

The Bouncy House



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Chair | CMBA Young Lawyers Section

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I can now check “throwing a one-year-old’s birthday party” off my bucket list. I had thrown adult-type parties in the past, and the preparation was limited to tapping a keg and putting out a bowl of pretzels. But preparing for a party of little people was something else entirely.

Every time I told a veteran parent about my plan for the party, I always got the same look of “are you crazy or just plain stupid?” and advice to call the whole thing off. I was overwhelmed by uncertainty. Will the walls be graffitied with kiddy art and the floors be covered in Kool-Aid? How many crayons will we need? What color Play-Doh should we get? What is Captain Bouncy’s number? Where do we put the Rice Krispies treats? What am I thinking?

I had already begun creating the perfect storm by inviting an inordinate number of lawyers to this gig. And a description of our yard that day would read like a 1L torts exam – there were opportunities to sue everywhere you looked. The centerpiece was the huge inflated Bouncy House. Directly adjacent was a pair of cornhole games, each with eight weighted projectiles to hurl through the air. Just past the cornhole boards was a baby pool filled with two feet of water – just deep enough for a toddler to get into trouble.

What are the rules for an attractive nuisance, again? Were these people invitees or licensees? What duty of care did I owe to each little kid sprinting around my lawn?

To create some level of protection from the possibility of losing the house, the car, and (likely) the wife, I had Captain Bouncy place a sandwich board listing the rules of engagement at the entrance to the Bouncy House, or what I came to refer to as “the rubber room of tortious damages.” Looking at this long list of rules, warnings, and potential injuries gave me pause. My first thought was fairly predictable: “I’m screwed.” But my

second thought was a bit more surprising: the rules of the Bouncy House are not unlike the rules that govern the practice of law.

Stay with me here. In this world, the lawyers are the children and the Bouncy House is our practice. In this world, Captain Bouncy is the sage practitioner Counselor Bouncy, Esq., metaphorically teaching us lessons learned over his many years in the law. Here are just a few of his coded insights:

The Rule: “Children must be supervised at all times! DO NOT leave children unattended!”

The Lesson: If you offload an assignment to a well-meaning clerk or a new associate, be sure to check and double-check their efforts. If you are the well-meaning summer clerk or a new associate, remind the assigning attorney that checking your work is a good idea.

The Rule: “Ensure that all children using the Bouncy House understand and follow these rules.”

The Lesson: Always conduct your practice with integrity. The rules we must follow as practitioners are set forth in the Ohio Rules of Professional Conduct. These rules are essentially the codification of common sense and good judgment. If you’re ever unsure whether you are following the “rules” of practicing law, consult a senior attorney before you proceed. This is one example where asking permission is, in fact, better than begging for forgiveness. You don’t want to be the guy or girl in the back of the OSBA Journal that everyone reads about.

The Rule: “The recommended number of children allowed in the standard 15 x 15 Bouncy House is:

- o Ages 2 to 8 8 to 10 children
- o Ages 9 to 126 children

- o Ages 13 to 164 to 5 children”

The Lesson: Be careful as to how many assignments you accept from others. Easy (2-8 year old) assignments can be accepted in greater abundance than the complex (13-16 year old) assignments, which will occupy much more time than originally anticipated.

The Rule: “Bouncy Houses are designed for children, not adults. No adults ‘playing’ in the Bouncy House please!”

The Lesson: Don’t hold yourself out as an expert in areas in which you are not. “Playing” in admiralty law as an antitrust lawyer could lead to disastrous consequences. Although it might sound like a good time, you’re not doing yourself or your client any favors. Leave practice areas outside your expertise to folks in your network that can best handle them for your client.

The Rule: “NO Silly String in, around, or near the Bouncy House (silly string has a chemical in it that will ‘eat’ through the vinyl)!!!!!!!”

The Lesson: If you have a colleague that you view as a better drinking buddy than competent attorney, you might want to keep him from being in, around or near the work that you produce.

The Rule: “No sitting or lying inside the Bouncy House.”

The Lesson: Resting too long in your practice can cause you to get hurt by not reaching your billable hours, looking bad in comparison to your peers, or both.

The Rule: “Do not unplug the Bouncy House while occupants / riders are inside.”

The Lesson: If you have someone helping you in any professional area – be it work, philanthropy, pro-bono – let the people with energy and drive do their thing. The best thing to do is focus their efforts and try to stay out of the way. No need to “deflate” their intensity when they can be a great asset to get things done.

The Rule: “Do not attempt to move or un-stake the Bouncy House.”

The Lesson: Strongly consider your options before moving from your current job. Developing a reputation as a “firm jumper” might be detrimental to your employment prospects. Firms will tend to be reluctant to invest in someone they expect to leave

after only a year or two.

The Rule: “Do Not Use the Bouncy House under the following conditions:

- o High Winds, Rain or Thunder Storms.
- o Bouncy House is punctured.
- o In the event of foul weather, make sure all children exit the Bouncy House safely, then deflate the Bouncy House by unplugging. Cover the blower to protect from rain. Turn off all sprinklers!”

The Lesson: If you are representing a client and begin to experience the blustery high winds of a difficult personality or if the relationship with your client is irreparably punctured, you might consider withdrawing from representation. In this case, the earlier the better to avoid a material adverse effect on the client. Remember, it’s not any adverse effect, only a material adverse effect. If you think there may be material effect, turn to Rule 1.16(b) of the Ohio Rules of Professional Conduct to determine if your reason for withdrawal is enough to overcome the material prejudice to the client. Knowing your rights when you seek to withdraw can help you exit the relationship safely.

The Rule: “If the Bouncy House starts to deflate:

- o Make sure all children exit the Bouncy House quickly and safely.
- o Check all power connections to make sure nothing has unplugged.
- o Check circuit breakers and fuses in house.
- o Check blower to make sure it’s not wet.
- o Make sure the air tube on the balloon is tied securely to the blower.”

The Lesson: If your case starts to turn against you, it’s a good idea to go into a prevent mode to mitigate the damage to your client. Verify that you have looked at every possible aspect of the facts surrounding the case to ensure there isn’t a legal theory or appropriate defense that can be employed to turn the case back in your favor. Consult with more seasoned colleagues to leverage their many years in practice for a recommendation as to overcoming the obstacles presented. They may have experienced an identical set of facts that they navigated to the benefit of their client.

Following a few of Captain Bouncy’s tips should make the complex and demanding world of law a little easier to navigate. In case you were wondering, everyone made it out of our party in one piece. And I haven’t been served with a Summons and Complaint from anyone....yet.

YLS Events

Social – Join the YLS on October 7th from 5:30-8 p.m. at the Velvet Tango Room to enjoy the city’s gold standard in cocktail preparation. YLS members will indulge on tasting flights of their world renowned libations accompanied by light appetizers in the Private Room. Email Events Chair, Kim Textoris (ktextoris@faysharpe.com) to RSVP.

Pro Bono – The YLS Brief Advice Clinic will be held on Saturday, November 6th from 9:45-12 p.m. at the West Side Catholic Center to provide legal assistance to those in need. No training is necessary. Contact Pro Bono Chair, Lauren Gilbride (lauren.gilbride@lasclev.org) to participate.

CLE – The YLS will host a “New Lawyer Training – Practice Management” 3.5 hour CLE at the CMBA offices on November 16th. This is a great course to learn the fundamentals of managing your work load and client funds and to earn your professionalism and substance abuse credits in one afternoon. Contact CLE Chair, Julie DiBaggio (jdibaggio@weltman.com) for details.

Books for Kids – Something you probably took for granted as a child—the availability of library books—is not a reality for all Cleveland elementary students. This year, the YLS is sponsoring *Season’s Readings, Open a New Chapter for Cleveland Public Schools* to put books on the bare shelves of seven Cleveland elementary schools. The event will take place at The Club at Key Center at 5:30 on December 9th with all money raised going directly to the purchase of library books. Please contact Aubrie Knight-Wancata (aknightwancata@hahnlaw.com) to participate as a sponsor and/or to donate an item for our silent auction.

YLS Club Series – Based on the success of our first event at The Club at Key Center, the Club Series will continue to introduce you to new local clubs to help you expand your professional network. We are pleased to announce our next event will be at The Union Club in January/February 2011. We also look forward to scheduling an event at The Cleveland Yachting Club (CYC) in late May.