

Volume 43 Number 2
February 2019

LAKE LEGAL VIEWS

“Regard for the Public Welfare is the Highest Law”

LAKE COUNTY BAR ASSOCIATION

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Paul R. Malchesky, Esq.
LCBA President 2018-2019

Valentine’s Day and Small-Town Lawyering

Lake County is a small, compressed county. As practicing attorneys in a small county, our community involvement allows us to build our practices. We represent clients that we once played ball with, went to school with, served in organizations with, and washed dishes at first—job restaurant with. It is these friends, former co-workers, and perhaps once classmates that lead you to your client base. You love representing them but, while immersed in this base, some days you need a day off.

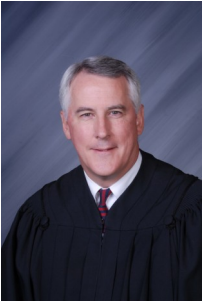
A handful of years ago, I started carrying those 3 ½ by 5 ½ inch, tiny notebooks in my pocket. I write items to do, client time, mental notes, and phone messages collected “on the fly.” I had to have them because during the day or on the weekends you run into people and they are reminders of things not yet done. Sometimes the solitude of church on Sunday mornings leaves you returning home overwhelmed on what you need to do on Monday. Does any of this sound familiar? So, I write my thoughts in my tiny notebook, for there is no way I could get away in the church pew pulling out my smart phone. Thoughts of Sister Vera from St. Stephens’ Byzantine Catholic Grade School stalk me still. However, the tiny note book and a golf pencil may leave her thinking I am filling out a collection envelope.

Point being, we work on expanding our practice by representing friends and neighbors which leads to representing their friends and neighbors. All in all, that pretty much surrounds us with our clients and our clients’ adversaries leaving us always thinking about the practice.

Approaching February, I think of a Valentine’s story, again one that is rooted in that notion of always surrounded by our client base. I am sure you all have a great Valentine’s memory, as well. Valentine’s Day was a big deal growing up at my house. My Mom made us a candle light dinner in the dining room, a heart shaped cake, and had a small gift for all us kids at our seats. So in that tradition, I had to try to do the same for my own kids. My daughter is almost 18 years old. Fourteen years ago I had this idea to take a ruby stone my wife

Con’t. on page 3 top





*Judge Timothy Cannon
11th District Court of Appeals*

“Life’s most persistent and urgent question is, ‘What are you doing for others?’”

Dr. Martin Luther King, Jr.

Quite a bit has happened since the drafting of my last article for these pages. Not least has been the retirement, or announced retirement, of three of our long-serving judges. Our court has lost Judge Diane V. Grendell, who served on the 11th District Court of Appeals since February 2001. We wish her well in her retirement. Likewise, best wishes to Judge Richard Collins, who served the legal community as a Common Pleas Judge since 2002. Finally, as reported here a few months ago, Judge Mike Cicconetti announced he will be retiring from the Painesville Municipal Court bench in 2019. It seems like just a few years ago (but it’s 40!) when he served as the clerk of that court, and I assisted as a bailiff for Judge Gilbert Cave. (I believe if you want to run into Judge Cic next winter, your best bet is to head to the Naples/Bonita Beach area in southwest Florida. Even though the area has some of the finest eating establishments in the world, don’t look for him there. You are more likely to find him at Johnny Malloy’s waiting for the bell to ring, signifying delivery of another free pizza at happy hour. And there’s a reason why it’s free.)



Another thing that has happened since my last article is the arrival of our second grandchild, little Charles Cannon Eichhorn. I wrote a few years ago about the arrival of our first grandchild, Reagan Quinn Cannon. Over the years, I have served in many roles, but I must say, the role of grandparent is one which Lisa and I have come to appreciate like no other. A word of warning: If you are charged with watching a 4-year-old granddaughter on your own, and you decide to take her into the Carter/OshKosh B’gosh clothing store, be prepared. The panicked look on my face must have been apparent to the clerk as my granddaughter repeatedly disappeared in the clothing racks. I was assured the joy she was experiencing from hiding is a fairly common occurrence.



These young kids bring me to another issue that has exploded since my last article.

Much has been written about the epidemic of various types of drug addiction and overdoses. It cannot be overstated how pervasive the effects have been on the legal system. According to the Legal Aid Society of Cleveland, there were nearly 72,000 *deaths* from drug overdoses in 2017. Emergency rooms attended to 1,000 patients per day. The economic impact was estimated at more than \$504 billion.

Perhaps the most significant of the casualties of this crisis have been the innocent children of drug dependent parents. Some of the most heartbreaking stories I have heard are those related by first responders to drug overdosed parents. Often there are young children in the home completely unattended, which leads to them being placed in the custody of the local children services agency. This has led to a significant number of abuse, neglect, and dependency cases. In addition, there has been a corresponding spike in complaints seeking Termination of Parental Rights (TPR), or what has been referred to as “the death penalty equivalent” of child custody cases. The number of TPR cases appealed to the 11th District Court of Appeals has more than tripled since I started in 2007.

I recently had a conversation with Judge Al Camplese, the Juvenile/Probate Judge in Ashtabula County.

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had and have that ruby inset into a ring for Emma on Valentine's Day -- nothing too expensive, but making a memory for her. I got a referral from a friend/client on a certain jeweler. I stopped in to the jeweler and explained what I wanted. I handed him the gem. His hand was more like a boxer's hand, wide and looks like it could be made out of concrete, not what you'd expect from someone who handles intricate jewelry and settings. I got that usual response "no problem" and was told to pick up the ring on February 14th. This jeweler certainly looked familiar. I left work around 5 on the 14th and headed to the Jeweler. It is dark, as usual that time of the year. I enter the establishment and ask for the finished product. I was greeted by "I will work on it now." I know then and there it is not going to be a Carol Malchesky (my mom) kind of well-planned Valentine's night.

The familiar-faced jeweler then locked the door, shut off the outside lights, and went into the back room. More than an hour lapses, not because he is working so hard but because he is talking on the phone, verbalizing those all too familiar buzz words and phrases we all know so well – "I didn't do it. He was harassing me. I want that guy on trial. I am not pleading to that. Let's take it to the box. (my favorite)..."

Now, I know who this guy is. Oh boy! How can I get out of here? You are locked in these places. It is like 8:15 p.m. now, and I would like to leave with a ring. What can I do? I knock on the glass and say "how much longer?" He starts to tell me his woes as he has me hold the ring and he solders the gold around the ruby. I am sympathetic for his plight, however I knew the other version of his story – the cop's version and the reason the judge was delaying the ruling! He finally finished. Needless to say, I paid with cash.

Your legal life is always around you. Small-town lawyering is truly helping real people resolve legal problems. Client contact is the rule, not the exception. Every now and then, you find yourself in unusual and uncomfortable situations.

By the way, my daughter Emma loved her ruby ring that February. The jeweler began serving time shortly after that evening.

While issues with children in these situations has been a great burden in all the counties in our district, it has been particularly devastating in Ashtabula County. The resources there are few, and the need for help significant. According to statistics compiled by the Ohio Supreme Court, in Ashtabula County in 2007, there were no trials for Termination of Parental Rights. In 2017, there were 20 cases tried to either the judge or magistrate.

There is a tremendous need for safe, secure, and competent placement for these children in all counties in our district. If you or anyone you know have interest in helping with the temporary care of these children, contact the local children services agency or juvenile court to offer your services.

In Ashtabula County, where the needs are nothing short of desperate, the contact at children services is the director, Tania Burnett, whose number is 440-998-1811. If you can assist as a guardian ad litem or attorney, the court contact is Greta Moore at 440-994-6006. These innocent child victims deserve a chance.

Another area of great need is for guardians of adults who are not able to care for themselves. Many of these people have no family relationships and are either physically or mentally incapable. By the time this article is published, if all goes as planned, the Lake County Probate Court will have launched its Volunteer Visitor and Guardian Program. The program is in response to the near daily requests from Lake Health, Beacon Health, nursing homes, and others. It is designed to assign a volunteer guardian to an adult in need. As someone who has had several family members in a nursing or rehab facility in the past few years, I know that the need is great, and this is an opportunity to make a huge difference in someone's life. The contact person for the program is Gwen Corban, and her number is 440-350-2233. Make a call to the program or have a family member or friend call for more information.

"The greatest of all mistakes is to do nothing because you can only do a little.", *Author Unknown*

Imagine how much could be accomplished if everyone did just a little.



CHAMBERS OF
JUDGE EUGENE A. LUCCI

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**News Release
For Immediate Release**

**Contact: Judge Eugene A. Lucci
Lake District Competition Coordinator**

LAKE DISTRICT MOCK TRIAL COMPETITION RESULTS

PAINESVILLE, OHIO (Jan. 18, 2019) - More than 3,000 high school students entered courtrooms in 26 counties across the state on Friday, January 18, to take part in the Ohio Center for Law-Related Education's (OCLRE) 36th Annual Ohio Mock Trial Competition.

Sixteen teams from the following twelve schools participated in the Lake District Competition, hosted by the judges and lawyers of Lake County at the Lake County Court House: Andrews Osborne Academy (two teams), Charles F. Brush HS, Cornerstone Christian Academy, Kenston HS, Lake Catholic HS, Lordstown HS, Mayfield HS (two teams), Mentor HS (two teams), Notre Dame Cathedral Latin School (two teams), Perry HS, Riverside HS, and Willoughby South HS.

Teams competed twice, once as plaintiff or defendant in the morning, and once in the afternoon representing the other party. The teams who won both trials will advance to Regional Competition on February 15. Those six teams advancing to the regionals are: Kenston HS – Team Unreasonable Doubt, Mayfield HS – Team Green, Mentor HS – Team GAZEBO MODE, Mentor HS – Team No reMORSE, and Notre Dame Cathedral Latin School – Team Legal Lions.

The following students won “best attorney” awards:

Thomas Shero & Carter Callender – NDCL Legal Lions
Nickolas Korzhiletsky & Johnny Gaudio – Mayfield HS Green
Alex Grosman – Mayfield HS White
Chloe Peiffer & Tia Speece – Kenston HS Unreasonable Doubt
Sarah Mancari – Lake Catholic Lake Gazebos
Nickolas Anderson – Charles F Brush HS Arcs of Justice
Rylee Yackin & Julia Lombardo – NDCL North Stars
Vaishnavi Kasabwala & Anna Zdrojewski – Mentor HS No remorse
Douglas Burnett – Willoughby South HS Southern|
Peyton Wood – Andrews Osborne Academy Excelsior
Paige Capel – Mentor HS GAZEBO MODE

The following students won “best witness” awards:

Thaddeus Brennan & Hannah Taylor – NDCL Legal Lions
Ilana Miller & Eman Naseerkhan – Mayfield HS Green
Eva Tchicaya – Mayfield HS White
Laura Parsons (both trials) – Kenston HS Unreasonable Doubt
Emma Smallwood – Lake Catholic Lake Gazebos
Niah Johnson – Charles F Brush HS Arcs of Justice
Lauren DiMaria & Carson Fraser – Mentor HS GAZEBO MODE

Olivia Lampros & Elise Provident – Mentor HS No reMORSE
Chloe Baldauf – Willoughby South HS Southern
Annie Crocker – Andrews Osborne Academy Excelsior
Corinne Sullivan – NDCL North Stars

The following judges or attorneys presided during the competition: Judge Timothy P. Cannon, Judge Vincent A. Culotta, Judge John P. O'Donnell, Judge Mark J. Bartolotta, Judge Karen Lawson, Judge Patrick J. Condon, Judge Colleen A. Falkowski, Judge Marisa L. Cornachio, and Attorney Anthony Aveni. Judge Eugene A. Lucci is the competition coordinator.

The following attorneys scored the competition: Teri Daniel, Nina Germano, Adrienne Foster, Matt Lallo, Daniel Rudary, Hector Martinez, Cory Hinton, Lisa Klammer, Michael Germano, Richard Vadnal, Jenny Azouri, James Carrabine, Barbara Moser, Jerry Walker, Karina Conley, and Phil Lamos.

Volunteers included: Sandra Murphy, Nancy Assel, Sarah Kooyman, David White, Tom Gorman, Kevin McCabe, Anthony Iliano, Debbie Doeing, Maria Tomba, Lonnie Sparkman, Jennifer McGee, Phylcia Chiappone, and Kelly Echols.

I thank each and every one for their contributions to make this program a success, and especially, Kelly Echols.

Thanks, once again, to the Lake County Bar Foundation for providing funds to purchase refreshments for the judging panels, volunteers, and participating students, advisors, teachers, and parents. I also thank the men and women of the Lake County Buildings and Grounds Department, and the Lake County Sheriff's Office, for expediting the set-up and take-down needed, and the ingress/egress of participants, to make for a smooth competition day.

The 2019 Ohio Mock Trial case focuses on Fourth Amendment protection against unreasonable searches and seizures as it applies to technology. Fictional defendant Quinn Woolf is charged with aggravated theft and telecommunications fraud for allegedly using a private, alpha-numeric code to steal \$120 million from the state pension fund. The catch is, the state used an aerial drone to obtain images of the defendant in the Woolf's backyard.

Each mock trial team consists of five to eleven students who prepare both plaintiff and defense cases and participate in two trials against opposing teams. Students assume the roles of witnesses and attorneys to present both sides of an original case based on a constitutional issue.

OCLRE Mock Trial Program Coordinator, Danielle Wilmot, explains that this year's case "challenges students to examine the realities of our increasingly technological world. Students use technology every day, but this case provides opportunity for them to think about the impact technology can have on an individual's privacy."

Mock Trial is Ohio's largest high school academic competition and the second largest high school Mock Trial program in the nation. Teams that win both trials in the district competition will advance to regional competition on February 15. Regional winners will compete in the state competition on March 7-9 in Columbus. The 2019 State Champion team will represent Ohio at the National High School Mock Trial Championship in Reno, Nevada, May 16-18.

OCLRE is a private non-profit, nonpartisan organization whose goal is to improve society by developing citizens empowered with an understanding of our democratic system. OCLRE is sponsored by the Supreme Court of Ohio, Ohio Attorney General's Office, Ohio State Bar Association, and the American Civil Liberties Union of Ohio Foundation. The Ohio Mock Trial program is made possible in part by a grant from the Ohio State Bar Foundation.

Note to editor:

Counties hosting Ohio Mock Trial district competitions:

Butler, Clermont, Cuyahoga, Delaware, Hamilton, Hancock, Hocking, Huron, Franklin, Lake, Licking, Lorain, Lucas, Marion, Medina, Montgomery, Richland, Scioto, Stark, Summit, Trumbull, Tuscarawas, Union, Warren, Washington, Wood

**LAKE COUNTY BAR ASSOCIATION
FISCAL YTD PROFIT & LOSS STATEMENT
JUNE 2018 through DECEMBER 2018**

INCOME

401- Bar Roster & Labels	90.00
402-Dues	22,850.00
404-Interest Income	471.63
405-LakeLV Ads	1,484.00
407-Notary Fees	22,766.50
408-Referral Fees	1,440.00
409-Weekly Lunch	2,050.00
410-Misc. Income	110.50
412-Golf Outing	21,145.00
413-Seminar	
414-Common Pleas Judge Seminar	8,625.00
418-Probate Seminar	2,780.00
424-Procrastinator's Seminar	1,830.00
426-Family Law	30.00
441-GAL	1,690.00
464-Meet Your Judge	15.00
465-OSBA Seminar	<u>1,157.20</u>
Total 413-Seminar	17,127.20
425-Pictorial Directory Listing	180.00
429-Website Listing	400.00
450-Annual Meeting	975.00
451-Misc Social Event Income	450.00
470-Barrister's Ball Income	
471-Tickets	5,700.00
472-Sponsorships	4,170.00
473-Advertising	840.00
Total 470-BARRISTER'S BALL INCOME	<u>10,710.00</u>

TOTAL INCOME **102,249.81**

EXPENSE

601- Accounting Fees	1,265.00
604-Bank Charges	506.62
606-Courthouse Plaques	64.37
608-Flowers & Memorials	341.11
609-Golf Outings	15,734.73
610-Grievances	193.55
611-Employee Retirement	1,750.00
613-Insurance-Health	6,016.55
614-Miscellaneous Social Events	320.00
620-Law Day	100.00
622-Lunch Payments	1,990.06
624-Membership	26.85
625-Miscellaneous Expense	125.40
628-Notary Costs	589.20
629-Office Equipment-	862.91
631-Office Expense-	2,137.90
634-Office Supplies-	1,524.15
637-Payroll Taxes	2,604.97
638-Pictorial Directory	216.07
639-Postage Machine Rental & Ink	671.64

640-Postage	575.44
642-Seminars	
655-Family Law	76.93
656-Procrastinator's Seminar	360.28
659-Probate	235.90
660-Common Pleas Judge Seminar	5,146.45
672-GAL	<u>166.78</u>
Total 642-Seminars	5,986.34
643-Telephone Yellow Page Advert	697.00
646-Travel Reimbursement (Staff)	472.51
647-Rent	6,210.61
648-County Telephone	60.07
650-Wages	26,405.81
651-Wages- Part Time	6,086.00
660-Payroll Expense	24.39
679-Board Meeting Lunch	240.00
680-Annual Meeting Expense	1,686.98
681-BARRISTER'S BALL	8,189.11

TOTAL EXPENSE **\$ 93,675.34**

NET ORDINARY INCOME **8,574.47**

OTHER INCOME/EXPENSE

Other Income	
500-Bar Foundation Income	3,450.00
Total Other Income	<u>3,450.00</u>
Net Other Income	3,450.00

NET INCOME **12,024.47**

**FISCAL YTD BALANCE SHEET
FISCAL YTD AS OF DECEMBER 31, 2018**

ASSETS

Total Current Assets 111,243.77

TOTAL ASSETS **111,243.77**

LIABILITIES & EQUITY

Total Current Liabilities 1,670.44

EQUITY

Retained Earnings 97,548.86

Net Income 12,024.47

TOTAL EQUITY 109,573.33

TOTAL LIABILITIES & EQUITY **\$ 111,243.77**



Pay your dues!!

It's that time again!

December 10, 2018

RELEASE

ASHTABULA
2018-A-0034 STATE OF OHIO, Plaintiff-Appellee v. MARQUE DAQUAN BROWN, Defendant-Appellant.

Judgment affirmed. O'Toole, J., dissents. See Opinion and Judgment Entry. [CANNON] (RICE) (O'TOOLE)

CRIMINAL LAW - resentence; consecutive sentences; R.C. 2929.14(C)(4) findings; criminal history; no single prison term adequately reflects the seriousness of the offender's conduct.

2018-A-0047 REBEKAH HAMM, Plaintiff, ASHTABULA COUNTY CHILD SUPPORT ENFORCEMENT AGENCY, Appellee v. KIERAN J. JONES, Defendant-Appellant.

Judgment modified and affirmed as modified. O'Toole, J., concurs in judgment only. See Opinion and Judgment Entry. [CANNON] (RICE) (O'TOOLE)

CIVIL - failure to pay child support obligation; contempt; failure to purge; no transcript filed; trial court is not permitted to punish appellant for conduct that occurred after the initial contempt finding without making a new contempt finding.

2018-A-0051 STATE OF OHIO, Plaintiff-Appellee v. MATTHEW DAVIS HARDIN, Defendant-Appellant.

Appeal dismissed. See Judgment Entry. [RICE] (CANNON) (O'TOOLE)

GEAUGA
2017-G-0140 STATE OF OHIO, Plaintiff-Appellee v. ALI PASCAL MAHVI, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [WRIGHT] (RICE) (O'TOOLE)
CRIMINAL LAW - illegal use of food stamps; R.C. 2913.46(B); failure to disclose all assets in applying for benefits; bank accounts; real property; manifest weight; witness credibility; forensic accounting degree unnecessary; Medicaid eligibility fraud; R.C. 2913.401(B); false statements as to amount of income from businesses; defendant's testimony as to source of income unbelievable.

2017-G-0146 JESSE NIETO, et al., Plaintiffs-Appellees v. BIANCA MARCELLINO, Defendant-Appellant.

Judgment reversed and remanded. See Opinion and Judgment Entry. [CANNON] (GRENDLELL) (O'TOOLE)

CIVIL - magistrate's decision; Civ.R. 53; failure to file a transcript of the magistrate's hearing; appellate review confined to whether the conclusions of law are supported by the factual findings; R.C. 5321.16(B) & (C); double damages as to amount wrongfully withheld; magistrate failed to make findings regarding whether any deductions were proper.

2018-G-0150 FATICA RENOVATIONS, LLC, Plaintiff-Appellee v. WILLIAM W. BRIDGE, III, et al., Defendant-Appellant.

Judgment affirmed. O'Toole, J., dissents. See Opinion and Judgment Entry. [WRIGHT] (CANNON) (O'TOOLE)

CONSTITUTIONAL LAW - Injunction barring former property owner from making public statements about present ownership; commercial speech; not protected if statement is false; prior determination by federal district court that former owner has no present interest in property; res judicata for purposes of state action for injunctive relief; privity to party in prior foreclosure case; issue pertaining to subject matter jurisdiction; res judicata still apply if issue fully litigated; merits of preliminary injunction moot once permanent injunction granted; no duty to grant injunctive relief when it was not requested; party not entitled to jury trial when summary judgment warranted.

2018-G-0151 STATE OF OHIO, Plaintiff-Appellee v. TYLER KYNON DONOHO, Defendant-Appellant.

Judgment affirmed. Grendell, J., concurs in judgment only with a Concurring Opinion. O'Toole, J., dissents. See Opinion and Judgment Entry. [CANNON] (GRENDLELL) (O'TOOLE)

PROBATION - motion to modify; conditions of community control; change of circumstances; Ohio Revised Code Chapter 3799; controlled substances; marijuana; THC; Marinol; dronabinol; medical marijuana not yet cultivated, processed, or dispensed by licensed facilities in Ohio; no reciprocity with other states; probation violation; affirmative defense.

LAKE
2018-L-034 TONI COLAGIOVANNI, Plaintiff-Appellant v. DUCAL L. HAYDEN, Defendant-Appellee.

Judgment affirmed. O'Toole, J., dissents. See Opinion and Judgment Entry. [CANNON] (RICE) (O'TOOLE)

CIVIL - contempt; failure to allow parenting time pursuant to court order; abuse of discretion; failure to demonstrate substantial compliance; failed to establish visitation was not in the child's best interest; purge order; inability to pay.

PORTAGE
2016-P-0062 STATE OF OHIO, Plaintiff-Appellee v. DONTE J. BUTCHER a.k.a. "STACKS," Defendant-Appellant.

Judgment is reversed and remanded. Grendell, J., concurs with a Concurring Opinion. See Opinion and Judgment Entry. [WRIGHT] (GRENDLELL) (CANNON)

CRIMINAL LAW - Pretrial identification; photo array; facial tattoo; not unduly suggestive; Crim.R. 12(F); no statement of factual findings on suppression motion; sufficient basis to uphold decision; manifest weight of the evidence; corrupting another with drugs; aggravating drug trafficking; failure to appear for trial; no-contact order; invalid when defendant sentenced to prison; R.C. 2925.02(C)(1)(a); mandatory prison term; jury finding that schedule I drug, fentanyl, was involved; jury instruction only referred to fentanyl; imposition of fine; ability to pay; evidence in record showing that trial court considered issue.

2017-P-0028 STATE OF OHIO, Plaintiff-Appellee v. LAWRENCE J. BOZEK, Defendant-Appellant.

Judgment affirmed. Wright, P.J., concurs with a Concurring Opinion. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON)

CRIMINAL LAW - sentencing; greater sentence; no evidence of vindictiveness; merger; offenses; R.C. 2941.25; *Ruff*; firearm specifications; no error; previously rejected argument; law of the case.

2017-P-0095 STATE OF OHIO, Plaintiff-Appellee v. MEGAN C. RALSTON, Defendant-Appellant.

Judgment reversed and remanded. Grendell, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [RICE] (WRIGHT) (GRENDLELL)

CRIMINAL LAW - plea of guilty; Crim.R. 11; *Boykin*; *Vaney*; strictly comply; no reference to a right to jury trial; cannot rely exclusively upon outside sources; advise in a manner reasonably intelligible; failure to comply; plea invalid.

TRUMBULL

2018-T-0089

GRANT SHIELDS, Plaintiff-Appellee v. GREENWOOD AUTO, INC., Defendant-Appellant.

Upon consideration and upon recommendation of the Administrative Counsel, the motion is granted, and this appeal is hereby settled and dismissed. See Judgment Entry. [WRIGHT] (RICE) (CANNON)

December 17, 2018

RELEASE

ASHTABULA

2017-A-0055

LORRIE J. ACCETTOLA, et al., Plaintiffs-Appellees v. BIG SKY ENERGY, Defendant-Appellant.

Judgment affirmed in part and reversed and vacated in part. O'Toole, J., concurs in part and dissents in part with a Concurring/Dissenting Opinion. See Opinion and Judgment Entry. [GRENDLELL] (WRIGHT) (O'TOOLE)

CIVIL - Trespass; Conversion; oil and gas wells; failure to remove items from property; wrongfully exerted control over personal property; manifest weight; noneconomic loss; intangible loss; attorney's fees in Trespass action; compensatory damages; punitive damages.

2018-A-0027

STATE OF OHIO, Plaintiff-Appellee v. JONATHAN VELAZQUEZ, Defendant-Appellant.

Judgment affirmed. O'Toole, J., dissents. See Opinion and Judgment Entry. [RICE] (CANNON) (O'TOOLE)

CRIMINAL LAW - endangering children; three-month old; traumatic brain injury; toddler fell; recklessly; duty of care; while caregiver; supported by the weight of the evidence.

2018-A-0035

STATE OF OHIO, Plaintiff-Appellee v. ALBERT THOMAS HUGHES, JR., Defendant-Appellant.

Judgment affirmed. Wright, P.J., concurs in judgment only; O'Toole, J., dissents. See Opinion and Judgment Entry. [RICE] (WRIGHT) (O'TOOLE)

CRIMINAL LAW - search and seizure; search of motel room based on arrest warrant but no search warrant; Miranda rights; mistaken identity; consent to search; drug paraphernalia; in plain view; acquiescence to show of authority.

GEAUGA

2017-G-0137

STATE OF OHIO, Plaintiff-Appellee v. DONNA M. MILLER, Defendant-Appellant.

Judgment affirmed. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [CANNON] (RICE) (O'TOOLE)

CRIMINAL LAW - guilty plea; *Anders v. California*; independent review; no reversible error; wholly frivolous.

LAKE

2017-L-122

2017-L-123

2017-L-124

2017-L-125

STATE OF OHIO, Plaintiff-Appellee v. VIRGINIA WOLFORD-LEE, et al., Defendants-Appellants.

Judgment affirmed. Grendell, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [WRIGHT] (GRENDLELL) (CANNON)

CRIMINAL LAW - cruelty against companion animals; failure to preserve potentially useful information; bad faith showing required; motion in limine; proffer or evidence required in context of trial to demonstrate prejudice; no plain error; no abuse of discretion in failing to allow cat videos that were not identified in advance of trial consistent with court's scheduling order.

2017-L-143

2017-L-144

STATE OF OHIO, Plaintiff-Appellee v. TYREZ T. TALLEY, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON)

CRIMINAL LAW - robbery; pleas of guilty; ineffective assistance of counsel; unsupported allegations; deadly weapon; plea knowing, voluntary, intelligent; felony sentence; consecutive; findings supported by the record.

2017-L-170

STATE OF OHIO, Plaintiff-Appellee v. BRIAN A. ROWE, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [WRIGHT] (RICE) (CANNON)

CRIMINAL LAW - rape and gross sexual imposition offenses supported by sufficient evidence and not against the manifest weight.

2018-L-083

STATE OF OHIO, Plaintiff-Appellee v. MATTHEW D. STEWART, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (O'TOOLE)

CRIMINAL LAW - sexual predator classification; former R.C. Chapter 2950.; scheme in effect at time of conviction; manifest weight of the evidence; clear and convincing evidence; no error.

PORTAGE

2017-P-0080

STATE OF OHIO ex rel. CORTEZ M. OLIVER, Relator v. PORTAGE COUNTY CLERK OF COURTS, Respondent.

Petition denied. See Per Curiam Opinion and Judgment Entry. (GRENDLELL) (RICE) (CANNON)

ORIGINAL ACTION - writ of mandamus; Civ.R. 56(C); there is no dispute that respondent is not in possession of the requested documents; no clear legal duty to provide relator with the documents.

2018-P-0010

TERESA JONES, et al., Plaintiffs-Appellants v. NATURAL ESSENTIALS, INC., Defendant-Appellee.

Judgment affirmed. O'Toole, J., concurs in judgment only; Wright, P.J., concurs with a Concurring Opinion. See Opinion and Judgment Entry. [GRENDLELL] (WRIGHT) (O'TOOLE)

CIVIL - sanctions; Civ.R. 37(D); failure to appear at depositions; notice of videotaped depositions; discovery sanctions; invoice; authentication; affidavit; frivolous conduct; R.C. 2323.51; Civ.R. 11; bad faith; abuse of discretion; attorney's fees; hearing; itemized notion of billing; competent, credible evidence.

2018-P-0078

STATE OF OHIO, Plaintiff-Appellee v. EDWARD G. HARDY, Defendant-Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [O'TOOLE] (RICE) (CANNON)

APPELLATE REVIEW - App.R. 4(A); thirty-day rule; untimely appeal.

TRUMBULL

2017-T-0116

STATE OF OHIO, Plaintiff-Appellee v. ROBERT LEE ANDERSON, II, Defendant-Appellant.

Judgment affirmed in part and remanded. Wright, P.J., concurs in part and dissents in part with a Concurring/Dissenting Opinion. See Opinion and Judgment Entry. [GRENDLELL] (WRIGHT) (O'TOOLE)

CRIMINAL LAW - felony sentencing; R.C. 2953.08(G); jail time credit; R.C. 2929.19(B)(2)(f)(i).

2018-T-0062 STATE OF OHIO ex rel. RICHARD A. CLARK, Relator v. HONORABLE RONALD J. RICE, et al., Respondents.
Petition dismissed. See Per Curiam Opinion and Judgment Entry. (GRENDLELL) (CANNON) (OTOOLE)
MANDAMUS - motion to dismiss; Civ.R. 12(B)(6); R.C. 2731.01; law of the case doctrine.

RELEASED
DECEMBER 10, 2018

2018-P-0056 IN THE MATTER OF: N.M.P. DEPENDENT CHILD.
Judgment affirmed. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (RICE)
JUVENILE - termination of parental rights; permanent custody; best interest of the child; clear and convincing evidence; R.C. 2151.414(D); the wishes of the child; guardian ad litem is authorized to give testimony regarding the child's wishes; R.C. 2151.414(B)(1)(d); 12 in 22 months; judicial notice; submission of evidence; due process.

December 31, 2018

R E L E A S E

ASHTABULA

2017-A-0049 STATE OF OHIO Plaintiff-Appellee v. ROBERT R. DAVIES, Defendant-Appellant.
Judgment affirmed in part, reversed in part and remanded. Grendell, J., concurs in judgment only with a Concurring Opinion; O'Toole, J., dissents. See Opinion and Judgment Entry. [WRIGHT] (GRENDLELL) (OTOOLE)

CRIMINAL LAW - R.C. 2953.53(D); access to previously sealed criminal record; record may not be unsealed for purpose of filing new motions; defendant may only examine record; copy documents.

2018-A-0030 STATE OF OHIO Plaintiff-Appellee v. AMBER M. CHESNIC, Defendant-Appellant.
Judgment affirmed. Grendell, J., concurs with a Concurring Opinion. O'Toole, J., dissents. See Opinion and Judgment Entry. [WRIGHT] (GRENDLELL) (OTOOLE)
CRIMINAL LAW - motion to suppress properly denied; mixed standard of review; purse on shoulder and under control at time of arrest; State v. Banks-Harvey, 152 Ohio St.3d 368.

2018-A-0092 STATE OF OHIO ex rel. DWAYNE DAVIS, Petitioner v. WARDEN BRIGHAM SLOAN, Respondent.
Petition dismissed. See Per Curiam Opinion and Judgment Entry. (WRIGHT) (GRENDLELL) (CANNON)
EXTRAORDINARY WRITS - petition for writ of habeas corpus; doctrine of res judicata; failure to state a claim upon which relief can be granted; sua sponte dismissal.

2018-A-0096 STATE OF OHIO Plaintiff-Appellee v. RYAN E. ELLIOTT, Defendant-Appellant.
Appeal dismissed. See Memorandum Opinion and Judgment Entry. [CANNON] (WRIGHT) (RICE)
APPELLATE REVIEW - App.R. 4(A); thirty-day rule; untimely appeal.

LAKE

2016-L-126 STATE OF OHIO Plaintiff-Appellee v. DEONTE M. MIMS, Defendant-Appellant.
Judgment modified and affirmed as modified. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [CANNON] (GRENDLELL) (OTOOLE)
CRIMINAL - ineffective assistance of counsel; questioning on cross-examination; trial strategy; trial to the court; no jury in danger of being misled; sentencing; juvenile record; R.C. 2929.12(D); history of criminal convictions; restitution; apportionment among co-defendants; victim is not entitled to double recovery; modified.

2017-L-081 STATE OF OHIO Plaintiff-Appellee v. MARLON J. HUNTER, Defendant-Appellant.
Judgment modified and affirmed as modified. See Opinion and Judgment Entry. [OTOOLE] (RICE) (CANNON)
CRIMINAL LAW - aggravated robbery; firearm specification; sufficiency of the evidence; manifest weight of the evidence.

2017-L-142 METAL SEAL PRECISION, LTD., AN OHIO LIMITED LIABILITY COMPANY, Plaintiff-Appellant v. GOOD TIME OUTDOORS, INC., d.b.a. CORE15 RIFLE SYSTEMS, et al., Defendants-Appellees.
Judgment affirmed. See Opinion and Judgment Entry. [CANNON] (GRENDLELL) (RICE)
CIVIL - contract for the sale of goods; Ohio's Uniform Commercial Code; breach of contract; extrinsic evidence; explain or supplement a writing; consistent additional terms; promissory estoppel; action on account; defective parts; damages; failure to mitigate damages.

2018-L-028 STATE OF OHIO Plaintiff-Appellee v. DAJUAN L. BANKS, Defendant-Appellant.
Judgment affirmed. See Opinion and Judgment Entry. [OTOOLE] (WRIGHT) (RICE)
CRIMINAL LAW - PLEAS, MOTIONS & OTHER HEARINGS - aggravated murder; post conviction relief; res judicata.

2018-L-032 STATE OF OHIO Plaintiff-Appellee v. MARQUIS E. MCCRUTER, Defendant-Appellant.
Judgment affirmed. See Opinion and Judgment Entry. [OTOOLE] (RICE) (CANNON)
CRIMINAL LAW - domestic violence; aggravated menacing; a finding that a verdict is not against the manifest weight of the evidence means it is based on sufficient evidence.

2018-L-058 RUBY KUMAR, Plaintiff-Appellant v. USA INSULATION, Defendant-Appellee.
Judgment affirmed. O'Toole, J., concurs in judgment only. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (OTOOLE)
CONTRACTS - small claims; breach of service contract; incomplete performance; substantial performance; damages; general verdict; Civ.R. 52; no request for findings of fact and conclusions of law; presumption that all proper rules of law were applied.

2018-L-108 KRISTIN M. HILL, Petitioner-Appellee v. MICHAEL A. HILL, SR., Respondent-Appellant.
Upon recommendation of the Administrative Counsel, this appeal is hereby dismissed for appellant's failure to prosecute. See Judgment Entry. [WRIGHT] (RICE) (CANNON)

2018-L-137 SHEILA M. EYAJAN, Plaintiff-Appellant v. NESCO RESOURCES, et al., Defendant-Appellees.
Appeal dismissed. See Memorandum Opinion and Judgment Entry. [RICE] (WRIGHT) (GRENDLELL)
APPELLATE REVIEW - App.R. 4(A); thirty-day rule; Civ.R. 58(B); untimely appeal.

PORTAGE

2017-P-0091 STATE OF OHIO Plaintiff-Appellee v. SEAN A. LUMPKIN, JR., Defendant-Appellant.
Judgment affirmed. See Opinion and Judgment Entry. [OTOOLE] (GRENDLELL) (RICE)
CRIMINAL LAW - trafficking in marijuana; possessing criminal tools; no contest plea; Fourth Amendment; search; suppression hearing.

2018-P-0004 EAST MAIN STREET LOFTS, Appellee v. THE CITY OF KENT PLANNING COMMISSION, Appellant.
Judgment affirmed in part and reversed in part, remanded. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (RICE)
CIVIL - administrative appeal; R.C. 2506.04; planning commission; denial of conditional zoning permit; public comment; expert testimony.

2018-P-0055 DAVID A. NIXON, Relator v. PORTAGE COUNTY COURT OF COMMON PLEAS, et al., Respondents.
Petition dismissed. See Per Curiam Opinion and Judgment Entry. (WRIGHT) (GRENDLELL) (RICE)
HABEAS CORPUS - guilty plea; fatally defective petition; R.C. 2725.04; R.C. 2969.25; adequate remedy at law.

2018-P-0068 STATE OF OHIO, Plaintiff-Appellee v. DAVID A. NIXON, Defendant-Appellant.
2018-P-0069 Appeals dismissed. See Judgment Entry. [WRIGHT] (RICE) (CANNON)

TRUMBULL

2017-T-0070 STATE OF OHIO, Plaintiff-Appellee v. AMATO PASQUALE ZACCONE, Defendant-Appellant.
Judgment affirmed. Wright, P.J., concurs in judgment only. See Opinion and Judgment Entry. [OTOOLE] (WRIGHT) (RICE)

CRIMINAL LAW - domestic violence; jury trial; hearsay statements; Confrontation Clause; de novo review, Evid.R. 801; Evid.R. 803; excited utterance; 911 call; written statement; harmless error analysis.

2018-T-0012 STATE OF OHIO, Plaintiff-Appellee v. GREG ALAN PERKINS, Defendant-Appellant.
Judgment affirmed. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [RICE] (GRENDLELL) (OTOOLE)

CRIMINAL LAW - plea of guilty; advisement of constitutional rights; strict compliance; right to a trial by jury; reference to jury; sufficient; plea not invalid; advise defendant of right to assistance of counsel on appeal; not required; no prejudice.

2018-T-0028 LEWIS POTTS, LTD., Plaintiff-Appellee v. GEORGE ZORDICH, et al., Defendants-Appellants.
Judgment affirmed in part and reversed in part, remanded. Grendell, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [CANNON] (GRENDLELL) (RICE)

CIVIL - summary judgment; motion to strike; Civ.R. 56(A); leave of court; affidavit; personal knowledge; sworn or certified copies; genuine issues of material fact; breach of contract; lease extension; liability; tenant; legal entity; "doing business as"; personal guaranty; continuing guaranty; damages; statute of conveyances; defectively executed lease; option to renew; R.C. 5301.01.

2018-T-0039 JAMES REAMENSNYDER, Plaintiff-Appellee v. RICK MARINO, Defendant-Appellant.
Judgment reversed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON)
CIVIL - burden of proof; workmanlike manner; expert testimony; Evidence Rule 702; abuse of discretion; weight of the evidence; adoption of magistrate's decision.

2018-T-0064 STATE OF OHIO, Plaintiff-Appellee v. JONATHAN R. EMERINE, Defendant-Appellant.
Judgment affirmed. Wright, P.J., concurs in judgment only. See Opinion and Judgment Entry. [OTOOLE] (WRIGHT) (RICE)
CIVIL - pro se petition to vacate or set aside judgment without a hearing; abuse of discretion standard of review; R.C. 2953.21. RES JUDICATA.

2018-T-0090 STATE OF OHIO ex rel. VINCENT EL ALAN PARKER BEY, Petitioner v. CHARMAINE BRACY, WARDEN, Respondent.
Petition dismissed. Grendell, J., concurs in judgment only. See Opinion and Judgment Entry. [RICE] (GRENDLELL) (CANNON)
HABEAS CORPUS - R.C. 2945.05; R.C. 2945.06; R.C. 2903.01; jury waiver; guilty plea; adequate remedy at law; direct appeal.

January 7, 2019

R E L E A S E

LAKE

2017-L-005 STATE OF OHIO, Plaintiff-Appellee v. KEVIN L. MARTIN, Defendant-Appellant.
2017-L-006 Judgment affirmed. Wright, P.J., concurs with a Concurring Opinion. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [GRENDLELL] (WRIGHT) (OTOOLE)

CRIMINAL - right to plead guilty; other acts evidence; timeliness; joinder of offenses; Crim.R. 14; plain error; substitution of appointed counsel; sufficiency of the evidence; manifest weight of the evidence.

2018-L-050 STATE OF OHIO, Plaintiff-Appellee v. FLOYD J. HULL, SR., Defendant-Appellant.
Judgment reversed and remanded. Grendell, J., dissents with a Dissenting Opinion; O'Toole, J., concurs in part and dissents in part with a Concurring/Dissenting Opinion. See Opinion and Judgment Entry. [WRIGHT] (GRENDLELL) (OTOOLE)
POSTCONVICTION RELIEF - res judicata; ineffective assistance trial counsel; appellant unable to advance argument in direct appeal based on evidence outside the record; hearing not mandatory, but trial court must determine whether supporting evidentiary documents contain sufficient operative facts, if true, establish substantive grounds for relief; State v. Calhoun, 86 Ohio St.3d 279 (1999).

PORTAGE

2018-P-0018 STATE OF OHIO, Plaintiff-Appellee v. DANIEL L. TUDOR, Defendant-Appellant.
2018-P-0024 Judgment affirmed. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [GRENDLELL] (WRIGHT) (OTOOLE)

2018-P-0095 STATE OF OHIO, Plaintiff-Appellee v. KENNETH D. CURLEY, JR., Defendant-Appellant.
Appeal dismissed. See Judgment Entry. [WRIGHT] (RICE) (CANNON)

TRUMBULL

2018-T-0018 N.T.I. ENTERPRISES, LTD. f.k.a. NTI, LTD., Plaintiff-Appellee v. DENTAL PRODUCTS & SERVICES, INC., Defendant, ALVIN G. SULLIVAN, et al., Defendant-Appellant.
Judgment reversed and remanded. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (RICE)

CIVIL - lease agreement; amendment and extension; forcible entry and detainer; damages hearing; res judicata; claim preclusion; issue preclusion; R.C. 1923.03; personal liability for unpaid rent; holdover tenant.

KNIVES AS CONCEALED WEAPONS

By JUDGE PAUL H. MITROVICH (Ret.)

Recently, the News Herald featured an interesting article that explained how foggy and gray Section 2923.11 is when it comes to defining what a concealed weapon is when considering knives. The article explains that it is not the size of the knife but the intent to use it as a weapon which qualifies its status as well as whether it possesses certain characteristics. The Ohio Supreme Court visited the issue in 2010 in the case of *State v. Cattledge*, 90 Ohio St. 3rd. 403, 417, wherein an eighteen-year-old High School Student was charged with a concealed weapon for having a knife in his pocket. The knife was seven inches long (Probably half of it was handle) and had a locking blade with a little knob on the blade to assist in opening it with one hand.

The court upheld the conviction saying the knife met the criteria as a weapon and therefore was carried as a weapon. The court opined that the locking feature and the knob made the knife a weapon. The court said nothing about the size of the knife which perhaps had a blade 3 ½" long. The ruling and reasoning of the court displays complete ignorance of knives and how they are used. The Court also relied heavily on 2923.20 (A)(3) which makes it illegal to possess a "spring blade knife, lock blade knife, gravity knife, or serrated knife"

The statutes say nothing about lock blade or one-handed knives. In making its analysis the *Cattledge* court analyzed cases involving knife CCW back to 1983. But a careful reading of these cases, however, indicated that where the court was knowledgeable about knives, it found the knife was not a concealed weapon even though the knife may have held some of the characteristics held by the Supreme Court to be a weapon. Where, however, the court had no specialized knowledge, it followed the list of traditional characteristics blindly and in some cases, the result belied common sense.

The court laid out factors for the judge or jury to consider: (1) whether the blade can be easily opened with one hand, (2) whether the blade locks in place, (3) whether the blade is serrated, (4) whether the blade is sharp, (5) whether it has a feature on the blade which aids in opening, a knob or hole, (6) whether it resembles a pocket knife, (7) whether the blade is considered a weapon under 2923.20 (A)(3). The judges must have gotten the list from law enforcement as the list belies logic, reason and was obviously grabbed out of the air. It should also be noted that not all of these factors are listed in the statutes.

The News Herald article quoted a detective who arrogantly said, "If you are carrying a knife, don't do anything wrong." Millions of people have knives and don't do bad things but still get charged with CCW. He also said that he would not charge CCW unless you were stopped for some other offense. Thus, the minor offense of speeding could result in a felony charge of CCW for having a pocket knife with any of the characteristics stated above.

The Supreme Court completely missed the point when it upheld the conviction in the *Cattledge* case. The statute and the

criteria laid out by the court are unconstitutional, although Constitutionality was not raised in the case. When a statute is so vague that it requires interpretation by a police officer, or court, it is invalid. In criminal law the statute must be clear and unambiguous so that the public knows what its rights are as well as responsibilities. There does not exist a standard or guide in the statute to follow in applying the law. Under the criteria outlined by the court, one officer may charge and another may not under the same circumstances. The explanations given by law enforcement is, if the possessor of the knife can give a good account for his possession, such as used in trade or employment, it passes muster. If it is possessed for self-protection, this is an admission that the knife is carried as a weapon.

The courts say, it is the Intent that determines whether the possessor is carrying a weapon or is lawfully carrying. This standard is also vague as the intent is implied from the determination of the police officer. It places a status on the knife without a standard to measure that status against. The evidence of the intent is supplied by the defendant's statements. As shown above, if the defendant says it is for work he may not be charged. But if he says it is for protection, he has incriminated himself from his own mouth. Thus, we have a Miranda violation unless he is advised before questioning which almost never happens in traffic stops. Knives and guns are both deadly weapons but knives are treated differently. A person has a right to carry a firearm if he believes his life is in danger and this fact is a defense. The same is not true in considering knives.

I once had a case where a man was charged with CCW. When he came to court he said, "Judge, it was a little pocket knife." He held up his fingers to show a knife about 2-1/2 inches long. The knife was not in court. I reached into my pocket and pulled out my 3 inch pocket knife, held it up and said, "like this." "Yes, Judge, only smaller." This charge was unfair and a denial of justice for the officer to believe such a blade was a weapon. I also tried a jury case where the defendant was charged with Assault With a Deadly Weapon on a security guard and Armed Robbery, while he was shop lifting. As he was running away, he pulled a pocket knife from his pocket and opened it with one hand. The prosecutor argued that the opening with one hand caused the knife to be a Deadly Weapon under the statute. The jury had other ideas and acquitted the defendant of the charges.

There is also the Equal Protection argument of the 14th Amendment. By allowing the police the discretion to charge based on their own determination without a standard to measure the application of that discretion is a violation. Each citizen under the 14th Amendment has a right to be treated fairly and equally. This means the law must be clear so that a citizen understands his obligations and it must be applied in such a fashion that all citizens are treated equal.

I have carried a pocket knife of some kind ever since I was five-years-old. In my day, every boy had a knife. We took them to school and played Mumble-d-peg in the school yard. The teachers knew we had knives and no one ever got cut or

hurt. Today, law enforcement seems to want to take innocent actions and turn them into criminal actions. If the criteria laid-out by the court and 2923.20 (A)(3) makes a knife a weapon then the Legislature ought to make the sale of these weapons illegal. It is lawful to buy such knives but it seems unlawful to carry or possess one.

A locking blade is a safety feature. Anyone who has used a non-locking pocket knife knows the blade can fold back and cut the hand. Spring-loaded knives and knives that have a knob or hole to facilitate opening with one hand have a definite value in the trades and other work. Anyone who works as a Drywaller, Craftsman, etc., often come upon situations in which one hand is used to hold something and the other hand must manipulate the knife. Whether the knife is sharp is a ridiculous criterion as a knife is a tool and it is worthless unless it is sharp. Even a dull knife will cut flesh. My knives are razor sharp. My pocket knife is worn to half its size from constant sharpening. Serrated blades are another misnomer as the serrations do not make the blade more lethal. The serrated blade was invented to keep a sharp edge on the knife. and to allow the knife to be used for a multiple of purposes without dulling. Survival knives and kitchen knives are often serrated. Under the statute, it is illegal to possess a serrated knife. Cook's knives are often serrated. A cook in a kitchen is breaking the law as he is *possessing* a serrated knife. The statute does not make exceptions. Whether the knife requires to be opened with two hands is also ill-considered requirement as a two-handed knife can be opened almost as fast as a one-handed knife. If the two-handed knife is used as a weapon, it is just as lethal, once-opened, as a spring knife. It seems what it comes down to is, the features make the knife appear to be more lethal, and therefore, it is.

The courts cannot correct the problems with the statutes by band-aiding characteristics to supply what is missing in the statutes and the decisions have given no clarity to the issues. The matter cannot be left to law enforcement as injustice occurs every day. The legislature must review the statutes and the cases in this area and pass legislation which is clear and direct

KUDOS!

Brandon Dynes, Thrasher Dinsmore & Dolan, was appointed by the Supreme Court of Ohio as a member of the Board of Commissioners on Character and Fitness serving as an Ohio attorney from the Eleventh District. His three-year term will run January 1, 2019 through December 31, 2021.

NEW FACES IN NEW PLACES

With 2019 off to a running start, changes have taken place in the Lake County Courthouse. Newly elected **Common Pleas Judge Patrick Condon** has settled in to his office on the lower level of the courthouse in what was formerly Judge John O'Donnell's court. Joining Judge Condon is **Bridgett Kronik**, Assignment Commissioner; **Susan Goodell**, Court Reporter; **Magistrate Ken Roll** and **Staff Attorney Thomas Gorman**. They will soon be welcoming their new bailiff, **Brian Jackson**.

Judge John O'Donnell and his staff are now located on the first floor of the courthouse in the offices where Judge Richard Collins was prior to his retirement.

Another new face in the courthouse is **Tony Iliano** who replaced Charles Ashman as bailiff in Judge Eugene Lucci's court.

MOVING ON

Iva Jeras Cindric joined Gallagher Sharp recently after serving as a Judicial Attorney to the Honorable Timothy P. Cannon, Court of Appeals, Eleventh Appellate District in Warren. New contact information: Email: icindric@gallaghersharp.com
Phone: (216) 522-1090

Steven Roth started the new year by joining the firm of Roetzel & Andress, LPA, 1375 East Ninth Street, Cleveland, OH 44114
sroth@ralaw.com
(216) 623-0150

The **Axelrod Law Office** has moved to 7976 Tyler Blvd., Mentor, OH 44060.

Lake County Clerk of Courts, **Maureen Kelly** has been elected to the Ohio Clerks of Court Association as second vice president. The Association provides and promotes continued education and technological updates for its members. The Association meetings and seminars promote new legislation and keep current on all Ohio and National legislation that pertains to the daily operations and procedures of the Legal Office and the Ohio Title Division of the office.

Congratulations Maureen!

Excerpt from Gazette Newspapers, 01/18/19

LAKE COUNTY BAR FOUNDATION

Lake County Courthouse - West Annex
25 North Park Place
Painesville, Ohio 44077

The purpose of the Lake County Bar Foundation shall be to promote educational, literary, scientific, charitable and scholastic purposes, and to maintain the objectives for which such foundation was organized.

In recent years the Foundation has provided scholarships to students residing in Lake County who are pursuing a career in law. The Foundation also provides financial assistance through the Helping Hand Fund to members who are suffering from medical or financial distress.

The Foundation is also a supporter of the Mock Trial events in Lake County Ohio.

The Lake County Bar Association hosted the first Annual Barrister's Ball this year as a fundraiser for the Foundation.

Enrollment in the Foundation is optional.

Joseph R. Klammer, Esq.
Foundation Chair

There will be a Foundation Meeting on February 13, 2019, 8:00 a.m. in the Hearing Room on the 2nd Floor of the Courthouse West Annex.

We have Trustee and Officer Positions vacant and there will be an election at this meeting.

Chairman: Joseph R. Klammer
Trustee: James P. Koerner
Trustee: Theodore Mann *Resigned*
Trustee: Maria Quinn *Resigned*
Trustee: Geoffrey Weaver *Resigned*
Trustee: Charles Deeb
Trustee: Judge John Trebets
Trustee: Judge Timothy Cannon
Trustee: Michael Hurley

Please plan to attend this meeting if you are a Lake County Bar Foundation member.

MEMORIAM



Kevin Joseph Hoopingarner

We extend condolences to Domestic Court Magistrate Lynne Yohe on the loss of her husband, Kevin Joseph Hoopingarner, age 58, of Wickliffe. He passed away with loved ones on January 20, 2019. He was born in Painesville, Ohio on October 25, 1960 to the late Robert and Mary Kay Hoopingarner.

He was a loving husband, father, son, son-in-law, brother, uncle and friend. Kevin will be dearly missed.

Kevin was the loving husband for 24 years of Lynne (Yohe), father of Kevin Patrick Hoopingarner, brother of Bob (Marianne), Tim (Sandy), Jim, Mary and Ann Hoopingarner, son-in-law of Charles and Charlene Yohe, uncle of Allegra, Hanna, David (Kenda) and Diana (Joe) and brother-in-law of Chuck and David (Donna) Yohe.



Emil J. Centa

age 95 passed away in October of 2018.

Beloved husband of 54 years to Mary Ann Centa (nee Tobbe); dearest father of Robert Centa (wife Susan), Helen "Molly" Rochester (husband Gregory) and Joseph Centa M.D. (wife Cheryl); loving grandfather of Daniel, Andrew, Brian, John, Emily, William, Michael, Thomas, Margaret, Nicholas, and Mary Catherine; dear brother of Olga Horvath, twin Ernest Centa and the late Frances Opaskar and Charles Centa M.D.; cherished uncle and great-uncle of many nieces and nephews. Emil was a 50+ year member of the Euclid Symphony Orchestra and was a U.S. Air Force Veteran of World War II. In lieu of flowers, the family would appreciate contributions in memory of Emil to the Ursuline Sisters of Cleveland, 2600 Lander Rd., Pepper Pike, OH 44124.

Published in The Plain Dealer from Oct. 9 to Oct. 12, 2018

Newly Remodeled Law Offices in Mentor

The Piscitelli Law Firm has newly remodel office space available at 8440 Station Street in Mentor, Ohio. The building is visible from Center Street (Route 615). Easy access from Interstate 2 and 90. Space is available for a small law firm or solo practitioners. One large office, three small offices and secretarial space. Includes two conference rooms, ideal for mediations and focus groups. Also, includes access to a full kitchen for employees and hosting events. Plentiful parking and handicap access. Call 216-931-7000 or email frank@feplaw.com



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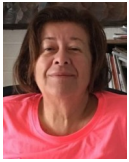


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(440) 357-1901 Tel. (440) 357-1902 Fax
baveni@csalawgroup.com**

Principals:

Benjamin L. Aveni Anthony J. Aveni Paul R. Malchesky

MEMORIAM



JANINE HATOUM, mother of bar association member **Carla Hatoum**, (nee El Meouchi) age 65, beloved wife for 35 years of Bechara, M.D.; loving mother of Maha, Carla and Joe; cherished daughter of the late Judge Badri and Evelyn (nee Azar) El Meouchi; dearest sister of Marie-Claude Saradar (husband Joe, deceased), Salim El Meouchi (wife Nawal) and Rafic El Meouchi, M.D.; treasured sister-in-law of Marcelle Nahra (husband Norman, deceased), Laudy Wehbe, Doris Kawkabani, Nawal and Inaam Hatoum and the late Madeleine Najem; dear aunt, great-aunt and cousin of many.

Janine was born on January 6, 1954 in Beirut, Lebanon and passed away on January 23, 2019. She was a resident of Lyndhurst since 1984, formerly of Lebanon. Janine received the most enjoyment in life when spending time with family and friends. Her recipes delighted guests who gathered around her table to enjoy her many traditional Lebanese specialties. Her sense of fashion reflected her sparkling, colorful personality. Equally as colorful was her passport book, stamped on every page. Her love of travel took her to many places, both near and far. She was always ready with a laugh upon the telling of a sarcastic joke. She will be dearly missed.

Contributions may be made in memory of Janine to Hospice of the Western Reserve; ALS Association, Northern Ohio Chapter; Aitaneet Foundation; or St. Elias Catholic Church.

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MEMBERS COST: \$20.00
NON-MEMBERS COST: \$35.00

Wednesday, February 27, 2019

PROFESSIONAL CONDUCT-DVD PRESENTATION

1.0 hour(s) CLE

11:00 a.m. - 12:00 noon : Registration and Lunch Buffet
12:00 noon - 1:00 p.m.: CLE

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Scott Robinson	5-Feb
Joshua Morrow	8-Feb
Robert Moore	9-Feb
Robert J. DiCello	11-Feb
Neil Conway III	15-Feb
Terrance O'Flaherty	16-Feb
Zachary Zele	16-Feb
Michele Raia	18-Feb
Randy Klammer	19-Feb
Kimberly Baranovich	19-Feb
Anna Parise	20-Feb
Jerri Mitchell-Tharp	21-Feb
Vanessa Clapp	23-Feb
Nicholas D'Angelo	23-Feb
Joseph Svete	25-Feb
Frank Brancatelli	26-Feb
David Neilsen	26-Feb
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Stephanie Landgraf and Lori Kilpeck, Co-Chairs

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