Proposed Judicial Qualifications Bill

The following points highlight the provisions of LSC 127 0457-3, a draft proposal to improve the quality of judicial candidates and judges.

Judicial Appointment Review Commission. Section 107.08 (pp 2-3 at lines 37-86) creates a judicial appointment review commission. The Review Commission makes non-binding recommendations to the Governor of three persons to fill the vacancy. The Governor is prohibited from filling the vacant judgeship for at least twenty days after the vacancy occurs. During the 20 days the Chief Justice may convene a meeting of the judicial allotment review commission. If the Chief Justice convenes this meeting, then the Governor is prohibited from filling the vacancy until 45 days pass, until the commission issues a report, or until the General Assembly specifically authorizes the Governor to fill the vacancy, whichever occurs first.

Judicial Salary. Section 141.04 (pp 4-9 at lines 87-258) outlines an increase in judicial compensation, as well as a cost of living increase. Salary adjustments are made over a period of three years (2008, 2009, and 2010) bringing overall salaries to approximately 85 percent of federal judicial salaries. In addition to these salary increases, judges receive an annual cost of living adjustment that is either 3 percent or the consumer price index, whichever is a greater amount.

Practice of Law. Section 1901.06 (pp. 11-12 at lines 311-339) clarifies the definition of "practice of law." Section 1907.13, 2301.01, 2501.02, and 2503.01(pp 12-17 at lines 340-504) increases the practice of law requirements to 10 years for common pleas judges, 12 years for appellate judges, and 15 years for the Chief Justice and Associate Justices.

Judicial Candidate Qualification Program. Section 2503.51 (pp. 17-19 at lines 505-556) establishes a judicial candidate qualification program that requires judicial candidates to take 40 hours of coursework prior to running for judge. The coursework must be completed within 5 years prior to the general election for the office. The candidates must submit their certification 75 days before election to office. The Supreme Court is authorized to exempt certain candidates from qualifying before the election.

Judicial Allotment Review Commission. Section 2503.52 through 2503.55 (pp. 19-26 at lines 557-770) creates a judicial allotment review commission. There are nineteen members of the allotment commission, which is chaired by the Chief Justice. Two members are appointed by the Ohio Judicial Conference. It provides that enacting legislation to abolish a judgeship "shall designate only the court and .... division" and that vacancies resulting from death, resignation, retirement, removal, or failure to seek reelection are the first judgeships to be abolished. In the event that there are no vacancies within the five year period, then the most recently created judgeship is to be abolished. Section 145.2914 (pp. 9-11 at lines 259-310) provides a purchase of service credit for a qualifying judge whose judgeship is abolished under Section 2503.55(C)(2).

Supreme Court Security Fund and Ohio Courts Network Fund. Section 2503.60 and 2743.70, and 2949.11 (pp 25-36 at lines 748-1069) create a "supreme court security fund" in the state treasury.

4/23/2007

2007 Judicial Salary Comparisons

	Federal	Illinois	Michigan	Pennsylvania	New York	Indiana	Ohio
Chief Justice	$212,100	$182,739	$164,610	$180,336	$156,000	$144,344	$146,750 [1]
Associate Justice	$203,000	$182,739	$164,610	$175,236	$151,200	$141,844	$137,750 [2]
Intermediate Appellate Judge	$175,100	$171,991	$151,441	$165,342	$144,000	$137,968	$128,400 [3]
General Jurisdiction Trial Court Judge (e.g. U.S. District Court, Ohio Court of Common Pleas)	$165,200	$157,824	$139,919	$152,115	$136,700	$120,282	$118,050 [4]

About the Comparison Group
The salary comparisons contained in this report are made with comparable states.
Particularly Illinois, Michigan, and Pensylvania because those states are most like Ohio; each is a large industrial state with small-town and rural poverty. In terms of population, Illinois ranks 5th, Pennsylvania 6th, Ohio 7th and Michigan 8th among the 50 states according to the U.S. Census Bureau's 2004 estimates. The Ohio Elected Officials Compensation Commission concluded that it was most fair and reasonable to compare the salaries of Ohio officials with salaries paid in those states.

Updated through 1.1.07

Judicial Compensation Proposal

Judicial Position	Ohio Judges' Salaries as of Jan. 1, 2007	Federal Judges' Salaries as of Jan. 1, 2007	Proposal – Calibrate Ohio Judges' Salaries to Percentage of Federal Judges' Salaries on a Date Certain, then Phase-In Over 3 years + 3% or CPI
Chief Justice	$146,750	$212,100	$169,680 (80% of U.S. Chief Justice's Salary) Increase of $7,643 per year for 3 years + COLA
Sup. Court Justice	$137,750	$203,000	$162,400 (80% of U.S. Sup. Court Justice's Salary) Increase of $8,217 per year for 3 years + COLA
Court of Appeals	$128,400	$175,100	$148,835 (85% of U.S. Court of Appeals Judge's Salary) Increase of $6,812 per year for 3 years + COLA
Common Pleas	$118,050	$165,200	$140,420 (85% of U.S. District Court Judge's Salary) Increase of $7,457 per year for 3 years + COLA
Municipal[1]	$111,000		$133,399 (95% of Ohio Common Pleas Judge's Salary) Increase of $7,466 per year for 3 years + COLA
Municipal & County[2]	$63,850		$76,704 (57.5% of Municipal Court Judge's Salary) Increase of $4,285 per year for 3 years + COLA

[1] A fulltime municipal court judge's salary is currently set by law at 95% of a common pleas court judge's salary.
[2] A part-time municipal and county court judge's salary is set by law at 57.5% of a fulltime municipal court judge's salary.

- It will cost $3.03 million to implement the first phase of the increase in FY 2008 (January 1, 2008 – June 30, 2008)
- It will cost $9.24 million to implement the second phase of the increase in FY 2009 (July 1, 2008 – June 30, 2009)
- It will cost $15.91 million to implement the third phase of the increase in FY 2010 (July 1, 2009 – June 30, 2010)

Updated 04/01/07

Pending Legislation of Interest to Municipal and County Court Judges
As reviewed by the OJC Criminal Law and Proceedure Committee
April 19, 2007

Andre Imbrogno

Senate Bill 21 and Sen. Austria's Amendment Mandating Anger Management Counseling

The Committee is in favor of the bill's adoption of the Uniform Interstate of Domestic Violence Protection Orders Act. However, the Committee strongly opposes Sen. Austria's proposed amendment mandating jail time and anger management counseling for those who violate protection orders. The Committee is opposed to the amendment on the ground that it limits judicial discretion, requires counseling that is simply not available, imposes unfunded mandates, and would further limit already limited jail space. It was agreed that Judge Shriver or Judge Herman would either offer opponent testimony on the amendment or identify a judge who could.

Mark identified some additional issues with respect to Sen. Austria's amendment:

- The amendment requires that the evaluator's report recommend the type of treatment the defendant needs (lines 340 through 342). The amendment assumes every defendant will require treatment.

- The evaluator's report must set forth the facts upon which the evaluator's findings are based "in reasonable detail" (line 334). Will the facts be provided by the defendant, the defendant's family, the victim? How reliable will those sources be?

- Does the evaluator's report need to be a written report? Is it a public record?

- The amendment allows a court to set a "schedule" for bail that requires courts to consider specific factors in the bail determination (lines 98 through 103). The amendment may be using the term "schedule" in a way that causes confusion. A "bond schedule" is commonly used to refer to a system under which defendants can post bond without appearing before a judge.

- Why does the amendment treat the anger assessment as something separate from a mental condition evaluation (R.C. 2919.271)?

Senate Bill 91 – Road rage

The bill allows an officer who has reasonable cause to believe that a driver has committed a road rage incident prior to committing a moving violation to:

- If the officer is within the officer's jurisdiction, stop or pursue and detain the driver and issue a ticket, or detain the driver until an arrest warrant is issued.

- If the driver is outside the officer's jurisdiction, obtain an arrest warrant pursuant to Criminal Rule 4.

The bill requires drivers to appear in court in person to contest the ticket, citation, or summons. Under the bill, the court must fine the driver at least $100, but not more than $250. If the moving violation is a fourth degree misdemeanor or higher, the court may fine the driver up to the maximum specified in the code. Finally, the bill requires drivers to complete a road rage abatement seminar, at the drivers' expense. Failure to complete the seminar results in a mandatory penalty of 3 to 30 days in jail.

Committee's Comments:

- These types of cases will be highly contested and could create more distress for the parties than the road rage incident itself. The possibility of jail time means that counsel will need to be appointed for indigent defendants. Speedy trial requirements could make scheduling these cases difficult.

- Who is to collect the road rage abatement seminar fee required to be paid by the defendant? Is the fee a court cost?

- Why does the bill address only road rage that is followed by a moving violation?

- It was noted that the bill does not provide any workable legal standards and that conduct prohibited by the bill is already covered by existing statutes – e.g., reckless operation. It was suggested that reckless operation be extended to cover road rage incidents.

- It was agreed that the Judicial Impact Statement for the road rage bill introduced in the previous General Assembly (S.B. 138) should simply be amended to note that the purpose of the bill could be accomplished simply be amending current law (R.C. 4511.20) to make reckless operation a fourth degree misdemeanor.

Senate Bill 51 – Seven-day field driving permits

The bill requires a law enforcement officer or state highway patrol trooper who issues a person a ticket for operating a vehicle with an expired Ohio driver's or commercial driver's license that is not under suspension to issue the person a seven-day field driving permit if the person has not been arrested, the person is physically capable of driving, and the vehicle can be lawfully operated on the roads and is not a commercial vehicle. The seven-day permit authorizes the person to drive the vehicle home immediately after the traffic stop, to drive to and from work for the next seven days, and to travel to the Registrar of Motor Vehicles or a deputy registrar to obtain a new license.

Committee's Comments:

It was generally agreed that the policy underlying the bill is a good one – people with expired driver's licenses are going to drive anyway so it is advisable to set up a mechanism that will allow them to drive legally and to get valid. There was general discussion as to how the bill could be improved. It was agreed that the Conference will send the bill's sponsor a letter expressing its general support for the bill, but suggesting the following modifications:

- Officers should be given discretion not to issue a permit.
- The seven-day permit should be conditioned on the driver demonstrating proof of insurance.
- The number of seven-day permits that may be issued to any individual should be limited to some specific number. In addition, the Department Motor Vehicles (DMV) should be notified of each permit issued to a driver so that DMV may maintain a database of seven-day permit issuances that is available to officers at the time they make a traffic stop.
- Clarify that the issuance of a seven-day field driving permit does not authorize someone to drive under suspension.

House Bill 102 – Township speed limit alterations

The bill does both of the following:

- Permits a board of township trustees, upon the basis of an engineering and traffic investigation conducted by the county engineer, to alter the prima-facie speed limit (i.e., the speed limit established by the Ohio Department of Transportation (ODOT)) on any part of a highway under its jurisdiction without any action by ODOT.

- Requires ODOT to establish speed transition zones where the posted speed limit decreases by 20 or more miles per hour. A transition zone consists of at least the preceding 1,000 feet and must be 10 miles per hour more than the speed limit to which the posted speed limit decreases.

Committee's Comments:

It was generally agreed that H.B. 102 will lead to the creation of "speed traps" with associated increases in judicial workload. Judge Harris noted that the current system, which requires townships to go through ODOT to change speed limits, makes sense because it creates uniform speed laws throughout the state. It was agreed that legislative staff would send the bill's sponsor a letter opposing the bill on the ground that it creates an inconsistent approach to speed laws throughout the state; increases traffic-

related cases at the municipal level; and will complicate civil trials by creating inconsistent standards for civil liability across townships.

House Bill 109 – Proof of insurance required to register motor vehicles and issue or renew driver's licenses

The bill conditions motor vehicle registration and driver's license issuance and renewal on the applicant showing proof of insurance.

Committee's Comments:

It was agreed that current law does not provide adequate assurance that drivers possess valid insurance and that the bill's proposal to require actual documentation of insurance is a much needed change in the law. The Committee agreed to support the bill. It was further agreed that legislative staff would send the bill's sponsor a letter indicating that the bill proposes a much needed clarification of the law and would ultimately reduce traffic fatalities.

House Bill 132 – Property burning

The bill makes it a criminal offense to set fire to or add a combustible substance to a trash receptacle, dumpster, combustible personal property, a motor vehicle, or to a fire that is already burning without privilege to do so and on real property owned by a person other than the offender. The offense is a misdemeanor of the second degree, unless the property that was set afire is located within 20 feet of a residence, vehicle or other property belonging to someone other than the offender or the fire that was set or fueled created a hazardous or hostile working condition for emergency personnel, in which case the offense is a misdemeanor of the first degree for which the court must impose a mandatory three-day jail term and a maximum fine.

Committee's Comments:

Judge Shriver noted that prosecutors oppose the bill because the offense it creates is already covered by existing statutes and also because the bill removes judicial discretion. It was agreed that the bill is an overreaction to events occurring on Ohio's campuses and that the law is unnecessary. It was also noted that the Conference generally opposes mandatory sentences like that provided for in the bill. It was further agreed that legislative staff would send the bill's sponsor a letter opposing the bill on the ground that the bill is unnecessary (offense is covered by existing law) and limits judicial discretion.

Senate Bill 17 – OVI penalty increase/Elements of "wrongful entrustment" modified

The bill does all of the following:

- Requires that trial judges order the immobilization of all of a repeat OVI offender's vehicles and to order the impoundment of those vehicles' license plates for one year.

- Requires a person convicted of a repeat OVI offense within six years to wear an electronic device that provides continuous alcohol monitoring until the conclusion of all community control sanctions. The offender is required to pay the costs of monitoring.

- Authorizes a judge who has granted limited driving privileges to an OVI offender to order that the offender use only vehicles equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption.

- Requires judges to prohibit the consumption of beer and to require continuous electronic alcohol monitoring as part of the bail conditions of individuals charged with an OVI offense who have previously been convicted of such an offense. The offender is required to pay the costs of monitoring.

- Removes the "reasonable cause to believe" element from the wrongful entrustment statute.

Committee's Comments:

Judge Herman described the huge costs associated with Secure Continuous Remote Alcohol Monitoring (SCRAM). It was agreed that most offenders would be unable to pay those costs, as required under the bill. Judge Herman further noted that while it may make sense to immobilize all of an offender's vehicles, those vehicles will be difficult to locate.

A question was raised as to why the bill requires immobilization for a longer period of time then an offender's license is suspended.

It was noted that S.B. 17 further complicates Ohio's already complicated OVI law. It was noted that the removal of the *mens rea* element from the wrongful entrustment statute violates federal law.

It was agreed that legislative staff would send the bill's sponsor a letter opposing the bill for the following reasons:

- Electronic alcohol monitoring and duties related to immobilized vehicles will substantially increase court workload, requiring additional staff.
- In light of the fact that defendants are required to pay the cost of electronic alcohol monitoring, in the case of an indigent defendant, how is a court to condition bail on electronic monitoring?
- Electronic alcohol monitoring for the full term of community control sanctions may be excessive.
- The bill adds more complexity to an already complex area of law.
- In line 1038, why does the bill *require* judges to order offenders to attend a drivers' intervention program? Why is this not left to a judge's discretion? What if an offender has already attended such a program in connection with a previous offense? What is to be gained by an offender repeating the program?
- There are already long waiting lists of OVI offenders who need to serve time. There would be no room to hold offenders who violate the new bond conditions required under the bill.
- Removing the "innocent owner" language in the wrongful entrustment violates federal law.
- Vehicle impoundment provisions could negatively affect innocent family members who need to use impounded vehicles.

Senate Bill 100 – Judicial attacks

The Committee agreed that legislative staff would send the bill's sponsor a letter supporting the bill and suggesting that the bill should be modified so that the penalty for assaulting a judge is higher than the penalty for threatening a judge; that the word "retaliation" should be removed from line 333 of the bill (which is the new Revised Code section criminalizing threats); and that the existing retaliation statute (R.C. 2921.05) simply be modified to lower the culpable mental state for that offense from purposely to knowingly.

The Committee also supports H.B. 141, which increases the penalty for assaulting someone in a courthouse. The Committee is in favor of Senator Austria's proposal to fold this bill into S.B. 100.

The Daily Reporter
Friday, April 20, 2007

Proposed legislation would eliminate smaller mayor's courts

By CHRIS SPITTAL
Daily Reporter Staff Writer

Ohio, one of just two states to have mayor's courts, could eliminate those courts in small towns and change how they operate in larger cities if legislation introduced yesterday is approved. Mayor's courts primarily hear minor misdemeanors, such as traffic cases.

House Bill 154, introduced by Hilliard Republican Rep. Larry Wolpert, builds on a 2003 law, also introduced by Wolpert, that abolished mayor's courts in towns with fewer than 100 residents.

Wolpert's target with his original legislation was the "speed trap" located on West Broad Street in New Rome.

"That started to pique my interest in this whole concept (of local courts)," Wolpert said.

The recently introduced legislation would eliminate mayor's courts in municipalities with populations less than 1,600 by Jan. 1, addressing what supporters are calling a potential conflict of interest. If passed, it would eliminate 142 of Ohio's 336 mayor's courts in its 938 municipalities.

Wolpert said the 1,600 population figure was chosen because in Ohio a village cannot be formed if it has fewer than 1,600 residents. The provision abolishing the court would affect just .9 percent of Ohio's population, he added.

Wolpert has been in contact with the Supreme Court of Ohio while developing the measure, as the issue of mayor's courts has been a concern for Chief Justice Thomas J. Moyer.

(See Legislation, Page 12)

Legislation

(Continued from Page 1)

"It's been a mutual interest of our," Moyer said.

Moyer added that mayor's courts have been declared unconstitutional by federal courts, most recently by the Sixth Circuit Court of Appeals in 1999. The court found there was an unconstitutional conflict when a mayor can level a fine that will be paid into the budget a mayor controls.

According to Cindy Bitter, clerk of court for the Upper Arlington mayor's court, Ohio receives $24 for each misdemeanor fine, while the jurisdiction that adjudicates the case gets the remaining fine and court costs.

"It's the appearance of that conflict," said Moyer. "It's a classic conflict of separation of powers."

To address the court's ruling, many cities and villages have hired attorneys to preside over cases if a mayor has no legal training, and others, such as Upper Arlington, have hired magistrates.

Frequently however, those chosen to preside over the mayor's court are appointed by the mayor.

"The appearance of impartiality is very important (in courts)," Moyer said. "Representative Wolpert's bill meets that issue, as I see it."

To ensure small towns are receiving a revenue stream if the courts are closed, Wolpert said the bill would function similarly to a township if it has a police force, and would receive 50 percent of fines distributed by police.

In addition to closing some mayor's courts, Wolpert's legislation would turn mayor's courts in larger municipalities into "community courts," which would be run by court appointed magistrates.

"We didn't want to abolish community courts," Moyer said, as the courts can resolve disputes quickly and save all parties involved a great deal of time. "We wanted to preserve the community nature of the court and eliminate the appearance of partiality."

Each municipality would be required to approve its own community court legislatively, as the cost to establish a court could cause some to opt-out, Wolpert said.

Those who decide against forming a community court could choose to receive funding through 50 percent of its police fines as an alternative.

The presiding judge of the municipal court would be responsible for appointing a magistrate to preside over community courts, and the court would also be subject to the Rules of Superintendence for the courts of Ohio.

"Peoples' rights and responsibilities are being determined by who is presiding in mayor's courts ... and the magistrates should be subject to the same rules of superintendence as any other court," said Moyer.

If passed, the changes in the legislation should not slow the court process down significantly, he added.

Bitter said though she understands the Chief Justice's concern, she is not totally in favor of the proposed legislation.

"I don't necessarily agree with it," she said, referring to the way it pertains to Upper Arlington. Upper Arlington's mayor is just one part of its government, she said, along with city council and its magistrates.

Each municipality in Ohio sets its fine and fee amounts, though the state sets caps on fines.

While fee amounts may vary widely across the state, mayor's courts in Central Ohio try to keep their fee and fine amounts similar, she said.

According to a 2005 report by the Supreme Court of Ohio, Franklin County has more than 20 mayor's courts.

"No one court is setting a fine schedule that's excessive," Bitter said.

Wolpert said the measure is about assuring proper function and oversight of courts, and should not be seen as an anti-local court measure, as he supports of local courts.

"With that support, we must have the highest level of integrity and professionalism in those courts," he said. "I don't think you get that all the time with a layman official acting as a judge."

9:05 AM

04/19/07

Accrual Basis

Association of Municipal/County Judges of Ohio, Inc.
Balance Sheet-Unaudited
As of March 31, 2007

	Mar 31, 07
ASSETS	
Current Assets	
Checking/Savings	
Cash and Cash Equivalents	
Chase Bank-Checking	233.00
Heartland Bank	37,614.62
Heartland Bank CD-5/16/07	31,200.67
Heartland Bank CD-mat 6/7/07	46,369.27
Huntington Bank-CD1/16/08	31,253.43
Oak Hill Banks-CD matures 5/07	31,015.35
Oak Hills Bank Money Market	65,031.09
Total Cash and Cash Equivalents	242,717.43
Total Checking/Savings	242,717.43
Accounts Receivable	
Accounts Receivable	1,825.00
Total Accounts Receivable	1,825.00
Total Current Assets	244,542.43
TOTAL ASSETS	**244,542.43**
LIABILITIES & EQUITY	
Equity	
Opening Bal Equity	229,860.76
Retained Earnings	-2,774.06
Net Income	17,455.73
Total Equity	244,542.43
TOTAL LIABILITIES & EQUITY	**244,542.43**

Negative number represents 2006 loss

Association of Municipal/County Judges of Ohio, Inc.
Profit & Loss-Unaudited
January through March 2007

	Jan - Mar 07
Ordinary Income/Expense	
Income	
Conference Income	29,715.00
Interest Income CD	2,923.04
Interest Income from checking	89.62
Interest Income Money Market	762.29
Membership Dues	27,600.00
Total Income	61,089.95
Expense	
Awards and Memorials	527.00
Bank Service Charges	6.25
Facilities	28,118.17
Meals and Entertainment	2,637.06
Mileage	660.11
Parking	18.00
Photography	154.00
Postage and Delivery	323.88
Printing and Reproduction	1,392.00
Professional Fees	8,237.47
Supplies	1,559.28
Telephone	1.00
Total Expense	43,634.22
Net Ordinary Income	17,455.73
Net Income	17,455.73

Frederic Rodgers
Judge

First Judicial District
Gilpin County and District Courts
Gilpin County Justice Center
2960 Dory Hill Road
Golden, Colorado 80403
303/582-5522 x 16 - fax 582-3112
frederic.rodgers@judicial.state.co.us

March 1, 2007

Honorable Michael T. Brandt
Franklin County Municipal Court
PO Box 365
Grove City, OH 43123-0365

Dear Judge Brandt:

Thank you for your letter and enclosures. I'll work on that CD for next time.

Will you please convey to the officers and members of the Association of Municipal/County Judges of Ohio how much I enjoyed presenting my program "Searches, Seizures, Statements and Other Top 40 Hits" to your association's members in Dublin recently. The program participants were a lively group, responsive –even after lunch— and it was a pleasure to speak with many of them afterwards and during the social hour to discuss their take on this topic.

I have a few other programs that I believe would play well for my colleagues in Ohio in the months and years to come, and I hope you will think of me when the time rolls around that you are planning and getting ready for the next educational program.

Very truly yours,

Frederic Rodgers
JUDGE

AMCJO – SUMMER MEETING
BERTRAM INN AND CONFERENCE CENTER
JULY 8 – 11, 2007

SCHEDULE, ACTIVITIES, MEAL PLANNING AND QUESTIONS TO RESOLVE

NOTE:

Things will be added to this per Larry Stone in normal Association Scheduling, such as registration times, time changes for meetings, etc. This will be added by the Conference based upon previous Conference Scheduling.

Saturday – July 7 – Early arrival – At this time our contract does not have a commitment for early arrivals on Saturday at the same rate; however, I will attempt to confirm that with Bertram. If not, people will still be encouraged to come a day early, even if they check in elsewhere to enjoy the area's amenities. Check In at the Bertram is 3:00 p.m.

Sunday – July 8 – 3:00 p.m. Check-In time. 4:00 p.m. to ? Registration Desk open. ? p.m. to ? p.m. – Trustee's Meeting (what time do we want the meeting – see questions).

Sunday – July 8 – 7:00 p.m. to 9:00 p.m. - Planned Family Arrival Activity (to be determined, possibly/probably ice cream/dessert social, poolside with access to Hospitality Suite. 7:00 p.m. to 11:00 p.m. Hospitality Suite open. 9:00 p.m. to 11:00 p.m. – Possible "night at the movies" – if possible, we a projection screen and sheet might provide a movie for the children in conjunction with the Hospitality Suite. (Possibly poolside, although the pool would be closed).

Monday – July 9 - ? to ? – Registration Open a.m.? to p.m.? – 7:30 a.m. to 9:00 a.m. – Breakfast. 8:00 a.m. to Noon – General Session to include General Membership Meeting – CLE and other matters TBD. 9:00 to Noon Children's Program (see elsewhere). 10:30 a.m. to 10:45 a.m. (or time TBD) break for both adult and children programs. Noon to 1:00 p.m. – Lunch. 1:00 p.m. – The annual "Benchers and Duffers" golf outing. (Location TBD see golf notes). Afternoon free for activities on your own, other than planned golf. (See activities, including golf, listed elsewhere). The rest of Monday is on your own to do what you wish, whether museums, amusement park, or other activities. Dinner is on your own, although see Northfield Park option. 6:30 p.m. to ? p.m. – "A day at the races". An evening at Northfield Park (see listing elsewhere). 7:00 p.m. to 11:00 p.m. – Hospitality Suite open. ?

Tuesday – July 10 – ? a.m. to ? p.m. – Registration and Information Desk open. 7:30 a.m. to 9:00 a.m. – Breakfast – 8:00 a.m. to Noon – General Session. 9:00 a.m. to Noon – Children's Program. 10:30 a.m. to 10:45 a.m. (or time TBD) break for both General and Children's Sessions. Noon to 1:00 p.m. – Lunch. 1:00 p.m. – the afternoon on your own, whether poolside, tee side, roller coaster or water park side, spa side or whatever side you wish (see activity notes). 3:00 p.m. to 6:00 p.m. – Hospitality Suite open. 6:00 p.m. (tentative – time TBD) – 6:00 p.m. to 7:00 p.m. - An evening at the Conch Nation, Keywest Municipal/County Court. 7:00 p.m. to 8:00 p.m. – Adult dinner. 8:00 p.m. to 9:00 p.m. – Adult entertainment. 7:00 p.m. to 9:00 p.m. – Children's dinner with balloon, juggling and magic entertainment. Mike Cheselka HBO Comedian/Attorney/Esposo Judico. 9:00 p.m. to 11:00 p.m. Hospitality Suite open.

Wednesday – July 11 - ? a.m. to ? p.m. – Registration and Information Desk open. 7:30 a.m. to 9:00 a.m. – Breakfast – 8:00 a.m. to Noon – General Session. 9:00 a.m. to Noon – Children's Program. 10:30 a.m. to 10:45 a.m. (or time TBD) break for adult and children's program. Noon – Conclusion of Summer Meeting. 12:15 p.m. to 2:15 p.m. – Optional Judicial Ethics/Substance Session. (Including box lunch for attendees only).

Although all times are somewhat specific, they are subject to confirmation by the Association, and the Judicial College as to specific times. Morning breaks can be flexible depending upon both adult and children's programs. If we start at 8:30 a. m. to 12:30 p.m. then the breakfast would probably remain the same but the lunch would be adjusted from 12:30 p.m. to 1:30 p.m. and the break time adjusted accordingly, as needed.

QUESTIONS FOR DETERMINATION BY THE TRUSTEES

TRUSTEE'S MEETING

1. What timeframe do you want for the Meeting?
2. Do we all want to eat on our own, or should the Association provide some food, whether from Bertram or "pizza delivered in".

JULY 9 – NORTHFIELD PARK

1. Do the Trustees wish to add this on as a meal extra price for people for this group? If so, it can be done easily and coordinated with the overall rate.
2. My suggestion is to have all people have transportation on their own so people may go and leave the track as they wish. This is also further than the Bertram shuttle bus would transport. Does the Association want to consider the potential of a bus for either shuttling or one ride out/one ride back, or just leave transportation on your own.
3. Hospitality Suite – What hours should the Hospitality Suite be open? Assuming the Sunday evening activity can be done poolside incorporating the Suite, I would think 7:00 to 11:00 p.m. On Monday and Tuesday it could/should be open in the afternoon, but what would be the Trustee's preference as to what time it should open. (My thought would be 3:00 p.m.) It might then be open continuously from 3:00 to 11:00 on Monday and Tuesday, but would be closed between 6:00 and 9:00 on Tuesday as everyone will be at the evening gathering.

JULY 10 – TUESDAY EVENING DINNER

1. What time would you wish to start the adult social hour?
2. My suggestion would be as for previous years that there is open bar/open margarita for some period of time then cash bar. If so, what would be the preferred time parameters, or do we wish to just go open bar? I expect to have some activities during the adult social hour that the kids may also enjoy. Would the Trustees prefer a combined youth/adult social hour for part of the time prior to the children break out, or breaking the children out from the beginning?

3. **Our Tuesday evening children's entertainer, as part of his package, will do tableside balloon and magic. Do the Trustees want this as part/all of the adult social hour, whether the children would be there or not. (I think I could juggle the times whichever way the Trustees prefer).**

MEAL PLANNING DECISIONS

1. **Do you wish to have an omelet station at $3.50 "per person" (including children), and if so, what day or days?**
2. **For breakfast for commuters, there should be some food in meeting room in addition to basic coffee service. Any thoughts on what could/should be done.**
3. **Do the Trustees have an preference as to a second lunch as to a theme buffet (Mexican, Italian, Chinese, Soup and Wraps).**
4. **Wednesday box lunch – Normally we would provide a box lunch for the members only who are attending the Judicial Ethics/Substance Program. Do we wish to do so, and if so, provide it complimentary or adjust the price? (Estimated cost of box lunch $14.50).**
5. **Box Lunch/Golf – On the planned golf day on Monday, unless the golf tee times are after lunch to permit lunch at Bertram, do we wish to do box lunch for golfers? (This would still provide lunch but would actually reduce costs as those who are golfing a box lunch would be cheaper than Bertram food service.**
6. **Do the Trustees wish to add the Monday night Northfield Buffet as an add on option?**

7. **If the sign up for the race track buffet is short five or less, would the Association make up the difference and if so, how should the additional paid for meals be distributed to staff/guests?**

TUESDAY NIGHT

1. **Do you want the steel pan musician after the two hours for the social/dinner hour?**
2. **Do we give Ken the authority to work with Comedian Cheselka as to his overall pay/cost?**

ASSOCIATION PRODUCTS AND COMPS

1. **What would the Trustees preference be for clothing with Association logo and for what group.**

   Collared Sport Shirts_____
   Men_____
   Women_____
   Youth_____

   Other Type_____
   Men_____
   Women_____
   Youth_____

   T-shirt_____
   Men_____
   Women_____
   Youth_____

   Other Clothing

   Hats_____
   Visors_____
   Others_____

GENERAL MEMBERSHIP MEETING AND EDUCATION PROGRAM

Debbie Wienberg, Joyce Campbell, and Judge Lee Mack will determine the exact parameters and timing of the three morning sessions. All meetings will be held at the Bertram Conference Center which is immediately adjacent to the basic hotel complex. Specific rooms will be determined for all meetings and meals after consultation between the host Judge (me) Lee Mack, Debbie and Joyce, based upon the presenters and the classroom needs.

MEAL PLANNING

At this time the estimated projected cost of all meals is $175.00 for adults and $155.00 for children. This is based upon probable prices and final menu selections. *If we qualify as sales tax exempt under 501(c)(6) with a tax exemption form this may be adjusted downward by approximately 7%.* The current meal planning is as follows:

Sunday Social Event – Cost to be determined probable ice cream/desser social. (Any alcohol can be obtained via Hospitality Suite, hopefully).

Breakfast – Monday – Wednesday (3) – This is your basic breakfast buffet which includes juices, in season fruit, cereal, scrambled eggs with bacon, sausage, potatoes, and French toast, pastries, coffee and beverages. We can probably alternate French toast and pancakes for the sweet thing. If we wish to have an omelet station this can be done at $3.50 a person additionally. My suggestion would be if you wish to do that we do it on Tuesday for a one day special. Estimated cost breakfast per person (all ages) $21.50 x 3 = $65.00.

Lunch – Monday – Tuesday (2) – Day one deli buffet, estimated cost per person $21.50 (all ages) $21.50. Day two – Theme buffet (TBD) estimated cost per person $24.25 (all ages) $24.25. Based upon a survey of the members, both lunches will be "lighter lunches" as opposed to heavier buffet luncheon. The deli buffet will be a "make your own sandwiches" and the theme buffet will be either Italian, Southwest Fajita, Mexican or soup and make your hot specialty sandwich.

Dinner – Tuesday – A visit to the Conch Nation/Keywest/Municipal County Court and children's dinner. The children's dinner will consist of a pizza burger estimated cost $25.00. The theme buffet has an estimated cost of $44.50. I will hopefully fax a copy of the evening menu for the Trustees Meeting. However, it is a Keywest/margarita theme buffet.

Closing Comments as to Meal Issues:

The estimated costs as noted above is just that. This does not include any food cost for the morning meeting sessions or breaks, including coffee/pop or other food service for the general meetings. That being factored in, the estimate cost would be greater. However, as noted on the questions page, it would be my suggestion/opinion that we can afford to eat a loss to encourage attendance.

PLANNED CHILDREN'S ACTIVITIES AND TUESDAY EVENING PROGRAM

Specific times have not yet been assigned for Children's Activities, other than the Tuesday Evening Program. Thus far the children's activities on Monday, Tuesday and Wednesday will include the following:

1. A day at the zoo "a visit by the Cleveland Zoo with a Zoo Program.
2. "Run Away and Join the Circus" – A professional juggler will spend time with the kids entertaining them with juggling and other circus related arts, including teaching them how to juggle. (We anticipate giving all children a set of balls that they can practice on and take home). Additional morning activities to be determined after discussion with hotel staff and additional presenters, which may include historical re-enactors and additional museum outreach type programs.

TUESDAY EVENING CHILDREN'S PROGRAM

Although still to be determined as at what point the children and the adults part company (see questions list), the evening entertainment for the evening is J. R. Grieco. J. R. is a graduate of the St. Ignatius High School Circus Club, and for 20 years has been a professional magician, juggler, and balloon artist. With the exception of the timeframe when the children are eating, he will provide all phases of entertainment for the children, as well as providing a teaser to the Wednesday morning juggler, who will teach them how to juggle. His maximum cost is $400.

CHILDREN'S ACTIVITIES DURING MORNING SESSIONS

At this time the following activities are planned for the morning children's programs, with more to be added:

1. Cleveland Zoo Program – Billy Matsumoto – Juggling performance on how to juggle class. There will be additional children's programming which will be resolved in the next two weeks.

Separate from the scheduled program it is anticipated that, per last year, there will be some adults to handle adult supervision of all attendees, but that transfer of younger children will be done by nametag and check list/permission slip and older children will have to sign in or sign out should they chose to go elsewhere.

CHILD CARE

At this time it would be expected that in addition to some form of parental release/consent document, that parents would drop off and pick up their children from the children's sessions, but with the ability to contact andget the responsible parent from the general session if necessary. Based upon the experience at Sawmill Creek, I hope/expect to have some teacher or other licensed persons on summer break who will act supervisors to the younger children during the parental programs, with some form of nametag pass off o the parent/responsible adult during breaks and at end of sessions.

TUESDAY EVENING ADULT PROGRAM

From 6:00 p.m. to 8:00 p.m. will be the social hour and dinner on the Keywest/Margariettaville Theme. Music during those two hours will be provided by Jeff the Pan Musician who will bring his palm trees and live steel drumming for steel drum music and entertainment. (Cost $400.00). If we would like Jeff to hang around for the Hospitality Suite cost would be additional but I do not thing this is immediately necessary. During the social hour I would expect that at a minimum we would make arrangements for a limbo contest (even if the bar is very high), with prizes, for children and adults, as well as other possible/probable Keywest/Buffet/Island games to be played for fun.

DINNER ADULT ENTERTAINMENT

After dinner the entertainment will be provided by Mike Cheselka. Mike Cheselka is an HBO Comedian, an Attorney registered to law in the State of Ohio, and the spouse of Judge Nancy Russo of the Cuyahoga County Common Pleas Court. Mike will entertain us prior to us all adjourning to the Hospitality Suite and/or picking up our children.

MIKE CHESELKA EXPENSE

I am currently in negotiation with Mike for overalls, but I have already committed to him for a complimentary night for July 10, plus his fee. He has expressed a possible interest that they may like to join us for relaxation. Mike has indicated that he would do the show for $500.00. I would like consent from the Trustees for authority to be flexible and negotiate with Mike such that separate from $500.00 plus a comp room for Tuesday night ($119.00 plus tax) that I might negotiate our best deal which might mean that Mike and Judge Russo might be around for most of the Conference as our guest/companions, but at a comparable price.

FREE TIME ACTIVITIES

For the purpose of most activities for free time (every day after Noon) it is more a question of our facilitating options as to providing planned alternatives. To that extent the following is the current status report of the options that have thus far been established or determined, with more probably to be added:

I. Golf – The planned Association Golf Outing will be on Monday. The location is to be determined, but will be at a venue close enough to the Bertram to enable easy connection. The official golf outing will be a more relaxed course, estimated cost $40.00 to $60.00 for the round, which will included prizes, on a course designed both for the serious golfer and the serious hacker. It is our anticipation that through Judge Barb Osowick, that those who wish to golf a second day on Tuesday that arrangements can be made for more serious golfing. (By way of example we can arrange golf at the Barrington next door to the Bertram but at $110.00 a round, for those who might be interested).

II. Museum and Sightseeing – Although the Bertram is not immediately close to any of Cleveland's excellent museums and normal sightseeing attractions, arrangements will be made to facilitate some potential connections, to which there are currently special exhibits as follows:

1. Cleveland Zoo – Estimated travel time 45 minutes to an hour. In addition to the normal zoo during our meeting the zoo will also have the giant touch tank and live walking dinosaurs exhibits. I can obtain tickets on a consignment basis, which we would sell to the members at a $1.00 per person discount for basic admission. Our members and families could then pay the additional $2.00 for the dinosaurs or $1.00 for the touch tank. We would then remit whatever tickets are sold back to the zoo. If we sell less than 25 tickets, we would be on the hook for an additional $25.00. This could either be done by sign up off the sign up form or direct sales at the information desk, depending upon weather.

2. **Great Lakes Science Center – Estimated travel 45 minutes to an hour. The Great Lakes Science Center is adjacent to the Rock and Roll Hall of Fame. Standing alone its museum and I-Max Theater are well worth a trip; however, the special exhibit "Baseball as America" will be on during our meeting. This is a traveling exhibit which may be the finest exhibit of baseball memorabilia and interactive activities in one place, and the place for this summer is Cleveland. In addition to the special exhibit there is the normal Great Lakes Science Center and I-Max Theater which would be the film "Dinosaurs Alive" and an additional film TBA. There is no cost to the Association on this other than our facilitating information and direction.**

3. **Geauga Lake – As you know Geauga Lake is the amusement park venue one mile down the street. There will be some form of discount/ticket available, hopefully on the same consignment basis as last year with Cedar Point. (As Cedar Point and Geauga Lake are the same corporate family). Shuttle service is available between the Bertram and Geauga Lake and when the exact details of the tickets are known this could be included in the mailing.**

4. **Aurora Farms Premium Outlets, and other Shopping – There are more than one shopping outlets for those who wish to engage in the "shopping" thing. Shuttle service from the Bertram is available to some, but possibly not all malls, this will be on a facilitating basis.**

5. **Spa Services – Separate from those services which may be available on the Bertram property, we expect to make arrangements with Mario's Spa in Aurora for those who wish to make a Spa Day. This will also be on a direct book basis, with the Association merely facilitating contact.**

6. **Monday Night "Night at the Races" – Northfiled Park – Northfield Park is a professional pari-mutual (which means gambling) for trotters and pacers (which means the horses pull a guy behind in a sulky, for those who may not know). Northfield is approximately 11 miles from Bertram (estimate 20 – 25 minute drive). In addition, they have simulcast betting from tracks across the Country via simulcasting. Normally parking is free and admission is $1.75 per person. Children are always welcome HOWEVER I SHOULD BE ABLE TO OBTAIN, AT A MINIMUM, COMPLIMENTARY ADMISSION**

TICKETS FOR ANYONE WHO WISHES TO ATTEND. This would be Monday night with a first race post time of 7:00 p.m. in what is normally a 10 race card.

In addition to the normal track areas, they have dinning areas, where one could, on their own, make reservations for tables to eat dinner and enjoy and watch races as they go. If we would wish to pursue that route, then separate from the comp tickets, members could make reservations on their own, and the track could put our groups together.

However, if we have 30 or more people, they can put on a buffet at $16.25 (total price) per person, including a free program (worth $2.00) which would include two soups, two pastas, five entrees, salad, ice cream and dessert stations. We would then have group seating in the dinning room/track area for the races. The buffet is a three hour buffet. I would suggest to the Association that we put this on the registration form as an add on option. Collecting the additional $16.25 per person which would also then include a comp ticket and a free program. If we have 30 or more people, we make one check to the track and distribute comp tickets to the sign ups, as well as anyone else. If we do not have 30 people, then refund checks could be issued to the registrants while still receiving comp tickets. Should we be close (25 to 30 sign ups) then would the Association want to eat "the loss", or cover the extra dinners and send our staff/guests to make up the difference (which would be my recommendation).

HOSPITALITY SUITE

The Hospitality Suite is located directly off poolside. It is anticipated that it will be open on Monday and Tuesday afternoons as well as Sunday, Monday and Tuesday evenings. It will be staffed by volunteers of the Parma Municipal Court and Judge Spanagel staff. We will have the usual adult beverages plus children's beverages and light food and snacks. (Most likely to include chocolate covered strawberries). In addition, we believe we will have the technology available so that every night at 9:00 a drive-in movie in the Courtyard can be shown via projector on a wall for children and/or anyone else interested, with the exact details to be determined.

ASSOCIATION PRODUCTS AND COMPS

I expect to work with local providers for what may be a goodie bag; separate from that I plan on spending up to $25.00 per "attendee" for Association products including but not limited to clothing and other goodies.

COMMITTEE REPORT

CODE OF REGULATIONS COMMITTEE

CHAIRPERSON CHAD L. CAREY

Other Members: Catherine Barber
1 to 3 more members yet to be determined

Goals

I Add language for Indemnification

II Add language for reimbursement of Officers, Trustees, Committee Member for expense for travel etc.

III Since there has been no amendments/changes of the Code of Regulations in 10 years to review for the need of necessary amendments.

Motto: If it is not broken do not fix it!

April 24, 2007 Judicial Administration and Practice Committee

Co-Chairs Dwight Osterud, Perrysburg; Phil Campbell,Van Wert; Elizabeth Gutman,Troy; Alison McCarty,Akron; Dave Branstool, Newark; Bill Grimm,Athens; Tom Januzzi,Oberlin; John Collier,Napoleon;
ex officio Gary Herman, Wapakoneta; Jennifer Weiler, Garfield Heights; and Janet Grubb, Columbus

Assignments:
1. Conflicts with Criminal and Traffic Rules. Proposal to change TR 11(I) to eliminate TR 13 and CR 1/12 conflict by inserting CR 12(K) language only. Proposal to add CR 12(C)(6) Motion to exclude evidence based upon case law;

2. Credit card (ORC 301.27)/ Financial Transaction Device (ORC 301.28)/ Procurement card (301.29) review statutory language, definitions, restrictions, and use/authorization statutory requirements. Propose enabling legislation for procurement card usage for special projects, research, and computer funds without Commissioner appropriation. Seek to remove (ORC 325.20) requirement to need Commissioner's permission to attend seminars;

3. No contest pleas procedure, Criminal Rule 11(E), and requirements. Analysis of the "explanation of facts and circumstances" standard;

4. Jails located out of Court's territorial jurisdiction whether multi-county or within county. Clarification of authority of Court, transportation, sentencing, access, communication (video,etc.);

5. Service of warrants (CR 4), service of Uniform Traffic Ticket TR 3(E), and CR 6(E) intra-state extradition procedure and sheriff/jail involvement;

6. Use of Electronic Monitored House Arrest and statutory requirement to find no room in the jail for 60 days to allow substitution for part of mandatory OVI time - 4511.19 (G)(3);

7. Judicial Immunity insurance coverage for Acting Judges;

8. Option to extend length of driving suspension if an Interlock regulation, or abusing privileges violation. Need BMV input;

9. Comparison of Municipal Court and County Court Statutes with check to Common Pleas statutes for correlation. Goal is to increase uniformity where appropriate; and

19. Judicial duties definition, application, and usage . Eventually to be a part of Code of Judicial Conduct and Superintendence Rules. Initial effort is inclusion in Judicial Immunity Insurance policy (see attachment which also addresses other issues).

Respectfully submitted, Co-Chair Phil W. Campbell

MUNICIPAL AND COUNTY COURT JUDGES ASSOCIATION OF OHIO

Proposals for Judicial Liability Policy

1. IV Exclusions

"C. based on or arising out of a conflict of interest between the Insured's official judicial capacity and any of the Insured's activities as a director, officer, partner, investor, owner, shareholder, or trustee of any private, public or charitable organization EXCEPT WHERE THE INSURED'S STATUS AS A JUDGE IS A CONDITION PRECEDENT FOR THE HOLDING OF SUCH A POSITION."

Our respective organizations all have Officers and Boards of Trustees; The Ohio Judicial Conference has Committees with Chairman and Officers; The Supreme Court has Committees and Commissions which have designated judicial slots; and the legislature has required judges to be on certain boards. The proposal would not then encompass positions where a judge chooses to participate (United Way, Lions,etc) since the judge's status is not requirement for holding the position. It makes no sense that a Judge selected as Chair of the Supreme Court Rules Commission by the Chief Justice, whose membership on the Commission is as a representative of a judicial organization, should be outside of the policy language.

2. III Definitions

"N. Official judicial capacity mean (sic) that capacity in which a person can only act if he/she is an active and sitting judge."

replace with

"N. Official Judicial Capacity means:

(a) The performance of the duties of a Judge as prescribed by law or Rule of Court;

(b) Participating in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote equal access to justice for all;

(c) Participating in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with the Code of Judicial Conduct;

(d) Participating in those activities that improve the law, the legal system, and the administration of justice, provided those activities are customarily performed by an active Judge;

(e) Participating as a teacher or as a student in judicial or legal education;

(f) Serving as a Supreme Court appointee, or officer, director, trustee, member of committee, or a member of an organization or governmental agency devoted to the improvement of the court system, the law, and the public's understanding thereof, or administration of justice, including but not limited to :

(i) The Supreme Court of Ohio
(ii) Supreme Court Commissions, Committees, & Task Forces
(iii) The Ohio Judicial Conference
(iv) The Ohio Judicial College
(v) State and/or National Judicial Associations
(vi) Local, State or National Bar Associations
(vii) The National Center for State Courts
(viii) The National Judicial College
(ix) Institutions of Legal Education

(g) The performance and discharge of the judge's administrative and superintendence responsibilities in the administration of court business

(h) The reporting of conduct where required of a violation of the Code of Judicial Conduct or of the Ohio Rules of Professional Conduct to a certified grievance committee of the Bar Association or the Office of Disciplinary Counsel

The proposed definition of official judicial capacity is certainly far more detailed than current language, but it more accurately reflects our actual duties. The new Ohio Rules of Professional Conduct add obligations to us.

3. Endorsement # 1

7. "Acting Judges" appointed by the Chief Justice of the Ohio Supreme Court. "

replace with

7. "Visiting Judges" appointed by the Chief Justice or the Acting Chief Justice of the Ohio Supreme Court.

4. Endorsement #1 re-number 8 to 9 and 9 to 10

8. "Acting Judges" appointed pursuant to statute by Municipal or County Court Judges.

Ohio Revised Code Sections 1901.10 and 1907.14 specify the requirements and procedure for the appointment of Acting Judges that have, when authorized, the same status as, the duly elected or appointed by the Governor, judge. Specific Judicial CLE has been instituted over the last several years. The oversight should be remedied.

Municipal and County Court Judges Association of Ohio

Proposals for Judicial Liability Policy

1. IV Exclusions (Suggested changes in all CAPS)

C. Based on or arising out of a conflict of interest between the Insured's official judicial capacity and any of the Insured's activities as a director, officer, partner, investor, owner, shareholder or trustee of any private, public, or charitable organization EXCEPT WHERE THE INSURED'S STATUS AS A JUDGE IS THE CONDITION PRECEDENT FOR THE HOLDING OF SUCH A POSITION.

COMMITTEE COMMENT: Our Respective organizations all have Officers and Boards of Trustees; The Ohio Judicial Conference has Committees with Chairmen and Officers; The Supreme Court has Committees and Commissions, which have designated Judicial slots; and the legislature has required the judges to be on certain boards. The proposal would not then encompass positions where a judge chooses to participate (United Way, Lions, etc.) since the judge's status is not a requirement for holding the position. It appears inconsistent that a judge selected as Chair of the Supreme Court Rules Commission by the Chief Justice, whose membership on the Commission is as a representative of a judicial organization, should be excluded from the policy coverage.

2. III Definitions

EXISTING LANGUAGE: "N. Official judicial capacity mean (sic) that capacity in which a person can only act if he/she is an active and sitting judge."

SUGGESTED LANGUAGE: Official judicial capacity means:

(a) The performance of duties of a Judge as prescribed by law or Rule of Court;

(b) Participating in activities that promote ethical conduct among Judges and lawyers, support professionalism within the judiciary and the legal profession, and promote equal access to justice for all;

(c) Participating in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the Judge must act in a manner consistent with the Code of Judicial Conduct;

(d) Participating in those activities that improve the law, the legal system, and the administration of justice provided those activities are customarily performed by an active Judge;

(e) Participating as a teacher or as a student in judicial or legal education;

(f) Serving as a Supreme Court appointee or officer, director, trustee, member of a committee or a member of an organization or governmental agency devoted to the improvement of the court system, the law, and the public's understanding thereof, or administration of justice, including but not limited to:

(i) The Supreme Court of Ohio
(ii) Supreme Court Commissions, Committees and Task Forces
(iii) The Ohio Judicial Conference
(iv) The Ohio Judicial College
(v) State and/or National Judicial Associations
(vi) Local, State or National Bar Associations
(vii) The National Center for State Courts
(viii) The National Judicial College
(ix) Institutions of Legal Education

(g) The performance and discharge of the Judge's administrative and superintendence responsibilities in the administration of court business.

(h) The reporting of conduct, where required, of a violation of the Code of Judicial Conduct or of the Ohio Rules of Professional Conduct to a certified grievance committee of the Bar Association or the office of Disciplinary Counsel;

COMMITTEE COMMENT: The proposed definition of official judicial capacity is certainly far more detailed than current language, but it more accurately reflects a Judge's expectations and duties. The Ohio Code of Professional Conduct add obligations for all and the association will request that this language be included in Cannon 2 (a).

3. **Endorsement #1**

EXISTING LANGUAGE: 7. "Acting Judges" appointed by the Chief Justice of the Ohio Supreme Court.

SUGGESTED LANGUAGE: "Visiting Judges" appointed by the Chief Justice or the Acting Chief Justice of the Ohio Supreme Court.

4. **Endorsement #1:** re-number 8 to 9 and 9 to 10

EXISTING LANGUAGE: 8. "Acting Judges" appointed pursuant to statute by Municipal or County Court Judges.

COMMITTEE COMMENT: Ohio Revised Code Sections 1901.10 and 1907.14 specify the requirements and procedures for the appointment of Acting Judges that have, when authorized, the same status as duly elected or a Judge appointed by the Governor. Specific Judicial CLE courses are required. To be eligible for appointment, Municipal and County Courts could not function without the appointment of "Acting Judges" and the liberal assignment policy of the Supreme Court for "Visiting Judges." They undertake the same duties and responsibilities as the elected or appointed Judge and should receive the same coverage.

TO: **Officers and Trustees / AMCJO**

FROM: **Judge Janet A. Grubb**
Chair – Court and Superintendence Rules Committee
Rep – Rules Commission

DATE: **April 24, 2007**

Report and Memorandum

The Rules Commission held it's First meeting of 2007 on March 23, 2007. This reporter has been named chair of the Criminal Law Committee of the Commission. This cycle's agenda will include possible revisions on Criminal Rules 10 and 43. There also seems to be substantial interest in revisiting CR16. The Criminal Rules Sub-Committee is scheduled to meet on Friday, April 27. The next full commission meeting is scheduled for May 3, 2007.

Please find attached the agenda from the March 23rd meeting.

Also attached is my email to the AMCJO Committee on March 29th. I received no responses to my email. A committee meeting was not scheduled due to my previously scheduled 12 day vacation in April.

COMMISSION ON THE RULES OF PRACTICE AND PROCEDURE

ITEMS PENDING BEFORE COMMITTEES
(As of March 2, 2007)

Civil Rules Subcommittee

2007 Proposed Amendments: Civ. R. 10(D)(2) [Attachments to Pleadings]

Pending Proposals: Proposed new rule on revivor of judgments; Civ. R. 4 – MAIL cube issue; E-Discovery; Multidistrict litigation; Civ. R. 3, 5, 11 [limited representation; Supreme Court Task Force on Pro Se and Indigent Litigants]; Civ. R. 33 & 36 [Requests for Admissions]

New Matters Referred: Civ. R. 4 [Process; Summons]

Criminal Rules Subcommittee

2007 Proposed Amendments: Crim. R. 43 and Crim. R. 10 (video teleconferencing for resentencing hearings, *Hernandez v. Kelly,* 2006-Ohio-126)

Pending Proposals:

New Matters Referred: Crim R 16 [Discovery]

Juvenile Rules Subcommittee

2007 Proposed Amendments:

Pending Proposals: Juv. R. 35 or 40 [waiver – appeal of magistrate findings]; Juv. R. 25 [Depositions]

New Matters Referred:

Evidence Rules Subcommittee

2007 Proposed Amendments: Gender neutrality of rules

Pending Proposals: Fed. R. Evid. 706 [Court-Appointed Experts]

New Matters Referred: Evid. R. 404(b) [Character Evidence – Other crimes, wrongs or acts]

Appellate Rules Subcommittee

2007 Proposed Amendments:

Pending proposals: App. R. 9 [Video Transcripts; per J. Grady]; Cases Pending – Judge dies, resigns, or retires (App. R. 21 – Oral Argument); En banc proceedings [*In re J.J.*, 111 Ohio St.3d 205]

New Matters Referred:

Traffic Rules Committee

Proposed Amendments: None

Pending proposals: Traf. R. 11 & 13 [*Toledo v. Fogel* 20 Ohio App.3d 146]

New Matters Referred: Traf. R. 3 [Complaint & Summons; form; use]

PROPOSED AMENDMENTS TO THE OHIO RULES OF CIVIL PROCEDURE, OHIO RULES OF CRIMINAL PROCEDURE, AND OHIO RULES OF EVIDENCE

Comments requested: The Supreme Court of Ohio will accept public comments until March 7, 2007 on the following proposed amendments to the Ohio Rules of Civil Procedure (Rules 10 and 86), Ohio Rules of Criminal Procedure (Rules 10, 43 and 59), and Ohio Rules of Evidence (Rules 104, 106, 404, 411, 602, 603, 604, 606, 610, 611, 612, 701, 703, 705, 801, 803, 902, 1004, 1007, and 1102).

Comments on the proposed amendments must be submitted in writing to Jo Ellen Cline, Legislative Counsel, Supreme Court of Ohio, 65 South Front Street, 7th floor, Columbus, Ohio 43215-3431 or clinej@sconet.state.oh.us and received no later than March 7, 2007. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each justice of the Supreme Court.

The proposed amendments were recommended to the Supreme Court by the Supreme Court Commission on the Rules of Practice and Procedure and initially were published for comment on October 9, 2006. After reviewing the comments received, the Commission recommended further revisions to the previously published amendments. After considering the written comments and the recommendations of the Commission, the Supreme Court adopted the proposed amendments to Civil Rule 10, Criminal Rules 10 and 43 and the Rules of Evidence and directed that the amendments be filed with the General Assembly and republished for public comment.

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the proposed amendments were filed with the General Assembly on January 11, 2007. The Commission on the Rules of Practice and Procedure and the Supreme Court will consider all comments received during this second comment period, and the Court may modify or withdraw proposed amendments prior to May 1, 2007. The amendments filed with the General Assembly and not withdrawn prior to May 1, 2007 will take effect on July 1, 2007, unless prior to that date the General Assembly adopts a concurrent resolution of disapproval.

A Staff Note prepared by the Commission on the Rules of Practice and Procedure follows each amendment. Although the Supreme Court uses the Staff Notes during its consideration of proposed amendments, the Staff Notes are not adopted by the Court and are not a part of the rule. As such, the Staff Notes represent the views of the Commission on the Rules of Practice and Procedure and not necessarily those of the Supreme Court. The Staff Notes are not filed with the General Assembly but are included when the proposed amendments are published for comment and are made available to the public and to legislative committees.

Following is a summary of the proposed amendments. In addition to the substantive amendments, nonsubstantive grammar and gender-neutral language changes are made throughout any rule that is proposed for amendment.

Affidavit of Merit – Civ. R. 10(D)

The Commission on the Rules of Practice and Procedure recommends the Court amend Civ. R. 10(D)(2) governing attachments to pleadings in medical malpractice litigation to respond to problems that have arisen in interpreting "good cause". The rule is amended to clarify what constitutes "good cause" to permit the plaintiff an extension of time to file an affidavit of merit and to define the effect of dismissal for failure to comply with the affidavit of merit requirement. [Civ. R. 10(D)(2), lines 20-73].

The revisions are intended to clarify that more than one affidavit of merit may be necessary as to a particular defendant [Civ. R. 10(D)(2)(a), line 24] and to allow judges greater discretion in enlarging the time to file the affidavit of merit [Civ. R. 10(D)(2)(b), lines 44-45]. The revisions also remove language initially proposed which made the affidavit requirement a prerequisite to the trial court's exercise of jurisdiction, but retains the proposed language that clarifies that a dismissal for failure to comply with the rule operates as a failure otherwise than on the merits. [Civ. R. 10(D)(2)(d), lines 63-66].

Use of Video Teleconferencing – Crim. R. 10 and 43

The Commission on the Rules of Practice and Procedure recommends the Court amend Crim. R. 10 and 43 to give courts more flexibility to utilize modern technology, specifically video teleconferencing, in misdemeanor cases if certain criteria are met.

Crim. R. 43(A)(2)(a) through (e) sets forth criteria that must be met prior to a court allowing the defendant to appear by video teleconference. These criteria include: (1) the defendant must be able to see and hear the judge; (2) the judge must be able to see and hear the defendant; and (3) the defendant must have the ability to communicate confidentially with his or her attorney. Video teleconferencing is also only allowed if a proceeding does not require sworn testimony that is subject to cross examination. [Crim. R. 43(A)(2), lines 241-258]. The amendment also addresses a defendant's ability to waive the right to be physically present with leave of court. [Crim. R. 43(A)(3), lines 260-261].

The amendment to Crim. R. 10 codifies *State v. Phillips*, 1995 Ohio 171, which authorized video teleconferencing for arraignments as long as it was "functionally equivalent to live, in-person arraignment." [Crim. R. 10(B)(2), lines 186-188].

No revisions have been made to this rule from the version that was first published on October 9, 2006.

Discovery – Crim. R. 16

The Commission recommended several revisions to Crim. R. 16 governing discovery procedures. The amendments were intended to encourage an earlier and more complete disclosure of information on both sides in criminal litigation which would benefit the judicial system by reducing the need for court intervention in the discovery process, facilitate the process of plea bargaining, and ease the congestion on the criminal docket. After consideration of the comments submitted during the first comment period, the Supreme Court of Ohio decided against filing the proposed amendments with the General Assembly.

Ohio Rules of Evidence

The Commission recommends non-substantive amendments to Ohio Rules of Evidence 104, 106, 404, 411, 602, 603, 604, 606, 610, 611, 612, 701, 703, 705, 801, 803, 804, 902, 1004, and 1007 to make the rules gender neutral. [Lines 315-814].

No revisions have been made to these rules from the version that was first published on October 9, 2006.

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

FILED BY THE SUPREME COURT OF OHIO PURSUANT TO ARTICLE IV, SECTION 5 OF THE OHIO CONSTITUTION

OHIO RULES OF CIVIL PROCEDURE

***

Rule 10. Form of pleadings

***

(D) Attachment to pleadings

***

(2) *Affidavit of merit; medical liability claim.*

(a) Except as provided in division (D)(2)(b) of this rule, a complaint that contains a medical claim, dental claim, optometric claim, or chiropractic claim, as defined in section 2305.113 of the Revised Code, shall include ~~an~~ one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability. ~~The a~~Affidavits of merit shall be provided by an expert witness pursuant to Rules 601(D) and 702 of the Ohio Rules of Evidence. ~~The a~~Affidavits of merit shall include all of the following:

(i) A statement that the affiant has reviewed all medical records reasonably available to the plaintiff concerning the allegations contained in the complaint;

(ii) A statement that the affiant is familiar with the applicable standard of care;

(iii) The opinion of the affiant that the standard of care was breached by one or more of the defendants to the action and that the breach caused injury to the plaintiff.

(b) The plaintiff may file a motion to extend the period of time to file an affidavit of merit. The motion shall be filed by the plaintiff with the complaint. For good cause shown and in accordance with division (c) of this rule, the court shall grant the plaintiff a reasonable period of time to file an affidavit of merit~~.~~ , not to exceed ninety days, except the time may be extended beyond ninety days if the court determines that a defendant or non-party has failed to cooperate with discovery or that other circumstances warrant extension.

(c) In determining whether good cause exists to extend the period of time to file an affidavit of merit, the court shall consider the following:

(i) A description of any information necessary in order to obtain an affidavit of merit;

(ii) Whether the information is in the possession or control of a defendant or third party;

(iii) The scope and type of discovery necessary to obtain the information;

(iv) What efforts, if any, were taken to obtain the information;

(v) Any other facts or circumstances relevant to the ability of the plaintiff to obtain an affidavit of merit.

~~(c)~~ (d) An affidavit of merit is required ~~solely~~ to establish the adequacy of the complaint and shall not otherwise be admissible as evidence or used for purposes of impeachment. Any dismissal for the failure to comply with this rule shall operate as a failure otherwise than on the merits.

(e) If an affidavit of merit as required by this rule has been filed as to any defendant along with the complaint or amended complaint in which claims are first asserted against that defendant, and the affidavit of merit is determined by the court to be defective pursuant to the provisions of division (D)(2)(a) of this rule, the court shall grant the plaintiff a reasonable time, not to exceed sixty days, to file an affidavit of merit intended to cure the defect.

Staff Note (July 1, 2007)

Rule 10(D). Attachment to pleadings

Staff Note (July 1, 2007 Amendments)

Civ. R. 10 is amended to clarify what constitutes "good cause" to permit the plaintiff an extension of time to file an affidavit of merit and to define the effect of dismissal for failure to comply with the affidavit of merit requirement.

Rule 10(D) Attachments to pleadings

The language of division (D)(2)(a) is amended in recognition of the fact that more than one affidavit may be required as to a particular defendant due to the number of defendants or other circumstances.

Because there may be circumstances in which the plaintiff is unable to provide an affidavit of merit when the complaint is filed, division (D)(2)(b) of the rule

93 requires the trial court, when good cause is shown, to provide a reasonable period
94 of time for the plaintiff to obtain and file the affidavit. Division (D)(2)(c) details the
95 circumstances and factors which the Court should consider in determining whether
96 good cause exists to grant the plaintiff an extension of time to file the affidavit of
97 merit. For example, "good cause" may exist in a circumstance where the plaintiff
98 obtains counsel near the expiration of the statute of limitations, and counsel does
99 not have sufficient time to identify a qualified health care provider to conduct the
100 necessary review of applicable medical records and prepare an affidavit. Similarly,
101 the relevant medical records may not have been provided to the plaintiff in a timely
102 fashion by the defendant or a nonparty to the litigation who possesses the records.
103 Further, there may be situations where the medical records do not reveal the
104 names of all of the potential defendants and so until discovery reveals those
105 names, it may be necessary to name a "John Doe" defendant. Once discovery
106 has revealed the name of a defendant previously designated as John Doe and
107 that person is added as a party, the affidavit of merit is required as to that newly
108 named defendant. The medical records might also fail to reveal how or whether
109 medical providers who are identified in the records were involved in the care that
110 led to the malpractice. Under these and other circumstances not described here,
111 the court must afford the plaintiff a reasonable period of time to submit an affidavit
112 that satisfies the requirements set forth in the rule.
113
114 It is intended that the granting of an extension of time to file an affidavit of
115 merit should be liberally applied, but within the parameters of the "good cause"
116 requirement. The court should also exercise its discretion to aid plaintiff in
117 obtaining the requisite information. To accomplish these goals, the plaintiff must
118 specifically inform the Court of the nature of the information needed as opposed to
119 a general averment that more information is needed. The plaintiff should apprise
120 the court, to the extent that it is known, the identity of the person who has the
121 information and the means necessary to obtain the information, to allow the court to
122 grant an appropriate extension of time. If medical records in the possession of a
123 defendant or non-party must be obtained, the court may issue an order compelling
124 the production of the records. If medical records are non-existent, incomplete, or
125 otherwise inadequate to permit an expert to evaluate the care, the court may, in
126 appropriate circumstances, permit a plaintiff to conduct depositions of parties or
127 non-parties to obtain the information necessary for an expert to complete such a
128 review and provide an affidavit.
129
130 Division (D)(2)(b) of the rule sets an outside limit of 90 days to extend the
131 time for the filing of an affidavit of merit, unless the court determines that the
132 defendant or a nonparty in possession of the records has failed to cooperate with
133 discovery, and in that circumstance the court may grant an extension beyond 90
134 days. This division also vests the trial court with the discretion to determine whether
135 any other circumstances justify granting an extension beyond the 90 days.
136
137 The rule is intended to make clear that the affidavit is necessary to establish
138 the sufficiency of the complaint. The failure to comply with the rule can result in the

139 dismissal of the complaint, and this dismissal is considered to be a dismissal
140 otherwise than upon the merits pursuant to Civ. R. 10(D)(2)(d).
141
142 Finally, new Civ. R. 10(D)(2)(e) allows a plaintiff a reasonable time, not to
143 exceed sixty days, to cure any defects identified by the court in any affidavit filed
144 with a complaint.
145
146 ***
147
148 **Rule 86. Effective Date**
149
150 ***
151
152 **(DD) Effective date of amendments.**
153
154 The amendments to Civil Rule 10 filed by the Supreme Court with the General
155 Assembly on January 11, 2007 shall take effect on July 1, 2007. They govern all
156 proceedings in actions brought after they take effect and also all further proceedings in
157 actions then pending, except to the extent that their application in a particular action
158 pending when the amendments take effect would not be feasible or would work injustice,
159 in which event the former procedure applies.
160
161 ***
162
163

OHIO RULES OF CRIMINAL PROCEDURE

***

RULE 10. Arraignment

(A) Arraignment procedure

Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to ~~him~~ the defendant the substance of the charge, and calling on ~~him~~ the defendant to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead.

(B) Presence of defendant

(1) The defendant must be present, except that the court, with the written consent of the defendant and the approval of the prosecuting attorney, may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

(2) In felony or misdemeanor arraignments, a court may permit the presence and participation of a defendant by remote contemporaneous video provided the use of video complies with the requirements set out in Rule 43(A)(2) of these rules.

(C) Explanation of rights

When a defendant not represented by counsel is brought before a court and called upon to plead, the judge or magistrate shall cause ~~him~~ the defendant to be informed and shall determine that ~~he~~ the defendant understands all of the following:

(1) ~~He~~ The defendant has a right to retain counsel even if ~~he~~ the defendant intends to plead guilty, and has a right to a reasonable continuance in the proceedings to secure counsel.

(2) ~~He~~ The defendant has a right to counsel, and the right to a reasonable continuance in the proceeding to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost ~~to himself~~ if ~~he~~ the defendant is unable to employ counsel.

(3) ~~He~~ The defendant has a right to bail, if the offense is bailable.

(4) ~~He~~ The defendant need make no statement at any point in the proceeding, but any statement made can and may be used against ~~him~~ the defendant.

(D) Joint arraignment

If there are multiple defendants to be arraigned, the judge or magistrate may by general announcement advise them of their rights as prescribed in this rule

Staff Note (July 1, 2007 Amendment)

Rule 10(B) Presence of defendant

In 1995 the Ohio Supreme Court authorized video teleconferencing for arraignments as long as it was "functionally equivalent to live, in-person arraignment". See *State v. Phillips,* 1995 Ohio 171. This amendment does not change existing law but will codify *Philips* by explicitly giving a court the option of using video teleconferencing at arraignments, and will clarify that if video teleconferencing is used in arraignments, the procedure must conform to the requirements of Rule 43.

***

Rule 43. Presence of the defendant

(A) Defendant's presence

(1) Except as provided in Rule 10 of these rules and division (A)(2) of this rule, ~~T~~the defendant ~~shall~~ must be physically present at ~~the arraignment and~~ every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in ~~his~~ the defendant's presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(2) Notwithstanding the provisions of division (A)(1) of this rule, in misdemeanor cases the court may permit the presence and participation of a defendant by remote contemporaneous video for any proceeding if all of the following apply:

(a) The court gives appropriate notice to all the parties;

(b) The video arrangements allow the defendant to hear and see the proceeding;

(c) The video arrangements allow the defendant to speak, and to be seen and heard by the court and all parties;

(d) The court makes provision to allow for private communication between the defendant and counsel as necessary. The court shall inform the defendant on the record how to, at any time, communicate privately with counsel.

256
257 (e) The proceeding does not require sworn testimony that is subject to cross
258 examination.
259
260 (3) The defendant may waive the defendant's right to be physically present
261 under these rules with leave of court.
262
263 **(B) Defendant excluded because of disruptive conduct**
264
265 Where a defendant's conduct in the courtroom is so disruptive that the hearing
266 or trial cannot reasonably be conducted with ~~his~~ the defendant's continued physical
267 presence, the hearing or trial may proceed in ~~his~~ the defendant's absence or by remote
268 contemporaneous video, and judgment and sentence may be pronounced as if ~~he~~ the
269 defendant were present. Where the court determines that it may be essential to the
270 preservation of the constitutional rights of the defendant, it may take such steps as are
271 required for the communication of the courtroom proceedings to the defendant.
272
273 ***
274
275 **Staff Note (July 1, 2007 Amendment)**
276
277 Rule 43 is amended to provide that in misdemeanor cases the "presence"
278 requirement can be satisfied either by physical presence or presence by video
279 teleconferencing. Advances in video teleconferencing technology have enabled
280 courts to save considerable expense by conducting proceedings by video
281 teleconferencing while still preserving the rights of the defendant. Given the high
282 volume of cases in misdemeanor courts, the cost savings is considerably
283 significant for misdemeanor cases.
284 In order to ensure that the defendant's rights are protected, any
285 proceeding conducted through video teleconferencing must meet certain
286 requirements: the defendant must be able to see and hear the judge, the judge
287 must be able to see and hear the defendant, and the defendant must have the
288 ability to communicate confidentially with his or her attorney. Furthermore,
289 presence by video teleconferencing is only permitted when the proceeding does
290 not require sworn testimony that is subject to cross-examination. Any proceeding
291 which does require sworn testimony subject to cross examination might implicate
292 the defendant's right to confront witnesses under the Ohio and Federal
293 Constitutions.
294 Division (A)(3) of the rule has also been added to permit a defendant to
295 waive the right to be physically present during any type of proceeding, whether
296 the case is a misdemeanor or a felony. The court must consent to this waiver so
297 that if the judge believes that the defendant must be physically present, the
298 defendant's physical presence will be required even if the defendant has waived
299 this right.
300
301 ***

302
303 **Rule 59. Effective Date**
304
305 ***
306
307 **(W) Effective date of amendments.** The amendments to Criminal Rules 10 and 43
308 filed by the Supreme Court with the General Assembly on January 11, 2007 shall take
309 effect on July 1, 2007. They govern all proceedings in actions brought after they take
310 effect and also all further proceedings in actions then pending, except to the extent that
311 their application in a particular action pending when the amendments take effect would
312 not be feasible or would work injustice, in which event the former procedure applies.
313 ***

OHIO RULES OF EVIDENCE

***

ARTICLE I. GENERAL PROVISIONS

***

RULE 104. Preliminary Questions

(A) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (B). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(B) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(C) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall also be conducted out of the hearing of the jury when the interests of justice require.

(D) Testimony by accused. The accused does not, by testifying upon a preliminary matter, ~~subject himself~~ <u>become subject</u> to cross-examination as to other issues in the case.

(E) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

***

RULE 106. Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require ~~him~~ <u>the introduction</u> at that time ~~to introduce~~ <u>of</u> any other part or any other writing or recorded statement which is otherwise admissible and which ought in fairness to be considered contemporaneously with it.

***

ARTICLE IV. RELEVANCY AND ITS LIMITS

***

RULE 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

(A) Character evidence generally. Evidence of a person's character or a trait of ~~his~~ character is not admissible for the purpose of proving ~~that he acted~~ action in conformity therewith on a particular occasion, subject to the following exceptions:

(1) Character of accused. Evidence of a pertinent trait of ~~his~~ character offered by an accused, or by the prosecution to rebut the same is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(3) Character of witness. Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609.

(B) Other crimes, wrongs or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show ~~that he acted~~ action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

***

RULE 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether ~~he~~ the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, if controverted, or bias or prejudice of a witness.

***

ARTICLE VI. WITNESSES

***

RULE 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that ~~he~~ the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony ~~of the witness himself~~. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that ~~he~~ the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken ~~his~~ the witness' conscience and impress ~~his~~ the witness' mind with ~~his~~ the duty to do so.

RULE 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation ~~that he will~~ to make a true translation.

***

RULE 606. Competency of Juror as Witness

(A) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which ~~he~~ the juror is sitting ~~as a juror~~. If ~~he~~ the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(B) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon ~~his~~ that or any other juror's mind or emotions as influencing ~~him~~ the juror to assent to or dissent from the verdict or indictment or concerning ~~his~~ the juror's mental processes in connection therewith. A juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear on any juror, only after some outside evidence of that act or event has been presented. However a juror may testify without the presentation of any outside evidence concerning any threat, any bribe, any attempted threat or bribe, or any improprieties of any officer of the court. ~~His~~ A juror's affidavit or

evidence of any statement by ~~him~~ the juror concerning a matter about which ~~he~~ the juror would be precluded from testifying will not be received for these purposes.

***

RULE 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature ~~his~~ the witness' credibility is impaired or enhanced.

RULE 611. Mode and Order of Interrogation and Presentation

(A) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(B) Scope of cross-examination. Cross-examination shall be permitted on all relevant matters and matters affecting credibility.

(C) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop ~~his~~ the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

RULE 612. Writing Used to Refresh Memory

Except as otherwise provided in criminal proceedings by Rules 16(B)(1)(g) and 16(C)(1)(d) of Ohio Rules of Criminal Procedure, if a witness uses a writing to refresh ~~his~~ memory for the purpose of testifying, either: (1) while testifying; or (2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing. ~~He~~ The adverse party is also entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

490 ***
491
492 ## ARTICLE VII. OPINIONS AND EXPERT TESTIMONY
493
494 ### RULE 701. Opinion Testimony by Lay Witnesses
495
496 If the witness is not testifying as an expert, ~~his~~ the witness' testimony in the form
497 of opinions or inferences is limited to those opinions or inferences which are (1)
498 rationally based on the perception of the witness and (2) helpful to a clear understanding
499 of ~~his~~ the witness' testimony or the determination of a fact in issue.
500
501 ***
502
503 ### RULE 703. Bases of Opinion Testimony by Experts
504
505 The facts or data in the particular case upon which an expert bases an opinion or
506 inference may be those perceived by ~~him~~ the expert or admitted in evidence at the
507 hearing.
508
509 ***
510
511 ### RULE 705. Disclosure of Facts or Data Underlying Expert Opinion
512
513 The expert may testify in terms of opinion or inference and give ~~his~~ the expert's
514 reasons therefor after disclosure of the underlying facts or data. The disclosure may be in
515 response to a hypothetical question or otherwise.
516
517 ***
518
519 ## ARTICLE VIII. HEARSAY
520
521 ### RULE 801. Definitions
522
523 The following definitions apply under this article:
524
525 **(A) Statement.** A "statement" is (1) an oral or written assertion or (2)
526 nonverbal conduct of a person, if it is intended by ~~him~~ the person as an assertion.
527
528 **(B) Declarant.** A "declarant" is a person who makes a statement.
529
530 **(C) Hearsay.** "Hearsay" is a statement, other than one made by the declarant
531 while testifying at the trial or hearing, offered in evidence to prove the truth of the matter
532 asserted.
533
534 **(D) Statements which are not hearsay.** A statement is not hearsay if:
535

536 **(1) Prior statement by witness.** The declarant testifies at trial or hearing and
537 is subject to cross-examination concerning the statement, and the statement is (a)
538 inconsistent with ~~his~~ declarant's testimony, and was given under oath subject to cross-
539 examination by the party against whom the statement is offered and subject to the penalty
540 of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with
541 ~~his~~ declarant's testimony and is offered to rebut an express or implied charge against ~~him~~
542 declarant of recent fabrication or improper influence or motive, or (c) one of
543 identification of a person soon after perceiving ~~him~~ the person, if the circumstances
544 demonstrate the reliability of the prior identification.
545
546 **(2) Admission by party-opponent.** The statement is offered against a party
547 and is (a) ~~his~~ the party's own statement, in either ~~his~~ an individual or a representative
548 capacity, or (b) a statement of which ~~he~~ the party has manifested ~~his~~ an adoption or belief
549 in its truth, or (c) a statement by a person authorized by ~~him~~ the party to make a statement
550 concerning the subject, or (d) a statement by ~~his~~ the party's agent or servant concerning a
551 matter within the scope of ~~his~~ the agency or employment, made during the existence of
552 the relationship, or (e) a statement by a co-conspirator of a party during the course and in
553 furtherance of the conspiracy upon independent proof of the conspiracy.
554
555 ***
556
557 **RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial**
558
559 The following are not excluded by the hearsay rule, even though the declarant is
560 available as a witness:
561
562 **(1) Present sense impression.** A statement describing or explaining an event
563 or condition made while the declarant was perceiving the event or condition, or
564 immediately thereafter unless circumstances indicate lack of trustworthiness.
565
566 **(2) Excited utterance.** A statement relating to a startling event or condition
567 made while the declarant was under the stress of excitement caused by the event or
568 condition.
569
570 **(3) Then existing, mental, emotional, or physical condition.** A statement of
571 the declarant's then existing state of mind, emotion, sensation, or physical condition (such
572 as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including
573 a statement of memory or belief to prove the fact remembered or believed unless it relates
574 to the execution, revocation, identification, or terms of declarant's will.
575
576 **(4) Statements for purposes of medical diagnosis or treatment.** Statements
577 made for purposes of medical diagnosis or treatment and describing medical history, or
578 past or present symptoms, pain, or sensations, or the inception or general character of the
579 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
580

581 **(5) Recorded recollection.** A memorandum or record concerning a matter
582 about which a witness once had knowledge but now has insufficient recollection to
583 enable him to testify fully and accurately, shown by the testimony of the witness to have
584 been made or adopted when the matter was fresh in his memory and to reflect that
585 knowledge correctly. If admitted, the memorandum or record may be read into evidence
586 but may not itself be received as an exhibit unless offered by an adverse party.
587
588 **(6) Records of regularly conducted activity.** A memorandum, report,
589 record, or data compilation, in any form, of acts, events, or conditions, made at or near
590 the time by, or from information transmitted by, a person with knowledge, if kept in the
591 course of a regularly conducted business activity, and if it was the regular practice of that
592 business activity to make the memorandum, report, record, or data compilation, all as
593 shown by the testimony of the custodian or other qualified witness or as provided by Rule
594 901(B)(10), unless the source of information or the method or circumstances of
595 preparation indicate lack of trustworthiness. The term "business" as used in this
596 paragraph includes business, institution, association, profession, occupation, and calling
597 of every kind, whether or not conducted for profit.
598
599 **(7) Absence of entry in record kept in accordance with the provisions of**
600 **paragraph (6).** Evidence that a matter is not included in the memoranda, reports,
601 records, or data compilations, in any form, kept in accordance with the provisions of
602 paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was
603 of a kind of which a memorandum, report, record, or data compilation was regularly
604 made and preserved, unless the sources of information or other circumstances indicate
605 lack of trustworthiness.
606
607 **(8) Public records and reports.** Records, reports, statements, or data
608 compilations, in any form, of public offices or agencies, setting forth (a) the activities of
609 the office or agency, or (b) matters observed pursuant to duty imposed by law as to which
610 matters there was a duty to report, excluding, however, in criminal cases matters
611 observed by police officers and other law enforcement personnel, unless offered by
612 defendant, unless the sources of information or other circumstances indicate lack of
613 trustworthiness.
614
615 **(9) Records of vital statistics.** Records or data compilations, in any form, of
616 births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office
617 pursuant to requirement of law
618
619 **(10) Absence of public record or entry.** To prove the absence of a record,
620 report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence
621 of a matter of which a record, report, statement, or data compilation, in any form, was
622 regularly made and preserved by a public office or agency, evidence in the form of a
623 certification in accordance with Rule 901(B)(10) or testimony, that diligent search failed
624 to disclose the record, report, statement, or data compilation, or entry.
625

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of ~~his~~ the declarant's family by blood, adoption, or marriage or among ~~his~~ the declarant's associates, or in the community, concerning a person's birth, adoption,

672 marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage,
673 ancestry, or other similar fact of ~~his~~ the declarant's personal or family history.
674
675 **(20) Reputation concerning boundaries or general history.** Reputation in a
676 community, arising before the controversy, as to boundaries of or customs affecting lands
677 in the community, and reputation as to events of general history important to the
678 community or state or nation in which located.
679
680 **(21) Reputation as to character.** Reputation of a person's character among
681 ~~his~~ the person's associates or in the community.
682
683 **(22) Judgment of previous conviction.** Evidence of a final judgment, entered
684 after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent
685 plea from another jurisdiction), adjudging a person guilty of a crime punishable by death
686 or imprisonment in excess of one year, to prove any fact essential to sustain the
687 judgment, but not including, when offered by the Government in a criminal prosecution
688 for purposes other than impeachment, judgments against persons other than the accused.
689 The pendency of an appeal may be shown but does not affect admissibility.
690
691 **(23) Judgment as to personal, family, or general history, or boundaries.**
692 Judgments as proof of matters of personal, family or general history, or boundaries,
693 essential to the judgment, if the same would be provable by evidence of reputation.
694
695 ***
696
697 **ARTICLE IX. AUTHENTICATION AND IDENTIFICATION**
698
699 ***
700
701 **RULE 902. Self-Authentication**
702
703 Extrinsic evidence of authenticity as a condition precedent to admissibility is not
704 required with respect to the following:
705
706 **(1) Domestic public documents under seal.** A document bearing a seal
707 purporting to be that of the United States, or of any State, district, Commonwealth,
708 territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory
709 of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof,
710 and a signature purporting to be an attestation or execution.
711
712 **(2) Domestic public documents not under seal.** A document purporting to
713 bear the signature in ~~his~~ the official capacity of an officer or employee of any entity
714 included in paragraph (1) hereof, having no seal, if a public officer having a seal and
715 having official duties in the district or political subdivision of the officer or employee
716 certifies under seal that the signer has the official capacity and that the signature is
717 genuine.

718
719 **(3) Foreign public documents.** A document purporting to be executed or
720 attested in ~~his~~ the official capacity by a person authorized by the laws of a foreign
721 country to make the execution or attestation, and accompanied by a final certification as
722 to the genuineness of the signature and official position (a) of the executing or attesting
723 person, or (b) of any foreign official whose certificate of genuineness of signature and
724 official position relates to the execution or attestation or is in a chain of certificates of
725 genuineness of signature and official position relating to the execution or attestation. A
726 final certification may be made by a secretary of embassy or legation, consul general,
727 consul, vice consul, or consular agent of the United States, or a diplomatic or consular
728 official of the foreign country assigned or accredited to the United States. If reasonable
729 opportunity has been given to all parties to investigate the authenticity and accuracy of
730 official documents, the court may, for good cause shown, order that they be treated as
731 presumptively authentic without final certification or permit them to be evidenced by an
732 attested summary with or without final certification.
733
734 **(4) Certified copies of public records.** A copy of an official record or report
735 or entry therein, or of a document authorized by law to be recorded or filed and actually
736 recorded or filed in a public office, including data compilations in any form, certified as
737 correct by the custodian or other person authorized to make the certification, by
738 certificate complying with paragraph (1), (2), or (3) of this rule or complying with any
739 law of a jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.
740
741 **(5) Official publications.** Books, pamphlets, or other publications purporting
742 to be issued by public authority.
743
744 **(6) Newspapers and periodicals.** Printed materials purporting to be
745 newspapers or periodicals, including notices and advertisements contained therein.
746
747 **(7) Trade inscriptions and the like.** Inscriptions, signs, tags, or labels
748 purporting to have been affixed in the course of business and indicating ownership,
749 control, or origin.
750
751 **(8) Acknowledged documents.** Documents accompanied by a certificate of
752 acknowledgment executed in the manner provided by law by a notary public or other
753 officer authorized by law to take acknowledgments.
754
755 **(9) Commercial paper and related documents.** Commercial paper,
756 signatures thereon, and documents relating thereto to the extent provided by general
757 commercial law.
758
759 **(10) Presumptions created by law.** Any signature, document, or other matter
760 declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie
761 genuine or authentic.
762
763 ***

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

***

RULE 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, ~~he~~ that party was put on notice, by the pleadings or otherwise, that the contents would be subject of proof at the hearing, and ~~he~~ that party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

***

RULE 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by ~~his~~ that party's written admission, without accounting for the nonproduction of the original.

***

ARTICLE XI. MISCELLANEOUS RULES

***

RULE 1102. Effective Date

***

(O) Effective date of amendments. The amendments to the Rules of Evidence filed by the Supreme Court with the General Assembly on January 11, 2007 shall take effect on July 1, 2007. They govern all proceedings in actions brought after

810 they take effect and also all further proceedings in actions then pending, except to the
811 extent that their application in a particular action pending when the amendments take
812 effect would not be feasible or would work injustice, in which event the former procedure
813 applies.

814 **STAFF NOTE (July 1, 2007 amendments)**
815
816 The 2007 amendments to the Ohio Rules of Evidence make no
817 substantive changes to the rules. The rules are amended to apply gender neutral
818 language.

Grubb, Janet A.

From: Grubb, Janet A.
Sent: Thursday, March 29, 2007 2:12 PM
To: 'tjanuzzi@cityofoberlin.com'
Subject: FW: AMCJO Court and Superintendence Rules Committee

From: Grubb, Janet A.
Sent: Thursday, March 29, 2007 2:07 PM
To: 'jstautberg@cmshamiltonco.org'; 'Price@mcohio.org'; 'tjanussi@cityofoberlin.com'; 'gwherman@bright.net'; 'mfrost@ccclerk.org'; 'judgemac3@hotmail.com'; 'mail.earthlink.net'
Subject: AMCJO Court and Superintendence Rules Committee

Greetings all. You expressed an interest in serving on AMCJO's Court and Superintendence Rules Committee at the winter meeting.. I would be very happy if your schedules would allow you to participate this year. The Supreme Court's Rules Commission is currently studying many issues relevant to our bench. I promise that you will be interested in the proposed changes. The Commission values your input and I'm hoping that this committee will be AMCJO's window to the Commission. Judge McClelland has asked that we organize and meet prior to the next board meeting of the association. A meeting may not be possible as I will be on vacation for ten days immediately prior to our April meeting. I would, however, like to report that we have discussed some issues and have a report. The front burner issue is related to video link proceedings. At the last Commission meeting I had a question about insuring that the defendants' end of the proceedings were held in a non-coercive and open setting. David Yost (Delaware Co Prosecutor) moved to further study that aspect. I know that the proposed changes to CrimR.10 and CrimR.43 are important to our membership. We want to provide for appropriate changes to the rules on an asap basis. Dave Yost suggested to me that we consider convening a Commission sub-comm hearing to allow interested parties to address 10/43 issues. Also, there appears to be continued interest on the Rules Commission in amending CrimR. 16. The Supreme Court did not choose to advance the changes offered from the 2006 Commission process. Any comments or suggestions about this issue are also welcomed. The AMCJO trustee's meeting is April 24, 2007. I will try to convene a criminal law sub-comm meeting (Rules Commission) in early May. Please forward your thoughts about these developments at your earliest convenience. Thanks, Janet Grubb

Stone, Larry

From: Stetson, Connie [cstetson@co.clermont.oh.us]

Sent: Tuesday, April 24, 2007 1:53 PM

To: evevius@ci.springfield.oh.us; jdork1005@yahoo.com; jpayton@ci.mansfield.oh.us; john.pickrel@ci.dayton.oh.us; csendry@portageco.com; catherinebarber@ci.fairborn.oh.us; ccarey@clintonmunicourt.org; judge@carrollcountycourt.org; dlebarron@ci.euclid.oh.us; judge@ottawacountymunicipalcourt.com; grubbj@fcmcclerk.com; john@circlevillecourt.com; jcollier@napoleonohio.com; jmn@cambridgemunicipalcourt.com; jcampbell@fairfield-city.org; hoover@cfmunicourt.com; judgemikey@sbcglobal.net; higginsmh@hotmail.com; vwmc@im3.com; judges@pmcourt.org; tberry@cms.hamilton-co.org; cmc0421@suite224.net; Stone, Larry; LEE W. MCCLELLAND; Schweikert, Mark R.; Melissa Byers-Emmerling; Sarah D. Morrison; william.lauber@cityhall.lima.oh.us

Cc: Imbrogno, Andre

Subject: Winter Survey Results & Request for Testimony

Attachments: SurveyResults.doc

I am forwarding the winter survey results. Please review them. We initially planned to discuss the results at the summer meeting. You may want to review before the meeting this evening.

Judge Tom Harris, Co-chair of the Criminal Law & Procedure Committee of the OJC has requested that I check your availability to testify against Senator Austria's proposed amendment to Senate Bill 21. Senate Bill 21 proposes to adopt the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. The CLPC of the OJC voted to support Senate Bill 21. Senator Austria's proposed amendment would require Courts to order Anger Management counseling and treatment of anyone charged with recklessly violating a protection order. The amendment authorizes Courts to obtain an anger evaluation or assessment of any defendant charged with that offense before or after setting bail. The costs of the anger evaluation or assessment are taxed as court costs in the criminal case.

Defendants charged with violating a protection order must appear before the court for the setting of bail. When setting bail, a court is required to consider any anger assessment that the court has available to it at that time.

The CLPC of the OJC voted to oppose the amendment. Testimony could occur as early as next week. If you are willing to testify, please contact Andre Imbrogno at

1-800-282-1510.

<<SurveyResults.doc>>

Summary of Survey Results

1.) What legislation/rules do you believe should be proposed to the legislature?

$ (17) Salary Increase for Judges
$ (3) Retirement Benefit Enhancements
$ (2) Public assistance sanctions when convicted of drug offenses/Drug test recipients
$ More flexibility in appointing Acting Judges
$ No more changes to Title 45 & Title 29
$ (6) Make all Judgeships full-time
$ (6) DUS laws need complete overhaul
$ ALS for under 21 drivers in OAUC
$ Entire Court Reorganization
$ Restricted plates for drug convictions
$ Classification of misdemeanors in drug abuse, drug paraph., and underage consumption
$ Increase $3,000 cap on small claims cases
$ Expand time for preliminary hearings to 15 - 20 days
$ Eliminate mandatory minimum sentences on misdemeanors
$ Record retention/Digital/Microfilm
$ Need adequate facilities, fund administered by Supreme Court to assist in construction perhaps part grant and part loan; use a statewide case fee/Clarification & expansion of judicial authority to use special projects funds to build a courthouse without County Commissioner includement
$ (3) Security Issues
$ Don't draft/pass laws which infringe on the separation of power
$ BMV Reform
$ Stop amending OVI law
$ Stay out of evidence decisions
$ Direct involvement in BMV forms and procedures
$ (2) Clarify Records Retention
$ Funding and facilitation of misdemeanor jails with treatment opportunities for alcohol and drug abuse

Single Judge Court - 46
Multiple Judge Court - 26
Municipal Court - 59
County Court - 9

2.) What legislation/rules do you believe should be modified?

$ Simplify DUI laws
$ Random selection law - service of process method should be revisited
$ Law prohibiting small solid stickers on motor vehicle windows violates free speech
$ Increase exemption for wage garnishment
$ (2) Reduce/eliminate mandatory vehicle immobilization for DUS conviction
$ Allow for video arraignments
$ Some DUS offenses could be misdemeanors
$ Criminal Rule 4 needs clarified
$ (3) Criminal Rule 16 - Discovery should be more open
$ Office terms/election laws
$ Court costs should be for operation of courts and not revenue for pet projects
$ Misdemeanor sentencing
$ Modification of uses for Indigent Alcohol Fund monies
$ OVI - using LEADS to show past convictions

$ Suspensions associated with DUS; if the defendant is already under multiple suspensions, why place them under another one
$ Sexual offender status laws are incomprehensible
$ No further changes to 4511.19
$ Constitutional amendment to allow magistrate to serve in more than one court
$ Mandatory sentences are too restrictive
$ Amend 4511.19 to clarify language about field sobriety tests and NHTSA standards

3.) Do you believe the association effectively interfaces with the legislature to promote the needs of Judges?

$ (29) Yes
$ (2) Somewhat
$ "I'm not sure, but it seems we are very weak in this area. Judges are not well liked in some quarters (because of distorted, misleading newspaper articles); we need to fix that."
$ (11) Unknown/Unsure
$ (7) No

How can we increase this effectiveness?

$ Provide names and telephone numbers of legislators with their committee designations
$ More judicial input prior to enactment
$ Judicial Impact Studies, if still done, are not very effective
$ Promote interaction between Judges and legislators in their own district
$ Provide quarterly updates to members
$ Make personal calls to the judges or even meet them at their courts
$ (3) Invite legislators to our meetings/social events
$ Need more lobbying staff
$ We have a 501(C)(3) related problem with lobbying
$ The proposal to attend special legislative committee hearings is a must do
$ Educate legislators

4.) If you are not currently serving on Association committees, is there a reason you are not doing so?

$ (27) Time constraints - single court judge; private practice; family commitments other associations
$ Work in the past has been ignored
$ Don't feel much relevance
$ Active with Judicial College and AJA
$ (7) Newly elected Judge/new member
$ (5) Distance
$ No follow through by Committee Lead

5.) What would encourage you to serve on Association committees?

$ Not having to come to Columbus
$ Defined obligations

$ Better communication
$ Retirement
$ (2) Once I become a full-time Judge
$ (5) Teleconference meetings
$ Time set aside in seminar schedule to meet
$ Better inter-urban transportation
$ (2) More experience/knowledge
$ Better pay
$ If I had a full-time magistrate

6.) Would you like to see additional educational opportunities offered by the Association throughout the year?

$ (35) Yes
$ (30) No
$ (2) Maybe

7.) What other activities would you like to see your Association provide?

$ (3) On-going CLE opportunities
$ Regional area meetings that wouldn't require overnight accommodations
$ A forms review sounding board to which you could send drafts
$ More educational/informational activities
$ Wide range of insurance products
$ Cooperation with Local Bar Associations & the OSBA
$ Make common court forms available to all Judges; put on web or distribute CDs
$ Publish Best/Worst Practices
$ Staff training
$ Mock jury trials
$ Web site where questions and concerns could be posted and others with more experience could respond
$ Public outreach to improve public perception/opinion of Judges
$ Access to all course material for all seminars by email or web access

8.) What issues are you facing that hamper your ability to be a Judge?

$ Ability of defendants to file frivolous attacks on our decisions with impunity (grievances, federal lawsuits, habeas corpus, and appeals with outright lies in them easily disproven by the record should be criminally chargeable
$ Consistent application of the law by other Judges
$ (8) Funding for proper facilities/other facility issues
$ Need for another Judgeship
$ Criticism by defense attorneys
$ Lack of support by local Ethics Committee
$ Infighting
$ Collection of fines & costs
$ Uninformed legislators
$ (6) Budget Concerns
$ Dealing with other agencies in Justice System
$ Governmental officer's financial support of courts
$ (6) Jail Space/Jail Management
$ Grant Funding

$ Limited resources for programs
$ Need for quicker information on legislative updates
$ (6) Caseload volume
$ Administrative duties/personnel issues
$ Part-time; on-call every day
$ County Commissioners
$ Lack of funds to adequately operate the court
$ Working within the system as established by non-lawyer legislators
$ Staffing Issues
$ Training
$ Competitive salaries for key staff
$ Resistance to change

9.) What could your Association do to make your job easier?

$ Lobby Supreme Court or legislature for re-districting of Court jurisdictions
$ Regular e-mails advising of legislative activities
$ OJC Library of Revised Opinions is a great addition
$ (2) Complete the revised Bench Book
$ Lobby the Legislature to enact laws to allow Judges to finance and build a new courthouse with special project funds without Commissioners; interference
$ Provide information regarding grants and funding for Judicial programs
$ Standardize computer program
$ Conduct a survey of the types of security measures employed by all the Muni & County courts in Ohio , and focus on assisting these courts that do not have adequate security measures in place
$ Innovate ways to handle large caseloads efficiently
$ (3) Forms
$ Revisit Lauber's Book of Forms
$ Create a Resource Guide for various forms
$ Step by Step Manuals

10.) How can your Association better serve you?

$ Offer a weekend education program to minimize time away from court
$ Form small groups of judges willing to share experiences and discuss issues in confidence with Judges in need of support and/or Judges struggling with an issue
$ Provide rooms for Judges at conferences
$ (4) Better communication
$ (2) Pay Increase
$ Reduce dues
$ Frequent updates on laws and rules effecting Municipal Courts
$ Seminar on pro se and freemen litigants

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2007-2008

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