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The Center for Principled Family Advocacy (CPFA)

www.famad.com

Since 1999, The Center for Principled Family Advocacy (CPFA) has been the leader in Cleveland, and all of Ohio, in the move away from litigation toward resolution processes that benefit families in transition. The CPFA is committed to educating the public and divorcing couples about the advantages of a “non-litigated” divorce. CPFA members (attorneys as well as financial and mental health professionals) are trained practitioners in alternative dispute resolution options including: mediation; collaborative divorce; cooperative divorce; arbitration; parent coordination; and, when necessary, litigation. To learn more, visit the CPFA website www.famad.com and contact one of our members listed below.

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You are reading a page from the Cleveland Metropolitan Bar Journal. The journal is committed to educating the public and divorcing couples about the advantages of a “non-litigated” divorce. The Center for Principled Family Advocacy (CPFA) is the leader in Cleveland and all of Ohio, in the move away from litigation toward resolution processes that benefit families in transition. CPFA members, including attorneys and financial and mental health professionals, are trained practitioners in alternative dispute resolution options such as mediation, collaborative divorce, cooperative divorce, arbitration, parent coordination, and litigation as necessary.

If you don’t practice family law, you may want to refer your clients facing divorce to CPFA. To learn more about CPFA, visit their website at www.famad.com and contact one of their members.

The Center for Principled Family Advocacy (CPFA)

www.famad.com
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Cleveland Academy of Collaborative Professionals

We are a network of attorneys, mental health and financial professionals who assist families facing the end of their marriage with a more healthy, holistic and future-focused process option.

CollaborativePracticeCleveland.com
WHO’S AFRAID OF THE BIG BAD PRO?

On May 24, the Volunteer Lawyers for the Arts of the CMBA hosted a free public presentation on how to hold live music events and stay on the performing rights organizations’ good side. A lively and interested crowd of musicians, local venue owners, and attorneys gathered at the Happy Dog West for some tater tots and animated discussion about the state of live music in Cleveland. Thank you to VLA Vice Chair Steve Day for moderating, and especially to our knowledgeable speakers Mark Avsec of Benesch, Friedlander, Coplan & Aronoff LLP; Kathy Blackman, owner of the Grog Shop; and Douglas Wood, who wears many hats as a composer, musician, artist manager, and booking agent. For more about the upcoming events and how you can get involved, visit CleMetroBar.org/VLA.

YLS BASKETBALL LEAGUE

Bill Mason, partner-in-charge of Bricker & Eckler’s Cleveland office, pulled together several colleagues and select area prosecutors to play 10 weeks of basketball in the Young Lawyer Section’s League, outlasting nine other teams to bring home the championship. The Bricker team defeated Brennan, Manna & Diamond in the championship game.

Max Martin, Marty Mason, Chris Bondra, Chris Furey, Bill Mason (front); Mo Awadallah, Tyler Sinclair, Kevin Bringman, Carl Sullivan, Eric Foster (back)
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ON BECOMING PRESIDENT...
Remarks of Darrell Clay at the 10th Annual Meeting of CMBA

Darrell A. Clay

Conventional wisdom says to consider starting a speech with a joke to lighten things with the audience. That's never worked for me. Instead, I had planned to celebrate the Cavs' throttling of the Warriors. After last night's miserable performance, that became a terrible idea. But then I recalled seeing a license plate that summed up how I felt about the Cavs' performance: LLWLWWW.

Ladies and gentlemen, thank you for being here today. The funny thing is, by most measures, I shouldn't be here, standing on this stage right now, a little nervous, with my knees knocking. I'll explain why shortly.

But first, know that I am deeply honored to have this opportunity to serve you and our bar association. That's why I'm going to tell you how the bar association is working to make us all better lawyers, how you can get involved, and how together we can make our own history...

How together we can make bar history.

If you who haven't visited the bar association's offices, I'd invite you to come, meet me at the bar. While there, you might notice these large composite photographs depicting past presidents of the Cleveland Metro Bar and its predecessors, the Cleveland Bar Association and the Cuyahoga County Bar Association. Since the Cleveland bar first organized in 1873, these associations have been led by titans not just of Cleveland, but of national and international status. Names like...

- Sherlock Andrews, who served for 7 years as the first president of the Cleveland Bar Association, and also as President of Cleveland City Council, a member of Congress, and United States Attorney for the Northern District;
- Franklin Polk, who served as president of the Cleveland bar in 1925 and one of the founders of Baker & Hostetler, who also served as Mayor of Cleveland, Secretary of War during World War I, and helped create home rule in the State of Ohio; and
- Frederick Harris Goff, Cleveland bar president in 1908, and one of John D. Rockefeller's lawyers, who is credited with creating the concept of a community trust or foundation, no better example of which is our own Cleveland Foundation.

For many years, I never imagined I'd become president of the Cleveland bar. After all, I wasn't born in Cleveland. I didn't grow up here. I didn't go to college or law school, or where I practiced law. Instead, I chose to come to Cleveland. It was an admittedly unusual choice for someone who was born in Rhode Island, who was raised and educated in Florida, and who attended law school, passed the bar, and began practicing law in Louisiana. I heard more than a few snickers when I told friends that I was moving to Cleveland, a place where I knew less than five people.

But after twenty years here — all of them spent working with the extraordinary lawyers and staff at Walter Haverfield, who have supported me unconditionally as I deepened my involvement at the bar association — Cleveland is truly my home, and I'm blessed to count so many of you as my friends. Things sure have changed in a mere 7355 days — but who's counting?

So it was, a few years ago, I decided that — even though I joined the bar association as soon as I arrived in April 1997 and had occasionally volunteered — it was time to step up, double down my involvement, and give back to the profession and the city that I so dearly love. What I found was that if I was willing to raise my hand, to volunteer, to get involved, to tackle the challenges presented to me, this bar association, our bar association, would be welcoming, with open arms. It didn't matter where I was born, where I grew up, where I went to college or law school, or where I practiced law.

Along the way, I got the chance to do some amazing things, both serious and fun, like:
Argue a case before the Ohio Supreme Court;
Sing on the stage at the House of Blues;
Speak at the City Club; and
Hang out on the floor of the Q!

So I’m confident in saying that getting involved in your bar association makes you a better lawyer, a better leader, and a better person. In fact, I stand before you today as living evidence of the truth of that proposition.

For more than 80 years, Cuyahoga County was unique in that it was served by two county-wide bar associations, the Cleveland and Cuyahoga County Bar Associations. Thankfully, today, we mark a decade of unification that was long, but not easy, in coming.

Earlier this afternoon you heard from some of the people who gave rise to our unified bar association. It was through their sheer force of will and their prophetic vision that a combined bar association would be greater than the sum of its parts, that today the Cleveland Metro Bar is considered the benchmark for all other bar associations in the State of Ohio. Right now, I’d like to recognize those who were at the helm of unification, including the late Steve Gardner, who served alongside Kerin Kaminski as the Cleveland Metro Bar’s first co-presidents. Please join me in a round of applause and appreciation for those who helped make bar history.

As we mark this historic accomplishment, it’s fitting that we should meet in this hallowed hall, one resplendent with its own extraordinary past. Public Auditorium is, of course, more than just the occasional home to the Rock ‘N Roll Hall of Fame induction ceremony. On this very stage, two Americans have been nominated to run for President of the United States, Calvin Coolidge and Alfred Landon.

Coolidge won the 1924 election, and went on to have a mostly forgettable presidency. Landon didn’t even attend the 1936 convention, going on to lose badly to FDR.

Today, we don’t have to tackle a challenge nearly as daunting as picking a candidate for President of the United States. That said, having picked this place for our assembly, I hope it proves a better jumping off point for my term of office!

As the Cleveland Metro Bar approached its tenth year, we faced fundamental choices about its future. In 2015, we decided not to let inertia decide our fate. Rather, we decided we should proactively chart a path forward, one that took stock of where we were and what we had accomplished, but was honest enough to know that we could and should do more for you, our members. In other words, we decided that we would make the bar’s history.

Developed over the course of a year of study and debate, and unanimously adopted by the board of trustees in May 2016, our strategic plan has been in place as our polestar for over a year. Although Rick briefly mentioned it earlier, I thought it appropriate to reiterate the plan’s four key tenets because they will continue influencing our decision-making over the coming years:

• First, we have committed that we will strengthen and grow our membership by enhancing the value proposition and member engagement.
• Second, we will focus on our sections, committees, and essential bar functions with the goal of making our association an indispensable resource for you, our members.
• Third, we will nurture and develop our own leaders, and engage in constant evaluation about how we are governing ourselves.
• Fourth, we will strive to become the “go to” organization for issues affecting law and justice.

Now, that might sound like a lot of fancy business school rhetoric. I assure you, it isn’t. Instead, these precepts rise to the forefront as the board, officers, and the CMBA’s remarkable staff consider things like programming, resource allotment, service to the community, and more. Consider just a few of the things that your bar association has created over the last year:

• The Cleveland Legal Inclusion 2020 Collective Action Plan, under which more than 20 local law firms, businesses, and government agencies united to tackle the continuing challenge of increasing diversity in our profession.
• Continued reinvigoration of the 3Rs and 3Rs Plus programs. Pioneered under the leadership of former bar president Hugh McKay, there’s just no question they have made a profound difference in the education of thousands of Cleveland and East Cleveland high school students, and made their own mark on bar history. If you’re looking to dip your toes into the CMBA’s
waters, please consider volunteering for the 3R's program this fall. You won't regret it!

- Our monthly Hot Talks, where we bring together knowledgeable persons to help us perform a deep dive on law and justice issues that are, to borrow a phrase, “ripped from the headlines.” Already, we have probed the concept of sanctuary cities, discussed presidential war powers, and debated the nation’s budgetary priorities. If you haven’t yet been to a Hot Talk, you owe it to yourself to change that soon.

- The first CMBA Leadership Academy, convening this fall. The academy was crafted to help both emerging and established leaders develop and refine the skills they need to advance their careers, their personal civic engagement, and — hopefully — their future leadership of CMBA! I’m pleased to report that when the application deadline closed at 5:00 p.m. yesterday, we had received nearly 40 applications for the available spots. We can't wait to get this program started in September!

- The creation of a Social Security and Disability Section, one of the few in Ohio, where our members who are dedicated to helping some of the most needy in society, can convene to share best practices. Kudos to Andrew November of Liner Legal, who identified this gap in our offerings, gathered support, and breathed life into it.

- In cooperation with Colleen Cotter and her great team at the Legal Aid Society of Cleveland, we piloted The Legal Clinics at Cleveland Metropolitan School District, where volunteers provide advice to students and their parents on bankruptcy, custody, child support, evictions, foreclosures, and more.

Because we’re not content to rest on our laurels, we have more fantastic programming coming in 2017–2018:

- This fall, we will hold our first Wellness Summit a/k/a “De-stress Fest,” which will unite lawyers and mental health practitioners in implementing practical steps to combat the stress inherent in our profession. Thanks to our Mental Health and Wellness Committee for innovating this cutting-edge program.

- In honor of the 50th anniversary of passage of the Civil Rights Act of 1968 and the 150th anniversary of enactment of the 14th Amendment, we will convene a summit next April to revisit these landmark accomplishments in the field of civil rights. Today’s William K. Thomas Professionalism Award winner, Avery Friedman, who made innumerable personal sacrifices to make real the moral imperative of equal rights under the law for all, has graciously accepted my invitation to develop this program. I’m sure we will all benefit from his efforts.

- While I can’t quite take the wraps off yet, capitalizing on the first-ever destination CLE we held in January 2017, we are finalizing plans for a spring 2018 event that we think will be a ... grand slam.

Although this isn’t all we have planned for the coming year, I hope it evidences that the strategic plan has us on the road to success. I also hope it shows we are not your typical bar association.

Speaking of making bar history — we’re actually doing that right here, this very second. We’ve been broadcasting this entire talk on Facebook Live. What better way to demonstrate that we’ve fully embraced the power of technology, in particular how it can help deliver what you want, when you need it, and how you need it. Please — make sure that you’ve liked us on Facebook, follow us on Twitter, and monitor our Instagram feed.

In fact, go ahead and take your smart phone out. I know many of you have been dying to check it. Sign on to Twitter, and follow both @CleMetroBar and @DClayCMBA. Go ahead, you know you want to. And while you’re doing that, I’m going to snap a selfie that I’ll tweet out to all my new followers ...
feedback from you. On the screen, you’ll see a set of numbers. Use your phone to visit www. menti.com, input that code, and then answer this question: “Name something you would like CMBA to offer during the next 12 months.”

Thank you for those great suggestions. If you’re especially passionate about seeing one of those become a reality, if you see it as your way to contribute to your profession or your community, then I want you to call me, e-mail me, tweet me, message me, just get ahold of me — and let’s talk about making bar history together.

Friends, our time together this afternoon is rapidly drawing to a close. I’d be remiss if I didn’t offer some thanks. First, I thank each of you for being here. I am in awe that you think enough of our association and the work it does to set aside important client needs and other matters, and to convene here for our Annual Meeting.

Second, to our Executive Director, Becky McMahon and the incredible staff of the CMBA: None of this would be possible without your extraordinary efforts. You provide the incomparable talent and unrelenting energy necessary for the lawyers of Cuyahoga County to succeed and make a difference in this community. Without each of you, we couldn’t make bar history.

Third, I must pay tribute to the past association presidents I’ve had the privilege of serving with: Mike Ungar, Barbara Roman, Carter Strang, Jon Leiken, Bruce Hearey, Anne Ford, and Rick Manoloff. I learned something from each of you as you took a turn at the helm of this great organization. Thank you for inspiring, encouraging, and challenging me.

Finally, to my wonderful family: I would be nothing without your love and support. My wife Mary is my bedrock. She astounds me with her undying encouragement. Every day her smile delights and makes my heart flutter just like it did the first time I met her. There’s no doubt: I wouldn’t be standing here if it wasn’t for you.

To my son Will, a rising junior at the University of Mount Union: You are the concrete proof that, if I do nothing else in this lifetime, through you I’ve already left an indelible mark on the world. If you continue making the right choices in life, working hard, and savoring the opportunities that come your way, then nothing is too great for you to achieve.

To my stepsons Matthew and Mark, their wives Natalie and Diana, and our wonderful grandchildren, Marky, Olivia, Colin, and Chase: Thank you for the laughter, silliness, and adventures you bring to our family. I never know what’s going to happen when we get together ... and I wouldn’t trade that for anything.

To my father Bill, who made a road trip from Connecticut to be here with his only child: Whether you know it or not, you have been a beacon to me my whole life. Physically, we may live 500 miles apart, but I feel your presence next to me every day. I’m so glad that you could be here along with “your” Mary. Lastly, to my mother Clementine, who untimely passed from this world 14 years ago: You raised me with an insatiable desire to do better and to serve my community. I think of you every waking day and wish you were here to celebrate with us. Thanks for looking out for me from Heaven.

In New Orleans, where I cut my legal teeth as a law student, judicial clerk, and newbie associate more than two decades ago, they have a saying: Laissez les bon temps rouler, which roughly translates as “let the good times roll.” Fellow CMBA members, let’s let the good times roll for our association over the next 12 months. We have what you want. All you need to do is come, meet me at the bar. I promise you that if you engage with the CMBA, you can and will be a better lawyer, a better leader, and a better person. Together, let’s make bar history!!!

Godspeed to you all. Have a wonderful afternoon. Laissez les bon temps rouler!!!

Darrell A. Clay is the tenth President of the CMBA. He is a litigation partner at Walter Haverfield LLP, with a practice focusing on complex civil litigation, white collar criminal defense, and aviation matters. He has been a CMBA member since arriving in Cleveland in April 1997. E-mail your CMBA-related questions or concerns to him at dclay@walterhav.com.
Megan Sigler
Company: CMBA
Title: CLE & Marketing Coordinator
College: Bowling Green State University

IF YOU WERE NOT IN YOUR CURRENT PROFESSION, WHAT WOULD YOU BE?
I am really passionate about human rights and advocacy work, so I would love to be able to do PR/Journalism work for a congressman or foundation in Washington D.C.

A RECENT MILESTONE FOR YOU?
I just recently graduated from Bowling Green State University at the beginning of May with a major in Communications and two minors in Business and Journalism. I started my first big girl job here at the CMBA two days after.

CAN YOU PLAY AN INSTRUMENT?
Yes! I have been playing piano since grade school and was on the drum line for 7 years in middle and high school. I grew up with my dad playing guitar every day, so my passion for music came from him!

TELL US ABOUT YOUR FAMILY.
My family is the best part of my life! My older sister recently moved to California and just gave birth to her second child. I'm 100% positive I show pictures of my niece and nephew to pretty much everyone I meet! My parents are my best friends, but I look forward to moving out of their house in the fall and getting an apartment in CLE.

WHAT DO YOU DO FOR FUN?
Other than eating good food and drinking good wine, I love to read, hike, explore new places and spend time with my friends and family.

Su He
Firm/Company: Robert Brown LLC
Title: Attorney
College: China Southwest University of Political Science & Law
Law School: Case Western Reserve University School of Law

A RECENT MILESTONE FOR YOU OR YOUR FAMILY?
Having my second son, George. He is now five months and very plump.

FAVORITE CLEVELAND HOT SPOT
Cleveland Museum of Art, because I was raised in an artist family, my father is a traditional Chinese Calligraphy artist and I am the only lawyer in the whole family of “He.” Another one is the Cleveland Botanical Garden — Japanese Garden, where my husband and I got married (we met in Cleveland, got married in Cleveland, and are having kids in Cleveland). If Case law school can be the one, it is the third one — actually the top one. I spend 4 years in there (master of law and J.D.) since I came to the United States on 2008. I killed lots of time in that building, and love each faculty member in there who supports me like a family member.

TELL US WHY YOU LOVE CLE.
My second hometown beside of Beijing. People are so nice here and there are lots of fun in many world-wide famous facilities.

WHY DID YOU JOIN THE CMBA?
I joined the CMBA when I was in law school and rejoined after got bar admission in OH. It is a very influential association for lawyers in Cleveland and provides very diversified events/programs to members.

HOW DID YOU MEET YOUR SPOUSE?
We met each other when I was 2L in Case law school and he was a PhD at Cleveland clinic. The first time we met was playing basketball together as a team. (I was still a good three-point shooter at that time, but... not now. And yes, I am a girl).

Erin Brown
Firm/Company: Robert Brown LLC
Title: Partner
College: Ohio University
Law School: Cleveland Marshall College of Law

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
I would be an interior designer. I went to school for interior design a while back but never really had the chance to use my education professionally.

DESCRIBE AN IDEAL SUNDAY.
Lazy. I like to sleep in, cook breakfast, go to yoga and spend the afternoon reading.

WHAT NEIGHBORHOOD DO YOU LIVE, AND WHAT DO YOU LIKE ABOUT IT?
I live in the Flats. I love being close to work and it is a really fun time to be living downtown.

WHO HAS INFLUENCED YOU THE MOST IN LIFE?
My father. Not only did he help raise me, but now I have the chance to work with him professionally. He is a great role model and mentor both personally and in the practice of law.

WHAT'S THE BEST PART ABOUT BEING A LAWYER?
The ability to be creative and think critically to find a solution to a problem.

Megan Sigler
Company: CMBA
Title: CLE & Marketing Coordinator
College: Bowling Green State University

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WHAT DO YOU DO FOR FUN?
Other than eating good food and drinking good wine, I love to read, hike, explore new places and spend time with my friends and family.
Thank you to all the 2016–17 committee and section chairs for a great year!

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10th Annual Meeting

The President’s Award
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Justice for All Volunteer of the Year Award
Rebecca J. Bennett & Charles E. Jarrett (not pictured)
ADR Section

Chair
Mark I. Wachter, Wachter Kurant, LLC, mwachter@lawkkwt.com

Regular Meeting
Second Tuesday of the month, noon at the CMBA offices

What is your goal?
The ADR Section provides an opportunity for ADR neutrals to improve their skills and knowledge base through presentations and discussions at our monthly meetings. We join with other Sections and ADR organizations outside of the CMBA to present seminars on advocacy skills in ADR settings, mediation techniques, and suggestions for those who utilize ADR services.

What can members expect?
Most monthly meetings include a CLE approved program regarding recent developments in the field or discussion of a particular issue facing ADR neutrals. Outside speakers are invited, and often present by videoconference. Members are also encouraged to assist with the organization and presentation of local seminars.

Upcoming Events
On September 27, 2017 we are teaming up with the Diversity Committee of the CMBA to present a half-day seminar. The seminar is being cosponsored by the American Arbitration Association as well as the Ohio Hispanic Bar, the Norman S. Minor Bar Association and the Asian American Bar Association.

Also, on November 9, 2017, we are planning a joint seminar with Mediation Association of Northern Ohio, the Center for Principled Family Advocacy and the Family Law Section of the CMBA, featuring Dr. Miki Kashtan. Dr. Kashtan is an internationally recognized mediator who will be providing intensive training in Convergent Facilitation — a unique decision-making process which she developed based on principles of nonviolent communication.

Family Law Section

Co-Chairs
Deanna L. DiPetta, Zashin & Rich Co. LPA, ddlz@zrlaw.com
Joseph Lanter, Lanter Legal, LLC, joe@lanterlegal.com

Regular Meeting
3rd Thursday of the month at the CMBA

What is your goal?
A goal of ours would be to help bridge the gap between the more experienced members of the Family Law Bar with those that are newer to the practice area. Also, we aim to provide the section with timely topics that affect all of our practices — big or small. It is also important to us to provide a community or camaraderie within our bar.

Upcoming events/activity you wish to highlight?
We always are anxious to highlight the court’s view from the bench. An idea we had was to approach the court about fostering professionalism and collegiality within our bar.

Recent Event
One of our favorite events is the end of the year party which in 2016 we helped to plan. Also, the case law update is absolutely fabulous.

Recent Event
The annual Greet the Judges and GCs member-only event in May provided an excellent opportunity to connect with members of the bar and the bench. We also recognized the newly admitted Ohio attorneys and are glad to welcome them into this great legal community.

Membership Committee

Chair
Ryan P Nowlin, CMBA Vice President of Membership
Schneider Smeltz Spieth Bell LLP
mnowlin@sssb-law.com

Regular Meeting
Fourth Tuesday of the month at noon at the CMBA offices. Participants may also join by phone.

What can members expect?
We are working on and developing a number of initiatives related to the CMBA’s Strategic Plan to serve current members and attract new members. You can be a part of shaping the CMBA’s future.

Upcoming Events
It’s renewal time. July kicked off our new membership year and we want you to stay plugged in and capitalize on the many programs and benefits the CMBA will have for 2017–18.

For information on how to join a section or committee, contact Samantha Pringle, Director of CLE & Sections, at (216) 696-3525 x 2008 or springle@clemetrobar.org
In One Hour
You Can

- Watch your favorite TV Drama
- Grab lunch from a food truck

OR

Change a Life
Lessons are held monthly during the school year, each lasting about an hour.

Choose To Make a Difference

Sign up for The 3Rs in 2017–18!

The 3Rs just completed its record-breaking 11th year in service to our local schools, and we need YOU as we head into Year 12!

This award-winning program matches volunteers from all areas of the legal profession with 11th grade students of the Cleveland and East Cleveland schools to teach a prepared curriculum on the U.S. Constitution and the Rule of Law. Volunteers also help prepare students for life beyond high school and encourage them to pursue their dreams, while giving them the practical tools for achievement.

The CMBA thanks the more than 2,000 members of the legal community who have volunteered for The 3Rs over the years since its debut in 2006, representing more than 91,000 volunteer hours and connecting with more than 30,000 students. To returning volunteers and new recruits — thank you sincerely for committing to make a positive impact on our schools and our city!

“Working with the students was incredible — they were definitely the best part of The 3Rs.”
– 3Rs Volunteer

“The 3Rs helped me decide what I would like to do and learn my rights.”
– New Tech West 3Rs student

Count on Me for the 2017–18 School Year!

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Please return this sheet by email to jpaine@clemetrobar.org or by fax to (216) 696-2414, attn: Jessica Paine. For more information, contact Jessica by email or at (216) 696-3525 x4462.

Sign Up Online! CleMetroBar.org/3Rs
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A divorce proceeding is time consuming and exhausting for the litigants and attorneys—sometimes taking a year or two to complete. By the end of the marathon, the parties are drained both financially and emotionally. Yet, even after the final time-stamp, the conflict, issues, and other needs may not be over.

In divorce, there are three main “buckets” of issues, which include (1) property division, (2) support, and (3) parenting. Each of these “buckets” entail potential issues that need to be addressed head-on to avoid future harm. For instance, while the divorce decree delineates the property division, it is incumbent upon the parties to effectuate those transfers and, preferably, right away. Moreover, while the decree sets forth the amount and duration of spousal support and child support, changed circumstances may render said order inappropriate where a party may need to seek a modification. Even further, parenting issues may emerge after the divorce due to unanticipated changes where a modification of the parenting time schedule or other provisions may be warranted.

With the unfortunately high divorce rate, both parties and attorneys should have some knowledge of post-divorce issues and rights so that a party can pursue action when needed. The following summarizes some of those issues and how to identify them.

(1) PROPERTY DIVISION: EXECUTION AND CONTEMPT ACTIONS
What must be completed after divorce? The most pressing action items include transferring real estate, dividing retirement benefits, and ensuring compliance of any buyout. To transfer real estate, such as the marital residence, the party receiving the property will, most likely, need to refinance any mortgage held in the other party’s name within a proscribed period. In turn, the party transferring the property must execute a quit claim deed. Frequently, the bank will require the executed deed to complete the refinance, making it vital for the deed to be executed contemporaneously and held in escrow to prevent delay. To divide retirement benefits, the parties must prepare a qualified domestic relations order or division of property order to be executed by the court. Said order sets forth the participant’s and alternate payee's rights, such as the amount to be transferred and survivorship rights. To avoid potential risks, such as the participant dissipating the account or dying prior to transfer, the order should be filed with the court right away. Further, a decree may require one party to “buyout” the other party from property such as a business interest or real estate investment. Unlike an account division, the decree orders one party to pay the other party pursuant to certain terms and conditions. Unfortunately, due to the inaction of many parties, the above transfers may take years to happen, if at all.

What if a party does not comply with the terms of the decree? A divorce decree is a court order, regardless of whether the parties litigated the matter or settled and executed a Separation Agreement. If a party violates a term of the decree, then that party is in violation of the court order regardless of intent, and may face fines and potential jail time for contempt. The aggrieved party may file a motion to show cause, motion for restraining orders (to freeze accounts), motion for specific acts, subpoenas to locate any moved monies, and motion for attorney fees and other relief. The party violating the decree must then demonstrate why he or she has not complied. In response, that party may assert a defense of substantial compliance, inability to pay, or laches to defend the allegations. It is imperative for a party to pursue a contempt claim immediately to avoid the wrongful depletion of assets, harm to their credit, or the inability to collect in the future.

(2) SUPPORT: MODIFICATION OF SPOUSAL SUPPORT AND CHILD SUPPORT
Can spousal support be modified post-divorce? Pursuant to R.C. 3105.18(E), spousal support can only be modified where the decree expressly authorizes the court to modify the amount or terms, and the court determines that the circumstances of either party have changed. A change in circumstances includes, but is not limited to, any increase or involuntary decrease in a party’s wages, salary, bonuses, living expenses, or medical expenses. However, the change must be substantial and make the existing award no longer reasonable and appropriate. The change must be one that was not taken into account by the parties or the court as a basis for the existing award, whether or not the change was foreseeable. R.C. 3105.18(F). Therefore, to modify spousal support, it must be clear in the decree that the court retained jurisdiction, and there is a substantial change in circumstances that would warrant the modification. If a party experiences a change, such as unemployment, promotion, health issues, etc., it is important for them to meet with an attorney to discuss the options, especially where there is a concern about retroactivity and the ability to pay.

Can child support be modified? By statute, child support falls into two categories. If the parties collectively earn less than $150,000 annually, then statutory child support guidelines dictate the amount of support by considering each party’s respective income, any cost of work-related or education-related day care, any cost of private health insurance for the child, and whether any deviation should be applied for extended parenting time, special needs of the child, or other factors set forth by R.C. 3119.23. The child support order is modifiable if there is a substantial change in circumstances (such as income) where the amount as recalculated is more than 10% greater than or less than the amount of child support under the existing order. R.C. 3119.79.
Thus, to modify child support, there must be a change in circumstances substantial enough to alter the bottom-line amount to be paid. On the other hand, if the parties collectively earn more than $150,000 annually, then child support is a case-by-case determination based upon the needs and standard of living of the child and the parents. R.C. 3119.04. The court applies the standard of the “amount necessary to maintain for the children the standard of living they would have enjoyed had the marriage continued”. Schwartz v. O’Brien, 8th Dist. Cuyahoga No. 100930, 2014-Ohio-4813, ¶ 14. In these cases, a substantial change in circumstances is not required to modify the amount, as R.C. 3119.79 is not applicable. Abbey v. Peavy, 8th Dist. Cuyahoga No. 100893, 2014-Ohio-3921, ¶ 22. Instead, the court considers the expenses of the parents, and the standard of living the parents and the child enjoyed prior to divorce, as well as the current standard of living, to determine whether a modification of child support would be warranted. Regardless of the applicable standard, it is important for a party to file a motion to modify child support as soon as possible to maintain any retroactivity on the order.

(3) PARENTING: MODIFICATION OF CUSTODY AND PARENTING TIME PROVISIONS

Can a “parenting” order be modified post-divorce?

Generally, a parenting order is always modifiable, but the type of modification will hinge on the circumstances and relief sought. Parents either have custody rights or visitation rights. If one parent has sole custody, then that parent has all decision-making ability and the other parent only has parenting time and the right to access medical, education, and other records defined by statute. Most cases involve shared parenting, where both parents enjoy joint custody and can make decisions for the child pursuant to the terms of their parenting plan. To modify custody, the movant must show that there has been a change in circumstances and a modification is necessary to serve the best interest of the child. R.C. 3109.04(E).

On the other hand, to modify a parenting time schedule or a provision of a parenting plan, the movant must only show that the modification is necessary to serve the best interest of the child.

What are some options to resolve “parenting” disputes?

If a modification is needed, it can only be done by the agreement of the parties or by the court. However, in reaching an agreement, mediation can be a useful tool to resolve disputes and avoid expensive litigation. Mediation focuses on problem solving and provides the parties control over the outcome. Parenting issues are sensitive and unique to each family. Presenting the issue to the court is not always the most constructive means to an end, and the parties may not achieve the result they desire. A mediator can help the parties talk through the identified issue to devise a plan to handle the adjustments needed. The process is faster, less expensive, confidential, and facilitates better communication between the parties.

In high-conflict parenting cases, how does the appointment of a parenting coordinator help a family?

If the parties need more than mediation, a newer option in Ohio is the appointment of a parenting coordinator (PC). A PC works with a family post-divorce to implement their parenting plan to minimize conflict and restore parenting relationships. The PC is a neutral third party appointed by the court to facilitate the resolution of disputes. If the parties cannot reach an agreement, the PC has the authority to make decisions within the scope of his or her appointment, as defined by prior approval of the parties and the court. A PC is child-focused and utilizes the tools of assessment, education, case management, conflict management, coaching, and decision making to help parents co-parent without court intervention. Parenting coordination is a tool for parties and attorneys to make sure a parenting plan works going forward.

Katie Arthurs is a Principal, Mediator, and Parenting Coordinator in McCarthy Lebit’s Family Law group. She focuses her practice on divorce, dissolution of marriage, child custody, visitation, child support, spousal support, prenuptial agreements and guardianships. Katie represents both husbands and wives and takes a “big picture” approach to complex cases to help clients find creative solutions to their family law matters. She is proficient in both litigation and alternative dispute resolution, negotiating mutually agreeable settlements and, when necessary, advocating for clients in court. She has been a CMBA member since 2011. Katie can be reached at (216) 696-1422 or kda@mccarthylebit.com.
Are All Settlements Created Equal? When Is the Right Time to Mediate?

BY MATT MENNES

More than 50 years ago, Ray Charles sang that the night time, is the right time (to be with the one you love). Ray Charles was called “The Genius” for his musical ability and for the smooth and confident way he delivered lyrics like those above. Apologies to Brother Ray for this clumsy segue, but as a mediator I am often asked, “When is the right time to mediate?” While I wish I could offer an answer as beautiful and sure as Ray’s, my experience as a mediator leads me to the decidedly broad answer of: “It depends.” The reality is that disputes can be mediated at any time, and they are effectively mediated every day at various stages of the conflict. Still, every case has an optimal window of time to mediate, and there are numerous factors that influence that decision. While many of those factors are case and party specific, there are a number of common themes that emerge in deciding when to mediate. This article will explore these themes, and aims to give counsel, and their clients, relevant talking points in their discussions around mediation and settlement.

A BALANCING ACT

In essence, the decision of when to mediate and when to settle is a balancing act between the need for information and the cost of obtaining it. The core principles of mediation are informed consent and party self-determination. In order to live up to these principles, the parties need to know enough about their case to make an informed decision about whether to settle and for how much. This usually means engaging in some limited discovery, while being strategic about which stones to leave unturned, at least for now. In most civil litigation, this translates to the exchange of paper discovery, the taking of some (but not all) depositions, and engaging some (but not all) experts. Depending on the number of issues in dispute, the complexity of the case and the amount in controversy, the parties may decide to spend more or less of their resources before preparing the case for mediation. Remember the Pareto Principle, also known as the 80/20 rule. In this context, 80% of the information needed to settle a case can usually be obtained for 20% of the discovery costs. Do those extra depositions justify their cost?

FOCUS ON THE CLIENT

Mediation is a client-focused process. During mediation, we explore the parties’ positions, but also their underlying interests. Exploring interests includes a discussion about the financial and emotional costs of litigation, as well as an exploration of any need for privacy and ultimately, privacy. Counsel should explore these same interests with their clients in evaluating when to mediate.

Financial Costs

How will the litigation impact the parties financially? Are they paying hourly or on contingency? If contingency, when does the fee go up? If hourly, how do retainers, reserves and any insurance coverage impact their out-of-pocket litigation costs? Will the parties have to advance litigation costs, including paying experts? Are any costs recoverable? Are there liens to pay back? It is often preferable to negotiate any liens before trial. In a broader sense, what are the opportunity costs to your client? Is this case causing them to miss work and lose income? Miss out on future business opportunities (perhaps even with the other party to the lawsuit)? Explore the time value of money with your client. A mediated resolution can come months, if not years, before an adjudicated one.

Emotional Costs

Litigation is stressful. Most clients would prefer to avoid having their deposition taken, being cross-examined and sitting in the hallway during pretrials and other court events. Remember that other life factors (health, family, financial, geographic, etc.) can influence a client’s motivation to settle. Plus, trials are inherently risky and jury outcomes are unpredictable. This lack of certainty can compound a party’s stress level. What is your client’s risk tolerance?

Privacy

The public nature of lawsuits can add to the financial and emotional costs of litigation, as outlined above. Mediation is confidential and privileged. Non-economic remedies like apology and admission of wrongdoing can be explored privately in mediation. Non-disclosure agreements are a standard part of many settlements. Is confidentiality a priority for your client?

Finality

The goal of mediation is a durable and lasting agreement. Parties are more likely to comply with the terms of a settlement if they helped design it. Settlement not only ends the current case, but also lowers the chances of future litigation. Appeals and enforcement actions are mitigated when parties voluntarily settle their case. How important is closure to your client?

TO MEDIATE IS NOT THE SAME AS TO SETTLE

While the ultimate goal of mediation is to help parties settle their dispute, the decision of when to mediate is not always the same as when to settle. Put another way, it might be the right time to mediate and the wrong time to settle. Moreover, this may not become clear until mediation begins. It is often said that mediation is a process, not an event. While I go into every mediation hoping the case will settle, sometimes the primary benefit of that mediation, on that particular day, is to identify and narrow the issues in dispute, and to choose where the parties should focus their resources going forward. This could include more discovery, hiring experts, negotiating liens, resolving ancillary issues, getting more medical treatment, filing dispositive motions, and a multitude of other things. The actual issues in court are often very narrow, as compared to the “real world” problems the parties are experiencing. Sometimes, mediation reveals that other issues need to be resolved before a case is ready to settle. Mediation is successful when it moves the parties closer to resolution.
ROLE OF THE COURT
While the court’s ultimate function is to adjudicate disputes, increasingly lawyers and the public look to the court to help them manage and resolve their conflict before trial. Today, ADR processes such as mediation, arbitration and settlement conferences are a regular part of the court experience. The court’s journal entries help manage the dispute by setting deadlines, ruling on motions and referring cases to mediation. Recent studies reveal that client satisfaction with their court experience improves when mediation is offered. Talk with your judge or staff attorney about mediation at the first case management conference. A mediation referral should compliment the litigation schedule, and vice versa.

HIGH CONFLICT CASES
Highly emotional clients run the risk of becoming further entrenched if their emotions are not validated and managed carefully in the mediation process. Just because a client is upset is not a reason to avoid mediation. Rather, it is a factor needing careful consideration. Conflict is stressful and the mediation process can help parties feel heard and understood. Counsel should alert the mediator to any special emotional needs of your client before the first mediation session. Skilled mediators can tailor the process to work with highly emotional clients.

WHEN TO NEGOTIATE
The parties are encouraged to engage in some pre-mediation negotiations. These could take the form of demands and offers, or simply informal discussions about settlement ranges. Either way, many cases settle once the parties start negotiating. Those that don’t could benefit from mediation. Mediation works best when the parties have “tested the waters” with some early negotiations, but before becoming too entrenched and positional. Strong negative feelings arising from adversarial negotiations add an extra layer of complexity to the mediation process. On the flip side, the lack of any pre-mediation negotiations leaves the parties shooting in the dark. At a minimum, once a plaintiff has a good idea of their settlement range, they are encouraged to make a demand. An early demand, reasonably related to plaintiff’s negotiation position at mediation, increases the chances of a successful mediation.

CONCLUSION
The reality is that most cases settle before trial. As such, the question is not whether to settle, but when. A settlement is worth less to the parties after spending significant resources (time, money and energy) in the same way that a verdict is worth less after days in trial. The question of when to settle a case is largely a question of allocation of resources. Clients want to make sure that spending additional money has the potential to “expand the pie” and not just be a zero-sum game. Will that extra deposition, motion or expert report take a slice away from the settlement pie, leaving less money in your client’s pocket? Or, will it add value? Clients want to know, “What value did my lawyer bring to this process?” A timely and informed decision to mediate can help the parties fully and efficiently settle their dispute.

Matt Mennes is the civil mediator for Cuyahoga County Common Pleas Court. He has been a CMBA member since 2015. Matt may be reached at cpnmxm@cuyahogacounty.us or (216) 443-8504.
Mediation is increasingly becoming a preferred means of settling disputes, avoiding the costs and time delays of litigation, or even arbitration. Mediation is nothing more than facilitated negotiation with the assistance of a third party neutral. Ideally the mediator is a person trained in mediation techniques and possessing knowledge of the underlying subject area in order to best assist the parties to reach a mutually acceptable resolution.

When effectively employed, mediation can resolve everything from consumer disputes, business disputes, landlord tenant disputes, family and domestic disputes, and employment disputes, to complex regulatory and technology disputes.

Effective skill sets and methodologies are as wide-ranging as the disputes themselves. While there are no bright lines, the issues vary depending on the types of disputes.

- In consumer disputes, the issues are relatively simple. There is a dissatisfied consumer who is seeking a refund, repair, or some type of compensation with generally limited dollar amounts. The dispute and its resolution is not primarily about relationships between the parties.
- In domestic and family disputes, and to some extent employment disputes, emotions and relationships are the key issues that need to be addressed. Often the real emotional issues are not necessarily related to the current dispute, but rather to years of interactions and relationships resulting in real or perceived slights or mistreatments.
- While business disputes to some extent involve individual relationship issues, they generally focus on money issues, whether cash or other consideration. Here the mediator needs to find the business needs of each side and then work with them to try to find a resolution that ends the dispute and minimizes costs. That way, each party can move forward and go about their business, maximizing the dollars each has after the dispute is resolved, taking into consideration the legal and business costs of litigating the dispute.

**Technology Disputes Are Different**

Technology disputes can be different and often involve the failure of a device, system, software program, or material. In these disputes, while there are obviously business issues and business people generally must be involved, also involving the engineers can be key. Engineers and lawyers share a logical resolution approach. However, while engineers tend to want to understand and fix the underlying physical problem, lawyers and business people tend to look only at the ultimate costs and business issues and often just focus on finding an economic solution. This difference can be crucial to the successful mediation of a technology dispute.

Successful mediations take significant preparation by counsel, the parties, and the mediator. Prior to the parties meeting with the mediator, the mediator needs to be educated in the issues the parties think are important. It is generally helpful for the mediator to have a background in technology to better understand the issues and language, and to more quickly gain the confidence of the parties.

A basic requirement of a successful mediation is to require that persons with full settlement authority attend. In technology disputes, it is generally also important to have technical people present.

Engineers by training and mindset tend to focus on the underlying physical problem and its cause. For example, if the dispute revolves around a complex mechanical system that manufactures a product or component, the
business people first think about what they paid, the delay cost, and their rights to recover their economic losses. However, the engineers tend to be more, or at least as, interested in the reason for the failure and if and how it can be fixed. Focusing first engineering problem, often gets the engineers talking about the issues that really interest them, rather than economic issues or legal rights.

After a general discussion of the dispute and the parties issues and needs, it is helpful to have each side articulate what they perceive as the reason for the failure. The business people may say that they did not get what they paid for or that they delivered exactly what was ordered and the buyer changed its mind. Or the business people might simply say that it did not work. Engineers, on the other hand, want to know why it did not work, and often, how can it be made to work.

LESSON LEARNED #1: LET THE ENGINEERS FIGURE IT OUT.

In a software implementation dispute that I mediated, one of the engineers for the licensee, during a party caucus, stated that he had a number of questions regarding the design choices in the software. I asked and received permission to go to the licensor’s caucus and asked the questions. Counsel agreed to allow its engineers to answer and I took the response back.

After a couple of more rounds, it became obvious to me, as mediator, that using an intermediary was inefficient. Good engineering strives for efficiency in process as well as design. Engineers hate perceived inefficiencies. So, at that point, I suggested that the engineers be permitted to speak together in a separate room to exchange questions and answers, in the context of confidential mediation settlement discussions to assure that the questions and responses would be conveyed accurately and more quickly and efficiently. To assure the concerns of counsel I told them that I would moderate the discussion and that counsel could sit in, but not participate.

All reluctantly agreed. The engineers quickly began to have a highly technical, productive, and non-contentious discussion. It soon becomes clear that the attendance of the lawyers, and then the mediator left the engineers to themselves.

As a result, a candid discussion and technical respect and trust developed between the engineers. Good engineers, with sufficient good data, should come to only one conclusion as to physical reality. They may disagree as to whether one design is more efficient, too costly, or better suited, but they should not disagree on how it worked or why it failed.

A successful joint meeting of engineers, ideally, will lead to a shared understanding of what happened, and an engineering solution. In this case, the licensee had already replaced the rejected system. However, when the engineers reported back to the business people and their counsel, the newly developed trust between the technical people lowered the level of hostility and distrust, and the business people were able agree on a settlement. The parties left the session, exchanging business cards and discussing the possibility for a new project together.

LESSON LEARNED #2: STEP-BY-STEP ENGINEERING SOLUTION SERVES BOTH PARTIES

Another technique that can work in engineering cases is for a mediator, who understands the engineering issues and has a technical background, to work with the parties and guide them through a process to solve their technical issues as a working group. This is not a negotiation or resolution of right and wrong, but rather, developing an engineering solution to solve both parties’ issues. In one example, I was selected to mediate a contentious dispute between two companies that had been engaged in a series of litigations and failed settlements over many years relating to whether a processed mined material supplied by one side met the technical specifications of the contracts. The purchaser needed the materials as an additive for a patented commercial industrial product that was unique which it fully believed would lead to large highly profitable sales. The seller wanted to produce and sell the material as it was highly profitable to it also. This would seem like a win-win for both parties. However, the seller insisted that the product as produced met specifications and the purchaser insisted that it did not. There had to be a solution.

Rather than try to negotiate an overall solution, which clearly was not going to be successful, I suggested that, like all engineering problems, it had to be broken down into a number of smaller simpler problems each to be solved in order. First, the parties had to develop a more detailed specification for the material that the buyer agreed would accept and seller agreed that it could produce. To avoid any further dispute, the refined specifications included a detailed description of chemistry, particle size, and the acceptable miniscule level and chemistry of mineral impurities. After several weeks the specifications were agreed upon. It then took several more weeks, with multiple telephonic mediation sessions and many rounds of testing, for the seller to confirm that it believed that it could produce materials meeting the agreed detailed specifications.

Finally, the parties, with the help of the mediator, worked together to find available test equipment that could analyze the material to determine compliance with all of the specifications and then to test that equipment so that both buyer and seller were satisfied that the tested materials would comply and meet buyer’s needs. This sounds easier than it was. There were a number of fits and stops and starts, each had to be resolved, often with mediator intervention and suggestions. But ultimately, once the technical engineering problems were resolved, the parties and the mediator were able focus on negotiating a long term mutually profitable business relationship.

APPLYING LESSONS LEARNED

While all disputes have a central problem or problems that sometimes can be ignored to get to a big picture dollar settlement, in technology disputes, first determining the engineering problem and using the mediation process to assist in understanding and solving it, can get the parties working together, enabling them to resolve the entire dispute.

Michael H. Diamant practiced as a business and technology litigator for 45 years and has been an arbitrator and mediator of technology, IP, and business cases for over 35 years. He is a graduate of Case Western Reserve University with a B.S. in Engineering with high honors and of Harvard Law School with a JD, cum laude. He is a member of the American Arbitration Association Large Complex Case and IP/Technology Panels; the International Center for Dispute Resolution; the Panel of Distinguished Neutrals of the International Center for Conflict Prevention & Resolution; and the Tech List of World’s Leading Technology Neutrals of the Silicon Valley Arbitration and Mediation Center. He is a Fellow of the College of Commercial Arbitrators and of the Chartered Institute of Arbitrators (London, England). Diamant practiced with Kahn Kleinman Co. LPA, prior to its merger with Taft in 2008. At the end of 2016, Diamant retired as an equity partner. He has been a CMBA member since 1971. He can be reached at (216) 706-3949 or mdiamant@taflaw.com.
You can see the Great Wall of China from space."

“You need to wait at least 30 minutes after you eat before you can safely swim.”

“Shaving your hair will make it grow back more quickly.”

“If you swallow gum, it will stay in your stomach for 7 years.”

“If you cross your eyes too long, they will stay that way.”

“If you get divorced, your spouse gets half of your assets (and you get half of his or hers).”

Most of us have probably heard and maybe even believed one, if not all, of the statements above at some point in our lives. I know I have (and I know my summer camp teachers did – they made us sit at the edge of the pool and just stare at the water for half an hour after lunch when we took field trips to the YMCA).

Until I began getting involved in financial expert and valuation work after graduating from college, I always thought that spouses divided their assets evenly between them if they divorced. In fact, given the popularity of Kanye West’s early 2000s hit “Gold Digger”, I’d wager that most people you run into believe that if your spouse leaves you, he or she is going to “leave with half.” As those involved in assisting spouses through the divorce process know, however, Kanye would have been more accurate had he said your ex-spouse would “leave with half ... if no separate property tracing analysis was performed.”

**WHY IS SEPARATE PROPERTY TRACING RELEVANT IN FAMILY LAW?**

When a couple gets divorced, their assets are typically divided between them. That division of property, however, may not necessarily be equal. Under Ohio law, the assets of each spouse may be classified as either “marital” property (divided evenly between the couple) or “separate” property (retained by the owner spouse) depending on how the assets were obtained and maintained during the marriage. Generally, marital and separate property can be viewed as follows:

- **Marital Property** – Assets obtained during the marriage with marital funds (funds earned by the labor of the spouses during the marriage).
- **Separate Property** – Assets obtained prior to the marriage or received by gift or inheritance during the marriage. In addition, income and appreciation derived from separate property are typically considered separate assets if the investment is passive (i.e. the spouse is not an active participant in creating the income or appreciation).

The party asserting that it owns separate property has the burden of proof to prove that claim. If successful, the asserting spouse typically retains the separate asset(s) in question without any corresponding division with the other spouse (which would otherwise be necessary if it could not be proven that the assets were “separate” rather than “marital”). As a result, it is possible that a spouse who owns
separate property may be allocated assets well in excess of 50% of the couples’ total assets — it is simply a function whether the asserting party is able to prove that particular assets are, in fact, separate property.

**HOW IS SEPARATE PROPERTY TRACING PERFORMED?**

A common thread in all tracing analyses is the need for documentation to support the separate property claim. This is often the biggest hurdle in separate property tracing analyses, particularly those that go back more than a few years. A general rule of thumb is the longer the marriage, the more documentation that will be needed to support the separate property claim, simply as a function of the longer time period that must be analyzed.

Each separate property tracing analysis is unique based on the assets of the couple, the length of the marriage, the length of time the assets have been owned, and other factors. The following, however, are examples of common tracing scenarios that are encountered in practice:

- **Cash/Investments in a Separate Account** – This is a “plain vanilla” separate property tracing scenario in which the separate assets owned at the time of marriage, or received by gift/inheritance during the marriage, are kept in a separate account (i.e. not commingled in an account that contains marital funds). In an ideal scenario, the spouse making the separate property claim will have complete bank account or investment statements from the date of marriage (or the date that the separate property was received, if later) through the current date. This allows for a clean trail documenting that the balance in the account(s) as of the current date can be traced back to the separate assets existing as of the date of marriage (or the date that the separate property was received). As long as marital funds were not contributed to the account(s), both the original separate property balance and any passive earnings or appreciation of those assets would also be considered separate property that would typically not be subject to division with the other spouse.

- **Cash/Investments in a Commingled Account** – Separate property tracing becomes more complex when separate assets and marital assets are commingled in the same account. A common example of this is a 401(k) account that was in place as of the date of marriage (or the date the ownership interest was received) and the current date so that the appreciation between the two dates can be measured. Consequently, tracing engagements involving an active business ownership interest are typically more time consuming and document intensive analyses. Each separate property tracing analysis is unique and may include pieces of each of the scenarios described above in addition to others that are specific to the facts and circumstances of the engagement. As with most financial analyses, the more information that is available, the greater the likelihood of success in proving the existence of separate property.

**CONCLUSION**

Common misconceptions contain enough hints of truth to make them believable. Given that spouses often equally split assets in divorces in which separate property is not present, it lends credibility to the simplifying assumption that this 50/50 split occurs all the time. When separate property is present, however, which is not uncommon for couples with family wealth, separate property tracing is often necessary in order to preserve a spouse’s right to assets that are not subject to division with the future former spouse.

Sean Saari is a partner at Skoda Minotti and manages the firm’s Valuation & Litigation Advisory Services group. He assists a diverse client base in valuations for litigated matters, domestic disputes, shareholder disputes, estate and gift tax planning, financial reporting and strategic planning. In addition to being a CPA, Sean is Accredited in Business Valuation (ABV) and is a Certified Valuation Analyst (CVA). He became a CMBA member in 2015. He can be reached at (440) 449-6800 or ssaari@skodaminotti.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

**RENEW THIS SUMMER**

Our new membership year started July 1 and we look forward to getting you plugged in to all that is to come this year. Membership renewal notices have been sent, so be sure to renew today! Your member benefits, including the Bar Journal, will lapse August 31. Renew today at [CleMetroBar.org/membership](http://CleMetroBar.org/membership), by mailing your statement with payment, by calling (216) 696-3525.

**HONOREES**

*Recognized at the Annual Meeting on June 2, 2017.*

**50-Year Honorees**
- Lewis T. Barr
- Kenneth A. Bravo
- Thomas L. Brunn, Sr.
- Gerald B. Chattman
- John R. Climaco
- Jerrold L. Goldstein
- Gary H. Goldwasser
- Robert J. Gregor
- Ronald H. Isroff
- Sheldon Karp
- Julius F. Kovacs
- Kenneth M. Lapine
- Robert P. Lawry
- Daniel L. Lovinger
- Larry I. Madorsky
- Robert D. Markus
- Hon. Richard J. McMonagle
- Stanley Morganstern
- Samuel Richard Petry II
- Richard S. Rivitz
- Dennis A. Roth
- Steven A. Sindell
- William L. Spring
- Howard A. Steindler
- Robert S. Stone
- David J. Strauss
- Hon. Ronald J. Suster
- William Wohl
- Marshall J. Wolf

**65-Year Honorees**
- Daniel R. Corcoran
- Richard K. Desmond
- Theodore J. Horvath
- Charles J. Kerester
- Meyer J. Kohn
- Donald P. Mull
- Hon. Joseph J. Nahra
- Marshall I. Nurenberg
- David W. Rowlinson
- James J. Schneider
- Morris G. Shanker
- Harold S. Stern
- Arlene B. Steuer
If your renewal is received before July 31, you’ll receive a free electronic version of the 2017–18 Legal Directory. Need a hard copy? Get your order in by July 31 and save $5. Visit CleMetroBar.org/Directory for more information.

Need CLE? Save big with the CLE Passport and lock in 12 hours of CLE for $180! That’s 50% off regular rates! This great member offer expires July 31 and the price increases to $300 August 1. Exclusions apply. See details at CleMetroBar.org/CLE.

ESSAY COMPETITION

Essay Competition Winners

Congratulations to the winners of the 2017 CMBA Ethics and Professionalism Essay Competition, presented by AmericanLawRadio.com and Malik Law:

1st Place: Sarah Ann Siedlak, Case Law, ’17, Who Ya Gonna Call — Ghostbloggers!, Essay No. 670. Check out the winning essay on page 44.


Honorable Mention: Zachary A. Zalewski, Case Law, ’18, Give up the Ghost? Outsourced Legal Blogging and Rule 7.1, Essay No. 314.

For information on the next competition, visit CleMetroBar.org/Essay.
A recent study reported in Law.com has brought to light certain interesting information regarding the involvement of women and minorities as ADR Neutrals. Specifically, a survey of one of the larger providers of ADR Services reported that only 25 percent of its neutrals are women and only seven percent are minorities. Another provider indicated that only 22 percent of arbitrators selected to hear matters were women or minorities. Among mediators dealing with family law matters, there is nearly a 50/50 split between men and women.

The ADR Section of the CMBA and the Diversity Committee recently met to review this information and determine if it is true within the areas served by the CMBA. The women participants in the CMBA ADR Section have vibrant practices in a whole range of specialties. Women, nonetheless, represent less than 25 percent of the ADR Section membership. Minority membership is even less.

Outside of family law matters, the lack of ethnic and racial diversity in our region is real. Recently a party made inquiry to the Norman S. Minor Bar Association to locate an African American ADR neutral to hear a complex commercial case. It appeared that, an African American ADR neutral to hear a case was not within the pool of neutrals available.

Of course, as many ADR neutrals and consumers of ADR services recognize, it is difficult to become an ADR neutral without experience and difficult to gain experience without having established something of a reputation as an ADR neutral.

Regardless, there are opportunities for anyone interested in serving as an ADR neutral to “learn the trade.” Many of our local courts can utilize volunteer services of mediators and arbitrators. The American Arbitration Association created the AAA A. Leon Higginbotham, Jr. Fellows Program in 2009 to provide training, mentorship and networking opportunities to up and coming diverse alternative dispute resolution professionals who have historically not been included in meaningful participation in the field of alternative dispute resolution. More information is available at www.adr.org/HigginbothamFellowsProgram.

In an effort to diversify the ADR pool locally, the ADR Section and the Diversity Committee are combining efforts to offer a seminar, on September 27, 2017, directed at anyone interested in the ADR process, whether as a neutral or a consumer of neutral services. The American Arbitration Association, the Norman S. Minor Bar Association, the Hispanic Bar Association, and the Asian American Bar Association have all agreed to cosponsor the seminar with the CMBA.

The seminar will include resources to obtain ADR training, experience, and an opportunity to learn from some nationally recognized, and diverse, ADR Neutrals explaining how they “broke into the business”.

Whether we are dealing with a family dispute, a construction dispute, or an international business dispute, ADR plays a very significant role in resolving local, national, and international disputes. This trend cannot continue without participation by diverse lawyers. We are happy to start the process to address this issue in greater Cleveland, and we hope that you can join us at the seminar and join in our efforts to have a more inclusive ADR process.

Mark Wachter is a member of the firm of Wachter Kurant, LLC and has been an ADR neutral for over 35 years. He was awarded the Construction Gavel by the AAA in 2003 and was named to the AAA Master Mediator Panel in 2015. Mark has served as the chair of the CMBA ADR Section for the past five years and has been a CMBA member since 1977. In addition to serving as a ADR neutral, he is a litigator focusing on construction, real estate and business matters. Mark served as a member of the Beachwood City Council from 1999 to 2015. He can be reached at (216) 292-3300 or mwachter@lawkkwt.com.

Majeed G. Makhlouf is a member of Berns, Ockner & Greenberger, LLC and is a Panel Member (Commercial, Construction) at the American Arbitration Association. He is an experienced litigator and a transactional lawyer and concentrates his practice on complex business litigation, real-estate development and transactions, public-private partnerships and economic development, land use, construction, zoning, and public and municipal law matters. Mr. Makhlouf served as a member of the CMBA’s Board of Trustees and served on its Executive Committee. He has been a CMBA member since 2006. He can be reached at (216) 831-8838 or mmakhlouf@bernsockner.com.
LIKE all of our sections and committees, the Mental Health & Wellness Committee came into existence because a committed and passionate group of members asked for it. Since its founding in 2014 under the original leadership of Cathy Bolek and Rob Wolff, the Committee has served as a vehicle to promote mental health and wellness among our members. Programs sponsored by the committee have been designed to educate lawyers, legal professionals and law firm administrators on a variety of topics including the warning signs of mental illness, opportunities for treatment, and ways in which we can work to reduce the stigma associated with a diagnosis of mental illness.

This year, James Sullivan is leading the effort and in doing so, has picked up some new ideas that will broaden the committee’s reach and hopefully our bar’s impact within the legal community.

At different times during 2016, I had opportunities to talk with Dan Messeleff, Irene Rennillo, Lori Wald and Steve Williger about how the bar might better serve our members. Somewhat to my surprise, I learned that each of these accomplished and dedicated members — who did not know each other — expressed a common passion for and interest in mindfulness and meditation. Plus, each expressed an interest in exploring ways to contribute his/her experiences and insights with mindfulness for the benefit of others. These interests aligned with similar interests expressed by then-CMBA President, Rick Manoloff.

For some reading this article, you might think that mindfulness is one of those empty buzzwords that has been introduced into our lexicon in order to induce people to buy new products and services. In reality, however, mindfulness is a practice that has been around for thousands of years. Sometimes as a religious practice — as with Hinduism and Buddhism — and sometimes as a secular practice, like non-religious meditation.

In its simplest form, mindfulness is the awareness of life in the present moment. Sounds really simple, doesn’t it? Not necessarily.

Have you ever done a less-than-stellar job advocating a client’s position before a judge or in a negotiation where your inartful words ended up looping over and over in your mind like a broken record (or for you younger folks, like a Vine video)? Ever been at home attempting to enjoy an evening with your family but you miss most of the night because you are obsessing over the crisis you left in your office as you raced out the door to get home? Or what about enduring the wrath of a senior lawyer who criticizes your work so severely that you spend weeks walking into the office each morning telling yourself “Today is the day I will be fired”? Sometimes the most difficult conversations happen inside our own minds.

Steve, Lori, Irene, Dan and Rick have all — to different degrees, at different times and in different ways — practiced mindfulness to quell the negative or disruptive voices that periodically surface in their lives. In doing so, they have learned how to reduce their stress, while at the same time increasing their productivity, emotional control and ultimately, their happiness. After learning about their shared passion, I could not help but bring this fabulous five together, and then to connect them with James and the Mental Health & Wellness Committee.

So now, after six months of planning, we are launching Wellness Wednesdays at the CMBA. These programs — all of which will be offered for free and conducted in less than 60 minutes — will arm our members with practical information and tools that you can use to lower stress, enhance your practice and generally improve your satisfaction with your career. To get our wellness revolution started, we are hosting “Wellness 101” on four consecutive Wednesdays beginning in August (August 23 at noon, August 30 at 5 p.m., September 13 at 5 p.m. and September 20 at noon). These sessions will provide an overview of: stress and the human brain; the benefits of mindfulness; the art of meditation; and techniques for practicing mindful meditation.

Thereafter, Wellness Wednesdays will continue through September, October and into November with sessions again alternating between lunchtime and after work (including Truly Happy Hours immediately following the after work programs). They will feature a variety of presenters across a host of subjects. From yoga and meditation, to strength training and nutritional eating, we hope to offer something for everyone. Speakers for these informative, interactive and entertaining sessions will represent a variety of Cleveland organizations that are helping to advance the cause of wellness within our community.

Among others, you will have a chance to sample offerings provided by: Barrefly, Puma Yoga, Soza Fitness & Wellness, Tremont Athletic Club, YMCA (Downtown), Yoga Roots, and Yoga Strong.

Then, after laying the groundwork through our Wellness Wednesdays, the Mental Health & Wellness Committee will sponsor the CMBA’s inaugural De-Stress-Fest on November 17. (Special props to Dan Messeleff for this fabulous concept!) The plan is for a half-day program that will include presentations on topics including:

- Postcards from the Edge: How Stress and Anxiety Take Their Toll, and How We Can Turn the Tide
- Don’t Search for Work-Life Balance, Create It.
- Your Office, Your Gym: Exercises You Can Do At Your Desk
- Techniques for Talking Back to the Anxious Voices Inside Your Head

For more details, visit CleMetroBar.org/Wellness. Come meet us at the Bar for our wellness revolution so you can enhance your ability to become the best attorney, the best colleague and the best person you can be.

Rebecca Ruppert McMahon

COLUMN
The ’80s Called; they want their “cap” back.

BY ADAM J. THURMAN & BRITTANY A. GRAHAM

Federal regulations require each state to provide presumptive guidelines for calculating child support. 45 C.F.R § 302.56 (2012). While these guidelines vary by state, the Ohio child support formula mandates specific adjustments for the following considerations:

- Income of the parents, including overtime and bonuses
- Child care expenses
- Health insurance premium cost to cover a minor child
- Other children that each parent has living with them in their household
- Amount of child support paid for other children
- Amount of spousal support being paid to any spouse or former spouse
- Local income taxes paid by either parent

Presently in Ohio, when the combined annual income of the parents is between $6,000.00 and $150,000.00, child support is governed by the Child Support Guidelines Worksheet. ORC §3119.022. The child support worksheet is intended to standardize child support obligations in domestic relations cases. However, as outlined below, some key, and often complicated, exceptions apply.

The Ohio child support formula, which is based on agricultural statistics from the 1980s, only allows for the calculation of child support at a combined income of no more than $150,000.00. This is commonly referred to as “the cap.” When the combined income of the parents is greater than $150,000.00 (“high income cases”), or exceeds “the cap” amount, child support obligations are governed by ORC §3119.04(B), which requires courts to determine the amount of child support on a case-by-case basis and to consider the needs and the standard of living of the children and of the parents. There are several software programs that allow “extrapolation,” which, in essence, extends the formula used by the Ohio Child Support Guidelines Worksheet past “the cap.” This method is not statutory nor grounded in any legal authority, but is often used as a baseline in determining a support amount. Practitioners should be aware that the Office of Child Support of the Ohio Department of Jobs and Family Services, the administrative agency that also handles child support cases, uses the “extrapolation” method in calculating support. Many of these cases end up being appealed to trial courts as the use of pure “extrapolation” can often lead to an unreasonable amount of child support under the circumstances.

In addition to mandating that courts analyze high income cases on a case-by-case basis, ORC §3119.04(B) has been construed to require courts to ensure that the child support amount ordered is not less than the $150,000-equivalent, or “the cap” amount, unless awarding “the cap” amount would be “unjust or inappropriate and would not be in the best interest of the child” (i.e., would be too high). If, however, a court decides “the cap” amount is unjust or inappropriate (i.e., awards a lower amount), then the court must issue specific findings and journalize the justification for that decision. See Abbey v. Peavy, 2014-Ohio-3921, 2014 WL 4460381 (Ohio Ct. App. 8th Dist. Cuyahoga County 2014), citing Siebert v. Tavarez, 2007-Ohio-2643, 2007 WL 1559565 (Ohio Ct. App. 8th Dist. Cuyahoga County 2007); Zeitler v. Zeitler, 2004-Ohio-5551, 2004 WL 2348151 (Ohio Ct. App. 9th Dist. Summit County 2004).

Similarly, ORC §3119.04(B) affords trial courts discretion in computing child support when the combined income of the parents’ is greater than $150,000.00. Macfarlane v. Macfarlane, 2009-Ohio-6647, 2009 WL 4864079 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009). ORC §3119.04(B) does not specifically contain, nor reference, factors to guide the court’s determination in computing child support in these situations. However, the statute does require an inquiry into the facts and circumstances of each case, to be developed through testimony and evidence, in order to determine exactly what the children’s needs are and the lifestyle to which the parents are accustomed. Bodell v. Brown, 2015-Ohio-526, 2015 WL 628421 (Ohio Ct. App. 8th Dist. Cuyahoga County 2015). Additionally, the standard a court must consider is not for basic needs. At incomes in excess of $150,000.00, there is a presumption that the children’s basic needs are met and the issue becomes benefits and privileges for the children of families with income that exceeds “the cap.” Wells v. Wells, 2014-Ohio-5646, 2014 WL 7275836 (Ohio Ct. App. 9th Dist. Summit County 2014). It is interesting to note that ORC §3119.04(B) does not require the trial court to issue findings to support a child support order that exceeds the “cap.”

The above analysis results in uncertainties when litigating child support matters in high income cases. Although the facts vary case-by-case, it is a common trend for one parent to earn significantly more than the other in many high income cases. ORC §3119.04(B) is intended to afford children the ability to maintain a lifestyle they were accustomed to living, or would have lived had the parents remained married. Thus, while it is not required by the courts to justify an award above the $150,000.00-equivalent, appellate courts have provided, to a certain extent, some explanation which provides guidance to those litigating high-income child support cases. In Bajzer, the Ninth District Court of Appeals held that the cost of supplemental education programs, extracurricular activities, and private tutoring constituted a sufficient justification in awarding an excess of the cap amount. Bajzer v. Bajzer, 2012-Ohio-252, 2012 WL 223925 (Ohio Ct. App. 9th Dist. Summit County 2012). See also: Wells v. Wells, 2012-Ohio-1392, 2012 WL 1076270 (Ohio Ct. App. 9th Dist. Summit County 2012). The Wells court determined that an upward deviation was appropriate to maintain the standard of life the children were accustomed to. i.e. an upward deviation was necessary to provide country club memberships, tennis and golf camps, academic camps, skiing and snowboarding lessons, vacations, allowances, and desired clothing. In the absence of any such explanation, however, upward deviations can lead to large, and possibly unrealistic child support figures. Siebert v. Tavarez,
Within the last few years, the Ohio Supreme Court has issued a book entitled Planning for Parenting Time – Ohio’s Guide for Parenting Living Apart. This book outlines many variations on parenting time schedules, including many geared toward an equal sharing arrangement between parents. In accordance, many domestic relations courts are moving toward sharing parenting time on a substantially equal basis as being more of the norm. Many domestic relations courts’ standard parenting time schedules now include mid-week overnight parenting time for both parents.

Thus, with an increase in the number of high-income child support cases being litigated and with the move toward more equality in parenting time arrangements, the Ohio legislature has been actively attempting to revise how child support is calculated. Senate Bill No. 125 is intended to provide a more standardized method to determine child support similar to cases currently governed by the child support computation worksheet. The Bill, as it presently reads, would require courts to utilize the child support computation worksheet when the combined annual income of the parents is between $8,400 – $300,000, doubling the amount of “the cap.” Additionally, the Bill provides for a defined extrapolation method when combined incomes exceed $300,000 and a set basis for consideration of the impact of parenting time on the amount of child support. It is presumed that this will afford courts less discretion in deviating from guideline child support figures, and will provide parents and their attorneys with more predictability and expected outcomes.

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WOMEN IN LAW SECTION’S INSPIRATIONAL COMMUNITY INVOLVEMENT: HOW DID THEY DO IT?

Rebecca Bennett interviews Gabrielle Kelly

THE WOMEN IN LAW SECTION HAS BEEN VERY SUPPORTIVE OF THE LEGAL AID SOCIETY OF CLEVELAND’S WORK WITH LOW-INCOME PEOPLE. AS IMMEDIATE PAST CHAIR OF THE SECTION, WHAT DO YOU FEEL MAKES THIS PARTNERSHIP IMPORTANT?

Our group believes it’s our responsibility to use our legal skills to give back to the community, and the best way to do that is to become involved with Legal Aid as much as possible — in particular, I personally feel we have one of the best legal aid programs in the country, and they make it easy for us to serve the community.

AND WHAT DOES THAT WORK WITH LEGAL AID LOOK LIKE?

We’ve staffed Legal Aid’s brief advice clinics, we’ve done fundraisers, and recently we’ve had Ann Porath, managing attorney for Legal Aid’s Volunteer Lawyer Program, come speak about the different Legal Aid programs and opportunities to volunteer.

WOMEN IN LAW & LEGAL AID LAUNCHED A CLINIC AT THE WEST SIDE CATHOLIC CENTER’S WOMEN & CHILDREN’S SHELTER. COULD YOU TELL US MORE ABOUT THAT?

In 2015, we collaborated with Legal Aid’s Volunteer Lawyers Program to launch a special project for women in crisis. Once a month, shelter staff provides activities for the children so women can have appointments with volunteer attorneys. Their issues range from eviction, to help with filing a pro se divorce, to applying for Supplemental Security Income or child custody. Many of the clients have experienced domestic violence. As female attorneys, we serve as safe, approachable, compassionate sounding boards, and we help them navigate the system and cut through red tape.

HAVE YOU BEEN PLEASED WITH THE OUTCOMES OF THIS COLLABORATION?

Yes. There was so much passion and momentum behind this project that once we had paired up all the women at the shelter with attorneys, we decided to expand to an additional project with Legal Aid to accommodate all the interested volunteers. We’ll continue our monthly clinics at the Women and Children’s Shelter, as more women who could benefit from Women in Law and Legal Aid come to stay there.

HOW WOULD YOU DESCRIBE THE DYNAMIC BETWEEN THE WOMEN IN LAW SECTION & WOMEN AT THE WEST SIDE CATHOLIC CENTER’S SHELTER?

These are resilient women who are capable of overcoming their current situation, but often, they don’t know how to get there without an attorney’s guidance. For these women, it is empowering to discuss their problems with a female attorney and learn about solutions that are achievable. Likewise, we find these women are amazing because they are able to take a hold of what we give them and gain success.

IT SOUNDS LIKE THERE’S A LOT OF GRATITUDE WITH THIS OUTREACH.

The recipients of our service are very appreciative. It truly means a lot to them to have someone come and listen to them and offer advice on their legal issues. They express how glad they are to have that.

But even within the group of lawyers that participate, they feel grateful for this opportunity. What you get out of it is worth so much more than the little bit of time you put into it!

More than anything, I want to express how happy I am to have Women In Law work with Legal Aid in all facets, whether at clinics, taking pro bono cases, or having Legal Aid staff come speak to us. We appreciate that we have a way to truly give back in a meaningful way, especially since our Legal Aid is so organized and connected with the community; it makes it very easy for us to get involved.

Rebecca Bennett is an attorney at Ogletree Deakins and past chair of the Women In Law section. She spearheaded the successful launch of the monthly clinic at West Side Catholic Center’s Women and Children’s Shelter and continues to be an active supporter of women in crisis and The Legal Aid Society of Cleveland. She has been a CMBA member since 1998. She can be reached at (216) 274-6903 or rebecca.bennett@ogletreedeakins.com.

Gabrielle Kelly is a partner in the insurance recovery group at Brouse McDowell LPA and the immediate past chair of the Women In Law section of the CMBA. She has been a CMBA member since 2008. She can be reached at (216) 830-6826 or gkelly@brouse.com.
WANTED:
MORE VOLUNTEER LAWYERS
TO ASSIST MORE FAMILIES IN NEED

Mitch Blair, CMBF President

I’m delighted that my role as the new president of the Cleveland Metropolitan Bar Foundation affords me the privilege and platform to promote the good works lawyers do to give back to our community.

Over the course of the coming year, my column will showcase the positive impact our funded programs have on people in need and explore what more we can do to serve. Helping families is a high priority. In this issue, we focus on our Pro Se Divorce Clinic, where we assist people who can’t afford attorneys through the divorce process, resolving legal issues negatively affecting their lives and giving them hope.

This program is made possible by your support of the Foundation’s endowment through the Fellows Program and other gifts, coupled with thousands of volunteer hours. Through your generosity of time, talent, and treasure, our profession is making a big difference in the lives of many.

PRO SE DIVORCE CLINICS PREPARE PEOPLE TO NAVIGATE COURT
Every day, hundreds come through the doors of the Old Courthouse on Lakeside Avenue seeking a divorce or legal separation. In 2016, more than 60 percent filed cases without a lawyer to assist, says Administrative Judge Rosemary Grdina Gold of Cuyahoga County Domestic Relations Court.

“For people with little knowledge of their rights or of what to do to get a divorce, the process can be daunting and overwhelming,” she observes. “Often hearings can’t go forward because of improper paperwork or lack of information. Because of the attorneys who volunteer for the Pro Se Divorce Clinic, many people are prepared and informed when they arrive in court, and their hearings go forward more smoothly than when they go it alone.”

Jennifer Himmelein, attorney at Cavitch Familo & Durkin, secretary of the Family Law Section, and chair of Justice for All Committee, leads monthly clinics at the Cleveland Law Library attended by 15 to 30 income-eligible individuals seeking divorce. Attendees are referred by Legal Aid Society of Cleveland and Cleveland Homeless Legal Assistance, another program funded by the Foundation.

“Participants in our clinics have a range of family concerns,” she explains. “Remaining married to a spouse who’s absent, addicted, or in legal trouble, for example, adds stress. Divorce can allow families to move forward with their lives.”

Volunteer lawyers guide them through paperwork and the legal process, helping fill out forms, make copies, notarize, and file with the court. They answer questions and assist those who cannot read or write or who have disabilities.

CLINICS TO EXPAND TO MEET DEMAND
We are expanding this program to help more low-income litigants. “The demand is great,” says Himmelein. “We need more volunteers.”

Volunteers have the option to work remotely from the office or home on legal paperwork, or to get involved in the clinic setting advising individuals face to face.

“As the number of people forced to go through divorce without a lawyer steadily rises,” Judge Grdina Gold points out, “the court and the individuals who receive help are most grateful to the CMBA for this program.”

“Without it,” adds Himmelein, “our litigants would have no access to justice.”

To volunteer or for more information, visit CleMetroBar.org/ProSeDivorce or contact Jessica Paine at jpaine@clemetrobar.org.

Mitch Blair is vice chairman of Calfee Halter & Griswold LLP and co-chair of the Litigation Group. He tries complex disputes, with special emphasis on securities litigation, including class action defense. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1982. He can be reached at mblair@calfee.com or (216) 622-8361.
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Liz Cullen, Cleveland Municipal Court, Housing Court Division
Rita Haynes, Cleveland Municipal Court
Jackie Johnson, Federal Public Defender’s Office
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Skills a Mediator Should Bring to Your Mediation

BY THOMAS REPICKY

Mediation has become an integral part of the dispute resolution process in our civil justice system. Advocates can have more effective mediations if they assess potential mediators before they decide on a mediator. This article will discuss the mediator skill sets that advocates should consider when selecting a mediator for their case.

1. FAMILIARITY WITH THE UNIFORM MEDIATION ACT

It is imperative that any mediator be knowledgeable about the Uniform Mediation Act (UMA) which governs all lawsuits mediated in Ohio since 2005. The act is codified in Ohio Revised Code Sections 2710.01 to 2710.10. Several sections of the UMA are worth noting here. Every participant at a mediation holds a privilege under which they can prevent their mediation communications from being disclosed. However, certain communications at mediation are not covered by the privilege under the UMA under Section 2710.05(A) (1) to (9). Thus, a mediator should alert unknowing mediation participants that certain communications i.e. threat of physical harm, criminal conduct and child or elder abuse to name a few are exempt from privilege. A mediator and mediation participants could find themselves unwilling witnesses in a separate proceeding about statements made in a mediation about criminal acts, trade secrets, and sexual or other abuse.

Mediators are allowed under the UMA to only disclose that the mediation took place, who attended the mediation and whether the case settled. Mediators are specifically prohibited from disclosing any information that has been deemed confidential or is covered by privilege. (O.R.C. Section 2710.07). A mediator who violates these restrictions may adversely impact the parties involved in the mediation.

2. KNOWLEDGE ABOUT THE MEDIATION PROCESS

An effective mediator will be familiar and comfortable with the various stages of the mediation process. Deciding how to start the mediation, when and how to caucus, who should attend the mediation, how to effectively deal with impasse, getting a settlement agreement signed by all parties, dealing with multi-party issues, and use of brackets and mediator’s proposals are some of the techniques that are available to a well-trained mediator. Process is often more critical in a multi-party mediation where there are multiple issues and conflicting positions. Advocates should familiarize themselves with the mediation process so they have input in the process. The parties should be told that mediation is flexible so the process can be altered to address their concerns. If the parties are uncomfortable with a particular aspect of the process, it can limit its effectiveness. A mediator’s intuition and experience in the process can earn the parties’ trust in their judgment on the mediation process.

3. PREPARATION BEFORE THE MEDIATION

One of the most important functions that a mediator can provide in a mediation is preparing for the mediation. Preparation includes review of mediation statements and any other relevant information from the parties, privately discussing with each party how the mediator can help at the mediation and the key issues in the case. Such private conversations generally give the mediator the essence of the case so they can start to formulate an effective process for the mediation.

Pre-mediation caucuses can help ensure that the necessary parties attend the mediation and that necessary information has been exchanged by the parties. Sometimes a pre-mediation caucus results in the parties deciding to limit or skip their opening statements because of the emotions of the parties or the nature of the dispute. This writer believes that the parties’ concerns or preferences about the mediation should be taken into consideration throughout the mediation. Such accommodations empower the parties at mediation.

4. GOOD LISTENING SKILLS

Listening is an essential mediator skill. Although listening is done with the ears, one’s eyes are just as important in listening. Parties want your undivided attention which involves eye contact and appropriate body language. Listening serves several purposes. It allows parties to tell their stories, feel heard, be recognized and understood. It also helps the mediator and the parties understand the claim. Furthermore, it allows the emotion and nuances of the case to come out so the mediator has a better feel for the case. Effective listening helps a mediator better facilitate between the parties. Often times, the caucus is where the parties need the mediator to listen to their candid concerns under the protection of privacy. If the mediator can make the parties feel listened to, then the parties are ready to listen to the mediator and the other parties and begin to focus on possible resolutions of the claim. Generally, parties feel listened to when the mediator shows empathy. The mediator’s demeanor and listening skills will usually relax the parties so they are more comfortable relating to the mediator.
5. SUBJECT MATTER EXPERTISE
Although it is not required and there is disagreement on its importance, a mediator’s subject matter expertise of the legal issues at the mediation can aid a mediator’s effectiveness. It certainly allows a mediator to raise relevant issues for the parties to consider that otherwise would not be raised but for the mediator. Moreover, it gives the mediator credibility as the mediation advocates often want confirmation of their assessment of the claim. The reality is that the parties often prefer a mediator with some subject matter expertise.

6. COACHING SKILLS
By coaching parties, I am referring to the mediator discussing the case issues with the parties as well as how they want to proceed in the mediation with their next response, offer or demand. Coaching involves the mediator brainstorming with the parties to generate and discuss ideas. Most parties welcome coaching by a mediator. The mediator should participate in this case discussion and generation of options without promoting their ideas. Mediator coaching can also focus on party goals, relevant law, risk, considerations in going to trial, unanswered questions, and facts and issues that the parties want the mediator to advocate to the other side. Often with the help of the mediator coaching the parties, they will be able to determine their next move in the mediation.

7. ANALYTICAL & EVALUATIVE SKILLS
An effective mediator needs to be able to analyze and evaluate the conflict that they are mediating. Even if the mediator keeps their analysis and evaluation to themselves, it is an inherent step in a mediator’s facilitation of the dispute. It allows the mediator to identify the issues and decide how to manage and resolve the conflict. Such an analysis helps the mediator map their plan and then implement it with approaches and skills targeted to resolving the dispute at hand. Sometimes the mediator’s approach is modified by the mediator’s intuition which flows from the feel and atmosphere of the mediation. The mediator gets the feel of the mediation from listening closely and watching the parties. There is a certain amount of intuition and instinct involved in most mediators’ work.

If it appears to be appropriate or the parties ask for the mediator’s opinion, the mediator can also share their evaluation of the dispute with the parties. This is a tricky endeavor, so the mediator needs to couch their evaluation appropriately so it helps the parties. At the least, when the mediator provides their evaluation they need to also tell the party that they can consider it to whatever extent they want, if it helps them in deciding how to resolve the dispute. That approach avoids the parties feeling that the mediator is deciding the outcome for them.

8. PERSISTENCE
One of the simplest but most important skills of a mediator is persistence. Disputes are resolved after starts, stops, lurches, pauses and turns in the mediation. Parties appreciate hard work and effort by the mediator. The settlement is often reached after the parties have postured, overstated, misstated and communicated in ways that can delay and obscure the sight of a settlement. An experienced mediator knows that often it takes time and patience for the fog of a conflict to lift so settlement can come into view. Mediator follow up with the parties after an unsuccessful mediation should be standard practice. The simple passage of time after the mediation can lead the parties to a different perspective on settlement. The mediator should take the initiative in following up with the parties.

9. NEUTRALITY
It goes without saying that mediator neutrality is an integral characteristic of a successful mediator. Parties can sense favoritism or “not getting a fair shake” so a mediator needs to go the extra yard to maintain their neutrality in all dealings with the parties at mediation. I encourage parties to call me on it if they feel I am not neutral in the mediation.

10. RESPECT
Although it is more of an attitude than a skill, mediator respect of all mediation participants lends an important undercurrent to the mediation. Respect for each other’s opinions, feelings, and settlement goals should be demonstrated by everyone at mediation. The mediator sets the tone at mediation by showing respect at the mediation. It provides the atmosphere where the parties can discuss their disagreements in order to reach agreement.

Thomas Repicky has mediated over 1300 cases since 1998. He was Board Certified as a Civil Trial Specialist by the National Board of Trial Advocacy for 20 years. He also taught Mediation for three years at the Kent State University Center for Conflict Management. Thomas Repicky has been a member of the National Association of Distinguished Neutrals, Ohio Chapter since 2013. He has been a CMBA member since 1979. He can be reached at (440) 247-3898 or tomrepicky@sbcglobal.net.

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Although law firms want to increase business and find new clients, oftentimes lawyers are too swamped to help. How can firms reach more people while keeping costs low and taking little time away from the lawyers? By blogging and being active on social media, of course. Blogging on law firm websites about significant case decisions, new laws, or law firm specialties is the new way law firms increase their business development. This is a relatively cheap business development method that can bring in many new clients and increase referrals. No wonder over 80% of the Am Law 200 law firms are now blogging. And, well, if this many big law firms are blogging, it must be ethical, right? Maybe. It depends on how “you” are blogging—are you writing your own blog and social media posts, or have you hired a ghostwriter? Some lawyers may not think twice about potential ethical issues regarding ghostblogging since there seems to be no ethical issues with clerks writing opinions for judges or with younger associates drafting briefs rather than the partner whose name is on it. Blogging, however, may be viewed differently.

Cue the Ohio Rules of Professional Conduct. Two rules shed some light on ethical considerations law firms face when publishing law-related material on their websites and in their social media (e.g., blogs) written by attorneys who are not members of the firm (i.e., “ghost writing”).

FALSE AND MISLEADING COMMUNICATIONS IN ADVERTISING

Blogs and social media posts that are meant to increase business likely constitute “advertising.” Advertisements are regulated under Ohio Rule of Professional Conduct 7.1, which states:

A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

Further, Comment 1 clarifies: “Whatever means are used to make known a lawyer’s services, statements about them must be truthful.”

Ghostblogging may violate Rule 7.1 in many ways. First, placing your name as the author of a blog post that you did not write is a false and misleading communication. This applies to lawyers who take pre-written content, upload it as “their” blog, and give no credit to the actual author. Ghostwritten posts may also be misleading “about the lawyer” because the way the post is written may misrepresent the lawyer. For instance, the ghostwriting may be more sophisticated or funnier or flow differently than how the lawyer actually writes, or worse, may convey perspectives or legal opinions differing from the lawyer.

Ghostwritten blogs may also be misleading regarding the lawyer’s services to the public. Blogs labeled as being written by a lawyer carry more weight and are subject to higher reliance in the public’s eye. Potential clients may reasonably believe that you are competent in an area of law that “you” posted a blog on, or at least believe that you have experience in that area, when in fact you may have zero experience in that area — it just happened to be the blog your ghostwriter uploaded one day.

GENERAL PROHIBITION ON MISREPRESENTATION

Lawyers are also subject to a general prohibition of misrepresentation. Ohio Rule of Professional Conduct 8.4(c) provides: “It is professional misconduct for a lawyer to ... engages in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Importantly, the misrepresentation need not be material to constitute misconduct.

The false and misleading communications discussed above would likely also constitute violations of Rule 8.4(c). Since even immaterial misrepresentations are violations, blogs that slightly misrepresent who authored the blog or the services the lawyer is capable of may be in violation.

STEPS TO PREVENT VIOLATIONS OF THE OHIO RULES OF PROFESSIONAL CONDUCT

If lawyers decide to use ghostwriters to write their blogs and social media posts, following these guidelines may help avoid violating the Ohio Rules of Professional Conduct.

• Review all posts before uploading online. Ensure that the post makes no false misrepresentations, such as about the firm’s ability, knowledge, or experience. The blog should only discuss areas of law you have experience or expertise in to prevent giving a false impression that you have knowledge in an area you do not.

• Make it clear who authored the piece. Be careful when writing “on behalf of” at the bottom of the post. Clients could reasonably question whether the lawyer wrote the piece or someone, such as the website administrator, just posted the blog to the website on “behalf” of the attorney. Do not deceive readers.

• When possible, write the post yourself or have someone in the firm write it. Editors can always be hired to polish up the piece and upload it. The amount of collaboration between yourself and the ghostwriter can make all the difference.

• Ensure that language in the post cannot be “misconstrued, used as legal advice or, from
a reader’s standpoint, viewed as an attorney/client relationship. Post a disclaimer as an added layer of protection.

ADDITIONAL GHOSTBLOGGING ISSUES

Ghostblogging presents other issues besides potentially violating the Ohio Rules of Professional Conduct. Ghostwritten blogs may be bad marketing, especially if you buy “legal blogs” from a bank of pre-written blogs available to the rest of the world. Don’t take the chance of having “your” blog entries appear on multiple other firm blogs. Ghostwritten legal blogs are also arguably ineffective as marketing tools because most ghostwriters recommend writing short posts, even though research suggests long posts perform better than short posts.  

Also, be aware that others may out you, or “ghostbust” you, for not writing your own blogs or social media posts. It’s happened.  

Keep in mind that some jurisdictions prohibit undisclosed ghostwriting of court pleadings for pro se litigants. Ohio courts, specifically, look poorly upon ghostwriting involving a pro se litigant.  

Lastly, to have effective attorney-client relationships, clients must trust lawyers completely. Lawyers may lose clients’ trust and respect if clients discover that the lawyer did not actually write a blog post (which may have prompted the client to contact the lawyer in the first place) or has little experience in the area of law blogged about. This is a poor way to start off any relationship, and it can greatly damage your reputation.

Conclusion

Until ghostblogging is addressed by the Ohio courts, lawyers and firms should remain mindful of Ohio Rules of Professional Conduct 7.1 and 8.4. These rules guard against misrepresentations, even immaterial misrepresentations, and any false or misleading communications about the lawyer or his services. While all lawyers are busy, spend some time reviewing material before it’s posted if you do use a ghostblogger. For all the great business development ghostblogging can provide, is it really worth it if you could lose your reputation, be found in violation of the Ohio Rules of Professional Conduct, or worse, be sued for malpractice? I’ll let you be the judge of that.

---

Sarah Ann Siedlak is currently a 3L at Case Western Reserve University School of Law. She attended the University of Miami for undergrad and studied Marine Science and Biology. She is from Willoughby Hills, Ohio, but will soon move out west to San Diego, California after graduation. She will be working at Wilson Sonsini Goodrich & Rosati in patent litigation, and she is excited to use her science background with law.

To My Fellow Attorneys:

Over the course of the last 25 years I have mediated one or more cases for many of you. Although I retired from the representation of clients on March 31, 2017, I am continuing to conduct mediations and arbitrations. Because I no longer have the overhead of a downtown office, I am able to do so at greatly reduced rates. I look forward to working with you and giving my undivided attention to your mediations and arbitrations.

Niki Z. Schwartz

216-696-7100
nzs.adr@gmail.com
Mediation Advocacy for Litigators

Steps to a Successful Mediation

BY TIM WARNER

While it may seem obvious, what a litigator must first learn is that mediation is not litigation. In order for a mediation to be successful, a litigator must set aside handy litigation traits such as argument and competition and replace them with listening, patience and empathy. Rather than a retrospective outlook mired in history, blame and rights, the mindset must shift to a prospective outlook with settlement in full view. Once this shift to a mediation mindset is achieved, it must be conveyed to the client so that they too can approach mediation with an eye toward successful conflict resolution.

Many litigators make the mistake of believing that mediation is a one step, one day event. In fact, a successful mediation consists of a multi-step process, with each step building toward a successful resolution of the matter. The first step in the process is determining whether you are ready for mediation. Do you know enough about the dispute? Do you know enough about the parties? Should some document production or other discovery take place first? Are the parties and the lawyers ready to fully and honestly participate in a mediation? When these and related questions are answered in the affirmative, the mediation process can begin.

The second step in the mediation process is choosing the mediator. In this step, the litigator must decide if it is sufficient for the mediator to be adept at the mediation process or, if a highly technical topic is involved, whether it is necessary to retain a mediator with an expertise in the technical topic. Issues such as fees, conflict and background should be explored as well. A question that should be probed is whether the mediator will be persistent in the face of adversity and tirelessly work to resolve the dispute.

After the mediator is chosen, the third step in the mediation process is the initial joint conference call (or meeting) with the mediator. This call can be short but it goes a long way toward building the base necessary for a successful mediation. With this call, you want to eliminate any barriers to mediation. Issues such as location, scheduling and determining how much time to set aside for the mediation should be discussed. Further issues, such as who needs to be present at the mediation and whether physical presence is necessary should be addressed. Are there decision makers outside the traditional parties that need to be included? Have there been settlement discussions? Will there be a settlement demand or a response prior to the mediation? Remember that, prior to this point, the mediator knows little to nothing about the case. The initial joint conference is the right time to inform the mediator and make her aware of the issues both promoting and detracting from possible resolution.

The fourth step in the mediation process is the creation and submission of a timely and effective written submission to the mediator. All too often, the default of the busy litigator is to lightly rework a motion or pleading and submit it for the mediation. A better practice is to create a submission from scratch after you have shifted toward a mediation mindset. While a retrospective litigation history, with laws and facts cited, may be necessary to set the table for the mediator, it may not be the most important information conveyed. Remember, the submission is not a litigation tool designed to convince the mediator that you should win but rather a mediation tool designed to bring the mediator with you on a journey toward a prospective settlement. Issues to consider are when to send the submission and whether the submission should be delivered to the mediator in confidence or whether it should be shared with the opposing party. In some instances, it may be best to have both a confidential submission to the mediator and a separate submission to the opposing party. The earlier lawyers and parties can begin to understand the opposition’s position the better. Barriers to settlement, sensitive issues and settlement positions should be addressed in the written submission.

The fifth step in the mediation process is the “heads-up” call or calls with the mediator. Remember that in mediation, unlike litigation, the lawyers and parties are permitted to have ex parte discussions with the mediator. These conversations are important. There should be frank and candid discussions of both the barriers to and catalyst for settlement. Issues between the lawyers, issues between a lawyer and her client and sensitive and hot-button issues should be discussed. These ex parte communications are essential for the mediator to fully understand all aspects of the dispute. The more information you provide to the
mediator, the more power you give her to facilitate settlement.

The sixth step in the mediation process is the creation of a flexible, creative negotiation plan. Too often, lawyers and their parties appear at the mediation having thought very little about why they are there and what they want to achieve in the mediation. Prior to the mediation, the lawyer must work diligently to develop a mediation strategy. Perhaps more importantly, the mediation strategy must be shared with the client so that lawyer and client are on the same page. Damages should be discussed in depth as well as sources of payment should a settlement occur. Different scenarios should be considered and mapped out. The opposing party's wants, desires and limitations must be considered. Above all, a real analysis of what it will take to resolve the dispute must take place. This is not to say that a party should come to the mediation with a rigid negotiation script. Rather, the strategy and plan must be flexible and the parties must be able to deviate from the strategy as the mediation moves forward. The developed strategy should form a basis for discussions, not a barrier to flexible settlement.

The seventh step in the mediation process is proper consideration of the mediator and the mediation. Mediation is a process and without question the mediator holds a valuable role in the process. That said, the lawyers and the parties must understand the proper role of the mediator. The dispute belongs to the parties and the parties, not the mediator, settle the dispute. Good mediators are good listeners, sounding boards and traffic police. A good mediator is a process expert working diligently to keep the negotiations fresh and the process moving forward. A good mediator uses skills, interjects expertise as necessary and persistently facilitates discussion but, in the end, it is the parties that ultimately must agree to settlement.

The eighth step in the mediation process is the mediation session. It is worth a pause here to note that what many litigators think of as the one and only step in the mediation process is conservatively the eighth step in the process. The mediation session can be broken down as follows: convening, opening joint session and perspectives, communication, negotiation and closure. Here again, it is essential that a mediation mindset set the tone. For example, rather than an opening statement designed to convince the other party to surrender and the mediator to declare your side a winner, the lawyer may consider a statement on perspective with an eye toward issues of common understanding and resolution. The emphasis of the mediation should be reasoned discussion over emotion, negotiation over argument, problem solving over problem creation, patience over agitation and resolution over victory. If a settlement is reached, that settlement must be evidenced in a writing, simple or formal, so that the parties cannot later attempt to disavow the settlement.

The ninth step in the mediation process involves confirming the resolution reached at the mediation session or the scheduling of subsequent sessions or telephone conferences. It is typical for a skeletal document to be signed at the close of the initial mediation session if a settlement is reached. This must be followed up with a complete and full settlement agreement and dismissal of the litigation. This is sometimes a laborious process but it is a necessity.

If resolution is not reached at the mediation session, it may be necessary to schedule follow up sessions either face to face or on the telephone. While the goal should always be to resolve the dispute at the initial mediation session, it should not be considered a failure if that does not take place. The mediation process should continue as long as the parties continue discussions and progress is possible. Additional ex parte communications with the mediator may also be necessary. It is the duty of the mediator, the lawyers and the parties to be persistent.

Settlement is the goal of mediation and that goal is much more attainable if the lawyers and the parties commit to and implement the nine mediation steps outlined in this article. Each step is designed to move the dispute from litigation to mediation and to build toward a successful settlement.

Tim Warner is a practicing mediator and arbitrator. A former Chair of the Litigation Section of the Cleveland Bar Association, Tim currently serves as the Chairman of the Litigation Group at Cavitch and has been a litigator for almost twenty five years. Tim has been recognized as a Super Lawyer for a number of years and has been listed in Best Lawyers. He has been a CMBA member since 1993. He can be reached at (216) 621-7860 or twarner@cavitch.com.

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Henry J. Heinz, American entrepreneur and businessman, once remarked that “to do a common thing uncommonly well brings success.” The designation of notary public has a long and distinguished history that dates back approximately 1500 years. Today, documents are notarized with regularity and presented or required in a variety of proceedings and applications. Though notarizations are commonplace, notarial guidelines can be complex and specific processes and procedures are statutorily mandated pursuant to R.C. 147.01 et seq. Sounds like we may need to play a little ketchup.

BECOMING A NOTARY
For starters, attorneys are not automatically notaries. Instead, attorneys must be additionally appointed and commissioned by the state through an application process. Notably, the application process occurs at the county level. Attorneys must be officially commissioned prior to notarizing any document.

SEAL & REGISTER
Prior to notarizing any document, a notary “shall provide themselves with the seal of a notary public.” See R.C. 147.04. Specifically, the statute provides:

The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surrounded by the words “notary public,” “notarial seal,” or words to that effect, the name of the notary public and the words “State of Ohio.” The seal may be of either a type that will stamp ink onto a document or one that will emboss it. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him.

ACKNOWLEDGEMENT VS. JURAT
The specific nature of the notarization depends upon the notary language that appears at the end of the document. An acknowledgement, which may contain language such as “the foregoing instrument was acknowledged before me,” allows an individual to sign outside the presence of the notary and then appear before the notary, confirm their signature, and have the document notarized. See R.C. 147.53.

Conversely, jurat language, which may contain language such as “sworn to and subscribed to before me,” requires that the notary certify that the document was signed in the notary’s presence, that the notary administered an oath or affirmation to the signer, and that the signer indeed swore to or affirmed the contents of the document. See Black’s Law Dictionary. Failing to administer the oath or affirmation when notarizing an affidavit is grounds for removal from the office of notary public. See R.C. 147.14. In either instance, the individual seeking to have a document notarized must appear before the notary.

CONCLUSION
Though notarizing a document is a relatively common action undertaken by a lawyer, taking the time to more fully understand the laws, expectations, and history of the notary public is a valuable endeavor. Perhaps nothing an attorney does could better fit into the life lesson set forth by Mr. Heinz, as effectively performing foundational tasks will allow the majority of an attorney’s energy and efforts to be focused on the finer points of the practice of law.

Disclaimer: The contents of this article are not intended to serve as legal advice. Appropriate legal counseling or other professional consultation should be obtained prior to undertaking any course of action related to the topics explored by this article.

Christopher D. Caspary is an Associate Attorney with Ritzler, Coughlin, & Paglia, LTD. Christopher previously served as a Judicial Staff Attorney to the Hon. Nancy A. Fuerst in the Cuyahoga County Court of Common Pleas. Mr. Caspary completed his undergraduate studies at The Ohio State University and received his JD/MBA from Cleveland State University. Mr. Caspary’s practice focuses on civil litigation and insurance defense. He has been a CMBA member since 2012. He can be reached at (216) 241-8333 or ccaspary@rcp-attorneys.com.
SPOTLIGHT ON:
HON. LAUREN C. MOORE

Cleveland Municipal Court Judge Lauren C. Moore is dedicated to encouraging young people to find joy and excitement in the law. As the chief organizer for the Cleveland Mock Trial Competition, Judge Moore is key to the successful operation of a program that welcomes hundreds of Cleveland and East Cleveland high school students to the Justice Center each spring. The top attorneys, witness, and writer each year are awarded paid summer internships with the Court, a much-coveted prize for top-notch work. Cuyahoga County Law Director and Cleveland Mock Trial founder Robert Triozzi says of Judge Moore that since taking over his role, “She has really done wonderful work with these cases. You see the energy of these students, why they’re participating, it’s because she’s identified issues that are important to kids, and uses those cases and those fact patterns as a learning experience.”

At each mock trial, Judge Moore takes the time to provide much-needed support and encouragement to the students. At a recent competition, she said: “I see a career in law for all of you. The people who watch you are going to say ‘Wow, that’s Cleveland school students. They look good, they sound good, they’re smart, they think on their feet.’”

Beyond mock trial, Judge Moore connects with young people on her 3Rs team that visits Ginn Academy. She has been a committed volunteer for The 3Rs for a decade, fostering appreciation and understanding for the U.S. Constitution and rule of law among the students. 3Rs team captains Judge Maureen Clancy of the Cuyahoga County Court of Common Pleas and Tina Tricarichi of the Cuyahoga County Public Defenders Office say their longtime teammate always has thought-provoking questions for her students. They note that “Judge Moore has been helping and guiding young people in the law for a long time. She and Judge Groves created the Get on Track program at the Cleveland Municipal Court a number of years ago which constituted a special probation program not only for but primarily for young people with misdemeanors and facilitated their getting their GED or high school diplomas and promoted life skills.” Thank you, Judge Moore, for all that you do!
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25 Professional Conduct LIVE
26 Election Law @ C|M Law
27 44th Annual Estate Planning Institute

NOVEMBER
1 Annual Special Education Law Forum
2 & 3 60th Annual Cleveland Tax Institute
9 & 10 39th Annual Real Estate Law Institute
14 Forensic Accounting for Lawyers
15 Don’t Be Shifty: The Nuts and Bolts of Fee Shifting
16 De-Stress Fest
30 Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics
30 Fluff Is For Pillows, Not Legal Writing

DECEMBER
1 Advanced Workers’ Compensation Medical/Legal Seminar
2 Legal Eagles Year End Update
5, 6 & 7 New Lawyer Bootcamp
8 2017 Environmental Law Institute
11 Professional Conduct Video
12 Pitfalls and Pointers for Young Litigators
13 Social Security Disability CLE
14 It’s Not What You Say, It’s What They Hear: Crisis Communications for Lawyers and Their Clients
15 2017 Federal Practice Update Live
16 Professional Conduct Video
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19 Don’t Let It Be You: Professional Conduct for the Modern Practitioner
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21 & 22 Real Estate Law Institute Video
27 & 28 O’Neill Bankruptcy Institute Video
28 Professional Conduct Video
29 Professional Conduct Video
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Visit CleMetroBar.org/CLE for updates or registration or contact the CLE Department at (216) 696-2404.

Bike Law 101
Wednesday, September 27
CREDITS 3.25 CLE
REGISTRATION 8:30 a.m.
PROGRAM 9 a.m. – 12:30 p.m.
Bike Law History
Modern Bicycle Laws
Overview & Application of The ORC – Ohio’s Bike Laws
Bicycle Crashes: Representing the Injured Cyclist

PRESENTER
Steve Magas, Ohio Bike Lawyer
Steve is a trial attorney in Cincinnati. He has now handled some 400 “Bike Cases” over the years — representing injured cyclists and the families of those killed on the road. His interest in the two-wheeled world of bikes and motorcycles extends far beyond the “9-5 job handling injury and wrongful death claims for cyclists or writing about Ohio’s Bike Laws.

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Friday, September 15
PROGRAM 8:30 a.m.
CREDITS 5.50 hours CLE
LOCATION Embassy Suites Independence
How to Fire An !#*(# Client: Letting Clients Walk Away and Selecting Clients
Show Me the Money: How to Get Paid, Creative Billing, Setting Fees, Knowing Your Value
The Downward Spiral: Taking Control of Your Inbox and Your Communications
LinkedIn for Lawyers
20 Client Development Tips in 20 Minutes
Tech Topic – CyberSecurity
Letting Go: how to Outsource
Judges Panel: Pointers, Practice and Pet Peeves

Breaking into the Industry: Starting Your Arbitration or Mediation Career
Wednesday, September 27
CREDITS 2.5 CLE
REGISTRATION 1 p.m.
PROGRAM 1:30 – 4:15 p.m.
All about Arbitration and Mediation
What is Arbitration and Mediation?
Mark Wachter, Wachter Kurant LLC
How to become an ADR Neutral
Available Opportunities, Education & Training
Tim Warner, Cavitch, Familo & Durkin
Majeed Mahklouf, Berns, Ockner & Greenberger, LLC
Breaking Down Barriers in the Industry
Overcoming Prejudice and Obstacles
Deborah A. Coleman, Coleman Law LLC
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The opioid epidemic continues to make headlines, but how are we going to solve the problem? I caught up with Cuyahoga County Common Pleas Drug Court Judge David Matia, who spoke on the issue recently in our nation’s Capital, and asked him.

Q: TWICE YOU HAVE BEEN ASKED TO GO TO WASHINGTON TO SPEAK ON THE OPIOID CRISIS. CAN YOU TELL ME ABOUT YOUR EXPERIENCE THERE?

A: I was lucky that this opportunity fell into my lap. Both trips were sponsored by AAAS, which stands for the American Academy for the Advancement of Science. They publish Science magazine. The AAAS had initially asked Chief Justice Maureen O’Connor to speak. She was unavailable and suggested me when they asked for a substitute with a drug court background. I was paired with an administrator from the National Institute of Health and an epidemiologist from University of California, San Francisco, and we gave a talk on the opioid epidemic. That went well, and they asked us back to address members of Congress, which consisted primarily of their staffers.

Q: SO HOW DID IT GO?

A: The staffers were really engaged. They are busy people, and they were on their phones at the start of the presentation. I made a joke about my contempt powers being intergalactic, and I never saw another phone! They kept us 45 minutes afterwards asking questions. I went there not to give a speech on letting people know that people are dying from opioid addiction. Rather, I went there with tips in mind for how they could help us in fighting the crisis with resources.

Q: GREAT. WHAT DID YOU SUGGEST TO THEM?

A: I suggested a loan forgiveness program for those pursuing careers in behavioral health. We need more behavioral health specialists; we need more addiction psychiatrists; we need more chemical dependency counselors. So, to incentivize people to go into these areas, a loan forgiveness program would be something easy to legislate, but would yield great results. I told them that we still need to ratchet down on the prescriptions in this country. Five percent of the world’s populations, that being the United States, consumes 80 – 85% of its opioids. That should not be happening at this point in our epidemic.

Q: YOU CURRENTLY OVERSEE 2 DRUG COURTS. IN YOUR OPINION, DO WE NEED MORE DRUG COURTS?

A: Oh, absolutely. More people are dying of opioid overdose each year than almost died in the entire Vietnam War. The overdose death rate continues to increase, not decrease. More people die every year. There are 2,500
drug courts nationwide now. So, while we have come a long way since the first Drug Court began over 25 years ago in south Florida, we still need more. Because this is the future, this is outcome-oriented justice. We could pretend to just call balls and strikes from the bench, but our goal really should be a recidivism-reducing goal. You have someone who is suffering from dependency, a chronic disease. You get them well, you get them healthy, and they don’t come back. It’s a good outcome.

Q: THAT IS A GOOD OUTCOME. SO, JUDGE, AS A LAST QUESTION, WHAT DO YOU WANT MEMBERS OF THE COMMUNITY TO KNOW?

A: There are several things that those in the community need to know and recognize. Harm reduction is something that we need to pursue. What is that? It’s needle exchange programs and passing out Naloxone, the overdose reversal drugs. These things do not enable people to use. Drug dependent people are going to use anyway. Harm reduction techniques let people use safely. A person can’t go through recovery if they are dead. Going through recovery with a diseased liver from hepatitis C is tougher. We need to support harm reduction. It keeps everybody’s costs lower and keeps people alive. I always get bothered by people who say these programs enable use. They don’t enable use. We need to change our thinking on that. We need to remove the stigma from dependency. We need to treat people who are dependent the same as we treat diabetics. It’s a chronic disease just like diabetes. We don’t throw people in jail for eating cake when they are diabetics. People are going to relapse from time to time, and we need to be a little more patient with them. We need to celebrate their recovery more and treat them normally. When they do recover, we need to not judge them because they are just trying to do their best, and they need society’s help and support.

Laura W. Creed is the Legal Support Coordinator for the Cuyahoga County Court of Common Pleas. Ms. Creed has been with the Court since 1995, previously serving as the Chief Judicial Staff Attorney and as the Assistant Chief Judicial Staff Attorney. She is a lifetime member of the 8th District Judicial Conference and has been a member of the CMBA since 2003. She currently serves as the Co-Chair for the Women in Law Section. She can be reached at (216) 348-4011 or CPLWC@cuyahogacounty.us.

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Contact us today!

Visit us online at  
www.clemetrobar.org/insurance  
or contact Oswald at 216.658.5202
### August

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.

<table>
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<tr>
<th>MONDAY</th>
<th>TUESDAY</th>
<th>WEDNESDAY</th>
<th>THURSDAY</th>
<th>FRIDAY</th>
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| 1 | CMBF Executive Comm. Mtg. – 8 a.m.  
Grievance Comm. Mtg.  
PLI – ERISA 2017: The Evolving World – 8:30 a.m. | 2 | CMBF Board of Trustees Mtg.  
WIL Officers Mtg. | 3 | 3Rs Committee Mtg. |
| 4 | CMBF Executive Committee Mtg. | 5 | Hot Talks  
JFA Committee Mtg.  
PLI – The Attorney Client Privilege and Internal Investigations 2017 – 3 p.m. | 6 | CMBA Board of Trustees Mtg. – 4:30 p.m.  
Past President’s Reception – 5:30 p.m.  
(Greater Cleveland Aquarium) |
| 7 | Grievance Committee  
ADR Section  
Insurance Law Section | 8 | Stokes Scholars Mtg.  
UPL Committee Mtg.  
VLA Committee Mtg. | 9 | PLI – 19th Annual Supreme Court Review: October 2016 Term – 8:30 a.m.  
LRS Oversight Committee Mtg. – 9 a.m. |
| 14 | | 15 | CMBA Board of Trustees Mtg.  
Past President’s Reception – 5:30 p.m.  
(Greater Cleveland Aquarium) | 16 | PLI – 19th Annual Supreme Court Review: October 2016 Term – 8:30 a.m.  
LRS Oversight Committee Mtg. – 9 a.m. |
| 21 | | 22 | | 23 | Pro Se Divorce Clinic & Pro Se Plus Divorce Clinic – 10 a.m. & 1 p.m.  
(1 Lakeside Ave Law Library) |
| 28 | | 29 | | 30 | Pro Se Divorce Clinic & Pro Se Plus Divorce Clinic – 10 a.m. & 1 p.m.  
(1 Lakeside Ave Law Library) |

### September

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<tr>
<th>MONDAY</th>
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<th>THURSDAY</th>
<th>FRIDAY</th>
</tr>
</thead>
</table>
| 4 | Closed for Labor Day | 5 | CMBF Executive Comm. Mtg. – 8 a.m.  
Grievance Comm. Mtg. | 6 | CMBF Board of Trustees Mtg.  
WIL Section Mtg. |
VLA Comm. Mtg.  
Joint WIL & OWBA Event – 4:30 p.m. (Off-Site) | 13 | Ethics Comm. |
| 18 | | 19 | Estate Planning, Probate & Trust Law Section Mtg. & CLE  
Grievance Comm.  
Insurance Law Section  
Anatomy of Justice – 5 p.m. (City Club) | 20 | CMBF Board of Trustees Mtg. |
| 21 | | 22 | Court Rules Comm. – 11:45 a.m.  
Family Law Section Mtg.  
CLE | 23 | |

JULY/AUGUST 2017  
CLEVELAND METROPOLITAN BAR JOURNAL  | 55
LISTINGS

Law Practices Wanted/For Sale

Established workers' compensation firm looking to increase client base by taking over an existing book of clients. If interested in discussing this, please call (216) 990-7951.

Office Space/Sharing

Downtown

820 W. Superior Ave – 2 large offices available in existing suite with 4 other attorneys. Full amenities. Support staff space available. Call (216) 241-3646.

55 Public Square – Office available in nicely decorated suite with receptionist, fax and copier. (216) 771-8084.

Downtown Cleveland – Rockefeller Bldg. @ W. 6th & Superior. Exceptional office space, exceptional value. All window space, no interior offices. Contact Ben Cappadora or Therese Manos at (216) 696-3929.

IMG Center – E. 9th and St. Clair – Office space available in suite with several other attorneys. Telephone, receptionist, fax, copier, secretarial available. Referrals possible. Contact Ty Fazio at (216) 589-5622.

Leader Building – Office space available in elegant suite with several other attorneys, receptionist, optional secretarial space, library/ conference room, fax, copier; telephone system, kitchen. (216) 861-1070 for information.

Terminal Tower – Law offices available in prime location with reception area, secretarial space, conference room, copier, fax and kitchen. Reasonable rent. Call (216) 241-2022.

Unique Cleveland Warehouse District – Executive and Associate Offices with available full services, amenities, and referrals. Convenient to courthouses, restaurants, and parking. Call Pam MacAdams (216) 621-4244.

Suburbs – East

Beachwood – Single office, New. Nice. Fair price and possible case sharing. (216) 244-3423

Beachwood – Green Road near Chagrin. Prime office space. Also small to large office suites in Class A building. Receptionist, Westlaw, conference room, office furniture included. Up to 6 offices available. $500 – $750 per office inclusive. Possible legal referrals. (216) 514-6400, ext. 324.

Beachwood – Office for lease, either fully furnished or vacant (216) 856-5600

Beachwood – Office in gorgeous suite on Chagrin. Copier, fax, conference room and other amenities provided. Possible litigation referrals. Contact Craig W. Reiman (216) 514-4981.


Beachwood – New at LaPlace, above Cedar Creek Grill, Corner 3 Window Office, all amenities available, including assistant area. Free underground parking. Contact (216) 292-4666 or limlaw@sbcglobal.net.

Bedford – Law Offices available with conference room/library, kitchen, receptionist, and mentoring from C|M grad with 40+ years legal experience. (440) 439-5959

Chagrin Falls – Furnished office available with other attorneys in eastside law firm. Chagrin Falls location with parking. $500/month includes office, WiFi, kitchen and conference room. Contact lawfirmchagrinfalls@gmail.com.

Chagrin Falls – New at LaPlace, above Cedar Creek Grill, Corner 3 Window Office, all amenities available, including assistant area. Free underground parking. Contact (216) 292-4666 or limlaw@sbcglobal.net.

Mentor – Two offices available at Carrabine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Carrabine at (440) 974-9911.

Mayfield Heights – Beautiful office space available with conference room, receptionist, all necessary law firm amenities, complementary practices. Rent negotiable. (440) 473-5262.

Suburbs – South

Brecksville – Conference room and mailing services available in the Ganley Building for $50 or $150 per month. Possible legal referrals. (440) 526-6411, ask for Laurie.

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kirner at (440) 884-4300.

Seven Hills – Law office for lease – Broadview Road just north of Pleasant Valley Road. Busy intersection. Not far from I-77, 3,000 square feet, move-in ready, immediate occupancy. Reasonable rent. Contact Michael Kulick at (440) 503-9685 or michael1kulick@gmail.com to schedule a visit.

Suburbs – West

Avon – New office space with multiple professionals. Great for networking. Desirable location across from Avon Commons on Detroit Road. Many included amenities. Contact Doug: (440) 937-1551.

Fairview Park Office Space – Beautifully remodeled. Many amenities included. As low as $475 per month. Call (440) 895-1234 to schedule a visit.

Westlake – One/Two offices in Gemini Towers across from Crocker Park; includes phones, fax, copier, wi-fi, receptionist, conference room. Call (440) 250-1800 to schedule a visit.

For Sale

Harden Forbes contract Desk and Hutch. Solid Cherry. 78x38 Desk with inlaid leather and glass top. Hutch 78x38x78 with built-in workstation, glass enclosed cases on either side. Pictures available. Asking $3500. You pick up.

For Rent

Lake Erie Rental – Upscale 2 bedroom/2 bath house on Lake Erie in Willowick. Beautifully furnished, wifi and air conditioning, fire pit and patio. Rent for getaway weekend or week. (440) 725-1224
Services


**Business Appraiser/Forensic Accounting** – For shareholder disputes, domestic relations, ADR, estate planning, and probate – Terri Lastovka, CPA, JD, ASA – (216) 661-6626 – www.valueohio.com

**Careplan Geriatric Care Managers, Inc.** – Providing in-home assessments, coordination of care, advocacy and assistance with placement outside of the home. Short term consultation and ongoing monitoring. Phone: +440-476-9534 www.careplangcm.com

**Certified Divorce Financial Analyst** – Financial Affidavit, Budget, Cash Flow Projections, Executive Compensation Valuation, Separate Property Tracing, etc. Contact Leah Villalobos, CDFA, MAFF at (216) 328-2113; leah@greatlakesdfs.com.

**Commercial Real Estate** – Premier Development Partners – Highly experienced professionals in business real estate acquisition/dispositions and development. Brian Lenahan (216) 469-6423 or brian@premierdevelop.com.

**Experienced Attorney** willing to co-counsel cases in Cleveland and all municipal courts – Contact Joe at (216) 363-6050.


**Experienced Process Server** – Super competitive prices – flat rate $50/address within Cuyahoga County. First attempt within 24 hours. Pente Legal Solutions (216) 548-7608 or lisa.vaccariello@pentellc.com

Looking to slow down or starting to think about retirement? Attorney with established probate/estate planning/small business practice looking to expand current practice; (216) 245-8861

**MarcoAuction.com** – Court: Estate and Probate, Divorce, Power of Attorney; Real Estate: Residential and Commercial; Appraisals: Insurance, Jewelry and Antiques; and Chattle Items: Farming equipment – Marco Marinucci, Auctioneer – (440) 487-1878 or RealEstateAuctions39@yahoo.com

**Security Expert** – Tom Lekan – tlekan@gmail.com – (440) 223-5730

**Trial Attorney** – Experienced trial attorney in business litigation, personal injury, and complex family law. (25+ trials). Federal and State. stephen@neebitinger.com; (440) 782-7825.

**Video Conference, Deposition Facility** – Plaza West Conference Center, Rocky River offers conferencing and remote video. “smart” whiteboard conference facilities for 5–33 participants. plazawestcc.com (440) 333-5484.
CMBA’s Laywer Referral Service
provided 1,236 referrals in the area of Family Law over the past fiscal year.

THANK YOU
to our dedicated LRS Family Law attorneys who have served these referrals and found new clients.

Apply today to join the LRS & start receiving referrals!

The LRS application can be found online at CleMetroBar.org/lawyerreferral or call our LRS Coordinator, Katie Donovan Onders at (216) 696-3532 ext. 5002 for additional information.
New Associations & Promotions

Baker Hostetler is pleased to announce Carole S. Rendon, former United States Attorney for the Northern District of Ohio, has joined Baker Hostetler as a partner in the Cleveland office.

McCarthy, Lebit, Crystal & Liffman Co., LPA is pleased to announce the promotion of Katie Arthurs and Jack Moran to principal.

Singerman, Mills, Desberg & Kauntz Co., LPA is pleased to announce that Evan S. Hirsch has rejoined the Firm as a Principal. Prior to rejoining the Firm, Evan practiced at Jones Day, focusing on real estate and business law. Evan will continue to expand his practice in these areas. Evan was named an Ohio Super Lawyers “Rising Star” in 2016 and 2017.

Reminger Co., LPA is pleased to announce that Michelle J. Sheehan has been named Chair of the Mediation Practice group.

Frantz Ward is pleased to announce the addition of Andrew J. Cleves as Associate to its nationally-recognized Labor & Employment Practice Group.

Tucker Ellis LLP is pleased to announce that Heather Barnes and Michael Craig have joined the firm’s growing Intellectual Property Department as counsel, bringing to 23 the number of Tucker Ellis IP attorneys firmwide.

Meyers, Roman, Friedberg & Lewis is pleased to announce the addition of associate Katie M. Kalbacher. Katie has focused her practice on corporate transactions, including the acquisition, development, and disposition of commercial real estate.

Honors

Robert M. Wolff, a shareholder in the Cleveland office of Littler, the world’s largest employment and labor law practice representing management, has been recognized with a top ranking in the 2017 edition of the prestigious Chambers USA: America’s Leading Lawyers for Business. Chambers placed Wolff in Band 1, the guide’s highest distinction.

Hennes Communications is pleased to announce that the firm won two Silver Anvil Awards, the public relations profession’s most prestigious award, from the Public Relations Society of America as part of the communications team, led by one of our clients, Destination Cleveland, in recognition of the work done to support the 2016 Republican National Convention.

The Rathbone Group, LLC has been named one of Northeast Ohio’s Top Workplaces for 2017 by The Plain Dealer.

Elections & Appointments

The City Club of Cleveland recently announced that Patricia A. Shlonsky, partner-in-charge of Ulmer & Berne’s Cleveland office, has been appointed to their Board of Directors.

Cathleen Bolek, of Bolek Besser Glesius LLC, was sworn in as President of the Cleveland Academy of Trial Attorneys at its annual installation dinner on June 16. Christian R. Patno, McCarthy, Lebit, Crystal & Liffman Co., LPA, was sworn in as Vice President; William Eadie, of Eadie Hill, as Secretary; and Todd Gurney, of The Eisen Law Firm, as Treasurer.

Reminger Co., LPA recently elected Jeanne M. Mullin to our Board of Directors. Jeanne joins shareholders Stephen Walters, William Meadows, Richard Rymond, Donald Moracz, and Ronald Fresco as a member of our Board.

Attorney Donald P. Scott on June 5th, 2017 was sworn in for admission to the federal bar by The United States Supreme Court in Washington DC. Attorney Scott is a 2015 Ohio State Bar Association Leadership Academy graduate and was licensed to practice law by The Supreme Court of Ohio in 2008.

Ray Robinson, Carle & Davies Co., LPA is now Ray Robinson Law Co., LPA. They have a new address and telephone: 6100 Oak Tree Blvd., Suite 200, Cleveland, Ohio 44131 and (216) 328-2128.

Kaufman & Company LLC, has opened a Chicago, Illinois office. The firm already has offices in Cleveland, Ohio, New York City, and Washington, D.C.

Something To Share?
Send brief member news and notices for the Briefcase to Jackie Barea at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
16th Annual
Halloween Run for Justice
5K & 5-Mile

Saturday, October 28, 2017
Jacobs Pavilion at Nautica