



*for the*

Second Quarter 2011

# RECORD

NEWS FOR THE OHIO COURTS

## DIRECTIONS

**Judge Mark R. Schweikert, Retired**  
Executive Director

Over the July 4<sup>th</sup> weekend I read several editorials referencing the rule of law and the separation of powers as defining characteristics of the American form of government we hold so dear and which we celebrated so sentimentally. Yet I can't help but comment to you that so many in the other branches of Ohio state and local government seem to overlook the point or seem weary of the burdens these principles place on government efficiency. Provisions in the county commissioners' budget program that worked their way into the state budget bill, as well as various provisions of the sentencing reform are evidence of the insensitivity. As the voice of Ohio judges, the Judicial Conference is routinely in a position to raise awareness to these principles and provide information to decision makers about how some proposals encroach on or tend to erode those fundamental principles. We are grateful for the assistance of so many judges who made phone calls to legislators, performed research, attended meetings and provided testimony to assist us in our task during this past quarter. The legislative staff is working on detailed enactment analysis that will be reviewed with the respective committees and available on our website in time for judges to prepare for fall effective dates.

Beside's the legislative activities during this quarter, the Judicial Conference judicial services staff met with judicial association leadership to re-affirm and define the support services we provide. This relationship enhances our ability to identify judicial resources and to stay tuned to current developments and trends.

Finally, I need to comment on the opportunity the Judicial Conference had to coordinate the implementation of a budget decision of the Ohio Department of Rehabilitation and Corrections that eliminated state courtesy preparation of pre-sentence investigation reports in over 50 counties.

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With very short notice the community corrections committee sponsored a workshop for the affected judges that facilitated direct communications with DRC staff on how the agency expected to implement the change and identified the practical challenges. We are grateful to the Ohio Association of Chief Probation Officers and the Supreme Court of Ohio Judicial College who used the insights gained at this workshop to develop the training programs necessary to give new court staff the tools and skills needed to assume this responsibility. Despite some frustration with the surprise and short time line, these judges made an admirable and timely transition.

## OHIO JUDGES IN THE NEWS



**Judge Patrick Fischer**, 1<sup>st</sup> District Court of Appeals, was chosen as president-elect of the Ohio State Bar Association at its 131<sup>st</sup> annual convention. He will take office as president of the OSBA on July 1, 2012.

Prior to joining the appellate court, Judge Fischer was a partner and general counsel in the Cincinnati law firm of Keating Muething & Klekamp. He co-chairs the Ohio Supreme Court Task Force on Commercial Dockets, and served on the court's Commission on Professionalism. He earned his undergraduate degree from Harvard College and his juris doctor from Harvard Law School.



**Judge Deborah Alspach**, Marion County Family Court, will serve a three-year term on the Ohio State Bar Association board of governors as District 5 representative. The district includes 428 members practicing in Crawford, Delaware, Marion, Morrow, Seneca and Wyandot counties. The OSBA board of governors manages the association's business affairs, sets policy, reviews pending legislation and conducts other business.



**Judge Mary Jane Trapp**, 11<sup>th</sup> District Court of Appeals, received the Ohio Legal Assistance Foundation's 2011 Presidential Award for Outstanding Leadership in the delivery of pro bono legal services. She was recognized for facilitating creation of foreclosure mediation programs in each of the five counties that make up the 11<sup>th</sup> District.

***Congratulations judges!***

### ***For the Record*** **Contributing Authors Needed**

We are accepting articles for the 2011 third and fourth quarter issues of *For the Record*. If you are interested in writing an article on an important issue pertaining to the Ohio judicial system please email:

**[Jennie.Long@sc.ohio.gov](mailto:Jennie.Long@sc.ohio.gov)**

# JUDGES AND CONCEALED CARRY OF HANDGUNS

Judge Eugene A. Lucci  
Lake County Common Pleas Court

This is an abbreviated version of a full article, including footnotes, citations, and attachments, that can be accessed by logged-in judges on the Ohio Judicial Conference website, [www.ohiojudges.org](http://www.ohiojudges.org).

## Introduction

The foundation of our government rests upon the confidence of the people in the ability of their courts to achieve liberty and justice for all under the law. The judge is the center of our judicial system and plays a central role in preserving the principles of justice and the rule of law. The justice system depends upon judges who can remain independent, fair, and impartial, free of intimidation and coercion. While the murder of judges is rare, judges are threatened daily by inappropriate communications, approaches, and even physical attacks. Many judges throughout the country, alarmed and fearful after recent courthouse shootings and attacks upon judges and their families at home, are taking their safety into their own hands. Whether a judge keeps a firearm in chambers, in the car, at home, or on his or her person is a matter of much debate recently.

Judicial independence means judges making decisions based solely on the law and facts (judicial fairness) without pressure or control from external sources (judicial impartiality). There are two types of judicial independence: Institutional independence and decisional independence. Institutional independence refers to the judiciary being a separate branch of government, free from the influence and pressure of the legislative and executive branches of government. Decisional independence refers to the judiciary being able to make decisions free from the influence and pressure of threats, politics, special interests, public opinion, and other outside sources. Both institutional independence and decisional independence are essential to enable judges to render decisions based solely on the facts and the law of a case. The insecurity of a judge is an impediment to the impartial administration of justice, the same as if political, cultural, and economic influences were brought to bear upon the decision-making process. Only an individual judge can know what effect insecurity has or can have on his or her ability to make certain decisions, and what measures would be needed to counteract that influence.

While the protection provided by any courthouse security personnel ends at the courthouse door, the threat to the safety of the judge does not. The scope of a judge's duty also extends beyond the courthouse and the normal hours of operation of the courthouse. The threat does not magically evaporate when the judge removes the robe and walks out the door of the courthouse. Indeed, the stronger the security measures inside the courthouse, the more likely the exposure and risk to the judge will be relocated outside the courthouse.

The judge must take responsibility for his or her own safety. This means developing and implementing a security plan and practicing the plan. While most courts and judges have made plans for safety and security inside the courthouse, rarely is much thought given to judicial protection in the courthouse after hours, or outside the courthouse, in the parking lot, driving home, and at home, for the judge and his or her family.

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A common pleas judge<sup>1</sup> is an elected, independent, and autonomous constitutional officer, agent, and employee of the state, upon whom is imposed, by constitutional grant and mandate, a duty to enforce all laws in cases and controversies presented to the judge and administer justice in a peaceful atmosphere of safety, decorum, and fairness.

A common pleas judge can authorize himself or herself to carry a concealed handgun for defensive purposes at all times in this state. The legal authority for such a decision lies in the inherent judicial power reasonably required to enable a court to perform its judicial functions efficiently, and to protect its existence, dignity, independence, and integrity. The authority for such a decision is also a corollary to the concept of separation of powers, and it ensures that judicial decisions will be free of the inappropriate influences of fear, coercion, and intimidation, as well as from personal, political, cultural, and economic influences. The authority secondarily lies in the statutes governing concealed carry of handguns, R. C. 2923.12(C)(1) and R.C. 2923.123(C)(1).

### **Inherent Authority**

The courts have inherent authority: to exist and control and protect the integrity of their own processes, and be free from excessive direction, control, or impediment by the other branches of government; to enforce their orders and punish disobedience, contempt, and obstruction of the administration of justice; to make independent and unconstrained judicial decisions; and to order funding that is reasonable and necessary to a court's administration of its business.

Courts possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled, or impeded therein by other branches of the government. The inherent power of the court is the power to protect itself; the power to administer justice whether any previous form of remedy has been granted or not; the power to promulgate rules for its practice; and the power to provide process and remedies where none exists.

Although the duty to provide for a courthouse and to maintain order within it lies in the first instance with the county commissioners and the county sheriff, courtroom order and decorum, including preserving the peace, safety, and security within the courtroom, is an adjudicative function of the judiciary. While deference should be given to law enforcement officers with security obligations, the trial judge must retain complete control over the courtroom and exercise his or her discretion.

It is beyond dispute that the judiciary has the power to control its courtrooms. The power of the judiciary to control its own proceedings, the conduct of participants, the actions of officers of the court, and the environment of the court is a power absolutely necessary for a court to function effectively and do its job of administering justice. An integral part of any court's duty to administer justice and fairly adjudicate disputes is to ensure that all parties have the opportunity to advance their cause in an atmosphere of safety, decorum, and fairness. It is fundamental that a court is vested with the discretion to provide for courtroom security in order to ensure the safety of court officers, parties, and the public. Security is an integral part of the essential adjudicatory function of the courts.

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<sup>1</sup>*Although I have written this article from my viewpoint as a general jurisdiction common pleas judge, the essential principles of inherent and statutory authority for judges to carry concealed handguns would seem to be applicable to all Ohio judges, at all levels, but I have not done the legal analysis for other courts, such as the municipal courts, to opine whether they have the same standing as a constitutional court in terms of inherent powers, contempt powers, or employment by the state.*

Similarly, although Ohio's revised code provides statutory authority, the power to define and punish contempt in disobeying a court's order, rule, judgment, or command is fundamental and inherent in a court and is within its sound discretion. The judge is mandated to require and maintain order and decorum in the courtroom, and patience, dignity, and courtesy in the conduct of lawyers, staff, court officials, and others subject to the judge's direction and control. Lawyers, parties, witnesses, jurors, law enforcement and peace officers, spectators, and the media, are all subject to the court's supervision and contempt power. To achieve these ends, the judge possesses the inherent and statutory disciplinary authority of contempt, including direct criminal contempt. A judge's failure to exercise the contempt power where appropriate may constitute a violation of his or her sworn duty. Among the inherent powers of the court necessary for the orderly and efficient exercise of justice are powers to punish disobedience of the court's order with contempt proceedings; implicit in the exercise of that power is the authority to fashion punishment that will induce the contemnor to remedy the contempt involved. The contempt power has been vested in judges, not for their personal protection, but for that of the public.

Because a judge must be free of fear or intimidation, as well as from political, cultural, special interests, personal preference, public opinion, and financial pressure in the performance of duty and in the decision-making process, a judge should not feel insecure in his or her own personal safety. The judge possesses the inherent authority to implement reasonable measures in and out of the courthouse for his or her personal protection.

### **Statutory Authority**

The General Assembly has chosen not to statutorily authorize persons holding specified positions to carry a concealed handgun. However, R.C. 2923.12(A)(2) provides that, "No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand . . . (a) handgun . . . . R.C. 2923.12(C)(1) states, "This section does not apply to . . . (a)n officer, agent, or employee of this . . . state . . . who is authorized to carry concealed . . . handguns and is acting within the scope of the officer's, agent's, or employee's duties."

R.C. 2923.123(C) exempts judges from conveying or having under his or her control, a handgun or other deadly weapon in a courthouse, unless a rule adopted by the supreme court or a local rule adopted by the court prohibits all persons from conveying or having under one's control, a handgun or other deadly weapon in the courthouse.

Pursuant to these sections, officers, agents and employees of Ohio are exempted from the prohibition against carrying concealed handguns, if they are authorized to carry a concealed handgun and are acting within the scope of their duties. Judges are exempt from the prohibitions against carrying handguns in a courthouse.

Common pleas judges are officers, agents and employees of the state. The question then is who can authorize a judge to carry a concealed handgun. R.C. 2923.12 is silent as to whether the authorization to carry a concealed handgun must be made by statute or whether it may be conferred by the chief officer of the person's department or agency. There are no statutes which authorize a person holding a specified position to carry concealed weapons, including handguns. This means that the General Assembly intended through R.C. 2923.12(C) to allow the chief officer of a state department or agency (or a co-equal branch of government),

in the exercise of reasonable discretion, to authorize his or her officers, agents, or employees to carry concealed handguns.

Since a judge is, in fact, engaged in a lawful activity, which is carried on at such times and places as to render the judge susceptible to criminal attack, and a judge can, and some judges do, have reasonable cause to fear a criminal attack upon themselves, such authorization would be reasonable. Judges, as in the case of police officers, are always “on duty.” The code of judicial conduct requires them to behave always, inside and outside of the courthouse, as if they are on duty – judges are subject to discipline for activities on and off the bench. A significant portion of a judge’s duties are performed away from the courthouse, sometimes at all hours of the day or night.

In each common pleas judge, as an elected, autonomous, and independent constitutional officer, agent, and employee of the State of Ohio, on any particular case, rests the entire judicial authority of the state. The judge can authorize himself or herself to carry a concealed weapon by journalization of a plan implementing procedures for the protection and security of the judge. The judge can also authorize himself or herself by journal entry to carry a concealed handgun as within the scope of his or her judicial duties. The judge is in control of courtroom security, which is part of the adjudicative function and inherent in the authority of a court.

The judge has no “supervisor” other than himself or herself. Even a court’s presiding or administrative judge has no supervisory authority over the other judges on that bench so as to be in a position to grant or deny authorization to carry a concealed handgun. Of course, the judge’s decisions on particular cases in controversy may be reviewed by a higher court or courts to determine their legal sufficiency, but the higher courts do not hire, supervise, direct the daily or decisional activities of, or fire the judge. The Supreme Court has “general superintendence” over all courts in the state, exercised by the chief justice. However, the Supreme Court has left matters pertaining to security of courts and judges to the individual courts and judges. Superintendence Rule 9 and Court Security Standard 12 authorize the court or judge to adopt whatever procedures an individual court or judge deems necessary for the safety and security of the judge, inside and outside of the courthouse, during all hours of the day and night, including firearms training. The threat and the need for protection are so individual and unique that generalized protocols for judicial protection may not be very useful, practical, or effective.

When a judge authorizes himself or herself to carry a concealed handgun for protection to reduce the impact of the threat of attack because of his or her decisions and as part of a comprehensive judicial security plan, the judge is acting within the scope of the judge’s duties for the benefit of the public.

## **Conclusion**

All courts/judges should adopt a comprehensive security plan, which should also cover the safety and security of the judge and the judge’s family away from the courthouse and at hours other than the normal operating hours of the court. Judges should journalize their security policy and procedures plan, and the procedures for the protection and security of the judges (without specifying in the journal any of the particulars). If the judge deems it necessary to carry a concealed handgun, the judge should be issued court credentials (a photographic identification card and a miniature certified reproduction of the journal entry regarding the proce-

dures for the protection and security of judges). The judge should obtain training in the safety, retention, and use of the firearm, maintain his or her proficiency, and objectively document the training and maintenance of proficiency. The training should, at a minimum, be of the quality required of individuals who are issued concealed carry permits. The judge should choose the proper handgun to suit his or her purposes. If the judge brings the firearm into the court facility, he or she should inform the sheriff or court security and take all precautions to ensure that the weapon is always within the personal control of the judge or otherwise safely locked away.

Carrying a firearm is not the only means of self-defense. Indeed, unless the judge is knowledgeable about carrying a handgun and handgun safety, and is proficient in the use of the handgun, and is committed to using the handgun if necessary, the judge should not resort to a firearm for defense. That would aggravate matters. Home security, a cellular telephone, a dog, and vigilance, may suffice for most threats.

The bottom line is that judges should take responsibility for their own safety and security, so that their decisions can be made with confidence and without fear of reprisal against his or her person or family, or at least with knowledge that they have the independent ability to attempt to meet the threat of any reprisal or attack and have a reasonably effective chance at success. Judges should also be aware that no precautions for safety and security can be totally foolproof.

Attached to the full article on-line are: a journal entry implementing a court security plan, a journal entry prohibiting weapons in the courthouse, a journal entry for the security and protection of judges, a memo to law enforcement regarding their firearms in the courthouse, and a sample of my court's judicial identification credentials.

**UPCOMING 2011-2012  
JUDICIAL ASSOCIATION  
FALL AND WINTER  
CONFERENCES AND MEETINGS**

**SEPTEMBER 7**  
**OCAJA**  
**FALL MEETING**  
HILTON COLUMBUS/POLARIS

**DECEMBER 1-2**  
**OAJCJ**  
**WINTER MEETING**  
EMBASSY SUITES, DUBLIN

**DECEMBER 7-9**  
**OCPJA**  
**WINTER CONFERENCE**  
EMBASSY SUITES, DUBLIN

**FEBRUARY 1-3, 2012**  
**AMCJO**  
**WINTER CONFERENCE**  
EMBASSY SUITES, DUBLIN

## WHY USE TRANSITIONAL CONTROL?

Phillip Nunes, Executive Director  
Volunteers of America of Greater Ohio

### Introduction:

According to Ohio Department of Rehabilitation and Correction (ODRC) Director Gary Mohr's testimony on April 4, 2011, the prison population stood at 50,548, which is at 132 percent capacity. Moreover, according to the Urban Institute's profile of Ohio's prison population, 95 percent of all inmates are returning home to Ohio communities. Finally, according to Director Mohr's April 4, 2011 and February 15, 2011 testimony, Ohio's recidivism rate is 34 percent, which represents an 11 year low, and is substantially lower than the national average of 50 percent.

How can we continue to drive that downward trend in recidivism in Ohio? Transitional Control (TC) is a strong tool. In Fiscal Year 2010, there were 1,791 Ohio inmates who applied for TC, but were vetoed by common pleas court judges. Offenders are returning to Ohio's communities regardless. Why not give them every advantage to be successful and productive members of society, rather than repeat offenders who are a drain on the criminal justice system?

### What is TC?

Transitional Control (TC) is a program that allows certain offenders to complete up to the last six months of their prison sentence under the close supervision of a Halfway House agency. Offenders are carefully screened using strict criteria. The TC offender is still considered to be an inmate, and is required to remain at the facility at all times unless authorized by the facility to leave. TC offenders can obtain permission to leave the facility to engage in employment, vocational training, treatment programming, maintaining ties with family, and other approved activities. Leaving without permission or failure to return at the designated time is considered an escape.

### Why Consider Using Transitional Control?

- In FY 2010, a total of 2417 offenders were admitted to a TC program with a successful completion rate of 75 percent.
- In FY 2010, TC participants earned nearly \$2 million, allowing them to meet their obligations such as court costs and fines, child support, and restitution.
- The recidivism rate for TC offenders (22 percent) is better than the recidivism rate for non-TC offenders (34 percent). In fact, according to the University of Cincinnati Recidivism Study released March 2010, TC offenders have the most successful offender status in the study. Simply stated, 78 percent do not return to prison after tracking them two years post release from supervision.
- TC is *not* an early release program and does not alter the original sentence. TC offenders are considered to still be on inmate status and are returned to prison if unsuccessful in the community.
- All TC needs are paid by ODRC versus being a burden to local resources.

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- If TC beds are not used in your community, they are moved to other Ohio communities where usage is greater.
- If approved, TC offenders get needed programming and treatment, get a full time job and leave with secure and appropriate housing.
- Eligible TC offenders who are denied TC will simply be released back into the community with no transition tools to help them succeed. Due to long waiting lists, often times TC offenders do not receive needed treatment in prison, but in a halfway house, treatment is required.

**In order to be eligible for TC, an offender must meet the following criteria:**

- Not serving a mandatory or actual incarceration sentence, such as conviction for gun specifications, repeat violent offenders, major drug offenders, and some drug offenses.
- Not serving a life sentence for a crime committed on or after October 19, 1981.
- Not serving a sentence of life without parole.
- Not disapproved by the court of common pleas of the county of conviction for those crimes committed on or after July 1, 1996. Not have a record of more than one commitment for an offense of violence including the present commitment.
- Not have a record of more than 5 felony commitments, including the present commitment, regardless of the offenses.
- Not currently confined in local or administrative control as a result of disciplinary action.
- Not subject to a detainer for a sentence imposed but not yet served, a supervision violation or wanted for a felony charge or U.S. immigration action.
- Not convicted in the past 10 years for any sex offense.
- Not currently incarcerated for escape, aggravated vehicular assault, vehicular homicide or aggravated vehicular homicide.
- Not convicted of arson or aggravated arson.
- Have a current security level of Level 1 or 2.
- When transferred, TC prisoners shall have no longer than 180 days of imprisonment to serve until the prisoner's parole eligibility, or no longer than 180 days of imprisonment to serve until the expiration of the prisoner's stated prison term.

### **What Happens To Eligible Inmates Who Do Not Enter A Transitional Control Program?**

- They have a much higher recidivism rate, thus increasing the number of victims, crimes, arrests, convictions and incarcerations, which increases the costs to the criminal justice and corrections systems and jeopardizes public safety.
- They are released with \$75 “gate money” and often dropped off at the nearest bus station. They are often released homeless and without receiving any identified treatment or programming needs. Many have been incarcerated for many years and have no coping skills to survive.
- Services oftentimes are *paid by local tax* dollars for drug and alcohol treatment and mental health services *rather than have ODRC pay* for those services through a Transitional Control placement to a local halfway house provider.
- Over 50 percent of these inmates released are not under any correctional supervision and receive no re-entry services.

### **Conclusion**

With 95 percent of inmates ultimately returning to our communities, research indicating that Transitional Control improves public safety by reducing recidivism, and TC offenders being maintained by state dollars rather than local dollars, TC is a powerful and important judicial tool. Some judges use TC heavily, while others rarely or if at all. Yet, the benefits of decreased recidivism and cost savings make it well worth a closer look.

### **For more information on Transitional Control contact:**

Ohio Department of Rehabilitation & Corrections  
Bureau of Community Sanctions  
770 West Broad Street  
Columbus, Ohio 43222  
(614) 752-1188

**2011**

**OHIO JUDICIAL CONFERENCE  
ANNUAL MEETING**

***EXAMINING THE CONSTITUTION: A JUDICIAL PERSPECTIVE***

**SEPTEMBER 8-9**

**HILTON COLUMBUS/POLARIS**

**DELAWARE COUNTY**

## **PRACTICAL ADVICE FOR JUDGES IN THE BRAVE NEW WORLD OF SOCIAL MEDIA**

**Hon. Michael Donnelly**

Judge, Cuyahoga County Court of Common Pleas

**Jonathan Marshall**

Secretary of the Board of Commissioners on Grievances and Discipline (Retired)

**Christopher Davey**

Director of Public Information, Supreme Court of Ohio

All of society today wrestles with the strange dilemma brought by the hyper-connectivity and information overload of the digital age and the rise of social media like Facebook and Twitter.

The dilemma is this: We now can connect and share knowledge and information like never before, but we are all struggling with how to maximize the benefits of this unprecedented connectivity while minimizing the potential harm.

People can now know and share almost anything, anytime, anywhere. We can share with all our friends and family video of our child's piano recital from our phone before he has stopped playing. For free, with very little technical knowledge, and in minutes, we can find a friend from high school we haven't seen in 30 years, connect on Facebook and video-chat by Skype. We are now all truly interconnected in ways that were previously unimaginable and that we do not yet fully understand.

If facing this strange dilemma is a challenge for anyone in society, it is particularly daunting for judges and courts.

A recent national study found that 40 percent of judges report using social media profile sites like Facebook and LinkedIn, a proportion roughly equal to that in the general U.S. adult population. Smaller numbers reported using microblogging sites like Twitter and other less popular social media, but the numbers are expected to grow<sup>i</sup>. The same study found that a large majority of judges believe social media use by judges raises potentially serious ethical issues.<sup>ii</sup>

The role of judges in society is unique, and judges have always had to navigate what Chief Justice Maureen O'Connor recently called a paradox of sorts.

"It's a paradox to be on the one hand separate and independent and on the other hand be responsive, engaged and accountable," she said in a speech to new Ohio judges. "How do we be responsive and transparent to the public we serve while being independent of the majority will? How do we strike the balance between independence and accountability?"<sup>iii</sup>

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<sup>i</sup> See: <http://www.ccpio.org/documents/newmediaproject/New-Media-and-the-Courts-Report.pdf>.

<sup>ii</sup> Ibid.

<sup>iii</sup> [http://www.supremecourtsohio.gov/PIO/Speeches/2011/lawDay\\_050411.asp](http://www.supremecourtsohio.gov/PIO/Speeches/2011/lawDay_050411.asp)

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Individual judges have always had to make informed choices about how to strike this balance in their lives. The rise of social media on the one hand offers huge potential to help judges be responsive, transparent and accountable. But social media also brings sometimes daunting challenges for judges to remain separate, independent, and impartial.

There are recent examples in the media of judges around the country not getting it exactly right.

In North Carolina, a judge and attorney struck up a side conversation about Facebook in conference during case proceedings and then “friended” each other soon after. While the case was still pending, the judge and attorney (who represented the defendant) posted messages regarding the case on their respective Facebook pages. Because they had become “friends,” each could view the content on the other’s page, raising allegations of improper ex parte communication.<sup>iv</sup>

An attorney in a case before a Texas judge asked for a continuance because of a relative's death. After granting the continuance, the judge viewed the attorney's Facebook page and saw pictures from the period when the continuance was granted that featured the attorney at social functions involving drinking.<sup>v</sup>

There is good news for Ohio judges wrestling with whether to use social media and if so how to use it responsibly.

Ohio is one of at least seven states that have issued advisory opinions examining the ethical implications of social media use by judges<sup>vi</sup>. The others include North Carolina, Georgia, Florida, Kentucky, New York and and South Carolina.

In one of the most comprehensive and detailed examinations in the nation, the Supreme Court of Ohio’s disciplinary board in December 2010 issued an advisory opinion examining the ethical implications of judges using social media sites like Facebook and Twitter.<sup>vii</sup>

The opinion from the Board of Commissioners on Grievances & Discipline advises judges that social media use is permitted but must be done with caution, and it offers wide ranging, specific guidance to judges on how to navigate the new waters of social media without violating judicial canons that require judges to avoid even the appearance of bias or impropriety.

The opinion was drafted and edited for the board by retiring Senior Staff Counsel Ruth Bope Dangel, who in more than 20 years researched and drafted more than 220 advisory opinions on a wide range of ethical issues.

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<sup>iv</sup> 11 Loy. J. Pub. Int. L. 511, p. 4.

<sup>v</sup> Ibid, p. 5.

<sup>vi</sup> *Reynolds Courts & Media Law Journal*, Vol. 1, No. 2, “That’s What ‘Friend’ Is For?” Genelle I. Belmas, p. 155-160.

<sup>vii</sup> See [http://www.supremecourt.ohio.gov/Boards/BOC/Advisory\\_Opinions/2010//op\\_10-007.doc](http://www.supremecourt.ohio.gov/Boards/BOC/Advisory_Opinions/2010//op_10-007.doc).

“This is a topic of great interest to the legal community because, like the rest of the nation, more judges are experimenting with social media in both their personal and professional lives,” said Jon Marshall, the board’s secretary. “For those judges who choose to use this technology, we hope this opinion gives them practical guidance on how to do so and maintain their obligations under the Code of Judicial Conduct.”

**Opinion 2010-7** finds that a judge may be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge, but cautions: “As with any other action a judge takes, a judge’s participation on a social networking site must be done carefully in order to comply with the ethical rules in the Code of Judicial Conduct.” Among the restrictions the opinion noted judges must observe:

- To comply with Jud. Cond. Rule 1.2., a judge must maintain dignity in every comment, photograph, and other information shared on the social networking site.
- To comply with Jud. Cond. Rule 2.4(C), a judge must not foster social networking interactions with individuals or organizations if such communications erode confidence in the independence of judicial decision making.
- To comply with Jud. Cond. Rule 2.9 (A), a judge should not make comments on a social networking site about any matters pending before the judge – not to a party, not to a counsel for a party, not to anyone.
- To comply with Jud. Cond. Rule 2.9 (C), a judge should not view a party’s or witnesses’ pages on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge.
- To comply with Jud. Cond. Rule 2.10, a judge should avoid making any comments on a social networking site about a pending or impending matter in any court.
- To comply with Jud. Cond. Rule 2.11 (A)(1), a judge should disqualify himself or herself from a proceeding when the judge’s social networking relationship with a lawyer creates bias or prejudice concerning the lawyer or party. There is no bright-line rule: not all social relationships, online or otherwise, require a judge disqualification.
- To comply with Jud. Cond. Rule 3.10, a judge may not give legal advice to others on a social networking site.

As Jon Marshall put it recently: “Judges using social networking sites are urged to be knowledgeable about the tools of the technology, including privacy settings, and to exercise good judgment in messages that are posted.”

### **SIDEBAR: FACEBOOK “FRIENDS”: ONE JUDGE’S VIEW FROM THE BENCH**

**Hon. Michael P. Donnelly**  
Cuyahoga County Common Pleas Court

During a recent professionalism seminar at which I served as a guest lecturer, a lively discussion took place on the issue of judges and Facebook. A colleague who was aware that I have, to date, accumulated over 1,500 Facebook “friends” introduced me as the pro-Facebook member of the panel. I have to admit I felt a slight twinge of embarrassment at this moniker. While it is true I have enjoyed my experience on Facebook, I have never considered myself a Facebook advocate. Given the often socially isolating effect our role as judges

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can impose on our lives, I completely understand the reluctance of some of my colleagues to participate in any form of social media.

Valid arguments can be made on both sides of the issue regarding whether a judge should or should not use Facebook. One thing that, in my opinion, is not debatable is that the social media is here to stay and it is quickly becoming the most popular medium in which information is being shared by human beings. Calling for a complete ban, in my mind, is the equivalent of a 19<sup>th</sup> century court telling judges they should not use the telephone.

So what are the advantages to using Facebook and how do I avoid the obvious and sometimes not so obvious dangers that exist due to my position as judge? The first advantage is being able to contact and communicate with people anywhere in the world instantly by just bringing up their name. Imagine Facebook as a sort of electronic Rolodex potentially containing the contact information for everyone you have ever met in your life (throw away that giant stack of business cards in your desk drawer!). I have experienced many positive re-connections with friends from all stages of my life. Many I did not think I would ever hear from again (amazingly, I was able to bring a grade school pal up to date in just a three paragraph note – I don't know if that means I am an eloquent writer or I simply need more adventure in my life).

The second advantage is the information sharing aspect of viewing Facebook's "News Feed" which is a constantly flowing river of all my Facebook friends' information posts – these may arrive in the form of their own words, a news article they find interesting, a photograph, or perhaps a YouTube video. Some may find this hard to believe, but I, like a lot of my fellow judges, have many interests outside my daily docket. These include music, books, sports, exercise, travel, and reading about current events. Facebook has provided me with information pertinent to these and countless other areas of interest that I would never have otherwise encountered.

So, how have I avoided any entanglements with my judgeship? I like to think that by exercising a little common sense I have been able to stay in full compliance with the advisory opinion long before it was issued. First, my profile photograph is and will always remain professional from day one. I rarely post my own words about anything – certainly no comments about work, pending cases or any matter that even remotely could find its way into a case before me. I do not offer any opinions on religion, politics or any other controversial matter that may be under discussion in the court of public opinion. My posts are usually confined to possibly an artist's song that I like or some innocuous observation on the world of sports. Even in those instances, I pause before hitting the send button, cognizant of the fact that it will be viewed by every one of my connections, and contemplating whether there is any possibility for the post to be misconstrued or offensive. Virtually all of the mishaps I have heard about involving lawyers, judges and jurors occurred as a result of individuals not exercising this judgment: essentially, making internet comments as casually as if you were talking alone in a room with your best friend.

And, speaking of "friends," I always remain cognizant and ready to act if a Facebook friend poses any appearance of impropriety issues on any particular case before me. I am convinced that if Mark Zuckerberg and his fellow creators of Facebook had chosen any other label than "friends" to describe the social contacts you associate with on Facebook, there is a good chance the concerns we are talking about in this article would

not be such a hot topic of controversy. Fortunately, as the world enters this new age of communication with a completely new lexicon, it also comes with it a developed sophistication in which the great majority of our society realizes or will eventually come to realize that a Facebook friend does not necessarily translate with our heretofore definition of the term “friend” – again, exercising common sense will keep you in compliance with the opinion from the Board of Commissioners on Grievances & Discipline: If you accept lawyers as friends, make sure you accept them from both sides of the aisle; never have a Facebook friend who is also a litigant in a case before you; and, always ask yourself whether adding an individual as a friend or, simply, the timing of adding an individual poses any appearance of impropriety.

From the advent of the printing press to the radio and the telephone and now social media, there has always been anxiety about what harm that might come with new communication technology. Invariably, it seems, we find that no new technology can overcome good old fashioned prudence and common sense.

## **LIBRARY OF REASONED ORDERS**

*TRINA BENNINGTON*

*OJC ADMINISTRATIVE ASSISTANT*

**The Purpose of the Library:** This library collects reasoned orders issued by Ohio judges and makes them available to other Ohio judges as a helpful resource. A reasoned order is one made by a judge that may prove helpful to other judges. Reasoned orders submitted to the web-based library may address new or unique issues as well as routine issues that may come before a judge. A reasoned order must provide sufficient analysis of the issue in order to be beneficial to another judge confronted with the same or a similar issue. The items in the library are subject to an important **disclaimer:**

- Reasoned Orders show how one judge handled an issue that may be of concern to other judges. Inclusion of an order in the Library does not give that order any greater precedential significance than it might otherwise have.
- Reasoned Orders have not been reviewed or edited and may contain errors including grammatical errors and citation errors.
- Inclusion of an order in the Library does not imply that the editors believe that the Reasoned Order or any portion thereof is legally correct. The Library may even contain decisions coming to opposite conclusions on certain issues.
- Although Reasoned Orders included in the Library may occasionally be reviewed to determine if they will continue to be included in the Library, no effort is being made to determine if they have been affected by subsequent authority or changes in the law.

**Using the Library:** The library is a collection of reasoned orders organized using categories and subjects. For the [current index of categories, please click here](#). The library is searched using a simple search function, and the results of a search are displayed to make it as easy as possible to find reasoned orders that address the issue the user is concerned with.

**Submissions to the Library:** If you would like to submit an reasoned order to be considered for inclusion in the Library of Reasoned Orders, complete the form found on the following page and submit it with your reasoned order. It may be submitted via email, fax or USPS mail. It will be reviewed by three members of the Library of Reasoned Orders Editorial Board. They will make a recommendation as to whether or not the order should be accepted. You will receive a letter informing you of the status of your submission. If you have questions or need additional information contact Trina Bennington at 614-387-9750 or [Trina.Bennington@sc.ohio.gov](mailto:Trina.Bennington@sc.ohio.gov).

## Library of Reasoned Orders Submission Form

A reasoned order is one made by a judge that may prove helpful to other judges. Reasoned orders submitted to the web-based library may address new or unique issues as well as routine issues that may come before a judge. A reasoned order must provide sufficient analysis of the issue in order to be beneficial to another judge confronted with the same or a similar issue.

<b>Submitted by:</b>	Judge _____ _____ Court	
This opinion was issued in _____ (case name), case number _____, on _____ (date).		
Submitted on _____ (date) Signed _____		
<b>Library Information</b> The Library of Reasoned Orders organizes orders into categories, and within categories it distinguishes different subject matters.		
<b>Example:</b> Suggested example category: Pro Se Representation Suggested example subject matter: Unbundled Legal Services		
Please suggest the category and subject you feel is appropriate for this order. You can access the current index on the OJC website ( <a href="http://www.ohiojudges.org">www.ohiojudges.org</a> ), log - - in, then click on Library of Reasoned Orders. Suggested category _____ Suggested subject matter _____		
<b>DISCLAIMER:</b> Reasoned Orders show how one judge handled an issue that may be of concern to other judges. Inclusion of an order in the Library does not give that order any greater precedential significance than it would otherwise have. Reasoned Orders have not been reviewed or edited and may contain errors including grammatical errors and citation errors. Inclusion of an order in the Library does not imply that the editors believe that the Reasoned Order or any portion thereof is legally correct. The Library may even contain decisions coming to opposite conclusions on certain issues. Although Reasoned Orders included in the Library may occasionally be reviewed to determine if they will continue to be included in the Library, no effort is being made to determine if they have been affected by subsequent authority or changes in the law.		
<b>Please submit this form and your order to the Library of Reasoned orders:</b>		
<i>Via mail:</i>  Ohio Judicial Conference 65 South Front Street Columbus, Ohio 43215-3431	<i>Via fax:</i>  614-387-9759	<i>Via email:</i>  Trina.Bennington@sc.ohio.gov



## OHIO STATE BAR ASSOCIATION

### THOMAS J. MOYER AWARD FOR JUDICIAL EXCELLENCE

#### CALL FOR NOMINATIONS

The Ohio State Bar Association is now accepting nominations for the 2011 Thomas J. Moyer Award for Judicial Excellence. Established in 2010 in honor of the late Chief Justice , this prestigious award honors a current or former Ohio state or federal judge who demonstrates outstanding qualities of judicial excellence, including integrity, fairness, open-mindedness, knowledge of the law, professionalism, ethics, creativity, sound judgment, courage, and decisiveness. These qualities were exemplified by Chief Justice Thomas J. Moyer who posthumously received the inaugural award.

The ideal nominee will have had a distinguished life-long career committed to the advancement of the rule of law and the administration of justice. Evidence that the nominee is deserving of the Award may include:

- a description of the judicial career and specific accomplishments of the nominee;
- a description of significant contributions to the administration of justice and the rule of law;
- a listing of, or brief excerpts from, scholarly articles, lectures, speeches, or judicial opinions that illustrate extraordinary or remarkable contributions to justice;
- a description of the activities advancing or enhancing the collaborative and professional relationships between the bench and bar; and
- a description of other public activities—for example, civic leadership roles at the state or community level in which the nominee has demonstrated a commitment to the improvement or benefit of society.

Nominees may not be candidates for election or appointment to any elected public office at the time of their nomination or selection. To nominate a candidate, please submit the following:

- The Nomination Form (available at [www.ohiobar.org](http://www.ohiobar.org));
- A description of the accomplishments, contributions and/or initiatives of the nominee toward the advancement of the rule of law and administration of justice in Ohio; and
- Any supporting documents such as reports or articles evidencing the nominee's contributions to the advancement of the rule of law and the administration of justice.

**Nominations may be submitted by personal delivery, by regular mail, by fax, or by e-mail to:**

Moyer Award Nomination  
Ohio State Bar Association  
1700 Lake Shore Drive  
P. O. Box 16562  
Columbus, Ohio 43216-6562  
614/485-3182 (fax)  
[kyalamanchili@ohiobar.org](mailto:kyalamanchili@ohiobar.org)

**All material must be received no later than  
AUGUST 31, 2011**

For more information, contact:  
Kalpana Yalamanchili at  
[kyalamanchili@ohiobar.org](mailto:kyalamanchili@ohiobar.org) or  
800/282-6556

**OHIO STATE BAR ASSOCIATION**  
**THOMAS J. MOYER AWARD FOR JUDICIAL EXCELLENCE**  
**2011 NOMINATION FORM**

NAME OF NOMINEE \_\_\_\_\_

POSITION \_\_\_\_\_

COURT/FIRM/ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

TELEPHONE ( ) \_\_\_\_\_ E-MAIL \_\_\_\_\_

Reason(s) for Nomination: On a separate page, in a few concise typewritten paragraphs, describe the accomplishments, contributions and/or initiatives of the nominee toward the advancement of the rule of law and administration of justice in Ohio.

NAME OF NOMINATOR \_\_\_\_\_

TITLE/POSITION \_\_\_\_\_

COURT/FIRM/ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

TELEPHONE ( ) \_\_\_\_\_ E-MAIL \_\_\_\_\_

Supporting documents, such as reports or articles evidencing the nominee's contributions to the advancement of the rule of law and the administration of justice may be submitted in support of your nomination. These materials will not be returned. This form, the reasons for your nomination, and any supporting documents must be received **NO LATER THAN AUGUST 31, 2011.**

**Nominations may be submitted by personal delivery, by regular mail, by fax, or by e-mail to:**

Moyer Award Nomination  
Ohio State Bar Association  
1700 Lake Shore Drive  
P. O. Box 16562  
Columbus, Ohio 43216-6562  
614/485-3182 (fax)

kyalamanchili@ohiobar.org

## **OJC Citizens Guide Brochures**

### **How to Order**

The Judicial Conference has created a series of brochures to help judges inform the public about Ohio's judicial system. We have seven tri-fold brochures with general information about aspects of the judicial system and one 25-page guide to small claims court. The back panel of each brochure has space for a standard size mailing label with contact information for a local court or judge.

### **Tri-Fold Series**

The Citizens Guide tri-fold series consists of seven of the following brochures:

- Jury Service
- Grand Jury Service
- Legal Terminology
- Electing Judges
- Representing Yourself
- Ohio Courts
- Mediation

The brochures can be ordered in bulk at a low cost of 15 or 20 cents per copy, depending on the number ordered.

### **Small Claims Court Guide**

The Small Claims Court brochure is a new edition of a brochure that was previously published by the Ohio State Bar Foundation. It has been updated and redesigned.

This guide can be ordered for 58 cents per copy.

### **Ordering Information**

Individual brochures are available for download at [www.ohiojudges.org](http://www.ohiojudges.org) on the "Publications" webpage. You may also place your orders for large quantities of the Citizens Guide Brochures on this same page or retrieve a downloadable order form on this page that can be faxed.

You may also contact Trina Bennington at [Trina.Bennington@sc.ohio.gov](mailto:Trina.Bennington@sc.ohio.gov) or 614-387-9750 to obtain ordering information or for general questions regarding the brochures.

**SUPREME COURT OF OHIO**  
**JUDICIAL COLLEGE COURSE SCHEDULE**

(phone) 614.387.9445 (fax) 614.387.9449 (e-mail) Patti.Reid@sc.ohio.gov

*(for Judges, Magistrates, Acting Judges, Court Personnel, & Judicial Candidates)*

<u>DATE</u>	<u>COURSE</u>	<u>FOR</u>	<u>LOCATION</u>
<b>July 2011</b>			
20	<i>Wed</i>	Magistrate Practice: Foreclosure Issues in Common Pleas General Division Courts	Judges and Magistrates Sawmill Creek - Huron
20	<i>Wed</i>	Magistrate Practice: Juvenile Course	Magistrates Sawmill Creek - Huron
21	<i>Thu</i>	Magistrate Practice: Contempt and Civil Rules	Magistrates Sawmill Creek - Huron
21	<i>Thu</i>	Magistrate Practice: Law, Life & Literature (7:00 p.m. - 8:30 p.m.)	Magistrates Sawmill Creek - Huron
22	<i>Fri</i>	Magistrate Practice: Consumer Law Issues in Municipal & Common Pleas General Division Courts	Magistrates, Judges and Acting Judges Sawmill Creek - Huron
22	<i>Fri</i>	Magistrate Practice: Domestic Relations Course	Magistrates Sawmill Creek - Huron
22	<i>Fri</i>	Magistrate Practice: Probate Course	Magistrates Sawmill Creek - Huron
<b>August 2011</b>			
4	<i>Thu</i>	Continuity of Operations Planning (COOP) (Roundtable)	Court Personnel, Judges and Magistrates Ohio Judicial Center
5	<i>Fri</i>	Delinquency & Unruly Update	Judges and Magistrates Video Teleconference Columbus
18	<i>Thu</i>	Judicial Candidates Seminar (1:30 p.m. - 3:30 p.m.)	Judicial Candidates Ohio Judicial Center
19	<i>Fri</i>	Computer Lab: Electronic Legal Research	Judges and Magistrates Cleveland
<b>September 2011</b>			
2	<i>Fri</i>	Abuse, Neglect, Dependency Update	Judges and Magistrates Video Teleconference
7	<i>Wed</i>	Ohio Courts of Appeals Judges Association Fall Conference	Judges* Hilton Polaris - Columbus
8 - 9	<i>Thu - Fri</i>	Ohio Judicial Conference Annual Meeting	Judges* Embassy Suites Dublin
15	<i>Thu</i>	Acting Judge Course: Criminal Procedure (2 of 4)	Magistrates, Judges and Acting Judges Toledo
16	<i>Fri</i>	Traffic Law (1 of 2)	Judges and Magistrates Columbus
21 - 23	<i>Wed - Fri</i>	Ohio Association of Magistrates (OAM) Fall Conference	Magistrates Crowne Plaza North Columbus

*Continued on next page*

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<u>DATE</u>	<u>COURSE</u>	<u>FOR</u>	<u>LOCATION</u>
<b>October 2011</b>			
13 Thu	Acting Judge Course: Criminal Procedure (3 of 4)	Magistrates, Judges and Acting Judges	Columbus
13 Thu	New Americans Series	Court Personnel, Judges and Magistrates	Columbus
14 Fri	Juvenile Traffic	Judges and Magistrates	Video Teleconference
21 Fri	Evidence By the Numbers: Part V	Judges and Magistrates	Columbus
25 Tue	New Americans Series	Court Personnel, Judges and Magistrates	Columbus
28 Fri	Jurisdiction in Municipal and County Courts	Magistrates, Judges and Acting Judges	Video Teleconference
<b>November 2011</b>			
4 Fri	Selected Civil and Criminal Rules in Common Pleas General Division Courts	Magistrates and Judges	Columbus
10 Thu	Acting Judge Course: Criminal Procedure (4 of 4)	Magistrates, Judges and Acting Judges	Holiday Inn Strongsville - Cleveland
15 Tue	Probate Seminar	Magistrates and Judges	Video Teleconference
17 Thu	Traffic Law (2 of 2)	Judges and Magistrates	Cleveland
18 Fri	Continuity of Operations Planning (COOP) (Roundtable)	Court Personnel, Judges and Magistrates	Ohio Judicial Center -
18 Fri	Judicial Ethics & Access to Justice and Fairness in the Courts (10:00 a.m. - 3:30 p.m.)	Judges	Cleveland
<b>December 2011</b>			
1 Thu	Ohio Association of Juvenile Court Judges (OAJCJ) Winter Conference <b>DAY 1</b>	Judges and Magistrates*	Embassy Suites Dublin
2 Fri	Ohio Association of Juvenile Court Judges (OAJCJ) Winter Conference <b>DAY 2</b>	Judges*	Embassy Suites Dublin
2 Fri	Magistrate Ethics, Professionalism & Substance Abuse	Magistrates	Video Teleconference
6 Tue	Ohio Association of Domestic Relations Judges Winter Conference	Judges*	Embassy Suites Dublin
7 Wed	Judicial Candidates Seminar (3:45 p.m. - 5:45 p.m.)	Judicial Candidates	Embassy Suites Dublin
7 - 9 Wed - Fri	Ohio Common Pleas Judges Association Winter Conference	Judges*	Embassy Suites Dublin
12 - 16 Mon - Fri	New Judges Orientation, Part I	New Judges	Columbus
16 Fri	Judicial Ethics for Judges	Judges	Video Teleconference

**OJC IN ACTION**  
**COMMITTEE NEWS**

*WE SERVE OHIO'S JUDGES, AND WE SERVE BEST WHEN OHIO'S JUDGES ARE INVOLVED*

For information about the OJC standing committees click on the name of the committee and it will take you to the committee page on the OJC website. If you would like to be involved please call or email us; our phone numbers and email addresses are shown below.

<a href="#"><u>Alternative Dispute Resolution</u></a>	<a href="#"><u>Domestic Relations Law &amp; Procedure</u></a>	<a href="#"><u>Legislative Magistrates</u></a>
<a href="#"><u>Civil Law &amp; Procedure</u></a>	<a href="#"><u>Judicial Compensation &amp; Benefits</u></a>	<a href="#"><u>Probate Law &amp; Procedure</u></a>
<a href="#"><u>Community Corrections</u></a>	<a href="#"><u>Judicial Education</u></a>	<a href="#"><u>Public Confidence &amp; Community Outreach</u></a>
<a href="#"><u>Court Administration</u></a>	<a href="#"><u>Judicial Ethics &amp; Professionalism</u></a>	<a href="#"><u>Publications</u></a>
<a href="#"><u>Court Technology</u></a>	<a href="#"><u>Ohio Jury Instructions</u></a>	<a href="#"><u>Retired Judges</u></a>
<a href="#"><u>Criminal Law &amp; Procedure</u></a>	<a href="#"><u>Jury Service</u></a>	<a href="#"><u>Specialized Dockets</u></a>
	<a href="#"><u>Juvenile Law &amp; Procedure</u></a>	

**OHIO JUDICIAL CONFERENCE STAFF**

<b><i>Executive Director</i></b> Hon. Mark R. Schweikert, <i>Retired</i> <a href="mailto:Mark.Schweikert@sc.ohio.gov">Mark.Schweikert@sc.ohio.gov</a> 614-387-9750	<b><i>Legislative Secretary</i></b> Alyssa Guthrie <a href="mailto:Alyssa.Guthrie@sc.ohio.gov">Alyssa.Guthrie@sc.ohio.gov</a> 614-387-9756
<b><i>Legislative Activities Coordinator</i></b> Donna Childers, Ph.D. <a href="mailto:Donna.Childers@sc.ohio.gov">Donna.Childers@sc.ohio.gov</a> 614-387-9763	<b><i>Legislative Liaison</i></b> Christina Madriguera, Esq. <a href="mailto:Christina.Madriguera@sc.ohio.gov">Christina.Madriguera@sc.ohio.gov</a> 614-387-9764
<b><i>Judicial Services Coordinator</i></b> Kristin Schultz, Esq. <a href="mailto:Kristin.Schultz@sc.ohio.gov">Kristin.Schultz@sc.ohio.gov</a> 614-387-9767	<b><i>Program Specialist</i></b> Jennie Long <a href="mailto:Jennie.Long@sc.ohio.gov">Jennie.Long@sc.ohio.gov</a> 614-387-9766
<b><i>Project Specialist</i></b> Vacant 614-387-9753	<b><i>Legislative Liaison</i></b> Louis Tobin, Esq. <a href="mailto:Louis.Tobin@sc.ohio.gov">Louis.Tobin@sc.ohio.gov</a> 614-387-9765
<b><i>Administrative Assistant</i></b> Trina Bennington <a href="mailto:Trina.Bennington@sc.ohio.gov">Trina.Bennington@sc.ohio.gov</a> 614-387-9761	<b><i>Fiscal Specialist / Office Manager</i></b> Jayma Umbstaetter <a href="mailto:Jayma.Umbstaetter@sc.ohio.gov">Jayma.Umbstaetter@sc.ohio.gov</a> 614-387-9757