

## LAW DAY

The April GCBA General Meeting will be a celebration of Law Day on May 4 at Legend Lakes Golf Course. Committee Chair **Matt Dolan** has invited U.S. Marshall **Peter J. Elliott** will be speaking. Marshall Elliott has earned many honors in his distinguished career, including Law Enforcement Officer of the Year from the Cuyahoga County Prosecutor's Office. Our bar will be presenting the Geauga County Law Enforcement Officer of the Year at the luncheon as well. Please see the enclosed flyer for more information.



Someone got their wires crossed

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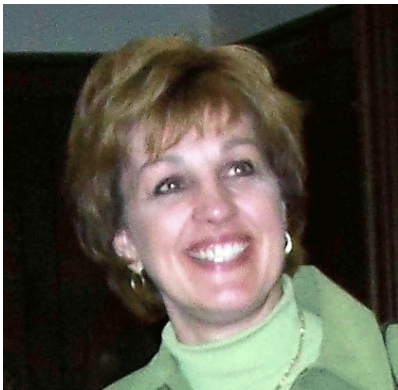
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## 2007 GOLF OUTING

**Jim Flaiz**, chair of the Golf Outing Committee has set the date of the 2007 Golf Outing as August 16. The outing will be at Little Mountain Golf Course. The cost will be \$95.00 and include a golf cart, lunch, beverages, and dinner. Look for reservation information soon.





# PRESIDENT'S COLUMN

BY HEIDI M. CISAN, ESQ.

**A**t a recent seminar, Lake County's **Judge Colleen Falkowski** lamented the lack of courtesy and respect she sees on a regular basis in her court, not from the lawyers, but from the litigants. She believes that this behavior stems in large part from TV court shows like Judge Judy, and spectacles like the recent Anna Nicole Smith hearing, where courtroom decorum is nonexistent. Judge Falkowski waxed nostalgic about the good old days of The People's Court, where Judge Wapner and his faithful bailiff, Rusty, kept everyone in order.

Judge Falkowski also commented on the role of lawyers in curbing the increasing level of incivility in the judicial system. The Ohio Supreme Court has attempted to emphasize this point in our new Rules of Professional Conduct. In adopting the new rules, the Court intentionally omitted the term "zealously" in describing a lawyer's obligations in representing his client. The Court felt that lawyers often cited zealotry as an excuse for unprofessional and overly aggressive conduct.

Fortunately, most members of our bar do not

step over that line. Nevertheless, I do think that we could sometimes exercise more restraint, both as to what matters we take to court, and the manner in which we advocate our clients' positions. I know I have been guilty of filing complaints or motions that, while of at least arguable merit, were probably unnecessary. My arguments have sometimes been more emotional than rational. Often, this has been driven by a desire to show my client that I really am representing him or her zealously. Now that "zealously" no longer appears in our ethical code, maybe I will get better at talking myself and my clients out of asking for court intervention unless it really is the best or only way to handle a problem. Perhaps if I, and whomever my worthy opponent happens to be in a particular case, tone down the rhetoric, the level of animosity would be reduced, and reasonable resolutions could be achieved more often. I think we would all agree that this is really the best way to serve our clients.



**T**hanks to all who participated in the Bowling for Kids Sake fundraiser for Big Brothers Big Sisters. We had **Ed Brice**, **Caterina Cocca-Fulton**, her husband, **David Fulton**, her brother, **Pasquale Cocca**, as well as friend and fellow lawyer **Lisa Montoni** on one team, with me filling in for an occasional frame. **Todd Hicks**, **Jaredd Flynn**, **Kelly Slattery**, and **Matt Dolan** made up the second team, with **Sammy Dolan**, **Carter and Grady Flynn**, **Cooper Hicks**, and **Jack Slattery** along to provide that extra cute factor (which helped to make up for their parents' really bad scores). We were competing against the **Geauga County Sheriff's Department**, and although they outscored us, we outcontributed them, raising in the neighborhood of \$900 for a very worthwhile cause.



TD&D table at Heinens





## 11<sup>TH</sup> DISTRICT COURT OF APPEALS

SUMMARIES BY LINDA IRELAND,  
COURT PARALEGAL

**O**n January 20, 2006, in *State v. Scheidel*, 11th Dist. No. 2003-A-0087, 2006-Ohio-195, the court of appeals reversed the rape and kidnapping convictions of appellant due to a *Brady v. Maryland* violation. Counsel for appellant was reviewing the presentence investigation report after a notice of appeal had been filed, and noticed that an exculpatory statement had been furnished to a sheriff's deputy. This statement was never shared with defense counsel prior to or during trial. It amounted to a prior inconsistent statement under Evid.R. 613. The deponent had not approved her statement because she was only nine years old at the time, but the court of appeals found the lack of approval by her to be immaterial to the fact that the statement should have been provided to defense counsel.

**O**n March 3, 2006, in *In re Estate of Bretnschneider*, 11th Dist. No. 2005-G-2620, 2005-Ohio-1013, the Eleventh Appellate District affirmed the trial court's judgment which denied appellant's motion for extraordinary fiduciary fees and awarded his attorney \$2,500 in fees and costs. With respect to the issue of attorney fees, the court held that the trial court properly considered DR 2-106(B) as well as other evidence proffered by counsel in relation to the applicable factors to arrive at a reasonable fee. In relation to the extraordinary fiduciary fees, the court held the trial court did not abuse its discretion in denying the extraordinary fees because much of the allegedly additional work was completed for appellant's own benefit and not the benefit of the estate.

**O**n March 24, 2006, in *Alexander v. Tullis*, 11th Dist. No. 2005-P-0031, 2006-Ohio-1454, the court of appeals confirmed the trial court's grant of summary judgment to appellee. Appellee looked forward before striking her golf ball, but failed to see appellant in a depression in the fairway. Appellant was hit in the head. The appellate court held that neither the pleadings nor the facts indicated any intentional or reckless conduct on the part of appellee, so liability could not exist under the rule enunciated in *Marchetti v. Kalish* (1990), 53 Ohio St.3d 95, and *Thompson v. McNeill* (1990), 53 Ohio St.3d 102. The court further held that appellant's failure to request a delay of consideration of appellee's summary judgment motion pursuant to Civ.R. 56(F) waived any objection to the trial court's grant of summary judgment prior to the discovery cut-off date.



## BANKRUPTCY SEASON

ROBIN L. STANLEY, PETERSEN & IBOLD

**A**pril is a significant month for many bankruptcy practitioners as many clients return to their offices with tax refund in hand to pay-off their bankruptcy retainers. Now is the time that a client realizes they cannot catch up their mortgage after the Christmas spending spree and not being able to say "no" to their children. As you may know, on October 17, 2005, the final provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)<sup>1</sup> became effective, and its enactment caused radical changes for bankruptcy attorneys and their clients. Such an overhaul has made practicing in the bankruptcy court somewhat of an adventure over the last year and a half. Over the next few months, I will attempt to outline many of the changes and discuss the results of the law, which reach far beyond the realm of bankruptcy law.

BAPCPA was passed on the premise that debtors were abusing the bankruptcy system and thereby avoiding paying off their creditors. For that reason, the law was an attempt to make it harder for a debtor to file for bankruptcy.

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<sup>1</sup> Text available at [www.ohnb.uscourts.gov/bankruptcycourts/abuseprotection.pdf](http://www.ohnb.uscourts.gov/bankruptcycourts/abuseprotection.pdf)

There are still two types of consumer bankruptcy—Chapter 7 and Chapter 13. A Chapter 7 bankruptcy is designed for individuals, corporations and partnerships in such financial difficulty that they do not have the ability to pay their existing debts.<sup>2</sup> Under Chapter 7, a trustee takes possession of all the debtor’s non-exempt property, liquidates it for cash and uses the proceeds to pay creditors according to the priorities of the Bankruptcy Code.<sup>3</sup> A Chapter 13 bankruptcy enables individuals with regular incomes, under court supervision and protection, to repay their debts over an extended period of time according to a plan.<sup>4</sup> The plan may require full or partial repayment<sup>5</sup> and typically last three to five years. This type of bankruptcy is often used when an individual falls behind on the payments on their home or has equity in non-exempt assets.

After the enactment of BAPCPA, the filing of bankruptcies did stall, but they by no means came to a halt. BAPCPA has made it harder for debtors to file bankruptcy, but not in the way that the law intended. The cost of filing a bankruptcy has increased tremendously. The filing fees for both a Chapter 7 and a Chapter 13 increased by one-third from \$209.00 to \$299.00 and \$189.00 to \$274.00, respectively. In addition, a debtor must take credit counseling at an additional cost of at least \$25.00 per debtor. Attorney fees have

<sup>2</sup> www.ohnb.uscourts.gov

<sup>3</sup> www.ohnb.uscourts.gov

<sup>4</sup> www.ohnb.uscourts.gov

<sup>5</sup> www.ohnb.uscourts.gov

doubled from \$500.00 to \$600.00 pre-BAPCPA to their current average of \$900.00 to \$2000.00. It takes longer for each bankruptcy petition to be prepared and filed, because more and more documents are required from the debtor. In many cases, one factor contributing to the debtor’s bankruptcy is an inability to manage their funds and organize their income and expenses. It is increasingly common for the client to present a box full of miscellaneous documents for the attorney to sort through during the preparation of the petition. Any bankruptcy practitioner can tell you that case files are twice as large as they used to be!

The filing of bankruptcy cases has continued to rise since BAPCPA’s enactment. Debtors needing bankruptcy relief did not disappear, nor are they prevented from filing due to the new law. Instead, it just takes them a little (or a lot) longer to gather all of the necessary documents and pay their attorneys.

Next Issue: Are you a debt relief agency?



## NOTICE

**M**ary K. Bender has been certified as a Specialist in Family Relations Law by the Ohio State Bar Association with the approval of the Ohio Supreme

Court. In order to become certified, Attorney Bender had to prove the following:

1. 25% of her practice had to be in Family Relations.
2. 36 hours of advanced continuing legal education in her specialty in the last three years.
3. pass a written exam.
4. be an attorney in good standing with the Supreme Court of Ohio.

We congratulate Mary.



Anita Comella, Court Reporter for Judge Burt



The Geauga County Bar Association

in conjunction with

The League of Women Voters of Geauga County & The Geauga County Public Library

Present the

Geauga Free Speech Forum

United States Marshall

Peter J. Elliott

Prior to Marshall Elliott’s appointment in 2003, he worked in undercover narcotics, as a Deputy Marshall, and as an ATF agent. He has received numerous awards for his service, including “Top Cop” from the Ohio National Association of Police. He created the Ohio Violent Fugitive Task Force, the U.S. Marshall’s Fugitive of the Week television program, and brought Gang Resistance and Education Training (G.R.E.A.T.) to the area.

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The Bar Association will also be presenting the award for Law Enforcement Officer of the Year

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May 4, 2007

Legend Lakes Golf Course

Noon, Lunch, \$18 / \$10 for Students

11135 Auburn Road

12:30, program, free and open to the public.

Chardon

The menu will include herbed chicken, ginger spiced ham, garlic mashed potatoes, seasonal vegetables, and a variety of desserts.

RSVP by April 27, 2007 to: Geauga County Bar Association, P.O. Box 750, Chardon, Ohio 44024

Questions? Call (440) 279-2087 or e-mail [gcll@nls.net](mailto:gcll@nls.net)

- Yes, I plan to attend the program only. Please reserve a place for me.
Yes, I plan to come to the lunch and program. Enclosed is my check for \$18, payable to the Geauga County Bar Association.
Yes, I plan to come to the lunch and program & I am a student. Enclosed is my check for \$10, payable to the Geauga County Bar Association.

Name: Phone:

e-mail:

RSVP: Geauga County Bar Association, P.O. Box 750, Chardon, OH 44024

## LOCAL ATTORNEY OBTAINS CERTIFIED SPECIALIST DESIGNATION

**C**leveland, OH - Effective January 1, 2007 **James G. Dickinson**, partner at Cavitch, Familo, Durkin & Frutkin, has received designation as a certified specialist in Estate Planning, Trust & Probate Law. Mr. Dickinson now joins a distinguished group of attorneys in the state of Ohio who are certified specialists in this area of the law.



Scott A. Williams, Esq, speaker at the February Bar Meeting on Estate planning along with the GCBA Immediate Past President, Stephen G. Macek

The OSBA is the largest certifying agency in Ohio, and **John S. Stith** president of the OSBA previously stated, "Certification as a specialist is one way attorneys strengthen their practice skills in a particular area of the law and inform their clients of that expertise. This is another form of assistance available to the public from Ohio attorneys who practice in certain fields of law, and the Ohio State Bar Association is pleased to participate in the certification process."

Mr. Dickinson brings over 25 years of legal experience in the areas of Estate Planning, Asset Protection Planning, Corporate Succession Planning, Mergers & Acquisitions, Probate Litigation and Non-Profit Corporations. Jim joined Cavitch in 2005 and has been instrumental in the continual growth of one of Northeast Ohio's most regarded law firms.

During the past several years Mr. Dickinson has been recognized as an Ohio Super Lawyer. For over ten years, Mr. Dickinson has been honored as one of *The Best Lawyers* in America. Jim is a sought after guest speaker by National Business Institute, National Center for Family Business, The Ohio Certified Public Accountants Association, Ohio State Bar Association and The Marvin R. Pliskin Advanced Probate and Estate Planning Institute.

You can reach Jim Dickinson by contacting him at the following: Cavitch, Familo, Durkin & Frutkin, Fourteenth Floor, 1717 East Ninth Street, Cleveland, OH 44114. 216-621-7860, [www.cfdf.com](http://www.cfdf.com), [jdickinson@cdfd.com](mailto:jdickinson@cdfd.com).

## SOCIAL EVENTS

ANN D'AMICO ESQ. ZIMMERMAN, CATICCHO, EISENBERG & MODICA

**S**ecretaries Day - June 27- Pineview Lake  
Honor your secretary and celebrate the **Year of the Pig** at Pineview Lake on June 27. We will have a Chinese cookout including Asian stir fry, fried rice, hot dogs, hamburgers and plenty of side dishes. Dessert will be from the 3rd Annual Pie Baking Contest. We have rounded up enough Cornhole games to have a tournament before the luncheon. We will be signing up teams starting in May.

Annual Dinner - October 27 - Red Maple Inn. Dinner will be the option of a clambake or steak. Keep this date open, as this will be so much better than last year!

Christmas Party - December 13 - Chardon VFW: The location of the Christmas Party has changed to the Chardon VFW. I am looking forward to having this event at a new venue.



Members of The Prosecutor's Office at Lunch



# AN INTERVIEW WITH DENNIS J. IBOLD

By PAUL A. NEWMAN

**D**ennis was admitted to the Ohio Bar in 1973 after Law School at Cleveland State University and undergraduate at Marquette University. He has four children, D.J. (30), Bradley (28), Rachael (26), and Jessica (25) and is presently married to Anna.

**Q:** What is the most attractive aspect of the law practice to you?

**Ans:** The variety of problems, challenges and opportunities to help clients, and the opportunities I received to become involved in real estate development and banking.

**Q:** What is the least attractive aspect of the law practice to you?

**Ans:** The time deadlines to meet client expectations or court schedules.

**Q:** What has been your area of practice for most of your career?

**Ans:** Family law, real estate and business.

**Q:** How has the practice of law changed you?

**Ans:** Emphasis on less practice areas by lawyers, more detailed due diligence work required and more complex regulations to comply with.

**Q:** Has religion had an influence on your practice of law?

**Ans:** No.

**Q:** How many jury trials have you tried?

**Ans:** In my more than 33 years, I don't really remember the number of jury trials I've had. In the last several years, I don't recall any. When I first started practicing I had criminal jury trials and civil jury trials. So I guess I probably had about 20 jury trials or so.

**Q:** What was the high point in your career?

**Ans:** Some of my high points were co-founding Petersen & Ibold with **Jerry Petersen**, working with my

brother, **Michael Ibold**, for more than 25 years, arguing a case before the Ohio Supreme Court, being a Director of three different public companies and becoming involved in real estate development.

**Q:** What effect has the Geauga Bar Association had on the practice of law in Geauga County?

**Ans:** The Bar Association serves a valuable purpose of communication, education and congeniality among the members of the Bar.

**Q:** Who do you consider, from the Geauga Bar only, to be the best all around general practitioner, and why? (no more than three).

**Ans:** My partner of more than 25 years, **Jerry Petersen**. I have learned much from Jerry, he is brilliant and practical.

**Q:** Who do you consider, from the Geauga Bar, to have the best sense of humor? (no more than three).

**Ans:** After **Tom Mullen's** retirement party, I guess it is **Mike Judy**. If he tires of being a lawyer, he could be a stand up comic.

**Q:** Do you think candidates for judgeships should be allowed to comment on their opponents record in office, if so, why, if not, why not?

**Ans:** Generally I would say that I am in favor of free speech and free comment, however, when I think about the attack ads that are prevalent in politics, I don't think that type of comment would be good in judicial races. Unfortunately it would be difficult to craft a compromise between those two positions so I think we are better off without comments.

**Q:** Do you think our profession is overregulated, why, why not?

**Ans:** Regulation is a way of life today in the U.S. My involvement with banking, real estate development and the law, all three are heavily regulated, have taught me that. In general, I don't think law is over regulated. Most of the regulations set forth a reasonable framework to provide safeguards for clients and lawyers.



**Q:** What do you consider the greatest ethical dilemma facing attorneys with greater than twenty-five years of practice?

**Ans:** Conflicts of interest.

**Q:** The Ohio Supreme Court is soon to mandate mandatory reporting of voluntary *pro bono* services of no less than 50 hours or payment of \$500. What is your opinion of this concept?

**Ans:** I personally do not like the concept. I understand it is a privilege, not a right to be an attorney and that it is important to give back something. However, I believe it is up to each individual to make his or her decision and law isn't the only profession or occupation. If it is right for lawyers, why isn't it right for others?

**Q:** What book are you presently reading, and what type of books do you read?

**Ans:** I read Tuesdays with Morrie by Mitch Albom, liked it, just finished his newest book, One More Day and plan to start his other book, The Five People You Meet In Heaven. I also like biographies and mysteries.

**Q:** What hobbies/activities, if any are you involved with, and how accomplished are you at them?

**Ans:** My hobby is tennis. I've played on USTA Teams in 2000 and 2001 that played for the State Championship, but unfortunately we lost. My other activities are real estate development and banking. I have participated in the development of more than 50 subdivisions in Northeast Ohio. In 1982 I became a Director of a small savings and loan in Cleveland, helped take that company public in 1986, became Chairman of the public company and helped negotiate a merger with Republic Bank of Michigan in 1993. After the merger, I became Vice-Chairman of Republic Bank until its merger with Citizens Bank in December, 2006. The merger value was more than \$1 billion dollars. I am a Director of Citizens Bank of Flint, Michigan (CRBC). Citizens is the 43rd largest bank in the United States with roots dating back to 1871 and has assets of about \$14 billion and a market capitalization of about \$3 billion. I am also involved with a group creating a new commercial bank on the west coast of Florida. We are planning a public offering in May of 2007.

**Q:** Where have you traveled in the world?

**Ans:** I usually like to get out of Chardon in the winter and go somewhere warm, usually

the Carribean I am about to leave for St. Maarten. We also recently went to Hawaii and are planning to go to Hilton Head in the fall.

**Q:** What female/male celebrity would you want to be photographed with?

**Ans:** I guess I would like a group photo after a mixed doubles tennis match with me, my partner, Maria Sherapova, and our opponents, Andy Roddick and Martina Hingis.

**Q:** What do you do to maintain physical and/or mental fitness?

**Ans:** To maintain physical fitness, I play tennis, usually 5 times a week, and I try to work out. I haven't been working out as much lately and need to get back to that. Playing tennis also provides mental fitness, because I can't think about work and play well.

**Q:** If you could have dinner with any two people in history, who would they be and who would you invite as your dinner date (excluding spouse)?

**Ans:** John F. Kennedy, Neil Armstrong and my dinner date would be Marilyn Monroe.

## U CONTEST

**N**o one was able to guess the location of the elephant in the last issue of *Ipso Jure*; it was located in the office of Jerry Petersen. Understanding that he doesn't allow access to his inner sanctum to just anybody, it is possible that people just haven't seen it. His office is well accented, nice decorations, great memorabilia, and more opulent than mine. I recommend a tour if permitted.

This month we are printing two photos located in two different locations. These locations are frequented often, so this query should be easily answered.

Remember, if this is your office, you are not permitted to enter the contest. There is a prize. Email your entry (guess) to the editor at [PAN126@aol.com](mailto:PAN126@aol.com).



Where have you looked through this window?

