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content

FEATURES

13 IT’S NOT ALL MEMES AND GIFS: E-CONTRACTING FOR MILLENNIAL CONSUMERS
By Amanda Rose Martin

15 CLARIFYING OFFICERS’ FIDUCIARY DUTIES AND MITIGATING LLC MEMBERS’ LIABILITY RISKS: SENATE BILL NO. 181 FILLS SOME GAPS AND PATCHES SOME HOLES
By Jeffrey C. Toole

17 USING COMPLIANCE AND ETHICS CONTRACT CLAUSES TO MANAGE THIRD PARTY RISK
By Margaret M. Cassidy

20 DISCIPLINE FOR SEXUAL BATTERY TOO LENIENT
By J. Philip Calabrese

29 BANKRUPTCY EXEMPTIONS: AN UPDATE ON OHIO EXEMPTIONS, AND SOUND EXEMPTION PLANNING
By Robert D. Barr

32 MATERIAL ADVERSE EFFECT: HOW IT “AFFECTS” M&A TRANSACTIONS
By T. Ted Motheral

34 INTERVIEW WITH A PRESIDENT
By Michelle Cady-Cook

DEPARTMENTS

07 FROM THE CMBA PRESIDENT
A Discourse on Discourse
Richard D. Manoloff

12 FROM THE EXECUTIVE DIRECTOR
A New Year’s Challenge
Rebecca Ruppert McMahon

10 BAR FOUNDATION
Rock the Foundation 12:
Get Ready to Rock
Drew T. Parobek

24 YOUR CLE METRO BAR
CLE Thank You, Membership Benefits and Specials, Pillars Program Series

35 ETHICS PERSPECTIVE
Beyond the Breach: Ethical Obligations When Client Information is Hacked
Jean M. McQuillan

40 MENTAL HEALTH & WELLNESS
The Anxious Lawyer: Managing Stress and Anxiety through Meditation
David Millstone

06 SECTION/COMMITTEE SPOTLIGHT
09 THE SCOOP
22 NEW MEMBERS
38 CLE
43 CMBA CALENDARS
44 CLASSIFIEDS
46 BRIEFCASE
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For information, contact Katie Onders at (216) 696-3525 x5002 or konders@clemetrobar.org

CleMetroBar.org/LRS
Volunteer Now for the Ohio Mock Trial!

The CMBA is proud to host the first two stages of the Ohio Mock Trial Competition in Cuyahoga County again: District trials will be held on January 20, 2017, and Regional trials on February 10.

The CMBA will again be welcoming ALL local high school teams to our District Competition, so we will need your help more than ever to support this exciting annual competition! This is Ohio’s largest academic competition and Cuyahoga County high school participation last year was among the highest yet. With the help of volunteers from the legal community in 2016, over 650 students representing 22 high schools in Cuyahoga, Geauga, Lake, and Lorain Counties were provided the opportunity to hone their communication, analytical, and courtroom skills.

Each year volunteer judges and attorneys serve as competition judicial panelists. At this done-in-a-day volunteer opportunity, volunteers have the chance to observe the region’s finest budding legal minds in an exciting afternoon of competition. Judicial panels score students based on their understanding of the case facts and applicable law, the roles of the attorney and witnesses at trial, and courtroom procedures and decorum. In the 2017 competition, students will consider a case of defamation of a public official by a news station.

For more about the Ohio Mock Trial Competition, visit CleMetroBar.org/OhioMockTrial.

SIGN ME UP!

☐ YES, I will serve as a judicial panelist for the Ohio Mock Trial Cuyahoga District Competition on January 20, 2017, from 11:30 a.m. to 5 p.m.

☐ YES, I will serve as a judicial panelist for the Ohio Mock Trial Cuyahoga Regional Competition on Friday, February 10, 2016, from 11:30 a.m. to 5 p.m.

☐ I will attend the volunteer orientation at noon on Tuesday, January 10.

☐ I have previous mock trial judging experience. My previous role (scoring and/or presiding)

Name __________________________
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Please return this sheet by email or fax. Reminders will be sent before the competition, but please save the date on your calendar.

For more information, contact Jessica Paine at (216) 696-3525 x4462 or jpaine@clemetrobar.org.
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Previous Events
This fall we hosted our Greener Way to Work Week and our annual luncheon, which welcomed guest speakers: Kathleen Rocco from the Cuyahoga County Solid Waste District, Matt Gray from the City of Cleveland’s Office of Sustainability, and Jerry Crabb from the Cleveland Indians. We also formally recognized the firms/offices that are CMBA Green and Green+ Certified for 2016–2018. These firms are listed at CleMetroBar.org/Green. During the luncheon, the first ever green sustainability award was presented to David E. Nash of McMahon DeGulis LLP. The Sustainability Award recognizes an individual who demonstrates leadership and promotes green sustainability practices.

Upcoming Events
The committee will focus its spring efforts on planning its 2017 events and sharing a collection of resources to support green firms. The 2017 Greener Way to Work Luncheon is scheduled for Thursday, September 28th.

BUSINESS, BANKING & CORPORATE COUNSEL SECTION

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buckley@buckleyking.com

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suzana.koch@usdoj.gov

Regular Meeting
Executive Committee meets monthly, every 2nd Wednesday.

What is your goal?
Provide value to the section members through networking and education.

What can members expect?
Networking and education

Upcoming Events/Highlights
Attorneys Advising Artists Program January 26, 2017; Program on Professionalism March 2, 2017; William J. O’Neill Institute May 4–5, 2017; Newsletter Forthcoming

Recent Event
Well-attended Holiday Party

The first program featured RNC Host Committee Chair Dave Gilbert, who shared the intricacies and extraordinary efforts involved in obtaining and hosting the RNC. In June, an educational CLE series brought together leaders from most of Cleveland’s top banks and corporations to discuss fiduciary duties, reputational risk, and the appropriate parameters when engaging with political figures. Notable speakers included Ann Ravel, Chair of the Federal Election Commission; Philip Richter, Executive Director of the Ohio Elections Commission; Congressman Jim Renacci; Lee Fisher, CEO for CEOs for Cities; and Chris McNulty, Director of Community and Political Affairs for the Republican National Committee.

James S. Rosebush, Deputy Assistant to President Ronald Reagan, Chief of Staff to First Lady Nancy Reagan, and White Senior Advisor; shared intimate observations and recollections of President Ronald Reagan, with compelling and thought-provoking insight into Reagan, whose unwavering principles and character changed U.S. history. Mr. Rosebush is the author of True Reagan: What Made Ronald Reagan Great and Why It Matters.

New Subcommittees offer leadership and networking opportunities
In response to the growing entertainment industry in Cleveland, the Section is in the final stages of creating an Entertainment, Sports & Media Subcommittee. This Subcommittee will focus on knowledge-sharing, educational opportunities and events that bring together industry professionals, including those who provide ancillary services, non-lawyers and lawyers.

There are several opportunities for members to become involved in (or lead) Section Subcommittees. We are extremely interested in hearing from Section members having an interest in the following Subcommittees: (a) Banking & Finance; (b) Securities; (c) Healthcare; (d) CLEs; and, (e) Nanotechnology.
A Discourse on Discourse

My lovely wife Molly and I wake up to a beautiful morning in Vienna, looking forward to a relaxing day on a wine-tasting tour in nearby Wachau Valley. We get picked up by a pleasant guide in a comfortable van, and settle in for a pleasurable ride through magnificent countryside.

We are hardly out of the city when I make the mistake of asking a "what's that?" question while pointing to a funky-looking structure that turns out to be a waste incineration facility. The guide barely finishes spitting out an eco-architect's name (Friedensreich Hundertwasser — say that ten times fast) before launching into a monologue on waste-to-energy initiatives and trying to goad me into a dialogue on American environmental policy.

As I cradle my coffee cup in my hands, I'm thinking, "Whoa, dude — Viennese coffee is strong, but not that strong ... and it's still kinda early." But I nibble on the bait, and get hooked on a day-long, wide-ranging discussion on policy, politics, and world affairs. The wine probably helped.

The guide speaks excellent English, albeit with a hint of a somewhat annoying Boston accent, which he evidently picked up while living there for five years. (I lived there for a year and thankfully escaped with our euphonious Midwestern accent intact.) Along the way, he remarks on the relative reluctance of Americans to engage in conversation about politics and other "deep thoughts." My mind immediately wanders to "Deep Thoughts, by Jack Handey" (like — "Before you criticize someone, you should walk a mile in their shoes. That way when you criticize them, you are a mile away from them and you have their shoes."). When my mind meanders back to the conversation, he has already covered three more weighty topics.

Fast forward ... I am attending a luncheon downtown. The event program carries a "Hamilton" (the Broadway musical) theme. Social media (not that I am on it, but I am aware of it) is abuzz about the Hamilton cast calling out Vice President-elect Pence, who attended the show, during the curtain call. So I bring up the topic of the actors getting political. After one person at my table offers a thoughtful comment, silence ensues. Another person says, "Got any other lead balloons, Manoloff?"

Then there was the holiday season in the aftermath of the recent political war. Where relatives with divergent views often converge around the dinner table or on the backyard gridiron, did any of your family members dare "go there," even obliquely, by commenting that they were making cranberry sauce great again, or were building a wall for the quarterback and were going to make the defense pay for it? Or did they follow the ubiquitous advice to preserve harmony by staying away from politics?

Why are we generally reticent to discuss political topics or other "deep thoughts"? Are we all just so darn nice that we don't want to possibly offend? Are we all Canadians? ... Perhaps it is because politics, religion and the like tend to define who we are at a deeper level than do fashion trends, sports teams and the like — although I readily admit that Cleveland sports is a religion to many in this town. Offering a viewpoint on a relatively important matter, then, risks being perceived as critical of someone's identity and thus personally offensive. So we shy away from such talk, and expect others to do the same. We become habituated to such avoidance. And our collective habits become a culture.

But it doesn't have to be that way. And, I contend, it's better if it's not.

Just as the Mighty Bucks (never mind Clemson) become a stronger team with a more refined playbook through tough training, earnest engagement and competitive challenge, our opinions become more durable and better developed when we engage in critical discourse. If we avoid discussing substantial matters, we deprive ourselves of the thought training exercises that help us better assess the strength of various viewpoints and help keep pervasive pundits at bay. In a democracy, where We the People rule ourselves within a wide whirling world of ideas, critical evaluation of viewpoints is not just a civic virtue — it is a civic imperative.

We can change our culture and advance the cause of critical discourse by addressing the rules of engagement. First, we must approach conversations about consequential concerns with civility. We make ourselves vulnerable when we avoid discussing topics that might make us personally offensive. So we shy away from things that even a relatively important matter, then, risks being perceived as critical of someone's identity and thus personally offensive. So we shy away from such talk, and expect others to do the same. We become habituated to such avoidance. And our collective habits become a culture.

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Rick Manoloff is President of the CMBA. Prior to joining then Squire, Sanders & Dempsey to commence his career as an attorney, he served as the Issues and Research Director for a United States Senate campaign. As a member of the Board of Education of the Rocky River City School District, he is an elected official. He has been to Canada many times, where the people are always exceedingly nice. He has been a CMBA member since 1993. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.
David M. Lenz
Firm/Company: Schneider Smeltz Spieth Bell LLP
Title: Partner
College: The Ohio State University
Law School: OSU Moritz College of Law

A RECENT MILESTONE!
My wife and I welcomed our second daughter into the world in December. We are now living the joys, challenges, and sleep deprivation of life with a toddler and a newborn.

WHEN HAVE YOU SEEN THE CMBA MISSION AT WORK?
I have volunteered with the 3Rs Program since it was created. It is a beautiful example of attorneys giving their time and expertise to partner with a community institution to make Cleveland a better place. I’m grateful for the vision of the attorneys who dreamed of the program and all of the volunteers who make it possible.

CAN YOU PLAY AN INSTRUMENT?
I have played the trombone since 5th grade, including six years in the basketball bands at Ohio State. You can still see me tooting my own horn from time to time in the Hillcrest Concert Band.

EAST SIDE OR WEST SIDE?
East side. Far east side. I grew up in Mentor and now live in Mayfield. I guess I just can’t get enough snow.

HOW DID YOU ASK YOUR SPOUSE TO MARRY YOU?
I proposed to my wife on the banks of the Olentangy River on campus at Ohio State. She was quite surprised, since I had just come back to town to finish studying for the Bar exam, which started only 9 days later; and she assumed I would have other things on my mind.

Alla Leydiker
Company: CMBA
Title: CFO
College: CWRU
Grad School: University of Akron

IF YOU WERE NOT IN YOUR CURRENT PROFESSION, WHAT WOULD YOU BE?
Definitely a famous fashion designer. Also, a psychologist — I have always been curious about people’s minds.

TELL US ABOUT YOUR PET.
My adorable seven-month-old tri-color Corgi, Princess Judith, is a new joy of my life. She is very sweet, smart, sociable, and loves everyone. Her favorite activities are eating and watching movies with us. My little puppy is precious to me because she is the first who was able to reveal to me and my family the love of and for animals, which is something we never felt before.

WHAT’S ON YOUR BUCKET LIST?
• Attend the Academy Award “Oscar” Ceremony and one of the A list parties afterward;
• Eat Omakase sushi at Jiro’s in Japan;
• Learn a third language such as Italian or Japanese and have a deep philosophical conversation with a native speaker about life.

IF YOU COULD GO TO DINNER WITH A FAMOUS PERSON WHO WOULD IT BE?
I would pick Golda Meir; the Prime Minister of Israel between 1969 and 1974. I would ask her what it was like to be a woman leading a struggling nation in a male dominated culture and world, while paving the way for other women.

ONE FUN FACT ABOUT YOU!
I am literally “Made in USSR”; born there in 1971. This makes me a former citizen of a vanished country.

Alex Reich
Firm: Calfee, Halter & Griswold LLP
Title: Associate
College: Washington University in St. Louis
Law School: Cleveland-Marshall College of Law

WHY DO YOU LOVE CLE?
As a proud native Cleveland, there isn’t much I don’t love about our city. The people, the distinct personality of each neighborhood, the cultural activities, the food scene, the cost of living...the list of Cleveland’s wonderful attributes goes on and on. I’ve always known that our city is a gem, but after all the fanfare during the past year, it certainly has become a not-so-hidden one.

WHAT NEIGHBORHOOD DO YOU LIVE IN AND WHY DO YOU LIKE IT?
This is my eleventh year as a downtown resident. In my mind, there’s never been a better time to live downtown. My wife and I have a pedestrian commute to work every day. We have the Flats, East Fourth Street, every major sports venue, and Playhouse Square all at our fingertips. It’s been incredibly exciting to see downtown grow as a residential community over the past decade, and it shows no signs of slowing down.

HOW DID YOU MEET YOUR SPOUSE?
I met my wife when we were both 1Ls at Cleveland-Marshall. I first noticed her while we were studying in the same area of the law library. So I very awkwardly introduced myself while we were walking into class one day. Luckily, I didn’t scare her away. We got married in September 2014 and are currently in the process of living happily ever after.

TELL US ABOUT YOUR FIRST EVER JOB.
After my sophomore year in high school, I got a summer job coaching toddler tee-ball and softball for the City of Bay Village. It was great! I was outside all day, and the kids were a blast. Ironically, the father of one of those kids was a successful attorney in town. I reached out to him one day, and he gave me my first job in the legal profession. He remains a great friend and mentor to this day.

DESCRIBE AN IDEAL SUNDAY.
My ideal Sunday is a quiet one. Running and cooking are two of my passions, so the only real agenda items would be a long run in the Metroparks, a stop at the West Side Market (since it’s open on Sundays now), and spending a few hours cooking dinner at home. It might not be very exciting, but it surely sounds good to me.
Rock the Foundation 12

Get Ready to Rock

Rock the Foundation, our signature fundraising event, is just around the corner. Please join us at the Music Box Supper Club on Saturday, February 11, 2017 for my favorite CMBF event each year. Why my favorite, you might ask? I’ll give you a dozen reasons in honor of Rock the Foundation’s 12th year!

12 THE DANCING
This is the one night of the year in which my wife, Rachel and I are transformed from mild-mannered Foundation president and first lady to Fred Astaire and Ginger Rogers (at least in our own minds). As the evening goes on, we inevitably morph into Michael Jackson and Britney Spears. And we never leave the dance floor. In fact, past-President Hugh McKay said last year that we reminded him of the 1969 movie, *They Shoot Horses, Don’t They!* where contestants in a marathon dance competition literally dance til they drop. Call it what you will — cutting a rug, tripping the light fantastic, a possible seizure or muscle cramp — our style is all our own, and we sure do have fun!

9 THE VENUE
Since its inception, Rock the Foundation has been blessed with an eclectic — and always marvelous — set of venues. In its early years, the Rock event was held at the Galleria. It was a place where our attendees could mingle, dance and enjoy the music in a cozier locale. As Rock grew, we found a new home at one of Cleveland’s most famous venues: The House of Blues. Rock the Foundation continued to grow there, surrounded by rock-n-roll mementos, traditions, and history. Rock celebrated its 10th anniversary in an elegant fashion at the Cleveland Museum of Art. Not even a classic Cleveland snowstorm could chill the warmth of that special occasion, and a record crowd celebrated in style. Last year, we took our “Rocktail” theme to the Music Box Supper Club on the West Bank of the resurgent Flats. The setting was so spectacular that we’re returning to the Music Box again this year.

10 THE RAFFLE
Where else do you have a chance to win a Kyrie Irving autographed jersey, a Kevin Love signed basketball, a 50/50 raffle, a bucket full of beverages, and a round trip to a select destination, all in the same evening? At Rock the Foundation, of course! Our raffle is further evidence of our growing partnership with the Cavs (last year, 3Rs Ambassador LeBron James donated an autographed basketball); it’s fun; and it benefits a great cause. What the heck, I might even throw my old Vanderbilt jersey (or what the moths have left of it) into the auction and see what happens.

8 THE VIP RECEPTION
The VIP Reception, which will be held this year from 6 p.m. to 7:30 p.m., is one of the ways the Foundation says “Thank You” to our incredibly generous sponsors. VIP attendees have the opportunity to socialize in a more intimate setting, surrounded by excellent hors d’oeuvres, the music of Transportation Boulevard, and an air of excitement and anticipation for the main event. This year, the significance of the VIP Reception will be enhanced by the announcement of our second winner of The Richard W. Pogue Award for Excellence in Community Leadership and Engagement: The Chairman and Chief Executive Officer of KeyCorp, Beth Mooney. The VIP Reception has always been a special part of Rock the Foundation. This year, its significance and meaning will reach new levels as the Foundation proudly honors one of the first citizens of Cleveland’s business and philanthropic communities.

7 THE MUSIC
Transportation Boulevard will get us started at the VIP Reception, and one of Cleveland’s hottest bands — Nitebridge — will rock us through the main event. Nitebridge follows a long list of well-known area bands who have played at Rock: Punch the Clown, Disco Inferno, Stone Pony Band, Heart & Soul, The Spazmatics, Rule 11 and the Sanctions, Disco Inferno, Stone Pony Band, Heart & Soul, The Spazmatics, Rule 11 and the Sanctions, and the inimitable, ever-popular No Name Band. I can still hear Hugh McKay singing “Wooly Bully,” in my sleep — and that’s a good thing! Great bands, great music, and a great venue simply cannot be beat.

6 THE TIME OF THE YEAR
Rock the Foundation tends to fall around Valentine’s Day, and I don’t think that’s by coincidence. Rock is certainly a cure for the wintertime blues, but it’s so much more. Our Foundation’s motto has long been “Lawyers Giving Back.” This year, to that theme we’re adding the following mantra: “Opening doors,
opening hearts.” The Foundation continues to open doors to young people and others in Greater Cleveland who need our support, doing so through the open hearts of our many donors within and beyond the legal community. This is a message of caring and love; Valentine’s Day is the perfect day to celebrate it!

5 THE CROWD
If the Bar Foundation is best-described as “Lawyers Giving Back,” Rock the Foundation is best-characterized as “Lawyers Having Fun.” If you think our profession is too serious, too staid, and at times too stressed out, you need to attend Rock. It is certainly one event where we enjoy each other’s company, the friendships, the camaraderie, and the good cause we are celebrating. It is also an occasion where we let our hair down (with the exception of my folically-challenged friends and Foundation leaders, Mitch Blair and John Lebold), and have a lot of fun!

4 THE TEAMWORK
Rock the Foundation is a great example of what can happen when a group of dedicated people work together for a cause they deeply believe in. The Foundation is comprised of a caring, working board of 41 trustees. The Rock Committee, led by Stephanie Trudeau, Eric Goodman and Pat Krebs, consists of Rosanne Aumiller, Mark Avsec, Mary Catherine Barrett, Pamela Daiker-Middaugh, Kevin Donahue, Hugh McKay, Bethanie Murray, Lee Ann O’Brien, Michael Riley, and Leslie Wargo. The CMBA/CMBF Staff team is led by Executive Director, Becky McMahon, Krista Munger, Mary Groth, Rita Klein and Kris Wisnieski. Together, this combined group does everything from soliciting the necessary sponsorship support to auditioning the bands to choosing the right sauce for the appetizers — and so much more! It is quite a team effort undertaken by quite a team. And the result, year after year, is a memorable event with long-lasting benefits for our society.

3 OUR SPONSORS
As I mentioned in one of my earliest columns, the Bar Foundation does a good job at Fun-Raising and a great job at Fundraising. Raising money to support the CMBA’s impactful Justice for All and Diversity Pipeline Programs is at the core of what we do. Rock the Foundation is our singular, most important fundraising event. We simply could not put on such a great party without sponsorship dollars. More important, we couldn’t carry out our mission of funding the CMBA’s critical programs without the generosity of our sponsors. Since its inception, the CMBF has raised over $1,280,000 through sponsor support of Rock during its first eleven years. Last year, we raised a record $209,700! Our sponsors are law firms, businesses, charitable organizations and numerous caring individuals. They are one of the top reasons I enjoy Rock so much: it’s a strong reminder of the kind of unselfish profession and community in which we work and live. To our sponsors, on behalf of the Foundation I thank you from the bottom of my heart.

I would also like to extend a special message of gratitude and appreciation to Huntington National Bank (and its predecessor, FirstMerit): Rock’s Signature Sponsor for many years. Tom Anderson, Doug Piper, Chris Keller and your many HNB colleagues, please accept the Foundation’s sincere thanks for your unparalleled support of Rock. Your generosity has taken the event to the next level!

2 THE POGUE AWARD
The Richard W. Pogue Award for Excellence in Community Leadership and Engagement is the Foundation’s most prestigious service award. The brainchild of Hugh McKay; the Pogue Award is given in recognition of both Dick Pogue and its recipients who have all excelled in their fields and given so much to our community and the business, legal, political, educational, social and philanthropic causes that make it great. This year, the Foundation is privileged to recognize three icons of the legal, business and banking professions in conjunction with the second Pogue Award. First, there is the man for whom the award is named. Dick Pogue is a lawyer’s lawyer whose contributions to the legal profession during his long and storied career are exceeded perhaps only by the estimable good he has done for so many in the Greater Cleveland community he calls home. Our first Pogue Award winner, Chris Connor, the Chairman of The Sherwin-Williams Company, is not only an internationally-renowned business leader, he is a trustee for numerous local business, civic and philanthropic institutions; a strong supporter of our CMBA programs; and a tireless cheerleader for our City. The Foundation was concerned that it might be impossible to find a second honoree as worthy as our first. Then, with the whole-hearted support and blessing of Messrs. Pogue and Connor, along came the Chairman and CEO of KeyCorp, Beth Mooney.

Beth is a banking leader in Cleveland and throughout the nation. She is the first female CEO of a Top 20 American bank and was named Most Powerful Woman in Banking for three consecutive years by American Banker. Beth co-chaired (along with Chris Connor and others) the Cleveland 2016 Host Committee, a group of senior executives responsible for bringing the RNC to Cleveland, and she is the Immediate Past Chair of the Greater Cleveland Partnership (GCP). Beth is a passionate proponent of many business, civic, social and charitable causes and serves on numerous boards, including AT&T, the Greater Cleveland Partnership, The Cleveland Orchestra, the Cleveland Clinic Foundation, and the Supervisory Board of The Clearing House. She is also a member of the Financial Services Roundtable and is a member of the Federal Advisory Council. Beth is a dynamic leader, dedicated to making Cleveland a better place to live for all of its citizens. The Foundation is thrilled to announce Beth Mooney as the second recipient of the Pogue Award.

1 THE MISSION
As you can tell by now, Rock the Foundation is near and dear to my heart for many, varied reasons. But, the #1 reason I love this event is the critical role it plays in enabling the Foundation to fulfill its mission: to fund the impactful Lawyers Giving Back programs of the CMBA. All dollars raised by Rock are an essential source of funding for the Bar Association’s pro bono and public service programs focused on youth education, social justice, the arts, and non-profit communities, including the nationally-recognized and award-winning 3Rs — Rights, Responsibilities, Realities; the Louis Stokes Scholars Program; mock trial competitions; and Volunteer Lawyers for the Arts. The 3Rs program, now in its eleventh year, has served nearly 30,000 students through the volunteer efforts of more than 2,000 individuals. Our instructors have contributed nearly 77,000 volunteer hours providing civics instruction and career counseling in the Cleveland and East Cleveland high schools. The estimated value of our volunteers’ service: $11,500,000. The value in terms of student and volunteer lives positively impacted: priceless. None of this would be possible without the funding provided by Rock.

SEE YOU ON FEBRUARY 11!
Good food, music and dancing; priceless prizes; a winter respite; Beth Mooney; fun amongst friends; and a great cause. There’s no better place to be on February 11 than the Music Box Supper Club for Rock the Foundation 12. See you there!

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A New Year’s Challenge

Well, it’s happened again. Another year over, and a new one just begun. (Channeling a little John Lennon here.) For me, 2016 was one fast year. Lots of highs. A few lows. And lots of challenges. Fortunately, they were the kinds of challenges that made me eager to take on nearly every day.

As we kick-off a new calendar year, we hit the midpoint of our fiscal year. Which also means Rick Manoloff has hit the midpoint of his term as the 9th President of the CMBA. (And of course which means we are hard at work inside the bar planning our next Annual Meeting — the 10th anniversary of our unification. Save the date for the celebration: June 2, 2017 at Public Hall.) Throughout the past six months, Rick’s collaborative spirit, advocacy for our bar and tireless encouragement that we all continue to answer the call to serve has been a true inspiration for all of us on Team CMBA. Not a surprise given how his presidency began a nanosecond ago on June 3, 2016 at the Huntington Convention Center.

During his self-described 90-minute inaugural address (which actually clocked in just over 20 minutes), Rick painted a vision for our bar and for our community that quite simply left us all feeling great. We laughed — a lot — especially when Rick thanked Michelle Connell and his esteemed colleagues at Squire Patton Boggs for giving him a year off with pay while serving as President of the CMBA. We thought deep thoughts – induced by Rick’s mini-lesson on Cicero’s teachings of the four over-arching values: shootingquia, dribblingissimus, passingqua and reboundingissima (which in Manoloffic Latin apparently translates to wisdom, courage, moderation and justice). And we aspired to answer the call to play our part in carrying out justice within our community.

One of the access to justice focuses Rick spotlighted was, at that time of the Annual Meeting, just an new concept in the making. As Rick explained during his speech: “Colleen Cotter and The Legal Aid Society do an excellent job of leading the charge in this community to provide legal services and thus access to justice to the poorest among us. There is another large socioeconomic group in our community that lacks access to legal services and justice — those whose income does not meet intake requirements for Legal Aid but who cannot afford legal services at market rates. We at the Bar Association are working on ways that we might address this issue, from developing a network of lawyers willing to accept referrals on a pro bono or “low bono” basis, to studying program models that are popping up like popcorn throughout the country, to implementing an idea to dedicate newer lawyers to serving this population and to support their efforts not only with facilities, client flow, and possibly stipends, but also with training provided by golden lawyers who want to help train the next generation of attorneys in this town.” Fast forward to January 2017, and our outline for a plan has taken shape based upon three fundamental, verified assumptions:

1. Our community has a large population of people who make too much money to qualify for Legal Aid (the cutoff is 200% of the poverty line or $48,600 annually for a family of four) yet cannot afford attorneys’ market rates.
2. Our newest lawyers continue to struggle to make ends meet as they endeavor to get solo or small practices off the ground with little or no support from more experienced attorneys.
3. Lawyers today are redefining what staying active in the legal profession after age 65 and beyond looks like.

Our plan is a simple one: bring together our newest and our most experienced generations of attorneys to work with one another to provide quality, “low bono” legal services to those who do not qualify for Legal Aid or who are not able to be helped by Legal Aid because of insufficient resources. Our working title for this initiative: The People’s Law Firm.

From this, new lawyers get hands-on experience and support with those more knowledgeable. Our experienced lawyers are able to provide direct coaching to the next generation. And those in need of quality service at an affordable price-point can access it.

So here’s our New Year’s challenge: help us turn our plan for The People’s Law Firm into a reality.

We are currently seeking lawyers from any and all areas of practice who have some time to give back and will:

- Mentor new or newer lawyers;
- Serve as our “Master Class” or subject matter experts on how to build thriving law practices (think brown-bag lunches featuring various speakers on topics such as avoiding IOLTA mistakes; ethical billing and collection practices; where and how to find clients; managing client drama; and more); and/or
- Accept two or three modest means cases annually, which would mean performing work for a reduced fee (not free), either individually or in collaboration with a newer attorney.

We are also hunting for one or more individuals who might be in interested in playing a leadership role to help us develop and implement related projects.

Potentially interested? We have a place for you. Call or e-mail me. Or come meet us at the Bar.

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
It’s Not All Memes and GIFs

E-Contracting for Millennial Consumers

BY AMANDA ROSE MARTIN

Millennials have been aptly described as digital natives living among digital immigrants.¹ Our predilection toward completing tasks online or via mobile app, unlike generations before us, as well as our large population, make us an attractive consumer base for traditional financial service providers and the growing financial technology (fintech) industry.

In response to this significant population leaning heavily on the internet for day-to-day transactions, financial services companies are increasingly targeting millennial consumers by making financial products available online or via smartphone or tablet app. However, many of these companies have faced challenges in both earning credibility with millennials and ensuring compliance with a growing set of state and federal regulations.

This article will serve as a high-level overview of considerations for companies wishing to contract electronically via the internet or app, including types of online contracts: ESIGN requirements; space-constrained device considerations; and Unfair, Deceptive and Abusive Acts and Practices (UDAAP) traps in the new digital age.

Types of Online Contracts

There are three main types of online contracts: browsewrap, clickwrap, and scrollwrap, and each should be employed differently.

Browsewrap allows the consumer to agree to the terms of a contract merely by remaining on a webpage. When the consumer implicitly agrees to the terms of the contract. Browsewrap agreements are probably sufficient for setting the terms for use of a website, but not for more complex transactions.

Clickwrap requires the consumer to click to agree with the terms of the contract presented in a hyperlink or a popup box. However, it does not require a consumer to scroll through or even access the contract, if provided in a hyperlink, before clicking to agree to the terms.

Finally, scrollwrap requires the consumer to scroll through the body of the contract before.
accepting the terms of the contract. This type of online contract is, by far, the most secure type of contract and is the best form for sophisticated contracts.

Using the most appropriate form of electronic contract will bolster the strength of your agreement. For example, clickwrap and scrollwrap are the two most common types of agreements financial service companies utilize. While a scrollwrap contract is difficult to challenge based on its form (as the consumer is required to view the entirety of the contract before agreeing), a clickwrap contract may be challenged if the consumer would not understand what she is agreeing to when she clicks to agree.

**ESIGN Requirements**

Ensure that your contract complies with federal ESIGN requirements. ESIGN is the federal statute upholding the validity of electronic contracts and signatures and is the main building block of your online transaction. ESIGN applies when another statute or regulation requires the consumer to receive disclosures or notices. If you plan to contract online, you must include an ESIGN disclosure and consent in your online session. If the ESIGN consent is not obtained, then the entire online transaction will be called into question.

Your ESIGN consent should, ideally, be a separate document that the consumer separately agrees to prior to moving forward with the loan documentation. We often see financial services clients attempt to combine the ESIGN agreement with a privacy policy or the website terms and services. The ESIGN consent, as the basis for your online transaction, should have a separate click or signature, which clearly indicates to the consumer what she is agreeing to.

One of the core requirements of ESIGN is that the consumer must reasonably demonstrate the ability to access documents in the electronic form provided. For example, if the final loan document, or any accessory documents, are provided in a PDF format, the consumer must demonstrate an ability to access and save PDF documents. This can be accomplished in several different ways. First, the ESIGN agreement can provide specifications that the consumer must agree her system meets. Another option is to provide a hyperlink for the consumer to test whether the form is accessible and able to be saved on her computer.

**Space-Constrained Device Considerations**

In March 2013, the Federal Trade Commission (FTC) published guidance titled ".com Disclosures: How to Make Effective Disclosures in Digital Advertising." Although online transactions, such as loan agreements, are not advertising, the guidance gives insight into navigating the complexities of presenting consumer-facing documents on mobile technology.

The most significant issue tackled in the .com Disclosures is how an entity can provide clear and conspicuous disclosures on space-constrained devices, such as smartphones and tablets. Compared to personal computers, mobile devices have smaller screens and, as such, disclosures required to be clear and conspicuous may not be displayed appropriately on such screens. The FTC advises that, ideally, consumers should be able to see these types of disclosures without scrolling on their device. Further, all important information should be visible without zooming. A consumer who pinches to zoom may miss disclosures and information in the margins.

Further, the FTC advises that if additional important information can be found by scrolling, the consumer should be explicitly told that the disclosure can be found in another location, as scrollbars are not always readily apparent on mobile devices. A useful way to tackle this is to use hyperlinks to the disclosures. The FTC recommends when using a hyperlink, the link should be obvious and should appropriately illustrate to the consumer what the information behind the hyperlink means. The hyperlink should also illustrate to the consumer the importance or seriousness of the information behind the hyperlink, so as to inform consumers that they should click on it.

**UDAAP Traps in the Digital Age**

Unfair, deceptive, and abusive acts and practices (UDAAP) concerns may not be apparent on the face of the transaction, but can arise when information presented to the consumer creates confusion or misinformation. The addition of the internet, and companies’ rush to appeal to millennial consumers, may result in potential UDAAP concerns.

The ultimate presentation of the portions of the contract to your customer could be considered an unfair, deceptive, or abusive act or practice. For companies seeking to do business with millennials, it may be tempting to downplay a vital portion of the agreement. We have seen companies refer to vital agreements as legal “stuff” or “nonsense” in an effort to seem cool. However, by failing to accurately represent the seriousness of an agreement, the consumer may not truly understand what it is they are agreeing to or, worse, the consumer may not realize its importance and may not read the agreement at all.

Keep in mind also that financial services companies are required to provide information to consumers about with whom they share personal information. Federal regulators have shown great interest in ensuring that consumers understand whether, and to whom, their information is sold. With the growing role of lead generators, make sure your consumer is informed of exactly where her information will go downstream by directly spelling out with whom financial services companies share consumer information in the privacy policy, and adhering to the list provided.

**Conclusion**

Financial services providers are wise to move online or to an app to court the business of millennials. However, these companies should be mindful of the different compliance concerns that arise when contracting over the internet, and should concern themselves with presenting a transparent, trustworthy face and brand. By presenting themselves as a compliant and responsible company, financial services providers can position themselves as long-term sources of financial products for millennials.

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5 See Macheel.
9 Id. at 9-10.
10 Id. at A-5.
11 Id. at 11-12.

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Clarifying Officers’ Fiduciary Duties and Mitigating LLC Members’ Liability Risks

Senate Bill No. 181 Fills Some Gaps and Patches Some Holes

BY JEFFREY C. TOOLE

For years, the Revised Code defined the fiduciary duties of corporate directors and limited liability company (LLC) members, but was silent regarding the fiduciary duties of corporate and LLC officers. Effective July 6, 2016, Senate Bill No. 181 filled this gap for officers of for-profit corporations (Chapter 1701) and LLCs (Chapter 1705). S.B. 181 also codified “freedom of contract” principles to promote greater flexibility in ordering LLCs’ affairs, and ameliorated some of LLC members’, managers’, and officers’ liability risks. Below is an overview of these amendments.

Corporate and LLC Officers

Before S.B. 181, a corporate board of directors’ chairperson automatically became an officer, even if that chairperson had little or no involvement in day-to-day operations. After S.B. 181, a chairperson is not an officer (unless the corporation’s articles or a board resolution provide otherwise). R.C. 1701.56(A)(4). Also, S.B. 181 added new section 1705.291, which permits (but does not require) an LLC to have officers.

Officers’ Fiduciary Duties

As amended, the Revised Code now defines the fiduciary duties that officers owe to corporations and LLCs. For corporate officers, the “default” fiduciary duties are the same as those applicable to directors: good faith, loyalty, and care. Specifically, a corporate officer’s only fiduciary duties to the corporation are to act (a) in good faith, (b) in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, and (c) with the care that an ordinarily prudent person in a like position would use under similar circumstances. If a corporation wishes its officers to have additional fiduciary duties, the corporation’s articles, regulations, or a written agreement with an officer may establish them. R.C. 1701.641(A); (B).

These standards also apply generally to an LLC’s officers. An LLC’s written operating agreement or written agreement with the officer can establish additional fiduciary duties. Absent that, and if those duties have not been modified, waived, or eliminated (more about that below), an LLC’s officer has only the same three fiduciary duties that apply to a corporate officer under R.C. 1701.641. There are two exceptions to this. An officer will only owe the fiduciary duties a member would owe if the officer is a member of the LLC (or is serving as a member’s representative) and (a) is not a manager, or (b) is a manager and in that capacity owes the duties a member would owe. R.C. 1705.292(A); (B).

Standards for Determining Fiduciary Duty Breaches and Liability

Under S.B. 181, the standards for determining whether a corporate or LLC officer has breached any fiduciary duties (and to impose liability for a breach) now match the standards applicable to corporate directors under Ohio law. As with corporate directors, to establish that an officer has breached fiduciary duties the plaintiff must prove, by clear and convincing evidence, that the officer did not act in good faith, in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, or with the care that an ordinarily prudent person in a like position would use under similar circumstances. R.C. 1701.641(C).
(1); 1705.292(C)(1). As with corporate directors, a corporate or LLC officer will not be liable in damages for a breach of fiduciary duty unless the plaintiff also proves, by clear and convincing evidence, that the officer’s action or failure to act was undertaken with deliberate intent to cause injury to (or with reckless disregard for the best interests of) the corporation or LLC, as the case may be. R.C. 1701.641(D); 1705.292(D).

A corporation or LLC may opt out of these statutory “default” protections, albeit only prospectively, if a written agreement with the officer, the corporation’s articles or regulations, or the LLC’s articles or operating agreement provide specifically that division (D) does not apply to that officer. R.C. 1701.641(D); 1705.292(D). But neither section 1701.641 nor section 1705.292 affects the duties of an officer who acts in any other capacity, including any contractual obligations the officer may have to the corporation or LLC. R.C. 1701.641(E); 1705.292(E).

Expanded Capacity to Modify or Eliminate LLC Managers’ and Officers’ Duties

Under prior law, an LLC could reduce its members’ or managers’ fiduciary duties, but not eliminate them altogether. S.B. 181 changed this. It added section 1705.081(D), which declares that “it is the policy of this chapter [1705], subject to the limitations of divisions (B) and (C) or this section [1705.081], to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements” and that, except as provided in sections 1705.081(B) and (C), “the default rules relating to rights and obligations between and among the members, managers, and officers” of an LLC “may be modified by the operating agreement or by the articles of organization.”

Section 1705.081(B) continues to list various actions an LLC’s operating agreement is prohibited from doing, such as eliminating a manager’s duties under section 1705.29(B) (and, as amended, an officer’s duties under section 1705.292). Before S.B. 181, an LLC’s operating agreement could prescribe the standards by which a manager’s performance is to be measured or could identify activities that do not violate the manager’s duties. After S.B. 181, an operating agreement may do the same for officers, too. Alternatively, new provisions authorize an LLC’s operating agreement or its articles of organization to provide that a manager — or, now, an officer — who is a member (or who is serving as a member’s representative) owes to the LLC and the other members only the duties that would be owed by the member. R.C. 1705.081(B)(6); (B)(7).

Despite these and other prohibitions in section 1705.081(B) regarding what operating agreements may do, a new provision (section 1705.081(C)) directs that “[a] written agreement, including an operating agreement, that modifies, waives, or eliminates the duty of loyalty, the duty of care, or both for one or more members, managers, or officers shall be given effect.” Accordingly, members’, managers’, or officers’ duties of loyalty or care (but not good faith) now can be modified or even eliminated by written agreement.

LLC Members’ Duty of Loyalty

Unless eliminated or modified by written agreement, members owe duties of care and loyalty to an LLC. Before S.B. 181, members’ duty of loyalty consisted only of the following: (a) account to the LLC and hold as trustee for the LLC any property, profit, or benefit the member derived in the conduct or winding up of the LLC’s business or that the member derived from the use of the LLC’s property (including the appropriation of an LLC opportunity), (b) refrain from dealing with the LLC in the conduct or winding up of its business as or on behalf of a person having an interest adverse to the LLC, and (c) refrain from competing with the LLC in the conduct of its business before its dissolution. R.C. 1705.281(A); (B).

S.B. 181 modified members’ duty of loyalty in two respects. First, it eliminated members’ duty not to compete with the LLC before its dissolution — a benefit to members who are merely passive investors. Second, it softened members’ duty to refrain from dealing with the LLC as (or on behalf of) a person with an adverse interest. Now, in such “adverse interest” situations, “adverse” members have a choice — they either can comply with the duty to refrain or, alternatively, they can satisfy R.C. 1705.31(A)(1)(a), (b), or (c).

That section insulates contracts, actions, and transactions from being void or voidable due to the involvement of an “adverse” member of the LLC, or a person in which the “adverse” member has a financial or personal interest, or because an “adverse” member, manager, or officer took part in the meeting or vote that approved the contract, action, or transaction, if the material facts about the “adverse” relationship or interest and the matter at issue are known or disclosed to disinterested members or managers (as the case may be), a majority of whom vote to approve it, or if the contract, action, or transaction “is fair to the company as of the time it is authorized or approved by the members or managers.” R.C. 1705.31(A).

Limits on Personal Liability

In recent years, it has become increasingly common for disgruntled owners and creditors to sue officers or other decision-makers, seeking to hold them personally liable for companies’ debts under “veil-piercing” and other theories. Indemnification and insurance potentially may mitigate such risks, at least to an extent. To better shield decision-makers from the threat of personal liability, S.B. 181 provides that the failure of an LLC or any of its members, managers, or officers to observe the formalities relating to the exercise of the LLC’s powers or the management of its activities is not a factor to consider in (or a ground for) imposing liability upon any of them for the company’s liabilities. R.C. 1705.48(C). Also, S.B. 181 added LLCs’ officers to the list of persons (i.e., members and managers) who are not personally liable to satisfy any judgment, debt, decree, or obligation of an LLC solely by reason of being a member, manager, or officer. R.C. 1705.48(B).

Conclusion

By defining corporate and LLC officers’ fiduciary duties and the standards for determining when officers may be held liable for breaching them — so that they “mirror” the preexisting duties and standards applicable to directors — S.B. 181 should create greater certainty for those individuals. Similarly, S.B. 181’s “freedom of contract” principles for LLCs, its refinements to members’ fiduciary duties, and its broadened liability shield for officers, members, and managers, should enhance LLCs’ capacity to mitigate risk for those individuals, to attract qualified talent to run their businesses, and to promote operational and managerial flexibility.

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Using Compliance and Ethics Contract Clauses to Manage Third Party Risk

Compliance and ethics clauses are appearing in all varieties of third party contracts, and organizations are finding the negotiations over these clauses to be frustrating and costly. But, it does not have to be. Generally, these clauses are designed to provide some contractual assurance to the parties that each will adhere to applicable laws and uphold ethical standards by requiring audits; due diligence; or certifications on corruption, conflicts of interest and other topics.

The clauses are proliferating as a result of businesses selling in a global marketplace — it’s an effective way to assure both parties understand compliance and ethical expectations.

But, it is not only the global market that has driven the increase in compliance and ethics clauses in contracts. Governments have been aggressively prosecuting businesses for corporate misdeeds and are mandating that their corporate citizens develop proactive controls to ensure that they act legally and ethically; in practice, that requires certain contract clauses to reflect those requirements.

For example, France recently instituted an anti-corruption legal regime mandating that companies institute a corporate compliance and ethics program — a certain driver for French businesses to update their contracts to reflect those requirements.

Creating good ethics and compliance terms and conditions really starts before an organization even receives a contract with these clauses or before it considers including these clauses in its contracts. It begins with an internal review of the business’ existing compliance and ethics controls to determine what it will actually be able to agree to in ethics and compliance clauses and what it will require of its business partners. To do this analysis, a business should identify its applicable policies and procedures along with the function that manages the legal requirements or that may have the information that is required as part of due diligence for these clauses.

For example, does the business have a policy against “conflicts of interest”? And if so, how are conflicts of interest defined, who is subject to the policy, and how is the business sure conflicts are mitigated? If a business can answer these questions, then when it receives a contract that requires a certification that it has no “conflicts of interest,” it can more quickly determine whether it can comply with the requirement or if it needs to negotiate or otherwise manage the certification.

Once these compliance controls are identified the business and its lawyers should create a “due diligence” library. The “due diligence” library should include the “evidentiary” support for ethics and compliance clauses that appear regularly in contracts: does the business have any “conflicts of interest”; are any employees government officials; does the firm have a gift policy; has the firm settled government investigations; will the firm agree to an external audit; does it have a code of conduct; or does it prohibit retaliation.

As part of the due diligence library, lawyers should work with the business to develop standard language that is responsive to compliance and ethics terms and should educate the business on what it means to agree to these types of clauses. For example, if a contract requires that the business disclose any “investigations,” lawyers should consider drafting a standard response explaining that although it has several internal investigations or is involved in settlement discussions, neither will impact the viability of the business or its ability to perform the contract. Obviously, if the matter is “material” and the company is public, that information will be available.

A “due diligence” library will allow business teams to more quickly find answers to common ethics and compliance clause questions and will also free up lawyers from having to engage in time-consuming internal discussions to determine if the organization can compile requested information or comply with the clauses.

Second, in negotiations, when a party is trying to force its compliance and ethics regime onto its business partner or is insisting on particular compliance and ethics terms, understand why they are so insistent. If a party is subject to a deferred prosecution agreement or non-prosecution agreement with the government that mandates particular terms, then it does not have much ability to negotiate and will require both parties to work together toward compliance and ethics terms that meet the government’s requirements.

A party also may be demanding particular
ethics and compliance terms or demanding that their ethics and compliance program be followed because they are concerned that the other business does not have the controls to manage compliance. If each party has a robust ethics and compliance program then, push back on these demands but appreciate that each party will need to actually see support that the other actually has an effective ethics and compliance program. Then, be prepared to provide information about policies, procedures, helpline calls and other aspects of managing an ethics and compliance program.

Alternatively, if one of the negotiating parties is a small entity and does not have an effective ethics and compliance program and the other party is a large business partner trying to force its program on the small entity, the small entity should consider agreeing to adhere to the larger parties ethics and compliance program. It’s good medicine for a small firm without an ethics and compliance program to rely on the program of its large business partners. Further, there are laws and regulations that actually require large business partners to assist its smaller business partners with compliance. But, before agreeing to the large business partner’s requirements, the small business should insist on knowing what the requirements are and then determine if it can actually execute the requirements.

Third, when dealing with clauses that require an audit or disclosures around conflicts, investigations, internal policies, it’s good business to be considerate and precise in these demands and avoid unduly burdensome provisions. Specifically, make sure that audit clauses clearly define the time, place, scope of the audit as well as what triggers an audit or who pays.

Similarly, when asking for disclosures or certifications, do not fear re-writing or tailoring these clauses to reflect the compliance controls that actually exist, even when it’s a government contract. For example, limit the disclosures and certifications to only cover the team working on the engagement or to the division in the company that will manage the contract, and if needed, agree not to disclose the information that is shared. It is far better to tell the other party that representations and certifications are limited than it is to just agree and make a misrepresentation. This is especially true with compliance and ethics clauses since often requirements that in the DOJ’s opinion work to mitigate corruption risks.

Ethics and compliance clauses should not hold up deals or increase negotiation costs. Instead, by preparing in advance to manage these clauses, by demanding and drafting legally accurate clauses, and asking for representations and certifications that are directed toward assuring business partners are complying with the law and making ethical decisions, ethics and compliance clauses will help manage third party risk without unnecessary cost and frustration.

Margaret Cassidy is principal and founder of Cassidy Law. She counsels businesses on legal and ethics matters when dealing with foreign, federal, state and local governments. She has conducted risk assessments, internal investigations, represented clients in government investigations and advised clients on matters related to corruption, money laundering, fraud, international trade, the False Claims Act, political law, ethics, and government procurement. She joined the CMBA in 2016. She can be reached at (202) 266-9928 or m.cassidy@cassidylawpllc.com.
February 11, 2017

Music Box Supper Club

We love the Foundation!
Get ready to Rock! Join us for fabulous food, open bars, live music provided by Nitebridge, dancing, great raffle prizes and more!

Rock12 will feature our 2017 awardee.

BETH E. MOONEY, Chairman and Chief Executive Officer of KeyCorp will be receiving the Richard W. Pogue Award for Excellence in Community Leadership and Engagement.
Discipline for Sexual Battery Too Lenient

BY J. PHILIP CALABRESE

Recently, the Cleveland Metropolitan Bar Association launched a first-of-its-kind diversity and inclusion initiative, aimed in part at attracting, retaining, and promoting women in the profession. These efforts do not take place in a vacuum. A recent ruling disciplining a lawyer convicted of sexual battery shows that a profession tasked with policing itself has a long way to go before it truly lives out the values that lie at the heart of the CMBA’s initiative. In that case, Disciplinary Counsel v. Warren, Slip Opinion No. 2016-Ohio-7333, the Ohio Supreme Court suspended a lawyer convicted of sexual battery for two years. But the lawyer’s conduct betrays a fundamental lack of character, fitness, and moral character to practice law and should have been considerably greater.

A Conviction for Sexual Battery

The facts are undisputed. In August 2013, a male attorney admitted to practice law in Ohio in 1977 invited a female friend to his home for dinner, and she planned to stay overnight. The two had a social, but not sexual, relationship. After dinner, the attorney’s friend lay down to rest because she had taken some pain medication and was not feeling well. Not knowing that she had taken that medication, the attorney gave his friend a sleeping pill. At some point during the night, the attorney removed the woman’s pajamas, and she awoke to the attorney engaged in sexual contact with her — too graphic to describe here. She asked him to stop and fell back asleep due to the effects of the medications.

At trial, the attorney was acquitted of rape, but convicted of sexual battery, a third-degree felony. The attorney was sentenced to 30 months of community control and was ordered to stay away from the woman, complete a sex offender treatment program, and pay a $2,500 fine and court costs.

Disciplinary counsel entered into a consent-to-discipline agreement with the attorney. The parties agreed that the attorney’s conduct violated Rule 8.4(b) of the Ohio Rules of Professional Conduct, which prohibits a lawyer from committing an illegal act that adversely reflects on the lawyer’s honesty or trustworthiness. Further, the parties stipulated that the appropriate sanction was a two-year suspension from the practice of law, with no credit for the attorney’s interim suspension. The parties agreed that the attorney’s conduct was improper. He cooperated with the disciplinary investigation, presented evidence of his good character (apart from the conviction involved), and had no other discipline at issue, and had no other discipline in a 39-year career. In particular, the attorney’s cooperation with the disciplinary process merits comment, because without that cooperation that process would likely have involved greater time and cost for those involved. But such benefits hardly outweigh the message sent by a two-year suspension — that conduct of the sort at issue resulting...
in a conviction for sexual battery does not disqualify a lawyer from the practice of law. Put another way, an attorney who victimizes a woman in this way should face more severe sanctions than a two-year suspension, even if imposing that sanction requires more from the lawyers involved in the disciplinary process.

Additionally, this case raises difficult questions about the line between private conduct and misconduct directly related to the practice of law. However, as lawyers, we have long accepted — and the Rules for Government of the Bar codify — that a lawyer’s license to practice may be suspended or revoked based on private conduct. What really is at stake, then, is the message to the bar and to the public about the seriousness of the private conduct at issue. Here, the facts show that the attorney drugged a woman and engaged in unwanted sexual contact with her. Wherever one draws the line at private conduct that should not result in professional consequences, the criminal conduct at issue here goes well past that line, and is among the type of conduct most deserving of censure. These facts warrant a more severe sanction than a two-year suspension.

In adopting the recommendation of the Board of Professional Conduct, the Ohio Supreme Court noted that convictions of lawyers for felony sex crimes involving children have received indefinite suspensions. Such a penalty, based on a minor’s incapacity, provides an appropriate analogy for the sexual battery here, where the attorney incapacitated a woman to commit a crime. A two-year suspension tells the lawyer and the public that, notwithstanding such conduct, the attorney will in the not-too-distant future be reinstated to the practice of law. An indefinite suspension, at least, expresses the profession’s judgment about the seriousness of the conduct and whether such conduct has any place for a member of the bar. It should have none.

One member of the Ohio Supreme Court, Justice O’Neill, dissented on the ground that the attorney should have received credit for time served while under remedial suspension. In effect, such a remedy would have resulted in a lesser sanction for the attorney, where a greater penalty should have been enforced.

Justice O’Donnell dissented, believing that the Board of Professional Conduct should have considered an indefinite suspension or disbarment. Although Justice O’Donnell did not explicate his reasoning for this position, one can infer that the seriousness of the attorney’s crime coupled with the message a two-year suspension sends to the bar and the public about the attorney’s conduct and whether the bar should tolerate a lawyer who engages in such conduct played a role. And rightly so. Those messages matter. They particularly matter as the bar continues to strive to make the profession a more diverse and inclusive one — something which is badly needed and considerably overdue. Progress toward such worthy goals requires that the bar and the Ohio Supreme Court recognize that misconduct of the sort here, resulting in the attorney’s conviction for sexual battery, is not acceptable for a lawyer licensed to practice in Ohio and has no place in the profession.

Phil Calabrese is a partner at Porter Wright. His practice focuses on complex litigation, defense of product liability claims and class actions, and appellate advocacy. The views expressed here are his own. He has been a member since 2000. He can be reached at (216) 443-2504 or pcalabrese@porterwright.com.

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The Volunteer Lawyers for the Arts Program and the Bankruptcy Section of the Cleveland Metropolitan Bar Association present

ATTORNEYS ADVISING ARTISTS
Debtor/Creditor Disputes, Collections, and Bankruptcy Options

January 26, 2017
Cleveland Public Theater at the Orthodox Church
6201 Detroit Avenue, Cleveland, Ohio, 44102
4:30 – 6 p.m., with complimentary refreshments

Artists and attorneys are invited to learn more about current legal issues related to a range of debtor/creditor issues for artists and the attorneys who represent them. Presentation topics include:
• Debtor/Creditor disputes;
• Collecting fees;
• Asset protection through business entities;
• Guidance on bankruptcy options;
• And alternatives to bankruptcy.

Featuring speakers Jaclyn Vary, Calfee, Halter & Griswold LLP; Robert D. Barr, Koehler Fitzgerald LLP; and Thomas W. Coffey.

Artists and attorneys are invited to attend for free, with 1.5-hr CLE credit available, in return for a future volunteer commitment to the VLA. Artists are also welcome at this free seminar designed to offer advice on a range of debtor/creditor issues.

The CMBA & Akron Bar are taking the show on the road!
Spend a long weekend in sunny Florida, and pick up 10 hours of CLE in between visits to the beach and our networking events.

Discounted Resort Rates Available!

January 26–27, 2017
MARRIOTT AT SINGER ISLAND IN FLORIDA
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

CLE THANK YOU

We thank all of our seminar chairs and presenters during our very busy December of CLEs. With your help, we met the needs of many area attorneys and proudly hosted many outstanding programs. Keep watch on your email and the online calendar for upcoming CLEs, section activities and more.

BENEFIT UPDATES

Lyft
CMBA members who sign up for Lyft can now enjoy a $50 ride credit. Lyft is a rideshare app to connect you with a ride from a friendly driver within minutes. To redeem your credit, you must be a new Lyft user, download the app and enter the promo code MyCMBA. Tell your friends, too. Each new download with our promo code can help provide $10 support to the CMBA. Free rides for you, support for the Bar!

Fastcase 7
You now have access to the new Fastcase 7 BETA interface. When you log into Fastcase through the CMBA site, you’ll see a new toggle button to switch to the new version in the upper right corner by your name.

Fastcase 7 is designed to be more user friendly, save you clicks, allow you to easily manage filters and more. To help you understand the new features, please look for the guided tour that will automatically launch the first time you toggle to the new version.

This new version is in BETA mode, so you are welcome to share feedback with Fastcase before this version becomes the more prominent interface in April 2017. Check out more at CleMetroBar.org/Fastcase.

Zounds Hearing
Zounds Hearing is Northeast Ohio’s premiere provider for adult hearing care. It provides high performance hearing aid products and hearing health services. From two offices in Metro Cleveland, its patients get the best in product selection, convenience, and care by Cleveland’s top audiologists.

CMBA members will enjoy an additional $150 per hearing aid discount off Zound’s current lowest sale when purchasing any of the premium or advanced line of rechargeable hearing aids.

View more about all your benefits at CleMetroBar.org/benefits.
MEMBERSHIP MARK DOWN

Happy New Year from all of us at the CMBA! Now is the perfect time to invite your friends and colleagues to join and enjoy a pro-rated membership at 50% off with benefits through June.

You, our valued members, make the best CMBA ambassadors. Tell your friends about the value you receive as a member and invite them to capitalize on what we offer.

Recruitment Bonus: Ask those you recruit to list you as the referral on their application and earn a $25 credit on your account for each new member* you recruit. (*Some exclusions apply. Contact the CMBA membership department with questions.)

CMBA LEGAL DIRECTORY SALE

Whether you seek the printed or digital version, our annual Legal Directory is now on sale. As a quick reminder, the Legal Directory includes information about our Association and Foundation and how you can get involved, court information, law firm listings and specialties, attorney roster, affiliate members roster, and attorney support services. It also includes local, state and federal resources as well as, professional responsibility materials and attorney resources. Order your copy today for just $17.50 (print) or $9.95 (electronic) at CleMetroBar.org/Directory.

PILLARS PROGRAM SERIES

The 2016-17 Pillars Program series continues next month with the third session. Pillars is a free CMBA program designed to help our members reestablish the pillars of their career, providing support for unemployed/under-employed legal professionals.

Whether you are an unemployed legal professional in a career transition, or just beginning the job search process, mark your calendars and join us February 9 for Effective Job Hunting.

Learn more and register at CleMetroBar.org/Pillars.
ARE YOU READY TO ANSWER THE CALL TO LEAD?
By regulation, the Cleveland Metropolitan Bar Association (CMBA) annually invites any and all Members of the Association to submit their recommendations or self-nominations for future volunteer leadership positions. For the upcoming 2017–2018 Fiscal Year beginning July 1, 2017, the CMBA is accepting nominations for the following positions:

**Vice President**
Serving one year as vice president before advancing for one year to president-elect, and then serving one year as president

**Vice President of Membership**
A two-year term

**Vice President of Diversity & Inclusion**
A two-year term

**Trustee**
Six (6) Member lawyers to each serve one, three-year term as a member of the Board of Trustees

The primary consideration by which all candidates for an open position will be evaluated is a demonstrated history of service to the CMBA through engagement with and/or leadership of the CMBA’s Sections, Committees and/or CLE programs.

**IDEAL CMBA OFFICERS & TRUSTEES WILL**
- be committed to the CMBA’s mission and goals
- work collaboratively with others
- offer adaptability, creativity, innovation and vision
- have a passion for the legal profession
- be open to considering different/new points of view
- be accountable and responsive
- have earned the respect of peers
- be energetic about our Bar
- have time to devote to the CMBA and a willingness to make the CMBA a priority commitment
- represent diverse life experiences and backgrounds, practice areas, segments of the legal community

If a prospective nominee has questions, contact Rebecca McMahon, Executive Director, or another current officer/trustee to learn more about serving.

As the charitable, fundraising arm of the CMBA, the Cleveland Metropolitan Bar Foundation (CMBF) also annually invites any and all Members of the Association to submit their recommendations or self-nominations for future volunteer leadership positions. For the upcoming 2017–2018 Fiscal Year beginning July 1, 2017, the CMBF is accepting nominations for the following positions:

**President-Elect**
Serving one year as president-elect before advancing to a one-year term as president

**Vice President of Endowment**
A one-year term

**Vice President of Special Events**
A one-year term

**Lawyer Trustee**
Serving a two-year term, with opportunity to serve a maximum of three consecutive two-year terms (6 years total)

**Community Trustee**
Non-lawyers of the community; serving a two-year term, with opportunity to serve a maximum of three consecutive two-year terms (6 years total)

**IDEAL CMBF OFFICERS & TRUSTEES WILL**
- be engaged in the mission of the CMBF and the programs of the CMBA, and have a passion for the work of our Bar
- have an ability to raise money
- work collaboratively with others
- provide connections throughout Cleveland
- have capacity to serve
- provide investment expertise and/or grant making experience
- represent diverse life experiences, backgrounds, practice areas, segments of the legal and business communities

All nominations are due by 5 p.m. on Wednesday, March 1, and should be sent to:
CMBA or CMBF Nominating Committee
c/o Executive Director, Rebecca Ruppert McMahon
If by Mail to: 1375 E. 9th Street, Floor 2, Cleveland, Ohio 44114
or By Email to: rmcmahon@clemetrobar.org
Visit CleMetroBar.org/Nominations for details.
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Bankruptcy Exemptions
An Update on Ohio Exemptions, and Sound Exemption Planning

BY ROBERT D. BARR

R ecently heard in the courthouse hallway: “Representing consumer debtors in bankruptcy is easy, right? All you need to do is fill out the forms!”

Not so fast. The assumption that bankruptcy is a mere form-driven and administrative practice, accomplished by delegating preparation to office staff, has led to the unnecessary loss of assets. The preparation of bankruptcy schedules in consumer cases may appear ministerial, but can be fraught with peril if a practitioner is unfamiliar with exemption nuances. Sound exemption planning not only protects assets, but saves hours cleaning up errors after a bankruptcy case is filed.

OVERVIEW OF EXEMPTIONS IN BANKRUPTCY
Exemptions dictate the property a debtor may keep in bankruptcy or protect from creditors. An exemption is “an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor.” Owen v. Owen, 500 U.S. 305, 308 (1991). Exemptions give debtors a stake in property to begin their fresh start. They provide a safety net, so a debtor and his family are not completely impoverished due to a bankruptcy.

When faced with uncertainty over whether an exemption is applicable to a certain asset, a debtor initially has the benefit of the doubt: courts have held that a claim of exemption is presumptively valid, and construed in favor of the debtor. See In re Peacock, 292 B.R. 593, 596 (Bankr. S.D. Ohio 2002). It is the burden of an objecting party (usually the bankruptcy trustee) to overcome this presumption. See Fed. R. Bankr. P. 4003(c).

CURRENT OHIO EXEMPTIONS
Ohio exemptions, applicable in both bankruptcy and collection matters, have changed substantially in recent years. The most common exemptions for an individual debtor are found in Ohio Revised Code § 2329.66(A), and were recently updated:

• Residence: $136,925.
• One motor vehicle: $3,775.
• Cash, money on deposit, tax refunds: $475.
• Household goods, clothing: $600 per item.
• Jewelry: $1,600 for one or more items.
• The sum of household goods, jewelry and clothing cannot exceed $12,625.
• Personal injury claim: $23,700 (there must be “personal bodily injury, not including pain and suffering”).
• The “wildcard” exemption: $1,250 (may be claimed in any property).

The following assets are 100% exempt, with some exceptions (notably deposits made to evade creditors):

• Individual retirement accounts (capped at $1,283,025).
• 401(k) and 403(b) retirement plans.
• 529 college savings accounts.

GOOD EXEMPTION PLANNING
Timing is everything. Filing a bankruptcy at the right time is key to protecting certain assets. One example: tax refunds. If a debtor received a substantial tax refund the previous year, then it is likely that she will receive a similar refund the following year. The portion of a tax refund attributable to pre-bankruptcy income becomes property of the bankruptcy estate. Filing a bankruptcy at the end of the year, or the very beginning of the year, will make the refund susceptible to recovery by a bankruptcy trustee, especially if it is greater than $3,000 to $4,000. A debtor should consider filing the case after the tax refund has been received and spent on regular living expenses. If a case is filed midyear, then the pro-rated refund will be smaller, and the $475 cash exemption and $1,250 wildcard may be used to cover most or the entire refund.

Motor vehicle transfers. The $3,775 motor vehicle exemption covers just one motor vehicle, and cannot be split among multiple vehicles. If a debtor has more than one vehicle with substantial equity, then it may be advisable to trade or sell one of the vehicles. A debtor could use the sale proceeds to make a deposit on a new vehicle lease, rather than lose the existing vehicle in a bankruptcy. It is best to wait as long as possible after such a transaction before filing the bankruptcy case.

Use the wildcard wisely. The $1,250 wildcard exemption may be claimed in any property. It is commonly applied to tax refunds and vehicles with substantial equity. Utilize the exemption by claiming it in “low hanging fruit” which the bankruptcy trustee may be more prone to liquidate. For example, if a debtor owns publicly traded stock valued at $2,000, and a collection of antiques with a value of $2,000, it is likely easier for a trustee to cash in the stock than to sell antiques, which may require an auctioneer or broker. The debtor may be overvaluing the antiques, whereas the stock value is public and easier to determine. Anticipate what the trustee will want to recover.

Claim the full value of the exemption. Do not limit the claimed exemption amount to the monetary value of the asset or its equity. For example, if a debtor owns real estate valued at $100,000, still claim the full $136,925 exemption, or claim 100% of the property value as exempt. This provides flexibility in the event the asset is later determined to have a greater value, or the value increases. With residual real estate, claiming the full exemption will also make it easier to avoid or strip off judgment liens.

Anticipate avoiding liens that impair exemptions. Debtors may utilize 11 U.S.C. § 522(f) to avoid judgment liens which impair the homestead exemption, allowing them to strip off judicial liens on real estate with little to no equity. For non-residential real estate (i.e., rental properties), don’t hesitate to use the $1,250 wildcard to avoid judgment liens on one or more properties. See In re Miller, 198 B.R. 500 (Bankr. N.D. Ohio 1996).

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Cleveland Metropolitan Bar Journal
The debtor did not own the property as of the bankruptcy filing date, the debtor may not claim an exemption in the property. See In re Breeces, 2013 Bankr. LEXIS 203, 2013 WL 197399 (6th Cir. BAP 2013) (debtor could not claim homestead exemption in property owned by LLC).

An unmodified vehicle (probably) cannot be considered a health aid. Be careful if claiming a motor vehicle as 100% exempt under the professional prescribed health aid exemption found in O.R.C. § 2329.66(A)(7). In some circumstances, a car specifically adapted to assist a person with special needs, such as a van with a wheelchair lift, may be claimed as exempt in its entirety. However, a vehicle which has not been adapted in any manner, and has not been prescribed by a medical professional, is unlikely to be considered exempt as a “health aid.” See In re McCashen, 339 B.R. 907 (Bankr. N.D. Ohio 2006).

POOR EXEMPTION PLANNING

Don’t rely on bankruptcy preparation software. Even the best computer program cannot substitute for careful review of exemptions to determine their applicability. There are important nuances recognized in the case-law. For example, workers’ compensation benefits are assumed to be entirely exempt under O.R.C. §§ 2329.66(A)(9)(b) and 4123.67. Thus, most bankruptcy preparation software will default to a 100% exemption if the user types “workers’ compensation.” However, the Ohio Supreme Court has held that if a workers’ compensation lump sum settlement has been paid and is still in the debtor’s possession at the time of execution or attachment (i.e., the bankruptcy petition date), then the funds may not be exempt. See Ohio Bell Telephone Company v. Antonelli, 29 Ohio St. 3d 9 (1987).

Eve-of-bankruptcy deposits into retirement accounts cause havoc. Large pre-bankruptcy transfers into otherwise exempt accounts, such as retirement accounts, IRAs and 529 college savings accounts, will raise scrutiny, and may result in an attempted recovery of the funds. With respect to those assets, O.R.C. § 2329.66(A)(10) clearly contains the language: “[e]xcept for any portion of the assets that were deposited for the purpose of evading payment of any debt…”

An asset voluntarily transferred pre-bankruptcy cannot be later claimed as exempt. A client who transfers property to a relative on the eve of bankruptcy, without fair consideration, must be aware of the consequences. Not only can the transfer result in a denial of a discharge, it may result in the transfer being set aside by the trustee; and an otherwise available exemption in the asset may not be claimed. See 11 U.S.C. § 522(g).

WHEN DOES PRE-BANKRUPTCY EXEMPTION PLANNING GO TOO FAR?

“Pigs get fat, hogs get slaughtered.” While some exemption planning is permitted (i.e., pigs may get fat), the wholesale sheltering of non-exempt assets from creditors will invite objections to exemptions, and a potential denial of discharge (i.e., hogs get slaughtered). In the case of In re Zouhar, 10 B.R. 154, 157 (Bankr. N.M. 1981), the court denied a debtor’s discharge after considering the magnitude of conversions from nonexempt into exempt property, concluding: “when a pig becomes a hog, it is slaughtered.”

Robert D. Barr is a partner in the Cleveland office of Koehler Fitzgerald LLC, where his practice is focused on bankruptcy, commercial litigation and real estate, with an emphasis on representing bankruptcy trustees in Northeast Ohio. He has been a CMBA member since 1996. He can be reached at (216) 744-2739 or rbarr@koehler.law.
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Material Adverse Effect

How It “Affects” M&A Transactions

BY T. TED MOTHERAL

In most corporate transactions, not everything is going to go as planned. Hence, the attorneys on both sides have to provide for unexpected happenings. Such is even the case when certain business, economic and government situations occur during the period between the signing and the closing of a transaction (also known as the gap period). On one hand, sellers would argue that little, if anything, should happen, meaning that the deal should still close at the previously agreed-upon purchase price and under the agreed-upon circumstances. Buyers, on the other hand, would counter that they shouldn’t bear the risk of adverse developments during this time period, particularly because sellers remain responsible for day-to-day operations of the target throughout the gap period between signing and closing.

Like in most circumstances throughout the negotiation of a transaction, the buyer and the seller usually find a middle ground, which is achieved through indemnification and termination provisions in the main transaction agreements. However, another important component to allocate risk between the parties is the concept of Material Adverse Change or Material Adverse Effect (MAC or MAE).

This article will provide an overview of MAE, including (1) an introduction to MAE, (2) examples of buyer and seller MAE definitions and uses, and (3) a brief analysis of some key MAE cases.

FUNCTIONS OF MAE PROVISIONS

MAE serves two primary functions in a transaction agreement. First, it limits various seller representations, warranties and covenants, establishing a relatively high threshold for disclosure or compliance relating to risks associated with changes in the target’s business. Second, MAE is operative in the conditions to be satisfied or waived before the buyer is required to consummate the deal. Specifically, an MAE must not have occurred during the gap period. Otherwise, the buyer may terminate the acquisition agreement. This is often referred to as an MAE out. In contrast with its use in reps, warranties and covenants, this application of the MAE concept favors the buyer by presenting it with the option to walk away from a deal after its anticipated value has changed. In both contexts, however, the seller will want to minimize the likelihood of occurrence of an MAE by narrowing which events and circumstances will satisfy the definition, and the buyer will seek to achieve the opposite.

MAE DEFINITION

Virtualy all acquisition agreements include a formal definition of MAE in the definitions section. Here’s a pro-buyer example, intended to cast a wide net:

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has, or could reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (a) the business, assets, liabilities, properties, condition (financial or otherwise), operating results, operations or prospects of the acquired companies, taken as a whole, or (b) the ability of the company or the seller to perform its obligations under this Agreement or to consummate timely transactions contemplated by this Agreement.

By contrast, a relatively pro-seller definition intended to be difficult to satisfy might provide:

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has a material adverse effect on (a) the business, financial condition or results of operations of the acquired companies, taken as a whole, or (b) the ability of the seller to consummate timely the transactions contemplated by this Agreement; provided, however, that none of the following, either alone or in combination, will constitute, or be considered in determining whether there has been, a Material Adverse Effect: any event, change, circumstance, effect or other matter resulting from or related to (i) any outbreak or escalation of war or major hostilities or any act of terrorism, (ii) changes in Laws, GAAP or enforcement or interpretation thereof, (iii) changes that generally affect the industries and markets in which any acquired company operates, (iv) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions, (v) any failure, in and of itself, of any Acquired Company to meet any published or internally prepared projections, budgets, plans or forecasts of revenues, earnings or other financial performance measures or operating statistics (it being understood that the facts and circumstances underlying any
such failure that are not otherwise excluded from the definition of a "Material Adverse Effect" may be considered in determining whether there has been a Material Adverse Effect), (vi) any action taken or failed to be taken pursuant to or in accordance with this Agreement or at the request of, or consented to by, the purchaser, or (vii) the execution or delivery of this Agreement, the consummation of the transactions contemplated by this Agreement or the public announcement or other publicity with respect to any of the foregoing.

Broadly speaking, there are three differences between the definitions, which are (1) forward-looking language, (2) the list of direct objects, and (3) the long list of exceptions in the pro-seller definition.

The forward-looking language sought by buyers is intended to capture events or circumstances that have not yet, but may in the future, result in a materially adverse effect. Without this language, it’s conceivable that an eventuality that would certainly reduce a target company’s future value without having any impact on its current operations and earnings would not qualify as an MAE. An example would be a failure to obtain government approval on a new product or service.

The second difference between the pro-buyer and pro-seller versions of MAE relates to the object of the effect. The buyer version looks to include assets, liabilities, properties and non-financial condition, all of which were omitted from the seller version. The buyer’s objective in this case is to reduce the size of the denominator in assessing materiality. What may qualify as a material adverse effect on, say, a company’s liabilities or properties alone may not be material to the company as a whole, particularly where the target company didn’t have a lot of liabilities or properties to begin with. Once again, the buyer looks to make a given event or circumstance more likely to constitute an MAE.

The final material variation between the two MAE definitions is the seller’s proposed inclusion of a long list of exceptions. Despite being omitted from the buyer favorable draft, virtually all MAE definitions include such lists in one form or another, though they may differ in their specifics. Some of the more common exceptions are those relating to:

- changes in the economy or business in general,
- changes in general conditions of the specific industry,
- acts of war or major hostilities,
- Acts of God,
- changes in political conditions.

### KEY MATERIAL ADVERSE EFFECT CASE LAW

**IBP vs. Tyson**

In *In Re: IBP, Inc. Shareholders Litigation*, 789 A.2d. 14 (Del. Ch. 2001), the merger agreement contained a broad MAC clause with no carve-outs. Tyson Foods asserted that IBP, the target, had suffered a material adverse effect because its first quarter 2001 earnings were 64 percent behind those for the first quarter of 2000. However, the Delaware Court of Chancery did not regard this downturn as affecting IBP on a long-term basis. In the standard set by the court in IBP, a party seeking to invoke a MAC clause and terminating a deal faces the high burden of proving that the events claimed to be a MAC “substantially threaten the overall earnings potential of the target in a durationally-significant manner. A short-term hiccup in earnings should not suffice; rather the [MAC] should be material when viewed from the longer-term perspective of a reasonable acquirer.” The court determined that IBP had not suffered a MAC, and, as a result, Tyson Foods was forced to complete the purchase.

**Hexion v. Huntsman**

In this case, Hexion Specialty Chemicals attempted to exercise a MAC out under its agreement with Huntsman on the basis of a deterioration in Huntsman’s business during the period between signing and closing. Hexion focused its arguments on Huntsman’s repeated failure to achieve its forecasts as well as an increase in Huntsman’s net debt as compared to its projected decrease and the underperformance of two of Huntsman’s operating divisions.

The court concluded that, because Huntsman had specifically disclaimed any representations regarding projections, the failure to achieve targets could not be the basis of an MAE. The court also concluded that the proper way to determine the existence of an MAE is to compare current results against the prior historical period and found only a small decline (3-6%) over annual periods. In addition, the increase in net debt had been small (5%), and the Huntsman business units affected by the downturn contributed only 25% of overall EBITDA. Thus, all considered, no MAE had occurred.

The court then ruled that Hexion was obligated to consummate the acquisition, a transaction for which financing was no longer available.

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The decision reaffirms the holding in *IBP v. Tyson* that parties seeking to invoke MAC outs bear a “heavy burden” to demonstrate that an MAE has occurred. The court noted that, as of the date of the opinion (2008), Delaware courts had never found a material adverse effect to have occurred in the context of a merger agreement. The court further noted that an MAE ordinarily will be “measured in years rather than months” and, thus, an MAE will not be found unless an adverse change is “consequential” to the target’s long-term earning power, rather than a “short-term hiccup.” The case is a cautionary tale to buyers and suggests that buyers may wish to include specific metrics and benchmarks in their agreements because reliance on generalized MAE definitions to terminate will be difficult. Additionally, the opinion indirectly states to buyers that MAE clauses will not be read in isolation, but will be viewed in the context of the entire agreement and the overall transaction.

T. Ted Motheral is a partner in the corporate transactions practice group of Walter | Haverfield, LLP. He has been a CMBA member since 2016. He can be reached at (216) 928-2967 or tmotheral@walterhav.com.
No matter what kind or size of law practice you have, if you use any kind of electronic system to communicate about or store confidential client information, one day you will most likely face a choice of which letter to send to your client. Which letter would you prefer to send?

Dear Client,

We regret to inform you that we have learned that our law firm computer network was hacked and your client file was accessed by unknown malicious third parties. We do not know when this occurred, how much of your information was taken or the identity of the parties who may now have your information. Pursuant to ORC 1349.09 we are required to inform you because your client file contained personal identifying information which likely included your full name, date of birth, social security number, tax returns, business records, employment records or medical records. Please don't contact us with any questions because, as lawyers, we do not understand how computer security works. Regardless, we will continue to work diligently on your case and we appreciate all the trust and confidence you repose in us.

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There is no third choice. A lawyer cannot conceal from a client or ignore a breach of electronically stored data that results in destruction, theft or disclosure of confidential client information. The Ohio Rules of Professional Conduct impose an ethical obligation to inform your clients — your choice is whether you will be prepared or not. Will the necessary notice to your client reflect your technology competence or will the letter set off alarm bells leading to client loss, malpractice claims and/or grievances?

Do I have your attention? The risk of and some say the inevitability of a breach of security of electronically stored confidential client information applies to all law firms, regardless of size. So, what are a lawyer’s ethical obligations?

1. Keep abreast of the risks and benefits associated with relevant technology (Prof. Cond. Rule 1.3, Comment 8)

The benefits of relevant technology for client information are obvious — electronic storage of client information makes it easy access to read, search, change or analyze client information from multiple devices. The risks arise out of this benefit — easy access to confidential client information. A technologically competent lawyer is aware of and addresses these risks.

Appreciating the risk of easy access to client information also includes defining what client information a lawyer is obligated to keep confidential. Client confidential information is defined expansively in Ohio. Client confidential information extends beyond attorney-client privilege and beyond work product privilege. Confidentiality applies to all information relating to a client’s representation, whatever the source. Prof. Cond. Rule 1.6, Comment 3.
3. Use reasonable efforts to ensure that services provided by non-lawyers outside the firm (specifically including services related to storage of client information) are provided in a manner compatible with the lawyer's professional obligations. Prof. Cond. Rule 5.3, Comment 3

In this area, it is reasonable and understandable that a lawyer would consult and use non-lawyers to provide advice about how to secure computer networks, devices, electronic storage and cloud services. A lawyer cannot blindly accept such services but must inquire and understand whether those systems and storage mechanisms reasonably protect confidential client information and are compatible with the professional obligations of the lawyer. This obligation applies to using a consultant as well as using third party software and systems such as Dropbox, iCloud or Google Drive to transmit, store or back up confidential client information.

4. Comply with client requests for additional or special protection of client information and comply with other state or federal laws governing data privacy. (Prof. Cond. Rule 5.3, Comment 3 and 4 and Prof. Cond. Rule 1.6, Comment 18)

These are the “Edward Snowden” provisions. If you want to represent Mr. Snowden, he would likely ask that your firm's information security systems be augmented and improved. More commonly, clients who are financial services or health care entities, will regularly scrutinize your information systems and require additional protections under applicable state and federal data privacy laws. If your individual or corporate clients provide you with medical or financial information that is stored electronically, you and your firm may be subject to the privacy protections of state and federal privacy laws such as HIPAA.

5. Communicate with your client when an information security breach occurs. (Prof. Cond. Rule 1.4)

The obligation to communicate with a client arises when confidential client information is accessed, disclosed or destroyed. There are two sources for this obligation.

First, a lawyer is obliged to keep a client reasonably informed about the status of a matter (Prof. Cond. Rule 1.4(a)(3) A lawyer may not omit to tell a client damaging information, if it is relevant and pertinent to the representation. Loss or disclosure of confidential client information is relevant and pertinent to any client. If the information taken was not in the defined categories of personal information covered by the Ohio breach notification statute, that does not relieve a lawyer of an obligation to communicate with a client. Consider if confidential client files are lost in an attack but are needed for continued representation. What does a lawyer say when a client wants to know why the lawyer needs a second copy of information? To the extent that any explanation to the client is not honest, the lawyer risks engaging in conduct involving dishonesty, fraud deceit or misrepresentation violating Prof. Cond. Rule 8.4(c). Therefore, in any cybersecurity breach that affects a client's confidential information, a prepared lawyer will anticipate and plan to communicate with their client.

Second, there are other breach notification laws that apply to lawyers. ORC 1349.19 requires notification to any person whose personal identifying information was taken when it causes or reasonably is believed will cause a material risk of identity theft or other fraud. Under Ohio's statute, personal information is first and last name combined with a social security number, drivers license number or a credit or debit card number and a pin/password. (See ORC 1347.12(A)(6)(a)) If the client information taken from the lawyer also included client medical information, HIPAA federal laws also include a breach notification requirement. (45 CFR Part 164.404)

Taken together, these ethical obligations require that lawyers first understand the information technology they use for confidential client information. Then, given the risk presented today — that no failsafe protection exists for confidential client information, it is also incumbent upon a lawyer to be prepared to detect, address and respond to a hacking attack.

Part 2 of this article will examine what is reasonable for a lawyer to consider and resources available within the legal community and elsewhere to learn and implement competent practice in information security.

Jean McQuillan is an Assistant Professor of Law at Case Western Reserve University teaching legal ethics after twenty-one years of private practice in Cleveland. She served on and was Chair of the Board of Commissioners for Grievances and Discipline. She has been a CMBA member since 1980 and can be reached at jean.mcquillan@case.edu or (216) 368-1673. Any opinions expressed herein are solely her own.
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The CMBA and its Ethics & Professionalism Committee present

**Professional Conduct 2016: Sex Drugs and Rock & Roll – Video**

**Tuesday, January 24**
**Tuesday, February 28**

**REGISTRATION** 8:30 a.m.
**VIDEO** 9 a.m.

**CREDITS** 3.50 Professional Conduct CLE

**Welcome & Introductions**
Kimberly M. Baga, Law Office of Kimberly M. Baga, Chair; CMBA Ethics & Professionalism Committee

**Whole Lotta Trouble: Relationships with Clients and Conflicts of Interest (Sex)**
Jonathan E. Coughlan, Kegler, Brown, Hill & Ritter, Columbus, Past Disciplinary Counsel for the State of Ohio

**Takin’ Care of Business: Preparing Your Firm for Life’s What Ifs (What If Preparedness)**
Deborah A. Coleman, Coleman Law LLC

**Up in Smoke: Medical Marijuana and the Practice of Law (Drugs)**
Patrick F. Haggerty, Frantz Ward LLP

**Keeping it Clean: Plagiarism and Copyright Infringement (Rock & Roll)**
Mark E. Avsec, Benesich, Friedlander, Coplan & Aronoff LLP

The CMBA and its Litigation Section present

**Fundamentals of Practice in the Northern District: Federal Court Training Program – Video**

**REGISTRATION** 12:30 p.m.

**PROGRAM** 1:00 – 4:45 p.m.

**CREDITS** Submitted for 3.50 CLE Hours with .50 professional conduct credit

**Tuesday, January 24**
**Tuesday, February 28**

Pursuant to District Court Local Rule 83.5, attorneys who wish to be admitted to practice before the United States District Court, Northern District of Ohio, must attend an approved seminar on Federal Practice. Attendance at this seminar satisfies the requirement of Rule 83.5. Further information regarding admission to practice before the U.S. District Court can be obtained from the office of the Clerk at (216) 357-7000.

**Welcome & Introductions**
Joseph P. Dunson, Dunson Law, LLC, Seminar Chair

**Personal Jurisdiction and Venue in the 6th Circuit**
Gregory P. Amend, Buckingham, Doolittle & Burroughs, LLC

**Perspectives from the Clerk’s Office: E-Filing, ADR and Corporate Disclosure**
Vicky Mizell, Operations Manager, United States District Court Clerk’s Office

**Federal Practice Overview, Standing Orders and Early Case Resolution**
The honorable Solomon Oliver, Jr., United States District Court, Northern District of Ohio

**Anatomy of a Federal Criminal Prosecution from Indictment to Sentencing**
Ian N. Friedman, Friedman & Nemecek, L.L.C.; Joseph N. Pinjuh, United States Attorney’s Office

**Early Civil Case Obligations: Initial Disclosure, Meet and Confer and E-Discovery**
Amy Ryder Wentz, Littler Mendelson, P.C.

The CMBA, Academy of Medicine Education Foundation, and The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) present

**2017 Medical/Legal Summit**

This summit is designed to bring together doctors, lawyers, health care professionals and others who work in allied professions for education, lively discussion and opportunities to socialize and network.
All programs are held at noon at the CMBA Conference Center, unless otherwise noted.

**January 25**  
**Litigation Section**  
Recent Developments in Consumer Class Action Litigation

**January 26**  
**Environmental Law Section**  
Sustainability Case Studies for 2016 & Beyond

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**February 1**  
**International Law Section (No CLE)**  
Organizational Meeting

**February 8**  
**Workers’ Compensation Section**  
Technology in the Hearing Room

**February 14**  
**ADR Section**  
Use of Mediation Confidentiality to Shield Legal Malpractice

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**Friday, March 24**  
**CREDITS**  
CLE 1.5, CME 1.5, *UH CRME 1.5  
**PROGRAM**  
4:15 p.m.

**Welcome & Introductions**  
Richard D. Manoloff, Esq., CMCA President  
Robert E. Hobbs, MD, AMCNO President  
Marlene Franklin, Esq., Associate General Counsel, MetroHealth Medical Center

**Keynote Presentation: “The Future of the Affordable Care Act and Medicare Payment Reform”**  
Gail Wilensky, PhD, is an economist and senior fellow at Project HOPE, an international health foundation. She directed the Medicare and Medicaid programs from 1990 to 1992 and served in the White House as a senior health and welfare adviser to President George W. Bush. From 1997 to 2001, she chaired the Medicare Payment Advisory Commission, and previously chaired one of its predecessor commissions, the Physician Payment Review Commission. Dr. Wilensky is an elected member of the Institute of Medicine and has served two terms on its governing council. She received a bachelor’s degree in psychology and a PhD in economics at the University of Michigan and has received several honorary degrees. Keynote to be followed by a networking reception.

**Saturday, March 25**  
**CREDITS**  
CLE 4.0, CME 4.0, *UH CRME 4.0  
**REGISTRATION & BREAKFAST**  
7 a.m.  
**WELCOME & INTRODUCTIONS**  
8 a.m.  
**MACRA – Plenary Session**  
**OVERVIEW**  
The Patient Protection and Affordable Care Act of 2010 (ACA) created the National Quality Strategy (NQS) and included the redesign of Medicare’s fee-for-service (FFS) payment structure. As set out in the new Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) legislation signed into law in April 2015, physicians will now submit quality measures through the Merit-based Incentive Program System (MIPS). MACRA replaces the Medicare Sustainable Growth Rate (SGR) and puts into place two types of quality payment programs. The panelists in this session will delve into the new payment systems to be implemented under MACRA.

**SPEAKERS**  
Cathy Costello, JD, Director, CliniSyncPLUS Consulting, Ohio Health Information Partnership  
Howard Rituk, MD, MPH, FACS, Health Services Advisory Group (HSAG) Vice President for Medical Affairs & Chief Medical Officer  
Robert Fumo, MD, MPH, MBA, Chief Medical Officer at the Centers for Medicare & Medicaid Services – Invited

**Addressing the Opioid Crisis in Ohio – Plenary Session**  
**OVERVIEW**  
This session will discuss the impact of the opioid epidemic in Ohio, and the unprecedented strain on all of our resources. The panel will discuss the extent of the problem in terms of the current statistics and provide insight into the physiology of addiction. They will also discuss what is being done to combat the problem from both the medical and legal perspectives.

**SPEAKERS**  
Nicole Labor, DO, Addiction Specialist, SUMMA Health Systems  
Carole S. Rendon, Office of the United States Attorney General; Northern District of Ohio  
Hugh Shannon, Administrator, Cuyahoga County Medical Examiner

**Litigation Section**  
**Sustainability Case Studies for 2016 & Beyond**

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Register at CleMetroBar.org/CLE!  
For questions or to register over the phone, call (216) 696-2404.
The Anxious Lawyer
Managing Stress and Anxiety Through Meditation

In a recent study commissioned by the American Bar Association, attorneys were found to have a higher rate of alcohol use disorders than any other profession and to have significant levels of mental health distress, including depression, anxiety and stress. Krill, Johnson and Albert, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys”, Journal of Addiction Medicine, February 2016, Vol. 1 – Issue 1, pp. 46-52. The highest barriers to treatment were concern about others learning of the problem and concerns for privacy. Id. Additionally, the Ohio State Bar Association recently published an article on the concerns over the high rate of attorney suicides and stress. Jackson: “The Warning Signs: The Dangers of Attorney Stress,” Ohio Lawyer, Sept/Oct, 2014, Vol. 28, No. 5, pp. 6-9.

Jeena Cho and Karen Gifford have written a book, The Anxious Lawyer, as a guide to anxiety busting and stress reduction through meditation. The authors are attorneys who understand the stress of practice and have put meditation to use in their own lives to deal with the pressures that come from practicing law. Gifford, a litigator and enforcement attorney with the Federal Reserve, began meditating to balance the demands of motherhood and her practice. Cho, a bankruptcy lawyer and contributor to Forbes and Above the Law, began meditation to help overcome her social anxiety disorder, a disorder that threatened her legal career. Not only have the authors found meditation a means for relieving or controlling stress and anxiety, but also as a way to increase productivity and focus in their professional lives.

Cho and Gifford take the reader on an eight-week journey to developing a meditation practice. Through examples and discussion, the reader is able to use what is learned in meditation in both their legal practice and every day life. The authors consistently encourage the reader to develop and continue with meditation, making it clear they understand some of the steps may be difficult and there may be failures along the way. They relate to the reader by explaining its application through their personal experiences. The book is very readable and understandable.

They start with the basics of meditation. It is necessary to make time to meditate for a set time each day where meditation is the sole focus. It can be as much as 10 minutes or as much as a half hour. After beginning to meditate, the authors take the reader through meditation chapters of Mindfulness, Clarity, Compassion (both toward others and for oneself), Mantra Repetition, Heartfulness and Gratitude. Each chapter is a one-week program. At the end of each chapter are meditation instructions and a meditation log, as well as ways to notice the benefits of meditation in both legal practice and every day life. In addition, Cho and Gifford have a website to help readers with meditation practice — www.theanxiouslawyer.com.

Looking at the list of chapters that includes “Compassion” might put one off. You might ask, how can an attorney be compassionate while zealously protecting the interests of a client? Cho and Gifford explain that being compassionate does not mean accepting or agreeing to an adversary’s position or being a doormat. It means understanding we are all human and professionals doing our jobs. Hostility for its own sake makes no sense. When a win at all costs approach is taken, civility can be lost. It doesn’t have to be that way.

I believe The Anxious Lawyer can be a valuable tool to assist lawyers in dealing with anxiety and stress, and improving their life and practice. It can also assist in leading all of us to having more professionalism in our practice. A client once told me he felt a full-day seminar was successful if he came away with two or three nuggets for the entire day. I believe the reader will find several nuggets in each chapter. If you are interested in exploring meditation or in trying it again, this book is for you. The Anxious Lawyer is available at www.shopABA.org for $29.95.

David Millstone is the principal in Millstone ADR. A former partner at Squire Patton Boggs (formerly Squire Sanders & Dempsey) for over 40 years, he now serves as a private arbitrator and mediator. He has been recognized as an Ohio Super Lawyer, in Best Lawyers in America and in Chambers Best Lawyers. He has been a CMBA member since 1972. He can be reached at (216) 469-4895 or david@millstoneadr.com.
Jessica Kubiak is the Senior Paralegal in the Domestic Relations department of Phillips and Mille. She also is the president of the Cleveland Association of Paralegals (CAP). She was kind enough to sit down with me and tell me a little bit about herself and her paralegal profession.

SO HOW LONG HAVE YOU BEEN A PARALEGAL?
16 years

WHERE DID YOU START OUT?
My first job in a law firm was a small four-person firm and they did all kinds of law. I quickly found out that I did not like asbestos work. I didn't center my career on family law when I first started, but I got a taste of it. I graduated from Lakeland Community College with an Associates Degree in Paralegal Studies, and I am going to Cleveland State to finish my English Degree.

In my first job, I got introduced to the CLAD system, because of all of the asbestos work at the time. I then went on to become a child support enforcement officer for six years. That skill set helped me when I got my next job in a small law firm where I did focus on family law.

Being a child support enforcement officer taught me so many things. I know the ins and outs of the system. When I call over there, I know what screen they are looking at, I know the terminology, the guidelines, and all of that helps me get my job done. Attorneys find that very useful because it's not something that they generally are as familiar with.

HOW LONG HAVE YOU BEEN OSBA CERTIFIED, AND WHAT MADE YOU WANT TO GET CERTIFIED?
I got my OSBA certification in 2011 in Family Law. First, one of the attorneys I worked for had brought it up at one point, and I think it was newer at that time. You had to have at least six years of experience at that point, and I only had four, so I was a short on experience. I didn't know if OSBA would consider my time as a child support enforcement officer, but when I contacted them they said that it absolutely qualified. So I signed up to take the exam. I have no idea what I was thinking, but I signed up to take the exam and the review course down in Columbus right after having rotator cuff surgery! I thought I'd be able to drive myself, it would be all good...no way! I was in a contraption, it was crazy. So I just got the materials and studied those, took the test, and then four weeks later I found out I had passed. I was so relieved!

AS A CERTIFIED PARALEGAL WHAT DOES YOUR DAY LOOK LIKE?
Right now I work under one attorney, but she is out of our office three days a week, and in the office two days a week. So usually the first thing I do when I come in is check my emails, because if she has worked late, I'll have some to-dos from her. The next thing I do is check the calendar to see what is going on for the day and what I'll need to get ready, my to-do list of what I need to do on cases. I prioritize the to-do list and I'll check her calendar for upcoming cases and everything that we will need to prepare for that. I handle all of her phone calls that come into the office when she isn't there. There are a lot of phone calls and emails that are exchanged between her and me about things we need to do or get done. The nice thing is that I sit right outside her office, so I can answer most questions. We have empty space that I could have if I wanted, but sitting outside of her office, I hear every conversation that she has. I know when she talked to the client, and what the conversation was. I also handle getting documents together and down to the courthouse. I also help with the firm's in-house collections, which is not a top priority for me, but if I have any time where there isn't a lot of domestic work to do,
or my attorney is in court and won’t need me right away, then I’ll work on the collections. I have also been helping with the firm’s marketing and website.

YOU WEAR A LOT OF HATS!
Yes! Definitely a lot of hats, but the majority of my time is spent on domestic relations, making sure my attorney has what she needs. I schedule everything like hearings on the calendar and docket them, make sure all of the documents are together and we and the clients are prepared. I talk to the clients who have never been to court before. I prep them regarding what to wear (business casual, not jeans) where to park, what to bring, and what they can expect.

DO CLIENTS FIND IT OVERWHELMING SOMETIMES?
Yes, they do. It can definitely be overwhelming, but we try and help them through that. A lot of my job is actually hand holding. I get a lot of calls from emotional people, especially in cases involving kids. So a lot of it is talking the client down from that ledge, letting them know that everything is ok, not to worry, we have it taken care of.

ARE THOSE CALLS EMOTIONALLY TAXING?
I like to help people, which is one of the reasons that family law was attractive to me. And in family law, I really feel like you need to disconnect. I have to leave my emotions outside of it because I have to be able to help the attorney think logically as to how to resolve the matter. So I’m not going to get wrapped up in “Aunt Mabel’s antique vase that was hidden and now I can’t find” or the dog. Those are things that I have to get them to step back from and realize that it’s not important right now; I’ll tell them that I’ll make a note for the attorney but let’s really focus on getting this important thing done. Things like getting the kids to counseling or what you need to do to move out of the house — I try and refocus their energies where they really need it. It is hard because I’m tearing years of your life apart, I know that it’s hard. I’m equipped to take those phone calls on because it frees up the attorney to focus on what she needs to and get the situation resolved.

It can be really hard though. There are some days when I go home and say, “Ok, I don’t want to hear anything from anyone for 10 minutes!”

SO, IS IT HARD TO KEEP THAT SEPARATE FROM YOUR HOUSE?
No, not at all. At my old firm, I did have one client who would call and overstep their bounds. He somehow got my cell phone number and would call me at all hours — 10 a.m., 1 a.m. It took the attorney that I worked for to put him in his place and tell him he could not call me outside of work hours. I set my time at home as time with my family, not time for answering work calls that are never an emergency.

Are you interested in joining the Cleveland Association of Paralegals? Applications available at CAPOhio.org and CleMetroBar.org/Membership/Paralegals.

Contact Jessica Kubiak at president@capohio.org. She can answer any questions that you may have about the Association.

Michelle Cady-Cook is part-owner and Marketing Director for Cady Reporting Services. She is Immediate Past Chair of the Green Initiative Committee and active on the Affiliate Committee at the CMBA. She has been a member of the CMBA since 2008. She can be reached at (216) 861-9270 or mcook@cadyreporting.com.
### January

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<tr>
<td>23 O’Neill Committee Lunch</td>
<td>24 Sex, Drugs &amp; Rock ‘n’ Roll Video – 9 a.m.</td>
<td>25 PLI – 8:30am 3Rs Committee Mtg. Litigation Section Lunch &amp; CLE (Vorys Sater Seymour and Pease)</td>
<td>26 PLI – 8:30am Court Rules Committee Mtg. Environmental Law Section Lunch &amp; CLE Small &amp; Solo Section Mtg. (Aladdin’s in Independence) Attorneys Advising Artists – 5 p.m. (Cleveland Public Theatre) Destination CLE (Singer Island, FL)</td>
<td>27 Destination CLE (Singer Island, FL)</td>
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### February

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<tr>
<td>1 PLI – 8:30 a.m. International Law Section Lunch Mtg.</td>
<td>2 CMBF Fellows Committee Mtg. – 8 a.m. WIL Section Mtg. YLS Council Mtg. Movie Night – 6 p.m.</td>
<td>3</td>
<td>10 Section &amp; Committee Leadership Mtg. – 8:30 a.m. Ohio Mock Trial Cuyahoga Regional Competition – 11:30 a.m. (Cuyahoga County Courthouse)</td>
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<td>6 CMBF Executive Committee Mtg. – 8:15 a.m. Grievance Committee Mtg.</td>
<td>7 CMBF Executive Committee Mtg. – 8:15 a.m. Grievance Committee Mtg.</td>
<td>8 UPL Committee Mtg. CMBA Executive Committee Mtg. Workers’ Comp Section CLE (State Office Building) VLA Committee Mtg.</td>
<td>9 Ethics Committee Mtg. Pillars Program Real Estate Law Section Lunch</td>
<td>17 PLI – 8:30 a.m. Pro Se Divorce Clinic – 10 a.m.</td>
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<td>13 PLI – 8:30 a.m. CMBF Board of Trustees Mtg.</td>
<td>14 PLI – 8:30 a.m. ADR Section Mtg. JFA Committee Mtg.</td>
<td>15 Bankruptcy &amp; Commerical Law Section CMBA Board of Trustees Mtg. Labor &amp; Employment Section Lunch &amp; CLE</td>
<td>16 PLI – 8:30 a.m.</td>
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<td>20 Estate Planning, Probate &amp; Trust Law Section Lunch &amp; CLE Grievance Committee Mtg. Insurance Law Section</td>
<td>21</td>
<td>22 Litigation Section Lunch &amp; CLE 3Rs Committee Mtg.</td>
<td>23 Court Rules Committee Mtg. Small &amp; Solo Section Mtg. (Aladdin’s in Independence) President’s Day Seminar with NE Ohio Law Directors</td>
<td>24 Minority Clerkship Program – 3 p.m.</td>
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<td>27 Sex, Drugs &amp; Rock ‘n’ Roll Video – 9 a.m. Membership Committee Mtg. Federal Court Video – 1 p.m.</td>
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**Saturday, February 11** – Rock the Foundation 12 (Music Box Supper Club)

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

Small downtown Cleveland law firm seeks to hire a part-time (20 hours/week) associate attorney with 2–4 years’ experience, to join the firm’s growing education and state and local tax law practice. At minimum, the successful candidate will provide legal and online research; draft discovery, pleadings, legal memoranda, contracts, and related legal documents; attend administrative hearings, assist with labor negotiations and employment and student related matters and perform general due diligence and legal services beneficial to the office. Candidates should possess a strong academic background and good written and oral communication skills. Hourly-rate compensation commensurate with experience and background. Please send resume and writing sample to jbradley@bms-law.com.

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

55 Public Square Building – Large corner office, 17th floor; Beautiful Lake Views, Secretary Space Available, Call Jim or Kevin at (216) 696-0600.

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.

Superior Building – Offices available in professionally decorated suite. Congenial environment with possible referrals. Will also consider barter arrangement for younger attorney seeking to establish own practice. Jack Abel or Lori Zocolo at (216) 621-6138.

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. Relman, (216) 514-4981.

Beachwood – LaPlace Mall, corner of Cedar and Richmond near Beachwood Place and Legacy Village. Upper level, sunny office space available with the usual amenities. Separate area for assistant. Free underground parking. Call (216) 292-4666 or email 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.

Highland Heights – Fantastic offices available. Includes receptionist, waiting area, conference room, kitchen, phone, printer/ copier/fax; Internet. Space available for paralegal/ secretary. Contact Annette at (440) 720-0379 or asamber@hendersonsmidlin.com.

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

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

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.

Independence – Lawyers have office(s) with shared conference room, receptionist, copier, kitchen. $500/mo. Possibility of sharing support staff. Rockside Road. (216) 236-2400.

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

Seven Hills – Law office for rent – Rockside Road, Seven Hills Corner office in prime location with Internet, copy, fax, scanner, telephone, receptionist. Two conference rooms. $1,000 per month. Call Anthony at (216) 401-7763.

Suburbs – West


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

Services

Appraiser – Personal Property, Art, Antiques, Residential Contents. 15 years experience providing USPAP compliant personal property...
listings
classifieds


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

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

Experienced Expert Witness for probate, estate planning or related matters. ACTEC Fellow since 1994: Harvard Law. EPC “Planner of Year 2006.” Herb Braverman at hlblaw@aol.com.

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.vaccanello@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

Premises Security and Security Guard Expert Witness and Consultant. Twenty-five years experience and ten years working for Defendant and Plaintiff attorneys
• Premises security, premises liability, risk assessment
• Allegations of crime foreseeability, industry standards, and best practices
• Inadequate security, workplace violence, violent crime
• Security officer negligence, guard allegations of misconduct or excessive use of force
• Safety issues involving training, background investigations, vetting
• Testified in state and federal courts and depositions nationwide
• I have never lost a challenge nor been removed, including federal court
• Provide services for either plaintiff or defense firms as a consultant and expert witness
• Security Consultant to Industry tlekan@gmail.com or guardconsultant@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@neebittinger.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.
Roetzel is pleased to announce new leadership roles in Ohio: Douglas E. Spiker, Partner-in-Charge of the Cleveland Office and Robert E. Blackham, President of Roetzel.

Schneider Smeltz Spieth Bell LLP is pleased to announce that James Gianfagna has joined the firm’s Business practice group as an associate attorney.

Schneider Smeltz Spieth Bell LLP is pleased to announce Aanchal Sharma has joined the firm’s litigation practice group as an associate attorney.

Schneider Smeltz Spieth Bell LLP is pleased to announce Jamie McHenry joined the firm’s Trust & Estates practice group as an associate attorney.

The law firm of Gallagher Sharp is pleased to announce that Brooke L. Hamilton has joined the firm as an associate and will be active in the firm’s General Litigation, Professional Liability, and Transportation Practice Groups.

Reminger Co., LPA is pleased to announce that David Walters has joined the Cleveland office. Dave focuses his legal practice on a variety of areas including construction liability, commercial litigation, and probate & trust litigation.

Fisher Phillips announced today that Brittany Brantley has joined the firm’s Cleveland office as an associate. In this role, Brantley will represent employers in a wide variety of labor and employment law matters, including business litigation and employment discrimination.

U.S. News Media Group ranked Thacker Robinson Zinz LPA as a “Best Law Firm” for the sixth consecutive year. For 2017, the firm was listed as “Best” in Cleveland and Toledo in the practice areas of Commercial Litigation, Insurance Law, Land Use & Zoning Litigation, Municipal Litigation, and Mergers & Acquisitions Litigation.

Frantz Ward is recognized in the 2017 U.S. News & World Report’s Best Lawyers “Best Law Firms” list.

Spangenberg Shibley & Liber LLP is pleased to announce that the following lawyers have been selected for inclusion on the Super Lawyers 2017 list: Peter H. Weinberger, William Hawal, Dennis R. Lansdowne (Plaintiff General); Peter J. Brodhead (Class Action); Nicolas A. DiCello, Stuart E. Scott (Plaintiff General); and Dustin B. Herman (Plaintiff General). The following attorneys have been named as Rising Stars: William B. Edie (Plaintiff General); Michael A. Hill (Plaintiff General); and Dustin B. Herman (Plaintiff Products).

The Cleveland office of Littler Mendelson, P.C., has earned a “Tier 1” ranking in U.S. News – Best Lawyers® seventh annual “Best Law Firms” list in the following categories: Employment Law – Management, Labor Law – Management, and Litigation – Labor & Employment. The firm also earned national “Tier 1” rankings in these categories and received “Tier 1” designations in 37 additional metropolitan areas. The “Best Law Firms” rankings follow the recently released The Best Lawyers in America® list, in which more than 180 Littler attorneys were recognized, including Cleveland Shareholders John T. Billick, Craig M. Brown, Frank W. Buck, Robert P. Duvin, Janette M. Louard, Stephen J. Sfera and Robert M. Wolff.


Ron Isroff of Isroff Mediation Services, LLC will be recognized in the 2017 Edition of The Best Lawyers in America in the areas of Mediation and Arbitration and in the 2017 Ohio Super Lawyers list for Alternative Dispute Resolution. Ron’s firm has also received a Tier 1 ranking in the 2017 Edition of “Best Law Firms” by U.S. News & World Report and Best Lawyers.

U.S. News – Best Lawyers® ranked Kaufman & Company, PLLC on the 2017 “Best Law Firms” list in the Metropolitan Tier 1 in Cleveland for their work in Real Estate Litigation and Commercial Litigation; Metropolitan Tier 2 in Cleveland for their work in Intellectual Property Litigation; and ranked on the National Tier 3 list for their Real Estate Litigation work.

Michael Jordan of Jordan Resolutions, LLC, has been named to Best Lawyers in America in several practice areas, including arbitration, mediation, health care, and commercial litigation. He has now been named to Best Lawyers in America for over a decade. In addition, he was recognized by his peers as Health Care Law “Lawyer of the Year” in Cleveland. Jordan recently spoke at an American Health Lawyers Association conference in San Francisco, California, on the topic of arbitration in the field of health care.

Best Lawyers in America® has recognized Ray, Robinson, Carle & Davies Co., L.P.A. with a Cleveland Tier 1 ranking and a National Tier 3 ranking for Admiralty & Maritime Law in the 2017 edition of U.S. News – Best Lawyers “Best Law Firms.” In addition, Sandra M. Kelly and two other Ray Robinson attorneys have been named as Best Lawyers in Admiralty & Maritime Law.
A concentrated, firm-wide focus on client service has catapulted Ulmer & Berne LLP up nearly 200 spots in BTI Consulting Group’s Client Service A-Team Rankings 2017. Landing at number 90, and up from number 272 just last year, BTI reports that corporate counsel and leading decision makers from the world’s leading organizations recognize Ulmer’s outstanding performance in client service.


Mishkind Kulwicki Law Co.,LPA has been recognized in the 2017 edition of Best Lawyers in America in the practice areas of Medical Malpractice Law – Plaintiffs, as well as Personal Injury Litigation – Plaintiffs and Professional Malpractice Law – Plaintiffs. His law firm has also been recognized in Best Law Firms 2017.

Reminger Co., LPA is pleased to announce that Allison M. McMeechan has been has been named to the “Forty Under 40” list published by Crain’s Cleveland Business.

Reminger Co., LPA has been ranked in the 2017 “Best Law Firms” list by U.S. News & World Report and Best Lawyers®. Two practice areas were ranked nationally, including Transportation Law and Insurance Law. Many practice areas were also ranked at the metropolitan level, including: Elder Law; Insurance Law; Legal Malpractice Law – Defendants, Litigation – Trusts & Estates, Medical Malpractice Law – Defendants, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Professional Malpractice Law – Defendants, and Transportation Law.

Reminger Co., LPA has been has been named to the “Forty Under 40” list published by Crain’s Cleveland Business.

The law firm of Din, Hochman & Potter LLC is pleased to announce that Michael C. Hennenberg and David C. Weiner, Of Counsels to the firm, have been selected as 2017 Ohio Super Lawyers for the 14th consecutive year.

Frantz Ward LLP is proud to announce that the following Frantz Ward attorneys who have been named Ohio Super Lawyers and Ohio Super Lawyers Rising Stars: Keith A. Ashmus, Brett K. Bacon, T. Merritt Bumpass, Jr., Michael N. Chesney, Gregory R. Farkas, Michael J. Frantz, Patrick F. Haggerty, Joel R. Hlavaty, Brian J. Kelly, Andrew J. Natale, James B. Niehaus, Bradley D. Reed (Rising Star), Mark L. Rodio, Adam J. Russ (Rising Star), Marc A. Sanchez, Andrew M. Sziagy (Rising Star), and Daniel A. Ward.

Howard Mishkind of Mishkind Kulwicki Law Co.,LPA has been recognized in the 2017 edition of Best Lawyers in America in the practice areas of Medical Malpractice Law – Plaintiffs, as well as Personal Injury Litigation – Plaintiffs and Professional Malpractice Law – Plaintiffs. His law firm has also been recognized in Best Law Firms 2017.

Judge Kristin W. Sweeney has been elected to a fourth consecutive term as the Administrative Judge of the Cuyahoga County Court of Common Pleas – Juvenile Division.

Cuyahoga County Common Pleas Court Judge John J. Russo has been elected by his colleagues to a fourth, one-year term as Administrative Judge.

Thompson Hine LLP is pleased to announce that Barbara A. Lum, in the firm’s Product Liability Litigation group, has been appointed to the National Asian Pacific American Bar Association’s Board of Governors for a two-year term.

Lawyers and executives from the nation’s largest corporations gathered on Veterans Day, in the 18 U.S. offices of Jones Day to learn how they can participate in VetLex, a network to link U.S. veterans, veteran-serving organizations, and qualified pro bono or “low bono” (low cost) lawyers — across town or across the country — who will stand ready, willing and able to provide the specific legal services veterans need. VetLex will be the first national and central resource allocated to legal service referrals for veterans.

Frantz Ward LLP announces the launch of its newly revamped website FrantzWard.com. Created with the user’s experience in mind, the website provides visitors with more relevant, easy-to-locate information.

Jerry Weiss was primary author of an article recently published by the Journal of Comparative Law of the Pacific/Law Faculty Victoria University of Wellington, New Zealand, entitled “Transformative Mediation – Can You Find Heart and Soul (and Adventure) in an Increasingly Relevant, Easy-to-Locate Information.” His co-authors were Kimberlee Kovach and Eric Galton of Austin, TX and Tony Willis of London, UK. The article was a synthesis of a talk the authors gave in Queenstown, New Zealand in February 2016.

Something To Share?
Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
TICKETS ON SALE NOW
MUSIC BOX SUPPER CLUB
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CleMetroBar.org/RockTheFoundation or (216) 696-3525