

GEAUGA COUNTY BAR ASSOCIATION VOLUME 38, ISSUE 3, JULY, 2015

# POST TOPSOIL JUNE





# From the Editor

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As I was preparing for this edition, which has a large focus on Secretary's Day, I was reminded by my very competent assistants how important they are to the operation of my practice. I cannot do it without them! So I started to compile a list of things that they do very well, much better than me, of course.

1. **They are true Care Bears.** They are the place that customer service starts and ends, and they keep me from going insane. Sometimes, I need to be taken down a notch, and sometimes, I need to be boosted up. They are always there to support me, and they don't get too upset with me when I forget to say "I'm sorry" when it might have been...probably was...most definitely is...*my fault*.
2. **They have the super-power of reading minds and magic swords like She-ra.** Usually, they know what I need before I ask for it, and sometimes, before I know that I need it. They perform miracles, when *I needed this yesterday, but I forgot to tell you.* They can transform the worst notes into the best pleading or letter or whatever, is needed, even when I am in court all day.

3. **They have better juggling skills than Penn and Teller.** No single day is the same. They keep my on-task, on-time, and get the work done. They keep everything up, until I can get to it. They jump through the client's best hoops, and stay late when the job calls for it. They know how to fill out every form and can do it with the speed of light.
4. **They have ears like owls and eyes like eagles, because they are as sharp as hawks.** They answer the phone, screen the calls, schedule my life, meet the unannounced clients, type, file, and all the rest, and they know everything that is happening in the office!
5. **They handle all problems like the Wonder Women they are.** They swoop in during times of crisis (and non-crisis) and handle whatever forest fires are in the works and help keep them from growing. Sometimes, they can only be brought down to a low burn, but that is always better than a raging forest fire. We wouldn't be anywhere without you!

**"Always be nice to secretaries. They are the real gatekeepers in the world."**

—Anthony J. D'Angelo

# Announcements

## Mary K. Bender Co. LPA

**WE HAVE MOVED!**

**8251 Mayfield Rd.,  
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**Chesterland, OH 44026**

**440-285-4332**

**440-678-5886 (fax)**

**mary@mkbenderlaw.com**

**Visit Our Website at:  
www.mkbenderlaw.com**

**Invitation from  
Gary L. Yost, Judge  
Ashtabula County  
Common Pleas Court  
August 26, 2015 at 1:00 p.m.  
Courtroom No. 211**

*You are cordially invited to attend our third open meeting for attorneys who handle cases assigned to my docket. The floor will be open to discuss any and all issues of interest or concern to the bar. The meeting will begin at 1:00 p.m. and will end by 3:00 p.m. Feel free to come and go as your schedule permits.*



*The*  
**Legal Aid Society**  
*of Cleveland*  
*Since 1905*

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## LEGAL ADVICE

*Brief Advice & Referral Legal Clinic*

### ***“PRO SE DIVORCE CLINICS”***

*Legal Aid is hosting these SPECIAL CLINICS  
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**WEDNESDAYS IN 2015: JULY 15  
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**These special events will help people who are:**

- 1. Financially eligible for Legal Aid's services** (visit this website for details: [www.laslev.org/who-does-legal-aid-help/](http://www.laslev.org/who-does-legal-aid-help/))
- 2. Need help with a divorce, AND**
- 3. Meet other criteria related to assets and children (depends on the situation)**

If you know of any individual who might qualify, they should call Legal Aid's intake number to inquire further: 888-817-3777.

If they qualify, they will be given an appointment to a clinic.

\*Attorneys are available for brief advice only.

Clinic attorneys do NOT represent you.

If you need legal representation, you may be referred to The Legal Aid Society of Cleveland or another service provider.

**A Program of the Volunteer Lawyers Program of  
The Legal Aid Society of Cleveland**

# From Legal Assistant to Attorney

**Karen L. Hummel, Esq.**

*Hummel Law, LLC, [hummel@karenhummellaw.com](mailto:hummel@karenhummellaw.com)*



In 1995, I was a scared young mother seeking help to end my rocky marriage while protecting my son, and the support I received through Legal Aid changed my life. My Legal Aid attorney, Ann Bergen, asked me what I planned to do after I graduated from college. I didn't have any definite plans, because it seemed daunting enough to finish my Bachelor's Degree while raising a child. I started to think about what was possible. Ann inspired me to consider becoming an attorney, but I pushed that thought aside for several years once I remarried and had two more kids. I had been working part-time for a few years at a hospital cleaning and sterilizing surgical equipment, when my supervisor encouraged me to take advantage of my education.

The first step was returning to work full time in the legal field. I got a job as a Legal Assistant, eventually working for two attorneys and learning about the day-to-day life of a lawyer and how to deal with clients. When I tell this story, I say that I had no illusions that the life of attorney was glamorous, and people joke that they are surprised I still chose to go to law school. At least, I'm pretty

sure they're joking! This career is stressful and difficult, but I wouldn't trade it for anything.

I started law school in August of 2008 as an evening student at the University of Akron while working full time during the day. On class days, I left my house at 8:15 a.m. and didn't return until after 11:00 p.m. Days between classes and weekends were spent studying and writing papers. It was a tough schedule, and I couldn't have done it without support and encouragement from my family, friends, and my bosses. I graduated in May of 2012, and it was an emotional moment for me to walk across the stage and see my husband, chil-

dren, parents, and in-laws in the audience.

Of course, graduation doesn't mean much until the bar exam is over with. I didn't really feel like celebrating yet, because I still had to get through months of studying and then the exam itself. The July 2012 bar exam results were released in October 2012, and as my daughter was going outside to catch the bus, she gave me a little hat to wear for good luck while I waited. I felt ridiculous, but I was afraid to take the hat off. I wore it while I sat on my couch refreshing the Ohio Supreme Court page on my laptop over and over until my name appeared! I yelled so loud, my dogs



(Continued on page 5)



**Attorney (from page 4)**

jumped. It's a feeling that I will never forget. The rest of that day was a blur of congratulatory messages and phone calls.

At the annual LCBA Family Law Seminar later that year, I was lucky enough to get the chance to talk with attorney Ann Bergen to let her know where her client from years ago ended up. I think she appreciated hearing that her representation really made a difference for me. I have been volunteering for Legal Aid on a regular basis since then to give back to the organization that was there for me when I didn't have many other options.

I don't think my story is all that unique. I've talked to other attorneys who went to law school part time while raising families and working full time. I overcame some challenges, but I'm not the only one who has had a few bumps along the road. At some point, I look forward to mentoring new attorneys so that I can provide support to new attorneys like the support that I received.

It's been about a year since I started my own practice, Hummel Law, LLC. I'm so thankful for the guidance and support I've gotten from attorneys, magistrates and judges. We've got a great legal community in northeast Ohio. 🌸



**Passerell vs. Cordell, 2015-Ohio-1767.**

Defendant-attorney had a conflict due to prior representations when four brothers who owned a company in equal shares were deadlocked and litigation was commenced. Defendant noted the conflict but agreed to represent two brothers on a limited basis only. Defendant notified everyone he was withdrawing. Four days later, the trial court granted an ex parte TRO. Defendant did not appear at the TRO hearing and the case eventually settled. The two brothers that Defendant agreed to represent on the limited basis then sued him for malpractice. Summary judgment for defendant-attorney was affirmed. The two brothers needed to provide expert testimony that opined that had Defendant attended the TRO hearing, the TRO would not have been granted, and had the TRO not been granted, the two brothers

would have had a better outcome.

**Iacovone vs. Selvaggio, 2015-Ohio-1493.**

Oral contract for waterproofing. Held: contractor's self-serving testimony about the reasonable value of his services is a sufficient basis for an award of damages if the trial court finds the contractor's testimony credible.

**Corrado vs. Lowe, 2015-Ohio-1993.**

Attorney and client enter into a contingent fee agreement and then negotiated a reduced fee of \$65,000.00, which was paid. Client then filed fee dispute with the Cleveland Metropolitan Bar Association and the parties agreed to arbitration. The panel then ruled that \$18,265.27 should be returned to the client. Held: contingent fee agreement is subject to prohibition against clearly excessive fees and arbitrators had authority to reduce contingent fee, despite the contract. 🌸

## Cases of Interest

### Pearce Leary

*Pearce Leary, Esq.*, [pearceleary@gmail.com](mailto:pearceleary@gmail.com)

**Pearce Leary, Esq. is now located at:**

**100 Park Place, Chagrin Falls, OH 44022**

**440-394-8514 (phone), 440-247-4025 (fax)**

**[pearceleary@gmail.com](mailto:pearceleary@gmail.com)**

# Chardon Municipal Court is in the \$\$\$

**Lisa Carey**

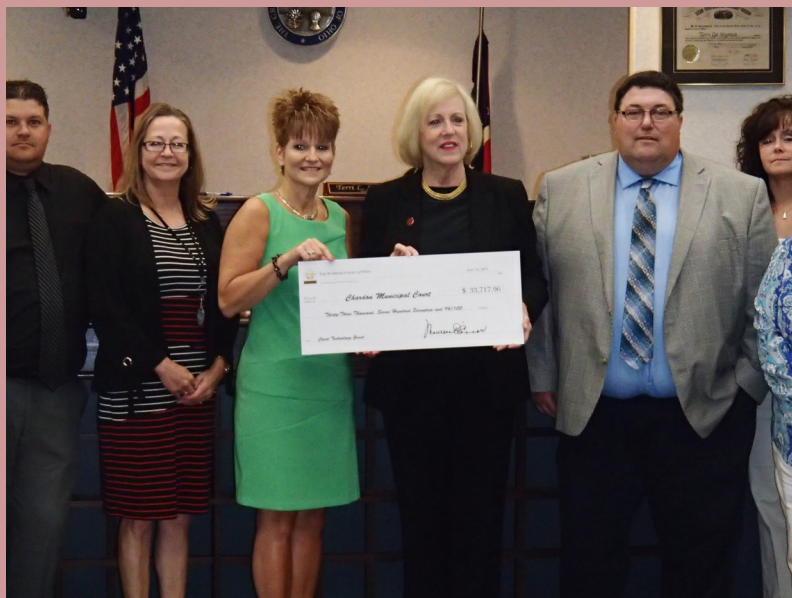
*Carrabine and Reardon Co., L.P.A., [Carey@jcjrlaw.com](mailto:Carey@jcjrlaw.com)*



With a little bit of hard work in the form of filling out a grant application, the Chardon Municipal Court is \$33,717.96 richer, thanks to special funding from the Ohio Supreme Court. Chief Justice Maureen O'Connor herself stopped by the Court on June 12, 2015, to make the presentation. The monies are to be used update the court's computer system to al-

low for the electronic payment of court costs and fees, upgrade the case management system, and make more case information available online. The funds will also be used to create a secure link with the Ohio Courts Network, which is a system that allows courts around the state to share information. Out of 350 proposals which were submitted statewide, Chardon Municipal Court was one of approximately 90 grants that have been issued thus far, with the total monies paid

adding up to more than \$1.9 million. Judge Stupica said that the Court is thankful for the funds, as the improvements were just not possible in the court's budget. Victoria Dailey, Court Clerk also credited Karen Murphy, the Court's technology clerk, with preparing the technical aspects of the grant proposal. Justice O'Connor believes her visit was an historic one—the first time a Chief Justice has ever visited Chardon Municipal Court. 🌸



Ohio Supreme Court Chief Justice Maureen O'Connor presents a check to Judge Terri Stupica for the Chardon Municipal Court

**Chardon Municipal  
Court  
June 12, 2015**





# Calling All Volunteers

Jaclyn Vary

*Schneider, Smeltz, Ranney & LaFond, [jvary@ssrl.com](mailto:jvary@ssrl.com)*



The Good Deeds Committee is seeking volunteers (new lawyers and staff attorneys are welcome!) for the following projects:

**1. Deed Research.** The Geauga County Recorder, Sharon Gingerich, is looking for volunteer attorneys to review 1,088 Montville parcels and 1,274 Huntsburg parcels that have been identified as needing further research.

- **Research.** We need multiple volunteers to commit to 1-2 hours in Recorder's office in Chardon – bring a laptop with a hotspot if you have one available! **If you would like to see a Fall Good Deeds meeting, please help out. Many hands make light work!** Thank you to Committee members, Jennifer Peck and Matt Rolf, who have volunteered!

**2. Summer Good Deed Meeting (s).** We would like to coordinate a few summer Good Deeds Meetings in Bainbridge, Russell and Auburn. The Good Deeds Committee previously went to these locations over 2 years ago. Revisiting these locations would make good use of the deeds that were reviewed and flagged as not hav-

ing survivorship language.

- **Alphabetize.** We need multiple volunteers to alphabetize the deeds being stored at the Recorder's office for the three townships. You can take the deeds home with you and alphabetize while watching a favorite show!
- **Publicize.** We need a volunteer to coordinate publicity for the summer meetings once the dates have been set. You can ask for an announcement to be posted in your favorite coffee shop or restaurant, on the Geauga County Bar Association, Geauga County Recorder and Geauga County Probate/Juvenile Court websites, in local area newspapers and the Geauga County Department of Aging's newsletter.

**3. Geauga County Fair.** During the Geauga County Fair (Thursday, September 3 and Friday, September 4 which is Senior Day), the Good Deeds Program Committee Members will assist the Geauga County Recorder in the County Bell Tower Building by answering questions about the Good Deeds Program.

- **Table.** Please sign up for a time slot (or 2!) to answer questions about the Good Deeds Program during the Geauga County Fair. You can sign up with a friend to make the time pass quickly! Use the Doodle link: <http://doodle.com/ce9yd7gu56iaqrp3>

**5. Deed Review.** Thank you to Committee members, Joe Svete and Matt Rolf, who have volunteered to review Montville deeds that have been flagged for attorney review!

**Volunteer now!** Contact Jaclyn Vary at [jvary@ssrl.com](mailto:jvary@ssrl.com) or 216-696-4200 to join the Good Deeds Committee. 🌸



Paul Newman

# Protecting Ohio's Children: Ohio Juvenile Court's Jurisdiction to Prevent Nonparty's Interference in the Protection of the Best Interest of a Child

**Judge Timothy Grendell<sup>1</sup>**

*Geauga County Probate/Juvenile Court, 440-279-1830*



*"[J]uvenile courts...  
occupy a unique  
place in our legal  
system."*

*Chief Justice  
Maureen O'Connor<sup>2</sup>*

## Introduction

Parents and children are not the only individuals subject to the jurisdiction of an Ohio juvenile court in child protection cases. There are many different ways that individuals who would not typically be subject to judicial action could come within the juvenile court's jurisdiction, and these ways ultimately boil down to two root causes. The juvenile court's jurisdiction could come to include a nonparty because of that individual's negative interactions with the child or parents, or because of an individual's interference with the court's child protective orders or other aspects of the administration of justice. The greater jurisdictional authority that the Rules of Juvenile Procedure afford to Ohio's juvenile court judges allows them to act in the best interests of the children brought before the court for judicial protection.

## Historical Foundations

The Ohio Supreme Court has stated as recently as 2000, "[The] juvenile justice system is grounded in the legal doctrine of *parens patriae*, meaning the state has the power to act as a provider of protection to those unable to care for themselves."<sup>3</sup> The result of this philosophical principle recognized by the Ohio Supreme Court is the duty of Ohio's juvenile courts to act in the best interest of children through various statutorily recognized court proceedings. Accordingly, juvenile courts have broad jurisdictional authority over both parties and nonparty individuals whose conduct interferes with a juvenile court's efforts to protect the best interest of a child and the administration of justice in child protective custody cases.

The state has had a significant role in ensuring the well-being of children since early on, leading to modern juvenile courts' mandate to act in the best interest of the child in question. Applications of this concept of *parens patriae* (Latin, literally, "parent of the nation") allow the state to intervene on behalf of children, whether in cases of delinquent juveniles or of abusive parents. In the United States, this doctrine was invoked as early as 1839 to

justify state intervention in situations involving juveniles.<sup>4</sup> However, the roots of this doctrine stem from a 1608 case in which English jurist Sir Edward Coke ruled that the law of nature extended to the king a duty to serve as the *pater patriae*, or the father of the nation.<sup>5</sup> In Ohio, the first juvenile court was established in Cuyahoga County in 1902,<sup>6</sup> and, by 1906, counties across the state had separate juvenile courts.<sup>7</sup>

The requirement of the juvenile court to act in the best interests of the child goes hand in hand with the historically more rehabilitative nature of the juvenile court's proceedings. The juvenile judge was seen as needing to act as "a wise and merciful father."<sup>8</sup> Likewise, when dealing with delinquent juveniles, the juvenile court was seen as being "motivated by a humanitarian impulse,"<sup>9</sup> with one commentator saying of the juvenile court, "Its purpose is not to punish but to save."<sup>10</sup> This philosophy is not merely archaic legal theory, since it still underlies the work of juvenile courts. The results of this philosophical underpinning are the statutory mandates governing juvenile courts, in particular the requirement that juve-

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nile courts act in the best interests of the child.

### A Unique Jurisdictional Authority

Like common pleas and municipal courts, Ohio juvenile courts have the inherent authority to assure compliance with court orders and to address contemptuous conduct. But when it comes to nonparties, Ohio juvenile courts have the unique additional authority to assert their jurisdiction over “any other person designated by the court.”<sup>11</sup> This expanded authority over “other parties” recognizes the practical enforcement issues related to nonparty interference which juvenile courts face on a daily basis, and it allows Ohio’s juvenile courts to better control external third party conduct that negatively impacts the best interests of a child or impedes the administration of juvenile justice. As a result, individuals who were not originally parties to the case but who still affect children’s lives may be subject to the juvenile court’s jurisdiction.<sup>12</sup> Juvenile courts may include as a party individuals “whose presence is necessary to fully litigate an issue presented in the action,” thereby allowing the court to “protect and adjudicate all legitimate claims, protect all interests appearing, avoid multiple litigation and conserve judicial time in the orderly administration of justice.”<sup>13</sup> State courts have been clear that Rule 2(Y) imposes no requirements that a juvenile court designate or refuse to designate an additional party; instead, juvenile courts are permit-

ted to “exercise [their] sound discretion in determining whether or not to designate an additional party.”<sup>14</sup> However, designating additional parties may serve to enable the juvenile court to fulfill its statutory duty to consider all relevant evidence in child placement cases, as Ohio Revised Code §2151.414(E) places this requirement on juvenile courts.<sup>15</sup> On appeal, the decision of whether or not to designate an additional party will be sustained unless the appellant clearly demonstrates that the trial court abused its discretion.<sup>16</sup>

### Protecting Children v. Claims of Constitutional Rights

Conflict between claimed constitutional rights, such as those protected by various amendments, and the juvenile court’s priority of protecting the best interests of children has been the subject of much litigation and legal literature. In situations where an individual becomes subject to a juvenile court’s authority to protect the best interest of the child by preventing interference with court proceedings, there may sometimes appear to be a conflict between that individual’s constitutional rights and the court’s duty to protect the best interests of the child. For example, if doing so would be in the best interests of a child, a juvenile court could order an individual to have no communications with a child or parent, to remove weapons from a residence, or even to vacate a residence, even though such an individual might assert that the court-ordered prohibition

violates their rights under the First, Second, or Fifth Amendments.<sup>17</sup> Those who exercise their constitutional rights in ways that do not adversely affect the best interest of a child and do not interfere with judicial protection of that child’s best interests have no cause to fall within the purview of juvenile courts. However, those who abuse their constitutionally protected rights in order to adversely affect the best interest of a child in a pending child protection or child custody case or to interfere with the court’s efforts to protect that child’s best interests invite judicial intervention. There is no constitutionally protected right to interfere with the protection of the best interests of a child in a juvenile court proceeding. To allow otherwise would defeat the very purpose of the juvenile court’s duty to protect the best interests of the child, and would give nonparty individuals unfettered ability to sabotage attempts at judicial protection of the best interest of the child under the guise of constitutional liberties.

A potential constitutional challenge could arise if an individual who was not originally associated with a case improperly interfered with the court’s proceedings in a child protection case, but claimed his or her actions were protected by one or more constitutional provisions. The key problem with such an argument is that no court has ever held that a constitutional right exists to interfere with the lawful proceedings of a court. Regardless of the exact circumstances at play in such an inci-

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## Juvenile (from page 9)

dent, the juvenile court has the authority to compel the interfering individual to stop engaging in such destructive behavior. A juvenile court cannot be prevented from taking timely and effective action to protect the child's best interests by an individual who, for whatever reason, decides that his or her rights or desires are more important than the welfare of the child in question. While an interfering individual might attempt to raise a claim under the First Amendment, some speech is not constitutionally protected, such as speech that is intended to produce imminent lawless action.<sup>18</sup> Likewise, using speech to intimidate a witness is a third-degree felony offense.<sup>19</sup> In the realm of juvenile courts, the Ohio Supreme Court has held that "[A] juvenile court, which is not presumptively open, has the power to control extrajudicial comments by the litigants," in order to protect the best interests of the minor child.<sup>20</sup> Several state courts have ruled that the best interests of children can be a substantial state interest justifying a restraint on speech.<sup>21</sup> As one California appellate court noted: "In family law cases, courts have the power to restrict speech to promote the welfare of the children."<sup>22</sup> Juvenile law cases revolve around such protection of the child's best interests.

When speech is used to inhibit the operations of a court or to encourage individuals to defy lawful orders of the court, the juvenile court has been granted the authority to hold that individual accountable. Even if the mechanism for doing so is found to be a

prior restraint on speech by an appellate court, a mere claim of prior restraint is not sufficient to invalidate the action in question. As the United States Supreme Court held in *Kingsley Books v. Brown*, "The phrase 'prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test."<sup>23</sup> Instead, courts have a duty of conducting a detailed analysis and passing critical judgment on the order in question to properly balance First Amendment liberties with the necessity of smooth operations of the court system.<sup>24</sup> At the level of the trial court, such detailed analysis and critical judgment requires holding a hearing to establish key facts and determine what course of action is in the best interests of the child. While this may result in confusion as to why someone not previously involved in a case is suddenly summoned to a hearing, this process is designed to protect an individual's due process rights and to determine whether any actual interference with court proceeding occurred.<sup>25</sup> Further potential problems could arise if a party to a juvenile case (or a nonparty somehow connected to a party) is attempting to win a case in the court of public opinion by publicizing information about the case. If the fairness of the case's resolution is in question because of significant media coverage, the juvenile court judge must exercise his or her discretion and determine what options are available to protect the best interests of the child. As Justice Hugo Black observed in his opinion in *Cox v. Louisiana*, "The very purpose of a court system is to adjudicate con-

troversies in the calmness and solemnity of the courtroom according to legal procedures."<sup>26</sup> When the parties to a case attempt to resolve their legal claims outside the courtroom, juvenile courts are justified in limiting their interactions with the press for the benefit of the child, because "[T]rials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper."<sup>27</sup>

The role of the juvenile court in ensuring the best interests of the child is so significant that outside individuals are not permitted to interfere with proceedings, as reflected by the authority granted to Ohio's juvenile courts. If outside interference with proceedings does occur, the juvenile court has a broader authority than other courts to designate those individuals as parties to the case and thereby make them subject to the court's orders. Because there are many factors which can influence child welfare, juvenile courts are granted greater authority to control those factors. This authority is not misplaced.

There are many instances in which an individual may subject themselves to the a child protection case or by interfering in other ways with the court's proceedings.

What should a juvenile court do when a live-in boyfriend of a custodial single mother is alleged to leave pornographic material unsecured in the home? Or, how should a juvenile court respond when a nonparty grandparent attempts to destroy the relationship a child has with one parent by tell-

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## Juvenile (from page 10)

ing the child that the parent does not love the child and that the child should not obey that parent? Or, what can a court do when a nonparty intentionally tells a party that the judge should be ignored because he does not follow the law and is mentally ill?

### Remedies and Judicial Discretion

On occasion a juvenile court can address such harmful conduct through orders aimed at parental or other party conduct, such as by ordering the party to ensure that the child has no contact with the interfering nonparty.<sup>28</sup> However, such orders will not always be effective, since not all nonparty interference results from actions that could be mitigated through an order to a party to the case. Accordingly, judicial action involving the nonparty is often warranted and is sometimes necessary to protect the best interest of the child. In fact, some commentators have argued that contempt is “an underutilized tool in the arsenal of attorneys and judges in juvenile court.”<sup>29</sup> While courts can order parties not present at a hearing to act in a given manner, courts must provide that party with notice and a hearing at which to contest the order.<sup>30</sup> Depending on the severity of the impact of the nonparty’s conduct on the welfare of the child, such judicial action can range from a subpoena to testify, to a temporary restraining order, to a show cause summons, where by virtue of the juvenile court’s unique authority, the individual becomes a party in the case

for the purpose of addressing the alleged interference with the proceedings. Such actions are left squarely within the trial court’s discretion. As prominent Case Western Reserve University Law professors Paul Gianelli and Patricia Yeomans Salvador note in their seminal text *Ohio Juvenile Law*, the power of an Ohio juvenile court to bring “any other person” within its jurisdiction provides a juvenile court with judicial authority over “virtually anyone” when necessary to protect the best interests of a child.<sup>31</sup> The exercise of that discretion to prevent nonparties from interfering with child protection cases is not an abusive exercise of judicial power, but rather, it is the ultimate judicial action to ensure that the best interests of the child are protected.

This broad discretion juvenile courts have when determining whether or not to bring a nonparty into the proceedings is necessary because of the fact that some individuals seek to interfere with the court’s proceedings. This is not necessarily an unusual scenario, especially since many juvenile court cases involve extremely emotional issues for parents, their families, and their friends. While court orders can reach parties to a case, injunctions cannot reach directly outside the case at bar to require that a nonparty obey that court order.<sup>32</sup> However, because of the ability of juvenile courts to bring persons not immediately involved into the case, the juvenile court can address the problem of a nonparty interfering with court proceedings. But before any form

of court order can have effect, whether a restraining order, contempt proceeding, or something else, the individual in question must be given adequate notice and the opportunity to be heard.<sup>33</sup> The United States Supreme Court has held that contempt proceedings specifically require that “the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.”<sup>34</sup> This serves to protect the rights of the individual accused of interfering with the court’s proceedings, and also serves to allow the court to investigate the potential merits of the issue.<sup>35</sup>

### Conclusion

The role of the juvenile court in ensuring the best interests of the child is so significant that an individual, whether a party or a nonparty, is not permitted to interfere with judicial child protection proceedings. Ohio juvenile courts can expand the scope of a case to allow the court to combat nonparty interference with proceedings. If interference with proceedings does occur, the juvenile court has a significantly broader authority than other courts to make those individuals parties to the case and thereby subject them to the court’s jurisdiction. The constitutional rights of those outside individuals (if any) can be respected by juvenile courts through the notice and hearing process, while still recognizing that those rights do not include the right to interfere with court pro-

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## Juvenile (from page 11)

ceedings or the mission of juvenile courts to protect the best interests of children. Because there are many factors which can influence child welfare, Ohio's juvenile courts have been granted greater authority to control those factors. That authority allows juvenile courts to prevent even nonlitigants from interfering with the court's efforts to protect the best interests of children and the administration of justice in child protection cases.

### Endnotes:

<sup>1</sup> Timothy J. Grendell is the presiding judge at the Geauga County Court of Common Pleas Probate/Juvenile Division, a position he has held since 2011. Prior to his service on the bench, he served in the Ohio House of Representatives from 2000 until 2004 and the Ohio Senate from 2005 until 2011. He has also served in the JAG Corps of the United States Army. Judge Grendell received his JD from Case Western Reserve University School of Law, and his LLM from the University of Virginia Law School. Anthony Hurst and Thomas Siu assisted Judge Grendell in the writing of this article.

<sup>2</sup> *In re C.S.*, 115 Ohio St.3d 267, 274 (2007).

<sup>3</sup> *State v. Hanning*, 89 Ohio St. 3d 86, 88; 728 N.E.2d 1059 (2000).

<sup>4</sup> *Ex Parte Crouse*, 4 Wh. 9 (Pa. 1839).

<sup>5</sup> SIR EDWARD COKE, THE REPORTS OF SIR EDWARD COKE, KNT. [1572-1617]: IN THIRTEEN PARTS, VOL. 4, 21 (1826).

<sup>6</sup> *In re Agler*, 249 N.E.2d 808, 810 (Ohio 1969).

<sup>7</sup> Yvette McGee-Brown & Kimberly

Jolson, *Chief Justice O'Connor's Juvenile Justice Jurisprudence: A Consistent Approach to Inconsistent Interests*, 48 AKRON L. REV 57, 60 (2015).

<sup>8</sup> Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).

<sup>9</sup> *Malone v. State*, 130 Ohio St. 443, 453-54 (1936).

<sup>10</sup> FLEXNER & OPPENHEIMER, *The Legal Aspect of the Juvenile Court*, 9 (1922).

<sup>11</sup> OHIO R. Juv. P. 2(Y).

<sup>12</sup> Gerard Glynn, *Contempt: The Untapped Power of Juvenile Court*, 15 FLA. COASTAL L. REV. 197, 207 (2014).

<sup>13</sup> *In re Franklin*, 88 Ohio App.3d 277, 280 (1993). *See also, e.g., B.W. v. D.B.-B.* 193 Ohio App.3d 637, 647 (2011); *In re Parsons*, 1996 Ohio App. LEXIS 2268, at 9-10; *Christopher A. L. v. Heather D. R.*, 2004 Ohio App. LEXIS 3880, at ¶ 12.

<sup>14</sup> *Franklin*, 88 Ohio App.3d at 280.

<sup>15</sup> *In re Parsons*, 1996 Ohio App. LEXIS 2268, at 6.

<sup>16</sup> *Id.* at 9-10.

<sup>17</sup> *See, e.g., People v. Javier A.*, 2010 WL 2028273 (Cal. Ct. App. 2010) (holding that an order conditioning a juvenile's probation on the removal of weapons from his family's residence was permissible).

<sup>18</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>19</sup> OHIO REV. CODE ANN. § 2921.03 (A) and (B).

<sup>20</sup> *In re T.R.*, 556 N.E.2d 439, 454 (Ohio 1990).

<sup>21</sup> *See, e.g., Schutz v. Schutz*, 581 So. 2d 1290 (Fla. 1991); *In re Marriage of Geske*, 642 N.W. 2d (Minn. Ct. App. 2002); *Dickson v. Dickson*, 529 P.2d 476 (Wash. App. 1974).

<sup>22</sup> *In re Marriage of Hartmann*, 111 Cal. Rptr. 3d 242, 245 (Ct. App. 2010).

<sup>23</sup> *Kingsley Books v. Brown*, 354 U.S. 436, 441 (1957).

<sup>24</sup> *Id.* at 442.

<sup>25</sup> *In re Oliver*, 333 U.S. 257, 275-76 (1948). *Cf. Hornbeck Offshore Services, LLC v. Salazar*, 713 F.3d 787 (5th Cir. 2013) (explaining the requirements for a contempt action).

<sup>26</sup> *Cox v. Louisiana*, 379 U.S. 559, 583 (1965) (Black, J., concurring in part and dissenting in part).

<sup>27</sup> *Bridges v. California*, 314 U.S. 252, 271 (1941).

<sup>28</sup> Glynn, *supra* at 207.

<sup>29</sup> *Id.* at 224.

<sup>30</sup> Glynn notes that different categories of contempt proceedings exist, with contempt for parents or custodians being treated more severely. *Id.* at 211. In *Baltimore City Department of Social Services v. Bouknight*, 493 U.S. 549 (1990), the United States Supreme Court held that a parent could not refuse to disclose the location of a child on the basis of that parent's Fifth Amendment right against self-incrimination.

<sup>31</sup> PAUL C. GIANNELLI & PATRICIA YEOMANS SALVADOR, OHIO JUVENILE LAW 679 (2014).

<sup>32</sup> *In re Baker*, Case No. 98 507 CA (Ohio App. 1999).

<sup>33</sup> OHIO R. JUV. P. 15(A). *See generally, Oliver*, 333 U.S. at 275; *Baker*, Case No. 98 507.

<sup>34</sup> *Cooke v. United States*, 267 U.S. 517, 537 (1925).

<sup>35</sup> It should be noted that the initial hearing is not the same as the evidentiary hearing. Glynn, *supra* at 216. ❀



# Advance Directive Committee Update

**Jennifer E. Peck, Esq.**

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



In May 2015, Senator Peggy Lehner introduced Senate Bill 165 to the Ohio Legislature. If passed, this Bill would establish procedures for using end of life medical orders for life sustaining treatment (referred to as "MOLST"). The purpose of MOLST is to encourage active communication between patients and physicians concerning end-of-life care. MOLST is not meant to replace Ohio's advance directive laws, but rather to allow more patient-centered care.

MOLST is suggested for those who are "frail or experiencing an advanced or progressive illness." (Proposed SB 165, lines 843, 844). The legislation proposes that a physician, physician's assistant, certified nurse practitioner or clinical nurse specialist (referred to collectively as "medical practitioner") may complete a special form. The medical practitioner reviews, with an appropriate patient, end of life care decisions and the use of life sustaining treatment, which is defined by ORC §2133.30(O), as, "...any medical procedure, treatment, intervention, or other measure that, when administered to a patient, is intended to serve principally to prolong the process of dying." See proposed MOLST form attached. Once signed, the MOLST, unlike the Health Care Power of Attorney and Living Will Declaration, be-

comes an active medical order.

The proposed law indicates that the MOLST is not a required document. It becomes effective upon signature by the medical practitioner and patient. In addition, the Bill proposes to allow people other than the patient to sign on behalf of the patient. Guardians, health care agents, and for those over the age of eighteen (18) with no guardian or health care agent, the following people in the following order: spouse, majority of adult children, parents, majority of adult siblings, or other nearest relative, may sign a MOLST.

The proposed legislation requires transfer of the form across medical settings to ensure that the receiving facility is aware of the MOLST. In addition, if a person with a MOLST is transferred by emergency services, the unit must keep a copy of the MOLST and deliver a copy with the patient to the health care facility. It is meant to be a portable document. A photocopy of the MOLST is meant to function as an original.

Just as the Health Care Power of Attorney and Living Will Declaration were meant to allow a patient to exercise self-determination regarding end of life decisions, the MOLST is meant to add to this and encourage more communication between medical practitioners and patients. However, the difference between the Health Care Power of Attorney

and Living Will Declaration and the MOLST is that those forms focus on future care while the MOLST is meant to cover current care and near future care. In addition, unlike the Living Will Declaration, the MOLST is not just a directive as to the termination of life-sustaining treatment, but rather is meant to define actual treatment options that a patient desires after the culmination of discussion with his/her medical practitioner. The MOLST can and should be updated to keep current with a patient's health status.

Finally, the proposed law grants immunity to physicians and other health care workers who provide care in accordance with a valid MOLST.

If passed, Proposed SB 165, will create the MOLST form for medical practitioners to review end of life treatment options with patients who are frail or suffering from an advanced illness in detail and to hopefully provide more patient centered end of life care and create a system to allow these decisions to be easily relayed from one facility to another.

The Advance Directives Healthcare Committee will keep you posted on developments concerning this Senate Bill.

Jennifer E. Peck, Esq., Chair  
Patricia Schraff, Esq.  
and Laura Gorretta, Esq.,  
Committee Members

*(Continued on page 14)*

**MOLST (from page 13)**

PROPOSED  
MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT FORM  
("MOLST FORM")

Patient's Name (last name, first name, and middle initial, printed): .....

Patient's Date of Birth: .....

Last four digits of patient's SSN: ... Gender (M or F) : .....

The HIPAA Privacy Rule permits disclosure of this MOLST form to other health care providers as necessary.

When signed, this form supersedes all previously signed MOLST forms. Comfort measures will be provided regardless of the intervention that is chosen.

**A. CARDIOPULMONARY RESUSCITATION (CPR):** Individual has no pulse and is not breathing. Check only one:

☐ Attempt resuscitation/CPR. Apply full treatment and intervention including intubation, advanced airway interventions, mechanical ventilation, defibrillation, and cardioversion as indicated. Transfer to hospital or intensive care unit in a hospital, as applicable ( if indicated).

☐ Do NOT attempt resuscitation (DNR; do not use CPR). When patient is not in cardiopulmonary arrest, follow the orders in sections B and C.

**B. MEDICAL INTERVENTIONS:** Patient has a pulse, is breathing, or both. Check only one:

☐ Comfort measures only. Use medication by any route, positioning, wound care, and other measures to relieve pain and suffering. Use oxygen, suction, and manual treatment of airway obstruction as needed for comfort. Transfer to the appropriate level of care setting to provide comfort care measures.

Additional order/instructions:

.....

☐ Limited additional interventions. Use all comfort measures described above. Use medical treatment, antibiotics, intravenous fluids, and cardiac monitor as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. Do not use intubation, advanced airway support (e.g., CPAP or BiPAP). Transfer to hospital if indicated; generally avoid intensive care.

Additional order/instructions:

.....

☐ Full intervention. Use all comfort measures described above as well as limited medical interventions (described above), as indicated. Use intubation, advanced airway interventions, mechanical ventilation, defibrillation, and cardioversion as indicated. Transfer to hospital and intensive care if indicated.

Additional order/instructions:

.....

.....

**C. ARTIFICIALLY ADMINISTERED NUTRITION/HYDRATION**

The administration of nutrition or hydration, or both, whether orally or by invasive means, shall occur except in the event that the patient is diagnosed with a terminal condition or is in a permanently unconscious state, as those terms are defined in Ohio Revised Code section 2133.01, and the administration of nutrition or hydration becomes a greater burden than benefit to the patient.

**MOLST (from page 14)**

Always offer by mouth, if feasible. Check only one in each column:

- ☐ Long-term artificial nutrition by tube feeding  
☐ Defined trial period of artificial nutrition by tube feeding  
☐ No artificial nutrition by tube feeding

Goals of care or additional order/instructions: .....  
 .....

**D . AUTHORIZATION**

Authorization name and signature belongs to (check only one):

- ☐ Patient  
☐ Guardian appointed by a probate court  
☐ Attorney in fact under patient's durable power of attorney for health care (attach if signed)  
☐ Next of kin as specified in Ohio Revised Code section 2133.08(B)  
☐ Spouse  
☐ Majority of adult children (available within reasonable time)  
☐ Parents  
☐ Majority of adult siblings (available within reasonable time)  
☐ Other nearest relative (available within reasonable time)  
☐ Parent, guardian, or legal custodian of a minor

Name (printed): .....

Phone Contact: .....

Signature (mandatory): .....

Date Signed: .....

**E . SIGNATURE OF ISSUING PRACTITIONER**

My signature in this section indicates, to the best of my knowledge, that these orders are consistent with the patient's current medical condition and preferences as indicated by the patient's advance directives, previous discussions with the person identified in Section D., above, or both.

Name of issuing practitioner (printed): .....

Signature of Issuing Practitioner (mandatory): .....


Date Signed: .....

License/Certificate Number: .....

Phone Number: .....

**F. SIGNATURE OF FORM PREPARER**

Name of Form Preparer and Credentials (printed): .....

Signature of Form Preparer (mandatory): ..... Date signed: ..... 



# A Garden Party

**Lisa Carey**

*Carrabine and Reardon Co., L.P.A., [Carey@jcjrlaw.com](mailto:Carey@jcjrlaw.com)*



*"I went to a garden party to  
reminisce with my old friends....."*

*Rick Nelson*

Eighty-seven (87) attorneys and their staff attended Bar Association's annual Secretary's

Day event which was themed as a Garden Party this year. The event, which was held at Munson Township Hall for the second year in a row, was enjoyed by all in attendance. "This facility is perfect for this event—the size, the ease of decorating, and the close location to Chardon make it a really nice place for this," said Ann D'Amico, Event Chair. Music and the sound system were provided by Dave Jevnikar.

The brunch/luncheon was catered by D.S. Cakes & Sweet Café from Newbury and featured such delicious selections as two quiches, chicken salad croissants, ham wraps, salads, and a huge fruit bowl. The desserts, consisting of mini bites of carrot cake, Kahlua brownies, peanut butter bars and cheesecake were gone in

a flash! All of the secretaries received favors of gardening gloves with packets of flower seeds and a fresh herb to plant. The contest next year will be whose seeds grew the most (just kidding).

After a game of two facts and a fib, everyone got to know just a little bit more about six (6) of the secretaries who had graciously volunteered to participate. Everyone was relieved to know that Wendy Daugherty is not pregnant (or is she??). Wendy, you may have some explaining to do to the judge when he reads this article.....

All in all, it was a great event with great food, great weather, and a fun time to get together. Thanks to everyone who helped with setup and cleanup! 🌸

# Baked Pineapple Salad

**\*\*This recipe sounds and looks a little weird but is really good - you have to try it!\*\***

1 20oz can of pineapple tidbits (slightly drained)  
1 20oz can of crushed pineapple (do not drain)  
2 cups grated/shredded cheddar cheese (can be mild or sharp - I usually use mild)  
1 cup of sugar  
6 Tablespoons of flour  
1 stick of melted butter or margarine mixed with 1 sleeve of crushed Ritz crackers  
9x9 pan (I usually use a glass dish or casserole dish)

- Preheat oven to 350.
- Lightly grease pan or spray with Pam.
- Mix first 5 ingredients together (both cans of pineapple, cheese, sugar and flour) and pour into the 9x9 pan.
- Top the mixture with the butter/cracker mixture (like a crust)
- Bake at 350 for 30 min.
- Serve hot/warm.

This recipe can be doubled for a larger casserole!

~From Lisa Carey 🌸

# Putting Faces with Names



## Petersen & Petersen

**Top Left:** Kelly Sprague, Todd Petersen, and Debbie DiPenti.

**At Right:** Lisa Lockeman, Miedema, Cindi Haycox, Cathey Schimmelman, and Nancy Douglas.



## Prosecutor's Office



## Chardon Municipal Court

**At Left:** Kim Foley, Judge Terri Stupica, Gayle Hallstrom, and Dorothy Hoffacker.

**Apologies** to Joanne Blaha, Sherri Weir & William Hofstetter, your picture was misplaced.

~Robin L. Stanley, Editor

## William C. Hofstetter's Office





## Legal Aid Society of Cleveland



**Above Left:** Carol Szczepanik and Juli Raphael. **Above Right:** Davida Dodson and Tracy Ferron. **Below Left:** Paul Newman and Ginny Dadante-Choate. **Below Right:** Lori Ondecko and Mary Bender.

## Paul Newman's Office



## Mary K. Bender Co. LPA

**Bottom Left:** Rhonda Lynn VanValkenburgh and Ann D'Amico



## Law Offices of Michael J. Caticchio

**Thank you to  
Paul Newman &  
Cindy DeMarco  
for all of the staff pictures!**





## Mediation Department

**Below:** Kristen Zulandt from Robert E. Zulandt, Jr.'s Office with Lori Ondecko from Mary K. Bender's Office



## Pamela D. Kurt's Office

**Above Left:** Deb Dudek (Mediation and Court Administrative Assistant), Christopher Horn (Foreclosure Mediator), Barbara Powell (Staff Attorney and Domestic Mediator). **Above:** Adam Waller, Barb Underwood, Pam Kurt, Christine Tibildo, and Shannon Luebking.



## Magistrates and Staff

**Above:** Christy Leonard, (Administrative Assistant for Magistrate Smalheer), Magistrate Bruce Smalheer, Magistrate Caroline Paschke, Linda Kostelnik (Administrative Assistant for Magistrate Paschke). **Right:** Tammy Harris and Elaine Tassi.



## Elaine Tassi's Office



# Judge Fuhry's Court



**At Left:** Bev Modic, Judge David L. Fuhry, Cindy DeMarco, and Valerie Vargo.

**Below:** Emil Sos Jr. and Elli Squire.

**Below Left:** Karen Walker, Colleen Donohoe, and Laura Carrabine.

# Carrabine and Reardon



## Right:

Casey O'Brien,  
Robin Stanley,  
Lisa Ludwig,  
Donna Morgan,  
Michelle Scott,  
Carly Ibold, and  
Natasha Haas.



# Emil Sos's Office



# Petersen & Ibold



**At Left:** (Front) Bobbi McVann, Lynn Neill, Holly England, Colleen O'Leary, (Back) David Lowe, Mary Jane Trapp, Barb Bennett, Tracey Znidarsic, Dale Markowitz, and Judy Baksa.

**Below:** Sharon Holmes, Pat Alves, and Dave McGee.



**Above:** *The Master of the Ceremony:*

Ann D'Amico.



**Above Left:** Mary Jane Trapp and Mike Apicella laugh before the festivities.



**Above Right:** Dave Jevnikar wonders, "Who picked out the music?"

**I apologize for any misspelling of names. I did my best!**  
—The *Ipsa Jure* Editor,  
Robin L. Stanley



# Practice Pointers

## Geauga County Clerk of Courts

### Dear Geauga County Attorneys:

The Deputy Clerks in the Geauga County Clerk of Courts office are always available to help you and enjoy our working relationship with you.

These are some suggestions that will help us process the paperwork, provided by you, as timely as possible for Common Pleas Court:

Please sign all pleadings in **blue** ink since our Court requires original signatures.

Please check the Local Rules located on our website at: [www.geaugacourts.org](http://www.geaugacourts.org) or call our office at 440-279-1960 for the correct filing fee to be sent in with your pleading.

If you are filing a document that needs to be processed immediately, please send a courtesy copy to the Judge's/Magistrate's office to make them aware of the filing, clearly marked

**COPY**, so the Judge/Magistrate does not sign the copy. We make every effort to docket our pleadings within 2 days if possible.

Please read and fill out the case designation sheet as thoroughly as possible.

#### New divorce/dissolution cases:

Please ask your client if they have had a CPO or DV case in our court. If so, please note the case number on the designation sheet as a related case.

Please send in a separate privacy sheet with Date of Birth and Social Security Numbers for husband, wife and minor children when filing domestic cases. We will keep the privacy information hidden from the public.

#### Post decree matters:

Please make sure you have current names and address-

es of both parties when sending in a post-decree motion.

If you are moving to a different location:

Please alert us as soon as possible on a separate notice that your office has moved and you have a new address.

Please include an updated W-9 for the AR Department to process deposit returns and/or monies due back to your office.

#### Foreclosure Cases:

Mortgage and lien releases cannot be processed until the title work mirrors the confirmation entry.

Please don't hesitate to call our office at 440-279-1960 with questions or concerns, or visit our website at: [www.geaugacourts.org](http://www.geaugacourts.org).

Sincerely,

**Denise M. Kaminski, Clerk of Courts & Deputy Clerks** ✿

### Geauga Clerk of Courts and Deputy Clerks:

(Back) Denise Kaminski (Clerk of Court), Lisa Tvergyak, Tammy McClintock, Carol Weidig, Vicki Schaner, Jan Dillon, (Front) Sue Acton, Abby Hollada, Jen Carson, Jeannie Lundstrom, and Deb Murfello.



# Geauga Bar Association

## Announcements

### Website:

Check out the Geauga County Bar Association Website for updated meeting dates, deadlines and other important information:

[www.geaugabar.org](http://www.geaugabar.org)

### Upcoming

#### Executive Committee Meetings

August 12, September 9,  
October 14

Second Wednesday of each month  
at 12:00 noon.

R.S.V.P. to Mary Poland

### Upcoming

#### General Meetings

July 22, August 26, September 23  
Fourth Wednesday of each month  
at 12:00 noon at Joey's Grille, 209  
Center Street, Chardon

R.S.V.P. to Mary Poland

### Update from the Geauga County Bar Association CLE Committee

The tentative CLE schedule for 2015 is as follows:

**August 6:** 8:30-11:00 a.m.: Probate/Estate Planning Update (2.5 hours) **Contact Mary Poland to register!**

*Presenters: Honorable Timothy J. Grendell, Robin L. Stanley, Esq., and Pearce Leary, Esq.*

**August 26** (lunch program) - Practice pointers from Recorder's office, Clerk of courts, etc. (1.0 hour)

**October 2** (Friday morning) – Employment law (2.5 hours)

**November 6** (Friday morning) – GAL (will satisfy the continuing education GAL requirement) (In conjunction with CASA) (3.0 hours)

**December 4** (Friday morning) – Procrastinator's seminar (professionalism) (2.5 hours)

### Geauga Bar Association Officer Nominations

The Nominating Committee is requesting that those interested in serving as an officer of the Bar Association let the committee know of your interest by  
July 31, 2015.

Serving as a Bar Association officer is usually a 4 year commitment.

~James R. Flaiz, Chair, james.fl aiz@gcpao.com, (440)279-2100

## Geauga Bar Association

## Golf Outing

**September 17, 2015**

**Wicked Woods Golf Course**

**18 Holes**

**Only \$80.00 a person**

**More information to come soon!**



## Geauga County Bar Association

### Executive Secretary:

Mary S. Poland  
(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)

### President

Jaredd Flynn  
(440) 285-2242  
[JFlynn@tddlwa.com](mailto:JFlynn@tddlwa.com)

### President-Elect

Frank Antenucci  
(440) 339-4727  
[FrankAntenucci@gmail.com](mailto:FrankAntenucci@gmail.com)

### Secretary

Judge Terri Stupica  
(440) 286-2670

### Treasurer

Dennis Coyne  
(216) 781-9162  
[dmclpa@sbcglobal.net](mailto:dmclpa@sbcglobal.net)

## Ipsa Jure Deadlines:

*Mark your calendars  
and turn in an article!*

**August 15, 2015**

**October 15, 2015**

**December 15, 2015**

**February 15, 2016**

**April 15, 2016**

## Quick Reminders

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

*August 12, 2015 at 12:00 noon*

### **Next General Meeting:**

*July 22, 2015 at 12:00 noon*

**Golf Outing:** *September 17, 2015*

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