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A PUBLICATION OF THE GEUGA COUNTY BAR ASSOCIATION  
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## SEPTEMBER GENERAL MEETING

**David Lowe** will be speaking at the next General Meeting of the Geauga County Bar Association. The meeting will be at Bass Lake Tavern, Upstairs at Noon on September 23. Lunch is \$15. Reservations (440.279.2087 or smcgrew@geaugabar.org) by 9:00 a.m. on 9/23 are truly appreciated. The minutes and agenda are enclosed.



Editor **Paul Newman** also has been hard at work "To create and build a memorial dedicated to all Geauga County Veterans, past and present, who have honorably served the United States of America."

## FIRST FRIDAY CLEs

On October 2, the GCBA will host the 2009 Domestic Relations and More program. On November 6, the GCBA will host the Planning for Disabilities and Long Term Care. Please see the enclosed flyers for more information and to register.



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## FREE SPEECH FORUM

Come to the University Hospitals Geauga Medical Center at 13207 Ravenna Road just off Rt. 44 on Friday, October 2 for a non-invasive discussion on "Who is responsible for the high cost of medical care—the doctors and hospitals, the insurance companies, or the patient-consumer?" A panel of primary care doctors, a hospital administrator, and a representative from the Ohio Department of Insurance will present their views, and then take questions or comments from the audience.

Lunch will be available at noon for a cost of \$15.00, or just come for the panel and open discussion starting about 12:45 p.m. Please call Donna Fried at the Bainbridge Library, 440-543-5611, for lunch reservations.

This Free Speech Forum is hosted by the Geauga County Public Library. The library works in conjunction with the Geauga League of Women Voters and the Geauga Bar Association to offer current topics of interest for discussion as a "Free Speech Forum." The "Forum" is always open to the public, and the discussion session is free.





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

LINDA IRELAND, COURT PARALEGAL

**O**n March 7, 2008, in *State v. Gatchel*, 11th Dist. No. 2007-L-036, 2008-Ohio-1029, the court of appeals affirmed the judgment of the trial court. The court held that appellant pointed to nothing outside the record that would entitle him to relief under R.C. 2953.21. Thus, the court concluded that the trial court correctly denied appellant's petition for postconviction relief without a hearing.

**O**n July 18, 2008, in *In re Nevelos*, 11th Dist. No. 2007-G-2804, 2008-Ohio-3606, the Eleventh District Court of Appeals affirmed the judgment entered by the Juvenile Division of the Geauga County Court of Common Pleas. The appellate court held that the father specifically waived his right to counsel and the mother implicitly waived her right to counsel by failing to obtain counsel after being informed of the right to counsel.

**O**n December 31, 2008, in *In re Spangler*, 11th Dist. Nos. 2007-G-2800 and 2007-G-2802, 2008-Ohio-6978, the court of appeals reversed the judgment of the trial court, allowing the Geauga County Board of Retardation and Developmental Disabilities to move the trial court to remove a developmentally challenged adult's guardians, and granting such removal. The court of appeals determined that county boards of mental retardation lack standing to move for the removal of an incompetent's guardian,

since the statutes creating and controlling such boards do not grant such a power, either expressly or by implication. The court of appeals further held that county boards of mental retardation and developmental disabilities are not fiduciaries of their clients.



## A CHALLENGE FROM THE LAKE COUNTY BAR ASSOCIATION

WILLIAM C. HOFSTETTER, ESQ.

**I**n the September edition of *Lake Legal Views*, Mike Murray, LCBA's President, issued a challenge, "... to the Geauga County Bar Association for a soft ball game to be held near the end of September." He went on to say that they need to put together a team, that talent is not required, and for members to let him know if interested. President Murray and I have been playing phone tag but in my last message to him I said that the GCBA would be game but that as we meet only once a month and we have just learned of the LCBA'S challenge, perhaps next Spring would be more doable. **HOWEVER**, if any one of you would like to volunteer to be our Captain and to organize our many athletic members, let me know and perhaps with the power of email and Susan's help we could field a team and meet the challenge sooner rather than later.



Ed Brice being ADA compliant in a small town



## PRESIDENT'S COLUMN

WILLIAM C. HOFSTETTER, ESQ.

**D**o you ever have days when you just don't want to face your email "in" box? I do. Not every day. Not most days. But some days.

I've given my occasional aversion some thought in an attempt to understand it, and I think I know what it is: For me, one of the most enjoyable and satisfying aspects of my practice is the personal interview with my clients. I enjoy meeting with new clients and catching up with established clients. I derive satisfaction when I am able to meet face to face with a client who is anxious, and perhaps filled with misconceptions, who becomes visibly more at ease as he/she is able to discuss concerns with the benefit of complete confidentiality upon learning that things may not be as bad as presumed, or that the law provides an organized process to deal with virtually all problems.



Cindy DeMarco volunteering at the Golf Outing. She also took many of the photos in this issue.

For me, the relative value of email depends upon the nature of my professional engagement or the specific professional task at hand. My practice includes a fair amount of transactional work as well as estate planning and administration.

In transactional work email is an extraordinary tool which greatly expedites and facilitates most transactions. The submission and revision of documents in the back and forth with clients or other counsel may be accomplished with far greater speed and efficiency than in the "old" days. However, just because we can revise and/or respond instantly doesn't mean that this is always well advised. For me, it is often important to intentionally take a night, circumstances permitting, to reflect and "sleep on it" before responding substantively, and to resist the urge to do so instantly just because the technology permits it.



Ed Brice & Paul Newman at the Golf Outing

For those of us with varied practices, however, it is important to be mindful that the desire for speed and efficiency is sometimes properly trumped by the need to be compassionate towards and supportive of our clients. In my experience there is a tendency to overestimate the value of email in some estate matters where, by definition, most clients have just suffered an enormous personal loss—the death of a spouse, father or mother—and are working through the grief process. In this context, the desire for speed and efficiency may properly be subordinated to the client's need for personal guidance, compassion, or just old-fashioned listening by their lawyer. Although I no longer do family law or domestic relations work, I would think that the role of email in the domestic practice is similar to that in the probate practice—fine for perfunctory communications but no substitute for face-to-face or even telephone contact as opposed to electronic communications.

Email is a fantastic tool which requires us to

understand its limitations as well as its strengths. When it permits us to do a better job for our clients more efficiently and economically, it enhances the attorney-client relationship. However, we need to be on guard, and to limit or avoid its use when it impairs or frustrates our proper roles with our clients. In many circumstances a telephone call or a personal visit is much preferred to a communication via an electronic screen.



## THE ECONOMY AND ITS EFFECT ON DIVORCE

BY MAGISTRATE DOROTHY H. LEE

**C**learly, the economy has had an impact on Geauga County court filings. One need only look at the local papers to see the increase in the number of foreclosure filings.

Likewise, the economy has affected at least some aspects of criminal cases. I recently talked to **Bob Umholtz**, our illustrious Public Defender, who informed me that his caseload has increased significantly. While crime in Geauga County has not necessarily increased, there is an increase in the number of people eligible for the Public Defender.



Jake Yanchar's foursome at the Golf Outing

So, too, as the economy continues to falter, we have seen some distinct trends in family law cases. There has been a vast increase in the number of pro se filings as litigants represent themselves in court so as to avoid the cost of attorneys. Out of 51 cases currently scheduled to be heard by me in the month of August, 20 of those cases are being litigated by pro se litigants. There has also been an increase in the number of filings for modifications of existing support orders due to loss of employment, as well as an increase in the number of contempt actions dealing with non-payment of support. Another trend is the increase in the number of "stays" of divorce cases due to the filing of bankruptcy.



First Place Team: Judge Cannon, Bruce Kephart, Joe Znidarsic & Dave Ondrey

The Columbus Dispatch (Nov. 11, 2008) disclosed that across the state there was a 15% increase in the number of new divorce filings.

Despite these trends, the actual number of new divorces and dissolutions filed in Geauga County has not changed much over the past few years. In 2006, the total number of divorces/dissolutions/legal separations filed was 319; in 2007 the total was 319; in 2008 the number filed was 299 and for the first half of 2009, the total filed was 148, almost the exact number filed during the first half of 2008.

It is hard to divorce now because of decreasing or

**Geauga County Divorce, Dissolution and Protection Order Statistics (Prepared by Victoria Janasik)**

	2006	2007	2008	1/2 of 2009
<b>Dissolution With Children</b>	42	74	61	32
<b>Divorce Without Children</b>	77	67	60	29
<b>Divorce With Children</b>	134	100	103	51
<b>Dissolution Without Children</b>	59	72	71	33
<b>Legal Separation</b>	7	6	4	3
<b>Stalking Petition</b>	48	59	54	25
<b>Domestic Violence</b>	79	82	94	65

stagnant salaries, unemployment, and the current real estate market. It used to be that the marital home was the largest asset to be distributed. When it was sold, the proceeds used to be enough to allow both parties to have enough money to finance a fresh start. Now these homes are worth a lot less and in some cases are under water. It makes it very difficult to figure out what is going to happen with that asset and it makes it more difficult to try to come up with solutions for people.



Team Leary at the Golf Outing

Another trend seems to be that couples are not separating but they continue to live together through their divorce because they cannot sell their homes.

It is a lot easier to divide assets than debts. I give a lot of credit to our local family law attorneys who

have used some very creative thinking to get people separated where they have accumulated extensive debt. The more affluent people find it easier to split-up than the middle and lower-income couples.

This disastrous economy and the increased stress it places on couples has also impacted the number of petitions for protection orders that have been filed in this County. In 2006

there were 79 Petitions filed; in 2007 there were 82; in 2008 there were 94; and for the first half of 2009 there were 65 (by August 18th, 2009, there were 24 petitions filed; last year at this time there had been only 10) .



## 2009 GOLF OUTING WRAP-UP

JIM FLAIZ, ESQ. CARRABINE & REARDON

Once again, we had a well attended, successful golf outing. The results were:

1st Place Team: Dave Ondrey, Judge Tim Cannon, Bruce Kephart, Joe Znidarsic

Highest Scoring: Dave McGee, Dorothy Lee, Lisa Carey & Susan McGrew

Long Drive Men: Jake Yanchar

Long Drive Women: Lisa Carey

Pin Shot: Ed Ryder



Long Putt: Tim Snyder

FirstMerit Visa Card - Jim Carrabine

2 Indians Tickets Sam Martillotta

Foursome at Little Mountain Country Club: Chad Dostal

I would also like to thank volunteers: Denise Kaminski, Cindy DeMarco, Linda Kostelnik, and Joanne Monaco.



## DISCHARGEABILITY OF POST-PETITION HOMEOWNERS ASSOCIATION FEES

ROBIN STANLEY, ESQ. PETERSEN & IBOLD

**D**o you have a client that owns a condominium or a home subject to a homeowners association and that is contemplating bankruptcy? Or do you represent a homeowners association where at least one homeowner has filed bankruptcy? This information is for you. Can a condominium, cooperative or home owners association collect

fees after a debtor-owner is discharged? The answer is yes, for a certain period of time. Section 523 (a)(16) of the Bankruptcy Code excepts from discharge debts for condominium, cooperative, or home owner association fees "for as long as the debtor or the trustee has a legal, equitable, or possessory ownership

interest in the property." Therefore, the association can continue to bill for the monthly fees even after the debtor is discharged. However, once the home is sold in foreclosure, the debt is discharged or paid by the foreclosure. The lien against the homeowner is extinguished and discharged at that time, because the debtor no longer has an ownership interest in the real estate.

What does this mean? If you are representing a condominium, cooperative or homeowners association, your client may be able to pursue the debtor for fees that have arisen since the filing of the bankruptcy. Once the debtor is discharged, you can bring a lawsuit against the debtor for fees owed presently and fees that will continue to accrue over the course of the foreclosure. If judgment for those fees is received, you can garnish the debtor's wages or attach a bank account during the time that

the debtor still owns the real estate. However, once the sale of the real estate is confirmed through foreclosure, anything remaining is discharged. So, should you rush into court and get a judgment? And can you collect anything in that time period? This strategy may come in handy in places that take a long time to complete a foreclosure, but is not so helpful on a home that was on the eve of sheriff's sale when the bankruptcy was filed. Further, you must be mindful of the date the sale is confirmed as any action to collect funds after the debtor no longer holds an ownership interest is a violation of the debtor's discharge and you can be liable for sanctions.

There is also a strong argument that if the debt is pursued and the association gets a judgment on those fees prior to the foreclosure that the debt is



Carolyn Paschke and Judge Trebets at the Golf Outing



Jim Carrabine & Jim Reardon at the Golf Outing

independent of the lien on the real estate and those fees may not be discharged. These fees are considered post-petition debts and are not discharged. I am hesitant to encourage associations to aggressively pursue these fees as the risk is high that you could be brought back into the bankruptcy court for violations of the debtor's discharge. Further, the amounts owed to the association are usually not high enough to make it worth the cost of hiring an attorney to pursue



Linda Kostelnik and Joann Monaco at the Golf Outing

payment.

There are several attorneys that are representing homeowners and condominium associations in our area. I would be curious to hear whether they have brought any lawsuits against these debtors and whether they have successfully recovered any funds in these cases. Is this a practical, worthwhile pursuit?

At the least, the condominium, cooperative or homeowners association is within its rights to pursue monthly fees after the bankruptcy is discharged for post-petition fees. Sending monthly invoices of current charges does not violate the bankruptcy code. However, I would expect that if the debtor is surrendering his or her home, the debtor will not be making any future payments on the fee as it will in most cases be taken care of in the foreclosure.



## LAW LIBRARY NEWS

SUSAN MCGREW, LAW LIBRARIAN

**T**he library has 2 major issues to work through during the transition. First of all, the budget.

Drive over the speed limit in Geauga County; we need the money! A year to date comparison with last year shows our income from traffic fines is down 16%, or \$25,000 so far for the year. While we have managed to reduce our expenses by 33%, more cuts will be coming. \$25,000 is 10 months of Westlaw for the library. \$25,000 is half of what we spend on legal research materials for other agencies. \$25,000 is all of our Ohio focused titles. The easy cuts have been made. The next round will involve online offerings and some of the more popular titles. This will translate into a longer wait time for you to be able to do your legal research. The lenient copy and printing policies may have to be revisited. So, if you get a speeding ticket in Geauga County, don't waive the fine portion. The 25% that the library gets may make a big difference in the service you receive.

Also, the current and future boards are working on the renovation plan for the library. This will be funded by the Retained Earnings of the library (the 10% kept over the years, which is currently \$320,000). In light of the budget situation, as well as the loss of all county general fund support for the Law Library (\$50,000), the boards are looking at spending about half of the retained earnings and keeping the rest to fund any unavoidable increases in fees from publishers and make up for any further loss of income from traffic fines. The main focus of the renovation is to



Golf Outing Barbie made a return appearance

make the law library a more functional place to perform research. To accomplish this, the boards are looking at plans that will open some of the basement windows, install nonmovable, shorter shelving, create a separate room for privacy for attorneys to work on support issues, and improve the lighting. The boards are aware of the upcoming financial issues for the library and are working on a 5 year plan so that the library will have enough funding to continue to (frugally) meet the research needs of the legal community.



## SETTLEMENT DAY

LISA J. CAREY, ESQ. CARRABINE & REARDON

**C**oming off a record-setting year when more than 50% of the Common Pleas cases settled last year, the Courts and Settlement Day Committee are ready to settle some cases! This year's Settlement Day is scheduled for



Lisa Carey at the Golf Outing

Friday November 20, 2009 from 8:00 a.m. until the last mediation ends. Each year, over 40 members of the Geauga County Bar Association volunteer their time and talent to hear personal injury cases, contract

cases, real estate cases, divorce cases, and even a few odds and ends in both Common Pleas and Chardon Municipal Court. If you would like to mediate, please fill out the enclosed form and return it to Settlement Day Chairperson, Lisa Carey, as soon as possible. Be sure to mark specifically what times you are available

and your areas of practice, as great care is done to ensure that a personal injury attorney does not have to mediate a divorce case, etc. If you have never mediated before, you are still welcome to join us - Susan has some great resources in the law library on mediation and there are also many seminars where you can brush up on your mediation skills prior to Settlement Day.

**WE NEED CASES!** Sometimes, the attorneys are the best resource as to selecting cases for Settlement Day, as they know when their cases are "ripe" - or in a position for settlement to be discussed. If you have any cases that you would like to submit for mediation, please fill out the enclosed form completely and return to Lisa Carey as soon as possible, as we will begin setting the schedule toward the end of September. It is (almost) NEVER too late to submit a case - we will try to squeeze one in whenever possible!

Sadly, this will be our first year without **Geauga County Sheriff's Deputy Greg Harmasek**. Greg was an integral part of Settlement Day and was usually the first face you would see and first voice you would hear when you entered the courthouse. He helped set up, clean up, keep the schedule running, make up rooms when cases got behind, and basically just tell people where to go (literally). He would volunteer to work that day, knowing it would be one of the busiest in the courthouse because he loved working with all of the people coming in and out of the building - or maybe it was just the Settlement Day snacks. Either way, our committee would like to honor Greg this year with a special monetary donation to be collected and paid to one of Greg's favorite projects - the DARE program.

Remember - please get your forms in ASAP and we look forward to seeing you on Settlement Day - 2009!

**IPSO JURE**  
P.O. Box 750  
Chardon, Ohio 44024