COLUMBUS BAR

Lawyers QUARTERLY

FALL 2009

A SUPPLEMENT TO THE DAILY REPORTER
CONTENT PROVIDED BY THE COLUMBUS BAR ASSOCIATION

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Columbus Bar Lawyers Quarterly is published by *The Daily Reporter* for the Columbus Bar Association, 175 South Third Street, Columbus, Ohio 43215, 614/221.4112, four times a year — Winter, Spring, Summer and Fall. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Columbus Bar Association, its officers, board, or staff.

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CBA
COLUMBUS BAR ASSOCIATION

The Columbus Bar – *Staying' Alive*

By Elizabeth J. Watters

"And now it's all right, it's O.K.
And you may look the other way.
We can try to understand
The New York Times' effect on man.
Whether you're a brother
Or whether you're a mother,
You're Staying' alive, Staying' alive.
Feel the city breakin'
And ev'rybody shakin'
And we're Staying' alive, Staying' alive.
Ah, ha, ha, ha, Staying' alive.
Staying' alive."

— Bee Gee's,
Saturday Night Fever, 1977

At my first Board of Governors meeting as President the question came up as to whether any Columbus Bar members realized that for the third year in a row – despite the economy – we did not raise member dues. Did you miss that wonderful bit of news in Judge McIntosh's Secretary/Treasurer's report? I know, I know . . . no one gives an annual financial report like Steve Chappelear (it's hard to follow the "arrow through the head" routine), and you dozed through the Judge's speech, just like you did mine. But, Judge McIntosh's report at the annual meeting was straightforward (no sugar coating at the Columbus Bar) and informative.

In case you missed it, we are doing some pretty amazing stuff! The Columbus Bar is doing more than just Staying' alive. We have done some belt tightening, but not at the expense of member benefits or programs. Twelve hundred plus members have bought an Easy Pass for CLE offerings this year. I consider this to be a major success, and clear indication to the Board and staff that members appreciated our help in controlling their costs during difficult times. Easy Pass is simply a remarkable deal, and I hope you are one of lucky ones reaping the benefits. Be sure to check out our website (www.cbalaw.org) and the Columbus Bar Today page in Daily Reporter for detailed listings of over 120 programs. We are especially excited about the Masters Series seminars developed by the CLE Program Development Council. I think you will find that you made a great decision and will be pleased with your CLE options this year.

More good things? The Columbus Bar and Bar Foundation will be presenting their annual Excellence in Pro Bono Awards on October 30, noon at the Hyatt on Capital Square. This will be in conjunction with the ABA's First National Pro Bono Celebration. Awards are given in four categories: (1) Outstanding Pro Bono Service by an Individual; (2) Outstanding Pro Bono Service by a Judge; (3) Outstanding Pro Bono Service by a Law Firm, Corporate Legal Department or Government Agency; and (4) Outstanding Pro Bono Service Project. In 2008 over 30,000 hours of pro bono service were reported by Central Ohio lawyers.

Little known and very good news from Columbus Bar Association Alliance, formerly the Columbus Bar Auxiliary. The secured waiting room at the City of Columbus Domestic Violence and Stalking Unit has been refurbished with new furniture and electronic accents thanks to the efforts of the CBAA. Proceeds from their 50-year celebration in April – a silent auction, luncheon and fashion show – were used to benefit this worthwhile project.

And speaking of Staying' alive, I suspect that many of our members joined me in having a "worcation" – working in the morning or throughout the day and vacationing in the evening or simply working while vacationing – this summer, as well. My primary worcation was at the ABA Annual Conference in Chicago. I had meetings during the day, and family time, including a birthday party for my daughter at American Girl Place, in the evening. As worcations go, it wasn't too bad and was at least in a great city. While I think that worcations and keeping in touch with the office and clients electronically every day, including during vacations, is something that is here to stay and will not change, my hope is that each of you took the opportunity to unplug entirely – no email, no computer, no cell phone, no iPhone, no television – at least once this summer. Whether it was playing a round of golf, sitting by the pool with a good book, camping, relaxing at a spa, staycationing or just doing nothing at all, I hope that you took the time to focus on your wellness as a person and family. As difficult as it is to let go of financial and client matters in these tough times, we all need a day of rest and reprieve so that we can stay alive in this tumultuous legal world. We will all be better attorneys if we do.

ewatters@cwslaw.com

Elizabeth J. Watters,
Columbus Bar Association President

MENTORING: A Call to Action

"Ask not what your country can do for you – ask what you can do for your country."

— President John F. Kennedy
January 20, 1961

By Justice Terrence O'Donnell

In his inaugural address in January 1961, President John F. Kennedy challenged American citizens with what is now an instantly recognizable quotation. He set a new tone for the country at that time and engaged the American people in the business of government. It is now time for lawyers to reengage in the legal profession.

Today, the legal profession is in a critical state as the economic downturn places new pressures on law firms and sole practitioners. County prosecutors and courts are cutting staff and ordering furloughs as declining tax revenues force budget cuts at state and local levels. It is an economic reality that few in the profession have ever witnessed. The future is not to be feared, however, it is to be faced. We all know that the economy will rebound and our clients, our firms, and our state and county budgets will eventually stabilize. Our collective concern should be with any damage that may result to our profession.

Not that many years ago, Chief Justice Tom Moyer, with deep concern about the future of the profession and sensing that it had begun creeping toward becoming a mere mercantile operation, formed the Commission on Professionalism to renew high standards of integrity among lawyers and improve the public's perception of the legal profession, among other goals. I had the privilege of serving on that Commission. We formulated a Lawyer's Creed and adopted Aspirational Goals and a Judicial Creed for judges, but we failed to dramatically impact the practice of law in Ohio, except for requiring lawyers to attend continuing legal education programs on professionalism.

More recently, under the guidance and direction of Monica Sansalone, former Chair of the Commission on Professionalism, and with significant input from Lori Keating and Denise Platfoot Lacey, the current and former Secretaries of the professionalism commission, the Supreme Court of Ohio has now established a statewide Mentoring Program for new lawyers which is nationally recognized and which places Ohio in a leadership role on this issue. It is this program that compels me to author this missive.

As attorneys and judges, we have the responsibility to help new lawyers. We may not be able to employ each and every law school graduate, but we certainly are able to mentor them as they seek our guidance. The success of our mentoring program depends, in large part, on the willingness of lawyers to serve as mentors.

Current tends in our profession illustrate the need to guide new lawyers on the path of professionalism and also show that one lawyer's shortcomings can affect us all. Little note is taken of the important work done by our Commissioners who administer the Client's Security Fund or of the fact that, from funds generated by attorney registration fees, millions of dollars have been paid to those harmed by lawyer dishonesty or other violation of the disciplinary rules. Nor are many aware that the Supreme Court of Ohio has recently directed banking institutions to notify disciplinary counsel of overdrafts in IOLTA accounts where attorneys deposit client funds. Statistics reveal that the number of complaints filed against attorneys arising out of the failure to properly manage client funds has grown from 72 in 2004 to 289 in 2007.

Created and administered by the Supreme Court of Ohio's Commission on Professionalism, Ohio's Lawyer to Lawyer Mentoring program guides new lawyers into the professional practice of law. Pairing new lawyers with experienced attorneys, mentoring provides opportunities to share practical advice and to develop lawyering skills, as well as to impart the importance of professionalism on newly admitted lawyers. The program itself pairs attorneys for a mentoring relationship and provides written materials available online to help the mentor and the new protégé lawyer engage in meaningful discussion, learning, and skills-development tailored to their practice needs and goals.

Not only does the program help to decrease anxiety among new lawyers and to renew the sense of purpose in the profession among seasoned lawyers, but also it increases job satisfaction and the sense of community for all lawyers involved. It creates a dialogue on issues of professionalism and provides a role-model for a new lawyer. At the same time, it allows more experienced counsel the opportunity to reevaluate their own approach to the law and their own professional obligations.

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As a follow-up to the Court's Lawyer-to-Lawyer mentoring program, the Columbus Bar Association offers another mentoring experience. All attorneys in central Ohio who believe they would benefit from mentoring are encouraged to submit a mentoring application (www.cbalaw.org). Approximately 100 attorneys have volunteered to serve as mentors and we will match you with one of our mentoring "pros" based on your criteria. Less formal then the Court's program, mentees are given possible subjects to discuss, but are responsible to create a program that suits their own individual needs. If you are interested or have questions, contact Alysha Clous at 340-2034.

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The mentoring experience is a positive one typified by the following comments from participants during our two-year pilot program:

"I found myself being reminded of the importance of ethics and professionalism, of treating 'law' as a profession, not a business, and [of] the personal satisfaction of being able to share my experiences while helping someone else."

"Revisiting the fears/anxieties of a young attorney has forced me to be reflective of how I approach my practice. It's also made me realize how I don't necessarily do what I preach."

"I think that the organization was wonderful, the materials were outstanding, and although the notebook was bulky, it is a gold mine of helpful and very valuable information. It is a terrific program."

The Supreme Court also provides incentives for busy practitioners who agree to become mentors. First of all, there is no cost other than the time commitment to become involved. Second, the Court affords 12 free hours of continuing legal education (CLE) to the mentor in exchange for the commitment to meet a minimum of six times over the course of a year and to verify those meetings in accordance with the regulations of the Commission on Continuing Legal Education. These meetings can be conducted at mutually convenient times, over lunch, or at a court or bar association meeting.

Ohio has more that 730 judges in our state, and every one should sign up to mentor a new lawyer. And every practitioner has a contribution to make to this effort.

This challenge comes as a paraphrase of President Kennedy: ask not what your profession can do for you, but what you can do for your profession; more directly, are you willing to do something for the newest members of our profession?

As a lawyer, you can fulfill part of your continuing legal education obligation, assist a new attorney with answers to questions, and help guide his or her professional development; in the process, you can enhance the very strong bar associations we have in Ohio.

Our mentoring program does not have enough mentors for those taking the July bar exam who will be admitted as lawyers this November. We need mentors who can be ready to assist new lawyers as of January 2010. This is a call to action for all judges and experienced attorneys to share their time, talent, and experience with this new generation of lawyers. I have already suggested some of the intrinsic benefits that accrue to mentors: a boost in career satisfaction, a renewed sense of purpose in practicing law, and a reminder of why we decided to become lawyers in the first place! Further, by passing on life-lessons learned through the practice of law, we honor those who initially taught us those valuable lessons as we give the younger attorneys the opportunity to craft their own legacies.

Take pride in your profession. Work to make it better and help younger lawyers take their rightful place in positions of leadership. Help them to avoid making mistakes that can lead to disciplinary problems. The challenges are well known. The choice to participate is yours. The time to engage is now. This is a call to action! Ohio's newest lawyers will be taking their oath come November and will need your help to mentor them in January. It is your turn to answer the call. Contact Lori Keating at the Supreme Court of Ohio or just sign up online. It's that easy! Our profession will be the better for it, and you can make it happen.

Justice Terrence O'Donnell,
Supreme Court of Ohio

Notes from the Federal Court

By The Honorable Mark R. Abel

Changing of the guard

The district court has experienced another changing of the guard this year. We have both a new chief district judge and magistrate judge. On a personal note, I became the first, and youngest, Columbus magistrate judge May 1, 1971. Last December, I made the decision to cut back on my schedule and "retire" so that a new magistrate judge can be appointed. I will continue to work as a judge with a full civil caseload.

Chief Judge Susan J. Dlott

Chief Judge Sandra Beckwith took senior status at the end of 2008, and Susan Dlott became the chief judge of the Southern District of Ohio on January 1. Although both now sit in Cincinnati, both have served in Columbus. Sandy Beckwith was appointed to the federal bench in February 1992 by President George H. Bush. Judge Beckwith sat in Columbus from 1992 through 1995. She can claim a number of firsts, including the first woman elected to the Hamilton County Municipal and Common Pleas Court benches, the first woman Hamilton County Commissioner, the first woman appointed a district judge in the Southern District of Ohio, and our first female chief United States district judge.

Susan Dlott took the oath as a district judge at the end of December 1995. She was appointed to the bench by President William Jefferson Clinton. A Dayton native, she earned her bachelors degree from the University of Pennsylvania and her law degree from Boston University. She was a law clerk to Judges Alvin Krenzler and Jack G. Day of the Ohio Court of Appeals for the Eighth Appellate District (Cuyahoga County). Then she served for four years in Dayton as an Assistant District Attorney for the Southern District of Ohio. For the next 15 years, Susan Dlott was a litigation partner with Graydon Head & Ritchey in Cincinnati.

Chief Judge Dlott is familiar to litigators throughout the District. She sat in Columbus until Ed Sargus was appointed a district judge in August 1996. She sat in Dayton until Judge Tom Rose was appointed in 2002. Since then she has sat in Cincinnati. Chief Judge Dlott is well-respected by litigators and well-liked by her colleagues. She is well suited to continue the tradition of collegiality and cooperation characterizing the relations among judges of the Southern District of Ohio handed down to her by Judge Beckwith.

One aspect of being chief judge beyond the tons of paperwork that Chief Judge Dlott has had to deal with are the tough budget times at all levels of government. There is zero growth in the court's budget for rental space, and when a judge takes senior status there is no money for additional courtrooms. On a more positive note, Chief Judge Dlott has enjoyed working with our Local Rules committee, chaired by Sandy Anderson, Vorys Sater, to adopt patent rules and to adjust our rules to reflect changes to the national rules that make it easier to calculate time deadlines. Those rules take effect this December 1. Other Columbus members of the Local Rules committee include Larry James, Crabbe Brown & James; J.B. Hadden, Porter Wright; Patrick Piccininni, Assistant Franklin County Prosecutor.

Chief Magistrate Judge Terence P. Kemp

Michael Merz, who is stationed in Dayton, has completed his term as chief magistrate judge, and Terry Kemp has begun a four-year term as the Southern District of Ohio magistrates'chief judge. Judge Kemp is a native of Pennsylvania. He graduated Phi Beta Kappa from Brown University and earned his law degree from the University of Virginia, where he was Order of the Coif and a member of the Law Review. Terry Kemp clerked for District Judge Malcolm Muir, Middle District of Pennsylvania, and was a litigation partner at Baker & Hostetler in Columbus when he was appointed to the bench on September 17, 1987.

Chief Magistrate Judge Kemp is respected by his colleagues on the bench and litigators who appear before him. He has an active trial docket, enjoys researching and writing decisions, and is an accomplished mediator. For the last nine years, he has been the Court's Settlement Week coordinator. Recently he has been leading our local Criminal Justice Act committee in its effort to reduce the size of our court appointed counsel list. That process should be completed by the end of the year.

Judge Kemp has been active in bar association activities and legal education. He served as president of the local chapter of the Federal Bar Association and was a member of the Duncan Inns of Court. He has taught a federal practice class at the Capital University Law School and a course on depositions at Moritz.

In his leisure time, Terry and his wife Denece enjoy traveling together. Terry is an enthusiastic bicyclist and hiker, working on hiking the entire Appalachian Trail.

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Retirement

This July I reached what I grew up thinking of as the retirement age of 65. I find that I am not ready to walk away from the law. I continue to look forward to coming to the Joseph P. Kinneary Courthouse each Monday and to be energized by my daily engagement with litigators, litigants and the law books.

I came to the Courthouse in June 1969 as a law clerk to Judge Kinneary, who was then 63 years old and on the bench for just three years. On May 1, 1971, I took the oath of office as United State Magistrate. I am now in the midst of serving my fifth eight-year term in office.

Although I could complete the term which runs through April 2011, and even apply for another eight years, I have decided to "retire" at the end of this year but ask to continuing serving as a recalled magistrate judge with a substantial caseload. Being on recall will give me the opportunity to spend more time with my grandchildren and to take advantage of VPN technology to remotely access work during longer out-of-town sojourns. While I have no thought of continuing work at the Courthouse into my 96th year – as my mentor Judge Kinneary – I would like to remain a judge so long as the challenges of the work remain stimulating and invigorating.

The process of selecting a new magistrate judge is well under way. Andy Smith, Vorys Sater, is chair of the magistrate judge selection committee. Local members include Kathleen Trafford, Porter, Wright; Fred Benton; Chad Readler, Jones Day; Professor Sharon Davies, OSU Moritz; Douglas Stephens, Supreme Court of Ohio; and Mike Curtin, Associate Editor Emeritus, Columbus *Dispatch*. The committee will forward the names of five applicants to the district judges this month. The district judges will interview the finalists and make a selection. After that, the required background checks by the FBI and IRS usually take about four months. So a new magistrate should be sworn in by next Spring.

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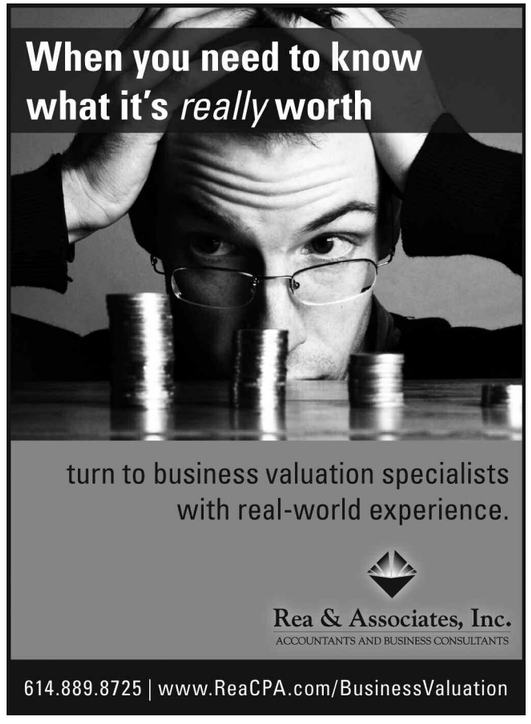
Honorable Mark R. Abel,
U.S District Court



Piloting Courtroom Technology

The pilot program officially began in May of 2009, and has received positive feedback from its users. The audio/video equipment is primarily operated by Judicial Assistant Dan Stover, who manages the recording functions of the system while indexing the events within a proceeding.

By Atiba Jones

Regardless of one's preference, technology is pushing its way into the courtroom. Courts throughout the country are challenged with providing technology within the courtroom to enhance proceedings and create efficiencies.

Attorneys may benefit from electronic presentations, as apposed to showing hard copy photos, distributing documents, and writing on blackboards, which can be cumbersome and time consuming. Jurors may appreciate information projected or imaged on a clear monitor or screen.

In an effort to research and gain a better understanding of new courtroom technology, the Franklin County Common Pleas Court – General Division has initiated a one-year pilot program to test these advancements. The pilot program consists of one courtroom outfitted with an audio video recording system, evidence presentation device (commonly referred to as an "Elmo"), touch-screen monitors for annotation, a projection screen, and a LCD (liquid crystal display) flat panel television. The courtroom equipment, designed by Jefferson Audio Video Systems, is located Courtroom 2 of the Municipal Building (magistrates courtroom), on the 6th floor of 375 South High Street.

The pilot program officially began in May of 2009, and has received positive feedback from its users. The audio/video equipment is primarily operated by Judicial Assistant Dan Stover, who manages the recording functions of the system while indexing the events within a proceeding. The evidence presentation device is operated by counsel, allowing for the electronic presentation of documents, photos, and video. It is compatible with all commonly used presentation sources, including VHS, DVD, and input connections for laptop computers.

Mr. Stover reports that "the pilot program has been successful in building a better understanding of courtroom technology among the magistrates and counsel, as well as created enthusiasm for the possibilities within the new courthouse. The attorneys utilizing our presentation equipment maximized the effectiveness of demonstrative exhibits in 2D and 3D form. The superior benefit of the audio/video recording system is that it captures everything that takes place in a proceeding, including digital presentations, depositions, and non-verbal communication. In sum, the courtroom becomes much more interactive for everyone in attendance. We continue to test the system in every way in order to grasp its benefits as well as its limitations, and work closely with Jefferson Audio Video Systems to address any of those limits".

Magistrate Mark Petrucci, recently presided over a six-day bench trial where the parties extensively utilized the equipment. He reported "that the ability of the attorneys to examine a witness was greatly enhanced with the new equipment."

The courtroom also has a 60x80 inch projection screen, and a 52 inch mobile LCD television, that allow jurors optimal viewing. Annotations can be highlighted on 15 inch touch-screen monitors, which are provided on the evidence presentation device as well as the witness stand. The annotations that are displayed during the proceedings are also recorded and can be printed or displayed at a later time.

Recently members of the Columbus Bar's Common Pleas Court committee tested the system. One member produced a number of three dimensional exhibits that were easily projected onto the large viewing screen. Combining that with the courtroom's touch screens, the technology allows a witness to actually place marks on the three-dimensional exhibit. The corresponding picture was captured as a trial exhibit. This is a great new feature.

Attorneys interested in using the equipment must have a case heard before one of the Common Pleas – General Division magistrates. The courtroom is scheduled with preference given to jury trials. For more information or a demonstration of the equipment, please contact Dan Stover at 614-462-2778.

At the conclusion of the pilot, the judges will use the information obtained in the pilot program to make informed decisions for technology within the new courthouse, scheduled to be completed at the end of 2010.

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Atiba Jones,
Executive Director of the Franklin County Court of Common Pleas – General Division

CIVIL JURY TRIALS

FRANKLIN COUNTY COMMON PLEAS COURT

By Belinda S. Barnes and Monica L. Waller

Verdict: $2,482,029.80 (Compensatory: $1,000,000.00; Punitive: $750,000.00; Attorney's Fees: $718,936.54). Breach of Contract/Breach of Fiduciary Duty. Owners of Accu-Check Instrument Service, a small family owned company, wanted to sell the company and hired Sunbelt Business Advisors of Central Ohio to help find a buyer. Accu-Check told Sunbelt that confidentiality regarding the sale was critical because employees may leave if they found out the company was for sale. Sunbelt assured them information would remain confidential and no one would be introduced to Accu-Check's owners unless they signed a non-disclosure agreement. Sunbelt located a potential purchaser, who was told of the confidentiality and signed a non-disclosure agreement. A meeting was arranged by Sunbelt. The potential purchaser brought his wife to the meeting. Sunbelt never told the wife about confidentiality and never told wife to sign a non-disclosure agreement. After extensive negotiations, the wife told a friend about the potential purchase of Accu-Check. The news spread to Accu-Check employees resulting in the departure of key employees and losses in customers and profits. Sunbelt did nothing to investigate the breach of confidentiality. The potential purchaser told Sunbelt they still wanted to proceed with the purchase. However, Sunbelt failed to convey this message to Accu-Check. Instead, Sunbelt's owner wrote a letter to Accu-Check indicating it must respond by a deadline, or the potential purchaser would move on. However, Sunbelt's owner never sent the letter to Accu-Check. Instead he only sent a copy to the potential purchaser. When Accu-Check did not respond by the deadline about which it did not know, Sunbelt solicited and signed the potential purchaser as a Sunbelt client. Accu-Check alleged that Sunbelt's actions resulted in a loss of profits between $787,000 and $1,317,000. Plaintiff's Expert: Brian Russell, CPA. Defendant's Expert: Ronald Vanke, CPA. Settlement Demand: $1,000,000.00. Settlement Offer: $25,000.00. Length of Trial: 5 days. Plaintiff's Attorney's: Daniel R. Mordarski and Diane Einstein. Defendant's Attorney: George Georgeff. Judge Brown. Case Caption: *Accu-Check Instrument Services, Inc. v. Sunbelt Business Advisors of Central Ohio, et al.* Case No. 07 CVH 05-6901 (2008).

Verdict: $440,339.81. Premises Liability. Plaintiff Angela York was 32-years-old at the time of the accident. She was shopping at Meijer. As she attempted to pull a box from a shelf, she claimed that another box that had been stacked on a higher shelf fell and hit her in the neck and shoulders. Plaintiff claimed that she did nothing to cause the higher box to fall. There were no witnesses. Plaintiff testified that a Meijer employee told her that the box that fell had been stored improperly, but nobody from Meijer admitted that at trial. Photos were taken at the scene but Meijer could not produce them at trial. Meijer maintained that the photos were not available because the store where the accident occurred had subsequently been closed. Plaintiff alleged that the photos were not produced because they were damaging to Meijer's position. Plaintiff had a bulging disk in her cervical spine that did not require surgery. Defendant's medical expert opined that she had sustained nothing more than a cervical strain. Medical Bills: $22,339.81. Lost Wages: None. Plaintiff's Expert: Ronald Linehan, M.D. Defendant's Expert: Martin Gottesman, M.D. Settlement Demand: $50,000. Settlement Offer: $20,000. Length of Trial: 4 days. Plaintiff's Attorney: Ronald E. Plymale. Defendant's Attorney: W. Charles Curley. Judge Bessey. Case Caption: *Angela York v. Meijer Stores Limited Partnership*. Case No. 08 CVC-02-2990 (2009). Note: The verdict consisted of $22,339.81 in economic loss and $418,000 in non-economic loss. The trial judge applied Ohio's damage cap statute and entered judgment against Meijer for $272,339.81. Plaintiff filed a motion for pre-judgment interest. Defendant filed a motion for a new trial and/or remittitur. While those motions were pending, the case was settled.

Verdict: $54,132.98. Auto Accident. Plaintiff was a passenger in a car traveling 35 mph when Defendant turn left in front of Plaintiff causing a collision. Plaintiff complained of immediate right shoulder pain and back pain at the scene of the accident. Plaintiff was diagnosed with a torn rotator cuff which required surgical repair. Plaintiff also completed physical therapy for the back and right shoulder. Plaintiff's Expert: Gerald Rosenberg, M.D. Defendant's Expert: Gerald Steiman, M.D. Settlement Demand: $400,000. Settlement Offer: $30,000. Length of Trial: 3 Days. Plaintiff's Attorney: Sean Harris. Defendant's Attorney: Ed Hollern. Judge: Cocroft. Case Caption: *Hutchinson v. Ensign*. Case No. 08 CVC 6446 (2009).

Verdict: $35,000.00. Auto Accident. The automobile collision occurred on August 13, 2003 on I-70. Marshone Garland (age 33) was a passenger in a car that was insured by American Family Insurance Company. An uninsured driver caused the accident and fled the scene. Marshone Garland alleged injuries to his teeth, right shoulder sprain and strain and left foot sprain and strain. Medical Bills: $4,012.45. Lost Wages: None. Plaintiff's Expert: Charles Kistler, M.D. Defendant's Expert: None. Settlement Demand: $10,256.00 (amount awarded in arbitration). Settlement Offer: $7,500.00. Length of Trial: 2 days. Plaintiff's Attorney: Jeffrey Bibbo. Defendant's Attorney: Mark Maddox. Judge Fais. Case Caption: *Marchone Garland v. American Family Insurance*. Case No. 05 CVC-08-08738 (2008).

Verdict: $34,507.00 ($5,507.00 in Past Medicals, $4,000.00 in Past Pain and Suffering, $25,000 in Future Pain and Suffering.) Auto Accident. Plaintiff Allison Rosier was driving in heavy rush-hour traffic in Columbus when she stopped for traffic ahead of her. Defendant Aleksic rear-ended her. Plaintiff estimated that Defendant's speed was 35 mph at the time of impact. Plaintiff claimed injuries to her neck as a result of the accident. She went to the emergency room and followed up with her family physician and went on to have physical therapy. She consulted with a physiatrist who diagnosed her with myofascial pain in her neck. Defendant disputed Plaintiff's claimed injuries. Medical Bills: $5,507.00. Plaintiff's Expert: Michael Yaffe, M.D. Defendant's Expert: David Ryan, D.O. Settlement Demand: $20,000. Settlement Offer: $10,000. Length of Trial: 3 days. Plaintiff's Attorney: Michael T. Irwin. Defendant's Attorney: LeAnna Smack. Judge Pfeiffer. Case Caption: *Allison Rosier v. Shane Aleksic*. Case No. 07 CV-010688 (2008). The Court denied Plaintiff's motion for prejudgment interest.

Verdict: $12,816.91. Auto Accident. Plaintiff alleged that defendant failed to yield from a private drive and entered the path of a vehicle in which he was a passenger. Both vehicles were total losses. Plaintiff was 32-years-old at the time of the accident. She claimed a neck injury resulting in a diskectomy and fusion at C5-6. Defendant claimed plaintiff sustained a cervical strain superimposed over pre-existing degenerative disk disease. The jury awarded plaintiff $10,316.91 in past medical bills and $2,500 in past pain and suffering. Medical Bills: $70,627.43. Lost Wages: Plaintiff claimed to be disabled as a result of the accident. Plaintiff's Expert: Carole Miller, M.D.; Robert Brooks, D.C. Defendant's Expert: Walter Hauser, M.D. Settlement Demand: $70,627.43. Settlement Offer: $15,000.00. Length of Trial: 3 days. Plaintiff's Attorneys: Lisa Christensen and Amy Milam. Defendant's Attorney: Belinda Barnes. Judge Holbrook. Case Caption: *Timmy Frye v. Ashley Mullins, et al.* Case No. 06 CVC 06-7150 (2008).

Verdict: $11,669.37 (Reduced to $5,834.69 for Plaintiff's Comparative Negligence). Auto Accident. Plaintiff Glen Dudley was driving eastbound on Henderson Road and started to turn left onto Olentangy River Road when his uninsured Lexus was struck in the intersection by Defendant Jared Miller who was traveling westbound on Henderson Road in his Honda. Each driver claimed that the other failed to stop for a red light. The jury concluded that each driver was equally responsible for the accident. The jury concluded that the plaintiff was entitled to $4,150 for medical expenses, $0 for pain and suffering, $0 for loss of self-employment income, $6,398.49 for property damage and $1,120.88 for car rental expenses. In a separate administrative proceeding involving the suspension of Plaintiff's license for failure to maintain insurance, Plaintiff was required to pay all of defendant's property damage. Defendant did not claim that he sustained any injuries in the accident. Plaintiff's Expert: Brian Briggs, D.C. Defendant's Expert: Joseph Schlonsky, M.D. Settlement Demand: $15,000. Settlement Offer: $1,500. Length of Trial: 4 days. Plaintiff's Attorney: J. Scott Bowman. Defendant's Attorney: Kelly M. Morgan. Judge: Bender. Case Caption: *Glen Dudley v. Jared Miller.* Case No. 06 CV 00777 (2008).

Verdict: $10,500.00. Auto Accident. The plaintiff, 47-years-old, claimed that she sustained injuries in a collision caused by the defendant's failure to yield in an intersection controlled by a traffic signal. With a prior history of an auto collision causing chronic neck and right hip pain, the plaintiff claimed aggravation of these pre-existing conditions from the subject collision. Medical Bills: $21,614.90. Lost Wages: $933.00. Plaintiff's Expert: Steven A. Severyn, M.D. Defendant's Expert: Walter Hauser, M.D. Settlement Demand: $90,000.00. Settlement Offer: $16,000.00. Length of Trial: 3 days. Plaintiff's Attorneys: Janica A. Pierce and James D. Abrams. Defendant's Attorney: John C. Cahill. Judge Bessey. Case Caption: *Sally A. Hess v. Traci L. Coffman*. Case No. 05 CVC05-5700 (2006).

Verdict: Defense Verdict. Medical Malpractice. Child with temporal lobe mass underwent craniotomy for removal. During surgery the removal was determined to be too hazardous due to potential for catastrophic vascular damage. The mass was biopsied and the diagnosis upon pathological examination was 'A-D hamartomatous lesion. The patient developed a seizure disorder which became intractable. Later the patient underwent formal epilepsy surgery with removal of the tumor and a portion of the amygdala resulting in seizure abatement. Plaintiff's claim was that the first surgeon allegedly told the child's parent that the operation was risk free and then, post operatively, that the tumor had been completely removed. Defendant was awarded summary judgment on most of the plaintiff's complaint. The only claim that went to the jury was fraud. Medical Bills: Unknown. Plaintiff's Expert: None. Defendant's Expert: None. Settlement Demand: None. Settlement Offer: None. Length of Trial: 4 days. Plaintiff's Attorney: Steven E. Hillman and Don E. Wolery. Defendant's Attorney: Mark L. Schumacher. Judge Travis. Case Caption: *Grant Steven Hillman, et al. v. Edward Kosnik, M.D., et al.* Case No. 00 CVA-06-5277 (2006).

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Belinda S. Barnes and Monica L. Waller, Lane Alton & Horst

In Court

The *Specter* of Juror Misconduct

By Brad L. Tammaro, Senior Assistant Attorney General
Ohio Organized Crime Investigations Commission

The specter of juror misconduct lurks in the shadows of any jury trial and can cause the best attorney to wonder why a future in veterinary medicine was not at the top of their career list. The potential for juror misconduct twists the intestinal fortitude of a trial attorney because it presents a set of circumstances over which there is no absolute control and can set the best prepared and presented case back to square one.

Since this is written by an individual who roams the legal wilderness of the criminal world, the reference for the following comments will be the criminal code and rules. Most notably, the provisions of R. C. 2945. 79(B) and Crim. R. 33 establish grounds for a new trial that involve misdeeds including "misconduct of the jury" as a justification for a new trial. However, the proviso is that misconduct must affect the defendant's substantial rights.[1]

The fact that juror misconduct may lead to a requirement to begin again stems from the recognition that every accused is entitled to a trial before an impartial, unprejudiced, and unbiased jury.[2] This right is guaranteed by both the Ohio and U.S. Constitution.[3] A jury's verdict must be based solely on the evidence and argument presented in open court, not on any outside influences.[4]

A litigator's natural question is "What effect does this right have on me?" When an allegation of juror misconduct is made, the court must look into the allegation. The trial judge is in the best position to determine the nature and extent of alleged misconduct and the scope of the proceedings necessary to examine the question.[5] However, any remedial action first requires the claimant to clear two hurdles. First, the claimant must prove that some kind of misconduct occurred. Second, the claimant must prove they were prejudiced by the conduct and that their substantial rights were adversely affected.[6]

Since the trial court has broad discretion in dealing with juror misconduct, a mistrial is not a foregone conclusion where there is alleged misconduct.[7] The litigator should remember that the appellate standard of review for the remedial decision is abuse of discretion.[8] Thus, parties should attempt to fashion a remedy, short of mistrial, that protects the rights of the defendant and allows the case to go forward. However, as a stalwart prosecutor might expect, the defense will often immediately demand a mistrial, as this will deal a severe blow to the prosecution. If the facts warrant a mistrial, the State should not request or join in a request for mistrial. Ultimately, a mistrial request by the State could lead to an appellate argument of double jeopardy should the Appellate Court rule that a mistrial was not the appropriate remedy. In light of the appellate standard of review, the State should attempt to save the case by suggesting any reasonable alternative to a mistrial that would work to ensure the rights of the defendant.

With that basic framework in mind, the next question would seem to be "What constitutes juror misconduct?" The flippant response is that the answer is as varied as the individuals who make up your jury. This writing cannot begin to list every category and every activity, but some of the most common will be discussed. With that understanding, the various categories include third party contacts, exposure to extra-judicial materials, experiments and reenactments, untruthful statements during voir dire, bias or prejudice, physical or mental incompetence, pre-deliberation discussions, and nullification.[9]

When juror conduct arguably falls within one of the referenced categories, the extent of the litigators' involvement will be dictated by a number of considerations. First, recognize that what is being dealt with is juror misconduct and that a juror's activities are not within the ability of either party to control, absent sequestration, and even that does not provide absolute protection. Coming to this realization will limit the need for various forms of stress relief and focus the litigator on the potential course of action and desired remedies.

While many of the categories of potential misconduct are beyond the ability of any litigator to control, there is the possibility of limiting some misconduct from occurring. For instance, a clear and concise voir dire can limit or disclose potential problems of bias and prejudice as well as physical or mental incompetence. Voir dire can disclose family and/or work problems that may affect the ability of a juror to concentrate and/or be attentive during the course of a trial. Voir dire can also be used to remind them of their responsibilities as a juror and to make sure they can abide by the rules.

It may be shocking for a litigator to realize, but not every case will keep a jury on the edge of their seats hanging on every word. Some cases that must be litigated are actually dry and, dare I say, boring. The litigator should never get so wrapped up in the technical matter of presenting the evidence that he or she forgets who they are presenting the evidence to, i.e. the people on the jury. Being attentive to the jury, looking at them when questioning witnesses and during responses, avoiding the death of a monotone speech pattern, etc..., all will help avoid problems with juror concentration and attentiveness. Furthermore, it is extremely important to time your witnesses wisely. The first hour after lunch is "nap time" for a jury so one should select a witness who will maintain the jury's interest. Moreover, do not leave a big question unanswered at the end of the day, unless it is strategy or cannot be helped, as this may lead to possible internet searches at home. A great deal of this is simple common sense, so put yourself in the position of a juror and plan accordingly.

Clear pre-trial instructions based upon your specific case can cover items like experiments and reenactments, as well as extra-judicial information, materials, and media coverage during the trial. The litigator can also instruct clients and witnesses on proper conduct in and outside of the courtroom where a juror might be present. However, the litigator should again realize that even the best voir dire, pretrial jury instructions, and courtroom techniques will fail to prevent some types of activities or occurrences that can be considered misconduct or may contaminate the jury.

When an issue with a juror arises, the most common course of action is an inquiry commonly called a voir dire. In most situations, the court will conduct the inquiry with the assistance of both parties. The individual juror is brought into the courtroom and questioned. If it appears that other jurors could have been contaminated, then individual voir dire should proceed with them. If the inquiry discloses that some questionable conduct did occur, the litigator must evaluate how essential it is to rehabilitate a juror versus removing the juror and the effect either action will have on the course of the trial. That evaluation is based upon factors that include things like the point in time where the questionable juror conduct happens. If at the beginning of a trial where alternates are plentiful and the conduct is limited to the particular juror, then the simplest course of action may be to simply replace the juror. Should the questioned conduct happen towards the latter stages of a lengthy trial when alternates may have dwindled, it may be necessary to try to rehabilitate the juror if possible.

The point at which alleged misconduct occurs also presents a strategic decision for the litigator. At the beginning of trial little evidence has been presented and your theory of the case may not be clear to your adversary. However, towards the end of the trial the opposition essentially has your trial notebook.

The most difficult decisions regarding misconduct arise when the jury is deliberating. Remedial options can be severely limited unless the alternate jurors are kept. Therefore, it may be appropriate to keep alternates until the verdict is returned following a lengthy trial, or if you anticipate extended deliberations. The alternate jurors would not be sent into the deliberation room unless needed to replace a regular juror. At that time, the jury would begin deliberations anew.

While there are a host of case-specific factors affecting a decision on whether rehabilitation, replacement, or mistrial is appropriate, the key point to remember is that the litigator's role is limited to identifying the extent and the parameters of the conduct and assisting the court in determining the facts that direct the appropriate remedy. In all situations, the ultimate question is whether the defendant can receive a fair and impartial determination of the facts by the individuals serving as jurors. Whether the remedy is no action, replacement of the juror with an alternate, or a mistrial, it must withstand the appellate standard of review which will determine whether the trial court's decision was an abuse of discretion.

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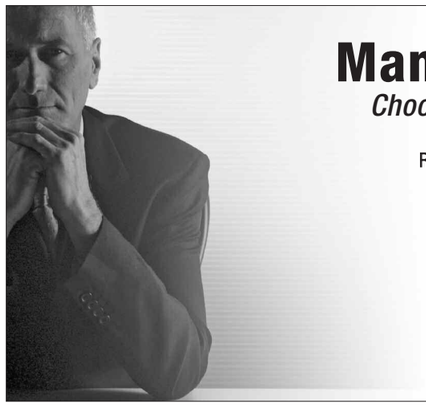
1. State v. Sheppard (1998), 84 Ohio St.3d 230, 1998 Ohio 323.
2. Petro v. Donner (1940), 137 Ohio St. 168.
3. See Duncan v. Louisiana (1968), 391 U.S. 145; Section 10, Article I, Ohio Constitution (establishing the right to 'a speedy public trial by an impartial jury').
4. Patterson v. Colorado (1907), 205 U.S. 454, 462; Smith v. Phillips (1982), 455 U.S. 209, 217.
5. State v. Rudge (1993), 89 Ohio App.3d 429, citing Nebraska Press Ass'n v. Stuart (1976), 427 U.S. 539, 547-550.
6. See State v. Kehn (1977), 51 Ohio St.2d 11,19; State v. Lewis (1993), 67 Ohio St.3d 200, 207, 1993 Ohio 181.
7. State v. Keith (1997), 79 Ohio St.3d 514, 526-527.
8. Id. at 528.
9. See Contaminating the Verdict: The Problem of Juror Misconduct, 50 S.D. L. Rev. 322.

Since the trial court has broad discretion in dealing with juror misconduct, a mistrial is not a foregone conclusion where there is alleged misconduct. The litigator should remember that the appellate standard of review for the remedial decision is abuse of discretion.



CHECKING UP *or* CHECKING OUT

By Dianna M. Anelli

As attorneys, we know that we are responsible for our clients' files. We have no doubt that we are duty bound to continue representing our clients until the legal matter is concluded. We usually have every intention of doing so. Most of the time this is not an issue since this is our job, this is what we are trained to do, this is what we have chosen and this is part of the practice of law. Well, in recent days there are those attorneys who have been laid off from law firms. And then there are those partners recently voted off the island. Of course, there are those who cannot wait for full retirement (encompassing the vast majority, recently licensed or not, of the practicing bar). Then again, many of us relish the thought of a permanent vacation from the office. And occasionally a permanent vacation intentionally happens. But that is not really what I'm talking about.

What happens when things go awry, such as when an attorney checks out of the practice of law without notice to the client and without providing a replacement? The client may not even know that the attorney has decided to discontinue practicing or that some other such thing has occurred making it impossible for the attorney to continue representation. What if really bad luck occurs and the attorney gets ill, has an accident, or dies? For lawyers practicing in law firms, whether large or small, this is not really an issue because the partners or attorney members ensure that the clients' files are reassigned. But what about the solo practitioner?

Luckily, the Supreme Court of Ohio has contemplated just this scenario and has presented a solution in the Supreme Court Rules for the Government of the Bar. Gov. Bar R. V, Section 8(F) addresses just this issue. It provides an available remedy where an attorney is suspended due to mental illness, cannot be found in the jurisdiction for sixty or more days, dies, refuses to meet or work with significant clients for sixty or more days, or fails to comply with his or her duties under Section 8(E) (involving suspension from the practice of law). This Rule applies where there is not a partner, executor or other responsible person willing to conduct the attorney's affairs or assume responsibility. In that event, disciplinary counsel or the chair of a certified grievance committee of a local bar association may appoint one or more attorneys to inventory the files and take action necessary to protect the clients' interests. This may include reassigning current cases to another attorney. The appointed attorney may not disclose client information from the inventoried files that is protected by the attorney-client privilege or Rule 1.6 absent the written consent of the client. The appointed attorney also may not represent any of the clients whose files he or she inventories. However, upon application and approval by the Secretary of the Board of Commissioners on Grievances and Discipline, the appointed attorney may be paid from Attorney Registration funds.

Some insurance companies require a solo practitioner to designate an individual who will take on responsibility for the current files in the event that the attorney becomes incapacitated. The Ohio Bar Liability Insurance Company is one such insurer. In that instance, there is an individual willing to assume responsibility for the attorney's client files and Gov. Bar R. V(8)(F) has no application.

It is the rare case when an attorney decides not to practice law and simply leaves the jurisdiction or when he or she is incapacitated with no one willing or able to assist with client files. However, it is nice to know that we, as an organized bar, have alternatives for the rare instances in which such events do occur.

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Practical Thoughts

on Defending Formal Lawyer Discipline Charges

By Alvin E. Mathews Jr.

The presenter at the annual legal ethics seminar said "it can happen to anyone" who is not careful enough. Yet, you didn't think that included you!

You realize you didn't manage the risks in your practice and seek preventive advice as you should, but you're honest and you work hard for your clients. Even three clients who complained that you botched their cases understand that you were going through a rough patch. Besides, three problem cases out of the hundreds you've handled in your career shouldn't cause you to receive a reprimand or lose your license for a period of time.

You've received that official letter from the Board of Commissioners on Grievances and Discipline. The letter reveals that the probable cause panel has certified the "formal complaint" to the board. You have twenty days to file an answer to the formal complaint. You are not quite sure what this all means but it doesn't sound good.

Where is this heading?

Considerations for responding to a formal lawyer discipline complaint, meaning one that has moved beyond investigation toward a hearing, are much different than consideration for merely answering a grievance. The reality is that most grievances do not result in formal charges. Conversely, formal charges almost always result in discipline. So, if you haven't yet taken the matter seriously, you'd better get serious now. Whereas the grievance investigation was private and confidential, formal complaints are public information and the formal deadlines of the rules of civil procedure govern.

So, what should you be thinking about to save your career?

The cause is not lost. Many lawyers who enter the formal lawyer discipline system lose hope. After being in denial during the investigation, at the formal stage, they give up and tend to expect the worst. They know the matter will become public knowledge and the embarrassment is too much to bear. They also internalize the problem and worry to the point of becoming immobilized. They don't recognize that the formal proceedings will take a number of months to complete and they must remain productive. They forget what they tell their own clients: worrying never helps but taking positive steps will.

What positive steps must you take?

Answer the Complaint and participate in the hearing. It has been said that showing up is half the battle. This truism of life also applies to the lawyer discipline system. It seems rather basic but many lawyers lose their license indefinitely or permanently because they don't participate in the proceedings and don't even appear at the hearing. Many don't keep the Supreme Court aware of their new address and don't pick up the certified mail. Conversely, most lawyers who attend the hearing and take responsibility or put forth a reasonable defense continue practicing under a stayed suspension or are able to return to practice after serving a suspension of six months to two years.

Yet, how can you control the damage in your case?

Accept responsibility and put forth a reasonable defense. Experienced professional responsibility lawyers will tell you that it is often a mistake to approach the defense of a lawyer discipline case like a typical court case. Cooperating with the relator is critical. Stipulating to undisputed facts and relevant documents is highly encouraged as most lawyer discipline trials are completed within a day or two. Restitution, accepting responsibility, and remorse are among the most important mitigating factors which can decrease the ultimate sanction. Any defense must be eminently reasonable to avoid making the situation worse.

So, what specifically can you do to make sure your approach is proper?

Get help. For several reasons, lawyers who get in disciplinary trouble don't get help from a trusted mentor, colleague or hire experienced counsel. Some who reach the formal discipline system have mental or substance abuse impairments but do not affiliate with the lawyers assistance program. Lawyers are wired to believe they can solve most any problem. Yet, when a lawyer's license is in the balance, it is not the ideal time to learn a new area of practice, professional discipline. Some lawyers don't think they can afford to hire a lawyer to help them, so they don't even investigate the possibility of entering a reasonable hourly or flat fee arrangement. They forget that if they don't get help to put their best foot forward in the disciplinary proceedings, they may lose their livelihood for a longer period of time than they would have had they sought the help they needed.

In sum, there is considerable preparation that goes into a meaningful lawyer discipline defense. Following a few basics tenets can make a big difference in keeping a bad situation from becoming worse. The forgoing are just a few practical thoughts you should keep in mind if you are faced with the stark reality that formal disciplinary proceedings "can happen to anyone," who is not careful enough.

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Alvin E. Mathews Jr.,
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Toe Tags

By Bruce A. Campbell

If you practice amid the sheltering arms of Fubar & Ratsafratz or some similarly prestigious firm, you may not have to concern yourself with questions of what will happen to your clients, cases, billing records, closet skeletons, and the like should you quit the scene – for a short term or long. You have the peace of mind of knowing that your deeply caring and highly competent partners will swoop in and will take care of any untidiness attending your sudden exit. Right?

Then there are the rest of you. Maybe you are a lone-wolf type or perhaps a part of some loose (in the organizational – not the moral – sense) association. You may not employ support personnel, choosing instead to operate your practice through the PC on your desk and voice mail.

All too many lawyers have not designated a second to take up the dueling pistol should they precipitously depart from the field of engagement, whether by choice, stretcher, or oblong box. Would it be too rude to ask whether you have every given any thought to a contingency plan? If you have thought about it, did you actually do anything about it? If you did do something, is that something still viable?

One way not to leave your practice is illustrated by Stark County Bar Assn. v. George (1976), 45 Ohio St.2d 267. Mr. George, deeply in debt and weary of the law and life in general, suddenly decided to take an extended leave of absence. He hit upon the highly original idea of overcoming his financial angst at the tables of Las Vegas. While thus occupied, he left his brother in charge of his law shop. Brother George was not encumbered by a law degree but, undaunted, pitched right in. He interviewed clients, accepted their money, arranged for attorneys to do work he could not handle himself, and split fees with them. One wag suggested that the practice had never been quite so well tended. Alas, the hapless lawyer brother, now separated from his remaining fortune by the capriciousness of Nevada gaming devices, returned to Ohio also to be separated from his license to practice law by the Supreme Court of Ohio (for, among other things, assisting his brother's UPL). Baby did not get new shoes.

Then there was the approach taken by a well-known central Ohio lawyer some decades back. He just plain vanished from the known universe (to the bottom of Lake Mead, some would have it) leaving hundreds of active files to be dealt with by the local bar and the courts. While this approach had a certain neat simplicity, the wake (literal and figurative) he left behind engendered a major carfuffle which lasted for years.

Some lawyers rely – whether by prearrangement or, more likely, by inattention – on their life partner to mop up upon their final decampment. While some of these partners are equipped to deal with the task, many are not. The Columbus Bar often gets calls for help from folks thrown into this situation, and it is clear from these calls that it is difficult for them, especially in the midst of their personal grief, to attend the pressing exigencies of the departed's practice.

A provision exists which authorizes Disciplinary Counsel or a Certified Grievance Committee, subject to the approval of the Secretary of the Board of Commissioners on Grievances and Discipline, to appoint an attorney to inventory the files of a lawyer if he/she "cannot be found in the jurisdiction for a period of sixty days … dies, [or] refuses to meet with a significant number of clients …, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is available and willing to assume appropriate responsibility …." Gov. Bar Rule 8(F). The receiver thus appointed is empowered to take such action "as is necessary to protect the interest of clients of the attorney," and can be compensated for this work through the Attorney Registration Fund. The receiver can direct pending cases to other counsel for handling but cannot directly represent the clients.

Useful though this procedure is when all else fails, it can hardly be viewed as an ideal way to manage transition. It takes time to implement and is cumbersome, not to mention expensive. It requires someone to start from zero (or worse) on the puzzle of figuring out which files may be active, who has hearing dates, and what statutes of limitation are about to run. It creates the challenge of finding counsel for those somewhat-less-than-desirable cases/clients every lawyer has in the professional portfolio.

It might be chilling but nonetheless worth the effort to imagine yourself in the position of the _____ [insert: friend, secretary, significant-other, lawyer-across-the-hall] who, upon learning that you have been hit by a falling meteor chunk and compressed to the approximate thickness of a CD, is entering your office to assess the immediate situation there. Does this person have any guidance/authority regarding what you would want done in this situation? Does the person know which lawyer(s) you would like to assume responsibility for various kinds of pending cases (assuming client agreement, of course – see Board of Comm. On Griev. & Disp. Op #98-5)? Can the person find your appointment calendar, and, if located, will it be reasonably accurate? Is it discernible which files are pending and which are closed? Are there computer passwords, keys to cabinets, lock combinations and the like about which only you have knowledge? Can it be determined easily how to reach clients who have approaching hearings or deadlines? Are closed and open files easily differentiated? Do the contents of files bear any relationship to what is currently going on in these matters? Are trust records in order? You get the picture.

Normally, at the end of an article like this you would expect to find some sort of exhortative paragraph challenging the reader to take immediate action to remedy the described problem. I must resist the temptation, however. A group of local citizens (led by my wife) is currently attempting to have my pontification permit revoked, so I have to be careful here not to say anything which could be taken as preachy and used in evidence against me. Have a nice millennium.

Afterword:

Although this piece was written some years ago, it has no less currency today. Apparently, not enough lawyers took its message to heart, given that messes are still being left behind at an alarming rate.

One fairly recent development could have some impact on the situation. A number of state Supreme Courts have either strongly suggested or even mandated that a lawyer, as a part of the registration process, designate someone to perform the necessary clean-up functions when the lawyer flat-lines or otherwise absquatulates the realm. It is likely that proposals will be made to the Supreme Court of Ohio for implementation of such an initiative here.

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Bruce A. Campbell, Columbus Bar Counsel

If you practice amid the sheltering arms of Fubar & Ratsafratz or some similarly prestigious firm, you may not have to concern yourself with questions of what will happen to your clients, cases, billing records, closet skeletons, and the like should you quit the scene – for a short term or long. You have the peace of mind of knowing that your deeply caring and highly competent partners will swoop in and will take care of any untidiness attending your sudden exit. Right?

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CBA

Get to Croatia *Before the Crowd*

By The Honorable David E. Cain

The Dalmatia Coast between Zadar and Split has 140 islands and islets that are all part of the Kornati National Park. They make for great yachting, sailing and other water sports in the crystal clear waters of the eastern Adriatic Sea.

Add to that the breathtaking natural beauty of the pristine white rocky land and the centuries old villages of blocked stone houses and buildings and it's easy to see why Croatia has the fastest growing tourism of any Mediterranean country.

One would never know it was considered a war zone only a few years ago. Now, Croatia is regaining its pre-WWI reputation as the European Riviera. Indeed, it has the only clear sea water in all of Europe.

My wife, Mary Ann, and I recently had the opportunity to spend several days about halfway between those two cities, along with Judge Julie Lynch and her daughter, Mary.

We were guests of Paul Bodycombe, a Columbus probate attorney, in a five-bedroom, 500-year-old stone house that is owned by Don McGregor, the boyfriend of Paul's daughter, Anne. McGregor, who lives in London, sells programming to European countries for NBC Universal. He loved Croatia and bought the house several years ago for the enjoyment of himself and friends. The house is in the island village of Betina.

A new coalition government came into power in 2000, and in 2002, Croatia entered an agreement with the Serbs, joined the Central European Free Trade Union and signed a contract for potential entry to the European Union. By 2006, it was considered peaceful and stable. Over the last three years, banks have started making loans to home buyers. The prices of real estate have shot up. Thankfully, Don bought the house before all of the above occurred, Paul remarked.

A new freeway now links all the major cities where large hotels can be found. Villages have smaller hotels and apartments for rent. Also, homes are being rented by owners whose primary residences are elsewhere.

Even the secondary roadways look new. One can travel along the coast and look down on villages huddled around bays. They are striking sights as the residential and other buildings all have matching burnt-orange, clay tile roofs. A catholic church always sits at the highest point.

Once in the villages, the streets narrow to one-lane cobblestone passages that meander up hills past the old stone houses.

Down at the seaside town centre, automobiles, motor scooters, bicycles and

Continued on Page 20

Continued from Page 19

pedestrians of all ages mix and mingle and jump and dodge in a lively dance where somehow accidents are rare. License plates on the cars are from all over eastern Europe and a heavy share from Germany.

One is always near a market featuring fresh fruit, vegetables and fish. Not too far away is a crowded supermarket with people shopping while talking on cell phones.

Outside the cities and villages, the hillsides are covered with wild olive trees separated by piles of rocks, several feet deep, in circles or straight lines. People have been piling up rocks for centuries, Paul commented. The rocks keep water pooled around the trees during the rainy season. Croatian limestone from nearby quarries was used to build the Whitehouse in Washington, D.C., he noted.

In the summer, every single day is sunny and bright. The blue skies are practically cloudless. No rain has fallen since early June. In the winter, the temperatures drop from the mid-90s to the thirties and forties. The population drops to 200 persons. The winters are very windy and rainy, Paul pointed out. "That explains the stone walls and shutters."

Restaurants are plentiful in the villages and the food is quite tasty, well presented and remarkably inexpensive. A typical menu has the entire fare repeated in a half dozen different languages. And the cuisine has been influenced by as many cultures.

The kuna was introduced as the national currency in 1994. Its stability is monitored against the euro – about seven to one. The euro is running about two to three against the dollar.

Swimming is very popular and is pretty much done in all areas with people jumping off boat docks and what not. In town there are public beaches where proper bathing attire is strongly encouraged. Outside of town is a larger beach where swimsuits are optional. Many went totally nude, but the most interesting aspect was that nobody seemed to notice. Age was not a factor.

The beaches were covered with rocks, not sand. Beautiful to sight, but painful to feet. Heavy pads were necessary for sunbathing. So were swimming suits in our case.

For some reason, Wednesday night is big for festivals. When we finished our dinner at an outdoor, seaside restaurant in the neighboring village of Murter, we walked back through the center of town where a stage had been set up and a group of six men and one woman were making great vocal harmony – probably some old Balkan favorites – with the help of two guitars, a bass fiddle and a mandolin (played by the female). When they finished their concert and packed up, we went back to Betina where we found yet another vocal group performing on a stage. Two girls were getting popcorn beside a man hawking grilled sardines.

After I walked in front of the stage to take a photo of the singers, a middle-aged, smiling woman grabbed me by the arm and started dancing. Our attempts at conversation were fairly fruitless except I understood the word "Slovania" and she was excited to hear "United States."

A must see is the Krka National Park about 30 miles north of Split. Take an excursion boat up the Krka River (pronounced Kurka) through the stone-faced canyons to the Skradinski buk, the most famous series of waterfalls on the river. The waterfalls are composed of travertine barriers, islands, and lakes and feature seven spectacular cascades. Travertine is limestone deposited from water that accumulates on such living things as moss and algae to take on a variety of forms. It turns the river water to a brilliant white as it sprays in a gazillion different directions as it falls.

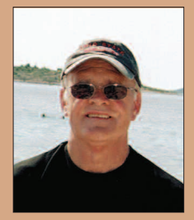
The whole show can be viewed freely and up close thanks to a network of paths and bridges that is easily traversed.

Croatia's greatest resource is its well-preserved natural environment. Forty-five percent of its power comes from hydro-electric power plants. The tap water is drinkable throughout the country.

Croatia's recorded history goes back to the Greeks who began colonizing the coast in the 4th Century B.C. Romans came in the mid-3rd Century B.C. After the country was divided into two spheres during WWII – the south governed by the Italians and the north by the Germans – the Federal Republic of Yugoslavia was proclaimed on November 29, 1943. Croatia was one of six Republics governed by Tito who ruled until his death in 1980. After much pressure by the Germans and the Vatican, members of the European Union recognized Croatia's independence on January 15, 1992, and Croatia became a member of the United Nations in May of that year.

Now, the tourism that began anew in the 1960s is beginning to flourish. Croatia's best days are yet to come.

On our last night in that country, Paul drove us to Zadar where we boarded a ferry boat shortly before midnight. The boat took us westward across the Adriatic to arrive the next morning at Ancona, Italy where we figured out how to ride trains to Venice for the last couple days of our vacation.



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What Now?

By Nicole VanderDoes

Four years ago, I had just taken the bar exam and my greatest fear was that I had not earned the precious 405 points that would allow me to begin my career as a lawyer. A year later, I had worked on a major trial, argued my first appeal and received a glowing review. By the following year, my caseload, my responsibility and my confidence as a young lawyer had all increased. A year ago, I had substantially more trial and appellate experience and felt like I was well on my way towards being a real lawyer.

As I write this, only four years after entering the practice of law, I am unemployed. I know I am not alone. I know that because of the endless articles I have read about record layoffs of attorneys. According to the "Layoff Tracker" at http://lawshucks.com, 4,260 attorneys were laid off between January 1, 2009 and July 26, 2009 – and that just accounts for "BigLaw" layoffs, so it doesn't include most, if not all, of the layoffs that have affected Columbus lawyers. An April 2009 Columbus Dispatch article named local firms that had made cuts, and more firms have cut back in subsequent months. The numbers are probably substantially higher due to "stealth" layoffs, a practice that became common on Wall Street in early 2008 and was widespread in the legal industry by the end of last year.

But the extent of this isn't just something that I know from the news. I also know I am not alone because I know real people who have lost their jobs in recent months. This isn't about news or numbers; this is about individual attorneys, many of whom are new lawyers. These lawyers obsessively devoted themselves to school and then to their jobs, but have now found their careers and lives turned upside down and don't know what the future holds.

I don't have all the answers, but I do have some thoughtful advice. The good news is all of the general advice for finding a job in other circumstances still holds true for lawyers who find themselves unemployed in today's difficult economic times: (1) develop and maintain a professional network; (2) look beyond help-wanted ads and headhunters; (3) consider alternative careers that use the transferable skills you have developed as an attorney; (4) look in other locales if you have the flexibility to do so; (5) consider part-time or contract employment while looking for permanent employment; and (6) keep your resume, cover letter, and writing sample current and polished.

This advice is elementary for most lawyers because lawyers already know how to search for a job. What we don't know is how to cope with losing one. Despite not having all the answers, I can share with you what I have learned in the past few months.

On the day I lost my job I emailed my friends and family to share the news. I wasn't surprised by the tremendous support and encouragement I received, but I was very surprised by the number of people who responded with their own stories of losing their jobs. Many of them had never shared what they were going through with me or with the vast majority of people in their lives. They thanked me for my honesty and for making something that has become far too common a little less shameful. The reaction I received to that email taught me that the most valuable choice I could make was to be open about what I was and am going through.

If you don't share what you are going through with the people in your life, you rob yourself of the opportunity to receive their support. It is easy to feel worthless after losing your job, but feeling loved reminds you that your worth does not come from being a lawyer.

Just getting through the day can be really hard. Losing a job is generally regarded as one of the most stressful events that a person can face, and that stress can lead to anxiety, depression, abuse of drugs or alcohol and other mental health issues. The Ohio Lawyers Assistance Program (OLAP) is available to provide confidential help to lawyers, judges and law students facing mental health issues and many private practitioners have experience assisting individuals who are coping with the loss of a job. OLAP's motto, "Problems are not a sign of failure but an opportunity for growth" should be your motto as you go through the challenges of being an unemployed lawyer.

Another source of support as you recover from the loss of your job can be your spiritual community. The counsel and prayers I have received from my church friends have given me perspective and hope on days when I felt like giving up. Just like with friends and family and with mental health professionals, your spiritual community is there to support you, but only if you reach out for help. If anyone can help you remember that your job is not everything, it is the people with whom you share your faith.

If you are unemployed, all you want right now is a job. I don't have a job to offer and I don't have any brilliant insights into getting one other than to use every resource available to you. Don't give up. What I can offer is the reassurance that you are not alone and that, if you reach out, there are a lot of people out there who care and want to help. Good luck!

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Nicole VanderDoes

Potential Pitfalls of Providing Financial Assistance to Clients in Need

By Rasheeda Khan,
Kegler Brown Hill & Ritter

Attorneys who routinely provide pro-bono or reduced-rate legal services to indigent or low-income individuals not only provide an invaluable service to the community by providing justice to all Ohioans but also fulfill their ethical obligation under EC 2-25. Helping clients with limited or no financial resources can be particularly frustrating, however, when the client cannot afford to pay his or her rent and grocery bills, let alone court costs, fines, administrative fees, etc. This is when the urge to provide financial assistance to a client in need can be the hardest to resist. Because you may potentially place your license to practice law at risk; don't do it without first reviewing Rule 1.8(e) of the Ohio Rules of Professional Conduct.[1]

Rule 1.8(e) prohibits lawyers from providing financial assistance to a client in connection with pending or contemplated litigation. This includes making or guaranteeing loans for living expenses. The prohibition extends to pending and contemplated litigation as well as administrative proceedings. The rule is in place because of the risk that lawyer-subsidized litigation could encourage clients to bring frivolous lawsuits or give the lawyer too much of a financial stake in the litigation.[2]

Rule 1.8(e) has two exceptions. First, "a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of a matter."[3] In other words, if there is a contingency fee arrangement and the litigation is successful, the client must repay the expenses. If it is not, the client does not have to pay. According to Comment 10 to Rule 1.8(e), if there is no contingency fee arrangement, the lawyer may *lend* a client "court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts."

Second, Rule 1.8(e)(2) permits a lawyer representing an indigent client to pay court costs and expenses of litigation on behalf of the client. Accordingly, a lawyer may pay court costs and expenses of litigation without an expectation of repayment only if the client is indigent. Furthermore, even though "expenses of litigation" is not specifically defined and is an arguably broad term, a lawyer should be careful not to pay for expenses that could be considered living expenses or a client debt.

Although we know that Rule 1.8 applies to both civil and criminal cases, there is very little authority addressing how the exceptions apply in criminal cases. On the one hand, court costs in a criminal case could be considered an expense of litigation. On the other hand, court costs in criminal cases are routinely well over one hundred dollars. That being said, a fine in a criminal case is clearly a client debt and a lawyer should never provide financial assistance to a client to pay it.

ABA Formal Opinion 04-432 addresses the sticky situation a lawyer can face when the client, who is a friend or long-time client, is in jail and cannot post bond. The opinion states that a lawyer may post bond to secure the release of a client, "but only in those rare circumstances in which there is no significant risk that her representation of the client will be materially limited by her personal interest in recovering the amount advanced. If the amount of the bond is inconsequential to the lawyer, then the risk of the representation being materially limited is low. Similarly, "there may be situations in which a lawyer who is a friend of the family of the client may expect that the family will indemnify her from loss when she has posted bond for the client in exigent circumstances."

Even when a lawyer's only motive for providing financial assistance is to help a client in need, a violation of Rule 1.8(e) will result in discipline. For example, in *Medina County Bar Association v. Kerek* (2004),[4] the lawyer loaned $450 to his client to avoid having her car repossessed and with the understanding that she would repay him upon settlement of her personal injury claim. The lawyer was publicly reprimanded. In *Cleveland Bar Ass'n. v. Nusbaum* (2001),[5] the lawyer advanced $26,000 for living expenses to a client who was injured in a motorcycle accident and could not work. The client testified at the disciplinary hearing that he could not have survived without his lawyer's financial assistance and would have had to settle for a lesser amount had the lawyer not provided assistance. The lawyer was found to have violated Rule 1.8(e) and received a public reprimand.

In *Cleveland Bar Ass'n. v. Mineff* (1995),[6] the lawyer wrote checks to his needy client during the pendency of the client's workers' compensation appeal. The client was only eating one meal a day and was about to be evicted for the second time. The Ohio Supreme Court in *Mineff* acknowledged that the lawyer's financial assistance was "needed at the time to live decently," and that the disciplinary violation was technical and not willful. Nevertheless, the lawyer was still disciplined and received a public reprimand.

Most recently, in *Cleveland Metropolitan Bar Ass'n. v. Podor* (2009),[7] the lawyer represented a long-time client and friend in a personal-injury action. During the pendency of the personal-injury action, the lawyer loaned the client $19,800. The client then repaid the loan using the proceeds of the settlement of the lawsuit. The lawyer, who had a prior disciplinary violation, received a one-year suspension, stayed in its entirety.

In its Statement Regarding the Provision of Pro Bono Legal Services, the Ohio Supreme Court encourages all lawyers to ensure access to justice for all Ohioans by participating in pro bono activities. Furthermore, the Ohio Supreme Court has regarded participation in these activities and/or providing legal services at a reduced rate to lower income individuals who otherwise may not have had representation as a mitigating feature in the disciplinary system. Just the same, as seen above, good lawyers with the best intentions who provide financial assistance to clients in violation of Rule 1.8(e) are subject to discipline.

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1. Prior to February 2007, Rule 1.8 was known as Ohio Disciplinary Rule 5-103(B).
2. See Rule 1.8, Comment 10.
3. Rule 1.8(e)(1).
4. 102 Ohio St.3d 228, 809 N.E.2d 1, 2004-Ohio-2286
5. 93 Ohio St.3d 150, 753 N.E.2d 184, 2001-Ohio-1305
6. 73 Ohio St.3d 281, 652 N.E.2d 968
7. 121 Ohio St.3d 131, 902 N.E.2d 488, 2009-Ohio-358

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Rasheeda Khan

Ethical Considerations for Young Attorneys Contemplating Nonprofit Board Membership

By Mark Hatcher, Baker Hostetler

At some point in your career you may be interested in serving as a director of a nonprofit organization or, better yet, a nonprofit client will ask you to serve on their board of directors because "your presence will bring credibility to the board." The probable reality in this situation is that the client sees this as a way to get free legal services. As a young lawyer eager to make an impact on society and give back to the community in some meaningful way, you may jump at this opportunity. Before you accept this appointment to help direct the noble work of the organization, a prudent attorney should consider some of the potential risks associated with sitting on the board of a nonprofit, whether solely as a director or as a director and general counsel for the organization.

Regardless of whether you serve on a nonprofit board solely as a director or as a director and general counsel, because you are an attorney, the organization will likely ask you to perform some type of legal service at some point. As such, an attorney must be mindful of the fiduciary duties imposed upon nonprofit directors, the ethical duties attorneys are sworn to uphold and potential conflicts that can arise. While a lawyer's service as a director of a nonprofit is not prohibited by the Ohio Rules of Professional Conduct, a lawyer/director's legal and fiduciary duties to the nonprofit corporation may present a "material limitation" conflict for lawyers who attempt to represent a client in a lawsuit against the nonprofit.[1] In Ohio, "[a] director shall perform the duties of a director, including the duties as a member of any committee of directors upon which the director may serve, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances."[2]

A material limitation conflict occurs when a representation, where there is a substantial risk the lawyer's ability to consider and carry out an appropriate course of action for the client, will be limited by the lawyer's responsibilities to another client, a former client or by the lawyer's own personal interests which may include a lawyer's fiduciary duties as a corporate director.[3] As a result, it would be a conflict of interest for a lawyer/director to represent a client in a lawsuit against the nonprofit because the lawyer's duties of loyalty and independence on behalf of the client would be limited by the lawyer's fiduciary duties to the corporation and the lawyer's personal interest in serving as a corporate director. The conflict of interest is even more apparent for the lawyer/director who also serves as general counsel to the nonprofit. For a lawyer/director taking on that "dual role" it would be both a material limitation conflict and a directly adverse conflict of interest where the dual role director attempts to represent a client who sues the nonprofit.[4] Furthermore, the conflict of interest is imputed to the dual role director's law firm, making it improper for a member of the dual role director's firm to represent a client in a lawsuit against the nonprofit.[5]

The risk of conflicts of interest in the dual role scenario as well as the potential challenges to preserving the attorney-client privilege should be considered strongly by attorneys contemplating taking on such a role. While you as a lawyer may understand when you are serving in the role of legal counsel as opposed to director, the members of the board may not be able to differentiate between the two roles and may believe that your presence at the meeting protects board communications. Lawyers serving in a dual role should consider clearly communicating to the board the role the lawyer is serving in when addressing the board and request that the minutes of the meeting reflect when certain communications fall within the attorney-client privilege. Other considerations for attorneys serving in a dual role include certain business risks such as inadequate or unavailable D&O insurance, inadequate indemnification, the loss of independent director status and the inability to vote on certain matters when conflicts arise. Lawyers should also keep in mind that as counsel for the organization, there is a risk that the lawyer may be held to a higher standard of care regarding decisions made as a director.

Serving as a director for a nonprofit organization can be a beneficial and worthwhile experience for young lawyers looking to make meaningful contributions to the public and give a new lawyer an opportunity to make valuable business contacts. Nevertheless, before an attorney accepts an appointment to a nonprofit board, he or she should realize that other non-attorney board members may view the attorney as serving in a dual role regardless of whether this is the case.

Before deciding to serve on a nonprofit board an attorney should:

Review the articles of incorporation, bylaws, corporate minutes and mission statement of the nonprofit.

Understand the fiduciary duties imposed upon nonprofit directors.

Review applicable state laws regarding immunity for actions taken while serving as a nonprofit director.

Review the organization's D&O liability policy and determine policy limits.

Review his or her professional liability coverage to determine whether legal services provided to the nonprofit on a pro bono basis are covered and whether there are any limitations when the lawyer is also a director.[6]

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1. Ohio Sup. Ct. Bd. Comm'rs on Grievances & Discipline, 2008-2 (2008).
2. ORC §1702.30 (B)
3. Prof. Cond. R. 1.7(a)(2).
4. Prof. Cond. R. 1.7(b).
5. Prof. Cond. R. 1.10(a).
6. Willard L. Boyd, III, "Lawyers' Service on Nonprofit Boards – Managing the Risks of an Important Community Activity" ABA Business Law Today, Vol. 18, No. 2 November/December 2008, available at http://www.abanet.org/buslaw/blt/2008-11-12/boyd.shtml

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"To Be or Not to Be a 'Government' Attorney"

Quote from Richard C. Pfeiffer, Columbus City Attorney

By Jennifer Anne Adair,
Assistant Attorney General

"Government attorneys have the privilege to be involved in many significant cases and matters that have broad implications. It is an awesome responsibility." Kathleen Trafford, Partner, Porter Wright Morris & Arthur.

A government lawyer can be found in the offices of the city and county prosecutors, the Attorney General's Office and State departments and agencies, the Justice Department, and as our judges, judicial law clerks, commissioners and elected officials. Each litigates, argues, makes policy, advises clients, negotiates, reviews contracts, drafts, enacts or interprets the law, and most important, has the ability to impact society.

"I do not believe one can get better experience quicker than as a government attorney." Judge, Franklin County Court of Common Pleas

Why should a young attorney consider starting a career in government? Chad Readler, partner at Jones Day says "… it was a perfect way to be introduced to the practice of law," speaking of his judicial clerkship after graduation. Government practice offers a hands-on, hit the ground running, sink or swim experience for the young attorney. But this experience is also coupled with support, mentorship, professional development and a collegial atmosphere. It is the perfect place to take advantage of a practical experience by excelling on projects and assignments, and participating in all opportunities presented.

"Flexibility in the advancement of a career is a benefit…career opportunities are endless and do not necessarily follow straight up or off a ladder." Sheryl Creed Maxfield, Chief Counsel, Ohio Attorney General's Office

A first year government attorney may have the opportunity to become first chair on major litigation, argue before appellate courts, draft legislation, or work on constitutional and policy issues that impact every citizen. Government attorneys develop skills that are easily transferable to other government departments as lateral hires. A young attorney may also have the opportunity to become an "expert" in a field of law sooner than a counterpart in a large firm private practice.

"The public sector provides a collegial atmosphere that is conducive to both personal and professional responsibilities." Amy Brown, Assistant Attorney General, Ohio Attorney General's Office

"Working in government does have its advantages. Typically a government attorney will receive a benefit package for insurance and retirement where the government employer pays a portion of the cost. Many young attorneys who are starting families sometimes find the government to be more understanding of time away from the office. Additionally, in government, many believe there is a better work/life balance as a result of the "forty hour" work week. It must be noted, however, that government attorneys routinely work more than forty hours and even some weekends. The major difference between the public and private sector is that the public sector is not a "business." The time spent in the private sector on client development and building books of business are spent by the government attorney with family and friends."

If "what you seek in life…is the pursuit of money, don't do it." Richard C. Pfeiffer, Columbus City Attorney

"The disadvantages of government work are also clear. Low starting salaries – need more really be said. A former government, now corporate attorney, states "…there are only so many six figure per year jobs…unfortunately the vast majority of them aren't with the government." It is imperative that the young attorney have a realistic view of the salary and his or her expenses. Making and sticking to a budget and investigating loan repayment programs can lead to healthy financial management. Additionally, the opportunity for pay raises is largely dependent on the agency's budget or attorney classification.

Another disadvantage may be the term "government attorney." Local attorney Kathleen Trafford reflected that "…when I practiced at the AG's office, I had a reputation as a good 'government' lawyer, it took me longer to be recognized as a good lawyer, without the qualification." She further stated, "I would like to think the view has changed, but I doubt it." James Ervin Jr., Of Counsel at Benesch Friedlander Coplan & Aronoff, believes that "…attorneys serving in the public sector typically must overcome misguided stereotypes … the fact remains that some of the best and brightest legal minds and practitioners are in the public sector." His advice is to "...not let such narrow-mindedness deter public service."

"Generally, I think private law firms view government service as a plus [because] of the skills and responsibility that young government lawyers attain more quickly than young private practitioners." Daniel Miller, Associate, Porter Wright Morris & Arthur

Something that should also be considered is how long a young attorney stays in government if private practice is the ultimate goal. If the goal is to get practical experience and then move to a large or mid-size firm, Aaron Granger, partner at Scottenstein Zox & Dunn, finds that "… anything after 3-5 years of government work can start to become a liability." As mentioned above, the private sector is a legal "business" where a book of business is its foundation. The government attorney who does not have a book of business, is not trained in attracting and maintaining business or not familiar with the "billable hour," may find a transition outside of the three to five year window difficult. Firms may also not be willing to retrain a "not-so-new" attorney. This may not be the case for a government attorney who has gained specialized experience in a complex area of law, such as securities or environmental law, and may be very marketable to a law firm who has existing needs and no expertise.

If the young attorney makes the choice "to be" a government attorney, finding a job involves the same steps as those in the private sector. Having a polished résumé, seeking advice and mentorship from established government attorneys and doing "homework" on the agency or department of interest is essential. In this economy, finding a job is difficult. The advice of Sheryl Creed Maxfield is to "…be persistent in trying to get hired. Employment opportunities are hard to come by right now because of the economy. However, as the economy improves more opportunities will become available."

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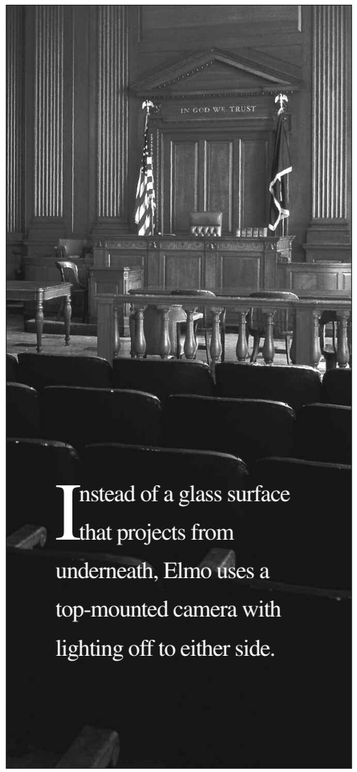
Say HELLO To ELMO

Elmo, the trade name it goes by, is the centerpiece of the courtroom. It is essentially a high-tech overhead projector.



By Michael E. Heintz,
Porter Wright Morris & Arthur

As we watch the new courthouse rise at the corner of High and Mound Streets, it is easy to think about life inside the new glass and stone building. Updated courtrooms with plenty of room to spread out, modernized lighting and color schemes, and improved facilities for juries and visitors. I encourage you to review Judge Frye's columns in the *Columbus Bar Friday* on the building's progress. While the target for occupancy remains fall 2010, one piece of the new courthouse is being tested now – electronic courtrooms. While no final decisions on the technology have been made, the Common Pleas magistrates are conducting a test of the new technology. Having just completed a six-day trial in the Common Pleas Court electronic courtroom (on the sixth floor of Municipal Court), the change could be significant for those not expecting it. Our trial went very smoothly, with only a few "hiccups" attributable to the technology, but that was due to the preparation and expectations of the attorneys. The technology will likely look similar to federal court. But even if you are familiar with courtroom technology, it is advisable to know "Elmo."

Elmo, the trade name it goes by, is the centerpiece of the courtroom. It is essentially a high-tech overhead projector. But instead of a glass surface that projects from underneath, Elmo uses a top-mounted camera with lighting off to either side. Elmo can project anything that fits onto its surface, including text, photos, graphics and other pieces of evidence used during trial. Elmo all but eliminates the need for foam-board blowups placed on easels. In the test courtroom, images are projected to four separate places: a large screen opposite the jury box for presenting to the room, a monitor in the witness box, a smaller screen on the bench and a screen at the judicial assistant's desk. This last screen allows the judicial assistant, the individual attached to the courtroom to administer the technology, to adjust the Elmo as needed. The judicial assistant has the ability to capture and print images projected by the Elmo. A laptop interface allows the laptop to project images through Elmo. While having the Elmo is convenient in its own right, it is only one piece of the electronic courtroom.

In conjunction with Elmo, the witness has the ability to "mark-up" images put before him. For example, if an aerial photograph is projected by Elmo, by using a touch screen in the witness box, the witness may "draw" on the image in order to indicate direction, pieces of equipment, vantage points and other information that may be relevant. The judicial assistant also has the ability to capture and print images with the witness's annotations.

Beyond evidence presentation, the electronic courtroom has other pieces of equipment. Currently, there is no court reporter. Instead, a series of cameras and microphones digitally record the proceeding. As a microphone is activated, a corresponding camera switches on to record the visual presentation by the speaker. Microphones are located at each counsel table, the podium, the witness stand, the bench and along the rail of the jury box. Counsel tables are also equipped with mute buttons in order to keep conversations between counsel and client off the record. In the short-term, the official, written transcripts will be transcribed from the video. The video recordings also allow you to take the transcript each evening to review for future work at the trial. This is particularly helpful if a trial extends over a weekend. In our trial, one counsel effectively used clips of witness testimony in his closing. Keep in mind, though, the video files are large and may not fit on the flash drive in your briefcase. Our six days of testimony totaled over five gigabytes of data.

Despite the benefits, there are some bugs to the system. First, the microphones have a limited range. Stepping away from a microphone during trial presentation may cause your words not to be captured in the recording. Second, remember the mute button. Even though the microphone's range is limited, it may pick-up otherwise privileged discussions that are not meant for the record. Conversely, a voice need not activate the microphone and camera; any noticeable noise, especially at the counsel table, will turn the equipment on. Third, be sure your laptop will interface with Elmo. Based on our experience, not all computers will communicate with the technology.

Finally, some words of warning. The technology it is not necessary to present an effective case. As a tool, its effectiveness is dependent on you. Nothing will ever take the place of thorough case preparation. In our trial, the different attorneys used it to different degrees, and some did not use it at all, instead relying on hard copy exhibits and verbal presentation. But remember, if you are going to use it, schedule time to become familiar with the nuances of the equipment. The current Judicial Assistant, Daniel Stover, is knowledgeable and an invaluable resource. You do not want to find yourself fumbling with unfamiliar technology during trial.

The expectation is that the new courtrooms will be equipped with litigation technology. This technology has the potential to change the dynamic of a trial. Courtroom staff has been very accommodating about experimenting with the technology and asking questions. If the technology appeals to you, make friends with Elmo before your opening statement.

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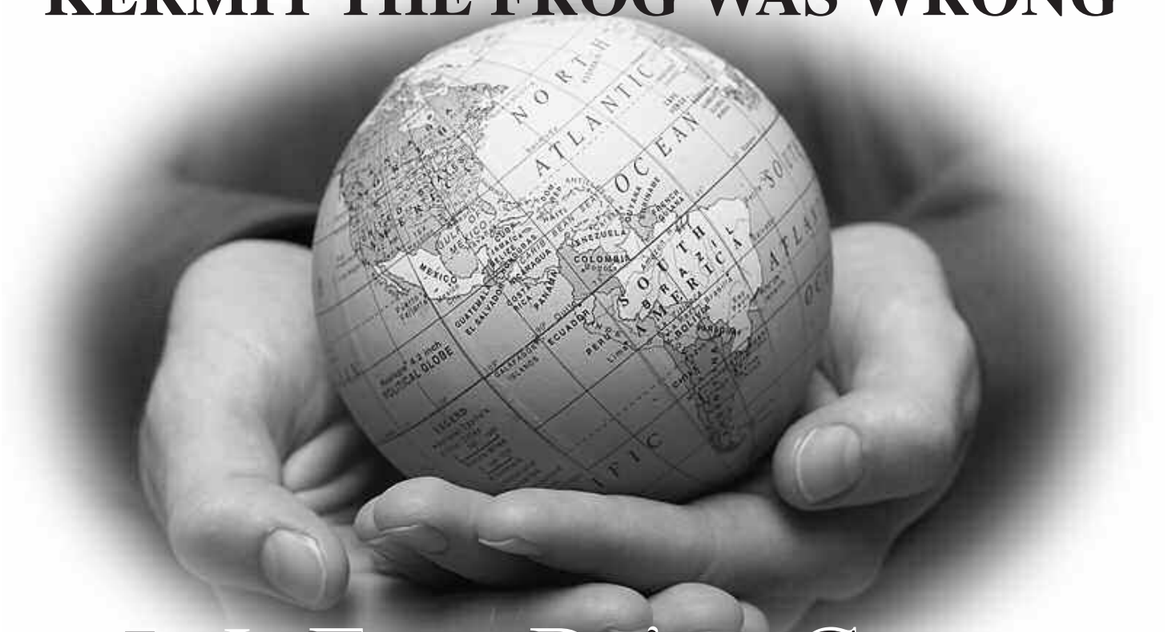
KERMIT THE FROG WAS WRONG



It *Is* Easy Being Green

At its core, green remodeling reduces the environmental impact on energy, water, material consumption, waste generation and harmful emissions, both indoors and outside

By Matt Austin, Mason Law Firm

Recently, we have been inundated with news that the real estate market continues to decline every month, new homes are no longer being built and people are spending what money they have left on remodeling their current homes instead of buying new ones. My wife and I are two of those people – sort of. We purchased an older home in December 2007 and just completed 18 months of renovating it to match our lifestyle and specifications.

So, as not to mislead you, we did not perform the renovations ourselves. Although my wife, (who is infinitely more handy around the house than I am) painted most every wall, many ceilings, all of the wood trim throughout the house, hung lights and installed door knobs and faucets, etc. I brought her flowers, poured her wine, and rubbed her aching muscles.

Through this process, we learned an incredible amount of information about renovating. The most surprising lessons were how easy it is to incorporate environmentally friendly elements into both our remodeling efforts and our daily lives.

Going Green Is Not Difficult or Costly

The National Association of Remodeling Industry (NARI), a professional association whose members voluntarily subscribe to a strict code of ethics, says "Green remodeling is beneficial because it results in lower operating costs for the home, increased comfort and resale value, healthier living, less maintenance and higher durability."

NARI's GreenRemodeling.org website is one of most extensive sources of information on green remodeling on the Internet, and NARI can identify and recommend a green remodeler for homeowners across the country through its local chapters. One such contractor, Bill Nicholson of Nicholson Builders, says that green remodeling has increasingly become a focus of the work his clients want done on their homes. According to Bill, "homeowners can pretty much make every part of their home more environmentally friendly, and many contractors who specialize in this area continually receive additional education and training that we then pass onto our clients."

At its core, green remodeling reduces the environmental impact on energy, water, material consumption, waste generation and harmful emissions, both indoors and outside on many of the estimated one million home remodeling projects each year, and homeowners who choose to remodel green can lower their energy consumption by 30-50%.

Green products are available for most any daily need and have various beneficial effects. They are energy or water efficient. They use healthy, non-toxic materials. They are made from recycled or renewable sources. They make current products you use more efficient or more durable. They are recyclable or biodegradable.

Below are specific ways you can help conserve the environment, modernize your home and ultimately save money in both materials and energy consumption.

Inside Your Home – *All About The Air*

Your HVAC system should have at least a bi-annually checkup to make sure it's running efficiently. Also, install a programmable thermostat that allows you to cool or heat the whole house or individual rooms at different times, as necessary. These are extremely inexpensive, can be purchased at any hardware store, installed in less than half an hour and will immediately begin paying for themselves through lower utility bills.

According to the EPA, the air inside your home could be up to five times more polluted than the outside air. Air purifiers help clean the air by capturing microscopic contaminants and many new air conditioning manufacturers provide HEPA (high efficiency particulate air) filtration systems built into the duct work.

Appropriate ventilation is also critical to suck bad air out of your home and bring fresh air in. Exhaust fans in kitchens and bathrooms remove odors, bacteria, humidity and cut down on mold growth. They also greatly neutralize major polluting contributors like tobacco smoke, smoke from the burning of wood, coal, or kerosene, toxic fumes from sealants or chemicals from cleaning products, lead paint, asbestos from insulation, damp carpets or fabrics and certain pressed-wood furniture products that release chemicals into the air.

Despite all this talk about letting air get out, make sure to plug air leaks! Leaky windows, doors, fireplaces, light switches and ceiling lights negate many of the benefits of a programmable thermostat. Sealed leaks also prohibit excess dust and allergens from entering your house. Lastly, make sure the attic entrance is sufficiently sealed so when doors and windows open and close the change in air pressure doesn't suck attic debris into your living area.

Use products that don't give off volatile organic compounds (VOC). And you thought everything organic was good! Low-or-no-VOC products greatly improve your indoor air quality and protect your health. Look for low-VOC paints and cleaning products. VOCs are emitted by a variety of home improvement products, including paints, lacquers, paint strippers, cleaning supplies, pesticides, building materials and furnishings. VOCs pollute indoor air and have adverse health effects.

What About Water and Wood

Water quality is a precious resource. Instead of drinking water from plastic water bottles, use a water filtration system that removes sediment and chemicals from tap water. Install aerators, available for a few dollars at home supply stores, to sink faucets and change to low-flow showerheads. And, of course, use appliances that are ENERGY STAR qualified.

Flooring choice is also important. For some, carpet is an allergy trigger. Instead, use environmentally preferable and rapidly renewable wood alternatives such as linoleum, bamboo, recycled-content tile or non-VOC carpet. Choose wood products from sustainably managed forests, like those certified by the Forest Stewardship Council. And use locally sourced products when possible to reduce carbon emissions from transporting products.

Endless Electricity

With green power, you do not have to change your electricity provider. Instead, customers just pay a premium on their electricity bills to cover the extra cost of purchasing clean, sustainable energy. Contact the U.S. Department of Energy or AEP for more information.

Switch to compact fluorescent light bulbs. CFLs are a huge energy saver and have a much longer life than other bulbs. Lighting represents nearly 20% of a home's energy consumption and changing five of the most frequently used bulbs in a home can save $100 per year on electric bills.

Today, a home's entertainment system goes far beyond a television and stereo player, and electronics manufacturers provide consumers with green alternatives. For example, flat screen LED TVs are ENERGY STAR qualified, provide 40% more energy efficiency than LCDs, have energy savings modes and are lead and mercury free. Surround sound speakers have energy efficient amplifiers that go into sleep mode when the system is idle, and they are free of lead, cadmium and mercury. Computer networking products reduce power consumption up to 80% over previous models and also are lead and mercury free.

Outside Your Home

Solar power technology that uses solar cells or solar photovoltaic arrays to convert light from the sun directly into electricity or heat saves energy costs for many homeowners. The U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy can help you find the right solar solutions for you. But be careful, Ohio is one of the worst states for solar power in the country!

When landscaping, use native plants and avoid high-maintenance landscaping. Native plants have adapted to our local soils and climate over thousands of years. They need less water, fertilizer and pesticides. The Environmental Protection Agency has additional information on green landscaping techniques.

Where to Begin

Many people don't know where to begin. They have no idea if their home leaks air or what plants are native to central Ohio. At a minimum, you should have an energy audit conducted on your home. For a few hundred dollars, a professional will identify where you are losing energy costs – literally throwing money out of the window or flushing it down the toilet!

For those more ambitious remodelers, the United States government currently provides **tax** credits for energy efficient upgrades. Tax credits up to $1,500 are provided to cover 30% of the purchase price of new energy efficient windows, air conditioners, water heaters, and insulation. Generally to qualify, the product must be 15%-20% more efficient than standard models. But, whether somethings qualify is a bit tricky, so check out www.energystar.gov for accurate, updated information on the tax credit.

Whatever level of greening you do to your home, all of us will be better off for it.

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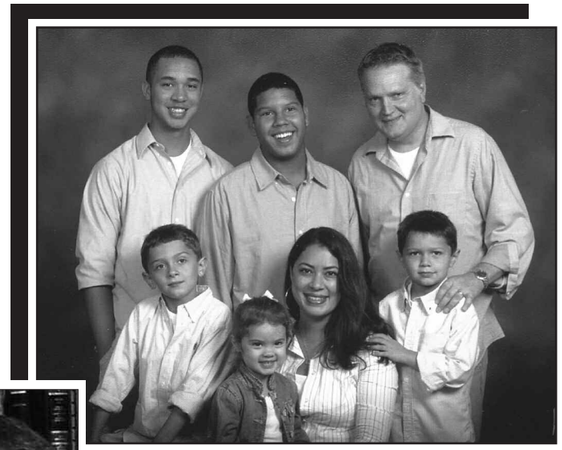
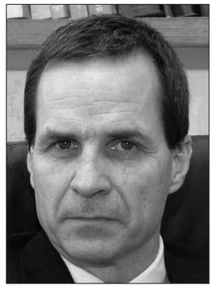
Matt Austin

THE RACE FOR THE MUNICIPAL COURT SEAT



Brown Family



Hummer Family

By Janica Pierce Tucker, Chester Willcox & Saxbe

This November, two individuals will be running for the retired seat of Judge Grubb for the Franklin County Municipal Court. All the other judges standing for reelection are unopposed.

The court, composed of fifteen judges and six magistrates, has been termed by many people as being the "people's" court as it interfaces with people of all facets of life and diverse backgrounds.

When interviewing the candidates, Richard ("Rick") Brown and Magistrate Mark Hummer, both commented about the volume of cases which appear on the court's docket on a daily basis and stressed the importance of efficiency in the court to ensure that the litigants, the attorneys, and the public are well served in a fair, accessible, effective and efficient manner.

Rick Brown graduated from Capital University Law School in 1994. He is a trial lawyer with extensive experience in defending people and organizations in civil damage lawsuits. As part of his professional tenure, he has gained experience in all phases of litigation – from discovery and motion practice to trial and appeal.

Mark Hummer graduated from Capital University Law School in 1985. After graduation, he served as a bailiff for Judge Richard H. Ferrell and began as a part-time referee magistrate in August 1990. Since August 1992, Hummer has served as a magistrate for the Municipal Court where he hears trials and makes decisions on small claims and eviction cases and accepts pleas and sentences defendants in traffic arraignment court.

I had the opportunity to interview each of these gentlemen regarding their views on the municipal court. Both candidates have a plethora of experience within the court system.

Q. If elected, what are some of your goals with respect to managing the municipal court docket?

A. *Rick Brown* – Time management is very important to ensure the efficiency of the court, as well as communicating with the lawyers involved in a case, and making certain that the docket follows the schedule as the court must be cautious.

A. *Mark Hummer* – Ensure that each case is given the sufficient amount of time and attention for the case. For efficiency, some cases may be resolved within a few minutes while others may take additional time. In looking at the docket, try to allot the appropriate amount of time so that every case is given the attention it rightfully deserves.

Q. What strengths do you feel that you bring to the municipal court?

A. *Mark Hummer* – I have served as a magistrate for the last 17 years and I have extensive experience in the matters that come before the court. In addition, as bailiff under the Hon. Judge Ferrell, I was able to deal with attorneys, court personnel, and members of the public in ensuring that the court room ran smoothly, as well as assisted the by helping with setting bonds and any other matters that came before the court. Because of my work with the court system, I believe this experience will help me with every aspect of the municipal court.

A. *Rick Brown* – I have been a trial lawyer for 15 years and have tried a hybrid of civil cases that allowed me to navigate through all aspects of litigation from discovery and motion practice to trial and appeal. I have also served as a managing attorney and that enhances my ability to work well with court personnel assigned to my chambers.

Q. If elected, how will you deal with any learning curve when transitioning from current position to municipal court bench?

A. *Rick Brown* –I have begun to shadow many of the judges at the municipal court level to observe the sentencing process and how the docket is managed. I have researched as well as conversed with others about the different misdemeanors and felony cases so that I understand the range of offenses and how sentencing is conducted within the municipal court.

A. *Mark Hummer* – I continue to be prepared and to stay fresh on topics that are new to the court. I have taught continuing legal education courses for magistrates and judges at the Ohio Judicial College and make sure that I am up to par on relevant issues that are important to the judiciary. I maintain an open communication with my staff; therefore, with the learning curve, if any, I will transition nicely.

Both Mark Hummer and Rick Brown consider family as an important, essential part of their lives. Hummer is married to Janine Amid Hummer, City Attorney of Upper Arlington, and they have four children ranging from the age of 7-15. Rick Brown is married to Lianne Brown, and they have five children ranging from the ages of 8-19. Both candidates speak highly of their involvement with their families and sports activities and how they will continue to maintain their relationships with their families throughout the campaign process as well as if elected to serve as municipal court judge.

Each candidate believes that a municipal court judge should have a judicial temperament that is approachable, accessible, as well as respectful to the parties. In terms of sentencing, it was a theme of both Mark Hummer and Rick Brown that a judge must decide on a case-by-case basis whether the crime warrants the punishment; in other words, in lieu of jail, properly utilizing available alternatives in place within the specialty courts or community services. However, both candidates agreed that the rules will be followed to ensure that people are sentenced appropriately not only to protect the community but also in an effort to rehabilitate the individual.

For more information about the two candidates, please visit their respective websites:

Richard Brown – *www.rickbrown4judge.com*
Mark Hummer – *www.hummerforjudge.com*

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Janica Pierce Tucker

Better Lawyer
a columbus bar publication for new lawyers

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Mark Hatcher
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Rasheeda Khan
Kegler Brown Hill & Ritter

Matt Austin
Mason Law Firm

Michael Heintz
Porter Wright Morris & Arthur

Calendar

October 29 - Municipal Court Judges Lunch at the Columbus Bar offices
You'll be able to discuss practice, in and out of the courtroom, with a small group of peers and one of the judges over an informal lunch.

November 10 - December 15 - New Lawyer Training
Spend your Tuesdays with the Columbus Bar. Our CLE department has developed over 14 specialized hours to satisfy the Supreme Court of Ohio New Lawyer Training requirements.

December, Date TBD - Social Event for Young Lawyers.

February 6 - Rock 'N Bowl for Nationwide Children's Hospital
Our new lawyer members will have a chance to be part of this community fundraiser. Proceeds go to Nationwide Children's Hospital.

March 30 - Law Student Night with the Columbus Blue Jackets
This annual event provides local law students the opportunity to network with committee members while enjoying a night on the Ice with the Columbus Blue Jackets.

April 22 - Lunch with the Common Pleas Court Judges at the Bar.
Roundtable style, like the November Luncheon.

May - Helping Hands Month
New lawyer members are recognized for their service to the Central Ohio community.

June 9 - Summer Happy Hour
Each year, we hold a special summer party as a thank you for our dedicated new lawyer members and use the opportunity to get to know new people.

We'll continue to add events with our community partners throughout the year. New Lawyer members will receive invitations over e-mail. Announcements will also appear in the Columbus Bar Friday section of The Daily Reporter. Check the New Lawyer's page on our website for up-to-date calendar events.

Considerations for the Aspiring Small/Solo Practitioner

By Matt Austin,
Mason Law Firm & Mark Kafantaris,
Kafantaris Law Offices

The allure of working for a large law firm enticed many of us to seek dozens of job interviews with large firms in our second year of law school. The prospect of practicing law making six figures was a big incentive, as well as the prestige and omnipotence of these firms. The reality, however, is that the vast majority of us – 80% according to the American Bar Association – end up in small firms, or practice by ourselves.

It is not clear what makes a law firm "large," and this often depends on its geographic location. Thus, while a 60 lawyer firm is plenty big in Columbus, it isn't big for New York City, where large firms boast as many as several hundred lawyers. Yet, even these mega firms operate in many ways as smaller firms. Separate departmental practice areas invariably group attorneys into smaller packs, and oftentimes attorneys share the same nearby secretary. The true muscle of the law firm comes from its ability to pool large resources where they are needed, be it other lawyers, staff or support services. Moreover, large firms can make better use of idle time of the staff by having workers assist another lawyer or department in the firm while the others are tied up in court or depositions.

In these economic times, however, much of the regular work has dried up and the lawyers have less work to bill their clients. This has been frustrating to established firms that have been burning through cash to stay afloat. Lawyers who once billed forty-five hours in the same week last year find themselves struggling to bill half of that per week this year. Nonetheless, firms continue to dole out regular pay checks (minus bonuses) to lawyers and try to keep them busy with volunteer or pro bono work. Large firms thus are not immune to today's harsh economy, though they bear it with more fortitude. Their aggressive hiring, however, seems to be a thing of the past.

This change in law firm momentum seems to have jump-started the creation of new solo and small law firms. And with an abundance of resources around, hanging your own shingle is not as perilous anymore.

To get started, of course, you will need to be resourceful with an entrepreneurial spirit. No one will hand you work. You will not have legacy clients, and you will not be able to count on a certain amount of revenue from long term clients each year. Your case load, and therefore revenue, will be inconsistent. Feast or famine will be all too familiar. Frugality and planning are paramount.

The solo firms that last are often the ones that have created a niche and have successfully marketed their services. Lawyers should specialize in something – and resist the temptation to take whatever comes in the door – once income becomes more stable. Solo firms ought to carve out an area of law for themselves in which they are particularly proficient and work to perfect their practice in that area.

Even with an established niche, marketing is necessary to bring in business. Tasteful advertising that provides honest information about a firm's services does not diminish the standing of our profession, and in fact can provided a public service to those in need of our assistance. The least expensive way to do this is with a website with lots of content ("How to" articles," "What if" scenarios, and pertinent "Q&A") to prospective clients who visit there. For those more comfortable with computer technology, a blog, Twitter account, or Facebook page can have some use, so long as they remain focused on business, rather than socializing.

Here are some nuts and bolts suggestions for those considering solo practice:

Business Plan: Create a concise memo clearly identifying the reason for starting the practice, your target clientele, your marketing initiatives, and your budget. Include where you would like to be in one year and five years. These are not only goals, but rules to live by; for example, if you have a $1000 marketing budget, do not exceed it despite prospective gain.

Choice of Entity: Learn the different ways a firm can be created and decide which is best for you. Consult with an attorney well-versed with regard to the professional responsibility rules.

> To get started, of course, you will need to be resourceful with an entrepreneurial spirit. No one will hand you work. You will not have legacy clients, and you will not be able to count on a certain amount of revenue from long term clients each year.

Business Name: The Ohio Supreme Court has stringent rules on law firm nomenclature. For example, you will likely designate the principals in the business name, though the Supreme Court has recently relaxed things a bit in this regard. Likewise, a solo practitioner cannot refer to his firm as a "Group" or use "and Associates" in the firm name and marketing must not be considered deceptive in any way.

Federal Tax Identification Number (aka "EIN"): All entities must have this unique number to pay federal income taxes. A Federal Tax ID is to an entity what a Social Security number is to an individual. Work with an accountant to obtain an EIN and plan for taxes.

Office Space: Choose office space based on both your clientele and your budget. Working from home is an option for some people, but for others the distractions ultimately become prohibitive. If you will be in court most days, find space near the court house. If you are interested in probate work, find space near well-to-do suburbs where it will be most convenient for your prospective clients. Share a lease with others to split the cost of rent and overhead. Officemates are also good sounding boards for legal strategy and are a wonderful resource for guidance.

Many new attorneys covet a great office in a marquee building. But as your practice develops, you will likely view office space as just overhead.

Malpractice Insurance: A must unless you are willing to provide each client with a disclosure to the contrary. Obtain quotes through bar associations, trade associations and private brokers. Then bite the bullet and get insured.

Now you need to furnish your office and begin implementing your marketing plan. Initially, attorneys need very little: a laptop computer, smart phone, high speed Internet, and a combination of printer/scanner/copier/fax machine, along with regular office supplies like pens and paper. Below is a little more detail about each of these items.

Computer: A laptop computer is essential. Part of the benefit of being solo is that you can work anywhere you want, from the coffee shop or the court house. Make sure your laptop has an internal air card so you're always connected.

Software: A computer is only as good as its software, and Google Apps is one of the best for solos and small firms. For $50/year, it provides email, calendar, telephone, and shared document support. You also need a billing program.

Smart Phone: This goes without saying. You need the mobility of a cell phone that can send and receive email, use the Internet, as well as download attachments.

All in One: Lawyers are constantly printing, copying, scanning and faxing. Reliable and professional grade equipment is critical.

Virtual Assistant: You're an attorney, so act like one. In the beginning you will type your own letters, answer your own phone, send out your own bills, file your own paperwork, etc. All of this effort reduces the time you have to market your practice and tend to your clients' legal matters. For a modest hourly rate, virtual assistants perform secretarial (and even some paralegal) tasks without the burden of hiring these individuals as employees.

These considerations might seem overwhelming to some, but no one said running your own business would be an easy task. It can, however, be a rewarding experience full of flavor and adventure.

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Matt Austin

Ethical and Business Considerations for Lawyers

Linking-In, Tweeting, or Facing Off on Facebook

By Lisa Kathumbi

Social and professional networking websites have dramatically changed the way we communicate. Today, a lawyer can catch up with law school friends or colleagues, showcase their expertise, identify business opportunities, and connect with current and potential clients without even leaving the office. As lawyers, however, we must remain mindful of our professional responsibilities and of the potential risks.

Top three sites where you are likely to find members of the Bar:

LinkedIn

Presently the most popular networking site for professionals, including lawyers, LinkedIn boasts over 43 million users in over 200 countries. LikendIn users can request and give referrals, share blogs and join groups based on both personal and professional interests.

Facebook

While Linkedin has long been seen as the online network of choice for professionals, more and more professionals are spending their time expanding their network on Facebook. Through formal contact (messages), informal contact (wall posts), event announcements, and opportunities to join interest groups, Facebook is reportedly helping lawyers obtain and give referrals and also land clients.

Twitter

Launched in 2007, Twitter is a social networking and "micro-blogging platform." It allows for an interactive experience among users who can subscribe to other users' "tweets," respond to them publicly or privately, or "re-tweet" them to other users. Lawyers are using Twitter to connect with potential clients and develop their expertise through blogs, links to their publications and by responding to legal questions from users.

Remember Your Ethical Duties

While social and professional networking websites present many benefits, lawyers must ensure that their online professional profiles and social networking activities do not violate the rules of professional conduct. Lawyers should be particularly mindful of the rules regulating lawyer communications, advertising, solicitation and referrals. For example, Ohio limits real-time communications with prospective clients, which includes online chats and instant messaging, which are common features of social networking sites.[1]

Having a bad day at work? Today, many people use their Blackberries to vent their frustrations. Lawyers who blog, tweet or post status updates with negative comments regarding a member of the bar run the risk of violating Rule 8-102(B), which prohibits false accusations against a judge or adjudicatory officer. The Preamble to the Rules explains that although a lawyer, as a citizen, has a right to criticize officials, "the lawyer should do so with restraint and avoid intemperate statements that tend to lessen public confidence in the legal system."

Tips for Lawyer-Employers

Many employers, including legal professionals, have also turned to social and professional networking websites as an easy and affordable way to identify potential job candidates and to monitor the conduct of current employees. These types of searches are not without risk. They can potentially expose a business to legal liability for discrimination, invasion of privacy, violation of the Fair Credit Reporting Act or other state and federal laws. If you are using information from networking sites to help make employment decisions in your practice you should: (1) conduct searches on potential candidates uniformly; (2) be careful about relying on information that a user has created privacy settings to protect; and (3) consider developing or encouraging your office to develop an off-duty, off network policy that clearly defines expectations.

See You in Cyberspace

With the White House recently unveiling its trio membership in Facebook, MySpace and Twitter, social networking websites have undeniably become an integral part of American culture that lawyers will likely have to adapt to remain competitive. Because social and professional networking websites are still relatively new, however, the law in this area is largely untested and it is difficult to fully evaluate the risks. By keeping in mind your ethical obligations and taking steps to minimize the potential risks, it is possible nonetheless to fully enjoy the many benefits and opportunities that social and professional networking websites have introduced.

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1. Rule 7.3 of the Ohio Rules of Professional Conduct.

Lisa Kathumbi

Young Lawyers Should Decompress with Non-Legal Community Work

Getting away from the law is thus a good idea to regain our composure. Non-legal volunteer work is an outlet that can help us decompress and heal the inherent wounds left by our daily routines.

By Mark G. Kafantaris, Kafantaris Law Offices

Law school, the rigorous bar exam and several years of practice make it natural for us to see the world through the familiar lens of the law. This, however, can become a myopic view if we do not make a conscious effort to regularly step back from the law. One way to decompress is to volunteer in a non-legal capacity. This may disappoint community organizations who want us precisely for our expertise with the law. Indeed, a short effort on our part can save such organizations hundreds of dollars and countless headaches. We recognize this and thus often volunteer our legal skills – and do so gladly. Nonetheless, it is legal work that we do for them, and though helpful, it does not provide us with the perspective we may need to shake off the legal mentality.

A country lawyer had a farm some years back and worked it himself in the evenings. When other lawyers would ask him how things were at the farm, he would often reply simply that "we make Grade A milk." It wasn't exactly clear what effort went into making milk, but whatever it was, this lawyer was very proud of it. This example illustrates the point: lawyers need to find a non-legal activity that produces something tangible or contributes to the community. This might entail providing a helping hand in a homeless shelter, a soup kitchen or a food drive, a neighborhood watch, a tree planting weekend, a car pool registration, or any of the myriad of other civic activities that come to mind. Civil service allows lawyers to mix it up in non-legal settings and without our attorney credentials on our sleeve. It also allows attorneys an opportunity to take stock in our community and build valuable goodwill in the process – something that is especially valuable to the many "transplants" that stay in Central Ohio after law school.

If it is true that attorneys take themselves too seriously, then it seems that an alternative non-legal activity can help clear our minds and regain perspective. Yes, attorneys are dealing with serious matters with far reaching consequences. Yes, attorneys are trained to put our feelings about the case aside and do a good job regardless. And yes, we are pretty good at what we do. But it is a 24/7 enterprise – whether we recognize it or not. Thus, while the butcher, the baker and the candlestick maker may leave their craft behind when they go home, we take it with us and it is ready at hand even in our ordinary dealings with others. The butcher wants to know if he can still reject the questionable beef he got yesterday and the baker is wondering if he can stay home to nurse his wrists swollen from carpel tunnel. And the candlestick maker wants to sue because his pension is gone when the company filed for bankruptcy. As we may know something or the other about these matters and carry that knowledge with us like the turtle that carries his house on his shoulders, we continue our practice day and night in the rain or shine. Temptation aside, we must find ways to escape the legal meat cooler and interact with people outside the law. Like the country lawyer, we need to find time to make our own Grade A milk so we may preserve mental balance and ultimately find our compass.

How is this possible in a profession that demands seventy-hour work weeks, almost as many billable hours and pro-bono work to boot? True, hard work is a rite of passage for the young lawyer and we have little patience for slackers in our profession – and even less for those who are ready to cut corners. Nonetheless, this monolithic work habit regularly comes to roost on us personally and the sacrifice is borne daily by our suffering families. Each of us has only so much legal energy to put forth, and though we can squeeze more out from time to time, in the end we are spent and not much good to anybody. So, although we have accommodated the senior partner's eleventh hour memo request, we have done it at tremendous expense to ourselves, our families or other important commitments.

Getting away from the law is thus a good idea to regain our composure. Non-legal volunteer work is an outlet that can help us decompress and heal the inherent wounds left by our daily routines. We love the law and it remains the greatest profession. Warts and all, few of us would change it. A change of scenery, however, can go a long way to put things in perspective and we should welcome it.

Those interested in learning more about volunteer opportunities in our area may wish to visit Volunteer Match, a web-based organization committed to connecting good people with good causes. On the web at: http://www.volunteermatch.org.

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Mark G. Kafantaris

Family Fugues*

***A contrapuntal composition for a fixed number of parts referred to as "voices," opening with one main theme. Though there are certain established practices, composers approach the style with varying degrees of freedom and individuality.**

Wikipedia (paraphrase)

Bill and Scott

Practicing Law – Father and Son
William S. Friedman and Scott N. Friedman,
Friedman & Mirman

They have been practicing law together for eleven years. It is a niche practice specializing in family relations. They have another partner, Denise Mirman, and four other associate attorneys.

The practice of law and process of running a small business has been overall a joy for both father (Bill) and son (Scott). The key to the joy is the mutual respect they have for each other. From the beginning, despite the fact Bill had been practicing for over thirty years when Scott started, Bill always valued Scott's opinions on cases, business and other matters pertinent to running a successful practice. They motivate one another to do better; they have worked together on hundreds of cases and family law matters. The work of a father and son is appealing to their clients who appreciate the relationship, because they communicate daily at all times and hours. Neither of them sleeps well, so it is common for them to be emailing each other about cases between 2 a.m. and 5 a.m. They meet and talk weekends, holidays, and other family events about their cases and practice. It is often said the practice of law is a 24/7 job. They agree.

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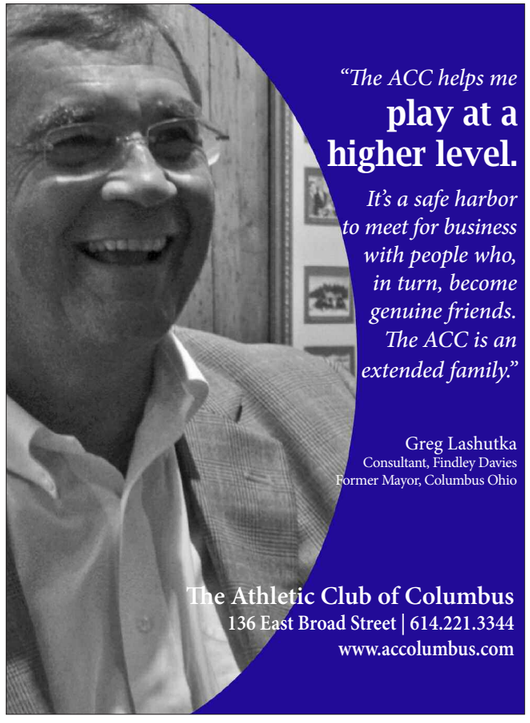

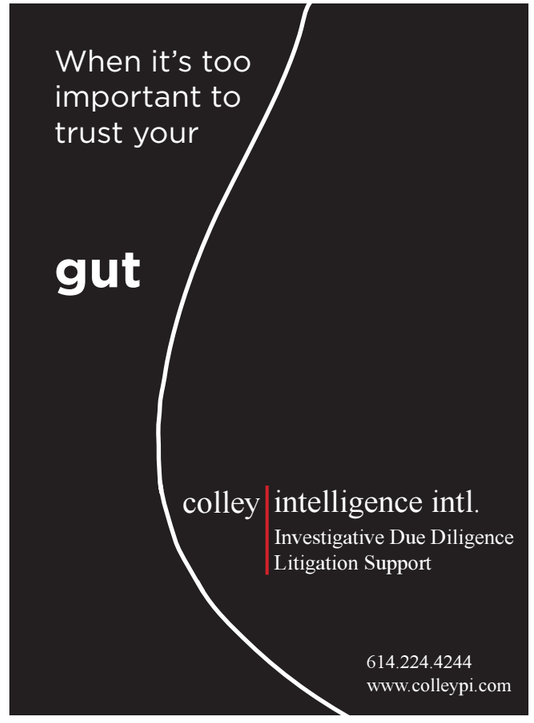

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There have been rough moments. Bill has had trouble criticizing and correcting Scott, and Scott has been at times defensive about being criticized. Because of that, the addition of a third partner, Denise, has been extremely helpful. The three meet regularly in and out of the office. They talk about the good and the bad, working out the problem-solving together. Denise has become, one of the family.

When asked to contribute to this article, Bill responded and Scott agrees so perhaps Bill's paragraph sums it up best:

"My son Scott has always been my best friend; although I did not encourage one way or another, he chose what was really his calling, Law, and then in 1998, to join my practice which I began in 1973. From the time we began anew, I have enjoyed the practice all the more and spending the days with him is the happiest part which makes me honestly feel sorry for his mother who doesn't get to do so. Scott's oldest son, fortunately or not, seems as much born to the profession as did he and whether I am here or not I smilingly envision the next generation and Scott enjoying his son as I do mine. I do want to add the only possible negative: As I age, I notice he makes the smaller decisions like location of practice, hours, pay, personnel; and I – the larger ones like cures for the national recession."

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Heather & Bea

Practicing Law – Mother & Daughter

Heather & Beatrice Sowald
Sowald Sowald Anderson & Fawley

After almost thirty years of partnership, my mother and I still have a great office and personal relationship, and have never had any disputes. Perhaps the reason we have enjoyed our partnership is because we maintain separate practices, or maybe it is because our different personal styles complement each other, or it could be due to the fact that this mother-daughter team created their firm together.

Beatrice Sowald, my mother, was the supervising attorney for the family law unit of the Columbus Legal Aid Society when I passed the bar in late 1979. She left Legal Aid so the two of us could practice together.

In early 1980, we formed Sowald & Sowald, the only mother-daughter law firm in the state. While Bea knew how to practice law, she had never had to bill clients or worry about the business aspect of running a law office. Both she and I found ourselves learning together how to hire (and fire) employees, set up a billing system, and manage all of the other aspects of running a business.

Our first employee was a first year male law student. It wasn't unusual for him to show up at the office dressed in his tennis whites. It was odd enough at that time for the lawyers to both be female, but it was even odder that a male was answering our telephone!

When I had my first child, I brought him to the office with me every day until he was able to crawl and open file-filled drawers. In the meantime, a portable crib had been set up for him in an extra office. It was not unusual for clients and attorneys to hear the baby in the background during telephone calls.

My mother was appointed in 1984 to serve as a judge in the local courts. She returned to practice with me in early 1986, thereby automatically giving me seniority in the firm (which I still enjoy to this day). In the meantime, I brought another partner into the firm. Over the years, the firm has continued to grow, and our AV-rated domestic relations firm currently has five partners and one associate, and is now known as Sowald Sowald Anderson & Hawley.

Several years ago, my mother and I co-taught a class on domestic relations at Moritz College of Law. We chose the course text, developed the lesson plans, and drafted and graded the exams together, but we divided the teaching. I taught the Tuesday classes and My mother taught the Thursday classes during the semester.

We have both had very active practices and have devoted much time to "giving back" through the Columbus Bar and Ohio State Bar Associations. As a result, even though we are both at the office every day, we often have to call the other at home just to catch up on work and family matters.

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Practicing with your Son - Father's Perspective

By R. Douglas Wrightsel
Wrightsel & Wrightsel

Moving from a lifetime in a large firm to a two-lawyer firm is quite a transition.

Pros
You see your son and his family on a regular basis.
Conflict checks take around fifteen seconds.
Conflicts virtually never occur.
Firm approval of new clients and matters take a "Hey, Brad."
Your son believes you know something after all.
My companion, Duchess, can visit the office.
Firm meetings do not involve a lot of hot air.

Cons - (There aren't many)
You have to get your own coffee.
The deference accorded a senior partner is less than you've become accustomed to.

Brad and Doug

Firm distributions sometimes are not regular.
Sometimes one memorandum isn't enough to get a timely response.
Your office backup for computers, etc., depends upon your son's availability.
Firm contributions have a direct impact.

Conclusion – It's great.
Sorry we waited so long to try it. Every parent should hope for the opportunity.

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Son's Perspective

By Bradley B. Wrightsel

I have practiced law with my father for approximately nine years. The good news is that it is the best job that I have ever had. That fact certainly was not a given going into our newly-formed firm. First, the difficulty of our transitions to a small firm setting was varied. Second, while you obviously feel that you know your father pretty well, you never know how that will translate to a work environment.

The transition for me was relatively easy. I already knew how to answer the telephone, turn on my computer, perform legal research and prepare documents. On the other hand, my father, coming from a large firm, was in uncharted waters. After all, there is no mail room, no IT department, and there are no associates. I occasionally hear the yell of my name down the hall (yes, we have a telephone system) when his computer is not doing what he wants it to do.

I still have people ask me what it is like to practice law with my father. I am being honest when I reply that it is a lot of fun and I am happy we decided to give it a try. My father acts as a partner, a mentor, a law professor, a friend and sometimes even as an English teacher. And not everything has changed for my father. I get rather formal memos that are occasionally followed up by other formal memos when the original memos are not addressed with the timeliness envisioned by the sender. It's all good.

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WHEN PARENS PATRIAE GOES WRONG

DEVASTATING CONSEQUENCES IN JUVENILE SEX OFFENSE CASES

By Angela Wilson Miller

The professed purpose of R.C. 2907.02(A)(1)(b), Ohio's strict-liability prohibition against rape, is to "protect the young and physically immature victim from sexual advances."[1] To effectuate this purpose, the statute establishes the age of consent at 13. But when applied to juvenile cases, this provision has led to truly bizarre results. And, given the fact that many sex offenses cannot be sealed or expunged, the penalty for consensual sex between two minor children is long-lasting.[2]

The increased attention paid to sex offenses and sex offenders has had a definite impact on juvenile cases. Behavior that years ago would be deemed inappropriate "horse play" or "experimentation" and resulted in a call to the parents is now often assigned a juvenile case number. Within a one-year period, two appellate cases bear mentioning raising questions as to whether the matters should ever have proceeded in juvenile court.

The initial case involved a child-defendant who had significant learning disabilities and was "retained" so that he was two years behind his peers in school. The child-defendant developed a "boyfriend-girlfriend" relationship with a girl in his class. In "love letters" contained in the court file, the girl, not learning-disabled, suggested a sexual relationship with the child-defendant. The two were "caught" when they decided to run away together. The child defendant (age 14) is now spending a minimum of two years at the Department of Youth Services for rape and may be held until his 21st birthday. The girl (age 12) was never charged with anything. Sex offense registration for the child-defendant (tier level) is yet to be determined. If the Supreme Court of Ohio determines that sex offender registration is offense-based, as it is with adults, the juvenile court will not be able to exercise discretion and the child will be a "Tier III" offender.[3] This means that he will have to register as a sex offender every 90 days for the rest of his life.[4]

The second case involved two children under the age of 13. While both the child-defendant and the alleged victim were under 13 and only one year apart in age, the state selected one child to prosecute for rape. The child chosen for prosecution was heavier, taller and would allegedly give video games to the other child in exchange for sex acts. While rape with force was charged, the juvenile court did not find any force in connection with the sex acts and the child was adjudicated delinquent for rape under R.C. 2907.02(A)(1)(b). The other child (the alleged victim) was not charged with any offense. So, one member of the "protected class" was adjudicated delinquent for rape for having sex with another member of the "protected class."

Different Ohio courts have expressed concern over the application of R.C. 2907.02(A)(1)(b) to minor children and have attempted to draw lines as to when prosecution for sex offenses is appropriate and when it is not. Initially, the Supreme Court of Ohio determined that minor children "playing doctor" did not rise to the level of rape.[5] Rather, the Court found that the juvenile court's failure to dismiss the rape charge resulted in the denial of the child-defendant's right to due process. Further, prosecution of the case ran contrary to the mandates of Chapter 2151 – to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court and to protect the welfare of the community.

Subsequently, the Supreme Court of Ohio decided that a child under the age of 14 could be presumed capable of committing rape.[6] The case involved an 8-year-old child-defendant and two 8-year-old victims. The Court noted that the record supported rape with force.

The question left open is what is the appropriate response when minor children, particularly when both are under 13, engage in sexual conduct that does not involve force. The Eighth Appellate District noted that when a case concerns consensual sexual conduct between very young children under 13, delinquency proceedings are unwarranted.[7] This, however, is only one appellate district. Without an amendment to R.C. 2907.02(A)(1)(b), there will continue to be a very uneven application of the law to young children.

Thus, when faced with a case involving consensual sexual contact between children, the juvenile defense attorney has only a small arsenal of cases and the purported purposes and goals of the juvenile court. Juvenile courts can exercise discretion and, in appropriate cases, choose not to treat matters as delinquencies. Juvenile Rule 9(A) and Juvenile Rule 22(B) allow the court to utilize community resources or amend the pleading so that a formal delinquency proceeding can be avoided. Revised Code Section 2152.16(A)(1)(c) suggests that a delinquency proceeding is appropriate if the offender is at least three years older than the victim where there is no evidence of force. Utilizing counseling, supervision and support is also an appropriate option particularly since recidivism among juveniles that receive treatment is 4-10%.[8] Indeed, a delinquency finding for a sex offense in juvenile court has a significant impact on the child and his or her family. The fact that several sex offenses cannot ever be sealed or expunged combined with possible sex offender registration, mandates that these cases be treated very carefully.

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1. In the Matter of Hamrick, Franklin App. 87 AP-1154, 1988 Ohio App. LEXIS 3963.
2. R.C. 2151.356(A); R.C. 2151.358. The sex offenses that cannot be sealed or expunged include: rape, sexual battery, and gross sexual imposition.
3. In re: Smith, Case No. 2008-1624. At this time, several Ohio appellate districts take the position that juvenile sex offense registration is discretionary and not dependant on the offense committed. In re: A.R., 12th Dist. No. CA 2008-03-036; In re: Gant, 3rd Dist. No. 1-08-11, 2008 Ohio 5198; In re: G.E.S., 9th Dist. No. 24079, 2008 Ohio 4076; In re: P.M., 8th Dist. Case No. 91922, 2009 Ohio 1694; In re: Antwon C., 1st Dist. No. C-080847, 2009 Ohio App. LEXIS 2189.
4. Lifetime registration is only one of the many consequences juvenile registrants face. Community notification, inability to qualify for military service or gain acceptance into college are additional results that we are seeing. Thus, a permanent underclass is being created.
5. In re: M.D. (1988), 38 Ohio St.3d. 149.
6. In re: Washington (1996), 75 Ohio St.3d 390.
7. In re: N.K., 2003 Ohio 7059, 2003 Ohio App. LEXIS 6457.
8. Behavioral Health: Developing a Better Understanding (Ohio Association of County Behavioral Health Authorities), Vol. III, Issue I.

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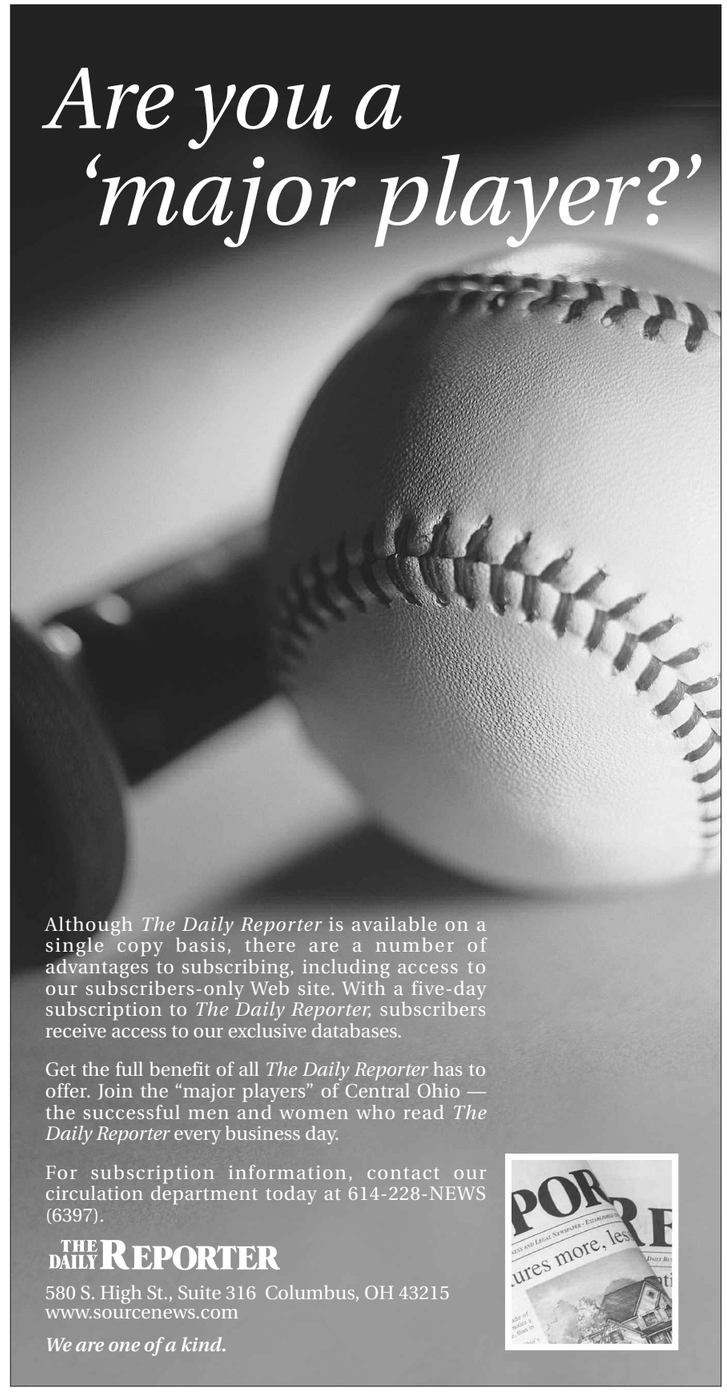

WRITING IT RIGHT
But "*Will It Write*"?
How Writing Sharpens Decision-Making

By Douglas E. Abrams

The 2004 National Football League Draft was fast approaching, and the last-place San Diego Chargers held the first pick overall. Their expected pick, University of Mississippi quarterback Eli Manning, was no stranger to the inner workings of the NFL because his father, former New Orleans Saints quarterback Archie Manning, and his older brother, Indianapolis Colts quarterback Peyton Manning, had preceded him to stardom.

Eli told the Chargers that he would not sign if the team selected him, and he intimated that he would instead re-enter the 2005 draft, expecting selection by another team. Sitting out the 2004-2005 season would mean losing a year's multimillion-dollar income in his athletic prime, but media reports indicated that the young quarterback also believed he could get a more favorable long-term contract from a team in a major media market.

The Chargers did pick Eli first. To avoid a stalemate that would leave them with nothing to show for the first round, however, they immediately traded him to the New York Giants. The rest, as they say, is history. Just ask any Giants fan about the team's 17-14 upset victory over the New England Patriots in Super Bowl XLII in 2008.

How did future Super Bowl Most Valuable Player Eli Manning reach his high-stakes decision to spurn the Chargers and threaten spending a season on the sidelines? "Eli did what I have always suggested in making big decisions," said his father. "I'm a legal pad guy. He took out a legal pad, drew a line down the middle, and put the pluses on one side and the minuses on the other side. It wasn't even close, so he went with it."

The Discipline of Writing

This sort of written decision-making also aids presidents, legislators, judges, lawyers, business people, and others who recognize that the discipline of committing arguments to paper can focus thinking more clearly than mere contemplation or oral discussion can. As author John Updike put it, writing "educates the writer as it goes along." Indeed, said California Chief Justice Roger J. Traynor, writing is "thinking at its hardest." "The act of writing," concluded U.S. Circuit Judge Frank M. Coffin, "tells what was wrong with the act of thinking."

At least three recent Presidents – Richard Nixon, Jimmy Carter and George H.W. Bush – were also "legal pad guys" who methodically penned longhand lists of pros and cons to marshal their thoughts as they wrestled with major policy decisions. Other leaders reliant on such lists when mulling over vexing personal and professional decisions include Secretary of State Hillary Rodham Clinton; Secretary of Agriculture Tom Vilsack; Senator Blanche Lambert Lincoln and former Senators Lloyd Bentsen, Sam Nunn, Lincoln Chafee and Paul Simon; former Treasury Secretary Robert Rubin; former Congress member and 9/11 Commission vice-chair Lee Hamilton; former governors Michael Dukakis and Pete Wilson; and World Bank President Robert Zoellick. Even naturalist Charles Darwin made extensive notes listing the pros and cons of getting married before he proposed to his future wife.

Judges offer a solid rationale for written decision-making. "All of us have had seemingly brilliant ideas that turned out to be much less so when we attempted to put them to paper," said U.S. Circuit Judge Wade H. McCree, Jr. "Every conscientious judge has struggled, and finally changed his mind, when confronted with the 'opinion that won't write.'"

Choosing the Format

Rather than listing pros and cons in two columns to expose tentative decisions that "won't write," the decision maker might pen longer passages, or even an informal essay. Hand-written diagrams or flow charts might also help. Felt need and personal preference determine the format because the point-counterpoint is normally for the writer's eyes only, unless the writer shares the document with a small circle of advisors or other colleagues.

Regardless of the chosen format, writing can influence not only lawyers' own personal and professional decision-making, but also the advice lawyers provide clients about how to reach decisions on matters within the scope of representation. Some individual and institutional clients adept at problem-solving may already understand how committing thoughts to paper induces careful reflection, but other clients may not.

Written decision-making should come naturally to lawyers because it remains fundamental to the American judicial system, and thus to the way law schools teach students to "think like lawyers." In bench trials or actions tried to an advisory jury, Rule 52(a) of the Federal Rules of Civil Procedure requires the court to "find the facts specially and state its conclusions of law separately." Appellate courts commonly hand down decisions with signed opinions (including majority, plurality, concurring and dissenting opinions), per curiams, or unpublished opinions or orders stating reasons. These cornerstones of trial and appellate judging hold lessons fundamental to the everyday decision-making of lawyers and their clients.

Rule 52(A)

The trial court's written findings and conclusions focus appellate review, permit application of preclusion doctrines, and inspire confidence in the trial court's decisionmaking. But the federal courts of appeals have also recognized a "far more important purpose" of Rule 52(a), "that of evoking care on the part of the trial judge in ascertaining the facts." The Supreme Court has recognized that "laymen, like judges, will give more careful consideration to the problem if they are required to state not only the end result of their inquiry, but the process by which they reached it."

In United States v. Forness in 1942, the Second Circuit gave perhaps the most thoughtful judicial explanation of the prime goal of Rule 52(a). The unanimous panel included Judge Charles E. Clark, the chief drafter of the Federal Rules of Civil Procedure and an acknowledged expert in their meaning and application. Writing for the panel, Judge Jerome Frank said this: "[A]s every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness . . . . Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper." Judges hold no monopoly on this knowledge.

Appellate Decision-making

The appellate court's full opinion or abbreviated writing shows litigants that the court considered their arguments, facilitates further review on remand or by a higher court, and defines the decision's meaning as precedent. But the written word's capacity to sharpen the decision makers' internal thought processes looms large, as it did in the district court. "The process of writing," says Justice Ruth Bader Ginsburg, is "a testing venture."

Chief Justice Charles Evans Hughes found "no better precaution against judicial mistakes than setting out accurately and adequately the material facts as well as the points to be decided."

"Reasoning that seemed sound 'in the head'," U.S. Circuit Judge Richard A. Posner explained decades later, "may seem half-baked when written down, especially since the written form of an argument encourages some degree of critical detachment in the writer. . . . Many writers have the experience of not knowing except in a general sense what they are going to write until they start writing."

Conclusion: The "Human Factor"

In *Forness*, Judge Frank acknowledged that "fact-finding is a human undertaking"which "can, of course, never be perfect and infallible." Writing can certainly sharpen thought in everyday decision-making, but the outcome depends on prudent use of the writing and other extrinsic sources of information and reason. Listing pros and cons can orient the decision maker, but the list offers no compass pointing ineluctably to the right answer. When President Bush pondered a Supreme Court nomination in 1990, for example, he took a legal pad and carefully penned the pros and cons of naming U.S. Circuit Judge David H. Souter, whose tenure on the Court did not turn out the way the President had anticipated.

Because so much professional and personal decision-making involves emotion and other intangibles whose force written words alone cannot capture, the outcome does not necessarily depend on which side of the ledger – pro or con – holds the longer list. Indeed, when Charles Darwin pondered whether to propose to his future wife, his list contained 13 "cons" and only nine "pros," but he married her anyway.

The "human factor," sometimes called a "gut feeling," may tilt the scale and ultimately carry the day. When Thomas P. Schneider's term as U.S. Attorney for the Eastern District of Wisconsin ended in 2001, for example, he weighed offers to join large influential law firms at handsome salaries, plus friends' suggestions that he cap his 29-year career as a prosecutor by running for state attorney general. "As most lawyers would," reported the Milwaukee Journal Sentinel, "Schneider grabbed a legal pad and divided the page into two columns: pro and con." Then his wife stepped in. "This is not a legal brief," she told him. "This is your life."

And the rest is history, as it was with Eli Manning. Schneider rejected politics and lucrative private law practice to become executive director of COA Youth and Family Centers, an agency dedicated to improving poor Milwaukee neighborhoods by enhancing opportunities for needy children and their families. "I've always loved working with kids," he says, "What I really care about is how you make a positive difference in this world."

With permission from *Precedent* (Spring 2009), The Missouri Bar's quarterly magazine, and the author, Douglas E. Abrams, a law professor at the University of Missouri. For endnotes: http://members.mobar.org/pdfs/precedent/may09/abrams.pdf

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FTC Grapples with Endless "Red Flag" Problems

By Bridgette C. Roman

The goal was laudable: requiring businesses in the position to detect and prevent identity theft to implement procedures to identify it and take steps to mitigate it. The need was real: $48 Billion Dollars in 2008 was lost due to identity theft. The execution: Well, in the words of Buffy the Vampire Slayer, "not so much."

The Red Flag plague has its genesis in the vague terminology that runs rampant through the rules. Broad and ill-defined terms such as "covered account," "transaction account" and "creditor," have placed a Girl Scout troop that defers payment for a cookie order until the time the cookies are delivered at risk of being a "creditor" and the cookie order a "transaction account." The legal community has not been spared. The most recent delay in the implementation of the Red Flag Rules may have arisen in part because the President of the American Bar Association made clear that unless the Federal Trade Commission exempted attorneys from the Red Flag Rules, a declaratory judgment action would follow.

These seemingly endless vagaries, and presumably the FTC's desire to clarify them before making the rules effective, have led to mounting frustration with the FTC and the Red Flag Rules. The deadline for implementation of required identity theft prevention programs has shifted more times than the San Andreas Fault. The most recent extension occurred on July 29, just three days before the deadline of August 1. The newly established deadline is November 1, 2009. One published comment exemplifies the aggravation at the ever-shifting deadline:

> It is actually laughable that the FTC sets guidelines and mandates and continuously changes them at the last minute. It is insulting and harmful to companies that try to meet the compliance guidelines and it rewards companies that have failed to meet the mandate. How are companies supposed to believe that the next deadline is any more realistic than the last? If I was a non-compliant company after the next proposed deadline I would argue that the deadline has been postponed so many times that no reasonable company could determine the validity of the newest enforcement date; therefore, I should not be subject to any real fines or regulatory action. Maybe the FTC should start reading parenting books for guidance on how to deal with establishing credibility in enforcement of rules. [Red Flag Forum on Linked In, posted July 31, 2009]

The foundation of the Red Flag Rules rests on Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), 15 U.S.C. §1681 et seq. A group of six federal agencies then promulgated regulation to carry out these statutory provisions.

The "final" regulations were published on November 9, 2007, but the effective date has been the subject of recurring delays. The rules require the following:

- Each "financial institution" and "creditor" that holds a "covered account"[1] shall develop and implement an identity theft prevention program designed to prevent, detect and mitigate identity theft in connection with new or existing accounts. This involves
  - Identifying and incorporating into the program certain patterns, practices and forms of activities that are "red flags" signaling possible identity theft. In large measure companies are to audit their own experiences and build their program on those experiences.
  - Once determined, the business is then required to develop policies and procedures to detect their pre-identified "red flags" on an on-going basis.
  - The business then must appropriately respond to any "red flags" detected in order to prevent and mitigate identity theft.
  - Then, periodically assess the effectiveness of and update the program to reflect changes in customer risk.
  - Oversight by the company's board of directors (or committee thereof) and reporting to the board.
  - Training of staff on the rules.
- Issuers of credit or debit cards must develop policies and procedures to assess the validity of certain address change requests.
- Users of consumer credit reports must develop policies and procedures to respond to notices from credit reporting agencies regarding address discrepancies.

The very broad reach of these rules requires that every business make a determination as to whether they are a "creditor" with "covered accounts." Given the concerns raised by the ABA that client accounts with their attorneys fall within these definitions, one cannot take lightly the question as to whether they are a "creditor" with "covered accounts." The current deadline for enforcement gives ample opportunity for even the stragglers to assess the risk areas for identity theft and implement the required program.

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1. Due to space limitations here, the reader is directed to 15 U.S.C. §1681 et seq. and 12 CFR 14.90 for the definitions of these terms.

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The Myth of "*Bad*" Feelings

By Brad Lander, PhD, LICDC

We believe that there are "good" feelings: happy, calm, joyous, serene, warm, satisfied, loving. This also means that there are "bad" feelings too: angry, guilty, anxious, resentful, disappointed, alone, ashamed. But is this really the case?

What is a feeling or emotion? A feeling is actually a physical state. When we sense a threat present, parts of our brain activate and hormones and peptides are released to help us fight or run away. Our muscles tense, pupils dilate, heart rate and blood pressure increase, adrenaline is released, and our attention becomes sharply focused. If we need to fend off a rabid wolverine (either kind) anger is a facilitative state. All our emotional states have an important function whether its heightened alertness (fear) or behavioral guidance (guilt).

We, as a society, tend to over-value emotions. Feelings are considered sacred and spoken of in poetic terms. To hurt someone's feelings is considered an abusive act. If someone is feeling bad we feel it is our obligation to cheer them up.

But this "pain is bad" mentality can hold us back. We need these "bad" feelings to help guide us through life. Pain is not bad, it is a message. If I go out to the park on the first nice day of spring to throw a baseball and come home with elbow pain, there are two ways I can look at it. If I see my problem as "pain in my elbow," my natural goal will be to get rid of the pain. If a couple aspirin clear up the pain, the problem is solved and I'll go back out and throw the ball some more. Of course when I come back in and the pain is worse, it may take a Vicodin to suppress the pain this time.

But what if the first time I came in with my elbow pain, I chose to see my problem as "damage" to my elbow and not "pain." I know there is damage to my elbow because I feel pain there. Pain isn't the problem, the damage is. So, if "damage" is the problem, the natural goal is to fix the elbow. If I apply an ice pack, how do I know if this fixed the problem? I know it is fixed because the pain will be gone. If I still feel pain, I need to try something else. Pain is merely a message, feedback. If I can't feel the pain, I can't fix my problem.

Emotional pain is the same as physical pain. If I feel guilty about something I did, it means I did something that went against my values. If I identify the feeling as the problem ("I feel guilt"), I can ameliorate that quickly with some alcohol, street drugs, prescription drugs, sexual acting out, aggression, or other numbing behavior. If I see my problem as "I did something that goes against my values," I will do something to try to make up for my actions. I may try apologizing. If I do and still feel guilt, then I can try to make amends some other way. I will know I fixed my problem when the guilt is gone.

Now, saying pain is just a message is not to say that running roughshod over someone's feelings is a desirable thing. However, if we hold back feedback or information because it may hurt someone's feelings, we are not helping that person learn a lesson or see something that might need "fixing." A young singer will learn more from Simon Cowell than Paula Abdul although the former may sting much more. Think about some of the greatest life lessons you have learned, and reflect on how much it may have hurt. When we give trophies to the kids who lost the soccer tournament to protect their feelings, we are taking away the feelings (shame, disappointment) that motivate them to work harder to become better players.

Of course, too much emotional (or physical) pain is destructive. There is a level of anxiety that motivates us to prepare well for a presentation; but too much anxiety makes us forget what we want to say, makes our knees wobble and causes us to sweat profusely. Even as wonderful as chocolate cake is, too much of it makes us sick, hyper, and [eventually] obese. The goal is to find those levels of emotion that provide us with maximum motivation and performance without creating problems like ulcers, heart disease and migraine headaches.

There are a lot of things we can do to help maintain this balance. It starts with self-care. Our mind and our body are connected. Taking care to get enough sleep, eat right and exercise aids in our ability to cope with problems and stressors. Mind-calming activities such as meditation, relaxation exercises, and prayer allow our minds to process through issues and events. Our minds can also be soothed by calming our bodies with methods like yoga, massage, or hot baths.

Improving our coping and thinking skills is an important way of dealing with strong emotional states. We are never so learned that we can't improve on our ability to clarify problems, put them in perspective and create plans to handle them. There are self-help books and disks, counselors and advisors, community agencies and good friends. American culture promotes the self-sufficient "asking for help is a weakness" icon of society. This is not the way we are built to function. We are social animals and we function better when we interact with each other. It is how we organize, process and validate our experiences. It is how we integrate our emotions, actions and thoughts.

There are no "bad" emotions. Emotions may hurt, but they are our rudders through life. If we fear them, we anesthetize, drown out or ignore the messages they are giving us; and that just leads to more "bad" emotions.

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A Midsummer Night's Dream: Connecting the Pirates and the Dots

Now we use the term connecting the dots to describe a hidden connection of disparate people, places, and things. Lawyers do this all the time. A good lawyer sees a connection of one body of law with another (that others usually do not see) in a way that helps his or her case.

By Jacob A. Stein

Long ago the Sunday newspaper had as its main attraction the big, separate "Comics" section. It included a puzzle called Connecting the Dots. It was a square filled with dots, with a picture in the middle. The challenge was to connect the dots to sketch something connected to the picture. For instance, if the picture was of a house, then the dots, if traced correctly, placed a tree next to the house and perhaps a walkway leading up to the house.

Now we use the term connecting the dots to describe a hidden connection of disparate people, places, and things. Lawyers do this all the time. A good lawyer sees a connection of one body of law with another (that others usually do not see) in a way that helps his or her case.

Last night I fell asleep with the radio on reporting a pirate takeover of an American cruise ship. That, of course, explains my pirate dream connecting the dots.

Dot One

Pirates come aboard an American cruise ship on the high seas. One of the pirates stands out from the others. He is well dressed. He wears a shirt with cuff links. He wears expensive Ralph Lauren denims. He has a patch over one eye just like the Hathaway shirt ads.

He points his pearl-handled pistol at one of the American passengers.

"Put up your hands," he says. Mr. American Passenger puts up his hands. Then the passenger asks, "Sir, haven't I seen you before?"

The Pirate says, "It's possible."

"Sir, I used to be a day trader and it seems to me I saw you—wasn't it a picture in the Financial Times, or was it The Wall Street Journal? Weren't you with one of the big investment banks?"

Dot Two

The Pirate puts down his gun and says, "You're right. I left my big Wall Street investment bank with a getaway bonus of $150 million. After leaving the firm, I felt uneasy. I had this competence in big finance, this cunning that got me the big money and big bonuses. But, I still had some of the pirate in me. A talent like mine must be used while I still have it. It is what the economists call a wasting asset."

Dot Three

"While I was sitting on my yacht, I received a call from someone who said he was retained by a search committee of a group of pirates who needed someone to provide financial advice. He had looked me up, and he thought I had the necessary qualifications for such an assignment. He was authorized to offer me a three-year consultant's fee with a negotiated bonus, but I had to get my hands dirty. And here I am."

Mr. American Passenger suggests they go below deck and leave the roustabouts to work things out with the crew and passengers. As they sit conversing, the pirate's cell phone buzzes. He takes the call. He utters one word into the phone and then snaps it closed. That word is "sell."

Dot Four

Mr. American Passenger and Mr. Wall Street decide to form an LLP, a Limited Liability Piracy.

Mr. Wall Street says he knows of big-time restless financiers like himself hiding out and scattered around the tax-free Caribbean. They want action. Mr. Wall Street says they will become the hedge fund.

There followed a private offering with the LLP's board of directors made up of displaced European royalty pretenders, the relatives of dictators, and former men of influence.

Although pirating brings in big money, everyone knows it is an unpredictable source of income. Therefore, the LLP must invest in something reliable, such as real estate. Mr. Wall Street and Mr. American Passenger learn that in most parts of the world where their clients do their pirating, there are no land records publishing a valid real estate title of lawful ownership. No title means no security to back up the loan.

Dot Five

Mr. Wall Street puts together a turnkey Recorder of Deeds and Title Insurance Company and makes proposals to people in various countries who could use this service. Once there are deeds, Mr. Wall Street says, there will be economic growth. It takes what is called dead capital (the real estate) and turns it into live capital (security for a cash loan). That is capitalism, with its investments, its mortgages, its high-rises, its malls, and its gambling hotels.

Dot Six

Mr. Wall Street organizes an investment bank to commence making loans to the builders who are ready for action using someone else's money.

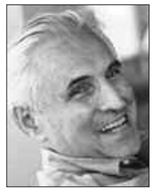
Even the pirates feel uncomfortable about using the conventional banking tricks such as confess judgment promissory notes, giving the bank the right to enter judgment after the borrower misses one payment. Not only does the bank enter judgment, it appoints a lawyer for the borrower and one for the bank. The appointed lawyers are awarded attorneys' fees. The pirates are uncomfortable, but they go along with it.

But as pirates, they do feel comfortable in setting up a bank credit card. They like the way the interest rates increase 10 percent each month on the unpaid balance. And if a cardholder does not pay, so be it. The ones who do pay cover the costs of those who don't. Whoever conceived of this trick is a real pirate.

Dot Seven

The dream ends when I get a call in my office from a friend who says he just heard a story I would not believe. One of these Wall Street pirate types got caught trying to stick up an American cruise ship on the high seas.

jstein@steinmitchell.com



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OCT 14 — Taxing Matters Series: COD Income Rules
TIME: 12:10 - 1:15pm • **CLE HOURS:** 1.0 • **LOCATION:** Columbus Bar

OCT 22 — 21st Annual Charitable Giving Seminar *(choose AM or PM session)*
TIME: 8:30 - 11:30am **OR** 1:00 - 4:15pm • **CLE HOURS:** 3.0
LOCATION: Jessing Center at Josephinum Pontifical College

OCT 23 — Masters Series: Evidence & Hearsay
TIME: 9:00am - 4:45pm • **CLE HOURS:** 6.0 • **LOCATION:** Columbus Bar

OCT 28 — Health Care Reform
TIME: 1:30 - 4:45pm • **CLE HOURS:** 3.0 • **LOCATION:** Columbus Bar

OCT 30 — Annual Requirements Seminar: Of Nomadic Lawyers
TIME: 12:10 - 1:15pm • **CLE HOURS:** 2.5 (1.0 ethics, 1.0 prof., .5 substance abuse)
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FALL BACK TO BOOKS

Review of books by Janyce C. Katz

Two journalists and one rabbi each wrote books reviewed in this issue.

Each book raises a similar question about how and why law originates and then is interpreted and applied, telling a different story within that structure. The books written by the journalists are clear and easy to read, but Rabbi's book is especially intense and well-written.

No Crime But Prejudice: Fischer Homes, the Immigration Fiasco and Extra-judicial Prosecution (TVG Books, 2009) by Jon Entine, FDV v. The Constitution (Walker Publishing Company, 2009) by Burt Solomon and *Sifra, Dibbura De Sinai: Rhetorical Formulative, Literary Structures and Legal Traditions* (Hebrew Union College Press, 2003) by Rabbi Howard Apothaker.

Jon Entine, author of *No Crime But Prejudice*, is a former national network television producer for ABC News, NBC News and Tom Brokaw's Nightly News and a print journalist. The Searle Freedom Trust provided funding for the book and the Buckeye Institute for Public Policy Solutions supported production and dissemination.

Entine was hired by Fischer Homes, a leading builder in Northern Kentucky and Southwest Ohio and its owner, Henry Fischer, to document a story about the legal process in which Fischer Homes and its staff became entangled. Fischer wrote in the foreword that the idea of documenting the story of what he characterized as "the federal government's attack on Fischer Homes and its associates" came out of discussions as "we were trying to defend ourselves." Fisher and Entine agreed not to speak about Entine's project for the duration of the case.

The book describes what the author and, by implication, Henry Fischer believe was an unjustified, preplanned legal and public relations attack on the company which started when the U.S. Immigration and Customs Enforcement (ICE) and federal prosecutors arrested some of the Fischer Homes' staff in a well-publicized raid on May 8, 2006. It was alleged that Fischer Homes had encouraged or at least tolerated the hiring of illegal immigrants. The charges were dropped when a key witness, who allegedly supplied illegal workers, vanished. A raid about which Entine wrote was one of the many that occurred in states after the federal government changed its policy and began targeting employers of illegal immigrants.

The book was written as a PR tool to make a point, but it still raises questions about how illegal immigrants are used to cut business costs and asks to what extent does an employer of subcontractors need to be aware of and to try to control the hiring practices of its subcontractors. The writer's focus is on the government's alleged use of politics to pick certain legal battles – particularly against Fischer – and the government's alleged tactics of fighting legal battles without sufficient evidence to back up its charges. Entine slams certain reporters and newspapers for convicting Fischer Homes and its employees before there was a trial.

In contrast to Entine's blasting the federal government for bringing its power against a successful businessman, Bert Solomon in his book describes how a president handles his frustration with a U.S. Supreme Court determined to keep him from using federal power to help workers during the Great Depression.

Solomon describes the clash between the Court's decisions and President Franklin D. Roosevelt's programs as passed by Congress. In essence, two different views about the role of government in the economy clashed. Solomon's book is footnoted to some extent, and, while also very readable, it is a description of FDR's presidency at a critical time in history rather than a book designed to right a perceived wrong.

The same questions about the power of the media appear in Solomon's book. The press, news reels and new radio were all tools in the struggle to influence the Supreme Court. George Gallop used the newly developed polling on the proposal to enlarge the Court. There was even a parody of minstrel songs and a Cole Porter musical debunking the "court-packing" plan that was presented to a reporter filled room at the Gridiron Club. It was an ugly debate and in the end, the plan to expand the Court was buried.

In contrast to both of the journalists, Rabbi Apothaker analyzes the interpretation of law that allegedly arrived from another source. He looked at the earliest commentary on the Scripture's book of Leviticus, Sifra, and focused on its last section. The book makes an important argument about the basis of Jewish law and the role of another interpretation of Jewish law, the Mishna. Again, the question comes up about who shapes the law and who carries it out. Certainly, there has been public dissemination of information and differing view points as to how this law should be interpreted and how to understand what sometimes seems to be irrational. Rabbi Apothaker is a friend. However, while acknowledging our friendship, I say without prejudice that the scholarship in this book is painstaking. For those with any interest in this area of the law, it is an important book.

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Collateral Consequences and Ohio's "*Going Home to Stay*" Reentry Initiative

By Carey Carr, M.P.H. and Dennis Moore, Ed.D.
Department of Community Health Boonshoft School of Medicine, Wright State University

Reentry of ex-offenders back into the community continues to be a critical criminal justice issue on the national, state, and local level as the number of prisoners released into communities continues to grow. Between 1990 and 2001 there was a 46% increase in the number of offenders released from state prisons. The surge is even greater in Ohio, with an almost 63% increase in annual prison releases since 1997.

A key policy concern emerging from this tremendous growth is how to help former prisoners successfully reintegrate back into their communities and reduce recidivism rates that are over 50% nationally and just under 40% in Ohio. While reentry strategies encompass a broad systems approach to managing offenders as they transition from the prison system back to society, socioeconomic reintegration plays a critical role in whether reentry in Ohio meets the Ohio Department of Rehabilitation and Correction's goal of "Going Home to Stay."

Ex-offender unemployment is a primary concern of reentry policy. Unemployment rates among this group are estimated at 25 to 40 percent, well above Ohio's general unemployment rate of 9.5 percent. While factors such as limited education, job skills, and employment experience influence post-release employment opportunities, collateral consequences also pose a significant barrier to employment and thus successful reintegration.

Collateral consequences are penalties and disabilities that are imposed on convicted persons, often automatically, in addition to a sentence imposed by a court. There are two types of collateral consequences – collateral sanctions and discretionary disqualifications. The American Bar Association defines a collateral sanction as "a legal penalty, disability or disadvantage…that is imposed on a person automatically upon that person's conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence." The term discretionary disqualification means "a penalty, disability or disadvantage…that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction". These consequences impact a variety of rights and opportunities for ex-offenders including employment, financial aid, firearm ownership, jury service, parental rights, public housing, and voting. While ex-offenders are expected to "fulfill the duties of citizenship…their conviction status effectively denies their rights to participate in social life."

Collateral consequences in the form of employment sanctions are particularly restrictive given that stable employment is one of the best predictors of post-release success. A stable job reduces the possibility of re-offending, rebuilds self-esteem, provides attachment to a conventional lifestyle, and allows the opportunity for economic attainment. Of the 404 collateral consequences under Ohio law, employment rights comprise 72 percent of all consequences and consist of any punishment that affects employment eligibility, including licensing rights. The vast majority of these employment consequences do not permit restoration of rights. These consequences, compounded by substance abuse, mental health issues, and the depressed Ohio economy, create a bleak employment landscape for ex-offenders in Ohio, making "Going Home to Stay" a difficult reality to achieve.

The impact of collateral consequences goes beyond its influence on individual offenders and their ability to successfully reintegrate into society. There are deep societal implications related to offender unemployment as well. Increased crime, criminal justice system costs, health care expenses, welfare needs, and the degradation of family and community life are all potential consequences of employment sanctions that restrict the ability of former felons to find a job. As noted by Ewald & Smith (2008), "The moment a felony conviction is announced in the U.S., a set of reverberations pushes out from the courtroom. The labor market, the jury pool, and, in most states, the voter roll are all changed, and the cumulative effects of these policies on the American polity and on particular communities are now substantial."[1] Because of their extensive personal and societal influence, Federal and State initiatives have begun to reassess sanctions that influence offender rights and focus on reintegration strategies that promote employability and economic attainment of former felons.

On the Federal level, the Second Chance Act of 2007: Community Safety Through Recidivism Prevention is first-of-its kind legislation that authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services to offenders reentering the community. The primary focus of the initiative is to promote successful community reintegration, as evidenced by reduced recidivism. In fiscal year 2009, $15 million was available for reentry demonstration projects under the Second Chance Act, which included a solicitation for adult reentry demonstration projects that provided educational, literacy, vocational, and job placement services to facilitate reentry into the community. In June 2009 the House of Representatives approved an appropriations bill for the Department of Justice for fiscal year 2010 that provides $114 million for prisoner reentry, including $100 million for Second Chance Act programs and nearly $14 million for reentry initiatives in the federal Bureau of Prisons. Equally important are Federal initiatives to better understand collateral consequences, as they have a direct impact on the success of reentry projects.

In February 2009 the National Justice Institute sought applications to fund a national study that will provide a comprehensive compilation of Federal and State collateral consequences for criminal convictions, an important first step toward reducing recidivism and maintaining public safety. Ohio has also begun to take a proactive approach to addressing the issue of offender reentry and collateral consequences with the passage of Ohio House Bill 130 on January 6, 2009. This bill removes collateral sanctions to employment for certain professions and provides that conviction of a felony does not by itself constitute grounds for denying employment. The bill also calls for the formation of a State Agency Ex-Offender Reentry Coalition that will serve as conduit for Ohio's reentry efforts, better positioning the state to receive future funding under the Second Chance Act of 2007.

While it is critical to consider offender reentry in the context of public safety, collateral consequences have a significant impact on the life trajectory of offenders and society. In fact, the effect of these sanctions may be as profound as those imparted by the formal sentence. As the number of released offenders continues to grow, it is imperative for legislators, the judicial system, and communities to examine collateral consequences and reflect on whether such sanctions truly promote public safety or impose unnecessary restrictions that prevent former felons from fully reintegrating into communities, becoming productive members of society, and "Going Home to Stay."

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1. Ewald & Smith, Justice System Journal (2008)

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FLY FISH WHERE YOU LIVE

Fishing local waters can be as varied and interesting as the experience you might have in more exotic locales.

By Philip A. Brown

I was hooked on fishing by the time I was six years old. I moved to Columbus in 1974 and promptly began fishing the Mad River because it was less than an hour away and was stocked with rainbow trout. I fished with worms and spinning gear. I got a small boat and fished Alum Creek Reservoir for crappie and bass. Then, a friend showed me that Ohio's streams contained a wide variety of native fish. Few people fished these streams. Fewer still fished with flies.

I discovered that I could catch more fish in the streams using flies than I could with bait, jigs or other lures. I now exclusively use a fly rod on local water. The fish are generally smaller than those caught in mountain streams but they present a nice challenge on light equipment and, most important, are close to home. I regularly catch smallmouth bass, rock bass, channel catfish and bluegill while accompanied by the sounds of freeway traffic and, when in the mood, I guide friends on the Olentangy who want to learn fly fishing. Less than an hour away, the noise of Columbus is replaced by the quiet of the Mad River where the wily brown trout rule.

Fishing local waters can be as varied and interesting as the experience you might have in more exotic locales. One day I fished alone and rigged with a saltwater leader. After two hours of stalking and many casts, I hit pay dirt: a 15 minute line-stripping, water-churning battle with a 24" six-pound carp that was similar to fighting a bonefish on the flats of the Florida Keys. The only time I encountered another person fishing where I was occurred on the Mad when a young man politely asked if he could watch me and my friend. Apparently, he was just learning to fly fish and could tell we were experienced. He saw me land a 16" brown and my friend gave him some flies he had tied.

The Olentangy River, Big Darby Creek, the upper Scioto River, public ponds like Antrim and Prairie Oaks and the Mad River are tailor made for fly fishing especially in the low water conditions of summer and early fall. You need not travel to upper Michigan, the Appalachians or the Rockies to have a great experience. Simply apply these principles to the local waters:

1. Ignore deep pools. Locate moving water (or in the case of ponds, shallow structure like lily pads or stumps) as that is where the most aggressively feeding fish usually gather.
2. Approach the water from downstream to minimize silt and noise. Don't let your shadow fall where you plan to cast.
3. Work the bubble line in the moving water with short casts while watching for swirls and rises of feeding fish.
4. Use a tiny floating strike indicator to control the depth and drift of the fly. Strikes will be hard and quick either upon the fly hitting the water or as it bounces the bottom. Set the hook at any pause in the drift.
5. Select the type and color of fly based upon what you see in the water. Minnows at the edge: streamers. Fish jumping out of the water: large caddis or extremely small midges. Swirling fish: terrestrial or emerger patterns. Fly color: dark in stained water, lighter in clearer water. Change flies every five minutes if you don't get a strike.
6. Use small flies no larger than #8 and keep the tippet 5x or smaller unless you are after carp.
7. Wade in dark long pants and sneakers unless you are on the always cold Mad River. Warning: your first trip to the Mad should be with someone who knows that water. The wading is tricky in some places and casting can be as difficult as on Appalachian streams.
8. Concentrate on one or two bodies of water. I chose the Olentangy because it is very close to home and the Mad because of the trout.
9. Learn and use a roll cast where the fly is lifted slightly off the water and then cast with a motion similar to throwing a baseball. Long, looping back-casts may be pretty, but they can get you into trouble on tree-lined streams.

If you have never fly fished, don't start by buying equipment. Take advantage of the almost evangelical nature of most fly fishing addicts by asking someone you know to introduce you to fly fishing through a demonstration on a local stream. The veteran will show you some basics and insist that you try it. Then, if your friend is not an experienced instructor, take a class. Mad River Outfitters on Bethel Road is a good source and tackle manufacturers run some good schools.

The biggest problem most beginners face is setting the hook and playing the fish. The principal drawback I have found with the fly fishing schools is that they don't take the student one-on-one with an instructor to a stream where a fish is actually hooked and played in the presence of the instructor. With beginners, I will often hook a fish and then hand off the rod with the fish solidly in play. If you decide to begin by attending a school, line up a veteran who will make sure you promptly start applying what you have learned.

There are plenty of native fish right where we live. Small stream fly fishing can be learned quickly, practiced often and, unlike some other activities, you actually get better at it as you get older.

Tight lines.

Postscript: Phil Brown was educated at Orvis School-Manchester VT (1982) and interned on the Battenkill and Mettawee Rivers. He subsequently trained on the Animus River, Davidson River, Mad River, North Mills River, Olentangy River, San Juan River, Scioto River, Spruce Creek, Tuscarora Creek and Yellow Breeches Creek. He currently concentrates his practice on the Mad and Olentangy.

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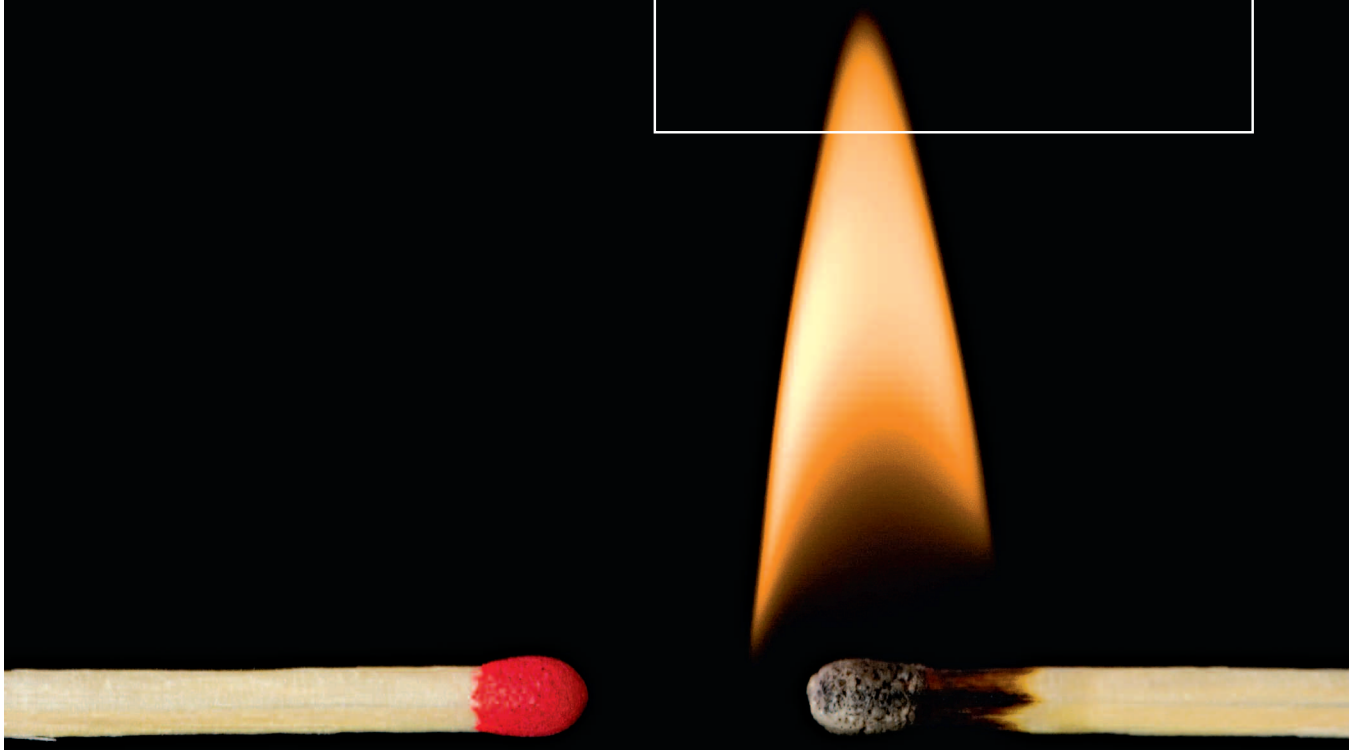

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