

# IPSO JURE

Vol. 25 No. 2

Geauga County Bar Association

June 2005

## First Friday CLE

The CLE committee has scheduled 6 two hour CLE programs for July through December. All Programs will be from 8 a.m. to 10 a.m. on the 3<sup>rd</sup> Floor of the Geauga County Common Pleas Courthouse.

### Program Listing

- 7/1 Asset Protection and Medicaid Process
- 8/5 Municipal Court: Changes in the Law and Procedures
- 9/2 Choosing a Business Entity & Changes to Bankruptcy Rules
- 10/7 Probate: Changes in Legislation and the Procedural Process
- 11/4 Notary Refresher Course and Domestic Relations Update
- 12/2 Procrastinator's Seminar for Ethics and Professionalism

Please see the enclosed flyer for registration and payment information. 3

## Secretaries Day

Secretaries Day will be June 22 at Bass Lake Island. In addition, there will be a Pie Baking Contest for Attorneys and Secretaries. Rules for the contest and information on the event is included in this issue.



Steve Patton and Sharon Gingerich at Law Day 2005

## Golf Outing

The GCBA Golf Outing will be at **Fowlers Mill Golf Course** again this year on August 25. Start getting your foursomes together for this exciting event. Registration forms will be sent out soon. 3

## In this issue:

President **Ann M. D'Amico, Esq.** shares stories about Macy on the *President's Page*. . . . . 2

Find out what happened at the annual convention in Columbus in *Proposed Fifty Hour Pro Bono Rule Passed by OSBA Council of Delegates* by **Mary Jane Trapp, Esq.** . . . . . 6

**William D. Mason, Esq.** updates the bar about the *Recent Amendment to Ohio's Aggravated Murder Statute* . . . . . 5

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## FREE CLE

On June 15, the Eleventh District Court of Appeals will be sponsoring a Free 1 Hour CLE program on Mediation at the Appellate Court. Charles Lally,

Conference Attorney, Ohio Court of Appeals, Eight Appellate District, will discuss the goals of the 11th District Court of Appeals Mediation Program, new procedures for appellate mediation and changes to the local rules This will be at Bass Lake Taverne, beginning at 11:00 a.m. If you have not already registered, please call Susan at (440) 285-2222 x. 2450.3



Carolyn Paschke, Eileen Miller & Steve Macek enjoying Law Day 2005

Ipsos Jure, a publication of the Geauga County Bar Association, is edited by **Paul A. Newman, Esq.** Committee members are: **Mary Jane Trapp, Esq., Lisa Carey, Esq., Larry Wharton, Esq., Tom Perotti, Esq., Stephen G. Macek, Esq., Pamela Makowski, Esq.** and **Heidi Cisan, Esq.**



## PRESIDENT'S PAGE

Ann M. D'Amico, Esq.

Being an attorney, judge, prosecutor or any other person working withing the legal field, we are all exposed to stressful situations on a daily basis. Therefore, we all appreciate the distractions in our lives that give us enjoyment.

For those of you who have not met her, one of the things in my life that provides constant joy and happiness is my little dog, Macy. Until 5 ½ years ago, neither my husband nor I had ever had a dog. We went to a softball game between the Geauga County Bar Association and the Lake County Bar Association and our friends John and Pam Trebets were there with their new toy poodle puppy, Omar. (Lake County had a lucky win that day).

Four months later, I finally managed to talk my husband into letting me get a dog. I told him it would be a loyal, loving little friend. We called the Trebets' to find out where they got Omar. Then on the day before Thanksgiving we made the trip to Warren to get a puppy. We had about 7 to choose from. We picked the smallest one, because all the others were pushing her around, so she couldn't get near the food or the toys. When we brought her home, she weighed under one pound. My husband had trouble getting around the idea that one would actually pay money to buy a dog.

That night, we went to the pet store to get things we needed. We decided to cage train her, so we needed a cage. All the cages were too big, so we bought the smallest one we could find, and decided to put a box in it to make it smaller. My husband was not happy that the box that fit perfectly was a Stay-Free box. Definitely a conversation piece when people came over.

The next morning, Thanksgiving Day, we decided we had to come up with a name for her. Nothing seemed to be agreeable to both of us. We looked on the internet. We asked family and friends (I do not recommend doing that).

Finally, we got bored and turned on the TV to watch the parades.. And found the perfect name: Macy. What better name for a fluff chick dog with an extensive wardrobe than the name of a sacred retail establishment? Plus, it does help us remember when we got her.

We are lucky that our veterinarian lives next door to us. Macy, full grown weighs 5 lbs and is 13 inches tall. She has what my grandmother would have called a "delicate constitution." My husband refers to her as a canine money pit. She wound up in the emergency room her first weekend with us, because she ate something she shouldn't have. My husband pointed out to me that in her first four days with us, she had cost us over \$1500.00.

Macy is a Canine Good Citizen and a Therapy dog, now. She has visited at the Greens Adult Living Communities in Lyndhurst, two Saturdays per month for the past two years. She has an excellent disposition and likes visiting all the people there. She also has a very active social life. A couple years ago, she hosted a poodle party for several of her friends, and wore a lovely pink poodle skirt. Her godfather, Judge John Trebets and his wife Pam were among the attendees with their two toy poodles, Omar and Lila. Since then, they have acquired a third toy poodle, Maggie. Macy also

attended the pool parties for dogs in Mayfield Village and Westlake last summer. She made the front page of the Sun Newspaper in her blue bikini at the Mayfield Village Pool.

So, now after reading this, I am sure many of you are thinking "Ann D'Amico needs to get a life!". That would be those of you who do not have dogs. But for those of you who do, I invite you to submit pictures and or stories of your dogs to be published in our next issue, as part of "THE DOG DAYS OF SUMMER." I will be giving a prize for the funniest picture and story. Naturally, the prize will be for the dog. Please send your photos and narrative to the Geauga County Law Library, 100 Short Court, Suite BA, Chardon, Ohio 44024 or e-mail [gcll@nls.net](mailto:gcll@nls.net). All original pictures will be returned.3.





# 11TH DISTRICT COURT OF APPEALS

Summaries May 2005

By Linda Ireland

**O**n June 18, 2004, in *State v. Anderson*, 11th Dist. No. 2003-G-2540, 2004-Ohio-3192, the court of appeals reversed the judgment of the lower court, which denied the appellant’s motion to suppress. The court held that the anonymous tip from the unidentified third party which merely reported a “suspicious” vehicle, without more, did not provide the officer with reasonable suspicion. The court also concluded that the officer did not sufficiently corroborate the anonymous tip. Thus, the court held that, under the facts as testified to at the suppression hearing, the officer did not possess the reasonable suspicion necessary to effectuate an investigative stop of the appellant.

**O**n June 30, 2004, in *Genova v. Hillbrook Club, Inc.*, 11th Dist. No. 2003-G-2496, 2004-Ohio-3515, the court of appeals affirmed the decision of the trial court, which granted summary judgment in favor of the appellee. The appellate court held that, since the appellant failed to specifically identify the cause of her fall, summary judgment on her negligence action was warranted. The court further



A scene from Larry’s party

held that, even if the appellant could specifically identify the cause of her fall, summary judgment would still have been appropriate because the appellant failed to proffer any evidence to establish that the appellee had either actual knowledge or constructive knowledge of the condition of the bridge which purportedly caused her fall.

**O**n July 9, 2004, in *Mitchell v. Bainbridge Twp.*, 11th Dist. Nos. 2003-G-2505, 2003-G-2513, 2004-Ohio-3687, the court of appeals affirmed the lower court’s decision, which affirmed the Bainbridge Township Board of Trustees’ decision to remove the appellant as a Bainbridge Township police officer. The court found that, since the charges filed against the appellant were not specifically set forth in the Disciplinary Policy, the Board had the right to fashion an appropriate discipline for the appellant’s offenses, pursuant to the Disciplinary Policy. The court further found that, even if the charges were specifically set forth in the Disciplinary Policy, the severity of the offenses, involving the integrity of a law enforcement officer, permitted the immediate termination of the appellant. Thus, the court held that the appellant was provided his due process rights. The court also



Larry Wharton at his going away party

held that, since there was extensive evidence submitted at the disciplinary hearing to establish each of the charges filed against the appellant, the trial court did not abuse its discretion in affirming the Board’s decision to terminate the appellant.

**O**n July 23, 2004, in *Maiorana v. Maiorana*, 11th Dist. No. 2003-L-067, 2004-Ohio-3925, the court of appeals affirmed the judgment of the trial court. The court reasoned that if the provisions of the QDRO and DRO could not be any more detailed or inclusive than the language of the divorce decree, the QDRO and DRO would have served no purpose. Thus, the court determined that the trial court reasonably concluded that the language of the QDRO and DRO reflected the parties’ agreement at the time of the divorce decree.<sup>3</sup>

# AN INTERVIEW WITH DEBORAH O'CONNOR

By Paul A. Newman, Esq.

Newman & Brice

**D**eborah O'Connor is one of three laypersons on the Geauga County Bar Association Grievance Committee.

Profession: Director, Geauga County Public Library

Age: 54

Grew up where: Detroit, Michigan

College: Wayne State Univ.

Bus location: Library Administration Center, Ravenwood Drive.

Family: Husband, Patrick, daughters, Kathleen and Meghan

Q. How did you get appointed to the Grievance Committee and how long have you served?

*A. I was appointed in 2000 by then Bar President Pearce Leary, likely because Paul Newman serves on the Library Board and recommended me.*

Q. How has your service on the Committee affected your personal view of attorneys?

*A. It hasn't changed anything. I believe attorneys to be honorable people for the most part. In every profession there are a few people who don't follow the rules.*

Q. In your business of public libraries, you have had the opportunity to get to know many attorneys both professionally and socially, has your service on the Committee affected your view of the reputation of those attorneys? If so, how?

*A. My opinion has gone up. I didn't realize the large body of knowledge the attorneys have to have. My opinion of their reputations has increased.*

Q. I know that you are not permitted to discuss any cases that may have come before the committee; however, what advice would you give to attorneys in order to avoid their appearance before the Committee?

*A. Communicate better with your client. If you try to sandbag your client it may come back to haunt you. You should just admit your mistake and come clean. And, keep better records.*

Q. What impact do you think the existence of the Grievance Committee has on the practice of law?

*A. It would seem to me that you know all the rules and ethics, and there is an incentive to follow them.*



Q. Do you enjoy the work of the committee? Why?

*A. Yes, I do! I like knowing that attorneys in general are doing a great job. And, when they are not, the profession is willing to police them. I think it is good to have a layperson on the committee because we bring a different view of the attorneys' obligations.*

Q. Now that you are partially an insider and partially an outsider of the legal community, have you observed cliques within the community? If so, what effect do you think they have and why do you think they exist?

*A. I don't know that. I know they exist, but I don't know who they are.*

Q. What recommendations would you make to modify or streamline the operation of the Committee?

*A. We are pretty streamlined. It would be nice to get the materials beforehand, but because of confidentiality, the materials cannot leave the room. It works well.*

Q. What do you say for the good of the order?

*A. I love living and working in Geauga County. Let me answer a question you didn't ask. Read any good books lately? I highly recommend a very strange non-fiction book about poker and a murder trial – Positively Fifth Street by Jim McManus. Be careful, though, it's not rated PG!*

Q. If you could have dinner with two people in all of history, who would they be and who would your date be (not your husband)?

*A. I'd like to go to dinner with Eleanor of Aquitaine (Queen of England and France, mother of King Richard the Lionhart, and traveler to the crusades), and Winston Churchill. For my date, I would like Richard Feynman (Nobel prize winner in Quantum Physics and a great bongo drums player).<sup>3</sup>*

# RECENT AMENDMENT TO OHIO'S AGGRAVATED MURDER STATUTE

By William D. Mason, Esq.  
Cuyahoga County Prosecutor

As both Cuyahoga County Prosecutor and the current President of the Ohio Prosecuting Attorney's Association, it is important to update the bar on recent changes to penalties for aggravated murder found in R.C. 2929.03.

As you know, these amendments increase the penalties for aggravated murder and clarify the law providing that if a death sentence is vacated on appeal, the State may choose to seek a new death sentence for that offender. The Ohio Prosecuting Attorney's Association applauds both of these changes, as it will allow prosecutors the ability to seek the appropriate penalty for aggravated murder.

Aggravated murder is of the worst crimes perpetrated against the citizens of this State. In seeking justice for the victims of these crimes and for society, prosecutors must determine what penalty to seek. Prosecutors must have the flexibility to seek an appropriate penalty based upon the facts of a case. The enactment by the Ohio legislature provides



Sheila Salem and Susan Wieland at Larry Wharton's party

prosecutors that flexibility by increasing the available penalty for all aggravated murders. In H.B. 184, the legislature ensured that any offender who commits the crime of aggravated murder is subject to highest possible life

sentences. The act also clarified the legislature's intent that, if a sentence of death is vacated on appeal, the State may seek a new death penalty regardless of when the murder took place.

Under prior law, if a defendant was convicted of or plead guilty to aggravated murder with aggravating

circumstances, the available penalties were death (if the aggravating circumstances outweigh any mitigating factors), life without parole, life with parole eligibility after 30 years, life with parole eligibility after 25 years, and life with parole eligibility after 20 years. However, if an offender, charged with aggravated murder, was not charged and convicted of an aggravating circumstance, the highest available penalty was life with parole eligibility after 20 years.



Jim Reardon enjoying a cigar at Larry Wharton's party

Thus, if an offender committed aggravated murder but was not charged and convicted of an aggravating circumstance, the highest life sentences were not available.

H.B. 184 now makes available the higher life sentences for all offenders who commit aggravated murder regardless of whether they were charged with or convicted of an aggravating circumstance. Now, under the amended R.C. 2929.03, if an offender, who was not charged with a capital aggravating circumstance, is convicted of or pleads guilty to aggravated murder, the available penalties are: life imprisonment without parole, life imprisonment with parole eligibility after 30 full years, life imprisonment with parole eligibility after 25 years, and life imprisonment with parole eligibility after 20 years.

For those cases that merit the longest possible life sentences, prosecutors will now be able to seek a penalty of life without parole and life with parole eligibility after 30 or 25 years for all aggravated murder cases. Moreover, the change affords prosecutors the flexibility to seek these higher life sentences without presenting the case as a capital case with all the costs attendant to such a prosecution.

The other significant aspect of H.B. 184 is the clarification by the legislature that if a death sentence is vacated on appeal, the State may choose to seek a new death sentence for that offender. Prior to 1996, the Ohio Supreme Court held that if a death sentence was vacated, the State was foreclosed from seeking a new death penalty.

In 1996, the legislature amended R.C. 2929.06 to allow the State to seek a new death penalty if a death sentence had been vacated. In September of 2004, the Ohio Supreme Court held that this amended statute did not apply to offenders whose crimes were committed before 1996. In H.B. 184, the legislature clarified that its intent was to have R.C. 2929.06



Michael Quinlan and Nancy Burgess at Larry Wharton's party

apply capital defendants regardless of when the offense took place.

This clarification by the legislature is vital to the continued prosecution of capital cases in Ohio. Because of the lengthy appellate process in both state and federal courts, a large number of inmates on death row are still pursuing appellate review even though they committed their crimes prior to 1996. In the event that a death sentence is vacated for an offender who committed their murder prior to 1996, justice may require the pursuit of a new death sentence. The clarification by the legislature allows prosecutors the opportunity to seek a new death sentence, which may be the appropriate sentence.<sup>3</sup>

# PROPOSED FIFTY HOUR PRO BONO RULE PASSED BY OSBA COUNCIL OF DELEGATES

by Mary Jane Trapp, Esq.  
Apicella & Trapp

The proposed Model Rule of Professional Conduct 6.1 regarding pro bono publico service by all Ohio attorneys was debated by Ohio State Bar Association Council of Delegates during the Annual Convention held in Columbus in May. The deliberative body passed an amended version of Rule 6.1 submitted by the Ohio Legal Assistance Foundation's special Pro

Bono Committee which, if adopted by the Ohio Supreme Court will provide that "[a] lawyer should aspire to render at least (50) hours of pro bono public legal services per year...", the "substantial majority" of which hours should be in spent in providing legal services to "persons of limited means" or "charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means..." An attorney may "provide additional services through the delivery of legal services at no fee or substantially reduced fee..." to organizations such as charities or civic groups or by participation in bar association work. It is unclear how many hours of "additional services" may be a part of the fifty hours.

As an alternative, the rule provides that an attorney may contribute financial support totaling \$500 or more per year to organizations that provide legal assistance to the poor in lieu of the fifty hours.

It is unclear how this rule will be applied to government service lawyers, especially federal employees who are prohibited from any outside practice, and to judges.

The rule also provides that attorneys "shall" complete a "Pro Bono Legal Service and Contribution Report" that is to be filed with the biennial report now required, but no sanctions are proscribed for failure to report.<sup>1</sup>

## Amendment of the Rule by the Council of Delegates

The OSBA Council amended the original OLAF proposal by moving the rule from the disciplinary rules to the governance rules.

Of course, the Supreme Court may ignore that amendment and chose to include the rule as a part of the larger set of Model Rules of Professional Conduct now being considered by the 18 member task force which was charged to consider whether Ohio should continue to operate under the Code of Professional Responsibility, or join 42 other states that have adopted some form of the ABA Model Rules. Chief Justice Moyer has indicated that he supports such a pro bono rule. The



Stacey Reid at Larry Wharton's party

work to date of this task force is available for review at the Supreme Court website.<sup>2</sup>

The spirited debate in the Council focused on two areas: mandatory reporting and the \$500 opt-out provision.

### **Mandatory Reporting**

The rule mandates a report of pro bono work and monetary contributions every two years with the attorney's biennial registration. The attorney will not be required to disclose privileged matter or the identity of the client or organization., and the rule is "aspirational...in nature". The failure to file the report "...will not subject an attorney to discipline", but

Delegate Mary Cibella, a noted professional responsibility lawyer, noted that even though similar language exists in the professionalism creed, the Supreme Court has recently used violations of the creed as a basis for suspension.

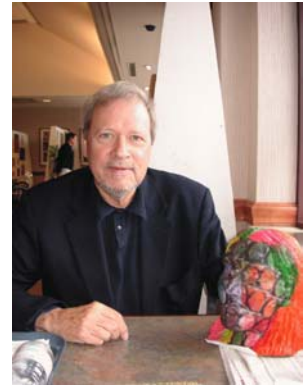
As a delegate, I argued that mandatory reporting does nothing to foster a positive culture toward pro bono work.

Some attorneys fear that pro bono programs cut into their potential client base and are thus reluctant to join voluntary bar association sponsored pro bono projects such the successful project started by the Toledo bar through which lawyers meet with low income clients once a month at a local church or community center or to participate in targeted pro bono projects such as advanced directives education and preparation for low income seniors. In times when attorney's receivables are high, some attorneys feel that they are already doing a large amount of de facto pro bono work. Rule 6.1 only negatively reinforces a distorted view of pro bono services.

### **Pro Bono Insurance**

The \$500 opt-out provision of the rule has been dubbed "pro bono insurance". Delegates on both sides of the issue argued that there was no rational relationship between fifty hours and the \$500 buy out provision, and that inherent in the rule is a suggestion that a lawyer's professional time devoted to pro bono work represents a value of \$10 per hour. I argued that the rule unfairly impacts all young lawyers and those solo or small firm

practitioners who are not as well-established. These lawyers can ill-afford a \$500 per year tax or a de facto reduction in their hourly rate to \$10 per hour for their services, especially when they are already saddled with six figure student loan obligations and the demands of practice building with minimal support staff.



Dave Lowe with a colorful dining companion at Heimens

Pro bono insurance also sends a negative message and does nothing to foster a positive pro bono culture. That message is if one can afford to buy out, you do so and avoid serving the poor while at the same time shifting the load to those lawyers who can least afford the time or the money.

If the real reason for this rule is to raise money, then let's do it. If it is to motivate attorneys to provide more pro bon hours than they already give, then let us find newer approaches than a mandatory reporting rule that has been batted about since 1993.

### **Endnotes**

1 The full text of the report and rule may be found on the OSBA website. Click on Member Resources, Special Report, Reports to the Council of Delegates Spring 2005. It is the last Report.

2. [www.sconet.state.oh.us/Atty-Svcs/ProfConduct/proposal/default.asp](http://www.sconet.state.oh.us/Atty-Svcs/ProfConduct/proposal/default.asp).



Michael Judy at the Law Library



Representatives of the Sheriff's Department at Law Day 2005

# Law Day Winners

## POSTER CONTEST:

Kristi Gockel  
First Place  
Fifth Grade  
Hambden Elementary



Joe Menard  
Honorable Mention  
Fifth Grade  
Hambden Elementary



## ESSAY CONTEST

Kim Lundstrom  
First Place  
  
Ninth Grade  
Kenston High School

Jessy Tittl  
Honorable Mention  
  
Eleventh Grade  
Kenston High School

## OFFICER OF THE YEAR



Trooper Bill Davis  
Ohio State Highway  
Patrol  
Chardon Patrol Post

Ipsos Jure  
Geauga County Bar Association  
P.O. Box 750  
Chardon, Ohio 44024