

# 11050 Three





**Cover:** All Judges (past, present, and future) pose for a picture at Judge Burt's retirement party. Pictures of the Annual Dinner by Mary Jane Trapp.

## Inside this issue:

Cover Photo	1
President's Page Judge Terri Stupica	2
Update on Common Pleas Court's Transition to E-Filing	3
Golf Outing Sponsors	4
Golf Outing Lisa Carey	5
Golf Outing Pictures Janess Heiden	6
Up in Smoke Judge Diane V. Grendell	7
Veterans Administration Laurie G. Steiner	11
Visiting with Justice Kennedy Robin L. Stanley	12
Follow-up: Will You be the "U" in Cure? Timothy H. Snyder	13
Cases of Interest Pearce Leary	14
Geauga County Courthouse Helps Geauga Children Back to School	15
G.C.B.A. Annual Dinner Honoring Judge Forrest Burt	16
Announcements from Judge Grendell	18
Thank you from the Burton Library	20
Announcements	21
GBCA Application	23
The Geauga County Bar Foundation	24
GCBA Announcements	25

# President's Page

## Judge Terri Stupica

*Chardon Municipal Court, 440-286-2670*



Well, this is it. My last article as President of the great Geauga County Bar Association. I have so enjoyed my term, and I believe we accomplished some great things this past year.

To begin, our bar association increased by 16 members this year, with a 17<sup>th</sup> still waiting to be approved. Welcome all.

Secondly, I sought to have more guest speakers at our general meetings. We started out the year in January with Shari Hunter, CEO of Two Foundation and owner of Two Café and Boutique in Chagrin Falls. Shari employs students/young adults who have special needs and helps them obtain other employment throughout the County. What a great gift. Her restaurant has wonderful food, as well.

At February's meeting, we had the pleasure of our future Commissioner, Jim Dvorak, on the Board of the Red Tulip Project, speaking about the women's sober house in Claridon Township. Many wonderful people have donated time, money and ideas, in addition to blood, sweat and tears, to this wonderful project, which is now set to open next spring. This is a project very near and dear to my heart, and I so appreciate all that the Red Tulip Project has accomplished with the generosity of our great community.

Shannon Majewski of Big Brothers/Big Sisters spoke at our

March general meeting. She provided great insight to this wonderful program and its needs. Though still in existence in Geauga County, the community involvement and promotion has waned over the past several years. Hopefully, some people enlisted in some of their programs to help assist others and get BB/BS flourishing once again locally.

We had a reprieve from guest speakers until our September meeting, when Ohio Supreme Court Justice, Sharon Kennedy, honored us with her presentation about Veterans' programs she is promoting around the State of Ohio, and her passion in doing same. Over 100 people attended the event at the Chardon VFW Hall, including many local veterans. What a great success!

Our final guest speaker was Elizabeth from WomenSafe, who relayed how its services relate to the Court and legal system. She provided very useful information.

We continued to do great work with our pro bono clinics at the Chagrin Falls Park recreation center. Thank you to those who volunteered their time on several Saturdays throughout the year to provide legal services to those in need. They are greatly appreciative of everything.

We had some fun times, too, throughout the year. We scheduled an Indians' opening day event at Brown Barn, a nice event at a new

*(Continued on page 3)*

# Update on Common Pleas Court's Transition to E-Filing

## Geauga County Court of Common Pleas

On April 25, 2015 Geauga County Court of Common Pleas was awarded \$143,979 from the first distribution of the Ohio Supreme Court's Technology Grant Program. In August of 2015, the Public Access Portal became available allowing the public to view case information and images of documents on the case. This feature is available to the general public for all Criminal and Civil Cases. Domestic cases require a user login, and Domestic Violence and Stalking cases are not available electronically. Under the leadership and direction of Judges Burt, Fuhry, and Paschke, it was determined that the Court would take advantage of the opportunity and eliminate "paper" within the Courthouse. Over the following years the Clerk and Court's business practices changed for both external and internal customers creating an environment of electronic communication.

Currently, the Court is accepting electronic filings on Criminal cases, and requires all Civil cases be filed electronically. Domestic Relations cases continue to be filed in paper format; however the Court will transition Domestic Relations filing to electronic format in 2019. Internally, the Clerk and Courts have experienced a dramatic change, eliminating paper files and developing electronic methods to communicate case activity and share information.

The E-Filing Administrative Order along with E-Filing procedures can be accessed via the Court's website <https://www.co.geauga.oh.us/commonpleas/>

General-Division/Local-Rules. E-Filing registration, login, docket search and tutorials can be found at the Clerk of Courts Website <https://www.co.geauga.oh.us/commonpleas/Clerk-Of-Courts>.

The use of the following practices and or requirements will assist with your E-Filing experience:

1. When initiating a new case filing:
  - Enter each party individually
  - All information entered must be in caps
  - No punctuation of any type is permitted
  - Always use "Default" address type
2. Submitting documents:
  - All motions are to be submitted in an Adobe pdf format and have an accompanying proposed Order in a Word doc format. A template is available for downloading within the E-Filing environment. We recommend you download and use this template as it contains the necessary tokens for judicial signing.

The Court expresses its gratitude to our Court IT Officers Debbie Urankar and Tom Huff, the Clerk of Courts and staff, and the Court staff for their commitment to the enormous task of converting to electronic filing and implementing the elimination of "paper" for the General Division of the Geauga County Court of Common Pleas.

We will continue to provide updates and pointers in upcoming *Ipsa Jure* articles. 🌸

### President's Page (from page 2)

local restaurant. Secretaries' Day at Munson Town Hall, always proves to be a delightful lunch with many laughs, and this year, fun hats. A cornhole tournament was scheduled for August, that unfortunately, due to a downpour, resulted in just a pizza party inside the Heritage House. The last so-

cial event of the year, other than the annual dinner and Christmas party, was the golf outing. I opted out and went to Europe instead, so I have no idea what happened-lol I heard it was fun.

Our two biggest events of the year were Law Day and the Annual Dinner. At Law Day, we

were honored to have the Honorable Sean Gallagher of the Eighth District Court of Appeals speak. One is hard-pressed to think you are actually gaining knowledge by the entertaining manner in which Judge Gallagher presents the legal-

*(Continued on page 4)*

# Thank you to all of our Golf Outing Sponsors



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**RAMBO FOR JUDGE**

**Judge Terri Stupica  
&  
Dennis Coyne**

## President's Page (from page 3)

ities of a topic. He never ceases to amaze me-always a great speaker. Those of you who attended the Legal Aid pro bono CLE seminar that I was privileged to host at Chardon Municipal Court this past October had the pleasure of watching Judge Gallagher once again, making case law updates a laugh-

ble event.

Finally, the annual dinner. Another huge success at Guido's, made so by those of you who attended. We honored Judge Burt in his upcoming retirement. We will miss you....

I am passing the torch to Kelly Slattery. I wish you well,

Kelly, and I know you will lead our Bar Association in an excellent manner.

It has truly been my pleasure. Thank you for this great opportunity this past year.

*Sincerely,  
Terri*



# Fore! 2018 Golf Outing

**Lisa Carey**

*Carrabine and Reardon, [carey@jcjrlaw.com](mailto:carey@jcjrlaw.com)*

This is a shameless plug for the G.C.B.A. Golf Outing. Honestly, if you haven't been there recently—or at all—you are really missing out. If nothing else, you are missing watching one team in particular play about 27 holes of golf instead of 18. Yes, I am referring to the High Score team.

The core of this team for about the last 20+ years has been Dave McGee, Lynne Day, and Lisa Carey. The 4<sup>th</sup> player has joined us, usually for a year or two, but always leaves with a very memorable experience. Our “4<sup>th</sup>” over the years has included Jacqueline Svete, Lora Lynne Brown, Dotie Lee, and, most recently, Ann D’Amico.

In one of his first years practicing law, Jim Flaiz actually golfed with us—and probably instantly regretted it (because he could actually play). As usual, we were moving slowly somewhere in between the tee off spot and the hole when Judge Craig Albert teed off behind us, and the ball promptly bounced up and hit Jim in the back of the leg. To be fair, the Judge did yell “Fore” but it was too late. Jim declined invitations to join us in later years.

Each year, we always have certain moments—usually at least one really great shot—and usually one really bizarre one. We have won awards over the years—the females on the team have won Women’s Longest Drive or Closest to the Pin. This year, Ann and I won both, although I think we were the only women golfing. This year’s memorable shot goes to Ann who chipped one in from about 30 yards out. It was such a beauty that we skipped the next hole in her honor (also, the hole was so long and we were behind so...).

Then, there were those really awkward moments: Dave McGee hitting the ball backwards on a drive; Dave and Lora Lynne almost flipping the golf cart; the time we pulled away in front of everyone and Lynne and Lisa’s clubs fall off the back of the cart; spending probably hours (over 20 years) looking and fishing for balls. Dave is really into nature and often stops to take pictures of the wildlife out on the course—this year, he was taking pictures of mushrooms and sending them to his daughter. One year, we even had a rear-end collision with the carts—between our own team! I

think we were playing at a Petersen golf course, because Lynne called Jerry Petersen to tell him about it, and he asked if the golf cart was ok. Really, Jerry?!?

I think our favorite course was Little Mountain, because they had those computerized stats in the golf carts so we could always make sure our score was higher than everyone else.

Our score, for a best ball scramble, usually hovers around 100, but at the end of the day, we have had a lot of fun, usually laughed at least once until we just about cried, caught up with each other’s lives, and played occasionally decent golf along the way. We have usually worked up such an appetite that a great steak meal really hits the spot—sorry Dennis, the tacos were good, but PLEASE bring back the steak dinner!!! We have earned it!!!!

If you played in the past and haven’t played for awhile, or just want to experience a great social time, please consider getting a four-some together in 2019. Ladies, come out and join us! We have won the high score prize every year, but would welcome a challenger or two. It truly is a great time! 🌻





# A Great Day for Golf!



**Golf  
Outing  
Pictures  
by  
Janess  
Heiden**



# Up in Smoke: Examining the Impact of Ohio's Legalization of Medical Marijuana in Conflict with Federal Law

**Judge Diane V. Grendell<sup>1</sup>**

*Eleventh District Court of Appeals, [dvgrendell@11thappealohio.us](mailto:dvgrendell@11thappealohio.us)*



In 2016, the Ohio General Assembly passed legislation allowing for the cultivation, processing, dispensing, possession, and use of medical marijuana. While medical marijuana has not yet become available due to delays in the implementation of the processes required to sell and purchase marijuana, it is likely that it will be available for sale in early 2019. Given this highly significant shift in Ohio drug policy, it is important to examine the legality of Ohio's law since the federal government prohibits the distribution, manufacture, and possession of marijuana for all purposes. Since federal law preempts state law, the potential conflicts that may arise from Ohio's legalization of medical marijuana are serious and abundant.

## **Ohio Medical Marijuana Law**

Ohio Revised Code 3796.02, effective in September 2016, "established a medical marijuana control program in the department of commerce and the state board of pharmacy," and orders that the department must "provide for the licensure of medical marijuana cultivators and processors \*\*\* [and] retail dispensa-

ries." It also requires that the department shall allow for "the registration of patients and their caregivers." *Id.*

Once licensed, cultivators may grow medical marijuana and sell it to licensed processors. R.C. 3796.18. They may then process the marijuana into a saleable form, which includes items such as oils and edibles, but the statute does not allow for the smoking of marijuana. R.C. 3796.19; R.C. 3796.06. Finally, licensed dispensaries may sell medical marijuana obtained from processors to individuals displaying proper identification and possessing a recommendation from a physician holding a certificate to recommend. R.C. 3796.20.

Patients who wish to use medical marijuana "shall apply to the state board of pharmacy for registration" and physicians holding "a certificate to recommend \*\*\* shall submit the application on the patient's or caregiver's behalf \*\*\*." R.C. 3796.08(A)(1). R.C. 3796.22(A)(1) provides that a person "[w]ho obtains medical marijuana from a retail dispensary licensed under this chapter" may use such marijuana. Ohio Administrative Code 3796:7-2-05 requires that marijuana products must be purchased only from a seller licensed by the "state board

of pharmacy" or pursuant to a reciprocity agreement.

While the statute permitting medical marijuana cultivation and sale was passed in 2016, dispensaries had not opened as of November, 2018, due to various delays ranging from licensing problems to lawsuits.<sup>2</sup> Sources have predicted that medical marijuana will become accessible by the end of 2018.<sup>3</sup> On December 3, 2018, individuals were able to begin registering to use marijuana for medical purposes, with state officials saying that marijuana products would be available for purchase and use within 60 days.<sup>4</sup>

Since implementation has been delayed for over two years following the enactment of marijuana statutes, the specific challenges of enforcing and applying the law in Ohio are not yet clear. Questions arise regarding how individuals within the state of Ohio may legally grow, sell, possess and use marijuana given the federal prohibitions on this conduct and what the consequences for doing so may be. Moreover, there are also concerns regarding the impact of transporting such drugs into and out of the state given the present lack of legally available medical marijuana within Ohio and questions about reciprocity in the fu-

*(Continued on page 8)*

## Marijuana (from page 7)

ture.

### **Federal Marijuana Law**

Federal law clearly prohibits all activities involving the production, sale, and possession of marijuana. 21 U.S.C. 812 Schedule I (c)(10) classifies marijuana as a schedule I controlled substance, the distribution, manufacture, and possession of which is prohibited. 21 U.S.C. 841(a)(1). No exceptions relating to medical marijuana exist, since Schedule I drugs are those which have “a lack of accepted safety for use of the drug or other substance under medical supervision.” 21 U.S.C. 812(b)(1)(C). The United States Supreme Court clearly explained this in *Gonzales v. Raich*, 545 U.S. 1, 27, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005), recognizing that the Controlled Substances Act (CSA) “designates marijuana as contraband for *any* purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses.”<sup>5</sup>

It is also clear that while the sale and use of marijuana has been legalized by many states, transportation of marijuana across state lines is also violative of federal law. 18 U.S.C. 1952(a)(3) and (b) prohibits travel in interstate commerce with intent to carry on “unlawful activity,” including a business enterprise involving narcotics or controlled substances.

Given that the laws of the state of Ohio, as well as those of many other states which have legalized the manufacture, possession, and use of marijuana for either medical or recreational pur-

poses, conflict with the federal law, it is necessary to examine whether Ohio’s new statutory scheme truly allows for legal use and sale of the drug within this state.

### **Federal Law and Preemption**

In light of the foregoing, it is abundantly clear Ohio’s new medical marijuana law as set forth in Revised Code Chapter 3796 is inconsistent with the federal law as stated in the United States Code. This is a conflict that has continued to become a concern as more states have legalized recreational and medical marijuana.

It is well-established under the Supremacy Clause of the United States Constitution that the United States Congress has the power to preempt state laws. Pursuant to Article VI of the Constitution, “the Laws of the United States \*\*\* shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.”

State laws can be preempted in several ways. Preemption occurs when the United States Congress explicitly defines that its enactments preempt state law. State laws are also preempted when Congress has created a pervasive scheme of federal regulation which allows for a reasonable inference that there is no room for the states to supplement such law or when Congress legislates a field of dominant federal interest such that preclusion of state laws on that subject is assumed. *Altria Group, Inc. v. Good*, 555 U.S. 70,

76-77, 129 S.Ct. 538, 543, 172 L.Ed.2d 398 (2008); *Arizona v. United States*, 567 U.S. 387, 399, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012).

There is little doubt that the United States Congress intended to ban the sale, cultivation, possession, and use of marijuana, including for medical purposes. There is no indication in the existing federal law that states are intended or permitted to supplement said law. Rather, the United States Supreme Court has held that the CSA can regulate marijuana manufacture, distribution, and possession within individual states as well as such activities in interstate commerce since the failure to regulate such activity “would leave a gaping hole in the CSA.” *Raich* at 22. This would allow for consequences such as a greater national supply of marijuana throughout the country as well as a greater nationwide demand. *Id.* at 19.

Several courts have addressed the issue of preemption as it relates to marijuana. In *Raich*, the United States Supreme Court noted that federal power over commerce is superior to the states’ right to “provide for the welfare or necessities” of their citizens. *Id.* at 29. The *Raich* court also explained, regarding state marijuana legalization laws, that “even though the Court does not have enforcement authority, its ruling demonstrates that these types of state laws are not recognized as being truly legitimate.”<sup>6</sup> Further, the Supreme Court of Oregon has held that, to the extent the perti-

(Continued on page 9)



## Marijuana (from page 8)

nent section of the Oregon Revised Statutes “affirmatively authorizes the use of medical marijuana, federal law preempts that subsection, leaving it ‘without effect.’” *Emerald Steel Fabricators, Inc. v. Bur. of Labor and Industries*, 348 Or. 159, 178, 230 P.3d 518 (2010).

It is evident, then, that this conflict in laws can lead to consequences for those who choose to cultivate, sell, or possess medical marijuana within the state of Ohio in violation of federal law, which must be further examined.

### **Legal Consequences of Marijuana Use Under Current Federal Law**

It has been observed that, in past years, particularly during the Obama Administration, enforcement of federal marijuana laws decreased, with the Department of Justice essentially making the decision “not to enforce federal marijuana laws against those in compliance with their states’ laws, while maintaining full enforcement against everyone else.”<sup>7</sup> During the administration, directives were issued by the Department of Justice to United States Attorneys, detailing policies for enforcement of federal marijuana laws selectively, such as in cases involving drug cartels, distribution of marijuana to minors, use of marijuana on federal property, or transporting marijuana to states where possession was still illegal.<sup>8</sup> In a memo issued on August 29, 2013, Deputy Attorney General James Cole noted that outside of the “enforcement priorities \*\*\* the federal government had tradition-

ally relied on states \*\*\* to address marijuana activity through enforcement of their own narcotics law,” and emphasized that states with legalized marijuana were expected to “implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” It is not immediately evident whether the states were capable of addressing such threats.

Regardless, since President Donald Trump has taken office, there has been a shift in this policy. Attorney General Jeff Sessions rescinded “previous nationwide guidance specific to marijuana enforcement,” citing documents authored over the past decade including those discussed above, in a Memorandum to United States Attorneys on January 4, 2018.<sup>9</sup> In that Memorandum, Attorney General Sessions noted that the Controlled Substances Act reflected “Congress’s determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.” The Department of Justice, Office of Public Affairs, further explained: “This return to the rule of law is also a return of trust and local control to federal prosecutors who know where and how to deploy Justice Department resources most effectively to reduce violent crime, stem the tide of the drug crisis, and dismantle criminal gangs.”<sup>10</sup>

Given this policy to properly enforce the federal laws regarding marijuana, those who choose to use, grow, sell, or possess marijuana, even where it may

be legal under state law, can face federal consequences. The most obvious impact is federal prosecution even where state law has legalized marijuana. For example, one provider of medical marijuana in Montana, where medical marijuana is legal, was convicted of federal drug charges and sentenced to five years in prison.<sup>11</sup> In California, federal raids on users, growers, and dispensaries have occurred since the legalization of marijuana, with one author noting that “[t]his direct conflict of federal and state law raises serious issues of due process rights—with state governments telling their citizens one thing only to have those citizens suffer federal prosecutions later.”<sup>12</sup>

It is also possible that some states’ legalization of marijuana will have a negative effect not only on the citizens within those states but may create a disparity where the federal prosecutors focus on offenders from states where legalization has not occurred,<sup>13</sup> although this can change based on the administration’s enforcement policy and may not be likely at the current time.

An additional problem with Ohio’s legalization of medical marijuana relates to transporting marijuana across state lines. This issue became relevant in the recent Eleventh District case of *State v. Donoho*, 11th Dist. Geauga No. 2018-G-0151, 2018-Ohio-4950. In that case, since Ohio has not yet begun the legal sale of marijuana, the concern arose that the defendant may attempt to purchase marijuana from another state to

(Continued on page 10)

## Marijuana (from page 9)

bring to Ohio for medical purposes, which would be a violation of federal law. Even when marijuana products are legally available for sale within Ohio, complications can arise if individuals either try to transport marijuana from Ohio to another state where it is not legal or wish to purchase or use marijuana in such a state.

R.C. 3796.16 sets forth a provision relating to reciprocity agreements in Ohio. It provides that the state board of pharmacy shall attempt to negotiate reciprocity agreements “with any other state under which a medical marijuana registry identification card or equivalent authorization that is issued by the other state is recognized in this state \*\*\*.” R.C. 3796.16(A)(1). This would allow those with valid medical marijuana cards to use marijuana legally within Ohio, although no discussion of whether marijuana could be transported from another state is included in this section. It provides the board of pharmacy with discretion to adopt rules necessary for implementation of reciprocity agreements. Since medical marijuana use within the state has not yet begun, proper enforcement and implementation of such agreements is still unclear.

It must also be emphasized that the law provides the use of medical marijuana is permitted only when an individual obtains the marijuana from “a retail dispensary licensed under this chapter [Chapter 3796].” R.C. 3796.22(A)(1). Licensed dispensaries are permitted to be located in specific geographic regions or districts within Ohio, as estab-

lished by the board of pharmacy. Ohio Adm.Code 3796:6-1-01(E).<sup>14</sup> There is no evidence that any licensing of dispensaries outside of the state of Ohio has occurred which would permit a resident of Ohio to purchase marijuana from another state for use in Ohio at this time.

Aside from legal problems, there are other consequences for the inconsistency between state and federal law. For example, it has been expressed by authors such as Mortensen, *supra*, that states may “undercut the role of the [Food and Drug Administration] and bypass them as a regulatory safety net or filter for keeping Americans safe from dangerous substances.” While individual states may develop plans for ensuring the safety of medical marijuana, questions arise as to whether this will be adequate or as effective as the FDA. Other concerns that have been raised include determining the proper taxation of the marijuana industry and ensuring that lawyers who seek to counsel individuals on the use of marijuana, due to the conflict between federal and state law, do not violate any ethical rules.<sup>15</sup>

Given the current federal law and its clear prohibition of production, sale, possession, and use of marijuana, the road forward in Ohio and other states that have legalized these activities in some form is paved with difficulties and legal consequences. Citizens of Ohio may believe that they will not face penalties from use of marijuana that complies with state law but must be aware that this may not be the case under the federal law.

The full scope of the impact of this change in law has yet to be seen given the delay in implementing the process for sale and use of medical marijuana in Ohio, but the potential consequences cannot be ignored. 🌿

### Endnotes:

1. Judge Diane V. Grendell is a judge on the Ohio Eleventh District Court of Appeals.
2. M.L. Schultze, *Ohio Will Miss the Sept. 8 Deadline to Begin Selling Medical Marijuana*, <http://www.wksu.org/post/ohio-will-miss-sept-8-deadline-begin-selling-medical-marijuana#stream/0> (June 5, 2018).
3. Mark Gillispie, *Some Things to Know About Ohio's Medical Marijuana Program*, <https://www.ohio.com/news/20181021/some-things-to-know-about-ohios-medical-marijuana-program> (Oct. 21, 2018).
4. Jim Provance, *Ohio Begins Registering Medical Marijuana Patients*, <https://www.toledoblade.com/news/medical/2018/12/03/ohio-begins-registered-medical-marijuana-patients/stories/20181203157> (Dec. 5, 2018).
5. The United States Supreme Court has consistently repeated the principle that the CSA “reflects a determination that marijuana has no medical benefits worthy of an exception” and marijuana has no “currently accepted medical use.” *U.S. v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 491, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001).
6. Daniel Mortensen, *California and Uncle Sam's Tug-of-War over Mary Jane is Really Harshing the Mellow*, 30 J. Natl.Assn.Admin.L. Judiciary 127, 129 (2010).
7. Adam Davidson, *Learning from History in Changing Times: Taking Account of Evolving Marijuana Laws in Federal Sentencing*, 83 U.Chi.L.Rev. 2105 (2016).
8. U.S. Department of Justice Memorandum for All United States Attorneys, Attorney General James Cole <https://www.justice.gov/opa/record/20180801>

(Continued on page 12)



# Veterans Administration Aid and Attendance Rules Change

**Laurie G. Steiner**

*Solomon, Steiner & Peck, Ltd., [lsteiner@ssandplaw.com](mailto:lsteiner@ssandplaw.com)*



The Department of Veterans Affairs (VA) has finalized new rules that establish an asset limit, a look-back period, and asset transfer penalties for claimants applying for VA needs-based benefits. This is a change from current regulations, which do not contain a prohibition on transferring assets prior to applying for benefits such as Aid and Attendance.

The VA proposed the new regulations in January 2015. Three years later, after receiving more than 850 comments, the VA has finally published the final regulations.

In order to qualify for benefits under the new VA regulations, which go into effect October 18, 2018, an applicant for needs-based benefits must have a net worth equal to or less than the prevailing maximum community spouse resource allowance (CSRA) for Medicaid (\$123,600 in 2018). Net worth includes the applicant's assets and income. For example, if an applicant's assets total \$117,000 and annual income is \$9,000, the applicant's net worth is \$126,000. The net worth limit will be increased every year by the same percentage that Social Security is increased. The veteran's primary residence (even if the veteran

lives in a nursing home) and the veteran's personal effects are not considered assets under the new regulations. If the veteran's residence is sold, the proceeds are considered assets unless a new residence is purchased within the same calendar year.

The VA has also established a 36-month look-back period and a penalty period of up to five years for those who transfer assets for less than market value to qualify for a VA pension. The look-back period means the 36-month period immediately before the date on which the VA receives either an original pension claim or a new pension claim after a period of non-entitlement.

The penalty period will be calculated based on the total assets transferred during the look-back period if those assets would have put the applicant over the net worth limit. For example, assume the net worth limit is \$123,600 and an applicant has a net worth of \$115,000. The applicant transferred \$30,000 to a friend during the look-back period. If the applicant had not transferred the \$30,000, his net worth would have been \$145,000, which exceeds the net worth limit. The penalty period will be calculated based on \$21,400, the amount the applicant transferred that put his assets over the net worth limit (\$145,000 - \$123,600).

Any penalty period would

begin the first day of the month that follows the last asset transfer, and the divisor would be the applicable maximum annual pension rate for a veteran in need of aid and attendance with one dependent that is in effect as of the date of the pension claim (\$2,169 in 2018).

The rules also define and clarify what the VA considers to be a deductible medical expense for all of its needs-based benefits. Medical expenses are defined as payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. Examples of medical expenses include: care by a health care provider, medications and medical equipment, adaptive equipment, transportation expenses, health insurance premiums, products to help quit smoking, and institutional forms of care.

As noted, the rules become effective on October 18, 2018. If you need help planning for eligibility or making an application, please be sure to see an Elder Law attorney accredited with the VA.



\*Laurie G. Steiner is a member of the law firm of Solomon, Steiner & Peck, Ltd. She is a Certified Elder Law Attorney by the National Elder Law Foundation and the Ohio State Bar Association and an Accredited attorney for the preparation, presentation and prosecution of claims for veteran's benefits before the Department of Veterans Affairs (VA). She practices in the areas of Elder Law, Medicaid, VA and Disability Planning, and Estate and Trust Planning and Administration.

# Visiting with Justice Kennedy

Robin L. Stanley

*Ibold & O'Brien*, [rstanley@peteribold.com](mailto:rstanley@peteribold.com)



It isn't every day that one of the Supreme Court Justices of Ohio heads to Geauga County for a G.C.B.A. Meeting. This day, Justice Sharon L. Kennedy came with a special message.

Ohio has the sixth highest armed forces population in the U.S., yet we only have 22 veterans



courts and those courts only cover 19 counties. Additionally, 2.9 million U.S. men and women have served in Iraq and Afghanistan, and 10% have served more than 1 tour of duty.


While many veterans may be suffering from post-traumatic stress or other mental health issues, they are often reluctant to identify themselves as veterans once they have entered the legal system.

There are two particular reasons that they fail to do so. The first is that they may have served in peace time and don't consider such service veteran-qualified. However, the Veterans Administration generally disagrees, and they may be eligible for more resources than they think. The second, and likely the most prevalent, is the knowledge that they have fallen below the standard of conduct, and their worry that the

judge will agree, and thereby they will receive a harsher sentence. While this could be true, it seems that as judges, defense attorneys, and prosecutors continue to be educated on available resources for veterans, significant strides could be made in the rehabilitation of a veteran rather than jail time.

Veterans should be identified early in the legal process so that they can receive access to additional resources available to them due to their work in defending our country. Additionally, many of the resources are free.

Therefore, we should all ask our clients if they have ever served in the armed forces, in wartime or peace, but particularly if the client is involved in a criminal proceeding. For more information see:

<https://attorneyatlawmagazine.com/advancing-veterans-treatment-courts> 

## Marijuana (from page 11)

[www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf) (Aug. 29, 2013); U.S. Department of Justice Memorandum for All United States Attorneys, Attorney General James Cole <https://dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf> (Feb. 14, 2014).

9. U.S. Department of Justice Memorandum for All United States Attorneys, Attorney General Jeff Sessions, <https://www.justice.gov/opa/press-release/file/1022196/download> (Jan. 4, 2018).

10. Department of Justice, Office of Public Affairs, *Justice Department Issues Memo on Marijuana Enforcement*, <https://www.justice.gov/iso/opa/press-release/file/1022196/download> (Jan. 4, 2018).

[www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement](http://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement) (Jan. 4, 2018).

11. Alex Kreit, *What Will Federal Marijuana Reform Look Like?* 65 Case W. Res. L.Rev. 689, 698 (2015), citing Gwen Florio, *Montana Medical Marijuana Grower Gets 5 Years in Federal Prison*, Missoulain, <http://missoulain.com/news/local/montana-medical-marijuana-grower-gets-years-in-federal-prison/> article\_89211f90-6ca5-11e2-aa17-001a4bcf887a.html (Feb. 1, 2013).

12. Mortensen, *supra*, at 130.

13. Davidson, *supra*, at 2105.

14. Pursuant to the board of pharmacy, districts have been created in four separate regions of Ohio. Ohio Medical Marijuana Control Program, <https://www.medicalmarijuana.ohio.gov/Documents/Dispensaries/Dispensary%20Districts/Medical%20Marijuana%20Dispensary%20Districts.pdf> (accessed Dec. 10, 2018).

15. Steven A. Vitale, "Dope" Dilemmas in a Budding Future Industry: An Examination of the Current Status of Marijuana Legalization in the United States, 23 U. Miami Bus. L.Rev. 131, 164-169 (2014).



# Follow-up: Will You Be the “U” in cUre? Progress with Bone Marrow Registrations

**Timothy H. Snyder, Esq.**

*Timothy H. Snyder, Esq., [SnyderAtLaw@Netscape.net](mailto:SnyderAtLaw@Netscape.net)*

Funny how things happen: the other day I was cleaning off my desk, not that it was messy of course, never, and I came across the Bone Marrow Registration article I wrote for publication in the September, 2017 edition of *Ipsa Jure*. The next day, I received an email from Robin Stanley requesting an update. Something there was an act of God: cleaning my desk or the timeliness of Robin's request or both. Not wanting to anger God any more that I already have, I respectfully submit the following:

By way of refresher: (1) daughter's medical school class registered to be bone marrow donors, (2) daughter asked father, would you like to register also, (3) father said of course I will, my father died of leukemia 35 years ago and no one has ever asked before, (4) daughter donated bone marrow and father accompanied her through the process, so we acquired firsthand knowledge of the process, (5) we pondered, why isn't bone marrow registration "a thing," (6) we should make bone marrow donor registrations "a thing," and (7) we now do bone marrow registrations anywhere/anytime we can find eligible people.

Since that article, we registered 208 donors at the 2017 Great Geauga County Fair and this year we had 98. Our spirits were lifted

by people who told us that they signed up with us last year. I do not judge success only by the number of registrations, because it only takes one registration to save a life, and if that life is yours, it is more than worth it. Education is important as I proclaim that education today leads to a donor tomorrow. Also since the initial article, I have worked my way "in" and we did a donor drive at one Cleveland Indians game last year and two this year.

When I get tired of hawking people who say "not right now" or "no thanks, I am ok," I am uplifted by people personally touched by a cancer fight. Last year we did a second Akron Rubber Ducks game that was sponsored by the Showers Family Center for Childhood Cancer and Blood Disorders at the Akron Children's Hospital. If you think you have troubles, please go to our Facebook site "Help Tim Snyder Delete Blood Cancer" and look at pictures from the game showing hundreds of small children fighting cancer. The first and third base foul line areas were filled with children and their families who were fighting cancer.

Promoting bone marrow donor registration has been personally fulfilling as well as interesting. A guy came up to us at the Indians game and said that a week earlier he had 'googled' how to

become a bone marrow donor because he thought it was the right thing to do. He was surprised when he came to the Indians game and there we were. That is divine intervention. We actually encounter many people who say that they always wanted to register but did not know how. Last year, we had a guy fill out a registration form without even asking us a question. The form has a section that asks why you signed up. His reason was "I am an M.D." Unfortunately, he was beyond the registration age of 55, and I was perplexed that a seasoned physician apparently did not know how to become a bone marrow donor.

At last year's Indians game, we received two 'complaints:' one lady wanted to know why we had not been there to register bone marrow donors before and another "complained" because we would not be back the following day because she wanted to bring some of friends to register.

I had a mother who came up to us and thanked us for doing what we do because her adult son has cancer and will be receiving a bone marrow transplant. It is heart wrenching to look into the eyes of a mother whose son is fighting cancer and considering that maybe one of our registrations is the one that will save his life or perhaps it is our next registration that will

*(Continued on page 14)*

# Cases of Interest

## Pearce Leary

*Pearce Leary, Esq., [pearceleary@windstream.net](mailto:pearceleary@windstream.net)*



### Morford vs. Morford, 2018-Ohio-3439

Trial court terminates spousal support based on ex-wife's cohabitation. Held: reversed. Spending nights together, planning and preparing for a wedding (that was canceled), entering

into and jointly funding a trust, and opening a joint bank account do not equate to the functional equivalent of marriage.

### Estie Investment Co. vs. Braff, 2018-Ohio-4378

Held: Landlord seeking recovery for damages to premises must present evidence of condition of premises before and after tenancy (landlord's testimony may suffice if based on personal knowledge); must itemize nature of damage; must itemize cost of repair and cannot rely on hearsay estimate of a contractor (although landlord's own itemized estimate may suffice if it is not a guesstimate, speculation or conjecture).

### Dahmen vs. Black, 2018-Ohio-3538

In 1986, plaintiff installed a culvert pipe over defendants' land for drainage purposes. The then owner's husband (who did not have an ownership) gave plaintiff permission. Owner did not. Plaintiff sued claiming a prescriptive easement. Defendants argued that the element of adversity was missing because plaintiff always thought he had permission. Trial court held for plaintiff. Affirmed. Adverse possession need not be intentionally adverse.

### State of Ohio vs. Magri, 2018-Ohio-4275

Former plant manager qualified as records custodian for business records hearsay exception as to records from his tenure as plant manager four years earlier, and as to calibration records since his position was eliminated and he became a machinist. Former plant manager demonstrated extensive knowledge of record keeping and calibration process.



## Cure (from page 13)

save a life. One of the signs that we crafted to draw attention to our booth states "Cancer Fighters Wanted." The sign brings in many people who share with us their struggles with cancer, and they express appreciation for our efforts.

The statistics are that blood cancers are a leading cause of death in children and the third leading cause of death in adults. Bone marrow donation is considered a life-saving treatment for

blood cancers and over 70 other diseases. The more people that register, the more lives than can be saved.

We have done 20 registration drives since our first on July 2, 2016 that was at our daughter's wedding, because she thought it was important to make saving lives a part of her special day. I did encounter one member of the bar who read the initial article and signed up at a drive. Unfortunately, no one from the bar has con-

tacted me about setting up a drive. As previously stated, all I need is a foot in the door to access a group of people, and I will do all the work and you can have all the credit. Please "Like" us on Facebook at 'Help Tim Snyder Delete Blood Cancer' to help spread the word and you can also find more information at [DeleteBloodCancer.org](http://DeleteBloodCancer.org). Please contact me at 440-834-5000 or [SnyderAtLaw@Netscape.net](mailto:SnyderAtLaw@Netscape.net) and we can save more lives. 🌸

# Geauga County Courthouse Helps Geauga Children Back to School



Judge Carolyn J. Paschke and Chief Deputy Thomas Rowan placing Back to School donations under the tree

Santa came a little early for the Geauga County Courthouse “**Christmas in July**” school supply drive. The Courthouse Staff, Clerk of Courts Denise Kaminski and Staff, Geauga County Sheriff’s Department and Staff, Adult Probation and other members of the “Courthouse family” came together to support Geauga County Job & Family Services and the “Help Me Learn Day” in collecting back to school donations for Geauga County children from low-income families. In July, a Christmas tree was set up on the first floor of the Courthouse and through the generosity of the Courthouse family, the tree was soon filled with all sorts of supplies: items such as backpacks, crayons, markers, scissors, pencil pouches, binders, notebooks and bookbags. Chief Deputy Thomas Rowan arrived with armloads of backpacks and back to school supplies collected at the Sheriff’s Department to place under the tree.

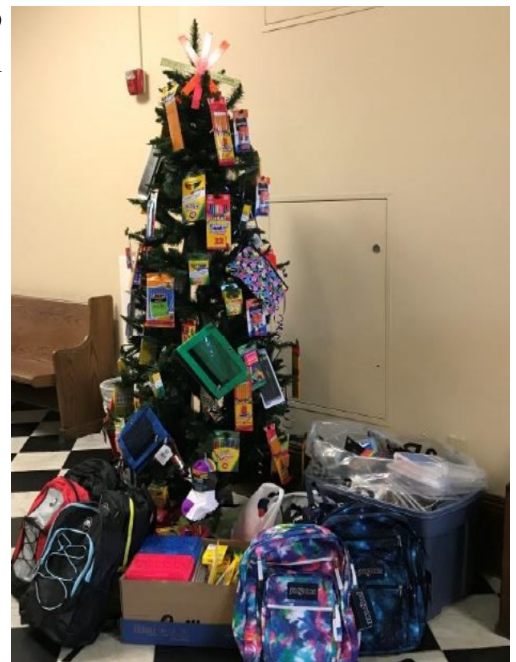
In the end, hundreds of supplies were contributed. Cash donations were also given to Geauga County Job and Family Services for them to get any remaining sup-

plies still needed.

The Courthouse family was honored to be able to contribute to this worthwhile project and help these Geauga County children have a great start to the upcoming school year with all they need for a wonderful and developmental 2018/2019 school year.

***The COURTHOUSE GIVING TREE was back this Christmas holiday season to help a Special Family have a little brighter holiday season!***

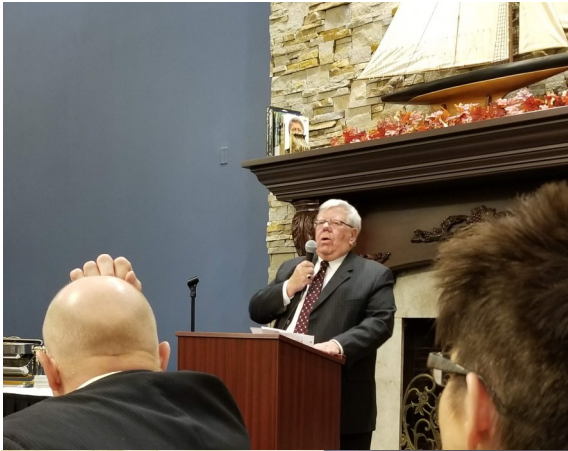
**Hope everyone had a wonderful Holiday!**





# G.C.B.A. Annual Dinner Honoring Judge Forrest Burt

## Judge Forrest Burt, *Geauga County Court of Common Pleas, 440-279-2015*



*Dear Executive Committee and  
Members of the  
Geauga County Bar Association,*

*While I am rarely at a loss for words, the 2018 Annual Dinner and recognition of my retirement have almost left me speechless.*

*Thank you for making the evening such a memorable occasion for me and my family. Thank you also for the many kind words, the heartfelt well-wishes, and your very generous gift.*

*Throughout my career as an attorney and judge, I have treasured my relationship with the members of the bar. The sharing of ideas, opinions, and “war stories” is essential to a lawyer’s or judges continual learning. Thank you all for being my friend and colleague.*

~~Forrest W. Burt, Judge🌸



# Annual Dinner 2018



Photos by Ann D'Amico

FILED  
IN COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS  
JUVENILE DIVISION  
GEAUGA COUNTY, OHIO

2018 NOV 20 AM 10:22

PROBATE-JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO

IN RE:

)

JUDGE TIMOTHY J. GRENDELL

)

PAYMENT OF WITNESS FEES

)

)

**ADMINISTRATIVE ORDER**

)

**2018-77**

The Geauga County Auditor has raised issue with the Court's voucher for payment of witness fees.

To avoid any confusion this court will adopt the witness voucher procedure used by the Lake County Juvenile Court.

Effective December 1, 2018, the procedure for payment of witness fees shall be as follows:

1. After a witness has appeared at court, the Clerk of the Court shall provide the witness with a voucher in the form attached hereto and incorporated by reference herein.
2. The Clerk of the Court shall advise the witness to take and submit the voucher to the County Auditor's Office for validation and then the witness shall receive payment from the County Treasurer's Office.

Costs for witness fees shall be assessed to the case by the Clerk of the Court.

IT IS SO ORDERED.

  
TIMOTHY J. GRENDELL, Judge

cc: County Auditor  
County Treasurer  
County Prosecutor  
Gauga County Bar Association  
Public Defender's Office  
County Commissioners



IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
GEAUGA COUNTY, OHIO

FILED  
IN COMMON PLEAS COURT

2018 NOV 20 PM 3:12

PROBATE-JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO

IN RE:	)	JUDGE TIMOTHY J. GRENDALL
	)	
PAYMENT OF WITNESS FEES	)	
	)	<b>ADMINISTRATIVE ORDER</b>
	)	<b>2018-53</b>

The Geauga County Auditor has raised issue with the Court's voucher for payment of witness fees.

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TIMOTHY J. GRENDALL, Judge

cc: County Auditor  
County Treasurer  
County Prosecutor  
Gauga County Bar Association  
Public Defender's Office  
County Commissioners



14588 W. Park St.  
P.O. Box 427  
Burton OH 44021  
burtonlibrary.org  
440-834-4466  
Fax 440-834-0128

**Director**

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**Fiscal Officer**

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Kathy Beten

Matt Connors

Judy Starr

Kristine Thompson

November 8, 2018

Geauga Country Bar Association  
P.O. Box 750  
Chardon OH 44024

Geauga Country Bar Association,

Thank you for your thoughtfulness in considering the Library as the recipient of your donation in memory of Judge Robert Ford.

Special books will be chosen in his honor and gift plates placed inside the front cover of each book.

We will notify his family of your generous and thoughtful gesture.

Your donation to the Library is a gift to the community. Your donation totaling \$150.00 is deductible from Federal Income Tax.

Sincerely,

Katie Ringenbach  
Director

# Announcements



## Congratulations

Judge Mary Jane Trapp, Ohio Court of Appeals, 11th District  
 Judge David M. Ondrey, Geauga County Common Pleas Court  
 From your Partners at Thrasher, Dinsmore & Dolan

David E. Lowe	Ezio A. Listati
Dale H. Markowitz	Kelly A. Slattery
Joseph R. Znidarsic	John R. Liber, II
Heidi M. Cisan	Brandon D. R. Dynes
Todd C. Hicks	Victor D. Radel
Matthew J. Dolan	Leo M. Spellacy
J. Jared Flynn	Susan T. Seacrist



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100 7th Avenue, Suite 150  
 Chardon, OH 44024

1111 Superior Avenue, Suite 412  
 Cleveland, OH 44114

## CHAGRIN FALLS PARK LEGAL CLINICS

At the Chagrin Falls Park Community Center, 7060 Woodland Ave., Chagrin Falls

**Saturday January 26th at 11:00-1:00 pm**

**&**

**Saturday, March 23rd at 11:00-1:00 pm**

Free CLE hours for participation!

There is always a high demand for attorneys that specialize in family law and landlord-tenant law. Our continued involvement with the Legal Aid Society and these legal clinics is dependent upon attorney participation.

Email the secretary@geaugabar.org to confirm your attendance.

**Know that you are making a difference in people's lives!**



# Announcements

The law firm of **Solomon, Steiner & Peck, Ltd.** is excited to announce that **Todd Bartimole** will be joining the firm as a new partner. We are also pleased to announce that partner **Laurie G. Steiner** has been named to the 2019 Super Lawyers list.

## ASSOC. ATTY. WANTED, 0 – 5 YEARS.

Solo practitioner in Madison Village looking for a new attorney that wants to be their own boss, develop their own client base and be mentored in the practice of law while assisting with some of my cases and court appearances to augment your income. Small Salary plus Fees. Attractive office building conveniently located to all courts in Lake, Geauga and Ashtabula counties. Please respond with Resume and Cover Letter. This is a crucial point in determining your future. I can help you navigate that. Experienced attorneys looking for a change also welcome to have a conversation.

### THE LAW OFFICE OF:

**ROBERT N. FARINACCI, ESQ.**

**ATTORNEY AT LAW**

**65 North Lake Street**

**Madison, Ohio 44057**

**440-551-0141 Office**

**440-551-0143 Fax**

## Settlement Day 2018 Statistics

\*25 cases were heard on Settlement Day    \*11 cases settled    \*44% success rate

\*20 mediators specializing in subjects from personal injury to contracts  
to domestic relations to workers compensation

\*In his first year back since retiring, Judge Fuhry was assigned 2 cases  
but settled 4—you will have to ask him about that

\*Favorite treats?

Probably Ann D'Amico's cakes and cookies or Barbara Moser's cinnamon bread.

Everyone always looks forward to Judge Paschke's Texas Caviar, too.

\*Other yummy eats:

chili, cheese and crackers, pizza, cucumber sandwiches, donut holes and bagels

*Thanks as always to the Bar Association, Courts, Security,  
and staff for making this a successful, worthwhile day!*

# Renew your Geauga Bar Association Membership

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

INVOICE – 2019 Dues  
November 1, 2018

To:

Address:

Phone:

Fax:

E-mail:

Website:

**Please mark all appropriate boxes so that your information is accurate – thank you.**

**Dues for membership in the Geauga County Bar Association: *Please note updated fees.***

- ☐ 1st year in practice: NO FEE
- ☐ 2-5 years: \$150.00
- ☐ 6 + years: \$175.00
- ☐ Retired (registered inactive with the Ohio Supreme Court) \$115.00

**Lawyer Referral Service**

- ☐ Please send me the application to join the Lawyer Referral Service (\$25/year)

**Inclusion in Roster**

- ☐ Name only
- ☐ Full contact information

**Copy of the Roster (available for distribution early 2019)**

- ☐ by mail
- ☐ electronically
- ☐ not at all

**Free listing on website (including photo, contact information and up to 3 areas of practice)**

- ☐ yes
- ☐ no

Areas of practice:

- (1) \_\_\_\_\_ (free) (4) \_\_\_\_\_ (\$15.00 total over 3)
- (2) \_\_\_\_\_ (free) (5) \_\_\_\_\_
- (3) \_\_\_\_\_ (free) (6) \_\_\_\_\_

Please return this form (noting any changes) and make check payable to:  
**Gauga County Bar Association, P.O. Box 750, Chardon, Ohio 44024**

The Geauga County Bar Association thanks you for your continued support and payment at your earliest convenience. If you have any questions, please call Krystal Thompson at (440) 286-7160. ☎

# GEAUGA COUNTY BAR FOUNDATION

## FELLOWSHIP RENEWAL/APPLICATION

### APPLICANT INFORMATION

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

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

If you have any questions, please contact Todd Petersen

Phone: 440-279-4480 Fax: 440-279-4486 Email: [tp@petersenlegal.com](mailto:tp@petersenlegal.com)



# *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](http://www.geaugabar.org)

### **Upcoming Executive Committee Meetings**

Second Wednesday of each month at 12:00 noon  
Next Meetings:  
February 13  
at Buckeye Chocolate  
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 23  
at Bass Lake Tavern  
R.S.V.P. to the  
G.C.B.A. Secretary

### **New Members:**

**Colin Ray:** McCarthy, Lebit, Crystal & Liffman Co., L.P.A.

**Susan Seacrist:** Thrasher, Dinsmore, & Dolan

### **Upcoming Chagrin Falls**

#### **Park Legal Clinics:**

January 26, 2019,  
11:00-1:00 &  
March 23, 2019, 11:00-1:00  
See page 21 for full details

Chagrin Falls Park Community Center,  
7060 Woodland Ave., Chagrin Falls  
Email: [secretary@geaugabar.org](mailto:secretary@geaugabar.org)

### **In Sympathy:**

Our condolences go out to the family of Judge Robert Ford, who passed away on Oct. 15, 2018.

We extend condolences to Judge David Ondrey on the loss of his mother, Violet Marie “Teri” Ondrey, on Oct. 25, 2018.

## Geauga County Bar Association

### Executive Secretary:

Krystal Thompson  
(440)286-7160  
[Secretary@geaugabar.org](mailto:Secretary@geaugabar.org)

### Ipsa Jure Editor:

Robin L. Stanley  
(440)285-3511  
[rstanley@peteribold.com](mailto:rstanley@peteribold.com)

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### President

Judge Terri Stupica  
(440) 286-2670

### President-Elect

Kelly Slattery  
(440) 285.2242  
[KSlattery@tddlax.com](mailto:KSlattery@tddlax.com)

### Secretary

Michael Judy  
(440) 729-7278  
[mike@mikejudylaw.com](mailto:mike@mikejudylaw.com)

### Treasurer

Susan Wieland  
(440) 279-2100  
[Susan.wieland@gcpao.com](mailto:Susan.wieland@gcpao.com)

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## Ipsa Jure

### Deadlines:

*Mark your calendars  
and turn in an article!*

**February 15, 2019**

**April 15, 2019**

## Quick Reminders

### **Next Executive Committee Meeting:**

*February 13 at 12:00 noon  
At Buckeye Chocolate*

### **Next General Meeting:**

*January 23 at 12:00 noon  
Place: Bass Lake Tavern*

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