GEAUGA COUNTY BAR ASSOCIATION VOLUME 41,ISSUE 1, JANUARY, 2018

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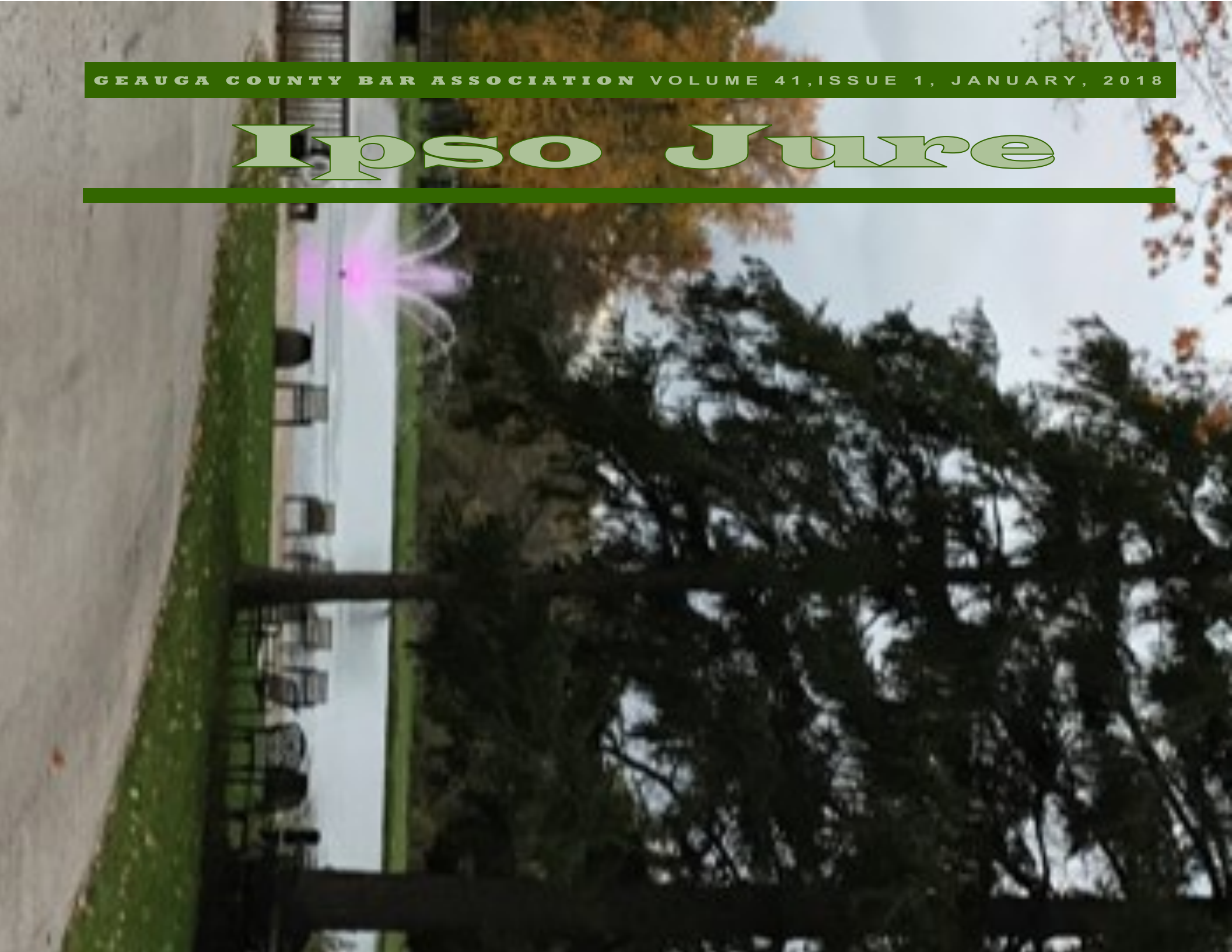


Cover: Deep Springs Trout Club

Inside this issue:

President's Page

Dennis Coyne, Esq.

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

Dear Fellow Members,

Another year just flew by. It is amazing how fast they go as you grow older. The Geauga County Bar Association had a very busy year. Legal Aid established itself in Geauga County for the first time. They have decided to continue into the foreseeable future and probably forever or until funding runs out. This is significant for Geauga residents as otherwise they would go to Cleveland or Painesville.

Similarly, the Advance Directives Committee helped the elderly of Geauga County with living wills and powers of attorney. Many people were given excellent legal advice at no cost. Both of these committees demonstrates how the bar association helps the general public.

The Grievance Committee handled some very serious complaints, and several lawyers were sanctioned or surrendered their bar license. Although Ohio has 88 counties, only 28 Certified Grievance Committees are operating throughout the state. I have to believe our bar association is the smallest one with a Certified Grievance Committee.

Thank you to all the hard working attorneys who give their time and expertise to these committees. The residents of Geauga County applaud you!

The Social Committee was hard at work and put on many events including the Christmas/Holiday Party. Not only was the food and company great, we also donated money and toys to the distributed prior to Christmas. This is an annual tradition that keeps increasing every year.

The bar association has many committees that help keep the association organized and focused on developing new answers to new problems. If you have an interest in being on a committee, please call the bar association secretary.

One of the goals of the bar association is to promote professionalism. It is now over 10 years since the Ohio Supreme Court published "A Lawyers Creed." This is a list of do's and don'ts that a lawyer should follow and is actually a pledge by attorneys to offer fairness, integrity and civility to opposing parties and their counsel. Here is the list:

Do:

⇒ Maintain a courteous and cooperative working relationship with opposing counsel and other lawyers.
⇒ Avoid motions about minor issues that should be worked out informally.
⇒ Wait 24 hours before deciding to respond to an intemperate, untrue, or exasperating communication from another attorney.

(Continued on page 3)

President's Page (from page 7)

⇒ Discuss discovery disputes with opposing counsel in person, by phone, or by e-mail before sending a formal letter that stake out your position.
⇒ Consult in advance with other attorneys to avoid scheduling conflicts.
⇒ Cooperate with other attorneys when you have obtained permission of the court to extend deadlines imposed by a court order.
⇒ Extend professional courtesies regarding procedural formalities and scheduling when your client will not suffer prejudice. DO be fair-minded with respect to requests for stipulations, and DO agree to stipulate to facts that are not in dispute if they will not adversely affect your client.
⇒ Keep your word.
⇒ Respond in a timely fashion to communications from opposing counsel and other attorneys.
⇒ Identify the changes you made from previous drafts when exchanging document drafts.
⇒ Promptly notify other counsel (and, where appropriate, the court or other persons who are affected) when hearings, depositions, meetings, or conferences must be cancelled or postponed.
⇒ Conclude a matter with a handshake or an exchange of courteous messages.
⇒ Require that persons under your supervision conduct themselves with courtesy and civility and that they adhere to these precepts when dealing with other attorneys and their staffs.

Don't:

* Respond in kind when confronted with unprofessional behavior by another attorney.
* Serve papers at a time or in a manner intended to inconvenience or take advantage of opposing counsel, such as late on a Friday afternoon, on the day preceding a holiday, or when you know counsel is absent or ill.
* Be belligerent, insulting, or demeaning in your communications with other attorneys or their staff.
* Use discovery as a means of harassment.
* Publicly disparage another attorney, either during or after a case concludes.

You have to wonder how bad attorneys were acting toward one another for the Supreme Court to come up with this list of "Do's" and "Don'ts." Has it really helped? It all seems like common sense to me. The same things your parents taught you growing up. The attorneys who act unprofessionally, because they have no facts or law on their side are the ones who need to read and abide by this list. Unfortunately we have all dealt with the same attorneys who don't care about professionalism. It is a black eye for the bar associations, and I don't see it going away.

The Geauga Bar Association does a lot of great work. Although most of it is not recognized, the accomplishments are both worthy and honorable. Consider joining a committee, you will be surprised and satisfied to be part of something special.

Thank you to Dennis Coyne for his service as Geauga County Bar Association President for 2017.

Fresh Fish, Anyone?

Lisa Carey, Esq.

Carrabine and Reardon, carey@jcjrlaw.com

If, on November 3rd, you were looking for a great fresh fish dinner (or steak if you have an aversion to fish), then you should have attended the Geauga County Bar Association Annual Dinner, held at Deep Springs Trout Club in Chardon. Thirty-nine bar members and their spouses and/or significant others attended the dinner where the menu called for a family-style clambake with clams, fresh trout and chicken or an enormous steak with accompanying sides for all of grilled asparagus, eggplant parmesan, and home fries. Dessert at the end, if you had room, was delectable ice cream with fruit.

If you don't know, Deep Springs has a lake stocked with hundreds of trout right on the premises, and with a fair weather evening like November 3, 2017, entertainment was provided by Dennis Coyne as he attempted to catch his dinner.

The real entertainment, though, came after dinner when those in attendance were treated to a quiz with fun and unusual facts about our incoming Bar President, Judge Terri Stupica. Who knew that her favorite color is purple (instead of tiger or leopard print), or that her favorite show is Blue Bloods, or that she was once on The Price is Right??? Apparently, Karen Lee knew more than the rest of us as she won the contest!

The Annual Dinner is a nice way to sum up the year for the Bar Association and have our families participate and meet everyone at the same time. Look forward to seeing you next year!

Annual Dinner 2017

Cases of Interest

Pearce Leary

Pearce Leary, Esq., pearceleary@windstream.net

Bell vs. Bell, 2017-Ohio-7956.

Family property partitioned in 2006 with brother Bruce retaining right to receive natural gas from family wells that originate on brother Roy's property. In 2008, court issued an injunction preventing Roy from interfering with flow of gas to Bruce's residence. In the fall of 2013, Bruce's gas shut off at well head five or six times and in October, 2013, below ground line plugged and above ground line cut clean through in six places. Roy held in contempt. Held: affirmed. Even though the burden was clear and convincing and no one saw Roy cut the lines, contempt can be supported by circumstantial evidence of Roy's past behavior and access to lines.

State of Ohio vs. Sullivan, 2017-Ohio-8806.

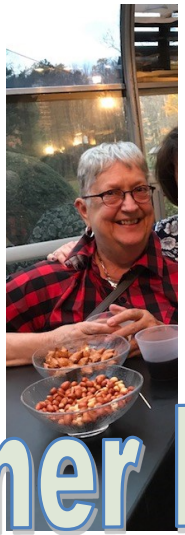
Defendant general contractor took $5,000 on a roof replacement job and did not perform. He was convicted of theft. The record clearly established that defendant was an alcoholic. On appeal, court agrees that the State had to prove that he had no intent to repay the money or perform under the contract. Defendant argued that he did intend to perform but his alcoholism prevented it. Homeowner admitted to talking to defendant over a dozen times and his speech was always slurred. Held: affirmed. Intent can be inferred from defendant's failure to order roof materials and failure to commence tear off.

Wochele vs. Veard Willoughby Lim. Pshp., 2017-Ohio-8807.

Tenant arrives home late at night; parks in normal spot; walks normal route to apartment carrying groceries; trips over cinderblock that had only recently been moved from its normal location; and is injured. Held: summary judgment for landlord affirmed. Court holds (among other things) that darkness is an open and obvious danger obviating any duty of landlord to its tenant.

Doty vs. Potteiger, 2017-Ohio-8811.

Plaintiff sued for writ of restitution after default on land contract without a single installment payment. Trial court granted writ and ordered plaintiff to refund excess of down payment over fair rental value plus damage to premises. Plaintiff appealed. Held: Reversed. In the absence of language in the land contract about the return of the down payment, plaintiff is entitled to keep the entire down payment.



More Annual Dinner Pictures

Settlement Day 2017
What A Day!

Lisa Carey, Esq.
Carrabine and Reardon, carey@jcjrlaw.com

It is hard to tell if our "little" courthouse in Chardon loves Settlement Day or dreads every minute of it! On the one hand, there are a couple of extra hundred people in and out of the courthouse all day long talking in hallways, corridors, conference rooms, virtually every space you can find. On the other hand, there is fresh coffee, juice, donuts, and bagels for breakfast. There are meatballs, pizza, Texas caviar, cheese/cracker trays, vegetable trays, cucumber sandwiches, and multiple desserts (cookies, pizzelles, homemade pound cake, chocolate covered strawberries) for lunch and snacking all day. I would have to guess we are leaning toward loving it!?!

This year, we started out with a pretty healthy docket of close to 45 cases. However, as often happens, in the days or weeks before Settlement Day (November 17th), cases settle, are dismissed, or are removed from the Settlement Day docket due to date conflicts or inadequate discovery time. Therefore, we actually started the day this year with 35 cases scheduled to go forward. Of those cases, 13 settled (37%). There were a couple of "no shows" and a couple of really close ones, so all in all, it was a very successful day.

Thanks to the Courts and their staff who graciously offer their cases and courthouse space to have these Mediations. Thanks to the mediators who offer their time and provide such a great service to the Bar and community in general: Edgar Boles, Brian Bly, Christopher Carney (1st timer who settled his case), Rebecca Castell, Denise Workum, David Gallup, Mary Jane Trapp, Barbara Moser, Ed Ryder (who always enjoys coming out of retirement), Jim Flaiz, Justin Madden, Pam Kurt, Jim Reardon, Perrin Sah, David Trimble (who holed up in the basement conference room all morning working on Board of Mental Health cases—he resolved the one who showed!), Michael Yaksic, Karen Lee, and Stephen Macek (another recent retiree!).

Special thanks to Krystal, Susan Wieland, Ann D'Amico, Judge Paschke, and Bridey Matheney for cooking/baking; and our wonderful security team who checks all of these people in and out and gets them where they need to go.

If you feel like you just missed out on something great, watch for the announcements and volunteer opportunities in the fall. Submit one or two of your cases or offer to mediate one. Even if your case is unusual, we have such a diverse Bar Association that we can always find someone with that kind of experience to mediate it. If you have never mediated before and would like to learn, please let us know and we can try to arrange for training and/or have you sit in and watch a mediation "live" to get some practice tips.

"Other-Acts" Evidence to Prove Character: When is Probative Value Trumped by Unfair Prejudice?

Judge David L. Fuhry, Retired
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Proof of Character and the Rules of Evidence

What if there were no rules of evidence?

Assume it were so. Now, assume you are an assistant prosecuting attorney prosecuting a defendant on a charge of theft by deception. Or, if you prefer civil law to criminal, assume you are counsel for the alleged victim of the alleged offense. You are pursuing the same defendant civilly for conversion and fraud.

The defendant is Ima Character. He is no stranger to the legal system. He is in complete denial. Ima maintains there was full disclosure, no deception, and the funds received by him were repayment of a pre-existing debt owed him by the victim. For every piece of incriminating evidence he has an explanation. It's a tough case.

However, in a legal world without the rules of evidence Ima is in dire straits. This is because he has a record. A record of crime and wrongs that would make Clyde Barrow blush. Assault, bribery, colluding with a foreign government to rig elections, sex offenses--the list goes on. A record that causes his defense counsel to cringe.

The state and private counsel are elated—their trial strategy challenges are solved! Why? At trial they will introduce evidence of Ima's character in the form of his record and otherwise—what could be simpler and more effective? Just roll it all out for the trier of fact. The evidence will establish Ima's rotten character. That is the purpose of introducing Ima's crimes, wrongs and other acts—in a word, his misconduct. Once Ima's character has been established as rotten and deceitful, it will be but a short step for the jury in finding that, in the instant case, Ima's conduct conformed to his dreadful character. Convict him of the charge! Award a large verdict! We don't need any other evidence—this is a case of Ima just being Ima, so says the jury.

Character Evidence Generally

Character evidence of the type the assistant prosecutor and plaintiff's counsel intend to use in Ima's cases lawyers is instinctively recognized by lawyers as inadmissible. We also know that in some cases evidence of a person's character or character trait is admissible. Admissible character evidence would include, for instance, a negligent entrustment case wherein the plaintiff claims that the defendant trucking company negligently hired a driver it knew to be an incompetent driver. The plaintiff must show as part of his case that the truck driver has the character of being an incompetent driver.

Further, in a child custody case, one parent may offer evidence of the other parent's record of assaults as proof that the parent is unfit.

In addition, sometimes a character trait can be admitted as circumstantial proof that a person acted consistently with his character at a time in issue in the case. For example, a defendant charged with assault may introduce evidence of his peaceful character. However, this use of character evidence as circumstantial proof of conduct is severely restricted. See Evid. R. 404(A)(2). *Were it not, Ima's record of crime and misconduct would be admissible to establish his "bad" character.*

Ima's record of misconduct is the type of circumstantial evidence of character that is generally inadmissible, if it is being offered to prove the character of the person in order to show that he acted in conformity therewith. Evid. R..

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Evidence (from page 8)

404(A). In our hypothetical case without rules of evidence, that is exactly why proof of bad character is offered—to demonstrate that Ima acted consistently with his bad character. Evidence Rule 404 is all about the admissibility of character evidence. So many times, whether it is admissible or not depends on the purpose for which it is offered. And it may be admissible for a legitimate purpose, but not for other purposes. The jury will need to be informed of what limited purpose it may use character evidence for, and that it may not consider it for any other.

Rule 404(B) and its Relation to 404(A)

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. Evid. R. 404(B).

The Rule reflects the recognition that evidence of a person's character or character traits tends to distract the trier of fact from the primary issues of the case. From other "bad" behavior (other crimes, wrongs, or acts) we tend to draw a conclusion concerning the actor's character. From that character, we infer propensity and the likelihood that the actor's future conduct will conform to that character. Left unchecked, there is the danger of concluding that the person must have acted in conformity with his character. "Other [Past] Acts" then become the basis of the conclusion as opposed to evidence of what occurred with respect to the current issue.

Despite the prohibition on other acts evidence to prove character, division of (B) of Evid. R. 404 contains noteworthy exceptions: "**Evidence of other crimes, wrongs or acts is not inadmissible to prove the character of a person in order to show that he acted in conformity therewith. *It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."*** (emphasis added).

A check on the unrestricted use of the exceptions listed in division (B) to admit otherwise inadmissible other-acts evidence is found at Rule 403(A): **"Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."**

Note that probative value wins out, and the evidence is thus deemed admissible, unless the other considerations substantially outweigh probative value. Where the boundary lies between probative value and unfair prejudice or confusion is the subject of much controversy.

Rule 404(B): The Most Litigated Rule of Evidence

There are more appellate cases on this rule of evidence than on any other. In 2013, one legal scholar researched North Carolina's equivalent rule for appellate opinions. She found that as of that time there were well over 600 published and over 300 unpublished decisions citing to Rule 404(B).

The Rule is not only the most litigated of the rules of evidence, but it is one of the most difficult to apply correctly. Although it seems relatively straightforward, its application in practice has proved otherwise.

Rule 404(B) applies to civil and criminal cases, to parties on both sides, to non-parties involved in the case, and to conduct taking place before and after the matter being tried.

For defendants charged with a crime, evidence of other crimes, wrongs, or acts is the most damaging character evidence imaginable.

Evidence of another crime or wrongdoing has a dangerous, natural and inevitable tendency to direct the attention of the jury from the charge or issue before it. The jury can become predisposed to conclude that the accused or other actor involved must be of bad character—and that he therefore acted in conformity with it and is guilty. It forces the accused in a criminal trial to defend against charges for which he is not on trial.

Where Do You Draw the Line? Ohio and the *Van Williams* Case

Williams was a church goer at the Good Shepherd Baptist Church near Cleveland. There he met and befriended a young boy, "J.H.", who had never had any contact with his father. J.H. lived with his grandmother. Williams

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Evidence (from page 9)

would often buy him things and employed him to perform odd jobs around his house. When J.H. was 14, Williams began to sexually abuse him. J.H. reported this to a school counselor, who reported the abuse to the local department of family services. Williams was then indicted on a multitude of sex offenses by a grand jury.

Prior to empaneling a trial jury, the state sought a pretrial ruling to allow admission of evidence that Williams, approximately 10 years earlier, cultivated a similar relationship for similar nefarious purposes with a high school member of a swim team that he coached. The state argued that Williams' conduct, *i.e.,* grooming of "A.B.", paralleled that of J.H. The state argued that this indicated a course of conduct engaged in by Williams constituting a common plan, and, by reasonable inference, supported a conclusion that Williams intended to achieve sexual gratification with teenage males. The state maintained the evidence fit within one or more of the exceptions set forth in Rule 404(B). It claimed the evidence was offered for the limited purpose of demonstrating Williams' motive, intent, or plan.

A hearing on the issue of admissibility of the evidence was conducted outside the presence of the jury. The defense argued the evidence was exactly the type of other-act evidence that Rule 404 (B) was aimed at excluding. It claimed that the state was obviously trying to show bad character on Williams part to convince the jury that he acted in conformity with such character—a classic forbidden propensity inference. Last, the defense argued that even if an exception did apply the evidence was so unfairly prejudicial and so lacking in probative value that its admission would violate Rule 403 (A). ("Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice…").

In this vein, one can only imagine how devastating the A.B. testimony would be to the defense. Picture A.B. on the stand, detailing to the jury how Williams did to him the same thing as he is charged with doing to J.H.

The court ruled in the state's favor and allowed A.B. to testify over Williams' objection. In so doing the court found exceptions to the rule contained in subdivision (B) of 404 applied. The evidence adduced from A.B. showed the defendant's motive and intent or purpose to seek sexual gratification from young men.

In admitting A.B.'s testimony, the trial court cautioned the jury twice concerning how it was to be considered. These instructions were given to the jury once at the time of A.B.'s testimony, and again in the court's charge to the jury at the close of the case: "The evidence [from A.B.] is going to be received for a limited purpose. It's not going to be received, and you may not consider it, to prove the character of the defendant in order to show that he acted in conformity with that character."

At the ensuing appeals, a central issue was the sufficiency of these limiting instructions to ensure that character/propensity evidence would not be used by the jury as a basis to infer that Williams acted "in conformity therewith."

Verdict

Williams was convicted and sentenced to a 20-year prison term. He appealed arguing the other acts with A. B. were remote and distinct occurrences and therefor inadmissible. The defense claimed the real motive for the state's injecting the evidence offered by A.B. was to show Williams' bad character, not admissible motive, plan or scheme of any sort. Further, and as a separate ground for reversal, the defense argued that admission of the testimony was so prejudicial as to violate the Rule 403 prohibition against admitting even relevant evidence where it's probative value is substantially outweighed by the danger of unfair prejudice.

The Court of Appeals agreed with Williams that admission of A.B.'s testimony was too prejudicial to admit, despite the limiting instructions to the jury that it not use the evidence to establish Williams' character to show that he acted in conformity with that character. The case was reversed and remanded to the trial court for a new trial. The state then appealed the Court of Appeals decision to the Ohio Supreme Court.

Supreme Court Decision

The Ohio Supreme Court

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Evidence (from page 10)

held the trial court did not err in admitting the other-acts evidence. The Court held the testimony of A.B. in the case was received not to show Williams' character and that he acted in conformance therewith. Instead, it was received for other purposes just as the trial court instructed the jury. Generally, a jury is presumed to have followed the trial courts instructions.

Justice Pfeifer was the lone dissenting vote. He found the other-acts evidence offered by the testimony of A.B. was offered to prove bad character, not motive, plan, or other permissible purpose. He believed the Court of Appeals got it right and that admission of the prejudicial other-acts evidence overwhelmed the probative value of A. B.'s testimony. *State of Ohio v Williams,* 2012-Ohio-569 (Ohio Supreme Court, decided 12/6/12).

The Controversy

There is a concern in many states that the application of Rule 404(b) is uneven to say the least. Understandably the loudest voice is that of the criminal defense bar.

Critics refer to the number of appellate decisions dealing with the Rule. It is argued that analysis of the issue in appellate opinions is often incomplete or inconsistent with other opinions. Some claim that interpretation of the Rule has strayed from historic common law principles which were the original inspiration for the Rule's adoption into virtually all state rules of evidence, as well as that of the federal rules.

At common law, evidence of extrinsic misconduct was deemed dangerously prejudicial. Is it the case that courts have become increasingly prone to reject especially criminal defendants' challenges to admission of other crimes or wrongs—challenges which in the past would have stood a much better chance of succeeding?

So, What Has Changed?

In the past Rule 404(B) has been interpreted much like character/propensity evidence was treated at common law. Evidence of other crimes or misconduct is presumptively inadmissible to demonstrate bad character in order to show conduct in conformity therewith. The exceptions in the second sentence of division (B), such as to show proof of motive, intent, plan or the like, were to be interpreted as flowing from the same policy considerations as the rest of the Rule. Those considerations were to narrowly construe those exceptions as the starting point of any analysis—after all, they are exceptions to the general rule. The language of the Rule specifically provides such proof of an exception *may* be admissible, not that it shall be.

The critics maintain the misconduct sought to be admitted has morphed from presumptively inadmissible, to presumptively admissible. That is, a former "rule of exclusion" is now a rule of inclusion. If the misconduct can be construed as demonstrating motive, intent, plan etc., it should presumably be admitted unless it so prejudicial as to offend Rule 403 and, taken a step further, be so prejudicial as to deprive the party against whom it is admitted a fair trial. The only recourse for that party is to request a limiting instruction from the trial court, such as was requested and given in the Williams case. Such an instruction is met with the criticism that it is a tepid and inadequate measure in the face of other-acts evidence which the jury will not be able to separate or dispel from their minds. What is more, if counsel neglects to request such a limiting instruction, any error in the court's not providing one is deemed waived and is of no consequence unless plain error analysis results in the appellate court finding that, in the absence of such an instruction, the non-objecting party was denied a fair trial.

Conclusion

With the Williams case one could argue Ohio is lining up with "inclusion" states and admitting evidence of misconduct so long as a limiting instruction of the kind given in that case is given the jury to emphasize the limited purpose for which the evidence is received. The federal courts seem to be operating from the same position. Once the proponent of the other-acts evidence establishes its relevance to an exception set forth in the Rule, the opposing party may be limited to arguing a 403 balancing test—that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

Where do *you* draw the line?

170 Years of Caring: Pleasant Hill Home

Karen DeCola

Director of Pleasant Hill Home, kdecola@co.geauga.oh.us

In 1816, County Commissioners were given the authority to build "poor houses." On March 15, 1839, the Geauga Commissioners bought the original tract of land, the farm of Nathaniel Stone, for $2400.00. For this investment, they made time payments of $900.00. The original farm house still stands, and is used as office space. They hired a contractor, David Eggleston, to build the first home for the whopping sum of $698.00. It was opened in 1840. A portion of the original building still stands, but is now used for storage. To the rear of the original home, was the "Mad House," with a total of 8 cells.

In the early days, County Homes, known as "Poor Houses," and later as "Infirmaries," were working farms with residents helping with daily chores. Men who were capable, worked in the fields and barns, while women could be found assisting with housekeeping and caring for less capable residents. This farm was a working dairy farm until the 1960's when its dairy operation was discontinued. County Homes, were often home to women and children, the elderly, homeless, and those with various disabilities.

As times changed, more and more social service programs became available to those in need. County Homes have also undergone a transformation. Today, Ohio County Homes have evolved to become either a non-certified with assisted living type care or a nursing home. Geauga County has chosen to provide assisted living type services.

In the 1880's, the original building began to deteriorate. By 1885, it was approved to build a new, red brick building at the same location. In Ohio, it is common to see similar red brick homes, with tall windows for healthy ventilation, that served the various counties. Geauga's home was described as a three story building of 36x72 feet with a high ceilinged attic for storage. Originally, there were no grand front porches, but the home was accessed through two front doors with curved stairways from the ground to the current front doors.

There have been additions, renovations and updates to the home, resulting in an airy and welcoming home. All bedrooms are small but private, with dormitory style bathrooms. Common areas are open and inviting.

Pleasant Hill Home offers a casual, family-oriented lifestyle to our residents, focusing on wellness, with a full recreation and social schedule, as well as plenty of opportunities to join in daily household routines. Residents are encouraged to join in on housekeeping, and meal preparation. We have had various farm animals over the years, for hands-on participation, if one is interested in a more rural lifestyle**.**

Pleasant Hill Home is committed to offering a welcoming, homey place to live for Geauga County's residents.

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Pleasant Hill (from page 12)

Pleasant Hill Home is located at 13211 Aquila Rd., Chardon, OH 44024 and can be reached at 44-279-2161.

It offers:

- A rural setting with freedom to spend time outdoors on our spacious farm
- A casual, family-oriented lifestyle
- Voluntary religious services offered
- Supportive care with 24 hour supervision
- Nurse provides assistance with coordinating medical evaluations and appointments with family through your established medical professionals
- Easy access to Senior Center, Geauga Hospital and Social Service Agencies
- A diverse planned activity and recreation schedule
- Opportunities to participate in community activities
- Laundry care is included
- Opportunities to participate in household responsibilities and routines
- Abundant home-style meals and snacks
- All private, furnished bedrooms with shared dormitory style bathrooms
- Quick access to Geauga Transit
- Respite/temporary care available

Admission Criteria

- Geauga County resident
- Receives, has applied for, or is qualified to receive a form of Social Security/Disability or-similar services/pension
- Ambulatory with walker/cane.
- Able to provide own personal care with minimal assistance
- No need for nursing home level of care.
- Complete and return all forms/requirements within 30 days of admission
- Agree to a trial admission to assess present level of functioning and ability to successfully reside at Pleasant Hill.

Funding for Pleasant Hill Home is provided by your local tax dollars through the Geauga County Commissioners as well as monthly resident room and board fees. A low personal income does not necessarily prevent someone from being accepted to Pleasant Hill Home. Rates are based on ability to pay.

Test your knowledge:

1. Aquilla Rd. was once named _____ Rd. after Our home.
2. Only _____ County residents are eligible for subsidized rates at Pleasant Hill Home.
3. During WWII, what was dispensed from the kitchen at Pleasant Hill Home?
4. Pleasant Hill Home can provide rooms and care for up to ___ persons.
5. Geauga County Pleasant Hill Home has provided assisted living style care since _____.
6. Resident room and board fees are based on _____.
7. What was Pleasant Hill's cemetery once called?
8. The "new" County Home was built in _____.
9. The farming operation that helped support the County Home until the 1960's was _____.
10. The County Home is financially supported by your tax dollars through the _____.

(Answers: (1) Infirmary Road, (2) Geauga, (3) war rations of cheese and butter, (4) 35, (5) 1840, (6) your ability to pay, (7) Pauper's field, (8) 1885, (9) dairy farming, maple sugaring, (10) Geauga County Commissioners.)

Our hearts are filled with appreciation for the Kind support provided by the people of Geauga County.
Your donations, and volunteering help keep us the happy, and great place we have become over the years.
Thank you, area business owners, civic groups, neighbors and friends throughout the county for all your support and kindnesses.
Sincerely,
Karen DeCola, Director

Practice Tips: Evidence May Be Required Before Default Judgment is Granted

Barbara Powell

Magistrate and Staff Attorney, Geauga County Common Pleas Court,

bpowell@geaugacourts.org

Today's practice tip: Even after a party is in default, the trial court has discretion "to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter." *See* Civ.R. 55(A); *Bd. of Trumbull Twp. Trs. v. Rickard*, 11th Dist. Ashtabula Nos. 2016-A-0044, 2016-A-0045, 2017-Ohio-8143, ¶¶ 70-71; *Dudas v. Harmon*, 11th Dist. Lake No. 2015-L-060, 2015-Ohio-5218, ¶¶ 32-36.

A complaint must contain a short and plain statement showing entitlement to relief. *See* Civ.R. 8 (A). When a claim "is founded on an account or other written instrument, a copy of the account or written instrument must be attached to the pleading." *See* Civ.R. 10(D)(1).

In an Ohio state court, the defending party must respond within twenty-eight (28) days after service of the complaint. *See* Civ.R. 6, 8, and 12. When the defending party fails to timely answer, averments in the complaint "other than those as to the amount of damage" are taken as admitted. *See* Civ.R. 8(D). However, failure to timely answer does not require a court to accept the truth of all allegations, enter the judgment demanded, or find the complaining party to be the prevailing party. *See* Civ.R. 55; *Rickard*, ¶¶ 70-71; *Dudas,* ¶¶ 32-36 and 50.

Before or after entering default judgment, the court may hold evidentiary hearings. *See* Civ.R. 55; *Dudas,* ¶¶ 32-36. In its discretion, the court may hold an evidentiary hearing on various matters including:

- Personal jurisdiction. *See* Civ.R. 4-4.6 and 12(B)(2) and (5); R.C. 2307.382; *Henderson v. SMC Promotions, Inc*., 6th Dist. Erie Nos. E-12-068, E-13-047, 2014-Ohio-4634, ¶¶ 12 and 56; *Jacobs v. Szakal*, 9th Dist. Summit No. 22219, 2005-Ohio-2146, ¶ 17.

- Subject matter jurisdiction. *See* Civ.R. 12(B)(1); *Cheap Escape Co. v. Haddox, LLC*, 10th Dist. Franklin No. 06AP-1107, 2007-Ohio-4410, ¶ 34.

- Venue. *See* Civ.R. 3 and 12 (B)(3); *Lorenz Equipment Co. v. Ultra Builders, Inc*., 10th Dist. Franklin No. 92AP-1445, 1993 Ohio App. LEXIS 1183, *4.

- Statement of a claim. *See* Civ.R. 12(B)(6); R.C. 2305.03; *Equable Ascent Fin., L.L.C. v. Christian*, 196 Ohio App. 3d 34, 2011-Ohio-3791, 962 N.E.2d 322, ¶ 17 (10th Dist.); *Wampum Hardware Co. v. Moss*, 5th Dist. Guernsey Nos. 14 CA 20 and 14 CA 17, 2015-Ohio-2564, ¶ 30.

- Damages. *See* Civ.R. 8(D); *CitiMortgage, Inc. v. Booth*, 10th Dist. Franklin Nos. 11AP-584, 11AP-910, 2012-Ohio-1419, ¶¶ 13-14; *Discover Bank v. Swartz*, 2016-Ohio-2751, 51 N.E.3d 694, ¶¶ 17-18 (2nd Dist.).

Test your knowledge.

Q. True or false: If, as a discovery sanction, the court strikes the defending party's answer, before granting default judgment the court may still demand evidence establishing allegations in the complaint.

A. **True.** Civ.R. 55(A) applies to default judgments granted for

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The Giving Tree of the Geauga County Courthouse

Kaitlin Vaselaney

Legal Intern, Geauga County Common Pleas Court

Christmas Day of 2017 will certainly be a whole lot merrier thanks to the generous men and women of the Geauga County Common Pleas Courthouse. This year marks the first of a hopefully annual participation in the amazing holiday program, "Sponsor-a-Family," which has been spreading joy to families of Geauga County for more than 40 years. The program is based solely on donations and works together with the Geauga County Job and Family Services in order to match low income families, foster children and seniors with gifts and food for the upcoming holidays.

The family the Courthouse sponsored was one with a particularly heartwarming story. The family of 8, including 3 boys, ages 16, 8 and 2, and a brand new set of triplets (2 girls and 1 boy), had a considerably rough year. The triplets were born at an astounding 30 weeks; and if three brand new babies were not enough for these parents, things got even harder after the mother endured an accident causing an injury. The kids were all consistently described as great children, a fact definitely shown by their very modest Christmas list.

Could the Common Pleas Courthouse simply stop at new socks and jackets? Of course not! Seasonal spirits were as high as the pile of presents this year, with all of the Courthouse contributing, four large bags filled with presents, two car loads, and all but a partridge in a pear tree. We, here at the Courthouse, hope that one son enjoys his Nike gear, the other loves his bike, the toddler is spinning on the Sit and Spin, the triplets will soon be on the rocking horse, and that all of you readers have a very special holiday and a Happy New Year!

Default (from page 14)

violation of discovery orders. *See* Civ.R. 55(A) and 37; *Rickard*, 11th Dist. Ashtabula Nos. 2016-A-0044, 2016-A-0045, 2017-Ohio-8143, esp. ¶¶ 55-57.

Q. True or false: If the defending party appears in the case but does not file a timely answer, default judgment may be granted without notice and an opportunity for hearing.

A. **False.** Procedural due process requires service of the motion for default on the defending party, notice of the hearing, and an opportunity to be heard. *See* Civ.R. 55(A); *MCS Acquisition Corp. v. Gilpin*, 11th Dist. Geauga No. 2011-G-3037, 2012-Ohio-3018, ¶ 25.

Q. True or false: Default judgment is available in divorce and civil protection proceedings.

A. False. Default judgment is not available in actions for divorce, annulment, legal separation, or civil protection. *See* Civ.R. 75(F); *Wood v. Hein*, 10th Dist. Franklin No. 14AP-382, 2014-Ohio-5564 ¶¶ 7-9.

Overcoming Ohio's "Winter Rule"

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It is not uncommon during this time of year for individuals to suffer significant and debilitating injuries due to a slip and fall on snow or ice. Unfortunately, and in many cases, Ohio courts apply the "winter rule" to deny an injured party's ability to recover for his or her injuries.

Before I discuss the application of the winter rule, let's review the basics. First, in order to establish a claim of negligence, a plaintiff must show the existence of a duty, a breach of duty, and an injury proximately resulting therefrom. *See, e.g. Armstrong v. Best Buy Co.* (2003), 99 Ohio St.3d 79.

When the alleged negligence occurs in the premises-liability context, the applicable duty is determined by the relationship between the landowner and the plaintiff. *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315. An "**invitee**" is one who enters the premises of another by invitation for some purpose that is beneficial to the owner or occupier. *Id.* Property owners owe invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition, including warning them of latent or hidden dangers. *See, e.g.*, *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St.2d 51, 52. A "**licensee**" is a person who enters an owner's premises, with permission or acquiescence, for personal benefit. *Light v. Ohio Univ.* (1986), 28 Ohio St.3d 66, 68. Under common law, a property owner owes a licensee a duty to refrain from willful or wanton misconduct that is likely to cause injury. *Gladon*, 75 Ohio St.3d at 317. Finally, a "**trespasser**" is one who enters property without invitation or permission, purely for his or her own purposes or convenience. *McKinney v. Hartz & Restle Realtors, Inc.* (1987), 31 Ohio St. 3d 244, 246. Ordinarily, a landowner owes no duty to undiscovered trespassers other than to refrain from injuring them by willful or wanton conduct. *Elliott v. Nagy* (1986), 22 Ohio St.3d 58, 60.

Keep in mind that, regardless of the classification of the plaintiff, the premises owner or occupier "owes no duty to persons entering those premises regarding dangers that are open and obvious." *Armstrong*, 99 Ohio St.3d 79. The rationale to the "open an obvious" doctrine is that the hazard serves as a warning unto itself and it can be reasonably expected that the person entering the premises would take precaution to protect themselves. *See id.*

With this in mind, it should come as no surprise that Ohio courts have routinely held that normal winter weather conditions in Ohio—snow, sleet, ice, and the accompanying perils—are considered obvious dangers. *See, e.g. Workman v. Linsz* (8th Dist.), 2015 -Ohio-2524, ¶ 9. As the Ohio Supreme Court noted "[t]he dangers from natural accumulations of ice and snow are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premises will discover those dangers and protect himself against them." *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, ¶ 2.

Consequently, Ohio courts routinely follow the "winter rule" which provides "no liability will attach to the occupier of premises for a slip and fall occurring due to **natural** accumulations of ice or snow, these being deemed open and obvious hazards in Ohio's climate, from which persons entering the premises must protect themselves." *Lorenzo v. Millennium Management Inc.* (11th Dist.), 2015-Ohio-2614, ¶ 26, *quoting*, *Sherwood v. Mentor Corners Ltd. Partnership* (11th Dist.), 2006-

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Winter (from page 16)

Ohio-6865, ¶ 13. Accordingly, it is accepted that a property owner has no duty to remove **natural** accumulation of ice and snow from private driveways, sidewalks, and steps. *See, e.g. Workman v. Linsz* (8th Dist.), 2015-Ohio-2524, ¶ 10.

However, and as with any rule, there are exceptions to the Ohio winter rule. The first exception to the winter rule is where a property owner is actively negligent in creating or permitting an **unnatural** accumulation of ice and snow. *Workman*, 2015-Ohio-2524 at ¶ 11. Unnatural accumulation is created by causes and factors "other than meteorological forces of nature such as the inclement weather conditions of low temperature, strong winds and drifting snow." *Lorenzo,* 2015-Ohio-2614 at ¶ 27. Typically, unnatural accumulations are caused by human intervention that causes "ice and snow to accumulate in unexpected places and ways." *Id.* at ¶ 27; *see, also*, *Workman* 2015-Ohio-2524 at ¶ 18 (characterizing it as "man-made" and "man-caused."). The second exception to the winter rule is where the property owner has been shown to have had notice, actual or implied, that a **natural** accumulation of snow and ice on his premises has created a condition **substantially more dangerous** than what should have expected in light of generally prevailing conditions. *Workman*, 2015-Ohio-2524 at ¶11, *citing*, *Debie v. Cochran Pharmacy-Berwick, Inc.* (1967), 11 Ohio St.2d 38; *see also Miller v. Tractor Supply Co.* (6th Dist.), 2011-Ohio- 5906, ¶ 11. Common scenarios which *could* fall into one of these exceptions include: improper plowing techniques, failing to maintain downspouts and gutters, defects in canopies covering walkways, or other construction defects.

In addition to the two exceptions, if the injury occurred upon a public sidewalk, a practitioner representing an injured person would be wise to investigate local ordinances. While landowners are generally not liable for injuries that occur to pedestrians while on public sidewalks, there is an exception "if a statute or ordinance imposes a specific duty on the property owner to keep the sidewalk adjoining his property in good repair." *See, e.g. Waters v. Carroll* (8th Dist.), 2002-Ohio-7222, ¶ 28. One such ordinance I used to successfully to establish liability provided:

> No owner or occupant of lots or lands abutting any sidewalk, curb or gutter shall fail to keep the sidewalks, curbs and gutters free from snow, ice or any nuisance, and to remove from such sidewalks, curbs or gutters all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated.

In other words, if a statute or ordinance imposes a specific duty on the property owner to keep their property in good repair and to remove snow and ice accumulation, his or her failure to do so may be actionable; despite the winter rule.

Finally, practitioners should not overlook the role and potential liability of independent contractors like snow removal companies. Unlike the owner and occupier, an independent contractor "who creates a dangerous condition on real property is **not relieved of liability** under the doctrine which exonerates an owner or occupier of land from the duty to warn those entering the property concerning open and obvious dangers on the property." *See Nageotte v. Cafaro Co.* (6th Dist. 2005), 160 Ohio App.3d 702, ¶ 35, *quoting, Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 646.

Geauga County Airport Seeking Board Member

Patty Fulop

Geauga County Airport Manager, geaugacountyairport@windstream.net

The Geauga County Airport is a 67.5-acre general aviation airport facility located in Middlefield, Ohio serving single and light twin-engine aircraft. It is publicly owned and operated by the Geauga County Airport Authority. The airport's mission is to manage the airport in a fashion that will improve and promote general aviation in Geauga County as well as materially benefit the local economy.

Current facilities include one runway 3500' long by 65' wide. Runway numbers are 11 on the west end and 29 on the east end. Two T-hangars, three community hangars, air ambulance living quarters, office rental space, a pilot lounge and restroom facilities make up the buildings on the site. The airport identifier is 7G8.

There are currently 40 based aircraft on the field including 2 twin engine aircraft, 6 gliders, 1 helicopter and 31 single engine aircraft

Visit our website at: http://www.co.geauga.oh.us/Departments/Airport

Mission statement:

The Geauga County Airport's mission is to establish, construct, operate, maintain, equip, improve, enlarge and promote the use of a county airport.

Form of Ownership:

The Geauga County Airport is owned by the Geauga County Board of Commissioners. Our current commissioners are Walter Claypool, Ralph Spidalieri, and Tim Lennon.

It is operated by the Geauga County Airport Authority. The board is made of 7 volunteer members, 3 which are appointed by the County Commissioners, 3 which the Airport Authority Board appoints and 1 that is appointed by the Village of Middlefield. Current Board Members are President Bill Meyers; Bill is a teaching pilot and also serves on the board of Habitat for Humanity. Vice President Tim Randles is also a pilot, Executive with Monroe Plumbing and management of several leased properties. Board member Cornelius Halsmer grew up on an airfield, has been a corporate pilot, has designed and built his own aircraft and a valuable member of EAA Chapter 5. Chip Hess has served on the board for over 15 years and is the owner of Hess Engineering, a civil engineering firm in Newbury, OH. His engineering experience has been a huge factor in the success of the airport. Board Mem-

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Airport (from page 8)

ber David Hostetler is a recently retired Business executive from Kraftmaid Cabinetry; Ben Nicastro is also a long time board member with over 15 years of experience and an expert in computer hardware and software. The seventh seat is currently vacant. **Any interested parties should contact the Airport Manager, Patty Fulop at 440-632-1884.**

Company History:

Ground was broken August 31, 1967, for Geauga County Airport which was officially opened September 19, 1968, as part of an initiative of then Governor James Rhodes. His vision was to have an airport in every county in Ohio. Middlefield Chamber of Commerce President Glade Harrison organized an effort to raise $20,000.00 to purchase the original 41-acre site and then donate the property to the County.

In the 1992, the Geauga County Airport Authority was formed to manage the facility and the airport became part of the National Plan of Integrated Airport Systems. Since then, several FAA and ODOT grants have been received to improve the runway, paving, and lighting as well as carry out obstruction removal.

In 2016 the airport was awarded a grant from the state Community Development Block Grant Program to add a handicapped entrance and has an application pending for a similar grant to add ADA restrooms.

They also received in 2016 an FAA grant in the amount of $ 249,660.00 for pavement repairs and are in the process of receiving a grant reported to be $ 494,324.00 for runway lighting replacement.

ODOT, Office of Aviation rewarded the airport a grant of $ 156,376.00 in 2016 and $ 132,500.00 in 2017 for the removal of trees and the airport manager has applied for an additional $ 308,000.00 to remove additional obstructions to the airspace.

Business Use:

Geauga County Airport is ideally located in Middlefield, Ohio on SR 608, 1 miles south of the center of the Village of Middlefield. The Industrial Parkway is just to the north and KraftMaid to the south. Business aircraft visit the airport regularly including large twin engine aircraft and small jet aircraft.

Geauga County Airport is home to Air Methods, an emergency MedEvac helicopter unit, the Cleveland Soaring Society, a glider operation offering commercial rides, Chapter 5 of the Experimental Aircraft Association, a 501c3 non-profit which builds aircraft, fosters youth activities and supports Geauga County Airport.

Above: Hangar 3, occupied by the Experimental Aircraft Association.

Dear Attorneys... From the Title Bureau Staff

Denise Kaminski

Geauga County Clerk of Courts., dkaminski@geaugacourts.org

Dear Attorneys:

Having served as Clerk of Courts for 21 years and hearing the woes of customers trying to obtain a title when a spouse or relative passes away has been very upsetting. My Deputy Clerks do not like to inform them that they must open up a case in probate court in order to obtain a title for a vehicle in their deceased relative's name. This vehicle may not have much worth, and spending time and money is not practical.

The best advice you can give your clients is to explain to them the difference between the "Rights of a Surviving Spouse," a TOD (transfer on death), and a WROS (with right of survivorship) when they title their vehicles to avoid probate court in the event of their death.

We have the "Affidavit for Designation of Beneficiary" for TOD and "Surviving Spouse Affidavit" forms on our website at: www.geaugacourts.org under the Clerk of Courts Auto Title Section.

Since April 6, 2017 a surviving spouse of the owner of one or more vehicles may elect to obtain title to vehicles through use of a surviving spouse affidavit. There is no limit on the number of vehicles. However, the total value of transferred automobiles cannot exceed $65,000. In addition, they are able to transfer 1 boat and 1 motor. Liens, if any transfer to new titles. The Definition of "automobile" in the statute ONLY INCLUDES cars, motorcycles, and trucks.

The affidavit cannot be used to transfer titles to Manufactured Homes, ATVs, APVs, motor homes, travel trailers (campers), or trailers over 4,000 pounds.

To obtain the title upon death for the surviving spouse, they need to present the original Ohio title, the death certificate, Driver's License or form of I.D. and $17 fee.

To avoid Probate and pass a title outside of the estate of the deceased owner we recommend: TOD (transfer on death): In Ohio an individual owner of a vehicle, motorcycle, boat, motor, manufactured home, camper, trailer or ATV may name a beneficiary. This is used when a vehicle, manufactured home, boat, or motor has a sole owner, and that owner wishes to pass ownership to another person (beneficiary) upon the sole owner's death. There may be more than one named beneficiary, and a beneficiary may be a company or a trust as well. The beneficiary has no ownership interest in the vehicle while the owner lives, and the owner can change the designation at any time. The owner and beneficiary may or may not be related. Liens, if any, transfer to the new title per ORC 2131.13.

To obtain the title upon death, the person needs to present the original Ohio title. If there is a lien on the title, they must contact the lender and request the original title be released. The title must be in the name of an individual only, not a company or trust. However, the beneficiary obtaining the title may name a trust, a company or multiple beneficiaries if desired. They must present: the Ohio Title, Photo ID, beneficiary's legal name, social security number, date of birth and $17.00 fee.

WROS, (with right of survivorship) designation is used when a vehicle, boat, motor, or manufactured home has two owners, and both want their one-half ownership interest to pass to the surviving owner upon the death of the other owner. The two owners may or may not be related. Liens, if any transfer to the new title of surviving owner per ORC 2131.12. When one owner passes away, the surviving owner is able to transfer the title into their name with the original title, a Certified Copy of the death certificate, a photo ID, and $16 fee.

Please feel free to call our office for clarification at 440-279-1750 Monday through Friday 8:00 a.m. to 4:30 p.m.

Denise Kaminski

and Title Clerks Staff

The Judge, the Wig, and the Wardrobe: The History and Significance of the Judicial Robe

Judge Diane V. Grendell[1]

Eleventh District Court of Appeals, dvgrendell@11thappealohio.us

While the ideologies, philosophies, and opinions of judges are often discussed and examined, a more light-hearted, but surprisingly significant, subject worthy of consideration is the judiciary's courtroom attire. An Internet search on this topic reveals various questions raised by the general public. From "Why do judges wear robes?" to "What clothing do judges wear underneath their robes?," this appears to be a topic of genuine interest to those who are not sitting on the bench.

Lawyers and members of the public alike immediately recognize the significance and gravity of the moment when a judge wearing his or her robe enters the courtroom. Some judges view this attire as a matter of tradition, while others see it as necessary to set the judge apart and dictate the appropriate tone and decorum of the proceedings. Exploring the history of judicial dress, as well as the present-day attire of judges throughout the United States, serves not only to satisfy the general interest in this topic, but also to highlight the impact a judge's wardrobe has on the public perception of the courts.

Historical Dress

As is so often the case when examining the development of legal issues in the United States, a review of England's historical judicial dress is necessary to understand the type of judicial attire which has been adopted by the United States courts. Fortunately, much has been written to preserve this history and explain the evolution of such attire.

An overview of court dress was conducted by the Lord Chancellor and Lord Chief Justice in *Court Dress: A Consultation Paper* (1992), which reviewed historical judicial attire in England and Wales. It notes that the wardrobe consisting of a long robe, hood, and cloak worn by High Court judges, was well-settled since the time of King Edward III's reign (1327-77). In medieval times, robe colors varied by season, with judges wearing violet in the winter and green in the summer, with scarlet worn on various occasions. Over time, this practice evolved, with judges wearing violet or black, while retaining items such as a cloak or collar in some instances.

It has been widely reported that the transition from red or other colorful robes to primarily black occurred in the wake of Queen Mary II's death in 1694, with black robes worn as a sign of respect and mourning.[2] Other sources have noted that the change may have been the result of King Charles II's death in 1685.[3] In either case, a transition toward black robes appears to have occurred in the latter part of the 1600s, with many lower court judges wearing primarily black and no longer donning some of the colors that had previously been common.

Judges in Great Britain have also traditionally worn wigs made of horsehair in addition to their robes and collars. Primarily, judges of the higher courts have worn longer wigs, while lower court judges' wigs are shorter. More recently, as was reported by Reuters, changes have been made to remove the requirement to wear wigs in civil trials, although they are still worn in criminal proceedings. Common complaints in relation to the wigs are not only that they are unnecessary, but also itchy and uncomfortable. Some benefits of the wigs have been advanced, such as maintaining uniformity and also protecting, to some extent, the identity of the

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judge (although it is questionable whether this is a successful, or necessary, endeavor). The wig-wearing tradition continues to be followed in several former British colonies. Judges in Canada and Australia have largely abandoned wigs, although this varies depending on the court.

Most judges throughout the world wear some version of a judicial robe. In many countries, judges wear robes of different colors depending upon the level of the court. Black robes are common; however, higher court judges in countries such as France, Germany, and Canada wear red. The robes in some countries in Africa and Asia have gold or other colorful embellishments.

Judges' Attire in the United States

With many countries providing examples of traditional judicial attire, the Founding Fathers of the United States had to determine which, if any, of these traditions should apply to the judges in their new country. The decision of what constituted appropriate judicial attire, or "costume" as it is often called, was subject to much debate. According to Juris Magazine, "Thomas Jefferson, and a few of his peers, wanted judges to wear suits in order to rid the vestige of the English era. John Adams, on the other hand, wanted to keep the tradition alive." Ultimately, this debate led to the adoption of the general attire that is still worn today: judges would wear the robes, but not powdered wigs.[4] In this way, a compromise was reached that has continued to distinguish United States judges from some of their counterparts across the ocean.

Presently, most judges throughout the country wear plain robes while on the bench. These are typically black, although sometimes a judge may choose to wear another dark color such as navy blue. While this type of dress is common, it is largely a matter of tradition, as there are limited formal rules dictating judges' courtroom attire.

The Ohio Revised Code, Code of Judicial Conduct, and Rules of Superintendence do not speak to any particular attire that must be worn while a judge is sitting on the bench, or at any other time. Opinion 2003-8, issued by the Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, noted: "There is no requirement in the Code [of Judicial Conduct] that a judge or a magistrate wear, or not wear, a judicial robe. By tradition, judges wear judicial robes in the courtroom."

Some states, or even specific courts, however, have adopted either formal or informal regulations in relation to the judicial wardrobe. The New Hampshire Revised Statutes require that "[t]he justice of a district court shall wear an appropriate black judicial robe whenever his court is convened in criminal or civil session," further providing that such robes be paid for by the state. N.H. Rev. Stat. § 502-A:23. In California, every judge "shall, in open court during the presentation of causes before him or her, wear a judicial robe, which the judge shall furnish at his or her own expense. The Judicial Council shall, by rule, prescribe the style of such robes." California Government Code, Section 68110.

In 2015, Florida Supreme Court Chief Justice Jorge Labarga required that all judges within the state wear a solid black robe with no color or embellishment, expressing concerns that judges had become too casual. He stated that he patterned this rule after the California state law for judicial courtroom dress. Several judges within the state have taken issue with this rule, questioning the propriety of banning any form of personal expression by judges, such as wearing a blue robe or a pin with a pet dog's picture.[5]

Where there are no rules regulating attire, judges may wear robes of different colors, or even no robe at all, opting for professional attire such as a suit. According to Rudolf B. Lamy in his history of Maryland appellate court dress, *A Study of Scarlet: Red Robes and the Maryland Court of Appeals*, much like high court judges in other countries, the Maryland Court of Appeals judges have worn scarlet or red robes when hearing arguments for a number of years. This practice has varied throughout history but was reintroduced in preparation for the courts' bicentennial. Justices of the Pennsylvania Supreme Court wear a brightly colored sash of purple and gold around their collars.

In recent years, some judges have decided to either not wear

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their robes, opting for a suit, or to "accessorize" their robes in order to show personal style. John Eligon of the New York Times examined this development in *Behind the Gavel, a Sense of Style*, and noted that, "on any given day in New York City's courthouses, it is common to see judges on the bench with unzipped or unbuttoned robes; accessories like scarves, jewelry or collars hanging outside of a robe; and, in some cases, no robe at all." Many judges in other areas of the country would see this as a departure from their typical choice to wear a dark robe with little adornment. Some New York City judges, however, such as Judge Melissa Jackson, see it as a way to better interact with parties, noting that it allows defendants to see her "as another human being, not just another rubber-stamp automaton."

Some of the most famous and well-respected United States Supreme Court Justices have been known to express their personal style in some manner, although not abandoning their robes altogether. For example, the first Chief Justice, John Jay, and other colleagues wore robes with red facing, similar to those worn by English judges. More recently, Chief Justice William Rehnquist is famously known to have modified his robe to add four gold stripes on each arm, reportedly as an homage to the Lord Chancellor character in *Iolanthe*, a Gilbert and Sullivan operetta,[6] who sings the lines: "The law is the true embodiment of everything that's excellent. It has no kind of fault or flaw." In the current Supreme Court's official picture, however, all justices wear a plain black robe, with Justice Ruth Bader Ginsburg wearing a small, decorative, beaded collar.

When it comes to the popularly searched question of what a judge wears under his or her robe, the most common attire is that of many professionals: a shirt, tie, and dress pants for male judges and either a dress or a blouse and dress pants or a skirt for a female judge. There are several reasons for this attire. While a robe may cover much of a judge's clothing, the collar of the shirt can still be seen. A visible collared dress shirt and tie can be observed in virtually every male judge's portrait. Many female judges have been known to wear lace collars or other similar garments, as the cut of a woman's blouse may often leave her with a different appearance than male judges. As New York Judge Judith Kaye noted, the neckline of a robe can create some difficulties for women, since the cut seems better suited for a man's collared shirt and tie: "If you wear an open blouse or something, you look strange." In past Supreme Court photographs, Justices Sotomayor and Kagan have had "a discreet hint of delicate white fabric peeking out from the top of" their robes since "[t]hey need a little something at their necks so they don't appear to be naked under their judicial uniforms."[7] In both the United States Supreme Court's and the Ohio Supreme Court's recent official portraits, however, two of the three female justices do not have a collar that rises above the cut of the robe.

Another reason for this typical attire is that judges often do not wear their robes throughout the entire day, especially if they are not on the bench, and have additional business to conduct. Further, as can be witnessed in past and present judicial portraits, some judges may leave their robe partially or fully unzipped, necessitating the need for professional dress. While the ABA has reported that some judges have been known to wear jeans, or even shorts, in the summer, this is likely the exception rather than the rule. More likely, a judge's attire under the robe can be compared to that of an attorney.

Judicial and Public Perspective on Robes

Central to the discussion of judicial attire is how it impacts the judiciary as a whole. This has been discussed by many of the finest U.S. judges and justices. Supreme Court Justice Sandra Day O'Connor expressed her opinion on judicial attire in a 2013 Smithsonian Magazine article discussing why judges wear black robes.[8] She notes that while wearing a robe is a matter of tradition rather than rule, it is a valuable custom: "It shows that all of us judges are engaged in upholding the Constitution and the rule of law" and "have a common responsibility."

Interestingly, she also described the tradition of the justices putting on their robes prior to oral argument as significant. Prior to oral arguments, all judges meet in the robing room to don their robes. She explained: "Then the justices,

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without fail, engage in a wonderful custom. Each justice shakes the hand of every other justice before walking into the courtroom—an important reminder that, despite the justices' occasional differences in opinion, the court is a place of collegiality and common purpose." To her, wearing this simple garment represents the many important principles that judges must honor and respect.

The most recent member of the United States Supreme Court, Justice Neil Gorsuch, has also discussed his feelings about wearing his robe, in a speech later published in the Harvard Journal of Law and Public Policy.[9] He noted that it does not serve to set a judge on a pedestal above others in society:

> [D]onning a robe doesn't make me any smarter. But the robe does mean something—and not just that I can hide coffee stains on my shirt. It serves as a reminder of what's expected of us—what Burke called the "cold neutrality of an impartial judge." It serves, too, as a reminder of the relatively modest station we're meant to occupy in a democratic society. In other places, judges wear scarlet and ermine. Here, we're told to buy our own plain black robes – and I can attest the standard choir outfit at the local uniform supply store is a good deal. Ours is a judiciary of honest black polyester.

The National Judicial College inquired into judges' thoughts about wearing a robe in 2017.[10] Most judges, 83 percent of the more than 1,250 surveyed, said that they enjoy wearing their judicial robes. Several reasons were offered by the judges for their favorable opinions, including that robes differentiate a judge and reinforce the dignity of the position. It also serves as "a visual reminder of the formality of the proceedings, and a reminder to the wearer of a solemn commitment to fairness and neutrality." In other words, the robe is not just some relic from hundreds of years ago, although its prestige benefits from its long history and cultural acceptance, but is a way of ensuring the judge and the court are given proper respect.

Some judges, however, have questioned the power that a robe gives them, and have seen "many judges let the robe go to their heads." Others have noted that they may not wear a robe when interviewing children in order to avoid intimidating them. As noted above, some New York judges see robes as a barrier to interaction with defendants.

When it comes to the public, robes are easily recognized as a sign of judicial authority. The Ohio Supreme Court has consistently made clear that robes are to be respected, as is evidenced by its disciplinary decisions. Even candidates for judicial office who have previously served as judges may not wear robes or other items such as name tags in their campaign materials, for fear that it may give the impression to the public that they are an incumbent judge. *See In re Judicial Campaign Complaint Against O'Toole*, 141 Ohio St.3d 355, 2014-Ohio-4046, 24 N.E.3d 1114. *Also In re Judicial Campaign Complaint Against Lilly*, 117 Ohio St.3d 1467, 2008-Ohio-1846, 884 N.E.2d 1101; *In re Judicial Campaign Complaint Against Moll*, 135 Ohio St.3d 156, 2012-Ohio-5674, 985 N.E.2d 436. These cases demonstrate the great emphasis that the judiciary places on regulating its profession and maintaining the public's confidence. Just wearing a robe has the power to change the voters' perception and opinion about a judge or prospective judge.

One study on judicial robes asked law students participating in moot court arguments questions about the impact of judicial attire and the setting of the argument on their perception of moot court judges.[11] Specifically, the authors were interested in whether the wearing of a robe, and adoption of other formal procedures, impacted the manner in which the public respected the judiciary and its function. It was determined that "those arguing before a judge who wore robes perceived the judge to be more knowledgeable than those arguing before a judge in business attire." *Id.* at 237. Again, then, judicial attire impacts the perception of a judge and the court.

At first glance, a review of judicial attire and the different styles of historical and current judicial dress may seem to be merely a topic of general interest, or a question asked out of simple curi-

(Continued on page 25)

The Robe (from page 24)

osity.[12] As discussed above, this subject does have further-reaching implications than may initially appear to be the case.

A judge's decision whether to wear a black or colorful robe, accessories, or even a suit rather than a robe, can impact the public's perception of the judge and the integrity of the court. It can also affect how confident a judge may feel interacting with the public. In the absence of rules regulating a judge's dress, it is incumbent upon that judge to consider these issues when determining appropriate attire. As the Honorable Justices of the United States Supreme Court have explained, the humble robe donned by judges throughout the United States speaks to many wide-ranging values, from shared judicial purpose, to integrity, respect, and democracy. Each time a judge dons his or her robe, a physical reminder of the oath taken to uphold the principles of justice is present. A simple article of clothing, a plain cloth robe, holds a great deal of power.

Endnotes:

1. Judge Diane V. Grendell is a judge on the Ohio Eleventh District Court of Appeals. The author would like to recognize Julie Beadle for her assistance in writing this article.

2. Judge Lucy Gamon, *Why Does a Judge Wear a Black Robe?* Ottumwa Courier, http://www.ottumwacourier.com/opinion/court_calls/why-does-a-judge-wear-a-black-robe/article_98c050b9-1ad8-5e39-8507-444c337b38d0.html (June 6, 2011); Jana Baca, *The Unusual Story Behind the Usual– Courtroom Attire*, Ontario Bar Association, http://www.oba.org/en/pdf/sec_news_fam_jan12_bac_gow.pdf (Feb. 2012).

3. Michigan Courts, http://courts.mi.gov/education/learning-center/Pages/hidden/Symbols-of-Authority.aspx.

4. *See* Meghan Collins, *Why Do Judges Wear Black Robes?*, Juris Magazine, http://jurismagazine.com/why-do-judges-wear-black-robes/ (Oct. 24, 2013). As the article notes, given that much of the United States' law was based on English common law, it is unsurprising that at least part of the traditional wardrobe was adopted.

5. Steve Bousquet, *Chief Justice Lays Down the Law: Black Robes Only in Court*, Tampa Bay Times, http://www.tampabay.com/news/politics/legislature/chief-justice-lays-down-the-law-black-robes-only-in-court/2230236 (May 19, 2015).

6. Photographs relating to this inspiration, and other judicial clothing items such as justices' lace collars and "legal skullcaps," can be found on Harvard University's website: https://exhibits.law.harvard.edu/decorated-sleeve.

7. Robin Givhan, *Trial by Attire: Supreme Court Look Should Go with Everything We Believe In*, http://www.washingtonpost.com/wp-dyn/content/article/2010/10/08/AR2010100806588.html (Oct 9, 2010).

8. http://www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robes-4370574/ (Nov. 2013). When it comes to Justice O'Connor's attire, she was known to often wear a lace collar with her black robe.

9. Honorable Neil M. Gorsuch, *Law's Irony*, 37 Harv. J.L. & Pub. Policy 743, 752 (2014).

10. *See* http://www.judges.org/vote-judges-like-wearing-robe-widely-varying-reasons/.

11. Oscar G. Chase and Jonathan Thong, *Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness -related Factors*, 24 Yale J.L. & Human. 221 (2012).

12. There are more than a few articles written about what judges wear under their robes. See Erik M. Jensen, Under the Robes: A Judicial Right to Bare Arms (and Legs and . . .), http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1063&context=faculty_publications.

Important Updates

The Geauga County Juvenile Court is seeking qualified attorneys to represent indigent defendants in proceedings including but not limited to abuse, neglect, dependency and delinquency.
If interested, please submit a cover letter and resume to:
Ann Hazen at 231 Main Street, Suite 200, Chardon, OH 44024.

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

March 2018

Wednesday, March 21, 2018 at 6:30 p.m.
Wednesday, March 28, 2018 at 6:30 p.m.

October 2018

Tuesday, October 9, 2018 at 6:30 p.m.
Wednesday, October 17, 2018 at 6:30 p.m.

The Ashtabula Juvenile and Probate Court has launched a new newsletter with updates on both courts.
To sign up, email: Andrew Misiak at ajmisiak@ashtabulacounty.org.

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:
February 14, 2018
March 14, 018
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:
January 24, 2018 at Cleats
February 22, 2018
R.S.V.P. to the G.C.B.A. Secretary

In Memoriam:

The Geauga County Bar Association wishes to extend it's condolences to Joe Weiss and his family on the passing of Joe's mother in September.

Chagrin Falls Legal Clinic

The next Legal Clinic at Chagrin Falls Park is January 27, 2018.

Law Day

Law Day has been scheduled for May 4, 2018, at Guido's in Chesterland. The theme is "Separation of Powers."

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Ipso Jure Deadlines:

Mark your calendars and turn in an article!

February 15, 2018

April 15, 2018

Quick Reminders

Next Executive Committee Meeting:

February 14 at 12:00 noon

Next General Meetings:

January 24 at 12:00 at Cleats, 602 South St. in Chardon
February 22 at 12:00

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