but the second

clause—which juxtaposes belief and mental distress—does not. See dissenting opinion at ¶ 65. {¶ 41} The dissent seeks out this supposed conflict so that it can dismiss our grammatical analysis and appeal to the rule of lenity, codified in Ohio in R.C. 2901.04(A). That rule, the dissent correctly points out, is applicable only “when, ‘after all the legitimate tools of interpretation have been applied, “a reasonable doubt persists,”” State v. Pribble, 2019-Ohio-4808, ¶ 23 (lead opinion), quoting Scalia & Garner, Reading Law: The Interpretation of Legal Texts, 299 (2012), quoting Moskal v. United States, 498 U.S. 103, 108 (1990). {¶ 42} But the dissent has not exhausted all the legitimate tools of interpretation, so the rule of lenity is not applicable here. When an incoherent interpretation of a statute would result, such as the dissent’s reading of R.C. 2903.211(A)(1), the General Assembly has explicitly provided that “[a]nd’ may be read ‘or,’ and ‘or’ may be read ‘and’ if the sense requires it,” R.C. 1.02(F). This rule of construction “operates to avoid inadvertent consequences when logic demands.” State ex rel. Stevens v. Fairfield Cty. Bd. of Elections, 2018-Ohio-1151, ¶ 16, quoting State v. Jones, 2007-Ohio-6093, ¶ 16. To the extent that the word “or” within the phrase “the other person’s belief or mental distress” causes unsound readings of R.C. 2903.211(A)(1), logic demands that “or” be read as “and.” {¶ 43} The dissent also takes issue with the practical application of our interpretation. See dissenting opinion at ¶ 70-72. According to the dissent, a petitioner’s belief in future mental distress, unlike actual mental distress, “is not susceptible of proof,” id. at ¶ 72. Whether a petitioner is likely to succeed in proving future mental distress, though, is not a factor that we should consider in a statutory-interpretation analysis. R.C. 2903.211(A)(1) is clear and unambiguous, so we apply it as it is written. See Boley v. Goodyear Tire & Rubber Co., 2010- Ohio-2550, ¶ 20. {¶ 44} Rather than “dissociate words and phrases from [their] context,” Gabbard, 2021-Ohio-2067, at ¶ 22, we read R.C. 2903.211(A)(1) in its entirety. To give effect to the only coherent reading of R.C. 2903.211(A)(1), we reject the dissent’s interpretation of the statute. Conclusion {¶ 45} When construing statutes, we often repeat the phrase that a statute “means what it says.” See, e.g., Everhart v. Coshocton Cty. Mem. Hosp., 2023- Ohio-4670, ¶ 13. And so it does here—though arriving at this meaning has required more technical analysis than usual. But this isn’t grammatical hairsplitting. It is applying the rules of grammar to understand what the General Assembly wrote and what that text means.

{¶ 46} The Fifth District certified the following question for review: “Whether R.C. 2903.211(A)(1) requires a victim to actually experience mental distress or only believe that the stalker will cause the victim physical harm or mental distress, for a court to issue a civil stalking protection order.” 2024-Ohio1507, quoting No. 2022 CA 0071, at 7 (5th Dist. Mar. 4, 2024). The answer to that question lies within the statute’s structure. Both R.C. 2903.211(A)(1)’s grammar and context show that a victim’s belief that an offender will cause him mental distress is enough to show a violation of the menacing-by-stalking statute. And because R.C. 2903.214(C)(1) requires only a showing that a respondent in a civil

stalking-protection-order proceeding has violated R.C. 2903.211, it follows that a petitioner need not show that he has suffered actual mental distress—but only a belief that the respondent will cause him mental distress—to obtain a civil stalking protection order.

{¶ 47} We therefore resolve the certified conflict by affirming the judgment of the Fifth District Court of Appeals.”

There is now a clear directive regarding the proof required for the offense of Menacing by Stalking regarding mental distress when seeking a civil protection order. The victim need not show that they have suffered actual mental distress but only a belief that the offender will cause them mental distress. This should open the door for charging a criminal offense where there has not been actual harm or the threat of actual harm. There are many instances where proof of actual physical harm is lacking and proof of actual mental harm is nearly impossible to prove without expert testimony or the testimony of a professional for whom the victim has sought help. Previous to this case, victims of domestic violence, who may have been in jeopardy of physical harm had little or no recourse for protection until an actual threat of physical harm or actual physical harm was present. It appears some courts have not granted protection orders and/or ordered separation of spouses pre final divorce decree without proof of actual physical harm or the threat of actual physical harm.

This case should now permit a court to consider separation of spouses pre final divorce decree and separation of intimate partners not married but living together where a person is exercising power and control over another when the other person believes that the abuser will cause or is causing them mental distress independent of the belief that they will cause them physical harm. In addition, there is recourse not only with a criminal charge but also in protecting themselves and other family members from continued abuse, manipulation and future harm by seeking and obtaining a civil protection order prior to an event of actual physical harm.

The opinion applies in the context of a person seeking a civil protection order as the case discusses, but also, to persons going through a divorce. Many attorneys and judges and magistrates, for reasons including the uncertainty of the law and the conflict discussed in this case, may have advised clients and/or ruled that a person going through a divorce or seeking a civil protection order had to live with a domestic violence abuser unless and until the abuser actually caused physical harm creating an untenable and potentially dangerous living arrangement and toxic environment for the family.

A divorce attorney may have previously counseled their clients that nothing could be done to move an abuser out of the house unless there was actual physical violence. With this opinion it now appears that the advice of attorneys and decisions of magistrates and judges in domestic relations hearings and protection order hearings may have to be reconsidered. Judges and

magistrates may have to accept the idea that protection orders and temporary orders separating the parties prior to the completion of the divorce may be available, without actual physical violence or the threat of physical violence, thus providing needed protection from potential harm that has yet to occur resulting in safety, peace and an escape from the toxic environment.

Some courts may now wish to reconsider their standard practice of not separating parties in a divorce proceeding when a person who is exercising manipulation, control and mental abuse of another has not caused actual physical harm. In some jurisdictions this would be a major change which could result in early intervention to keep Ohioans and their families safe without having to wait for the slow-moving wheels of justice which seem to be an unavoidable and/or accepted norm in a contested divorce proceeding.

In some jurisdictions, it may also alter the position of divorce attorneys that routinely advise their clients that there is nothing they can do to move someone out of a toxic living arrangement unless and until physical violence occurs. Consequently, early separation could be accomplished and there will not be an allegation of physical violence [whether it occurred or not] by a desperate person or baiting of the other person into a physical encounter only because their attorney told them that the court will not separate the parties unless there has been physical violence, which is something I witnessed many times on the Municipal Court bench.

It will be interesting to see how this case impacts the practice in these areas. Perhaps in some cases the decision will provide a safer and more peaceful environment for litigants and their families, including children, by permitting a protection order or temporary order of separation before a final divorce decree many months later and reduce the number of physical confrontations among family and household members as a result of co-existing in a toxic environment while a divorce proceeding moves through the system.

How Does Trauma-Informed Care Aid Judges?

Judge Teresa Dellick

Nowadays we hear more about being trauma-informed than in prior years. And it is for good reason. Being trauma-informed leads to many benefits, including better results, safer courtrooms, recovery, and reduced recidivism. Trauma-informed practices can be incorporated into all jurisdictions, from general to probate to domestic to juvenile to municipal and county courts. Trauma has been defined by the Substance Abuse and Mental Health Services Administration, SAMSHA, as an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life-threatening. This experience causes lasting adverse effects on the individual's functioning and overall well-being. Trauma is best measured by the Advanced Childhood Experiences study, ACEs. ACEs lists ten types of childhood trauma. One study conducted by SAMSHA showed that men and women in jail both experienced similar levels of lifetime and current trauma. The percentages were 96% for women and 89% for men. Sadly, the study detailed that for more than three fourths of the jail population, the victimization was ongoing. A key takeaway from the study revealed that rates of trauma experience was not much different between men and women. As compared to the general populations, men and women in the justice system report much higher rates of trauma. For this reason, it is best for jurists to hold a universal assumption of trauma among those involved in the justice system.

The six guiding principles designed to prevent re-traumatization and build trust begin with safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, voice and choice, and recognizing parties' culture, personal history, and gender. These principles help build a physical and psychological safe environment and interactions. Judges and court personnel need to act with clarity and consistency to build trust among those appearing in court. Peer support is essential since it links parties with others who have shared lived experiences and promotes healing. As contrary as it sounds to a judge, collaboration and mutuality also leads to better results because it levels the power and control so the party is involved in the decision-making process. Additionally, recognizing the individual strengths of the parties and providing some choice, even ever so slight, aids in recovery. Finally, moving past standard stereotypes and biases, whether explicit or implicit, while actively recognizing and acknowledging how an individual's history affects their trauma also promotes recovery.

Trauma manifests itself in different behaviors. Trauma related behavior is often disproportionate to the current situation. Some of the behaviors are anxiety, misinterpretation of verbal cues, anger, dissociation, reduced ability to focus or retain information, and inability to make difficult decisions. Some trauma survivors' behaviors can be seen as withdrawn, forgetfulness, panic, or suspiciousness. These individuals experience shame, hopelessness, traumatic flashbacks, and distrust. A judge can make adaptations to the courtroom to prevent re-traumatizing a party coming to court. These adaptations are as simple as explaining courtroom procedure and what the person should expect. Judicial officers can explain the purpose of the hearing and what occurs during the hearing. Courts need to run on time since needless waiting can cause agitation and anxiety. If the court is running behind, it is recommended the jurist apologize to those in the courtroom for running behind and explain that it happens unintentionally. Some may feel this may be demeaning to the bench, but it exhibits respect, which is a two-way street. This practice recognizes people as individuals and gives them respect and dignity.

Another adaptation that can be made in the courtroom is when sidebars occur. Non-attorneys do not understand the purpose of a sidebar. In order to allay anxiety, it is recommended the judge explain the purpose of a sidebar and that they are needed to discuss legal matters outside the hearing of the parties

and jury. If you oversee a treatment docket, you may want to modify the language used. Instead of stating, “Your test came back dirty,” you may say, “Your test showed the presence of drugs.” Additionally, instead of saying, “Did you take your meds today?,” you could say “Are the medications your doctor prescribed working well for you?” Another suggestion is instead of saying “I am ordering a mental health evaluation for you,” you might say “I would like to refer you to a doctor who can help us better understand how to support you.”

Rather than resorting to rote blanket sentences, when trauma-informed guiding principles are acknowledged by the judge, the judge can craft decisions on the whole person and not just a stereotype of the party. By carefully following these principles, judges will notice reduced recidivism and better results. The practices decrease emotionally heightened responses. As judges, we need to remember that we are walking trauma machines. The robe, the position, and the bench are intimidating. Acknowledging that the individual most likely did not sleep but worried the night before a hearing helps us better understand the world we live in day today. As jurists, we are familiar with our environment but to others, it is a difficult world to navigate. When judges practice trauma-informed responses, litigants can begin to fully participate in the process of recovery. Give it a try.



Proposal to Change OJC Constitution

September 2026

Dear Ohio Judicial Conference Members,

Our Executive Committee has reviewed the following proposal to make changes to the by-laws. **The by-laws require that all members have an opportunity to review any such proposals and vote on them at the Annual Meeting (September 17, 2026). Questions and comments will also be accepted via email, until September 17, 2026.** The proposal would (1) reflect that the Chief Justice of the Supreme Court of Ohio and the Administrative Director of the Supreme Court of Ohio will no longer be voting members of the Ohio Judicial Conference Executive Committee; and (2) Change the name and function of the existing Judicial Ethics and Professionalism Committee.

1. Amendment to ARTICLE III.—EXECUTIVE COMMITTEE

Section 1. The Executive Committee. The Executive Committee shall consist of the officers of the Ohio Judicial Conference; the Co-Chairs of the standing committees of the Ohio Judicial Conference; the Chief Justice of the Supreme Court of Ohio; the Chief Justice and the Chief Justice-elect of the Courts of Appeal of Ohio; the presiding officer and the presiding officer-elect of each member judicial association; the Administrative Director of the Supreme Court of Ohio; and the Executive Director of the Ohio Judicial Conference. Each member of the Executive Committee shall have one vote on all matters coming before the committee, with the exception of the Chief Justice and Administrative Director of the Supreme Court of Ohio who are non-voting members of the Executive Committee.

2. Amendment to Article V, Section 1, which lists the standing committees, will have to be altered to accommodate:

- a. The Judicial Ethics & Professionalism Committee will become the Judicial "Professionalism and Diversity".

Section 1. Committees.

A. Standing Committees The Chair with the approval of the Executive Committee shall appoint and fill vacancies in the following Standing Committees:

- | | |
|--|--|
| 1. Appellate Law and Procedure | 12. Judicial Officers and Organization |
| 2. Civil Law & Procedure | 13. Jury Instructions |
| 3. Community Corrections | 14. Jury Service |
| 4. Court Administration | 15. Juvenile Law & Procedure |
| 5. Court Technology | 16. Legislative |
| 6. Criminal Law & Procedure | 17. Personnel & Office Administration |
| 7. Domestic Relations Law & Procedure | 18. Probate Law & Procedure |
| 8. Executive | 19. Public Confidence & Community Outreach |
| 9. Innovative Specialty Courts | 20. Retired Judges |
| 10. Judicial Education | 21. Traffic Law and Procedure |
| 11. Judicial Ethics & Professionalism <u>Judicial Professionalism & Diversity</u> | |

Presented to the Ohio Judicial Conference Executive Committee May 15, 2026.

Presented to the Ohio Judicial Conference membership at the Annual Meeting September 17, 2026

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