



for the

First Quarter 2013

RECORD

NEWS FOR THE OHIO COURTS

DIRECTIONS

RETIRED JUDGE MARK R. SCHWEIKERT
EXECUTIVE DIRECTOR, OHIO JUDICIAL CONFERENCE

“A primary object...should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important? And what duty more pressing...than communicating it to those who are to be the future guardians of the liberties of the country?” George Washington

On March 19, 2013, Retired U.S. Supreme Court Justice Sandra Day O’Connor presented “A Conversation on Civil Discourse through Education in a program sponsored by the Chief Justice Thomas J. Moyer Legacy Fund and others. Her comments focused on the importance of educating today’s students in the structure and value of our system of governance. She also introduced those present to the website www.iCivics.org This website offers interesting and educational video games and teaching materials in American civics. For more information about her remarks and the rest of the program you can visit the CNO website at http://www.courtnewsOhio.gov/happening/2013/legacyFoundation_032013.asp

I am also reminded of the resources available on the Judicial Conference website, www.ohiojudges.org, in the Outreach that Works Library maintained by the Judicial Conference Public Confidence and Community Outreach Committee. Here you will find many examples of programs your colleagues have found to work well in educating and engaging students and adults in the workings of your local justice system. Take a look, and take a minute to think about the outreach you and your court have adopted into your routine operations. Retired Justice O’Connor and George Washington would fondly approve.

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OHIO JUDICIAL CONFERENCE NEWS

WELCOME! MARTA MUDRI, ESQ.



The Ohio Judicial Conference is pleased to welcome our newest Legislative Liaison, Marta Mudri, Esq. Marta joined the staff on March 18, 2013. Marta served as a Legislative Aide in the Ohio Senate and the Ohio House of Representatives to former Senator, and current State Representative, Teresa Fedor from June 2010 through March 15, 2013. She graduated from Kent State University with a Bachelor's degree and The Ohio State University Moritz College of Law with her J.D. in 2007 and was admitted to the Bar in November 2007.

Ohio Judicial Conference 2013 Annual Meeting

**September 12 - 13
Hilton Polaris/Columbus**

Save the Date!

EX PARTE COMMUNICATIONS

JUDGE THOMAS A. JANUZZI, OBERLIN MUNICIPAL COURT

At the 2012 Ohio Judicial Conference Annual Meeting the issue of Ex Parte communications was raised as a source of stress for many judges. Attempted Ex Parte communications present in many forms. It can be a difficult task to address an Ex Parte communication especially when the attempted communication occurs during an extremely demanding or hectic day or period. The attempted Ex Parte communication can cause stress and consternation not only for the judge but for staff members who most often are initially confronted with the attempted communication.

Code Jud. Cond. 2.9(D) requires that the judge properly train staff in this area: “(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge’s direction and control.” Providing staff members with the proper information and instruction not only complies with the Code of Judicial Conduct but facilitates an appropriate response and alleviates stress to both staff and the Judge who is ultimately accountable for the response.

Even though there are many situations involving Ex Parte communications, these situations may be categorized. The response to each situation should be tailored to fit the circumstances.

Prior to addressing the specific categories several definitions and rules that are common to all attempted Ex Parte Communications may be identified:

Ex Parte is defined in Black’s Law Dictionary as “Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested.”

Ex Parte communication is defined in Black’s Law Dictionary as “A generally prohibited communication between counsel and the court when opposing counsel is not present.”

An Ex Parte Communication under the Code of Judicial Conduct is prohibited unless there is an exception. The exceptions are listed in Code Jud. Cond. 2.9:

When circumstances require it, an ex parte communication for scheduling, administrative, or emergency purposes, that does not address substantive matters or issues on the merits, is permitted, provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;

A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives notice to the parties of the person consulted and the subject-matter of the advice solicited, and affords the parties a reasonable opportunity to object or respond to the advice received;

A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge’s adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter;

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A judge, with the consent of the parties, may confer separately with the parties and their lawyers in an effort to settle matters pending before the judge;

A judge may initiate, receive, permit, or consider an ex parte communication when expressly authorized by law to do so;

A judge may initiate, receive, permit, or consider an ex parte communication when administering a specialized docket, provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage while in the specialized docket program as a result of the ex parte communication.

The Comments to Code Judicial Cond. 2.9 provides additional guidance:

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

[4] A judge may initiate, receive, permit, or consider ex parte communications expressly authorized by law, such as when: (1) an indigent defendant demonstrates a particularized need to retain an expert witness and has not determined whether the expert will testify at trial; (2) the judge obtains information that may result in a confidential referral of counsel to a lawyers assistance program [see Rule 2.14]; or (3) in order to comply with Crim. R. 46(C) provided the prosecutor and accused, or her/his attorney, are apprised of the information prior to any decision that is made as a result of the information gathered by the judge or member of the judge's staff.

[4A] A judge may initiate, receive, permit, or consider ex parte communications when administering a specialized docket established under the authority of the Rules of Superintendence or other law. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

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[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code. Such consultations are not subject to the restrictions of division (A)(2).

The source and manner of the communication will dictate the appropriate response.

The Unrepresented Civil Litigant

In recent years there has been a marked increase in civil filings resulting in an increase in unrepresented civil litigants. The reasons are many including the economy which has resulted in loss of employment and underemployment. Defaults in consumer loans and credit cards account for the majority of the increase in filings in the municipal courts. Credit companies sell delinquent accounts in bulk transactions resulting in a high volume of court filings by assignees of the original creditor. Sometimes the account has been sold and assigned multiple times prior to the filing of the lawsuit. Typically, the consumer receives no prior notice of the assignment. When a person is sued by an assignee the result is often times a frustrated and/or irritated litigant. The person has long forgotten or mentally written off the debt or legitimately believes that the debt has been resolved. Many cannot afford an attorney or expect that the court system will provide them relief from the perceived or actual injustice and resolve the matter fairly and expeditiously without the need for an attorney. Since the cases are almost always filed in the regular division of the court [as opposed to the Small Claim Division- Evid. Rule 101(C) excepts the application of the Evidence Rules from Small Claim proceedings and Civil Rule 1(C) excepts the application of the Civil Rules from Small Claim proceedings] the litigant must follow court rules and procedure the same as an attorney. See *Copeland v. Rosario* (Jan. 28, 1998), Summit App. No. 18452, unreported, at 6. They are not to be accorded greater rights and must accept the results of their own mistakes and errors. *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (holding that pro se litigants are, "presumed to have knowledge of the law and of correct legal procedure and [are] held to the same standard as all other litigants"); *Meyers v. First Natl. Bank* (1981), 3 Ohio App.3d 209, 210, 444 N.E.2d 412." See *Jones Concrete, Inc. v. Thomas* 1999 WL 1260308 (Ohio App. 9 Dist.)

An unrepresented civil litigant, instead of filing a formal answer, may file a letter addressed to the Judge without sending a copy to opposing counsel. By definition the communication is an Ex Parte Communication because opposing counsel has been excluded from the communication. Is there an exception under Code Jud. Cond. 2.9 which permits the Judge to receive this information? There does not appear to be. Also, the Civil Rules of Procedure prohibit the judge from considering the letter unless a proof of service accompanies the letter or is separately filed. See Civ. R. 5 (B) (3). In Oberlin Municipal Court when a filing is made that does not comply with Civ. R. 5 (B)(3) an Entry is docketed titled "Notice of Filing". An example of the notice reads:

"A letter was filed by [Defendant] this date. The document has no proof of service. Civil Rule 5(D) provides in part that "Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. [Defendant] is granted until [Insert an appropriate date] to file an answer or otherwise defend, that includes a proof of service.

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The court is not permitted to give legal advice but pursuant to RULE 2.6(A) of the Ohio Code of Judicial Conduct judges are encouraged to provide information to self-represented individuals.” [a footnote is then referenced which reads: ‘RULE 2.6 Ensuring the Right to Be Heard’ provides in part: (A) A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.’ Comments [1] and 1[A] to Rule 2.6 provide that [1]“The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. [1A] The rapid growth in litigation involving self-represented litigants and increasing awareness of the significance of the role of the courts in promoting access to justice have led to additional flexibility by judges and other court officials in order to facilitate a self-represented litigant’s ability to be heard. By way of illustration, individual judges have found the following affirmative, non-prejudicial steps helpful in this regard: (1) providing brief information about the proceeding and evidentiary and foundational requirements; (2) modifying the traditional order of taking evidence; (3) refraining from using legal jargon; (4) explaining the basis for a ruling; and (5) making referrals to any resources available to assist the litigant in the preparation of the case.’]

The last sentence of the Notice of Filing then reads:

“The NOTICE TO DEFENDANT below is intended to provide information to the Defendant pursuant to the Code.”

An appropriate NOTICE TO DEFENDANT is then set forth at the end of the Notice of Filing. For example:

“NOTICE TO DEFENDANT: The letter you sent may not be sufficient to protect your legal rights in this case. You may continue to represent yourself; however, you are bound by the same rules as an attorney. A copy of the Civil Rules of Procedure can be accessed by visiting the Ohio Supreme Court’s website at <http://www.sconet.state.oh.us/LegalResources/Rules/civil/CivilProcedure.pdf> Neither the court nor the clerk’s office is permitted to give you legal advice. You should consult with an attorney regarding your rights. The law does not permit the court to appoint a lawyer to represent you in this type of case. If you cannot afford an attorney you should contact the Lorain County Legal Aid Society 323-8240 or the Lorain County Bar Association 323-8416. They may or may not represent you. You will note on the Summons that you received you are required to serve a copy of the Answer on the Plaintiff’s attorney. You may have done this, but the Civil Rules require that you file a “Proof of Service” with the court informing the court that you have sent a copy of the Answer to the Attorney and the date that you sent the copy of the Answer to the attorney. If you already sent a copy of the Answer to the attorney you should file a separate “Proof of Service.” If not, you should send a copy and file a “Proof of Service” with the court informing the court of the date it was sent.”

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The Clerk is then instructed to send a copy of the Notice of Filing to counsel for the Plaintiff and to the Defendant and to send to the Defendant a pamphlet on pro se representation. The pamphlet is titled “A resource of court procedures for those representing themselves in a civil case” and is published collaboratively by the Ohio State Bar Foundation, Ohio Legal Assistance Foundation, Ohio Library Council and Ohio State Legal Services Association and is available at www.osbf.net or www.ohiolegalservices.org.

By responding in this manner the judge fulfills obligations under the Code of Judicial Conduct:

The judge has not read [or if read or partially read] has not considered the letter;

The judge has notified opposing counsel of the [attempted] communication;

The judge has ensured the unrepresented litigant the right to be heard by providing information pursuant to the Code. See Code Jud. Cond. Rule 2.6.

An alternative method is to instruct or request the Clerk to not accept the filing and return it to the litigant without explanation or with a similar explanation. We prefer to send and docket the Notice of Filing which also satisfies the judge’s obligation under Code Jud. Cond. Rule 2.6.

There are other situations when a civil litigant may attempt to contact the Judge or expect the judge to “assist” the civil litigant. An extreme example is the case of *Disciplinary Counsel v Medley* (2004) 104 Ohio St.3d 251. An action on an account was filed by a Hospital against Roger Watson, a local official and two-term chair of the political party of which the judge was a member. The hospital obtained a default judgment against Mr. Watson of over \$6,000.00 on June 17, 1998. Watson contacted the judge 6 days after the default judgment was granted and the judge issued an order that read that Watson “orally applied for relief from judgment pursuant to Rule 60(B)” and rescinded the default judgment and granted Watson 28 days to file an answer. Watson did not file an answer and on March 1, 1999 the hospital filed another motion for default judgment. The judge scheduled a pretrial conference on April 9, 1999. Watson did not appear and on April 11, 1999 the judge entered a second default judgment against Watson. On February 6, 2002 the hospital filed a praecipe instructing the clerk of court to prepare a certificate of judgment which was done that day. Within days, Watson went to the courthouse to speak to the judge about removing the lien because the lien was holding up the closing of a real estate sale that Watson had pending. The judge told Watson “I’ll get it taken care of and it will be off before evening.” No representative of the hospital was present during any of the conversations between the judge and Watson. On February 13, 2002 the judge entered a journal entry representing that Watson appeared in open court and requested that he be permitted to file an answer. The entry included that “Watson is given the right to file his answer instanter [Instantly; at once]. Set for pretrial-Remove any Default judgments.” Watson testified that he had spoken with the judge three times in the judge’s chambers and once on the street about the case. Each communication was an inappropriate ex parte communication and the judge was sanctioned for violations.

The represented Civil Litigant

Sometimes a person who is represented may try to contact the judge for a variety of reasons. In one case the trial court received a letter ex parte from the father of a child in a pending matter before the

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judge involving parental allocation rights. The letter urged the judge to have the child psychologically evaluated. The judge immediately upon receiving the letter forwarded copies of the letter to the parties' counsel. The judge did not make a decision relevant to the pending motion until over a month had passed since the receipt of the letter and there was no evidence that the judge relied on the letter. In *Re Pierce* 2008 WL 1837258

Certainly, anytime a communication is received from a represented individual the person should be referred to the person's counsel and the opposing counsel or opposing unrepresented litigant should be notified of the communication immediately. Anytime a judge is faced with a situation where an ex parte communication has been received, the judge should immediately make all participants or their counsel aware of the communication, provide copies of any written communication and docket the court's action.

The Unrepresented Criminal or Traffic Defendant

A person is stopped by a police officer for a traffic offense or served with a summons to appear in court for a criminal offense. During the conversation with the police officer the person is told by the officer "Tell it to the Judge" or "Write a letter to the court." The person in good faith writes a letter to the Judge, without sending a copy to the prosecutor, with their impassioned plea for justice asking that the charge be dismissed or requesting that no points be assessed or that the fine be suspended.

The counterpart in the Criminal Rules of Procedure to Civ. R. 5(B)(3) is Crim. R. 49(C) which provides that "papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed." Clearly this is an Ex Parte communication by definition because the prosecutor has been excluded from the communication. Just as with the unrepresented civil litigant the unrepresented criminal or traffic litigant expects that the court system [the judge] will provide them relief from the perceived or actual injustice and resolve the matter fairly and expeditiously without the need for an attorney or even a court appearance.

Can the Judge read the letter? Of course, the answer is no. The response should be similar to the response to the unrepresented civil litigant. A Notice of Filing can be docketed similar to the notice sent to the unrepresented civil litigant. In Oberlin Municipal Court a form is available for an unrepresented person with a waivable offense to use rather than appearing for arraignment. The form permits a not guilty plea and an option to schedule the case directly for trial or for pretrial. A copy of the form [1-05] is available at oberlinmunicipalcourt.org at the Traffic Ticket link under Not Guilty Plea.

What if the person just needs time to pay the fine on a waiver offense? Can the judge read and respond to that letter? The rule permits Ex Parte communications "when circumstances require it" for scheduling, administrative, or emergency purposes, that does not address substantive matters or issues on the merits "provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication." Paying a waiver fine does not involve a substantive matter. It also does not appear that the Defendant gains any advantage because there is an admission of guilt and agreement to pay the waiver fine. If you conclude that "circumstances require it" then the letter can be considered. In Oberlin Municipal Court when a letter asking for time to pay a waiver fine is filed an entry is docketed that reads:

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“DEFENDANT REQUESTED AN "EXTENSION" OR “PAYMENT PLAN.” TO THE EXTENT THAT THE REQUEST IS FOR AN EXTENSION TO PAY THE WAIVER IN THIS CASE THE REQUEST IS GRANTED UNDER THE FOLLOWING TERMS AND CONDITIONS:

THE LETTER SENT BY THE DEFENDANT IS CONSIDERED A TENDERED WAIVER [GUILTY PLEA] AND SHALL BE ACCEPTED AS SUCH UNLESS THE DEFENDANT FILES AN OBJECTION WITHIN 14 DAYS. IF AN OBJECTION IS FILED THE MATTER WILL BE SET FOR TRIAL;

DEFENDANT IS PERMITTED AN “EXTENSION” TO PAY THE WAIVER AMOUNT UNTIL [Insert Date]- NO FURTHER “EXTENSIONS” WILL BE GRANTED;

IF THE WAIVER AMOUNT IS NOT PAID ON OR BEFORE [Insert Date] THEN THE DEFENDANT IS ORDERED TO APPEAR ON [Insert Date-allow at least 30 days for license forfeiture notification compliance] AT 8:30 A.M. IN THE EVENT THE WAIVER HAS NOT BEEN PAID AND THE DEFENDANT DOES NOT APPEAR THEN THE DEFENDANT’S LICENSE WILL BE CANCELLED WITHOUT FURTHER NOTICE. IN ADDITION, IF THE DEFENDANT FAILS TO PAY AND FAILS TO APPEAR AS ORDERED THE FILE MAY BE TURNED OVER TO A COLLECTION AGENCY AND THE COLLECTION AGENCY WILL ADD A FEE TO ANY OUTSTANDING BALANCE.”

The Alleged Victim

The alleged victim attempts to communicate directly with the Judge by telephone call, by letter or through another person [e.g. victim advocate] in good faith expecting that the Judge will be able to use the information in providing a just result. Can the Judge take the telephone call? Can the Judge read the letter? The Judge cannot take this call or read the letter. What should be done with the communication?

Staff should be instructed how to respond to the communication. If the communication is a telephone call, explain to the alleged victim that the Judge is not permitted by law to receive this information in a telephone call. Sometimes it is helpful to cite the section of the Ohio Code of Judicial Conduct [Rule 2.9]. This assures the person that it is not that the Judge is not concerned about their situation or disinterested in the information but that the Judge, just like everyone else, must follow certain rules. The person should be given the name and contact information of the prosecutor and the victim advocate.

If the communication is a written correspondence, the staff may be instructed to contact the person by telephone (if a number was provided) and explain the Ex Parte rules.

In either event the staff communication with the alleged victim should be documented. At the very least an internal Memo should be prepared and either kept in the court file or in a separate file for future reference. In the Oberlin Municipal Court most attempted Ex Parte communications are docketed with a Notice of Attempted Ex Parte Communication that reads:

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“Please take notice that on [insert date] an [attempted] ex parte communication was made to the judge by [insert name or alleged victim] by [insert manner of communication, i.e. telephone call or written correspondence]. The [alleged victim] was advised by court staff that the judge is not permitted to receive the information and was advised to contact the prosecutor and/or victim advocate.]”

If the Clerk has accepted a written correspondence for filing you may wish to consider ordering the correspondence sealed and notifying the parties that the [attempted] communication has been sealed.

Of course there are some situations where the Judge is not only permitted but is required to have an Ex Parte Communication with an alleged victim. Cod. Jud. Conduct 2.9(A)(5) provides “A judge may initiate, receive, permit, or consider an ex parte communication when expressly authorized by law to do so.”

Two examples of situations where the law permits [and even may require] an ex parte communication with a victim are R.C. 2919.26 and Criminal Rule 4.

R.C. 2919.26 requires that a judge receive information from an alleged victim/complainant seeking a temporary protection order:

“(A) Upon filing a complaint...for any offense of violence...the alleged victim...may file a motion that requests the issuance of a protection order...

“(B) The motion shall be prepared on a form that is provided by the clerk of the court...

“(C) As soon as possible after the filing of the motion...but not later than 24 hours...the court shall conduct a hearing to determine whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion.”

Here it is contemplated by the law that a judge will have an ex parte communication. In order for the judge to fulfill the obligation under the law to receive information within 24 hours the judge will necessarily, in circumstances where the accused has not been served or arrested, have to hear the information ex parte. Even though it is an ex parte communication it is a permitted ex parte communication because the law not only permits but requires it.

Another example of a permitted ex parte communication is Criminal Rule 4. Criminal Rule 4 provides in part that the issuing authority [judge] may examine under oath the complainant and any witnesses prior to issuing an arrest warrant. Clearly an ex parte communication the law permits the judge to receive this information prior to issuing a warrant.

The Concerned Citizen

The judge receives an urgent telephone call from an unidentified or identified source that claims that a defendant against whom a charge is pending is abusing drugs and is a danger to either his or her self or others. Staff appropriately transfers the call to the Community Control Department. The

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Community Control Department speaks to the person and concludes that the person is in need of immediate intervention. Is the judge permitted to receive this information?

Cod. Jud. Cond. 2.9(A)(1) and (6) may permit the court to receive this information in very limited circumstances. Section (A)(1) provides in part that, when circumstances require, an ex parte communication for “emergency purposes” that does not address substantive matters or issues on the merits is permitted, provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication. This decision will be very fact intensive.

Section (A)(6) is more expansive and provides in part that when a court is administering a specialized docket that the judge may initiate, receive, permit or consider an ex parte communication provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.

While a case is pending a judge always has authority to modify a bond. Criminal Rule 46(E) provides that “A court, at any time, may order additional or different types, amounts, or conditions of bail.” Of course, justification for modifying the bond would be a change of circumstances. Recall that an exception to the Ex Parte communication rule is that a judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge’s adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter. This may be a situation where the judge can use the information to modify the bond or the bond conditions. Unless it is a grave concern and if the judge has any doubt regarding the credibility of the source the judge should schedule a hearing as soon as possible either prior to modifying the bond conditions or within 24 hours or on the next business day, notifying all participants concerned (i.e. prosecutor, defense counsel and/or the defendant and the community control department).

What about letters received from concerned citizens regarding an upcoming sentencing hearing? It is common for a judge to receive letters, both in support of a defendant and in support of the victim(s) prior to sentencing. The case of *State ex rel. Beacon Journal Publishing Co. v Whitmore* (1998) 83 Ohio St. 3d 61 is instructive on the issue. The court noted in that case that “The Judge receives letters from identified concerned citizens regarding the sentencing. Judges often receive numerous letters from interested parties attempting to persuade the judge to their viewpoint or to bring some information to the judge's attention. Many judges have their staff screen and discard such mail because it constitutes an improper ex parte communication, or a judge may, once it becomes apparent what the letter involves, cease reading the letter and, preferably discard the same.” This is probably the preferred course of action. The judge should not read these letters. If a judge chooses to read the letters they should be read at the sentencing hearing or a separate hearing should be held to permit the defendant and her/his counsel and the prosecutor to see the letters and be given an opportunity to respond and/or prepare a response for the sentencing hearing.

Even though the preferred method is set forth in *Whitmore* one court appears to have condoned the practice of reading letters from concerned citizens without formally notifying the defendant or defense counsel as long as the letters are in the public record and available for review by the defendant or defense counsel. In *State v Johnson* (2005) 164 Ohio App. 3d 792 many letters were sent to the judge on the

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victim's behalf by the victim's family, friends, and co-workers. The judge indicated at the sentencing that the judge had reviewed all written correspondence received, both on behalf of the defendant as well as the victim. Defendant objected to the use of the letters as improper ex parte communications because he was not made aware of the letters. The court, although it did not reference the code of judicial conduct (code of judicial responsibility) found that there were no improper ex parte communications.

To avoid even the claim of an ex parte communication the preferred course would be to docket a "Notice of Filing" and send a copy of the notice to the Defendant, his or her counsel and the prosecutor.

The Inquisitive Attorney requesting an Advisory Opinion

Attorneys are understandably anxious to know the judge's opinion either as to the procedure to follow or the law prior to filing a pleading or motion. Either the attorney or a staff member of the attorney may call the Clerk of Court or a member of the court staff and inquire "How does the Judge want this done" or "What is the judge's position on this." Depending on the how or what is inquired will depend on whether the judge can receive the communication. In an effort to maintain a good relationship with the bar the judge does not wish to be perceived as untouchable and impersonal. On the other hand there are inquiries that are clearly inappropriate and as much as the judge might want to be helpful the judge must avoid participating in a forbidden communication. Examples include:

Attorney contacts the clerk of court and asks if the judge would permit an eviction hearing to go forward without the landlord being present because the landlord is out of town. The attorney tells the clerk that the attorney is familiar with the tenant's account and the service of the three day notice and can make a "professional statement" for the landlord.

Attorney contacts a staff member and asks if the Judge will grant driving privileges for the attorney's client and whether it is worth filing a motion for driving privileges.

Attorney calls the Clerk's office and wants to know if the court has a form of Notice to Leave Premises (or any other form or pleading) or if the Clerk can tell the attorney if there is a supply store where the attorney can purchase such a form.

Attorney contacts a staff member and asks if the Judge will grant the attorney's client an early release from jail or whether the judge will grant limited driving privileges if a motion is filed. The attorney is attempting to find out the answer to a question without filing an appropriate motion.

The judge should not entertain these types of questions. The attorney should be instructed to put the request in writing. Both the criminal rules and civil rules support this position. Crim. R. 47 provides in part "An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally." Crim. R. 49(C) requires a certificate or proof of service... The judge cannot respond to these oral questions nor should the clerk or staff member give this information or concern the judge with the question. These appear to be "pending" or "impending" matters. If the judge participates in assisting the attorney with answers to these questions the judge will be painted into a corner if at the hearing the other side wishes to contest the judge's

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opinion. The judge must maintain her/his independence and open mind to rule on any issue pending in the court. If the judge has pre-approved or pre-determined an issue her/his independence has been compromised.

On the other hand, if the judge has made a ruling in a case with a similar issue, staff can reference the attorney to the written opinion or decision but it would be improper for the judge to give an advisory opinion or decision that would foreclose the opposing side from an opportunity to argue the counter point.

The Walk-in Prosecutor/Defense Attorney

The prosecutor's office is adjacent to the judge's chambers and the prosecutor occasionally walks into the judge's chambers. Sometimes the discussion is small talk, but at times the discussion turns to a pending or impending matter. In these situations the judge must be very careful about the discussions that the judge has with the prosecutor. The docket is extremely busy. The attorneys become anxious and want to complete their case as soon as possible and feel they cannot wait for the prosecutor to be available to meet with the judge.

Examples include:

On this occasion a case is scheduled for a suppression hearing later that day and the prosecutor tells the judge verbally that the prosecutor just received a call from a witness and that the witness will not be able to make the hearing because it is the officer witness day off and the officer would have to be paid overtime to attend. The prosecutor has not yet spoken to the defense about the request but wants to know if the case can be continued if the defense does not agree. The prosecutor wants to be able to tell his witness what to do right now and the defense counsel is unavailable until the hearing.

A defense attorney enters the judge's chambers and wants to discuss a proposed plea bargain with you. The case is scheduled for pretrial and the prosecutor is down the hall in the prosecutor's office but because the docket is so busy has sent the defense attorney to speak to you without the prosecutor's presence. The defense attorney wants to give you a summary of the proposed plea bargain. You tell the attorney that you cannot discuss the case without the prosecutor's presence. The defense attorney tells you that the prosecutor said it is okay to speak directly to you without the prosecutor's presence.

Clearly, these are examples of ex parte communications. In the first example the judge does not know if there is an objection to the continuance and cannot know if the defense will be prejudiced by the continuance until input is had from the defense. In the second example, even if the prosecutor said it was O.K. for the defense attorney to speak to the judge the judge is at the mercy of the defense attorney's [good faith] representations of the facts of the case and the prosecutor's position.

In *Disciplinary Counsel v Plough* (2010) 126 Ohio St. 3d 167 the judge initiated a contact with the prosecutor by telephoning the prosecutor without defense counsel's presence to discuss a defendant's opposition to a plea agreement reducing a pending 3rd degree felony charge to a misdemeanor. The communication was ruled a violation of Code of Jud. Conduct, Canon 3(B)(7) prohibiting ex parte communications about a pending case.

Ex Parte Communications

The communication from another Judge

The rules provide that you can speak to another judge but this does not apply in all cases. The exception reads: “A judge may consult with... other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter” The comments also provide “[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.”

A judge received a call from another judge that had an employee who was charged with Domestic Violence. The employer Judge called the other judge at home. Not knowing what the call was about the judge took the call. The employer judge then proceeded to tell the other judge that the employee was charged with domestic violence and that his attorney would be contacting him. He proceeded to tell the other judge that the employee was a “nice guy” and “we need a personal bond set.” The other judge listened politely [the judge was an elder judge who had been on the bench for a long time and I did not want to preach ethics to the judge.] The attorney attempted to call the other judge at home but the judge did not answer the phone when the attorney’s number appeared on the caller ID. The case was handled as any other Domestic Violence case – in open court and on the record.

Was the call to the judge at home a violation? The purpose of the rule is consult with other judges to assist the judge in making a decision. Clearly, the unsolicited telephone call from the employer judge was not for consultation purposes but to convey [factual] information not on the record.

The cold call

Very seldom does a person call the judge just to talk. It is not unusual for a person with a pending matter to attempt to contact the judge, especially a person that claims to “know the judge.” Staff should be instructed to be polite but firm. Red flags that the person is attempting to contact the judge for personal attention include:

1. “Oh, I’ve known [first name of judge] for a long time. She/he is a good friend of mine.”
2. “I went to high school with [first name of judge].”
3. “I don’t need legal advice or have a pending case, I just have a question.”
4. “I worked on the judge’s campaign. I put up signs for her/him.
5. “It’s OK I am a [City Council member, Trustee, County Commissioner etc.] I am sure the judge will speak to me.”

The person attempts to convince the staff member that the judge would have no problem speaking to them. Many times the person will refuse to tell the staff member the subject matter or nature of the call. Staff should be advised to follow a script similar to:

CALLER: This is [name of caller] May I speak to the Judge?

STAFF: May I ask the reason for the call?

CALLER: Oh, just tell her/him who I am. I am sure she/he will speak to me.

Ex Parte Communications

STAFF: Mr./Ms./Mrs. [name of caller] I would like to do that but before I tell the Judge that you are calling I have to ask reason for the call. The judge is not trying to be impersonal but has rules that she/he has to follow before she/he can speak to you.

CALLER: [HERE THE CALLER THEN STATES ONE OF THE RED FLAG STATEMENTS DESCRIBED ABOVE]

STAFF: I am sure that the Judge would like to talk to you but, the judge has to follow the Code of Judicial Conduct. For example, she cannot speak to anyone about a pending case and cannot give legal advice. If you will kindly tell me why you are calling I can give the information to the judge so she/he can decide if she/he can speak to you.

CALLER: [EXAMPLES]

EXAMPLE #1 – I don't have a case in the court but my son/daughter does. I just want to let the judge know...

STAFF: The judge is not permitted to receive this information. If I were to give this information to the judge, he/she might not be able to hear the case and the Supreme Court would have to assign another judge to the case. I am sure the judge will be fair with your son/daughter's case. You may wish to provide your information to the prosecutor or to your son/daughter's attorney if they have one. They will be able to tell you how this information can be given to the judge at the appropriate time and in the appropriate manner.

EXAMPLE #2 – I don't have a pending case in the court and I am not asking for legal advice. It is a personal matter.

STAFF: I still cannot put you through to the judge. I will tell the judge that you called and that you said it is a personal matter. She/he may or may not return your call or the judge might ask me to call you back.

In any event, even if the judge decides to receive this information, as suggested in Comment 1 to the Rule, to the extent reasonably possible, all parties or their lawyers shall be included in the communications with the judge. The judge may wish to consider contacting all participants and/or their attorneys to advise them of the communication and reveal the communication, on the record if possible and appropriate and docket the communication.

Conclusion

Like many other ethical issues identifying a prohibited ex parte communication is best accomplished by the following test. If you think that it is a prohibited ex parte communication, then it is – until you give it additional thought and consideration. Advise staff members to think of themselves as a gatekeeper. They should not open the gate until they are satisfied that the communication can enter the protected area – the judge's chambers or the judge's mind. If there is any question about whether the communication can enter – err to the side of caution. You can always open the gate but once the gate is open and the communication enters you cannot ever send it back. If the gate was opened when it should not have been – let everyone involved in the case know that you opened the gate – and what was permitted to pass through the gate.

STRENGTH IN JUSTICE: OHIO'S LEGAL AIDS ENERGIZING OUR ECONOMY AND BUILDING OUR COMMUNITIES

**HON. KATHY S. MOWRY, RETIRED
FAIRFIELD CO. DOMESTIC RELATIONS COURT**

**ANGELA M. LLOYD, EXECUTIVE DIRECTOR
OHIO LEGAL ASSISTANCE FOUNDATION**

“Legal aid clients are the homeowners and renters in our neighborhoods; the consumers on ‘Main Street;’ and the employees in our manufacturing plants, farms, restaurants, and hospitals who are living ordinary, hard working lives,” reports *Strength in Justice: Ohio’s Legal Aids Energizing Our Economy and Building Our Communities*.

In its new report, *Strength in Justice*, the Ohio Legal Assistance Foundation (“the Foundation”) highlights the overall community impact of Ohio’s legal aids. Community impact is created by Ohio legal aids when the work of legal aids puts money into the economies of the communities they serve; when the work of legal aids saves money for the communities they serve; and when legal aids generate tax revenues that go into the coffers of the communities they serve.

Strength in Justice points out first, that each of Ohio’s legal aids operates as a regional nonprofit law firm. As with any law firm, or indeed any small business, a legal aid office purchases goods and services to keep its doors open. It rents office space; pays utilities; and buys everything from insurance to computer hardware to coffee for the lunch room and tissue for the restroom. Legal aids, of course, also buy scores of pens, paper and ink cartridges for the printers. As local employers, Ohio’s legal aids provide jobs for Ohioans. The legal aid attorneys are the first line of representation, but the attorneys are supported by administrative support staff, intake workers, accounting staff, IT staff, and paralegals. At the end of 2012, for example, Ohio’s legal aids had 479 full and part-time employees. In 2010, the year on which *Strength in Justice* reports, employment at Ohio’s legal aids also created an additional 100 jobs in the business sectors supporting the operation of legal aid.¹

Strength in Justice utilizes the U.S. Department of Commerce’s Regional Input-Output Modeling System, known as RIMS II, to measure the economic impact of Ohio’s legal aids. The RIMS II system uses a set of regional multipliers to measure how a regional economy responds to changes in expenditures which result from a particular business operating within a particular geographic area; in this case, legal aid.² *Strength in Justice* thus concludes that Ohio’s legal aids generated \$ 106 million in economic impact in Ohio in 2010.³ This economic activity represents a return of 115 percent for every dollar spent by Ohio’s legal aids and the Foundation.⁴ In addition, legal aids’ operations in 2010 also generated \$2.1 million in state tax revenue and \$3.5 million in tax revenues for counties

Strength In Justice: Ohio's Legal Aids

and municipalities, for a total positive impact on state and local tax revenue of \$5.6 million.⁵

The following stories of Mr. L.I. and Ms. N.T. not only reflect the work of legal aid attorneys who ensure that those qualified for benefits which prevent homelessness and provide food, but also reflect the positive economic impact which results from people being able to stay in their community and participate in the economy. Usually, people think of lawyers as helping their client - singularly. But because legal aid lawyers often secure a client's financial resources, housing or physical safety, the work of legal aid lawyers strengthens our larger communities.

Mr. L.I. is a naturalized citizen.⁶ He immigrated to the United States from Asia years ago. He holds an advanced degree and worked for an Ohio university for seven years until his employment was terminated for unspecified reasons during the recession. Mr. L.I., like so many Americans, turned to unemployment compensation in order to support his children while he found new work. His university employer appealed his award of unemployment benefits, so Mr. L.I. went to his local legal aid for help. A legal aid attorney agreed to represent him in the appeals process. Mr. L.I.'s employer then withdrew its appeal before the hearing. Mr. L.I. was, as a result, able to maintain his monthly benefit of about \$2,100.

Mr. L.I. used his unemployment compensation to buy his family's food; to pay for the utilities for their home; and, to put gas in the family car. He buys his gas at the Speedway and United Dairy Farmers gas stations in his neighborhood and shops for his children's clothes and school supplies at the nearby J.C. Penney's and Aldi. Not only were Mr. L.I. and his children able to stay in their home and weather the recession as a result of his local legal aid's help, but other local businesses benefitted from Mr. L.I. being a customer during an economic downturn when he might otherwise not have had cash to spend in his community.

Ms. N.T. is a college educated single parent with two young daughters. She lives in southeast Ohio. Several years ago she was diagnosed with cancer. She underwent both radiation and chemotherapy. Tragically, a subsequent relapse required that she undergo a bone marrow transplant. While she is now cancer free, her radiation and chemotherapy caused permanent physical damage.

Ms. N.T. entered a vocational rehabilitation program in order to ensure that she could continue to work and support her children despite her disability. Ms. N.T. applied for and received benefits to help feed and support her children while she learned how to work with her new disability. Ms. N.T. spent her benefits at her local grocery and on a local child care provider for her daughters.

However, Ms. N.T. was subsequently notified that she was ineligible for the child care benefit she had received because she holds a bachelor's degree. It was the child care

Strength In Justice: Ohio's Legal Aids

benefit which had enabled her to attend job training and go to work. She was told that she would have to pay back the child care benefit.

Luckily, Ms. N.T. knew about the help available at her local legal aid because they had helped her prepare her will when she learned of her cancer diagnosis. So, Ms. N.T. contacted her legal aid again and asked if they could provide any help with her most recent legal hurdle. Legal aid agreed to represent Ms. N.T. and was successful in identifying state regulations which confirmed that Ms. N.T. was eligible for child care benefits during her rehabilitation. As a result of legal aid's help, Ms. N.T. was able to continue with her job retraining and care for her family and was free of the burden of repaying benefits which she had rightly received during her time of need.

As so vividly shown by Mr. L.I. and Ms. N.T., Ohio's legal aids generate more than a purely economic impact on the state – they generate a far larger community impact. Ohio's legal aids leverage other private and public state resources. For example, Ohio's legal aids leverage resources by recruiting, training and supporting lawyers in private practice or government service to represent legal aid clients pro bono. It is challenging for a private attorney who spends her days negotiating and drafting merger agreements to represent a victim of domestic violence seeking a civil protection order unless that private attorney has mentoring and training from an expert in the field. Yet, in 2010, Ohio lawyers provided more than 38,000 hours of pro bono legal services to legal aid clients. At an hourly rate of \$175, the value of the pro bono work exceeds \$6.8 million.⁷ Thus, the physical network of Ohio's legal aids, along with the professionalism and skills of its staff, allows legal aid to create a statewide safety net for private attorneys to represent low-income Ohioans in life sustaining cases. For, while Ohio's legal aids don't have a brick-and-mortar legal aid office in every county, Ohio's legal aid lawyers represent low-income⁸ clients in all 88 counties, thus making pro bono work available in all 88 counties.

Strength in Justice also points out that Ohio's legal aids expand the reach and efficacy of scarce resources by partnering with other community organizations. Medical-legal partnerships in Ohio's metropolitan areas are one of legal aids' most successful collaborations. Medical-legal partnerships place a legal aid lawyer in an urban emergency room on a weekly basis and train doctors and nurses to identify legal issues impacting the health of low income children and families. Once a doctor or nurse identifies an issue, the child and his family are referred to the onsite legal aid lawyer. As highlighted in *Strength in Justice*, Baby Ben is one such success which had statewide impact as a result of the partnership.

Ben was 7 months old when he was diagnosed with several medical conditions that could have resulted in permanent facial deformity and life-long medical problems. Ben's application for a prescribed baby helmet was declared a "non-covered" service by a state agency and declined.

The medical center where Ben was a patient referred Ben's family to legal aid. Legal aid interceded on Ben's behalf and through advocacy and without a lawsuit, convinced the agency to approve the baby helmet.

Strength In Justice: Ohio's Legal Aids

Ohio now regularly provides baby helmets to infants with Ben's conditions and, as a result, Ohio saves tens of thousands of dollars annually in special education costs and long term care costs for these children, who, if put into a helmet before the age of 2, have every likelihood of developing normally and without disabilities. Thus, Ohio's legal aids also impact the economic life of the communities they serve by achieving results in individual cases that alleviate the need for governmental interventions or reduce the consumption of governmental resources.

The foreclosure crisis creates another opportunity to highlight Ohio legal aids' positive impact on state resources. As *Strength in Justice* reports every foreclosure may cost local governments up to \$34,000 in property maintenance, security, inspections, and trash removal.⁹ Where a legal aid lawyer successfully negotiates a home mortgage modification and thereby keeps a homeowner in her home, the legal aid lawyer saves local government not only the cost of providing emergency shelter care or transition housing for a homeless individual or family, but also saves local government the cost of providing grass cutting or snow removal for the property as well as police and fire protection to ensure neighbors around an unoccupied home remain safe. In the long run, it also saves local government the cost of tearing down vacant or abandoned housing. Representing clients in foreclosure actions, legal aid lawyers serve not only their client, but the client's community, municipality and county by preventing homelessness, stabilizing housing prices and avoid the cost of care and maintenance of vacant and abandoned property.

In 2010, the Foundation study reports, legal aid prevented nearly 1,000 foreclosures. Conservatively estimating that each home touches only one other home and that the average home value in Ohio is \$ 135,000, then it follows that legal aid was responsible for preserving roughly \$2.7 million in property value for Ohioans who never walked through the door of a legal aid office.¹⁰ In addition, Ohio's legal aids have also helped to save multi-family dwellings and even entire neighborhoods at risk of multiple foreclosures. In Price Hill in Cincinnati, for example, legal aid acted as the attorney for Price Hill Will, "a nonprofit organization committed to creating systemic change through economic development and physical revitalization"¹¹ of the Price Hill neighborhood. Through the activity of Price Hill Will and the Legal Aid Society of Greater Cincinnati "foreclosed properties have become safe attractive and affordable."¹²

Finally, *Strength in Justice* affirms that Ohio's legal aids' work to rescue women and children from domestic violence has had substantial positive community impact. In 2010, legal aid secured or retained a safe environment and reduced risks for children in 2,600 instances; it secured or retained child support, retirement benefits, health insurance or other assets in 872 instances; and it secured or retained shelter and reduced debt in nearly 1,200 instances.¹³ Legal aid's work not only helps to reduce domestic violence, but also

saves counties and municipalities the cost of extra police runs and emergency responder time. It saves medical and mental health services costs for victims of domestic violence and their children. Legal representation also helps victims of domestic violence avoid homelessness and break cycles of violence that develop when their children repeatedly witness violence in the home.¹⁴ What's more is that women who are victims of domestic violence who have an attorney miss fewer days of work and are better able to maintain employment than women who have no representation.¹⁵

Strength In Justice: Ohio's Legal Aids

Throughout Ohio, legal aid operates 28 offices. It is present for the people and in the courts of all 88 Ohio counties. In 2010, the Foundation report finds that legal aid lawyers served low income Ohioans in over 87,000 different matters, including legal assistance to nearly 17,000 seniors.¹⁶ *Strength in Justice* documents the value Ohio's legal aids bring to all Ohioans. Our legal aids provide community and economic value. They are small businesses operating and employing people in our midst and, even more than that, they are doing work that keeps Ohioans in their homes, spending their incomes and actively supporting their communities. Whether it is in fewer emergency room visits for a child because an uninhabitable apartment is made safe from mold; escape from an abusive relationship for a mother; thriving neighborhoods not dotted by foreclosed homes; or, whether it is just buying supplies from local businesses, legal aids have a lasting, positive impact on every community in Ohio. It benefits us all for Mr. L.I. to be able to remain home and buy gas and groceries and food and it benefits us all if Ms. N.T. has child care while she retrains as a result of her medical disability. Robust support for Ohio's legal aids is vital as Ohio's legal aids are not just good ideas, but are essential to energize our economy and to build our communities.

The Ohio Legal Assistance Foundation would like to thank the Ohio State Bar Foundation for its support in publishing and circulating *Strength in Justice: Ohio's Legal Aids Energizing Our Economy and Building Our Communities* and Community Research Partners and Regionomics for its economic analysis and application of the RIMS II model to legal aids' impact on the state.

¹ Strength in Justice: Ohio's Legal Aids Energizing Our Economy and Building Our Communities, Ohio Legal Assistance Foundation (2012), available at <http://www.olaf.org/public/files/other-publications/OLA-001%20OLAF%20Brochure.9.LowResDONOTPRINT.pdf>.

³ Boston University, Office of the Executive Vice President, Economic and Social Impact, Research Methodology, Introduction. <http://www.bu.edu/esi/research-methodology/>.

³ Strength in Justice at 3.

⁴ Id. at 3.

⁵ Id. at 3.

⁶ Client names have been changed to protect privacy.

⁷ Id. at 4.

⁸ Financial eligibility for legal aid is based on the federal poverty guidelines announced annually by the Department of Health and Human Services. Generally, a person or household must earn less than 125 percent of the federal poverty guideline to qualify for legal aid help. For a family of four in 2013, this means income no greater than \$29,438; and, for a single person it means income no greater than \$14,363.

⁹ Id. at 7.

¹⁰ Based on an average Ohio home value of \$135,000; Id. at 7.

¹¹ Id. at 8.

¹² Id.

¹³ Id. at 10.

¹⁴ Id. at 9 (citing Murray Strauss and Richard Gelles, *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8145 Families* (New Brunswick, NJ: Transaction Publishers, 1990)).

¹⁵ Id. at 9.

¹⁶ Id. at 5.

OHIO JUDICIAL CONFERENCE ASSOCIATION NEWS

AMCJO

OJC Liaison: Michele Worobiec

The Association of Municipal/County Judges of Ohio enjoyed a great winter conference. The association met at the Embassy Suites in Dublin, OH from February 6th-8th, 2013. The educational sessions featured presentations on the following: hot topics, court costs – authorization, collection and assessment, access for non-English speakers and limited English proficient individuals, access to justice for people with disabilities, what happens in Vega stays in Vega, legislative update, court LiveScan pilot project, traffic law case update, evidence in domestic violence cases, and ODRC update.

During their winter meeting, the Association of Municipal/County Judges of Ohio elected their officers and trustees. Who were sworn in by Justice Terrence O'Donnell. The new slate of officers and trustees for the association is as follows:

Officers

President

Judge John T. Rohrs, III

1st Vice President

Judge Beth W. Root

2nd Vice-President

Judge William Allan Grim

Secretary

Judge Michael R. Goulding

Treasurer

Judge Michael T. Brandt

Past President

Judge Mark B. Reddin

Trustees

Judge Teresa Lyn Ballinger

Judge Chad Lee Carey

Judge Gary Dumm

Judge Carrie E. Glaeden

Judge Frederick Hany, II

Judge Carl Sims Henderson

Judge Gary W. Herman

Judge Deborah A. LeBarron

Judge Stephen B. McIlvaine

Judge Fanon A. Rucker

Judge John B. Street

Judge David Sunderman

Judge Diane S.A. Vettori

Judge Philip M. Vigorito

Judge Deborah J. Nicastro was the recipient of the Association of Municipal/County Judges of Ohio's President's Award. The award was presented to Judge Nicastro by Judge Mark B. Reddin, AMCJO President, recognizing her dedication and service to the association.

The Association of Municipal/County Judges will hold their 2013 Summer Conference at the Dublin Embassy Suites from July 14-16, 2013.

OCPJA

OJC Liaison: Michele Worobiec

The Ohio Common Pleas Judges Association hosted a very successful winter conference. The association met at the Embassy Suites in Dublin, OH from December 5th through December 7th. The educational sessions featured presentations on the following: transitional control, HB 86 cleanup, criminal law update, legislative update and CQEs, *Mapp v. Ohio* revisited, sealing the record, complex receiverships, Supreme Court update, four decades of perspective on Ohio's judiciary (Judge Roger Wilson), Ohio's forensic mental health system, state constitutional law, and access to justice for people with disabilities.

During their winter meeting, the Ohio Common Pleas Judges Association elected their officers and trustees, who were sworn in by Chief Justice Maureen O'Connor. The new slate of officers and trustees is as follows:

Officers

President

Judge Howard H. Harcha, III

President Elect

Judge Jonathan P. Hein

First Vice-President

Judge Guy L. Reece II

Second Vice-President

Judge Thomas M. Marcelain

Third Vice-President

Judge David T. Matia

Fourth Vice-President

Judge Linda J. Jennings

Secretary

Judge Barbara P. Gorman

Treasurer

Judge Mark K. Wiest

Past President

Judge Peter J. Kontos

Trustees

Judge Forrest W. Burt
Judge Michael P. Donnelly
Judge Howard E. Hall
Judge Jody M. Luebbers
Judge Gregory F. Singer
Judge Brett M. Spencer

Judge Everett H. Krueger was the recipient of the Ohio Common Pleas Judges Association's President's Award. The award was presented to Judge Krueger by Judge Peter J. Kontos, OCPJA President, recognizing his dedication and service to the association. Additionally, the Golden Gavel awards were distributed to the following individuals recognizing ten or more years of service on the common pleas general division bench:

Judge John F. Bender, *retired*, Franklin Co. Common Pleas Court
Judge John P. Bessey, *retired*, Franklin Co. Common Pleas Court
Judge Susan E. Boyer, *retired*, Washington Co. Common Pleas Court
Judge Neal B. Bronson, *retired*, Warren Co. Common Pleas Court
Judge Charles E. Brown, Jr., *retired*, Stark Co. Common Pleas Court
Judge Dennis S. Helmick, *retired*, Hamilton Co. Common Pleas Court
Judge James D. Jensen, *retired*, Lucas Co. Common Pleas Court
Judge Lee Sinclair, *retired*, Stark Co. Common Pleas Court
Judge John M. Stuard, *retired*, Trumbull Co. Common Pleas Court
Judge Ronald Suster, *retired*, Cuyahoga Co. Common Pleas Court
Judge Richard K. Warren, *retired*, Allen Co. Common Pleas Court
Judge Roger B. Wilson, *retired*, Champaign Co. Common Pleas Court
Judge Edward M. Zaleski, *retired*, Lorain Co. Common Pleas Court

The Ohio Common Pleas Judges Association will hold their 2013 Summer Conference at the Hilton Netherland in Cincinnati, Ohio from June 19-21, 2012.

OCAJA

OJC Liaison: Jennie Long

During the 2012 OCAJA Fall Meeting, educational topics covered included:

- Access to Justice and Fairness in the Courts: Unconscious Bias and the Criminal Law
- Access to Justice and Fairness in the Courts: Just Politically Correct – or Correct and Just?
- Mapp v. Ohio Revisited – A Story of Extraordinary Personalities
- Rx Abuse: The Scope of the Problem 2012
- The Intoxilyzer 8000

The following were elected to serve as officers for 2013:

Chief Justice	Judge Stephen W. Powell, Twelfth District Court of Appeals
Chief Justice Elect	Judge Gary Tyack, Tenth District Court of Appeals
Secretary/Treasurer	Judge John W. Wise, Fifth District Court of Appeals
Past Chief Justice	Judge Sheila Farmer, Fifth District Court of Appeals

The Summer Meeting of the association will be held at the Dayton Marriott on June 27th & 28th.
The Fall Meeting will be held at the Hilton Polaris on September 11th.

OAPJ

OJC Liaison: Jennie Long

The Ohio Association of Probate Judges is comprised of all judges in Ohio with probate court jurisdiction. Each county in Ohio has one judge with probate court jurisdiction with the exception of Cuyahoga and Marion Counties which each have two judges with probate jurisdiction.

The OAPJ is preparing for the summer educational and business meeting for judges as well as planning for the annual seminars for probate court investigators and deputy clerks.

OAJCJ

OJC Liaison: Jennie Long

The Juvenile Judges Winter Conference was held on Thursday and Friday, December 6-7, 2012 at the Embassy Suites Hotel by the Airport.

The education program covered the following topics:

- Competency Issues in Juvenile Cases
- Case Law/Legislative Updates
- Juvenile Protection Orders
- Juvenile Rule 3

- Court Interpreting in Ohio
- Release of Records/Transcripts
- ODYS Policy and Program Update
- Open Hearings
- Sexual Offender Registration

In partnership with the Ohio Association of Juvenile Court Judges and the Governor's Council on Juvenile Justice, the Ohio Department of Youth Services (DYS) presented the Fourth Annual Community Recognition Awards on December 6, 2012. These awards (the J. Thomas Mullen Achievement Award; the Thomas J. Stickrath Re-entry Award; the Community Award; and the Director's Award highlight youth who have done an outstanding job of turning their lives around, and also recognize community partners for providing valuable services to youth.

OADRJ

OJC Liaison: Jennie Long

The Domestic Relations Winter Seminar was held on Tuesday, December 4th at the Embassy Suites Hotel in Dublin with the following educational topics:

- Rules of Civil Procedure in DR courts: protections orders, service venue, and other issues
- Divorce actions for same sex couples lawfully married in other jurisdictions
- Custody and visitation and other issues related to access to justice and fairness in the courts for lesbian, gay, bisexual, and transgender citizens

OAPJ, OADRJ, OAJCJ Annual Summer Conference

OJC Liaison: Jennie Long

The three associations are busy preparing for the upcoming summer conference scheduled for the week of June 10th at Maumee Bay in Lucas County. Education topics include:

6/11/2013 5.5 CJE Hours (including one hour of ethics)

- Ohio Association of Probate Judges
- Case law update
- Legislative update
- Insolvency
- Sealing/Access to Records
- Crossing the Line (Ethics credit)
- Public Records
- Adoptions
- Hot Topics

6/12/2013 2.75 CJE Hours (including 1.5 hours of professionalism)

Ohio Association of Domestic Relations Judges

Ohio Association of Probate Judges

Ohio Association of Juvenile Court Judges

- Promoting Professionalism On and From the Bench (Professionalism credit)
- Forensic Drug Testing
- Stress – Handling the Pressures of Being a Judicial Officer

6/12/2013 2.0 CJE Hours

All jurisdictions

The Economic Basis of Ohio’s Child Support Guidelines and Other Guidelines Issues

Dr. Jane Venohr, a nationally-recognized expert on child support guidelines, will explain the economic basis and assumptions underlying the existing Ohio child support guidelines schedule.

Dr. Venohr will also review economic data available to update the Ohio child support guidelines and the impact of an update. In addition, Dr. Venohr will summarize federal requirements of state guidelines, compare the Ohio child support guidelines to other state child support guidelines, and identify current trends in state guidelines reviews.

6/13/2013 4.75 CJE Hours

Ohio Association of Domestic Relations Judges

Ohio Association of Juvenile Court Judges

- Trauma – The Impact on Children and Families

Other Information

Details about all of the activities being offered and others in the area are included in the registration packet. The annual directory of judges with probate, juvenile and domestic relations jurisdiction will be available at the summer conference. If you have questions or need more information please call: Diane Medlin, Lucas Co. Probate Court at 419-213-4881.

KEEP UP TO DATE WITH THE LATEST NEWS AFFECTING OHIO JUDGES AND OHIO COURTS BY VISITING OUR WEBSITE!

WWW.OHIOJUDGES.ORG

SUPREME COURT OF OHIO - JUDICIAL COLLEGE

2013 Course Schedule

<u>DATE</u>	<u>COURSE</u>	<u>FOR</u>	<u>LOCATION</u>	
May 2013				
2 - 3	Thu - Fri	Capital Cases	Judges	Columbus
10	Fri	Civil Procedure By The Numbers: Part IV	Judges & Magistrates	Columbus
17	Fri	Damages for Municipal & General Division Courts (1 of 2)	Judges & Magistrates	Cleveland
22	Wed	Interpreter Course	Judges, Magistrates & Court Personnel	Columbus
June 2013				
7	Fri	Personal Technology in the Courts	Judges & Magistrates	Columbus
11	Tue	Ohio Association Probate Seminar (Summer Conference)	Judges*	Toledo
12	Wed	Ohio Association Probate, Juvenile & Domestic Relations Joint Seminar (Summer Conference)	Judges*	Toledo
13	Thu	Ohio Association Juvenile, Domestic Relations Joint Seminar (Summer Conference)	Judges*	Toledo
13	Thu	Judicial Candidates Seminar (1:30 p.m. - 3:30 p.m.)	Judicial Candidates	Columbus
14	Fri	Damages for Municipal and General Division Courts (2 of 2)	Judges & Magistrates	Columbus
19 - 21	Wed - Fri	Ohio Common Pleas Judges Association (OCPJA) Summer Conference	Judges*	Cincinnati
27 - 28	Thu - Fri	Ohio Courts of Appeals Judges Association (OCAJA) Summer Conference	Judges*	Dayton
July 2013				
16 - 18	Tue - Thu	Association of Municipal & County Judges of Ohio (AMCJO) Summer Conference	Judges*	Columbus
August 2013				
9	Fri	Delinquency and Unruly (1:00 p.m. - 3:45 p.m.)	Judges & Magistrates	Video Teleconference
15	Thu	Judicial Candidates Seminar (1:30 p.m. - 3:30 p.m.)	Judicial Candidates	Columbus
16	Fri	Computer Lab: Electronic Legal Research	Judges & Magistrates	Cleveland
23	Fri	Probate Seminar	Judges & Magistrates	Columbus
September 2013				
11	Wed	Ohio Courts of Appeals Judges Association (OCAJA) Fall Conference	Judges*	Columbus
12 - 13	Thu - Fri	Ohio Judicial Conference Annual Meeting	Judges*	Columbus
20	Fri	Abuse, Neglect and Dependency (1:00 p.m. - 3:45 p.m.)	Judges & Magistrates	Video Teleconference
20	Fri	Acting Judge Course: Small Claims (2 of 3)	Judges, Magistrates & Acting Judges	Toledo

October 2013

2 - 4	Wed - Fri	Ohio Association of Magistrates (OAM) Fall Conference	Magistrates*	Columbus
10	Thu	Traffic Law (1 of 2)	Judges, Magistrates & Acting Judges	Cleveland
11	Fri	Judicial Ethics and Access to Justice and Fairness in the Courts	Judges & Magistrates	Cleveland
18	Fri	Juvenile Traffic (1:00 p.m. - 3:45 p.m.)	Judges & Magistrates	Video Teleconference
25	Fri	Unauthorized Practice of Law and Vexatious Litigants in Municipal & Common Pleas General Division Courts (1:00 p.m. - 3:45 p.m.)	Judges, Magistrates & Acting Judges	Video Teleconference

November 2013

1	Fri	Evidence	Judges & Magistrates	Columbus
14	Thu	Acting Judge Course: Small Claims (3 of 3)	Judges, Magistrates & Acting Judges	Cleveland
15	Fri	Paternity, Custody and Child Support	Judges & Magistrates	Video Teleconference
15	Fri	Traffic Law (2 of 2)	Judges, Magistrates & Acting Judges	Columbus
20	Wed	Probate Course (1:00 p.m. - 3:45 p.m.)	Judges & Magistrates	Video Teleconference
21	Thu	Interpreter Course	Judges, Magistrates & Court Personnel	Columbus

December 2013

3	Tue	Ohio Association of Domestic Relations Judges Winter Conference	Judges*	Columbus
4	Wed	Judicial Candidates Seminar (Live - 3:45 p.m. - 5:45 p.m.)	Judicial Candidates	Columbus
4 - 6	Wed - Fri	Ohio Common Pleas Judges Association (OCPJA) Winter Conference	Judges*	Columbus
5 - 6	Thu - Fri	Ohio Association of Juvenile Court Judges (OAJCJ) Winter Conference (tentative)	Judges*	Columbus
6	Fri	Magistrate Ethics, Professionalism and Substance Abuse	Magistrates	Video Teleconference
9 - 13	Mon - Fri	New Judges Orientation, Part I	New Judges	Columbus
13	Fri	Judicial Ethics (1:00 p.m. - 3:15 p.m.)	Judges	Video Teleconference

Regional Forensic Trainings



Department of
Mental Health



The Ohio Department of Mental Health, the Ohio Association of County Behavioral Health Authorities, the Ohio Council of Behavioral Health and Family Services Providers and the Ohio Judicial Conference are pleased to sponsor a series of Regional Forensic Trainings designed to provide an intermediate level instruction about the forensic mental health system in Ohio.

This round of trainings will focus on case examples and presentations by people who have been found by trial courts to be not guilty by reason of insanity. In addition, there will be a presentation on models of collaboration between the Mental Health and Developmental Disabilities systems.

Training Sites and Date:

<i>Location</i>	<i>Date of Training</i>
Columbus	April 19, 2013
Toledo	May 10, 2013
Cincinnati	May 17, 2013
Marietta	June 14, 2013
Canton	June 21, 2013
Independence (Cleveland)	July 12, 2013

Course Description:

Participants will review the various forensic legal statuses described in the Ohio Revised Code and the procedures involving people who have a legal status that makes them eligible for conditional release (CR) to the community. Specifically, these are individuals who are found by a trial court to be Not Guilty by Reason of Insanity (NGRI) pursuant to section 2945.40 of the Revised Code or Incompetent to Stand Trial—Unrestorable—under Criminal Court Jurisdiction (IST-U-CJ) pursuant to section 2945.39(A) of the Revised Code.

Presenters from ODMHs' Regional Psychiatric Hospitals will present two cases of people who have been found NGRI. They will also discuss the ways in which they prepared these patients for conditional release through a discussion of the treatment they provided, the violence risk assessments they conducted, the court hearings that occurred at various times, and the collaborative work done with the Forensic Monitors and other community partners prior to conditional release.

Community Forensic Monitors and community treatment providers will discuss the same cases from their perspective, including the adjustment of the people to community living, their response to treatment, and the challenges that they faced while living on conditional release under the commitment of the trial court.

Course Description (continued):

Following a Question and Answer period regarding the case examples, there will be a panel presentation by several consumers who have been found to be NGRI, have been patients in a Regional Psychiatric Hospital, and who have been granted conditional release.

Finally, there will be a presentation about the Mental Health and Developmental Disabilities Systems and their respective roles and responsibilities with people who have been dually diagnosed (mental illness and intellectual disability) and found NGRI. Local examples of excellent collaborative efforts will be described so that audience members will gain an appreciation of the complexities that these case present and how success on conditional release can be achieved.

Who Should Attend?

This training is intended for people who desire to learn more about how Ohio's forensic mental health system functions. It is specifically designed for:

- ADAMHS/CMH Board employees and members,
- Staff members at community mental health agencies that treat people who are on conditional release,
- Staff involved with the Developmental Disabilities system including DD Boards and other providers,
- Judges and attorneys working with people with a forensic legal status (2945.39 and 2945.40) who are involved with the criminal courts.

Schedule

Registration will begin at 9:00 a.m. The program will begin at 10:00 a.m. and end at 4:15 p.m.

Registration Information

Please register online at http://www.oacbha.org/regional_forensic_trainings.php

The Registration fee is \$40.00 for all trainings except Columbus, which is \$30.00

A Box Lunch will be provided at all trainings except Columbus where lunch is "on your own."

Continuing Education Credits

Application is being made for the following continuing education credits:

Psychology, Social Work, Counselors, Nurses, and Continuing Legal Education

CONTRIBUTE TO *FOR THE RECORD*!!!

We are always looking for interesting articles to print in *For the Record*. If you know of a good topic, are willing to write an article, or if you participate in an association, committee, commission or other group covering important information regarding the Ohio or national judicial system, please email Jennie Long at: Jennie.Long@sc.ohio.gov or Jeff Jablonka at: Jeff.Jablonka@sc.ohio.gov to let us know. We will contact you for more information.



**OSBA ACCEPTING NOMINATIONS FOR
INNOVATIVE COURT PROGRAMS AND PRACTICES AWARD**

The Ohio State Bar Association Judicial Administration and Legal Reform Committee is accepting nominations for the 2013 Innovative Court Programs and Practices Award. The purpose of this award is to bring greater visibility to exemplary programs in Ohio's courts and facilitate the transfer of those programs to other courts in the state.

Any individual may submit a nomination along with a completed nomination form to the OSBA Judicial Administration and Legal Reform Committee. The committee will review all nominations and select one program which has been instituted within the last five years and is deemed to be an outstanding example of innovation. All submitted programs or practices which are determined to meaningfully enhance the work of the judicial system will be appropriately publicized.

The following criteria will be considered:

- Creativity—Does the program represent a new and creative approach to solving a problem or issue?
- Effectiveness—Has the program achieved its goals and purposes to this point?
- Transferability—Could the program be easily transferred to other courts?
- Significance—Does the program address significant issues or problems which are regional in scope?

The recipient of this award will be recognized at the annual meeting of the Ohio Judicial Conference. Visit www.ohiobar.org to download a nomination form. Nominations should be sent to Jessica Tobias at jtobias@ohiobar.org by May 31, 2013. (Resubmissions from previous years are welcome and should include a 2013 Nomination Form.)

OHIO STATE BAR ASSOCIATION
Judicial Administration & Legal Reform Committee
Innovative Court Programs and Practices Award
2013 NOMINATION FORM

Name of Court: _____

Name of Program: (if any): _____

Contact Person for Program: _____

Title	Telephone	E-mail
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Please provide a two-sentence description of the program. (This description may be used if the program is chosen for an honorable mention or the 2013 Successful Program List): _____

Briefly describe the issues or problems that the program was designed to address: _____

Why is the program considered to be creative or innovative? _____

Nominator: _____

Name	Telephone	E-Mail
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REQUIRED ATTACHMENTS: Please provide additional information which addresses: how long the program has been operational; how is the program funded; what were the start up costs; what is the annual operational cost; and what additional equipment or software was necessary to implement the program. Also, please briefly describe how the program is effective in addressing the defined problem or issue. You may attach or submit any other additional information or material which describes the program.

NOMINATION DEADLINE: May 31, 2013.

SUBMIT TO: Judicial Administration & Legal Reform Committee, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204 or Jessica Tobias at jtobias@ohiobar.org.

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