

GEAUGA COUNTY BAR ASSOCIATION VOLUME 40, ISSUE 2, APRIL, 2017

IPSO JURE



Cover: Daffodils at the courthouse. Maybe spring is almost here? Not until after the Maple Festival!

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Introducing...

Krystal Thompson

Law Library Director and Executive Secretary for Geauga County Bar Association, Secretary@geaugabar.org

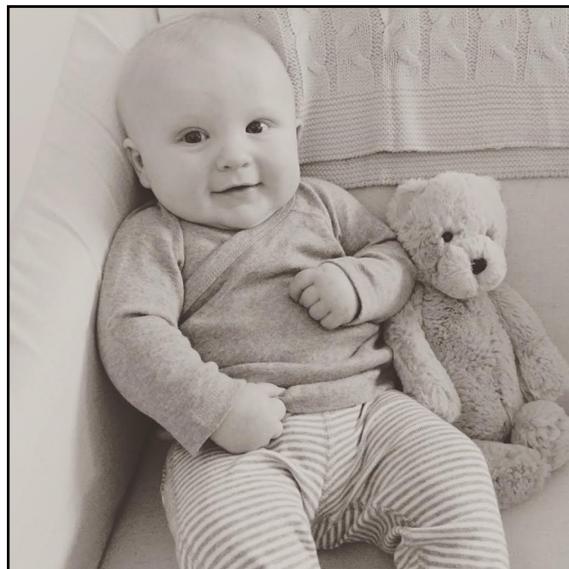


I've been in my new role as Law Library Director and Executive Secretary for the Geauga County Bar Association for almost one month. In this short time I've already met so many great people and have learned so much. I have to say thank you to everyone for being so helpful and helping me transition.

I have a Bachelor's Degree in Justice Studies and a Master's Degree in Library and Information Science from Kent State University. As a previous academic librarian, I assisted faculty and students with research in a variety of subjects, but I always looked forward to questions concerning legal research. I'm so glad to now have the opportunity to focus on what I'm most passionate about.

When I'm not researching legal databases, I enjoy spending time with my husband and our five month old son. Law librarian by day, new mommy by night!

I'm so happy to be here and I'm looking forward to working with everyone! 🌸



President's Page

Dennis Coyne

Dennis Coyne Co. L.P.A., dmc1pa@sbcglobal.net



Dear Colleagues,

It is an honor and a pleasure to serve as the bar president this year. The Geauga Bar is 188 members strong. We have a dedicated group of attorneys who continuously give their time to make sure the bar is vibrant and changing with the times.

I want to thank all the committee chairs for accepting the responsibility of leading their specific committee. The time and effort put forth by attending the many meetings is appreciated and noble.

I especially want to thank former president Frank Antenucci for his dedicated leadership and the extensive time he puts in to the Geauga County Bar Association.

As most of you know, Mary Poland, our former executive bar secretary, returned to the state of Washington to continue to practice law. She was also the law librarian. Because Frank is also on the Law Library Board, he spearheaded the hiring of the new librarian and executive secretary, Krystal Thompson.

Several people interviewed for the job and we are extremely pleased to have hired Krystal. Many interviews were conducted, and thankfully, Frank was there when I was present. Frank is current on the questions permitted to be asked and especially the ones not permitted. He asked all the legally allowed questions and I, of course, asked the ones that are no longer permitted. Thankfully, Frank was there to interview and keep me out of trouble.

The Executive Committee meets the 2nd Wednesday of every month at 12:00 noon at various establishments in Chardon.

Last year, we met at Square Bistro. This year, we tried a few meetings at Buckeye Chocolate. Because one of our fearless leaders, with initials of BZ, had some adverse opinions, we are returning to Square Bistro.

The General Meeting is the 4th Wednesday of the month at 12:00 noon. Great news! I think. We are returning to our long favored meeting place at Bass Lake Tavern. Hopefully, everything works out and we can make BLT our permanent place to meet.

Thank you again to all the dedicated attorneys who work hard to make the Geauga County Bar Association as good as it can be. Welcome, Krystal. 🌸

Peanut Butter Fruit Dip From Ann D'Amico

Perfect for parties or FUN make-with-the-kids snack!

Ingredients:

1 cup Greek Yogurt

1/4 cup creamy peanut butter

1 Tbsp raw honey, or to taste

1 tsp. vanilla extract

Add all ingredients to a bowl and whisk until smooth. Serve with fruit (recommended bananas, apples, raspberries, or strawberries.) Store in refrigerator in an airtight container for up to 4 days.

Announcements



Kurt Law Office Welcomes Attorney James M. Smolinski

Pamela D. Kurt is pleased to announce the addition of Attorney James M. Smolinski as an Associate in her firm's Wickliffe and Chardon offices. Jim's practice with Kurt Law will be focused on small business, estate planning, and civil litigation.

Mr. Smolinski comes to Kurt Law from a private solo practice wherein he maintained his own caseload and was Of Counsel to a Ch. 7 Bankruptcy Panel Trustee. Prior to entering practice, Jim was Manager of the Cleveland Metropolitan Bar Association Lawyer Referral Service. Jim also clerked for the CMBA's Certified Grievance Committee, during which time he developed an interest in professional responsibility and licensing issues.

Jim is a graduate of Villa Angela-St. Joseph High School, St. Bonaventure University, and the Cleveland-Marshall College of Law. In his free time, he enjoys golf and spending time with his Wife, Halle, and their miniature schnauzer, Nelson.

Jim can be reached at (440) 516-1010 and JSmolinski@kurtlawoffice.com.

Cases of Interest

Pearce Leary

Pearce Leary, Esq., pearceleary@windstream.net



Martin vs. Martin, 2016-Ohio-7551

In the four years leading up to husband filing for divorce, wife transferred

\$854,261.10 to her attorney's IOLTA, and attorney transferred funds to Switzerland. Husband's investigator discovered this. Court found financial misconduct and awarded husband an amount equal to all funds in Switzerland, in the IOLTA account, and in another bank account, totaling approximately \$780,000 for the misconduct. Held: affirmed. Not inequitable or punitive.

Reagan vs. Sturges, 2016-Ohio-8226

Plaintiffs bought 1.2 acres in 1957. Defendant/seller reserved twenty-foot driveway easement to cottages in rear. Ten feet were graveled; ten feet remained grass. Defendant purchased a cottage and began driving his commercial truck home each week for cleaning, and the truck wheels damaged the grassy area. Held: plaintiffs did not prove exclusive use for adverse possession and while generally an easement holder may not increase burden on servient estate, com-

mercial truck use did not unreasonably enlarge or abuse easement grant.

Watson vs. Bradley, 2017-Ohio-431

Plaintiff, visiting relatives, steps into darkened hallway, attempts to lean against wall to steady herself, but wall has ended and she falls through opening in wall and down steps. Held: summary judgment for defendant reversed. The disputed evidence as to how dark the hallway was precludes finding an open and obvious condition and precludes finding that darkness itself was open and obvious danger.

Elliott-Thomas vs. Smith, 2017-Ohio-702

Plaintiff filed wrongful termination lawsuit against school district and later filed tortious interference and destruction of evidence (TIDE) lawsuit against attorneys for school district. Disagreeing with other Appellate Courts, Eleventh District holds that TIDE claim of spoliation of evidence not limited to physical destruction of evidence, but includes intentional concealment, interference with, or a misrepresentation of evidence. ❁

What Do I Have To Do With The Home Now?

Richard A. Ivans

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If you serve as a guardian, you probably have had to apply for Medicaid for your ward at one time or another. If so, you have most likely noticed that the Ohio Medicaid rules have changed. A specific noteworthy change is Ohio Medicaid's treatment of the home.

Before August 1, 2016, Ohio Medicaid permitted a 13-month time period before the home had to be listed to sell. In other words, once you spent-down for Medicaid, to the then \$2,000.00 resource limit, you could still apply for Medicaid even while the applicant owned a home. This 13 month grace period was well suited for Guardians who, once appointed, may have had a "land rich and cash poor" ward and could relatively quickly spend-down his or her ward and then apply for Medicaid even with a hoard-filled home in tow. At least the homes are typically a hoarder's dream in my short experience! This was the game-plan for many Guardians before August 1, 2016.

The above rules were rescinded and on August 1, 2016, the new rules came into effect.

What is one to do with the applicant's home now? One suggestion mentioned at a Medicaid Planning Course provided by the Ohio Bar Association is that caseworkers may follow the Supple-

mental Security Income (SSI) program rules. The "SSI" rules provide that "non-liquid" resources like the home may be placed for sale and the individual applicant is then eligible for benefits on a "conditional" basis for nine months. It was suggested that the practitioner consult with the Social Security Administration Program Operations Manual System (POMS) SI 011050.200 and 01130.140 for further instruction.

Further, one solution to the issue of the home may be found in Ohio Administrative Code 5160:1-3-05.13. Under the new Ohio Medicaid rules, for the home not to be counted as a resource, it must be the individual's "principal place of residence" meaning the "dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return." The key phrase in OAC 5160:1-3-05.13 (B)(4) is "intends to return." For the rules further state in 5160:1-3-05.13 (C) (3) that "a temporary absence from the home does not affect the principal place of residence exclusion so long as the individual provides a signed statement of his or her intentions to return to the home and has not established permanent residence elsewhere." One solution for the practitioner is to have the applicant, currently

staying at the nursing facility, sign a statement of his or her intentions to return to the home. After all, who doesn't want to go home?! While it is understood that once on Medicaid, no monies would be available for property taxes, bills, and home maintenance, this "signed statement" may be the applicant's answer to becoming Medicaid eligible while owning a home. At the very least, this should buy the applicant time to have his or her home sold all the while remaining on Medicaid and preventing the nursing home bill from rising.

One issue for the Guardian arises. Can the Guardian sign an "intent to return home" statement for his or her ward? Can a Power of Attorney sign for the principal? The answer remains somewhat unclear. At the Medicaid Planning Course provided by the Ohio Bar Association previously referenced, the speaker indicated that in Southern Ohio the answer to both questions is "yes," while in Northern Ohio, the answer to both is "no." The writer tried this at Geauga County Job and Family Services and received Medicaid Eligibility for his ward; however, the caseworker did not indicate if this was the reason. Practitioners will have to keep applying for Medicaid, making these arguments, and may ulti-

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“Annie’s Law,” Effective April 6, 2017, Significantly Changes Current Ohio OVI Laws

S. Michael Lear,

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On January 5, 2017, Governor Kasich signed Sub. H.B. 388, also known as “Annie’s Law” into law. The sweeping changes on Ohio OVI law included therein became effective on April 6, 2017. Significantly, “Annie’s Law” increases the current six-year “lookback period” to ten years, increases the length of judicial license suspensions imposed for OVI convictions, and permits a “first-time offender” (defined, in relevant part, as “a person whose driver’s license or commercial driver’s license or permit or non-resident operating privilege has been suspended for being convicted of, or pleading guilty to, an OVI offense) to petition the court for “unlimited driving privileges with a certified ignition interlock device” during the period of sus-

pension imposed for the OVI offense.

New 10-year “lookback” period and increased judicial license suspensions:

OVI offenses are “enhanceable” offenses, meaning, if a person is convicted of an OVI offense and has prior “equivalent offense” convictions within a certain period of time, the statutory penalties are increased. For the past several years, and for quite some time, a 6-year lookback period applied.¹ For example, prior to April 6, 2017, that lookback period will increase to 10 years. For example, currently, if a person is arrested for OVI, consents to a breath test with a result in excess of .08 but under .17 and has one (1) prior OVI or “equivalent of-

fense” conviction within 6 years of the date of offense and if that person is convicted of an OVI offense, that person faces increased penalties: a minimum of 10 days in jail (or 5 days + 18 days of Electronically Monitored House Arrest (EMHA) and/or Continuing Alcohol Monitoring (CAM)), as opposed to minimum of 3 days in jail (or a 72 hour Driver’s Intervention Program) if the person did not have one (1) prior OVI or “equivalent offense” conviction within that period of time. Under the law effective April 6, 2017, that 6 year period will increase to 10 years.

Further, the length of judicial suspensions imposed by the court following an OVI conviction will also be increased. The following limited penalty charts describe

Prior to April 6, 2017:

<i>No. and Type of Offense</i>	<i>Incarceration</i>	<i>Judicial License Suspension</i>
1 st in 6 years (low-tier breath blood, or urine test result ²) or refusal with no prior OVI or “equivalent offense” conviction in 20 years	<p><u>Minimum:</u> 3 days jail or 72 hour Driver’s Intervention Program</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • Class 5 • (6 months to 3 years) • Limited driving privileges available after first 15 days of suspension. • Restricted license plates not required. • Ignition Interlock Device optional.

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Annie's Law (from page 6)

<i>No. and Type of Offense</i>	<i>Incarceration</i>	<i>Judicial License Suspension</i>
1 st in 6 years and either (a) high-tier breath, blood, or urine test result or (b) refusal with prior OVI or “equivalent offense” conviction in 20 years	<p><u>Minimum:</u> 6 days jail or 3 days jail + 72 hour Driver’s Intervention Program</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • Class 5 • (6 months to 3 years) • Limited driving privileges available after first 15 days of suspension. • Restricted license plates required. • Ignition Interlock Device optional.
1 st in 6 years and either (a) high-tier breath, blood, or urine test result ³ or (b) refusal with prior OVI or “equivalent offense” conviction in 20 years	<p><u>Minimum:</u> 6 days jail or 3 days jail + 72 hour Driver’s Intervention Program</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • Class 5 • (6 months to 3 years) • Limited driving privileges available after first 15 days of suspension. • Restricted license plates required. • Ignition Interlock Device optional.
2 nd in 6 years and either (a) high-tier breath, blood, or urine test result or (b) refusal with prior OVI or “equivalent offense” conviction in 20 years	<p><u>Minimum:</u> 20 days jail or 10 days jail + 36 days EMHA and/or CAM</p> <p><u>Maximum:</u> 6 months</p>	<ul style="list-style-type: none"> • Class 4 • (1 to 5 years) • Limited driving privileges available after first 45 days of suspension. • Restricted License Plates required. • Ignition Interlock Device mandatory (if alcohol related).
3 rd in 6 years (low tier breath, blood, or urine test)	<p><u>Minimum:</u> 30 days jail or 15 days jail + 55 days EMHA and/or CAM</p> <p><u>Maximum:</u> 1 year</p>	<ul style="list-style-type: none"> • Class 3 • (2 to 10 years) • Limited driving privileges available after first 180 days of suspension. • Restricted License Plates required. • Ignition Interlock Device mandatory (if alcohol related).
3 rd in 6 years and either (a) high-tier breath, blood, or urine test or (b) refusal with prior OVI or “equivalent offense” conviction in 20 years	<p><u>Minimum:</u> 60 days jail or 30 days jail + 110 days EMHA and/or CAM</p> <p><u>Maximum:</u> 1 year</p>	<ul style="list-style-type: none"> • Class 3 • (2 to 10 years) • Limited driving privileges available after first 180 days of suspension. • Restricted License Plates required. • Ignition Interlock Device mandatory.

Annie's Law (from page 7)

Pursuant to "Annie's Law," the following will apply:
On or after April 6, 2017:

<i>No. and Type of Offense</i>	<i>Incarceration</i>	<i>Judicial License Suspension</i>
1 st in 10 years (low-tier breath blood, or urine test result ⁴) or refusal with no prior OVI or "equivalent offense" conviction in 20 years	<p><u>Minimum:</u> 3 days jail or 72 hour Driver's Intervention Program – but Court must suspend any jail term imposed if the offender applies for and is granted Unlimited Driving Privileges with Ignition Interlock Device</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • 1 to 3 years • (Judge can reduce minimum suspension period by half if offender applies for and is granted Unlimited Driving Privileges with Ignition Interlock Device) • Limited driving privileges available after first 15 days of suspension. • Restricted License Plates not required.
1 st in 10 years and either (a) high-tier breath, blood, or urine test result ⁵ or (b) refusal with prior OVI or "equivalent offense" conviction in 20 years	<p><u>Minimum:</u> 6 days jail or 3 days jail + 72 hour Driver's Intervention Program</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • 1 to 3 years • (Judge can reduce minimum suspension period by half if offender applies for and is granted Unlimited Driving Privileges with Ignition Interlock Device) • Restricted License Plates required.
2 nd in 10 years (low-tier breath, blood, or urine test result)	<p><u>Minimum:</u> 10 days jail or 5 days jail + 18 days EMHA and/or CAM</p> <p><u>Maximum:</u> 6 months jail</p>	<ul style="list-style-type: none"> • 1 to 7 years • Limited Driving Privileges available after first 45 days of suspension. • Restricted License Plates not required.
2 nd in 10 years and either (a) high-tier breath, blood, or urine test result or (b) refusal with prior OVI or "equivalent offense" conviction in 20 years	<p><u>Minimum:</u> 20 days jail or 10 days jail + 36 days EMHA and/or CAM</p> <p><u>Maximum:</u> 6 months</p>	<ul style="list-style-type: none"> • 1 to 7 years • Limited Driving Privileges available after first 45 days of suspension. • Restricted License Plates required.
3 rd in 10 years (low tier breath, blood, or urine test)	<p><u>Minimum:</u> 30 days jail or 15 days jail + 55 days EMHA and/or CAM</p> <p><u>Maximum:</u> 1 year</p>	<ul style="list-style-type: none"> • 2 to 12 years • Limited Driving Privileges available after first 180 days of suspension. • Restricted License Plates required.
3 rd in 10 years and either (a) high-tier breath, blood, or urine test or (b) refusal with prior OVI or "equivalent offense" conviction in 20 years	<p><u>Minimum:</u> 60 days jail or 30 days jail + 110 days EMHA and/or CAM</p> <p><u>Maximum:</u> 1 year</p>	<ul style="list-style-type: none"> • 2 to 12 years • Limited Driving Privileges available after first 180 days of suspensions. • Restricted License Plates required.

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Annie's Law (from page 8)

how the new law will effect OVI offenders:

As can be seen, passage of "Annie's Law" will significantly affect those OVI offenders who have prior OVI or "equivalent offense" convictions that are currently outside of the 6-year "lookback" period but within the new 10-year "lookback" period.

As listed by the Ohio Legislative Service Commission in its Final Analysis of Sub. H.B. 388, OVI "lookback" periods are used for the following purposes:

- (1) Penalty for operation or physical control of any watercraft or manipulation of any water skis, aquaplane, or similar device while under the influence;
- (2) Determining whether a mayor's court has jurisdiction over an OVI case;
- (3) The penalty for OVI-related aggravated vehicular homicide;
- (4) The penalty for OVI-related aggravated vehicular assault;
- (5) The prohibition against allowing a person to operate a school bus for a period of time after an OVI conviction or guilty plea;
- (6) Prohibitions against granting limited driving privileges to certain repeat

OVI offenders or chemical test refusers:

- (7) The period of hard suspension for an out-of-state OVI offense;
- (8) The penalty for an OVI offense;
- (9) The penalty for refusing to consent to a chemical test upon arrest for OVI;
- (10) The penalty for a positive chemical test after arrest for OVI;
- (11) Vehicle immobilization or forfeiture for violation of a municipal OVI ordinance, and
- (12) Vehicle seizure for an OVI offense.
(Citations omitted).

Accordingly, the expanded "lookback" period effective April 6, 2017 will affect all of the above-listed purposes.

Ignition Interlock Devices and Unlimited Driving Privileges:

An Ignition Interlock Device ("IID") is a device that is installed in an offender's vehicle for the purpose of preventing that offender from driving while under the influence of alcohol. Essentially, an IID prevents the ignition of a vehicle if it detects the presence of alcohol on the offender's breath. Pursuant to "Annie's Law," beginning on January 1, 2020, all IIDs must be equipped

with a camera.

Under current Ohio law, courts must impose a mandatory driver's license suspension for individuals who violate OVI laws. However, a court may grant limited driving privileges to an offender so that he or she may still drive despite the suspension, but only under certain day/time limitations and only for specific purposes approved by the court (e.g. commuting to work, school, doctor's visits, rehabilitation meetings, etc.). If the court chooses to grant limited driving privileges to an offender who has been convicted of more than one OVI within the applicable "lookback" period, then the court must also require the offender to install an IID on his or her vehicle. For first-time alcohol-related OVI offenders or any drug-related OVI offenders, a court is authorized, but not required, to order that the offender use an IID as a condition of limited driving privileges.

However, starting April 6, 2017, this will change. "Annie's Law" will give courts the option to grant an alternative form of driving privileges to a "first-time offender". R.C. 4510.022(A)(1) defines a "first-time offender" as:

... a person whose driver's license or commercial driver's license or permit or nonresident operating privilege has been suspended for being convicted of, or pleading guilty to, an OVI offense under any of the following:

- (a) Division

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Annie's Law (from page 9)

(G)(1)(a) or (H)(1) of section 4511.19 of the Revised Code [OVI offense or underage OVI with no prior OVI or "equivalent offense" conviction within 10 years];

(b) Section 4510.07 of the Revised Code for a municipal OVI offense when the offense is equivalent to an offender under division (G)(1)(a) or (H)(1) of section 4511.19 of the Revised Code;

(c) Division (B) or (D) of section 4510.17 [out of state OVI] of the Revised Code when the offense is equivalent to an offense under division (G)(1)(a) or (H)(1) of section 4511.19 of the Revised Code.

Note that because a "first-time offender," by definition, has been suspended for "being convicted of" or "pleading guilty to" an OVI offense, the ability to petition for unlimited driving privileges does not apply to a person who has been *charged with, but not yet convicted of*, a first-time OVI offense and is under an Administrative License Suspension. Under this scenario, the ability to request limited driving privileges, after the "hard time suspension" period expires, is still available.

Pursuant to R.C. 4510.022, a "first-time OVI offender" may petition the court for "unlimited driving privileges" with a certified ignition interlock device during

the period of the offender's judicial license suspension. "Unlimited driving privileges" is defined, in relevant part, as "driving privileges that are unrestricted as to purpose, time, and place". See, R.C. 4510.022(A)(3). Unlimited driving privileges

If the Court grants such a petition, the following applies:

(1) The court shall issue an order authorizing the offender to operate a motor vehicle only if the vehicle is equipped with a certified ignition interlock-device"⁶;

(2) The court may reduce the offender's judicial license suspension by up to one-half of the suspension imposed;

(3) The court must suspend any jail term imposed for the OVI offense.

See, R.C. 4510.022(C)(2).

Further, if the court grants a first-time OVI offender's petition for unlimited driving privileges, the offender must obtain a "restricted driver's license" from the Ohio Bureau of Motor Vehicles. To do this, the offender must present to the registrar or deputy registrar of the OBMV a copy of the order granting unlimited driving privileges and a certificate affirming the installation of a certified ignition interlock device. Upon receipt thereof, unless the offender is otherwise suspended, the OBMV must issue the restricted driver's license. The restricted

driver's license must have "printed on its face a statement that the offender is prohibited from operating any motor vehicle that is not equipped with a certified ignition interlock device". R.C. 4510.022 (D)(1).

The offender granted unlimited driving privileges is prohibited from operating a vehicle prior to obtaining a restricted driver's license. This is a strict liability offense. An offender that does operate a vehicle prior to obtaining a restricted driver's license is subject to penalties for driving under an OVI suspension.

Offenders who violate unlimited driving privileges by operating a vehicle prior to obtaining a restricted driver's license and/or by operating a vehicle not equipped with an Ignition Interlock Device will be subject to further charges and/or penalties, including serving the jail term that was mandatorily suspended by the court.

This "unlimited driving privilege" will not replace the other types of privileges a court may grant to a first-time offender; hence, courts will still have the discretion to grant limited driving privileges (without use of an IID), or no driving privileges, to a first-time offender. The current law relative to limited driving privileges remains in effect, however, any offender granted limited driving privileges with an Ignition Interlock Device condition must obtain the restricted driver's license referred to above. Again, violation of Ignition Interlock Device conditions is a violation of law and will

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Annie's Law (from page 10)

result in further charges and penalties.

“Annie’s Law” implements some additional, more nuanced rules for OVI offenders who receive unlimited driving privileges, as follows:

First, if an offender, who has been granted limited or unlimited driving privileges with an IID, commits an IID violation within the last 60 days of his or her license suspension, the court may increase the period of suspension by a factor of two, but must automatically extend the offender’s suspension (along with the required use of an IID) for a period of 60 days from when the violation occurred. This means, for example, if an offender has 30 days left on his or her license suspension, and then commits an IID violation, that offender’s license must automatically be suspended for 60 days from the date of the violation (i.e. adding an additional 30 days). Other than this, the penalties for IID violations remain the same as under current law (See Ohio Revised Code § 4510.13). An IID violation occurs when (i) the offender operates a vehicle that is not equipped with an IID; (ii) the offender circumvents or tampers with the IID; or (iii) the IID detects an amount of alcohol that prevents the offender from starting the vehicle.

Second, a court that grants unlimited driving privileges with an IID to a first-time offender may also impose additional, reasonable conditions upon the driver, as long as they do not restrict the driving privileges in terms of purpose, place, or time. These are separate

conditions than the IID requirements mentioned above, and violating a condition of one’s driving privileges has distinct consequences from committing an IID violation.

Third, if a court does grant unlimited driving privileges with an IID to a first-time offender, then the court must suspend any jail term imposed for the OVI offense. However, the court retains jurisdiction over the first-time offender until the expiration of the license suspension, and if the offender violates any term or condition imposed by the court, then the court must require the offender to serve the suspended jail term.

Fourth, “Annie’s Law” will also modify the requirements that apply to out-of-state offenders who are granted limited driving privileges. Under current law, a court must issue a permit card to the offender, which can be used to exercise the driving privileges. However, under “Annie’s Law”, a court must instead issue a copy of the order granting limited driving privileges to the offender. If the limited driving privileges are subject to the condition that the offender use an IID, the offender must obtain a restricted license and is subject to the same penalties as specified above for in-state offenders

Finally, if a court grants unlimited driving privileges with an IID to a first-time offender, the court must impose an additional cost of two-dollars and fifty cents (\$2.50) to the offender. However, if the offender can prove he or she is indigent, then the court may waive this additional cost. Fur-

thermore, the court may impose an additional \$2.50 fee, if it sees fit, to be deposited in the court’s special projects fund.

This is just an overview of some of the most significant changes to OVI law contained within Sub. H.B. 388. As can be seen, the expanded “lookback” period will result in significantly increased penalties for some OVI offenders and has incentivized courts (and first-time OVI offenders) to order and/or petition for limited driving privileges with the installation of an Ignition Interlock Device.

Endnotes

1. There is also a 20-year lookback period that applies for purposes of increased penalties (if charged under R.C. 4511.19(A)(2)) if an OVI arrestee with a prior OVI conviction or “equivalent offense” conviction within 20 years refuses a breath, blood, or urine test and/or for purposes of a felony OVI charge if an OVI arrestee has five (or more) prior OVI or “equivalent offense” convictions in 20 years.
2. As used herein, “low-tier breath, blood, or urine test result” means over the statutory limit but under the “super OVI” limit for breath, blood, or urine tests (which, for example, is a concentration of 0.17% or more of alcohol by weight per unit volume in the person’s whole blood or comparable amount in another tested substance).
3. As used herein, “high-tier breath, blood, or urine test result” means over the statutory “super OVI” limit for breath, blood, or urine tests.
4. As used herein, “low-tier breath, blood, or urine test result” means over the statutory limit but under the “super OVI” limit for breath, blood, or urine tests (which, for example, is .17 of one gram by weight of alcohol

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What now? (from page 5)

mately have to have state hearings to determine the answer. For those guardianships where money and land is on hand, it is no doubt easier to pay bills and get the home for sale and sold as quick as possible only applying for Medicaid when the magic \$2,000.00 in resources is reached. However, as we know this is not always the case! ❁

Annie's Law (from page 11)

per two hundred ten liters of the person's breath).

5. As used herein, "high-tier breath, blood, or urine test result" means over the statutory "super OVI" limit for breath, blood, or urine tests.
6. R.C. 4510.43(C) permits an offender who has been granted unlimited driving privileges with a certified ignition interlock device installed to operate a motor vehicle owned by the offender's employer only if the person is required to operate that motor vehicle in the course and scope of the offender's employment. The offender may operate the employer's vehicle without the installation of an ignition interlock device only if the employer has been notified that the offender has limited driving privileges and the nature of the restriction and the offender has proof of the employer's notification in the offender's possession while operating the employer's vehicle for normal business duties. Note that a motor vehicle owned by a business that is partly or entirely owned or controlled by the offender is not a motor vehicle owned by an employer for purposes of this provision.

****Editor's Note: Annie's Law is named for Annie Rooney, a 36-year-old attorney from Chillicothe, Ohio, who was killed in an automobile accident caused by a drunk driver on July 4, 2013. The drunk driver had multiple past OVI convictions. Her family was instrumental in the development and passage of "Annie's Law." ❁**

From the Chambers of Judge Timothy J. Grendell

March 2, 2017

Dear fellow members of the Bar,

It would be inappropriate for me to comment on the incorrectness or correctness of retired Medina County Probate Judge Lohn's recent decision. However, I can explain my understanding of the Ohio Supreme Court's prior unanimous (7-0) decision against the Chester Township Trustees, upon which my subsequent decisions were made.

In 1984, Geauga County Probate Judge Frank Lavrich created the Chester Township Park District by court order. The Chester Township Park District managed and operated the Township Park at the corner of SR 306 and SR 322 from 1984 until December 31, 2016. Effective January 1, 2017, the Township Trustees unilaterally terminated the Park Board's management of the Township Park.

The Township Trustees sued me, arguing that I did not have the authority to prevent the Trustees' interference with the Park Board's management of the Chester Township Park. In a unanimous, 7-0 ruling, the Ohio Supreme Court ruled against the Chester Township Trustees.

All of the Ohio Supreme Court Justices had determined the following:

"Under R.C. 2101.24(C), probate courts have plenary power to 'dispose fully of any matter that is properly before the court,' unless the power is expressly limited or denied by the Revised Code. Without the power to investigate the management of park districts and issue orders compelling compliance with R.C. Chapter 1545, a probate court's power to appoint and remove park-district commissioners would be hollow..."

In this case, the master commissioner determined that certain activities by the township trustees frustrated the purposes for which the park district was created. The probate court's authority to create park districts and its plenary power 'to dispose fully of any matter' that is properly before it surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purposes."

The Ohio Supreme Court's opinion was also shared and advocated by 18 of Ohio's most experienced and respected Probate Judges.

As the elected Probate Judge for Geauga County, I am legally and ethically required to follow the rulings of the Ohio Supreme Court.

Sincerely,

Timothy J. Grendell
Judge

Practice Tips: Service of Process in Civil Cases

Barbara Powell

Magistrate and Staff Attorney, Geauga County Common Pleas Court,
bpowell@geaugacourts.org



Today's practice tip: The plaintiff must ensure the complaint is served in compliance with both the Civil Rules and with the Due

Process Clause. *See* Civ.R. 4-4.6; Fourteenth Amendment.

In an Ohio state court, after the complaint is filed, the clerk issues a summons for service and sends the summons and complaint to each defendant, return receipt requested. *See* Civ. R. 4(A) and 4.1(A). If service fails, the clerk notifies the plaintiff. The plaintiff must then provide the clerk with further service instructions. The burden is on the plaintiff, not on the clerk, to ensure service is made on the defendant. A claim may be dismissed without prejudice if service is not perfected within six months of the complaint's filing. *See* Civ.R. 4(E); *DeFranco v. Shaker Square*, 158 Ohio App. 3d 105, 2004-Ohio-3864, 814 N.E.2d 93, ¶ 2 (8th Dist.).

Service must be directed to a location reasonably calculated to give the defendant notice and an opportunity to be heard. *See* *Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 413 N.E.2d 1182 (1980) paragraph two of the syllabus; *see also* Civ.R. 4.1(A). Service directed to a business, a parent's home or any location other than the defendant's residence fails

when it is not reasonably calculated to give interested parties notice. *See* *Akron Canton Reg. Airport Auth. v. Swinehart*, 62 Ohio St. 2d 403, 405-407, 406 N.E.2d 811 (1980); *Erin Capital Mgmt. LLC v. Fournier*, 10th Dist. Franklin No. 11AP-483, 2012-Ohio-939, ¶¶ 23-24; *Grant v. Ivy*, 69 Ohio App.2d 40, 429 N.E.2d 1188, paragraphs one and two of the syllabus (10th Dist. 1980).

A rebuttable presumption of service arises when the plaintiff both complies with the civil rules and directs process to a location where it is reasonably expected the defendant would receive it. *See* *Famagelto v. Telerico*, 2013-Ohio-3666, 994 N.E.2d 932, ¶ 14 (11th Dist.); *Cappellino v. Marcheskie*, 11th Dist. No. 2008-T-0016, 2008-Ohio-5322, ¶¶ 13-28. When challenged, the plaintiff must establish personal jurisdiction by a preponderance of the evidence. *See* *ComDoc v. Advance Print Copy Ship Ctr.*, 9th Dist. Summit No. 24212, 2009-Ohio-2998, ¶ 3; *Famagelto v. Telerico*, 2013-Ohio-3666, 994 N.E.2d 932, ¶ 19 (11th Dist.).

Without successful service, a voluntary appearance, or waiver, the action is not commenced and the Court lacks personal jurisdiction over the defendant; any judgment entered against the defendant is void. *See* *Redfoot v. Mikouis*, 11th Dist. Trumbull No. 96-T-

5398, 1996 Ohio App. LEXIS 5415, *3; *Bell v. Midwestern Educ. Servs.*, 89 Ohio App. 3d 193, 196-205, 624 N.E.2d 196 (2nd Dist. 1993); *Jones v. Jordan*, 8th Dist. Cuyahoga No. 88696, 2007-Ohio-2519, 8-19.

Test your knowledge.

Q. True or false: When a defendant believes a court lacks personal jurisdiction, he may either challenge jurisdiction or ignore the judicial proceedings and later challenge any default judgment.

True. *See* *Button v. Button*, 2nd Dist. Montgomery No. 16122, 1997 Ohio App. LEXIS 2616, *14-15; *Maryhew v. Yova*, 11 Ohio St. 3d 154, 157-159, 464 N.E.2d 538 (1984).

Q. True or false: If a defendant has actual knowledge of the suit, but is never served and does not challenge service before default judgment is entered, he waives any right to challenge the judgment.

False. The judgment is void. *See* *Maryhew v. Yova*, 11 Ohio St. 3d 154, 157, 464 N.E.2d 538. (1984). ❁

Sub. House Bill 432

Jennifer Peck and Bryan C. Palmer

Solomon, Steiner, & Peck, Ltd. jpeck@ssandplaw.com

Ohio Revised Code Update: Effective April 6, 2017, Sub. House Bill No. 432 amends Ohio Revised Code regarding the age limit for custodial accounts, depositing wills with a probate court after the death of a testator, number and value of automobiles a surviving spouse may elect to take and a fiduciary's access to digital assets of a principal or decedent.

Ohio joins Florida, Pennsylvania, California, Alaska, Oregon, Nevada, Tennessee, and Washington in allowing property to be held in a custodial account until a minor is 25 years of age. The Ohio Transfers to Minors Act ("OTMA") allows a person 18 years or older to make a gift or transfer property to a minor and have the property held by a custodian designated by the person making the gift or transfer, for the minor's benefit, until the minor turns 21 years of age. Sub. House Bill 432 amends the OTMA to allow a custodian to hold such gifted or transferred property until a specified age of the minor not to exceed 25 years. Pursuant to the amended R.C. §5814.09(B), the following language must be included in gifting or transfer document: "as custodian for (name of minor) until age (specify age) under the Ohio Transfers to Minors Act" to specify when the custodial account is to be terminated. If this language is not included in the

gifting or transfer document, the minor will be entitled to take the property at age 21, free of the custodian.

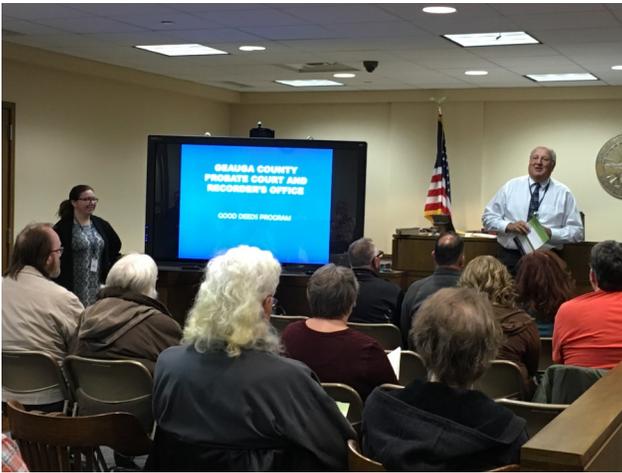
Ohio now allows a will to be deposited with a probate court after the death of a testator and expressly states such a will is not a public record until offered for probate. Ohio law allows a testator to deposit his or her will, or have his or will deposited, with the testator's local probate court. This provides the benefit of safekeeping the document, as a will is less likely to be lost or damaged in the care of the probate court than in a person's home. Sub. House Bill 432 expands this right by amending R.C. §2107.07 and R.C. §2107.08: a will may now be deposited in the probate court before *or after* the death of a testator even if the will is not offered for probate. This may benefit a testator whose estate passes outside of probate through trusts, TOD designations or other non-probate methods of transfer. Because of this addition to the Revised Code, a will can be kept safe at the probate court in case additional assets are discovered and the estate needs to be opened. Additionally, the Revised Code provides privacy for testators who deposit their wills, as it now expressly states a deposited will is not a public record until an application is filed to probate the will.

Ohio now allows a surviving spouse a maximum of "one or more" automobiles with a total value no more than \$65,000.00. Sub. House Bill 432 amends R.C. §2106.18(A) to allow a surviving spouse to select one or more, rather than the previous maximum of two, automobiles of the deceased spouse provided such automobiles have not already been transferred via joint ownership with right survivorship, TOD beneficiary designation or specifically disposed of by a testamentary disposition. Additionally, the maximum aggregate value of such automobiles has been increased from \$40,000.00 to \$65,000.00.

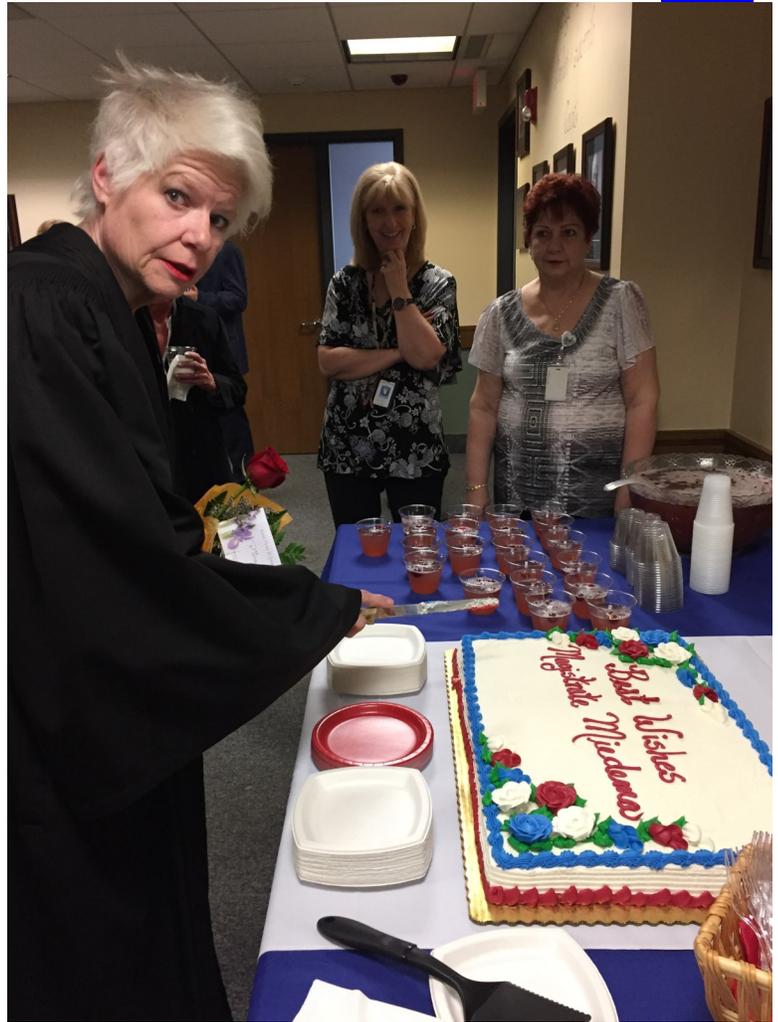
Ohio adopts the Revised Uniform Access to Digital Assets Act. Sub. House Bill 432 adds R.C. §2137.01 to §2137.18 to allow fiduciaries, such as an agent under a power of attorney, executor or administrator of an estate, a guardian or trustee to access, terminate or suspend, or disclose information regarding the digital assets of a principal or decedent. This new Revised Code section specifies how a fiduciary may access such digital assets and provides an order of priority in cases where the principal or decedent provided contradictory directions regarding disclosure of his or her digital assets.



Best Wishes to J.A. Miedema on her new position as Magistrate of the Probate/Juvenile Divisions. A reception was held in her honor on April 10, 2017.



Above: Judge Grendell and Tara Pavlovcak present at the Good Deeds Program.



Picture by Cheryl Koncler

Updates from the Recorder: TOD Affidavits & Medicaid Estate Recovery Forms

Sharon C. Gingerich

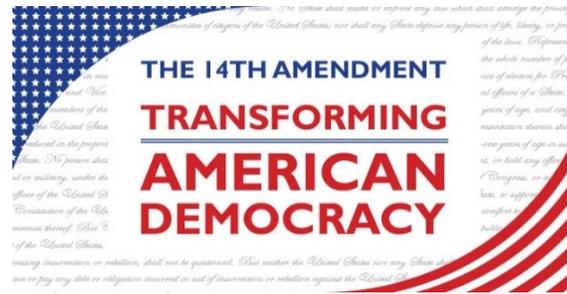
Geauga County Recorder, SGingerich@CO.GEAUGA.OH.US

Prior to April 6, 2017, Recorder's Offices were required to provide a copy of the Medicaid Estate Recovery Form to the beneficiary before recording the transfer of real property or interest in real property (O.R.C. sec. 5302.222). We then submitted the completed form to the administrator of the Medicaid Estate Recovery Pro-

gram. We will no longer require or submit these forms per the code. This new statute applies only to the Transfer on Death Confirmation Affidavits, not all transfers.

Beginning April 6, 2017, a new form was supposed to be available from the Program Administrators. However, it appears

nobody told them that Amended Sub. SB 227 had been passed. It will take them a while to have the form ready. In the meantime, we will provide you with the old form, but the responsibility will be up to the beneficiary to complete and submit the form. ❁



The 2017 theme provides the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

The Geauga County Bar Association presents:

Guest Speaker:
Donald Caster, Clinical Professor of Law in OIP
Nancy Smith, Exonoree

Friday, April 28, 2017
Noon – 1:45 p.m.
Guido's
12809 Chillicothe Rd, Chesterland, Ohio

A request for one (1) hour of CLE credit is pending.

The GCBA will also present the award for Law Enforcement Officer of the Year, and honor three (3) area high school students for their essays about the Law Day theme, “The 14th Amendment: Transforming American Democracy.”

Menu:

Guido's will serve lunch, which includes: Beverages, Salad, Rolls, entrée of Lemon Chicken with Cavatelli, Green Beans and Cake for dessert.

Cost: \$25.00/person

Name: _____

Phone or email: _____

Send your payment by **Friday, April 14th** to:

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

Please call Krystal Thompson @ (440) 286-7160 or email: secretary@geaugabar.org with any questions

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

Law Day:

April 28, 2017

Upcoming Executive Committee Meetings

Second Wednesday of each month at 12:00 noon

Next Meetings:
May 10 at El Patron
R.S.V.P. to the
G.C.B.A. Secretary

Upcoming General Meetings

Fourth Wednesday of each month at 12:00 noon

At Bass Lake Tavern
May 24
R.S.V.P. to the
G.C.B.A. Secretary

The Ipsso Jure Needs Your Help

Do you like to take pictures? Due to Paul Newman's retirement, we are in need of help taking pictures at Geauga Bar Association Events for publication in the *Ipsso Jure*. If you are at a Bar Association Event, please help us out by taking pictures. If you are interested in taking pictures on a regular basis, please let the Editor or the G.C.B.A. Secretary know. All of your help is appreciated!

Updates and Opportunities from the Geauga County Probate and Juvenile Courts

The Geauga County Probate Court would like to inform the members of the Geauga County Bar Association that the Supreme Court has slightly changed the guardianship CLE format. Those guardians seeking CLE should take the online 3 hour courses, rather than attend the in-person broadcast version. The 3 hour broadcast courses will continue to be offered to accommodate the layperson audience, but they will not carry CLE. Please keep in mind that this applies to 3 hour broadcast courses only—the 6 hour Fundamentals broadcast courses will still qualify for CLE as they have in the past.

The Geauga County Probate Court is seeking qualified attorneys who would like to be added to our list of court appointed attorneys for Civil Commitments. Please submit your cover letter and resume to Tara Pavlovcak, 231 Main Street, Suite 200, Chardon, Ohio 44024.

The Geauga County Juvenile Court is seeking qualified attorneys who would like to be added to our list to represent indigent defendants in proceedings including but not limited to abuse, neglect, dependency and delinquency. Please submit a cover letter and resume to Ann Hazen at 231 Main Street, Suite 200, Chardon, Ohio 44024.

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Ipsa Jure

Deadlines:

*Mark your calendars
and turn in an article!*

May 15, 2017

July 15, 2017

Law Day: *April 28, 2017*

Quick Reminders

Next Executive

Committee Meeting:

May 10 at 12:00 noon at El Patron

Next General Meetings:

May 24 at 12:00

Bass Lake Tavern

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