

Ipso Jure

CHARDON
MUNICIPAL CENTER

111
WATER ST.



Cover: A pocket full of posies under the sign of the Chardon Municipal Building.

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President's Page

Judge Terri Stupica

Chardon Municipal Court,

440-286-2670



So, at our last executive meeting, I was informed I needed to get my quarterly president's article in for Ipso Jure. Quarterly? I thought

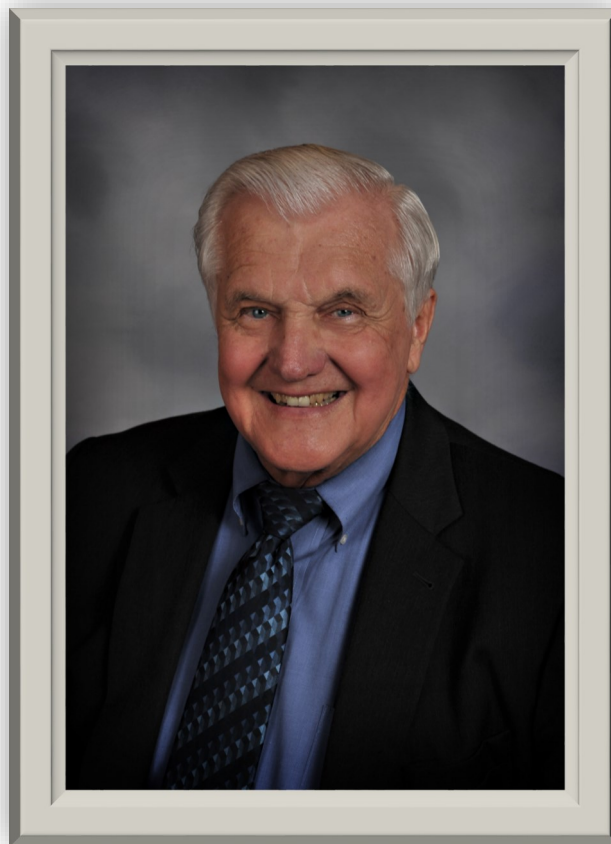
I was done with the initial article. Lynne Day suggested I do what Brandon Dynes does in Lake County, and throw in an interview. So, here it is, of the inimitable Robert Wantz.

On June 4, 1932, Bobby Wantz was brought into this world. Eighty-six glorious years later, he is still gracing us with his presence

and great lawyering skills of 56 years, though he will tell you he is just acting.

After graduating from Russell High School here in Geauga, Bob went on to serve four years in the Air Force as a control tower operator, serving in the Marshall Islands during the Korean War. He then went on to attend Hiram College, where he graduated in three years with a B.A. in political science, continuing on at C.S.U. law school, where he graduated three years later.

He started his legal career in 1963 doing insurance defense at Eardley & Wantz, taking over Judge Simmons' practice when he was elected to the bench. Only on one occasion did the jury return a verdict that was higher than the insurance company offered. What a coup. When he started practicing, Judge Robert Ford told him, "Gauga County is not over-lawyered," meaning, "there's room for you, Bob." He remained with Dave Eardley until about 1985, when he joined Petersen, Ibold & Wantz, and practiced



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President (from page 2)

with that firm for about five years. He then moved to Thrasher, Dinsmore & Dolan, of counsel, where he remained until about 2000. Feeling confident enough that he could go out on his own, he bought the old Cablevision Building, now known as the Wantz Building, and hung his shingle, where you can find him daily, at 7:30 a.m., even on the weekends.

In the beginning of his legal career, Bob was active in the Bar Association when there were not many members at all. There were no pictures of any of the members, so he hired a photographer and was responsible for compiling the photographs of the Bar members and displaying them in the Courthouse. (I think there are still some original pictures on that wall.) To get your notary stamp, you only had to have a judge sign off on it; Bob implemented taking some type of basic civics-type test to get your notary stamp.

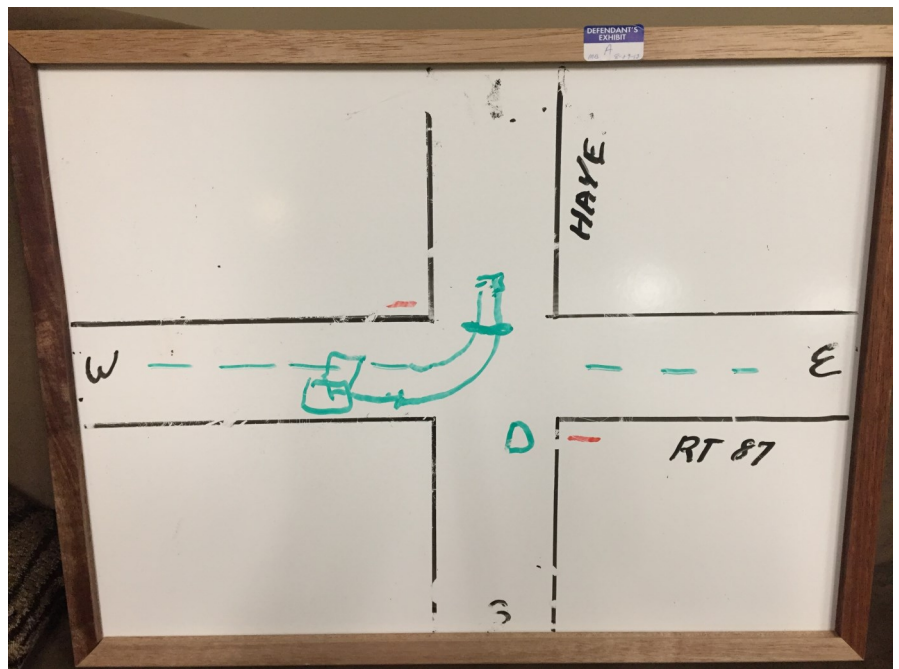
I could have listened to Bob's stories for days, but my bailiff and I did have to return to work after lunch, and my stomach hurt from laughing so hard. After outlining his background and experience, as mentioned above, I asked what one of the biggest changes over the course of his practice. He immediately said, "The changes in the D.U.I. laws." The per se violation was .15 when he started! He continued to entertain us with funny story after funny story, many of which I could not publish, but, believe me, they were hysterical. Two that I can share.

The first one goes back to when Judge Inderlied was the mu-

nicipal court judge and Craig Albert was the prosecutor. Bob's client was charged with many high level misdemeanors. Bob and Craig went to lunch, indulging in a few adult beverages, and Bob's client pled to a couple minor misdemeanor charges. Judge Inderlied told them they could never go to lunch together again.

The second story involves Bob's representation of an African American youth charged with theft set for jury trial with Judge Bob Ford presiding. After the jury returned a "not guilty" verdict,

My first jury trial was a vehicular manslaughter, about two years after I took the bench, and Bob represented the Defendant. The jury returned with a not guilty verdict, due, most likely, to his request for a jury view of the scene, whereby my bailiff said all the jurors gasped when they unloaded from the bus, as if to say, "Oh my God, I see how the Defendant could not have seen the oncoming driver coming over the crest of the hill." My true belief is that it was due to Bob's drawing used as an exhibit:



Bob's client turns to him and asks, "Does that mean I can keep the stuff?" Here's your sign.

Anyone who knows Bob, knows he is a class act with high moral values, and just a joy to be around. He raised 8 children, which produced 30 grandchildren and great-grandchildren. Watching Bob in action is an art form. His performance before a jury is priceless.

Yes, folks, the Oscar Meyer Weiner-mobile at its finest.

I am grateful to have Bob as my friend, and I am hopeful that he is around many more years to provide great stories and honor to the rest of us and our profession.

He continues to live by the two mottos that are hanging behind his desk: "Life is good," and "We will prevail." It sure is, and Bob will. 🌸

What to Consider in Addressing the Legal Concerns of Older Clients

**Patricia J. Schraff, John P. Thomas,
and Lindsay C. Jones**

Schraff Thomas Law, L.L.C., pschraff@schraffthomaslaw.com

It is often said that Elder Law is a combination of social work and law. To some extent this is true, as the needs of a particular client are often based, at least in part, on the client's familial and financial circumstances. After all, the estate plan of a healthy, wealthy, and married 65-year-old will often differ from the estate plan of a widowed 85-year-old whose health and assets are declining. Yet, that 65-year-old may one day become that 85-year-old, and a single set of planning documents may be involved with both scenarios. Consequently, in considering how best to meet the needs of our older clients, both their present needs and their future goals should be taken into consideration. In short, our older clients must be encouraged to plan, pre-plan, and re-plan.

It is also often the case that a client coming to see us will be focused on a single immediate legal need, such as the preparation of a General Durable Power of Attorney (for the management of their financial assets). This can be an opportunity to introduce that client to other equally important planning tools, such as Health Care Directives, Wills, Trusts, and other planning documents.

Additionally, when work-

ing with an older client, the preparation of a General Durable Power of Attorney requires clear and detailed instruction. Although we do have a standard General Durable Power of Attorney for financial affairs, our office advocates for the use of a General Durable Power of Attorney which allows for each individual client's needs to be specifically addressed. Utilizing a checklist, it is possible to help each client consider whether he or she wishes to give powers that go beyond the usual standbys. Examples of these would be detailed gifting clauses, designation of specific beneficiaries, and powers including the creation of Trusts, the modification and amendment of Trusts, and the ability to enter into a private settlement agreement with respect to a Trust (where the client's goals have not been advanced due to changes in the law). These special powers, often referred to as "hot powers," can be useful in planning for an older client. More to the point, however, their inclusion is often required in order to permit an agent to meet certain planning objectives. With that said, it is extremely important for the client to understand the powers that are being given, and how the same might impact his or her financial situation moving for-

ward.

When preparing a General Durable Power of Attorney, there is also the opportunity to preserve the client's wishes with respect to potential long-term care. For example, does the client wish to remain at home, even if it means the exhaustion of his or her assets? Or does the client wish to allow the agent to protect his or her assets for the benefit of a spouse and/or children, and attempt to obtain Medicaid eligibility for the payment of long term care? Does the client wish to try to protect their residence for a caregiver child or a disabled child, or perhaps a sibling who lives with the client? These powers can also be included in a General Durable Power of Attorney.

Time should also be taken to discuss Health Care Directives, and the importance of each document. Discussing a client's end-of-life preferences can be both awkward and difficult, and as such this discussion is frequently overlooked in the preparation of the standard forms available for the Health Care Power of Attorney and Living Will. However, the discussion itself promotes a better understanding of the goals and decisions that may become involved

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Older Clients (from page 4)

in a life-threatening situation and permits the client to fully consider the involved implications. Ultimately, this can serve to preserve the client's direction and ease the agent's job in a time of medical crisis. Including a specific HIPAA release (in addition to what is contained in the current standard form for a Health Care Power of Attorney) can also eliminate challenges to an agent's need for medical information, and allow for proactive decision-making.

It is also important to educate our older clients with respect to the interaction between beneficiary designations, Wills, and Trusts, so that there are no conflicts in the client's complete estate plan. Clients are frequently confused in this regard, and do not realize that the designation of a beneficiary eliminates the assets from inclusion in a probate estate or a trust plan. Therefore, the starting point must always be to identify what the client wishes to achieve—when they are competent, when they are incompetent, and in the event of death. If a Trust is the most appropriate option, a client should be urged and directed in the funding of the Trust, to be certain that the assets the client has are included in the overall plan. Older clients should also be discouraged from designating a single family member or friend as the sole beneficiary of their estate plan, at least where the client's goal is for that beneficiary to then voluntarily share the estate with other individuals and/or charities. Often, this decision is based on the client's trust in that individual to carry out the client's wishes, com-

bined with the goal of lessening the burden of administration. Although one might have a great deal of trust in a child or friend, the legal fact is that the named beneficiary will have no obligation to share any assets. Conflicts in estate planning often lead to disputes and various types of probate litigation, which is time consuming, expensive and stressful to litigants. Therefore, practitioners must not only confirm that clients possess the requisite testamentary capacity and are acting free from undue influence, but must also educate the client on the legalities of beneficiary designations.

Older clients should also consider long term care issues. The question should be asked whether or not there is long term care insurance, or a life insurance hybrid that provides for the payment of long term care. Unless a client has familiarity with the costs of long term care, the client is often surprised to hear that the cost of in-home care can be upwards of \$14,000.00 per month, the cost of assisted living can be anywhere from \$5,000.00—\$9,000.00 per month, and nursing home care can be anywhere from \$7,000.00—\$14,000.00 per month. The potential payment of these expenses can deplete a client's assets quickly. This discussion may also include a review of the client's family medical history. For example, a client whose family members have an established history of death from Alzheimer's disease may have a corresponding risk of needing long term care themselves. Proactively planning for the payment of such care can be part of the client's

overall planning.

Clients should also be made aware of what Medicare provides and does not provide, and what Medicaid can provide or not provide. Knowing what the client would want if faced with the costs of long term care can help to determine their planning opportunities. This is not unlike asking a client to determine their comfort level with conservative and aggressive investment strategies. Different planning strategies will work best with different clients, and preferences can change with time.

The legal needs of our clients of advanced years can be more complex than other clients, and certainly require our skills in identifying the appropriate legal planning to address individual client goals and potential future needs. In undertaking such planning, there is a unique opportunity to preserve and protect the client's wishes, to protect the client's future well-being, and to insure their interests now and into the future—even when the client can no longer act on their own behalf.

For those of you who do not frequently assist clients with estate planning as part of your chosen practice, it is worthwhile to note that the Geauga County Department on Aging has a longstanding Legal Services Program, which has served to assist Geauga County seniors in addressing these same needs for the past 38 years. The Geauga County Department on Aging is located at the Chardon Senior Center, 12555 Ravenwood Drive, and can be contacted at (440) 279-2130. 🌸

Practice Tips for Handling A Bicycle Injury Case

Scott M. Kuboff

Ibold and O'Brien, scott@peteribold.com

With sun, warmer temperatures, and longer days come people who enjoy riding their bicycles on Ohio's roadways. When you factor in more and more people are taking up cycling—whether for fitness or just a better way to get around town—the instances of potential car vs. bicycle collisions increase. According to statistics from the Ohio Department of Public Safety, there were 1,494 reported collisions involving a bicycle in 2017; of which 19 were fatal. Sadly, these statistics appear to be consistent with those from 2014, 2015, and 2016, instead of trending down.

If you come across a bicycle injury case, here are a few practical tips to help establish liability and maximize recovery:

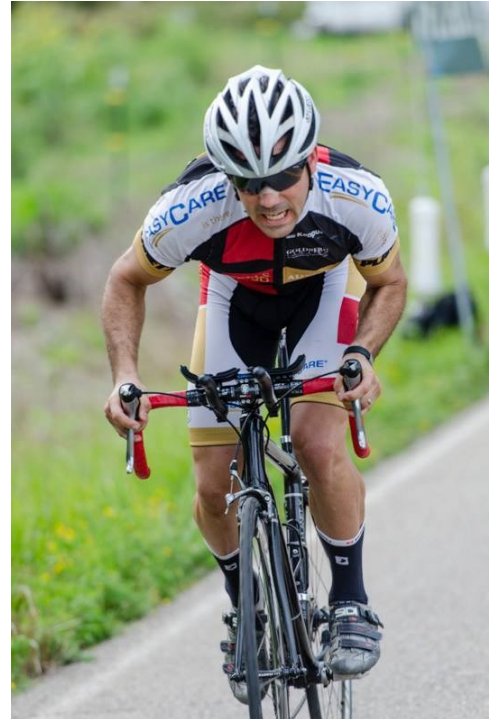
Do Not Rely Upon an Officer's Determination

As a practical matter, unless a police officer personally observes a collision, his or her determination of "fault" should not carry much weight and is certainly no substitute for your own thorough investigation. Moreover, and as it relates to bicycles, even if the officer observed the collision, there is a good chance he or she does not know the law.

Many communities—including those that I

ride my bicycle through—have local ordinances that regulate the use of bicycles in the community. Officers, when responding to a collision involving a bicycle, will undoubtedly look to their local ordinances when preparing their crash report. However, the problem is that many local ordinances are outdated and simply do not comport with Ohio's Better Bicycling Bill which became effective on September 21, 2006.

For instance, some communities have ordinances that require bicycles to be ridden on sidewalks or paths; not the roadway. However, R.C. § 4511.55 specifically permits bicycles to be ridden on the roadway, R.C. § 4511.07 (A)(8) prohibits municipalities from banning the use of bicycles on a public street and, further, R.C. § 4511.711 provides that municipalities cannot require bicycles to be ridden on a sidewalk. Additionally, the signs you see posted about "Bikes Must Ride Single file" are wholly inconsistent with



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Bicycles (from page 8)



R.C. § 4511.55(B) which allows cyclists to ride two abreast in a single lane. Further, and despite what certain ordinances state, a cyclist may use the full lane as R.C. § 4511.55(C) “does not require a person operating a bicycle to ride at the edge of the roadway when it is unreasonable or unsafe to do so. . . .” In short, be sure to cross reference any local ordinance with the Revised Code.

Electronically Stored Information

When riding their bicycles, many people use cycling computers like Garmin, Cateye, or Wahoo or apps like Strava or MapMyRide to record measurables like speed, distance, heartrate, and time. Nowadays, most include GPS tracking information. Accessing this information from your client could be incredibly helpful in determining pre-collision actions.

Even better is the use of action cameras like Go Pro. If your client has a video of the accident, it will do wonders in terms of determining—in an objective format—how the collision occurred and who is at fault.

ESI to Support Non-Economic Loss

While we are on the topic of electronically stored information, many cyclists upload that

data to websites like Strava (Facebook for endurance athletes) or Garmin Connect. Personally, I have my training logs dating back to 2009, which is incredibly useful in terms of valuing non-economic loss. What better way than to show how a particular injury effected your client’s ability to participate in an activity they loved than by supporting it with historical data showing the number of miles ridden, time in the saddle, or average speed.

In addition, many cyclists possess licenses to USA Cycling, USA Triathlon, and USA Track and Field. You can search those organizations’ websites to obtain past and current race results for your client to be used for the same purpose.

It goes without saying but, the same data can be used against you if your client is making a claim for loss of enjoyment of life, but the data simply does not support it. As such, ask your client about his or her training data and licenses and then verify it before making any specific claims.

Property Damage Could Be More Than You Think

Next, when preparing a settlement demand or complaint, be sure to consider the property damage component as there could be some value. For example, a set of Zipp 404 wheels—a common after-market purchase—will run in excess of \$1,000.00 and SRAM Red groupset—cranks, derailleurs, brakes, and shifters—will set a cyclist back \$1,700.00. We’re not even talking about the \$2,000.00 frame and \$1,000.00 in other ac-



cessories including the handlebars, seat posts and seat, tires, pedals, shoes, and kit (lycra shorts and jersey).

Do Not Forget About UM/UIM Coverage

Finally, be sure to ask whether your client has uninsured/underinsured motorist coverage on his or her auto policy and fully investigate whether there is coverage; you might be surprised to find out that many UM/UIM policies extend coverage to people injured by a motor vehicle while riding a bicycle. Whether the collision is a hit-and-run or the driver otherwise has inadequate coverage, pursuing a UM/UIM claim may be the only way to insure your client receives fair and just compensation for his or her injuries.

Scott M. Kuboff is an avid cyclist, competitive cyclocross racer, and a personal injury attorney with Ibold & O’Brien. Scott is a member of USA Cycling, Bike Cleveland, Heights Bicycle Coalition, and a founding member of North Coast Cycling. Scott was recently appointed Chairmen of the University Heights Bicycling Committee. 🌸

Interacting with the Geauga County Engineer's Office

Frank Antenucci

Gauga County Engineer's Office, fantenucci@co.geauga.oh.us

While lawyers come in many shapes and sizes, there exists a particularly peculiar subset of us with a certain venerating penchant for the United States Supreme Court. We are the ones who enjoyed reading the silver-tongued Cardozo in law school; who watch Supreme Court confirmation hearings on C-SPAN (though, admittedly, we record them so we can 'skip to the good stuff'); and who shed a tear when the honorably rebellious and sardonic Justice Scalia passed away in 2016. Hand raised—I am one of those SCOTUS geeks. That being said, there is one Justice among the historic gang who is widely regarded as the most celebrated of the black-robed titans of jurisprudence. Former Associate Justice Oliver Wendell Holmes, Jr. is widely considered by most to be one of the finest writers, dissenters, and legal minds to have ever graced the Court that Marshall built.

One of Justice Holmes' most famous and oft-quoted selections appears in his opinion from *Rock Island, A. & L. R. Co. v. United States*, 254 U.S. 141 (1920)—a controversy that originated in the Court of Claims where the claimant's suit was predicated on the federal government's procedural rigmarolish bureaucratese culminating in a discussion of the federal government's sovereign immunity. Ultimately, the Su-

preme Court's Holmes Opinion found for the United States in a terse judgment that essentially chastised the claimant for not following the federal government's procedures. But in the larger scope, the Court said that, although the federal government's rules and procedures might be confusing, incongruent, and often times, convoluted, such vexation is the entry fee we citizens must pay when we interact with our government. Justice Holmes summed up the entire controversy, and truly, the interplay between citizens and government, when he famously and rather frankly penned that "men must turn square corners when they deal with the government."

So, why all this talk of Supreme Court cases, federal sovereign immunity, and square corners? Because I serve as a government attorney and want to do my part to help my colleagues circumnavigate the government experience. My intent is to shine a light on the various aspects of the Geauga County Engineer's Office that afford interaction with private attorneys in order to make the experience of interacting with government a bit more palatable and copacetic. And when I say government—I do not mean the federal government. I cannot help you there. I serve in the Geauga County Engineer's Office. The Engi-

neer is statutorily responsible per Ohio Revised Code Section 5543 to perform the following duties on all county roads and all bridges on county and township roads: construction, reconstruction, improvement, and maintenance. Simply explained, the Engineer oversees road paving projects on county and township roads and provides routine maintenance such as pavement repair, road-side mowing, and snow plowing on county roads.

Private attorneys interact in their profession fairly routinely in the following areas of the Engineer's Office:

- Client contractor representation for contractual work.
- Resident representation for various private disputes.
- Easement, right-of-way, and work agreement acquisition.
- Survey and public records requests.
- Litigation or some controversy involving a public right-of-way.

But in my experience, private attorneys interact with the Engineer's Office far more often in their personal capacity, rather than professionally in the service of a client. These are the mundane scenarios that affect all of us. For instance, if you are an attorney and

(Continued on page 9)

Engineer (from page 8)

you live on a designated county road in Geauga County, there is a very high probability that within a fifteen year period, your road will be asphalt resurfaced. While resurfacing roads with new asphalt before the road surface useful life has expired is obviously essential to the integrity of the road because roads are a major transportation investment and need constant care, resurfacing can cause traffic delays through work-zones. Delays can be frustrating, but a necessary inconvenience for proper repaving. To provide as much information as possible about the construction process, the Engineer's Office publishes all relevant data on its website for all county road projects, so information is just a click away.

If you live on a county road, you can also expect your mailbox to get knocked down at some point. This is unfortunate, and frustrating, I understand. But I assure you it is not intentional. Most often, mailboxes are knocked down in the course of wintertime snow and ice control operations. There are two typical scenarios where your mailbox can

be knocked down during an active snow emergency response situation; they are as follows:

A snow plow actually comes into physical contact with your mailbox. This happens, but is not as common. In my experience, there is typically no guess needed as to whether or not a snow plow actually contacted your mailbox as not much of the mailbox remains. In this case, the Engineer will either repair or replace your mailbox.

The more common reason a mailbox is knocked down is from snow and ice impact. Rather than the physical snow plow or truck impacting the mailbox, the snow and/or ice thrown from the plow often times is heavy enough to take down a structurally compromised mailbox. In this case, the Engineer is not responsible to repair or replace your mailbox.

Lastly, I want to provide you with a few informative resources. First, much of the information you will seek can be found at the Engineer's website:

<http://www.co.geauga.oh.us/Departments/Engineer>.

Also, many times residents need assistance determining if they live on a county road and will even need to interact with the Engineer in the first place. Accordingly, please find below a listing of all current county roads:

Aquilla, Auburn, Bainbridge, Bass Lake, Bell, Brakeman, Bundysburg, Burton-Windsor, Butternut, Chardon-Windsor, Chagrin, Claridon-Troy, Clay, Fairmount, Farmington, Fowlers Mills, Grove, Hale, Kile, Kirtland, Leggett, Mentor, Messenger, Morgan, Moseley, Mulberry, Munn, Mumford, Music, Nelson, Old State, Rapids, Russell, Sperry, Swine Creek, Taylor Wells, Thompson, Thwing, Wilson Mills, Woodin,

My hope is that this brief article has provided the reader with some helpful information on interacting with the Engineer's Office. Certainly, if you have questions or are in need of assistance regarding our outstanding county highway system, please feel free to contact me at fan-tenucci@co.geauga.oh.us. ❁

Kurt Law Office, LLC

Attorney David E. Koerner Joins Team

Kurt Law Office, LLC is pleased to announce that Attorney David E. Koerner has joined the Chardon office as an Of Counsel Attorney. Attorney Koerner has been practicing law in Northeast Ohio for over 30 years, with wide-ranging experience as a prosecutor, criminal defense attorney, civil litigator, magistrate, and acting judge. His practice focuses on litigation and appeals, with a concentration on criminal defense. He will be accepting clients in the areas of criminal defense, OVI & Traffic Defense, juvenile law, plaintiff's personal injury, and appeals. To learn more, contact the Kurt Law Office at 440-516-1010 or visit the website at www.KurtLawOffice.com.

Cases of Interest

Pearce Leary

Pearce Leary, Esq., pearceleary@windstream.net



Karnofel vs. Superior Waterproofing, Inc., 2017-Ohio-9346.

Mother lives in daughter's house.

Plaintiff submits contract to daughter for work at house that is approved by both mother and daughter. Daughter cancels. Plaintiff sues daughter in municipal court and obtains judgment. Mother then sues plaintiff for breach of contract and negligent workmanship in common pleas court. Held: trial court's granting of summary judgment affirmed. Mother and daughter in privity and daughter's failure to bring counterclaim in municipal court is res judicata.

Baryak vs. Lange, 2017-Ohio-

9348.

Plaintiff filed a voluntary dismissal, refiled and then dismissed again. Held: trial court has authority to grant sanctions for frivolous conduct relating to first complaint even though defendant only requested sanctions after second complaint was filed.

City of Girard vs. Oakman, 2018-Ohio-1212.

Defendant charged with obstruction of official business. At initial appearance the Court sets the matter for *trial* on March 29. Clerk sends out notice the next day setting the matter for *pretrial* on March 29. On March 28 Clerk faxes defense counsel notice of March 29 *trial*. Trial court denies continuance. Held: reversed.

Counsel could reasonably rely on clerk's notice of *pretrial*. (emphasis added).

State of Ohio vs. Hudson, 2018-Ohio-133.

Police search home rented by defendant where defendant and brother live. Police find cocaine in locked bedroom. Defendant not at home. Police stop defendant in brother's car out front; take his key ring; and one key opens the bedroom door. Held: defendant had constructive possessive of the crack cocaine. Circumstantial evidence of key, lease and that items with defendant's name on them were found in the bedroom, are sufficient to find that defendant "conscious" of presence of drugs, and therefore had constructive possession. ❁

Practice Point from the Trumbull County Clerk of Courts, Auto Title Department

On transfers of vehicles through the Trumbull County Clerk of Courts, Auto Title Department, when one of the parties in a Divorce or Dissolution refuses to relinquish, sign over, or convey the property ordered by the Domestic Relations Court to be given to the other party, the State requests specific details to be placed in the Separation Agreement or Stipulations providing all information regarding the vehicle (i.e. make, model, and Vehicle Identification Number). Also there should be provided language in the Agreement or Stipulations put on the record, which is sometimes referred to as the "Implementation of Agreement" clause containing the following language:

"Upon failure of either party to execute and deliver any such deed, conveyance, title or certificate or other document or instrument to the other party, this instrument shall constitute and operate as such properly executed document and the County Auditor, County Recorder, Clerk of Courts and any and all other public and private officials are hereby authorized and directed to accept this Agreement, or properly certified copy thereof, in lieu of the document required for such conveyance or transfer."

Attorneys need to be aware that is this language is not present in a Domestic Relations Order (or Decree), we are not authorized by the State Bureau of Motor Vehicles to transfer any vehicles into the other spouse's name. ❁

Separation of Powers in the Modern Era: Law Day 2018

Lisa Carey

Carrabine and Reardon, carey@jcjrlaw.com



If you didn't understand the concept of Separation of Powers prior to May 4, 2018, then you should watch a re-run of the Geauga County Bar Association's Law Day program on G-TV!

Judge Sean C. Gallagher from the 8th District Court of Appeals told of how the independent work of the executive, legislative and judicial branches of government are "critical to the function of our government." He then wound his way through the role of independent counsel and government investigations, which, believe it or not, are not new to the United States Government. Rather, some of the first special counsel appointments were in the late 1800s for the investigation of the Whiskey Ring scandal and U.S. mail routes, of all things. Fast forward through Watergate and the Whitewater scandals to the modern day issues and investigations in the Trump administration. As Judge Gallagher noted, if you are able to step back and

simply watch the process, it is actually fascinating how the government works - and how many of the government's actions stem from the concept of Separation of Powers.

Many Geauga County students learned about and applied the concept of Separation of Powers when they wrote their essays for the 2018 essay contest. Sponsored again by the law firm of Petersen and Petersen, the following student essays were declared the winners out of a record number of essay submissions:

1st place: Kelly Holl—home school

2nd place: Katy Lessick—Chardon High School

3rd place: Rick Barone—Kenston High School

The teacher of the 1st place winner also received \$100 toward school supplies.

The winners of the Law Enforcement Officer of the Year for 2018 could remember a time



when terms like "active shooter" and "opioid overdose" barely existed. Sergeant Frank Chickos and Sergeant Jon Weiner of the Bainbridge Police Department garnered the honor, in part because of their role in a May, 2017 incident involving a shooter at a Bainbridge home. Sergeant Chickos and Sergeant Weiner and other responding officers were credited with remaining calm and professional while evacuating neighbors, setting up a perimeter, and ultimately negotiating with the subject to turn himself in without any casualties. Sergeant Chickos and Sergeant Weiner thanked their families and fellow officers, as well as the community, in that, without all of those partnerships, his job, as well as the jobs of every law enforcement professional, would be impossible. 🌸



Top: Judge Sean C. Gallagher presents on separation of powers. **At Left:** Mary Jane Trapp and Judge Stupica pose with the first prize winner of the essay contest, Kell Holl and her family. **Above:** The Law Enforcement Officers of the Year take a picture with their nominators.



Law
Enforcement
Officers of
the Year:
Sergeant
John Weiner
&
Sergeant
Frank Chickos



**Law Day
2018**



Law Day Student Essay: Law Day 2018

Separation of Powers: Framework for Freedom

Kelly Holl,

Home Schooled, 1st Place Student Essay

Imagine if the U.S. Congress could pass any law it desired, or if the president possessed full management of the national budget. Citizens would have no choice but to succumb to the supremacy of a single sovereign, the very injustice that induced our secession from Great Britain and led to the birth of the United States. Fortunately, the Constitution enables us to avoid this occurrence by establishing three branches of government; the legislative branch, the executive branch, and the judicial branch. Each branch serves discrete purposes and reacts to the activity of the other two branches. This separation of powers has historically been and continues to be the core of our freedom.

Separating government power into independently functioning branches is not a new procedure. This idea dates back to ancient Greece when Aristotle founded the concept of a three-pronged government structure, which included a deliberative assembly, an executive, and courts of law.¹ It was evident to Aristotle that an unregulated tyrannical leadership would result in the detriment of public interest. From the days of our founding, we have been conscious of this danger. One of the principal defects of the Articles of Confederation was that it threatened the nation as a whole by assigning the vast majority of power to the states, creating the

potential for states to fall into despotism.² The Federalists sought to replace this system with one in which control would be more uniformly distributed throughout a strong central government. Madison stated in *The Federalist Papers*: No. 51 that “ambition must be made to counteract ambition,” meaning that power should rest not in a single estate but instead among several distinct branches, each with its own roles and motives.³ Thus, this notion of balanced power has persisted through many eras.

The ongoing maintenance of power balance is an intrinsic element of any operative republic. By nature, people crave authority and personal benefits. Our deep-rooted beliefs and aspirations make it impossible for any person or group of people to govern justly without limitations. As Madison explained, “if angels were to govern men, neither external nor internal controls on government would be necessary.”⁴ Having three branches of government allows power to be constantly dispersed and restrained. Individual branches check and balance each other to ensure that there is no great concentration of control. In a sense, the government governs itself just as it governs the people. Although separation of powers hinders the branches from acquiring too much influence, each branch still attempts to gain more power and

stifle other branches’ powers. For example, the president can issue executive orders that go beyond his or her scope of office as a method of obtaining more power. However, our system continuously checks itself to minimize tactics like this from becoming extreme and to prevent any single branch from dominating the nation.

One recent instance in which the checks and balances of our government preserved liberty involved the disenfranchisement of former prisoners. In most states, felons are restricted from voting during their incarceration but reclaim suffrage at a designated point after release. Conversely, the state of Florida compels ex-felons to appeal to the governor for restoration of their voting rights. A few months ago, the current Governor of Florida, Rick Scott, altered the system by decreeing that an elected panel would determine whether felony convicts were permitted to vote on a case-by-case basis.⁵ If there were no other branches to monitor Scott’s mandates, this plan would be carried out, and the fate of each former felon’s rights would be dependent on varying, undefined factors. However, U.S. District Judge Mark Walker declared this practice to be a violation of the Constitution as it applied the law unequally.⁶ Walker directed Scott to establish “neutral criteria” and

(Continued on page 15)

Law Day Student Essay: Law Day 2018

Separation of Powers in the United States: A Brief Analysis of *Hawaii v. Trump*

Katy Lessick,
Chardon High School, 2nd Place Student Essay

In 1788, James Madison wrote Federalist Paper 51 to advocate for the separation of powers in the United States of America, writing that the country should “divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights.” To ensure that no one branch of government becomes all-powerful or infringes upon the rights of individuals, the first three Articles of the Constitution distribute governmental powers amongst the Executive, Judicial, and Legislative branches. Article I provides that Congress shall be responsible for creating legislature, Article II vests executive powers such as leading the army and navy in the President, and the Judicial branch is given the power to interpret law in Article III (US Const. Art I, sec. 7-Art III, sec. 2). All of the branches are given regulatory powers over each other as well. The separation of powers strengthens the United States by encouraging the branches to work together and by ensuring that Americans are represented by their government. The blurring of these separations, as is examined in the case *Hawaii v. Trump*, can prevent that from happening.

A recent occurrence of blurring the lines between branch-

es of government has come in the form of an executive order by President Donald Trump. On 27 January, 2017, President Trump issued the first iteration of what has since been called a “travel ban:” an executive order prohibiting people from seven Muslim-majority countries and Syrian refugees from entering the United States for an indefinite period of time. The executive order was quickly met with criticism and several states filed injunctions, including the state of Hawaii. The complaint issued by Hawaii argued that problems with the order included violations of “the First Amendment Establishment Clause, Fifth Amendment equal protection and due process rights, the Administrative Procedure Act, and Immigration and Nationality Act” (Case Profile). However, from among all of these issues, the state chose to pursue its case to strike down the executive order based on the premise that President Trump does not have the power to write such an executive order because immigration law is under congressional authority.

The decision in this case is critically important because it rules on the amount of power one person can wield over the government. In a democracy, the rights and interests of citizens should come before political agendas.

When all governing power is held by one person or group (in Hawaii’s case, that person being President Trump), the interests of citizens who are not represented by that person or group are cast aside. The main concern Hawaii had with the January 27th executive order was that the President was taking the liberties and freedoms of Americans by circumventing Congress. This point was made in the initial complaint for declaratory and injunctive relief as it was stated “President Trump’s Executive Order is tearing apart Hawaii families...subjecting a portion of Hawaii’s population to discrimination and second-class treatment, and denying them their fundamental right to travel overseas” (Complaint). When the lines separating our governmental branches become blurred, the freedoms of Americans are placed in jeopardy because they are put in the hands of one person or group only. The ruling in *Hawaii v. Trump* will provide guidance to understanding better the balance between the powers the executive and legislative branches hold.

Hawaii v. Trump went to the Ninth Circuit Court in December 2017 and majority of the executive order was enjoined (Case Profile). While the court conceded that President Trump has authority

(Continued on page 15)

Law Day Student Essay: Law Day 2018

Importance of the Separation of Powers

Rick Barone,

Kenston High School, 3rd Place Student Essay

The United States was the first republican government that was founded on the values of liberty and freedom for its citizens. The functions of the various branches of government were created with a system of checks and balances to ensure that these values were reflected and protected by the leaders American citizens elect. These checks on power are at a glance meant to balance the amount of control each branch wields, but more deeply, they were created to shield American citizens from unjust infringements on their rights and liberties. The separation of powers put into place by the Constitution of the U.S. Government plays a key role in upholding democracy by maintaining consistent balance in governmental abilities and ensuring that freedom and liberty remains at the center of politics and society.

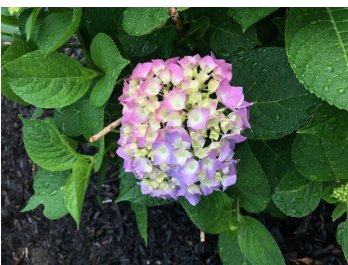
One example from current-day politics that highlights the importance of the separation of powers in preserving liberty is the investigation into President Trump's 2016 election campaign's connections with the Russian government. Robert Mueller, who is

leading the investigation, has been under fire by the President, who insists that he and his campaign did not collude with the Russian government in any way during the 2016 election. Recently, there has been fear that the President would try to fire Mueller from his position, as he felt that the investigation was based on false premises and was not worth the time or effort. Regardless of what the truth may be with President Trump's campaign being involved with the Russian government, what is much more important, and representative of the separation of powers, is that no one person—even the President of the United States—is immune to being investigated, and through Congress it has been legally allowed to continue.

Through warning the President of the various consequences that could result from firing Mueller, various members of Congress, including top officials of his own party, have prevented the President from wielding abilities that could expand his influence over the government. While firing a special prosecutor is not illegal, or unconstitutional, doing so can

easily lead to attempts to expand the President's power, if he so chose, and since Congress has warned against this, they are upholding the proper balance of powers that the Constitution outlines. Whether or not President Trump's election campaign legitimately collaborated with the Russian government, so far, the Congress and the President as well have managed to uphold the separation of powers by allowing the investigation to continue.

The consistency of holding any person accountable for their actions—seen not only in President Trump's particular investigation but in several cases in society—therefore reflects on how the separation of powers upholds democracy. Through maintaining the principles of government which the United States government was created with, the separation of powers safeguards liberty and freedom for all citizens of the United States by, theoretically, holding all people to the same standard and balancing the capabilities of all branches of government to ensure each are acting responsibly and representing citizens effectively. 🌸



Pictures from Secretary's Day, the Great Geauga County Fair, and any articles received after June 13, 2018, will be featured in our September Edition! It's been a busy summer!—Thanks, the *Ipsos Jure* Staff

First Place (from page 13)

“specific and expeditious time constraints” for restoring voting rights so that all decisions could be justified.⁷ This is the epitome of how the branches work separately to defend enumerated rights and natural law.

Despite the many changes the U.S. has undergone since its organization, separation of powers is one aspect that has remained steadfast throughout history. This system forms the backbone of our democracy and prevents those in power from attaining an excess of

control. It is clear that the branches’ checks on each other are crucial to avoiding infringement of our liberty.


Notes

1. Aristotle, *Aristotle’s Politics*, trans. Benjamin Jowett (New York: Random House, 1943), 40-41.
2. Gordon S. Wood, *The American Revolution: A History* (New York: Random House, 2002), 152.
3. James Madison, “The Federalist Papers: No. 51,” *The Avalon Project*, Lillian Goldman Law Library, http://Avalon.law.yale.edu/18th_century/fed51.asp

4. Ibid.

5. Scott Neuman, “Voting Rights Process For Florida Felons Unconstitutional, Judge Says,” *The Two-Way*, National Public Radio, <https://www.npr.org/sections/the-two-way/2018/02/02/582600802/voting-rights-process-for-florida-felons-unconstitutional-say-judge>.

6. Ibid.

7. Steve Bousquet, “Judge orders Gov. Scott, Cabinet to create system to restore felons’ voting rights,” *Miami Herald*, Miami Herald, <http://www.miamiherald.com/news/politics-government/state-politics/article207063494.html>. 

Second Place (from page 14)

under the Immigration and Nationality Act, 1182(f) to institute a temporary ban on immigration, the court decided that he went too far by trying to rewrite law that Congress had written. “The Executive cannot without assent of Congress supplant its statutory scheme with one stroke of a presidential pen,” read the final opinion of the court: a testament to American dedication to the separation of powers (Opinion). The Supreme Court, however, disagreed with the Ninth Circuit Court’s analysis and allowed parts of the original executive order to be enforced. Oral arguments in the Supreme Court will be heard April 2018 in what is sure be a landmark case (Case Profile).

Despite what the results of *Hawaii v Trump* in the Ninth Cir-

cuit seem to indicate, the separation of powers is not meant to make it harder to keep our country safe or protect the interests of the United States. Rather, the separation of powers brings together the government by encouraging the branches to cooperate. If President Trump would have asked the Republican-majority Congress to write travel restrictions into law instead of writing an executive order, there would have been less upset. There would be no question of their legality; Congress clearly has power under the Constitution to write federal laws. This moment has reminded us that the separation of powers is about representation and cooperation. In other words, *Hawaii v Trump* has reminded America that when our powers are separate, we are

stronger.

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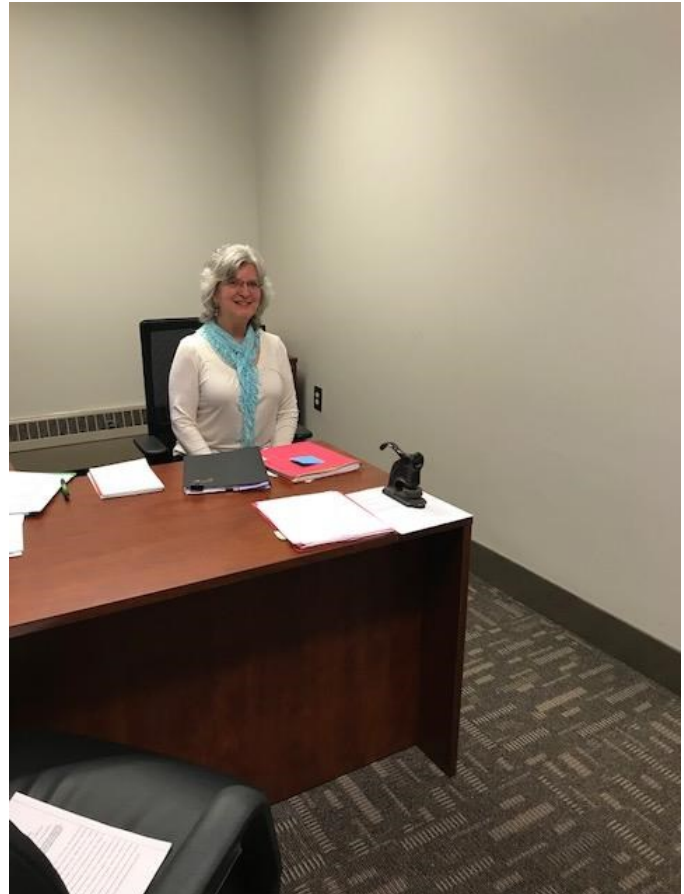
Madison, James. “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” 8 February, 1788.

“Opinion.” *Politico*, 6 December, 2017, <https://www.politico.com/f/?id=00000160-80b7-da22-ad65-e7ff377c0001>. Accessed 21 March, 2018.



Check Out the Remodeling at the Geauga County Courthouse

Pictures by Lisa Carey



Announcements

From Kevin O'Reilly:

Kevin is seeking an assistant to work approximately 10 hours a week. Days and hours are flexible. May lead to more duties/hours. Responsibilities include helping to keep the office neat, organized, and running smoothly by filing, copying, scanning, running errands, etc. No legal experience is required. If you know of anyone interested, please have them submit a resume or short letter to geaugalawyer@windstream.net.

Newly Remodeled Law Offices in Mentor

The Piscitelli Law Firm has newly remodel office space available at 8440 Station Street in Mentor, Ohio. The building is visible from Center Street (Route 615). Easy access from Interstate 2 and 90. Space is available for a small law firm or solo practitioners. One large office, three small offices and secretarial space. Includes two conference rooms, ideal for mediations and focus groups. Also, includes access to a full kitchen for employees and hosting events. Plentiful parking and handicap access. Call 216-931-7000 or email frank@feplaw.com.



Announcements



Carrabine & Reardon Co., LPA
7445 Center Street, Mentor, Ohio 44060
(440) 974-9911 Fax: (440) 974-9919

June 6, 2018

Dear Bar Association Member:

As a member of the Irish American Law Society of Cleveland, I invite you to attend our 3rd Biannual Legal Symposium scheduled for September 27-29, 2018 at the Cleveland-Marshall College of Law.

One of the many reasons the symposium is an interesting CLE opportunity is it brings both experts from the United State and Ireland together to speak on current legal topics, which affect all of us. We are applying for 9.5 CLE credits if you attend all presentations, including all required professionalism credits. The topics are varied from International Cartel Price Fixing Issues to NCAA Compliance, presented by Oliver Luck Esq. of the NCAA, and former Houston Oilers Quarterback and Rhodes scholar.

The fee for this program is \$395.00, and includes the opening reception on Thursday, September 27th as well as the lunch and reception on Friday, September 28th. A spouse/guest can attend the social events for \$50.00. There is a discount for early registration of Ten Dollars (\$10.00) if you register by August 31, 2018.

I look forward to you joining us.

Very truly yours,

CARRABINE & REARDON CO., LPA

James P. Carrabine, Esq.

JPC:kw

Patricia J. Schraff and John P. Thomas have started a new law firm called **Schraff Thomas Law, LLC** with offices at the same location in Willoughby Hills and Strongsville. The Firm practices elder law, estate and trust planning and administration, and probate litigation.

Important Updates from the Geauga County Recorder

The Geauga County Recorder's Office will be closed on Tuesday, September 11, 2018

In order to better serve the public, the Recorder's Office is installing a new software system. The office will be closed on September 11, 2018 to install the system and to train staff.

There will be training classes for the public on September 20 and 21. Please call if you are interested in attending a class.

On October 1, 2018, we will also be initiating our new Property Fraud Alert Program that comes with our new provider. Watch the Recorder's website and Facebook for more details.

Good Deeds Program Schedule for 2018

Deeds can be picked up at the Geauga County Recorder's Office between 6:00 and 6:30 p.m.

All Meetings will be held at the Geauga Probate Court

October 2018

Tuesday, October 9, 2018 at 6:30 p.m.

Wednesday, October 17, 2018 at 6:30 p.m.

GEAUGA COUNTY BAR FOUNDATION

FELLOWSHIP RENEWAL/APPLICATION

APPLICANT INFORMATION

Name:		
Firm/Employer:		
Business address:		
City/State/Zip Code:		
Business Telephone:		Business Fax:
E-mail:		
County:		District Number:
Home Address:		Apt./Suite:
City/State/Zip Code:		
Home Telephone:		
Law School:		Graduation Year:
Degrees:		State Licensed in/Date:

**REVIEW/COMPLETE ENTIRE FORM AND RETURN WITH PAYMENT TO:
GEAUGA COUNTY BAR FOUNDATION, 428 SOUTH STREET, CHARDON, OH 44024**

If you have any questions, please contact Todd Petersen
Phone: 440-279-4480 Fax: 440-279-4486 Email: tp@petersenlegal.com

Geauga County Bar Association Annual Golf Outing



When:

September 13, 2018
12:00 Lunch
1:00 Shotgun Tee Off
5:30 Cocktails on the Patio
6:00 Dinner and Prizes

Where:

St. Denis Golf Course
10660 Chardon Road
Chardon, Ohio 44024

Cost:

\$90 per person
\$360 per foursome
\$25 for dinner only

Includes:

18 Holes of Golf
Golf Car Rental
Unlimited Range Balls Prior to Play
Bag Drop Service

Lunch – Hotdog or Hamburger, Toppings and Condiments, Potato Chips

Beverages – Complimentary Water, Soda, and Beer during Golf
Cash Bar after Golf

Dinner – Fajita Bar with Flank Steak Strips, Chicken, Ground Beef, Jalapenos, Cilantro Rice, Tortilla Chips, Soft and Hard Taco Shells, Peppers and Onions, Salsa, Cheddar Cheese, Warm Queso, Black Olives, Sour Cream

Prizes

Contact Krystal Thompson at (440) 286-7160 or secretary@geaugabar.org to register by August 31, 2018.

Geauga County Bar Association Annual Golf Outing

Sponsorship Opportunities – We need your support!

☐ Dinner Sponsor
\$1,000

☐ Lunch Sponsor
\$500

☐ Prizes Sponsor
\$250

☐ Hole Sponsor
\$50 – \$100

☐ Beverages Sponsor
Everyone will know you are the favorite sponsor!

To show our appreciation for your sponsorship, we will gladly recognize your company or firm on event literature, banners, on the Geauga County Bar Association's website, and in the Geauga County Bar Association's quarterly publication.

Sponsor Name:

Sponsor Address:

Sponsor Phone Number:

Sponsor E-mail:

Sponsor Website:



Geauga County Bar Association
P.O. Box 750
Chardon, Ohio 44024
(440) 286-7160



Geauga County Bar Association General Meeting

Wednesday, September 26th, Noon
Veterans of Foreign Wars Post 6519
752 Water Street, Chardon

Please join us and special guests,
Ohio Supreme Court Justice Sharon Kennedy and Local Veterans,
for lunch and a discussion on the importance of providing support and services to our veterans.

Lunch by Guido's: Meatball Sandwiches, Chicken Parmesan Sandwiches, Salad,
Beverages, and Dessert

Cost: \$15 per person

Your lunch sponsorship for a veteran for an additional \$15 would be greatly appreciated!

Please RSVP by September 3rd using the registration form below.



**Geauga County Bar Association
General Meeting w/Special Guests Justice Sharon Kennedy and Local Veterans
Wednesday, September 26th, Noon**

Name(s): _____

Sponsoring Lunch for a Veteran: Yes _____ No _____

*Please contact Krystal Thompson at (440) 286-7160 or secretary@geaugabar.org
for more information.*

*Checks made payable to **Geauga County Bar Association**
P.O. Box 750, Chardon, Ohio 44024*

Please register by September 3rd to ensure a spot, as seating is limited!

Geauga County Bar Association

Announcements

Website:

Check out the Geauga County Bar Association Website for updated meeting dates, deadlines, and other important information at www.geaugabar.org

Upcoming Executive Committee Meetings

Second Wednesday of each month at 12:00 noon
Next Meetings:
September 12,
October 10
R.S.V.P. to the
G.C.B.A. Secretary

Upcoming General Meetings

Fourth Wednesday of each month at 12:00 noon
Next Meetings:
August 22
September 26
R.S.V.P. to the
G.C.B.A. Secretary

Annual Golf Outing:

Thursday, September 13,
St. Denis Golf Course
(See Page 22)

For Sponsorship Opportunities (See
Page 23)

Geauga County Bar Association General Meeting:

September 26, 2018 @ 12
Veterans of Foreign Wars
Post 6519
752 Water St., Chardon
Ohio Supreme Court Justice Sharon
Kennedy and Local Veterans
Register by September 3, 2018 (See
Page 24)

Chagrin Falls Legal Clinic:

Tentatively September 29 @11:00-
1:00, Location: TBD

New Members:

Donald Bryson: Self-employed
Ian Friedman:

Friedman & Nemecek, L.L.C.

Matthew Rambo:

Collins & Scanlon LLP

Morgan Sauder: Sauder Law

James Smolinski:

Kurt Law Office, LLC

Mary Springer: Petersen & Petersen

Jo Tatarko:

Dworken & Bernstein Co., L.P.A.

John Thomas:

Schraff Thomas Law, LLC

Robert Zulandt:

Robert Zulandt's Office

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Susan.wieland@gcpao.com

Ipsa Jure

Deadlines:

*Mark your calendars
and turn in an article!*

September 15, 2018

November 15, 2018

Quick Reminders

Next Executive Committee Meeting:

September 12 at 12:00 noon

Next General Meetings:

*September 26 at 12:00 noon at
Veterans of Foreign Wars Post 6519
With Justice Kennedy*

*We hope to see you at the Bar
Association's next event!*