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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 26, 2018, and Regional trials on February 16.

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 2017, over 600 students representing 25 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. 2018 is the 35th anniversary of the Ohio Mock Trial program, and to mark this momentous occasion the case hypothetical tackles the most-requested topic yet: a murder trial, with a Constitutional twist!

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 26, 2018, 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 16, 2018, from 11:30 a.m. to 5 p.m.

☐ I will attend the volunteer orientation at noon on Tuesday, January 16.

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

Name ________________________________________
Firm/Organization (if any) __________________________
Phone __________________ Fax ____________________
Email _________________________________________

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.

1375 East 9th Street, Floor 2
Cleveland, Ohio 44114-1785
P: (216) 696-3525 • F: (216) 696-2413
CleMetroBar.org
Justin J. Roberts

Firm: Vorys, Sater, Seymour and Pease LLP
Title: Partner
CMBA Join Date: 2014
College: University of Texas
Law School: University of Texas

FAVORITE CLEVELAND HOT SPOT
Progressive Field has been my favorite Cleveland spot since I moved here in 2004. The Cleveland Museum of Art is a close second. It is amazing to have such easy access to Major League baseball (or world class art). It is a great place to unplug for a few hours and connect with people from all over the area. The recent success and the new food/beer selections make it even better.

TELL US ABOUT YOUR PET.
We have a black lab named Ranger. He is almost 4-years-old and weighs nearly 100 lbs. We got him from a breeder in Ostrander, Ohio. Everyone who meets him calls him a “gentle giant.” Taking him for a walk at the end of a long day is a great way to unwind.

TELL US ABOUT YOUR FIRST JOB?
I was a night doorman in a Manhattan apartment building. The shift was from 11 p.m. to 7 a.m. I read books and watched a 4-inch portable black and white TV to pass the time. New York is definitely a great neighborhood atmosphere!

WHAT’S YOUR FAVORITE BOOK?
The Great Gatsby by F. Scott Fitzgerald

WHAT’S ON YOUR BUCKET LIST?
Aside from the normal ones like travel and (hopefully) getting married, I’d love to try and do 10 minutes of stand-up comedy at some point. Being a lawyer gives you a surprising amount of good material to work with.

WHAT ADVICE WOULD YOU GIVE TO A LAW STUDENT?
Set goals, work hard, and stay humble. In our field, there can be a lot of chest-puffing and self-aggrandizing, but you can accomplish very serious things without taking yourself too seriously.

TELL US WHY YOU LOVE CLE.
Cleveland has three major sports teams, an amazing array of restaurants and bars, and a world-class group of cultural institutions. On top of all of this, and despite Cleveland going through a renaissance, it still has that collective grit and underdog spirit that is unmistakably Cleveland-esque. I mean, what’s not to love!

Denise Nancy Rini

Cuyahoga County Juvenile Court
Title: Judge
CMBA Join Date: 2003
College: Baldwin Wallace College
Law School: Cleveland Marshall College of Law

WHAT DO YOU LOVE ABOUT YOUR JOB?
The best part of my day is working with teenagers. I find their perspective to be egocentric and therefore, quite fascinating. Most are very respectful, regardless of the reason the youth is in my courtroom. Juvenile Court hears delinquencies, abuse, neglect, dependencies, private custody, child support and traffic cases. Instead of terminating parental rights, I love reunifying children with parents once the parent has completed services.

A RECENT MILESTONE?
For the new season of Will & Grace, my daughter obtained a position with Eric McCormack and is on the set with the entire crew. Over the Thanksgiving holiday, we took pictures on the set and had Thanksgiving dinner at his home. I am thrilled for my daughter because she is very happy.

FAVORITE CLEVELAND HOT SPOT
Etna and/or Valerio’s Restaurant. Since the owners are brothers-in-law, I love both, not only for the incredible food, but the atmosphere is congenial and any person may have a conversation with a doctor, psychologist, attorney or even a judge. It is truly a great neighborhood atmosphere!

WHEN HAVE YOU SEEN THE CMBA MISSION AT WORK?
The 3R’s Program has been implemented in the Detention Center and the teacher, Ms. Melissa Smith, is amazing. The schedule is every other week, though due to issues, the group usually meets every three weeks. I am assigned to the 17–18 year old youths, who are intelligent, inquisitive and quite humorous. The lesson begins with four smaller groups, and the youths read aloud after the question and answer session, a round of Jeopardy is played. The youths love to shout out the answers, even when it is not their turn.

WHY DID YOU BECOME A LAWYER?
I attended law school at the age of 40 to specifically practice Juvenile Law. In 2003, I became a Guardian ad Litem and focused on family and juvenile law. When my daughter was in college, I worked one full-time and two part-time jobs, an advertising director, bartender, and private investigator. After Mk graduated college in 1997, I began my Masters Degree in Psychology before applying to the Cleveland-Marshall Law in 1999. While in law school, I resigned my position as the advertising director and worked as a private investigator and substitute teacher.
RESOLVE TO GET INVOLVED THIS YEAR
Join the CMBA’s Lawyer Referral Service (LRS) by January 31 at the discounted price of $125 (that's half price!).

Mention Promo Code NEW YEAR to receive this limited-time offer

- Perfect for solo / small firm or entrepreneurial attorneys
- Give back to the community while connecting with potential clients
- LRS attorneys enhance the reputation of the legal profession
- LRS clients generated an average of $740,000/per year for LRS attorneys
- LRS provides 1,000+ referrals each month

Find the LRS application at CleMetroBar.org/LawyerReferral or contact Katie Donovan Onders at (216) 539-5979

Already a LRS attorney? Get the Enhanced Profile for half-price!
The Enhanced Profile places you at or near the top of search results for your practice areas and enables you to customize your LRS profile.

HON. SANDRA L. WALKER, PRESIDING JUDGE, East Cleveland Municipal Court (retired)

Judge Sandra Walker has been a longtime friend of Shaw High School in East Cleveland, serving as team legal adviser in the Ohio Mock Trial Competition for over a decade. Shaw students excelled under her guidance, including the 2015 team that advanced to the State Tournament, earning awards for outstanding attorney and witness along the way.

When she is not advising a team, Judge Walker has generously volunteered as a judicial panelist at the Ohio Mock Trial, providing helpful feedback for each year’s competitors, along with competitions on the college and law school level. She also has joined a team of Shaw 3Rs volunteers for over a decade, imparting her unique experience as a municipal court judge and, in a past life, as a registered nurse. For both mock trial and 3Rs, Judge Walker has partnered with friends and colleagues at Calfee, Halter & Griswold, longtime supporter of Shaw students.

Judge Walker volunteers through Legal Aid’s Act 2 program, assisting at monthly Expungement Clinics since 2012, as well as pro se clinics at the Juvenile Court helping people with child support problems twice a month. She also volunteers as acting judge in Shaker Municipal Court as needed, and with a group of retired judges and attorneys on a project to reduce gun violence. She joined the Fellows Program of the Bar Foundation in 2014.

For her community support through the CMBA and beyond, we sincerely thank Judge Walker!
Without question, the sections and committees of the CMBA are its lifeblood. Whether small or large, prominent or not, together our 20 sections and 21 committees cover the gamut of member needs, from Alternative Dispute Resolution to Young Lawyers. (Sorry, nothing starts with a Z!)

While each section and committee provides meaningful opportunities for involvement and service, as we approach the next round of judicial elections, I thought it appropriate to highlight the work of our Judicial Selection Committee. As one of only a handful of committees whose work is entirely outward facing, JSC is a critical cog in CMBA’s impact on Cuyahoga County.

For those not in the know, JSC is part of the larger Judge4Yourself initiative, which evaluates judges and candidates seeking judicial office in Cuyahoga County to assist the public in making an informed vote. (The other organizations participating in Judge4Yourself are the Cuyahoga Criminal Defense Lawyers Association, the Norman S. Minor Bar Association, and the Ohio Women’s Bar Association.) Judge4Yourself’s ratings are non-partisan and independent. Its focus is taking the guessing game out of judicial elections and working toward a system of justice with partisan and independent. Its focus is taking the guessing game out of judicial elections and working toward a system of justice with competent, fair, and trustworthy judges.

JSC’s 60 members — consisting of at least 54 trial and appellate practitioners drawn from a diverse range of practice areas, and up to six non-lawyer community members — review writing samples and questionnaires, and conduct confidential in-person interviews of every judicial candidate who agrees to participate. Members are selected with an eye toward ensuring the committee reflects maximum diversity in background, experiences, and viewpoints, including diversity by race, ethnicity, sex, and other demographic categories. In assigning its ratings, JSC examines a candidate’s integrity, judicial temperament, work ethic and industry, intellect and professional competence, and life experience and community understanding. Based on the results of the interviews, examination of questionnaires and writing samples, and the feedback from a survey of our entire membership, each candidate is rated as Excellent, Good, Adequate, or Not Recommended. Once the results are approved by the Board of Trustees, they are released on the Judge4Yourself.com website in advance of both the primary and general elections.

To ensure fairness and objectivity throughout the process, JSC members must pledge that they will not publicly endorse a candidate, contribute money to a judicial campaign, or serve on a judicial campaign committee. Further, any member is expected to refrain from participating in any rating where the member’s absolute impartiality might reasonably be called in question. Committee proceedings are strictly confidential, and each member signs a written pledge to preserve the confidentiality of all information gained through candidate questionnaires, investigations, interviews, and other sources.

I have personally served on JSC for the last five years. In my experience, and notwithstanding some of the criticisms I hear levied at it, the reality of JSC’s operations matches entirely with the aspirational goals laid out in the committee’s recently-overhauled by-laws. Members devote innumerable hours to reviewing questionnaires and writing samples, and conducting in-person interviews, in the sole hope that an objective evaluation of candidates will assist voters when they enter the ballot box.

JSC’s most-recent leadership team has been Chair Jill Okun of Porter Wright and Vice Chair Kenneth Callahan of Collins & Scanlon. They have served tirelessly, and with remarkable poise, grace, and determination. Their contributions to the work of JSC are too numerous for me to recount here. Simply put: JSC would not be what it is without the work of Jill and Ken. I cannot thank them enough for their meritorious service to our bar association.

In December, the Board of Trustees confirmed the appointment of a new leadership team for JSC. Stepping in as Chair will be John Mitchell, a litigation partner from Thompson Hine; Sheryl King Benford, General Counsel of the Greater Cleveland Regional Transit Authority, will serve as Vice Chair. John and Sheryl’s work starts immediately, overseeing ratings for the May 2018 primary elections of candidates for contested races for Cuyahoga County Common Pleas Court (General and Juvenile Divisions), the Eighth District Court of Appeals, and the Ohio Supreme Court. Those ratings will be released in late March.

If you are interested in serving as a member of JSC, applications are available on the committee’s page of the CMBA website, CleMetroBar.org. In addition, JSC’s work is supported by member contributions to CMBA’s Partners for Community Engagement. Please consider making a contribution by checking the appropriate box on your next membership renewal invoice.

Darrell A. Clay is the tenth President of the CMBA. He is a litigation partner at Walter Haverfield LLP with a practice focusing on complex civil litigation, white collar criminal defense, and aviation matters. He has been a CMBA member since arriving in Cleveland in April 1997. E-mail your CMBA-related questions or concerns to him at dclay@walterhav.com and follow him on Twitter at @DClayCMBA.
What is a “young lawyer”? Commonly accepted as a Gen Y or Millennials (those born 1980–2004), and I’ll use this bracket mostly because it means I still get to be considered a young lawyer. This cohort is larger than Gen X, and even a little bigger than the Baby Boom Generation. But young lawyers are so much more than an age range. We want to make a social impact. We enjoy working for causes bigger than ourselves and volunteering time to non-legal causes. We are resilient, optimistic, and believe we can do great things and change the world around us.

Two people immediately came to mind when I sat down to write this article, Nick Froning, of Koblentz & Penvose, LLC, and Anna Woods at the Cuyahoga County Prosecutor’s Office. They are not only dedicated attorneys, but incredibly involved in the community and have a fresh perspective on the practice of law.

Nick Froning is an associate attorney at Koblentz & Penvose, LLC practicing in the area of Ethics and Professional Responsibilities, representing licensed professionals. Nick is proud to be a young lawyer in Cleveland, Ohio, and believes young lawyers can change the practice of law. Technology is changing everything, including how we practice law, how we bill our clients, and how we communicate with our clients. The legal market has been, in the past, slow to adapt to the changes in technology, but as young lawyers we are able to champion this technology into the future of our practices.

Young lawyers are different than prior generations. Young lawyers are more concerned about the perfect work/life balance. In the past, the practice of law was built on billable hours (it still is, but the mindset is changing). To Nick, this is important, because our personal lives are worth something. He works in a firm that allows him to take the opportunity and appropriate amount of time to work with and grow the nonprofits and civic organizations that he is a part of. Nick likes seeing, more and more, the culture of local law firms changing to allow more of the philanthropic activities to be conducted within our community.

Why does Nick love Cleveland? Easy, warm winters! Coming from North Dakota (Fargo), Nick was used to plugging his car into the house every night in the winter (yes, cars in ND have block heaters to keep the oil from freezing). In all seriousness, coming from ND to Cleveland was a huge step, not knowing a single soul before the move. (Nick and his wife, Chelsea, moved to Cleveland in 2010 and live in downtown Cleveland). Ever since, Nick has found that everyone is friendly, kind and willing to help. This city in the short time that he has been here has grown to be, in Nick’s opinion, one of the best liveable cities in the States. Clevelanders love Cleveland and they will show it to you and tell you all about it.

Nick believes it is important to love your practice area in the law, but it is equally important to be able to give back to the communities of Northeast Ohio. In our practice, we make it a point to be able to have some time for both non-profit organizations and civic organizations. A well-rounded practice and life balance is imperative to success and happiness. He is involved in multiple organizations within Northeast Ohio: Rainbow Babies and Children’s Foundation Associate Board, LifeAct (Suicide Prevention and Awareness), Kids Kicking Cancer, Cleveland State Young Alumni Council and Cleveland Marshall Alumni Board.

Being a part of nonprofit and civic organizations is important to Nick because it allows him to utilize his networks, his education, and his experience to help those in our community. In all of these organizations, he strives to be an active participating member. These are groups of individuals structured in the form of a board, looking to give their time back to the communities that we live in.

It’s important to understand that individuals are drawn to organizations either through an experience they had with the organization or the people within the organization. For Nick, being from North Dakota, it was the people that drew him to the organizations, and the mission and vision of the organizations hooked him in. For example, Mary McKenna is the Development Director for LifeAct, after leaving Cleveland-Marshall College of Law. Nick owes everything in his legal career to Mary as she introduced him to almost everyone that he knows. She is a dear friend and when she went to LifeAct, Nick followed. Now years later working with LifeAct, he understands its mission and vision and it is something that he believes in.

With Rainbow Babies and Children’s Foundation Associate Board, the Board had just been formed and Nick was asked by a friend to consider joining. In the years that he has now been a member of this board, Nick believes that UH Hospitals and Rainbow Babies and Children’s Hospital are outstanding organizations that are able and continue to give back to this community through a ton of different programming such as Kids Kicking Cancer, making it a very influential organization.

Taking the time to get involved in nonprofit and civic organizations allows us as individuals to grow personally and professionally in our community. All of the organizations that I am honored to be a part of, give me more than I could ever give. They are great organizations in our community and I hope everyone finds their niche in giving back.
As the future of the profession, young lawyers can accomplish great success in our community in two ways: professionally and personally. In the eternal words of Gandhi: “The best way to find yourself is to lose yourself in the service of others.” Anna Woods is both a public servant and committed volunteer at Northcoast Spirit TEC (Teens Encounter Christ).

Anna has worked for the Cuyahoga County Prosecutor’s Office for 12 years, even prior to becoming an attorney. Anna worked at the Prosecutor’s Office during the day, and attended law school at night. She was hired on as an attorney six years ago after passing the bar. She is passionate about being a prosecutor because it gives her a unique opportunity to help people through a rough time in their lives. While prosecutors do not represent victims in the traditional sense of an attorney-client relationship, they do work closely with them to develop and prosecute their cases. Being a prosecutor is difficult work, but Anna enjoys the challenge and the satisfaction of seeking justice for victims of crimes.

Young lawyers bring a different perspective to the practice and have different priorities. Making money can be an important goal, but job satisfaction and feeling of contributing to something and being proud of work is more prevalent in this generation of lawyers. Anna is a strong supporter of Cuyahoga County’s specialized dockets (Drug Court, Mental Health Court, and Veteran’s Court, for defendants that qualify). Specialized dockets encourage cooperation between law enforcement, jails, community treatment providers, defense attorneys and prosecutors, and courts. Through them, people are able to get the help they need, while balancing the need to protect the community. The community is safer when people get the help they need.

Most female attorneys have a role model who inspired them to go to law school. It is usually one of the trailblazing female attorneys that came before us who broke barriers and beat the odds to rise to success in a male-dominated profession. It’s this generation of women that enables us as young female lawyers to have the role in the profession that we do. For Anna, that role model is Justice Sandra Day O’Connor, who was the first female U.S. Supreme Court Justice. When Anna went off to college at 18, her father gave her a book on the life of Justice O’Connor. A little homesick, Anna read the entire book her first weekend at college. The compelling life story of the retired U.S. Supreme Court Justice inspired Anna to pursue a career in law.

Like Nick, Anna has a unique take on life and work and the intersection of the two. “Work-life balance” is a difficult concept because you don’t become a different person at five o’clock. People don’t have a “work” personality and a “life” personality. We are who we are, and young lawyers want a job that fits into life and flexibility in the way we work. Technology has blurred the lines of work and personal time. Anna regularly takes phone calls and emails from police, victims and defense attorneys on her cases during the evenings and weekends. Technology has changed the way we work. We can work from any place at any time.

Anna grew up in Seven Hills, Ohio, and is a lifelong resident of Northeast Ohio. Because she lives and works in the same community, she can be active in the community which she serves. Anna attends block club and ward meetings, community police events, and city-sponsored events. These events help her better understand the people who come in on cases as both victims and defendants.

Anna loves Cleveland because it is a big city, but at the same time, small enough that most people in the legal field know each other. She met her boyfriend, a police officer, at the Court House. They love Cleveland for the restaurants and the theater district. As a lifelong dancer, Anna has a special appreciation for the incredible talent the shows bring through Cleveland.

Anna is a Young Adult Representative on the board of Northcoast Spirit TEC (Teens Encounter Christ). Anna has been involved with this organization since she was 18 years old. TEC helps teens build a relationship with religion. This organization was life-changing for Anna and she enjoys the opportunity to give back to a group that has given her so much. TEC showed Anna ways to grow in faith. Adults model a long faith life to teens. In return, the adults receive from the energy and passion without life’s cynicism, and renew their faith life. Working with teens in this capacity continues to inspire Anna to live with justice and mercy in all she does.
INTRODUCING MY CMBA!
This month the CMBA launched its members-only, online community and invite you to log in and start using it. This new platform provides new and robust ways for members to connect and engage with their CMBA network anytime, anywhere!

HOME PAGE
Here you have access to key areas of the community, but also can post to the entire CMBA membership. To post only to specific committees or sections in which you are a part, go directly to that group and post there.

GROUPS
(look here to see your groups and explore others)

RESOURCES
(files, etc. shared with your groups, including CMBA-wide)

EVENTS

MEMBER DIRECTORY
(search for other CMBA members)
FOR MEMBERS ONLY
My CMBA is available to members only, so you’ll need to log in for access. Sign in with your CMBA website credentials.

Link to My CMBA from our main website or directly at Community.CleMetroBar.org.

CUSTOMIZED EXPERIENCE
All CMBA members can interact through My CMBA but each member’s view and access reflects their personal engagement with the CMBA. When you belong to a Section or Committee, you can enter that group’s specific area to engage directly with just that group. By doing so, posts, resources, etc. are accessible to only those for whom it is relevant and appropriate.

In either the main My CMBA community or your specific groups, you may
• Post info or ask questions
• Post photos
• Share articles/links
• Comment and reply
• Search for members by typing their name
• Tag group members using the @ symbol and typing their name
• ... and more.

TAKE A VISUAL TOUR
Watch our short video to learn your way around. https://youtu.be/Q2MAYF4fSCE

BROWSER NOTE
This platform is accessible in Chrome, Edge, Safari, Firefox, etc. Although not recommended for optimal performance, it will work with Internet Explorer 11, which was the latest version released two years ago.

Community.CleMetroBar.org
**Spotlight**

**Ethics & Professionalism Committee**

**Chair**
Jeffrey A. Brauer
Hahn Loeser & Parks LLP
jabrauer@hahnlaw.com

**Regular Meeting**
Second Thursday of every month

**What is your goal?**
The Ethics and Professionalism Committee promotes the ethical conduct of lawyers and judges; and discusses, teaches, and disseminates information about ethical and professional conduct. The Committee seeks to make thoughtful recommendations on the changes to the Rules of Professional Conduct as they presently stand. The Committee also aids the CMBA in responding to ethics and professionalism inquiries from lawyers and judges.

**What can members expect?**
Members of the Committee are uniformly committed to the improvement of the profession. The Committee is a forum for informed and vigorous debate on changes to the Professional Conduct Rules where proposed changes are tested against the diverse real world experience of Members. At monthly meetings, Committee Members review local and national developments on Ethics and Professionalism issues and all advisory opinions issued by the Ohio Supreme Court and the OSBA. Many Members serve as Ethics Partners to their respective firms or as members of the CMBA Grievance Committee. The Committee is committed to aiding Members in assessing the impact of Rule changes on large, small, and solo practices and how best to communicate such changes.

**Upcoming Events**
The Committee is actively involved in the evaluation of several different rule change proposals and is in the process of making its recommendations to the CMBA. In addition, the Committee holds an annual Essay Competition for law students with a $1,500 scholarship prize. This year’s topic analyzes whether a law student must disclose an overturned criminal conviction for exercising her First Amendment rights in an Ohio Bar Examination application. The Committee also solicits applications and evaluates candidates for the Honorable William K. Thomas Professionalism Award.

**Recent Event**
In October, the Committee completed its annual half-day Professional Conduct CLE entitled “Sizzling Hot Topics in Professional Conduct.” The speakers addressed a variety of important professionalism topics in Ohio including advising on medical marijuana issues, with panelists addressing the novel legal issues created by representing clients who are adhering to state law but potentially in violation of federal law. Another panel addressed lawyer participation in online referral services and featured Dan Lear of AVVO, Inc. AVVO has taken strong positions in a number of jurisdictions and the panel engaged in a debate as to whether services like AVVO aid clients in accessing the legal system or violate the Rules as they presently stand.

**Young Lawyers Section**

**Leadership**
Kelly Zacharias, Chair
Law Office of Kelly M. Zacharias
Kelly@Zachariaslaw.com
Abigail A. Greiner, Vice Chair
Gallagher Sharp
AGreiner@Gallaghersharp.com
Kevin P. Donoughe, Secretary/Treasurer
Fifth Third Bancorp
Kevin.Donoughe@53.com

**Regular Meeting**
The executive council meets at noon on the first Thursday of the month at the CMBA Conference Center.

**What is your goal?**
My goal for this section is to be a point of contact for young lawyers just starting out in their careers. I went to law school in Akron, so I didn’t know many lawyers when I started practicing in Cleveland. I joined the CMBA to meet people and make connections. It can be hard to break into a new area, and I want our group to be a starting point for that connection for young lawyers. Our group is very diverse — we have government attorneys, big and small law firm attorneys, in-house counsel, and solo practitioners.

**What can members expect?**
Mixers, mentoring, opportunity for pro bono activities, leadership opportunities, discounted CLEs

** Recent event to highlight?**
Our holiday party this year, Saucy Brew Works. Members attended free and received drink tickets and all the fantastic Saucy pizza they could eat.

**Criminal Law Section**

**Chair**
Anthony Petruzzi
Tucker Ellis LLP
anthony.petruzzi@tuckere Ellis.com

**Regular Meeting**
We will be scheduling quarterly meetings at the CMBA Conference Center

**What is your goal?**
Our goal is to revitalize the section and create an environment where both defense lawyers and prosecutors have the opportunity to get to know one another and share ideas and thoughts on the criminal justice system. We also intend on looking to our members to provide education on various topics significant in the white collar and general criminal law practice areas. Criminal law is an ever-changing field of practice, and keeping up to date on the latest developments is of utmost importance when dealing with defendant’s constitutional rights.

**Upcoming Events**
We anticipate informative CLE’s for the upcoming year; highlighting our own distinguished colleagues and government attorneys on a variety of topics.
Happy New Year! I hope your holidays were great ... and that you’ve started 2018 off with a bang!

I begin 2018 with a sense of deep gratitude for the incredible work that my colleagues on Team CMBA have accomplished in this bar year. While we stay busy all year long, October 1 to December 31 proved to be particularly demanding thanks to one of our best CLE seasons of all time, intensive planning for events like the Halloween Run and our upcoming Rock the Foundation, record-setting rental business in our Conference Center, development of our soon-to-be-released Foundation annual report ... and so much more. And all the while, Team CMBA does everything with smiles and a genuine passion for serving others.

As full as their day jobs are, Team CMBA also gives back to our community. Like our members, they believe in paying forward the many blessings they have received. Did you know ...

As much as she does for our Stokes Scholars and other students, Mary Groth (Director of Member and Donor Engagement) still makes time to serve as a mentor with College Now Greater Cleveland for high school students preparing for college. She is also committed to supporting college students who are first generation students by serving as a Viking Alumni Recruiter at Cleveland State University. Mary is still celebrating the May 2017 graduation of her first College Now mentee from Ohio University!

For more than a decade, Samantha Pringle (Director of CLE, Sections & Committees) has volunteered for her college sorority, Phi Mu. Founded in 1852, Phi Mu provides personal and academic development, service to others, commitment to excellence and lifelong friendship through a shared tradition. Currently, Sam is partnering with Phi Mu staff to guide the development of three new chapters at Texas Christian University, the University of Minnesota, and Sacramento State University. In addition, she was recently appointed chair of the 2018 Nominating Committee, which means she is leading the selection of the National President and Vice Presidents for the next two-year term. “I’ve met such wonderful women from across the country through my volunteer work, people I never otherwise would have connected with.”

Meanwhile, Melanie Farrell (Director of Board Relations and Facility Planning) has appeared onstage for nearly eight years in the annual musical production, Razzle Dazzle. This springtime event held at the Beck Center brings together members of an inclusive musical theater program at the Rocky River Adult Activities Center and volunteers from the Cuyahoga County Board of Developmental Disabilities. The joy Melanie gains from her volunteer hours is second only to the pride she feels when watching her Razzle friends shine on stage.

Heather Zirke (Bar Counsel) channels significant time to the Berea City School District’s Parent-Teacher Association. She got started as a volunteer six years ago, and was quickly tapped for leadership roles, including serving for two years as the President of Grindstone PTA and now serving as the Vice President of Berea PTA Council. Just last year, Heather’s significant impact was rewarded with an invitation to represent her school at the National PTA Conference in Las Vegas where she had the chance to present to parents from across the country about the good things that are happening in education in Ohio.

Through a connection made at the CMBA, Alla Leydiker (CFO), joined the board for the Cleveland Hearing and Speech Center whose mission is to be the premier provider of hearing, speech-language and deaf services, as well as providing education and advocacy. Alla finds tremendous fulfillment in being part of an organization that gives people of all ages a gift that everyone deserves — the ability to fully interact with the world and enjoy life to the fullest. “I have grown to love the Center, its people, and its mission of a community where everyone communicates effectively.”

Since 2013, Jessica Paine (Manager of Community Programs) has volunteered significant time with Seeds of Literacy, a Cleveland-based nonprofit that helps adults get their high school equivalency through free, in-person tutoring. While she began as a reading tutor and fundraising volunteer, in 2015 Jess joined the Board and now serves as the co-chair of the Fall Fundraiser Committee. She also dusted off her math skills when she realized the greatest need was for math tutoring. “There’s nothing like it when I can figure out a new way to present math problems so that it clicks for a student (making my retired calculus teacher mom proud)!”

From ambassador and educator, to organizer of an annual Gift of Life Walk & Run held each August, Katie Onders has served in a variety of volunteer roles since 2010 for Lifebanc, a non-profit that coordinates organ, eye and tissue donation in Northeast Ohio. She joined forces with Lifebanc to honor two of her cousins who were tragically killed in a car accident. “My favorite Lifebanc experience came in a classroom where, after sharing the story of my cousins, who at the ages of 16 and 13 became organ, eye and tissue donors, a student came to me after the class and told me that because of my presentation, he decided to say yes to becoming a donor.”

And that’s just a few examples of Team CMBA … the best team anywhere. Come meet us at the Bar and learn first-hand how extraordinary our team is.

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.
Rock the Foundation, our signature fundraising gala, celebrates in rockin’ fine fashion lawyers who love to give back!

Most important, Rock the Foundation raises money essential to support the volunteer efforts of some 1,200 lawyers who commit their time and legal skills to bring equal access to education, justice, and inclusion to people and nonprofits with need.

We are proud of our many and growing programs effectively strengthening the fabric of our Greater Cleveland community:

• 3Rs
• Mock Trials
• Louis Stokes Scholars
• Homeless Legal Assistance
• Pro Se Divorce Clinics
• Reach Out for Nonprofits
• Volunteer Lawyers for the Arts
• Pro Bono Legal Clinics in Cleveland Schools

Each year, we aim to raise $165,000 through Rock the Foundation. For the past two years we have exceeded that goal, and we hope to surpass it once again — with your generosity.

Party for a Purpose
Here’s what you need to know before you go to Rock the Foundation:
• February 10, 2018, at Music Box Supper Club
• VIP reception at 6 p.m. with Transportation Boulevard Jazz Band
• Pogue Award presentation to Frank Sullivan at 6:45 p.m.
• Main event at 7 p.m. with Nitebridge Band
• Quiet atmosphere downstairs with acoustic guitarist Nate Jones
• Food stations, premium open bar, and raffle

Frank Sullivan Wins Pogue Award
This year, the Foundation’s most prestigious service award — Richard W. Pogue Award for Excellence in Community Leadership and Engagement — will go to Frank Sullivan, chairman and CEO of RPM International.

In addition to his role as a corporate leader, Frank has long been actively involved in the community as a volunteer and a philanthropist.

While RPM has donated or pledged nearly $7 million to some 350 worthy organizations over the past five years, Frank and his wife, Barb, also have given many notable personal gifts to important community projects.

• The Sullivan-Deckard Scholars provides highly motivated students who have aged out of foster care the chance to attend Cleveland State University to pursue a bachelor’s degree. Up to 10 students annually receive tuition, housing, campus employment, mentoring, and tutoring. Launched in 2015, the program is now a national model for lifting a student population facing more challenges than most.
• Cleveland School of Science and Medicine partnering with Cleveland’s world-class medical institutions prepares Cleveland public high school students for college and careers in science and medicine fields. Frank was instrumental in launching this innovative school, now celebrating its 10th anniversary, and continues to serve on its board.
• Progress with Chess started in Cleveland public schools in 2001 and continues today, thanks to Frank’s generosity. Each year, more than 500 kids learn chess and compete in the Chess Challenge tournament. Playing chess has proved to have a positive impact on academic performance.
• Sullivan Scholars Foundation began as a gift from Frank and his siblings, along with other family members and friends, to honor his parents, Tom and Sandy Sullivan, for their exemplary community involvement. The foundation gives scholarships to eighth-graders from select inner-city schools to attend a Catholic or private high school.

“Giving the gift of education to children and foster children,” says Frank, “is dear to my heart. Sharing this passion with local lawyers giving back, especially in the schools, makes this award a very special honor.”

Mitch Blair is vice chairman of Calfee Halter & Griswold LLP and co-chair of the Litigation Group. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1982. He can be reached at mblair@calfee.com or (216) 622-8361.
Get ready to Rock! Join us for fabulous food, open bars, live music provided by Nitebridge, dancing, great raffle prizes and more!

Rock the Foundation 13 benefits the award-winning programs funded by the Cleveland Metropolitan Bar Foundation, making a difference in the Cleveland and East Cleveland City Schools.
One Friday morning in 2016, I found myself listening to the life story of a young woman. Born in Puerto Rico, she immigrated to the United States at a young age. Before long, she found herself bouncing amongst homeless shelters in New York City with her family. Then, to escape an abusive father, she moved to Cleveland, Ohio with her mother and siblings. The young woman did not speak English until the sixth grade. Nonetheless, she graduated from high school with honors and enrolled in community college.

On a Wednesday evening in March 2017, I heard a young man recount the story of his youth. Growing up in a public housing complex in central Cleveland, he and his best friend aspired to play college (and then pro) basketball. Now, he stands to become the first person in his family to attend college, where he plans to obtain an accounting degree. Although he gave up his dreams of playing professional basketball, he stays in touch with his best friend. He writes to him, because his former best friend is incarcerated for gang-related crimes.

I listened to both of these stories through activities sponsored by the Boys & Girls Clubs of Cleveland. The young woman and young man credited the Boys & Girls Clubs with much of their success. The young woman stated that the Clubs changed her life — she learned English, they offered her a second family, and, perhaps most importantly, they gave her somewhere safe to go after school. Similarly, the young man thought the Boys & Girls Clubs helped keep him away from violence outside of school.

Stories like these motivate me to give back to the community and to contribute to the Clubs. I became involved after I learned about the annual “Tailgate in Tremont” fundraiser in September 2015 for the Boys & Girls Clubs of Cleveland’s Bridge Board. The event sounded great — for $35, you could contribute to a good cause and enjoy good food and beer while watching college football. I valued and appreciated the Clubs, as I volunteered at one prior to moving to Cleveland. However, I knew virtually nothing about the Bridge Board.

The Bridge Board serves as the young professionals’ board for the Boys & Girls Clubs of Cleveland. It strives to assist Cleveland’s youth in becoming productive, responsible, and caring citizens of the Cleveland community. The Bridge Board accomplishes this through promoting volunteer efforts, raising awareness, and making financial contributions to the Clubs and their youth.

Shortly after my first Tailgate, I decided to get involved with the Bridge Board and joined the Board in January 2016. In my first year, I learned much more about its mission and what a group of motivated young professionals can accomplish. I saw the hard work fellow Board Members put into organizing and running the numerous volunteer opportunities sponsored by or in which the Bridge Board participated. These included Easter egg hunts, pumpkin decorating contests, and Career Series workshops. I joined the College Guidance Committee, where we offered advice to high school students and set up mentoring relationships. I also participated in the Bridge Board’s two major fundraising events — a spring Guest Bartending fundraiser and the Tailgate in Tremont in the fall. Together, those events raised over $30,000, which the Bridge Board directed back to the Clubs. This funding helped fulfill general funding requests (e.g., buying supplies for the garden) and provided $15,000 in college scholarships.

In the course of that first year on the Board, I also heard stories like the one shared by the young woman. Listening to those stories, hearing where the funds we raised went, and seeing its impact motivated me to deepen my involvement.

For 2017, I was elected to a Fundraising Co-Chair position. In this role, I served on the Board’s Executive Committee and ultimately ran both annual fundraisers — Guest Bartending and the Tailgate in Tremont. As an Executive Committee member, I quickly realized and valued the larger impact on the Board and contribution...
to the Clubs that I could make. In our regular meetings, we brainstormed about upcoming events, discussed funding requests, and developed a strategic plan. From a fundraising perspective, I was thrilled that, through the hard work of the Board as a whole, we once again raised over $30,000. In general, I appreciated the opportunity to offer my thoughts and insights on the Board's activities and direction. I also was struck by what I saw on the Executive Committee — ten other young professionals selflessly dedicating their free time towards the betterment of the Board and ensuring that, as a whole, we could make a positive and substantive impact on the Clubs.

With that experience, I decided to run for the Bridge Board's Vice Chair position. In November 2017, contending against several excellent candidates, I was honored to be selected for the role by my fellow Board Members. As Vice Chair, I hope make an even greater impact on the Board, the Clubs, and, most importantly, the youth.

So, you might ask — why do I do this? Why do I value and enjoy spending so much time (to which my wife can attest) supporting the Boys & Girls Clubs and their youth? It’s not just the stories of the young woman and the young man. It’s about making an impact, no matter how small or large. It’s about sensing the excitement of the kids learning an instrument and producing music because they now have a studio at the Club. It's about listening to the kids talk about their lives and activities, and realizing that they have an untapped potential. It’s about realizing the kids may just need a reason or excuse to stay off the streets and out of violence. It’s about giving the kids the opportunity to become something they might not otherwise have become — whether it's going to community college or getting into a trade school or apprentice program. It’s about supporting the Clubs in whatever manner they need, and it’s about helping the Clubs develop and utilize the tools they need to give the kids the chance to reach for something more.

That is why I do it. I also enjoy the time spent at the Clubs. Seeing the kids and being able to fund a scholarship or help pay for the Clubs' garden tools has a tangible element. Not every cause has that or has it to the degree present in the Clubs. I have also enjoyed getting to know the Board Members — other young professionals willing to commit their time and energy to the Clubs.

I firmly believe it is important to get involved in the community in whatever causes drive or motivate you. It is important to give back to the community and, for me, to remember that not everyone has had the same background or support that I have had.

That is why I have become so involved in the Boys & Girls Clubs of Cleveland's Bridge Board and that is why I have gone down a path which, in some ways, started by attending a tailgate event and watching college football.

Andrew J. Cleves is an Associate at Frantz Ward LLP and practices in all areas of labor and employment. When he is not busy at work or with Bridge Board activities, he enjoys going to concerts, cheering for his Xavier Musketeers, rooting for his hometown Cincinnati Reds and Bengals, and tasting local craft beer. Andrew lives in Lakewood with his wife, Sarah. He has been a CMBA member since 2012. He can be reached at (216) 515-1660 or acleves@frantzward.com.
You have an adversarial matter that you are trying to move forward — to a settlement, to an agreement or to an eventual trial — but you are being stymied because opposing counsel constantly fails or refuses to cooperate with respect to basic procedural matters. What can you do, especially when the busy judge who is presiding over the case has neither the time nor the inclination to become involved with such problems, believing, quite understandably, that licensed lawyers should know how to deport themselves in a professional manner?

This is where the CMBA’s Professionalism Conciliation Panel can be of help.

The CMBA’s Professionalism Conciliation Panel was created to help improve the deportment of lawyers in Cuyahoga County in their interaction with each other and with courts. The Panel uses the Statement of Professionalism issued by the Supreme Court of Ohio in 1997 and the Lawyer’s Creed of Professionalism adopted by the CMBA in 2013 as the guiding principles for the program.

A lawyer or judge who believes that the conduct of a lawyer, or of multiple lawyers, has been inconsistent with the Principles of Professionalism and that the assistance of the Panel may help alleviate the situation may call (216) 696-3525. Bar Counsel will make an initial determination as to whether the call should be referred to the Panel or whether the call gives rise to a possible grievance under the Rules of Professional Conduct (and should therefore not be referred to the Panel). If Bar Counsel determines that the matter falls within the purview of the Panel, Bar Counsel will send the information on to a member of the Panel.

Upon receiving the information from Bar Counsel, the Panel member will contact the caller to obtain more information. After that, the Panel member will contact the lawyer who is the subject of the call. The identity of the caller who made the report will be given to the lawyer unless circumstances warrant keeping the identity of the caller confidential.

If the Panel member decides the behavior complained of by the caller is inconsistent with the Principles of Professionalism, the Panel member may provide a copy of the applicable principle to the lawyer as a means of persuading the lawyer to change his or her conduct. The Panel member may take further steps as needed to help resolve the situation through informal discussions, counseling, mediation or other action to help the lawyer act in a manner consistent with the Principles of Professionalism in the future.

The conciliation process is confidential and is entirely voluntary. The purpose of the conciliation is to improve the atmosphere or climate in which lawyers are interacting with each other or with the court.

One recent caller who used the services of the Panel said, “It was great to have someone to turn to in order to help get a thorny professionalism issue solved! The panel definitely fills a need.”

The distinguished Panel members who have been appointed to carry out the purposes of the Panel are: Marvin L. Karp, Chair
Deborah A. Coleman
Frank R. DeSantis
Barbara K. Roman
Karen E. Rubin
Niki Z. Schwartz
Roger M. Synenberg
Adrian D. Thompson
Michael N. Ungar

The CMBA strongly urges all Cuyahoga County lawyers and judges to make use of this program and to thereby help improve the level of professionalism in this community. Therefore, do not hesitate to call Bar Counsel if you have a situation that you believe can benefit from this procedure or if you would like further information.

Heather Zirke serves as Bar Counsel for the CMBA. She has been with the CMBA since 2005. She can be reached at (216) 696-3525 or hzirke@clemetrobar.org.
Professionalism Conciliation Panel

The Professionalism Conciliation Panel was formed to help improve the deportment of lawyers in Cuyahoga County in their interaction with each other and the courts. The Panel uses the Statement of Professionalism issued by the Supreme Court of Ohio in 1997 and the Lawyer’s Creed of Professionalism adopted by the CMBA in 2013 as the guiding principles for the program. Our goal is to intervene to constructively assist in the orderly and professional resolution of the conduct or dispute preempting any actual grievance.

A lawyer or judge who believes that the conduct of a lawyer, or of multiple lawyers, has been inconsistent with the Principles of Professionalism and that the assistance of the Panel may help alleviate the situation may email or call Bar Counsel Heather Zirke at (216) 696-3525.

THE DISTINGUISHED PANEL MEMBERS APPOINTED TO CARRY OUT THE PURPOSES OF THE PANEL ARE:

Marvin L. Karp (Chair), Deborah A. Coleman, Frank R. DeSantis, Barbara K. Roman, Karen E. Rubin, Niki Z. Schwartz, Roger M. Synenberg, Adrian D. Thompson and Michael N. Ungar
FEATURE

SCOTUS GOES DIGITAL
How the Third Party Doctrine CouldApply to Emerging Technology UnderCarpenter v. United States

BY AMI IMBROGNO

How much information has your cell phone transferred to another party? In the past day alone, your phone has not only likely transferred text and email messages to other people, but has constantly been collecting data and passing it on to third parties. Companies like Facebook, Instagram, Fitbit and Garmin are likely collecting geographical data, and Google, through its myriad of services, is likely collecting data regarding an infinite number of topics, including whereabouts, web browsing preferences, and your contact network.

While this extensive data is collected by private, non-governmental companies, the Third-Party Doctrine could allow the government to obtain this information without a warrant. Therefore, while information within our own homes, hard drives, and backpacks generally cannot be obtained without a warrant absent an exception, once this information is in the hands of third parties, there is little we can do currently to protect from its disclosure.

The history of the Third-Party Doctrine begins with an examination of Katz v. United States, 389 US 347 (1967). In Katz, the Supreme Court held that the government violated the Fourth Amendment when it tapped into the petitioner’s phone conversation, held in a private phone booth. Because the petitioner had a reasonable expectation of privacy in his phone conversation held within the closed phone booth, it was unconstitutional for the government to listen to the conversation (or conduct a “search”) without first obtaining a warrant.

In United States v. Miller, 425 US 435 (1976), the Supreme Court held that the petitioner had no reasonable expectation of privacy in documents that he had provided to his bank, and therefore, no search occurred, and the government did not violate the Constitution when it obtained the bank records without first obtaining a warrant. Later, in Smith v. Maryland, 442 US 735 (1979), the Supreme Court held that no search occurred when a phone company recorded the numbers a suspect dialed, since phone users must inevitably know that they are conveying those numbers to the phone company.

Both Katz and Miller were decided before we entered a digital age, and the Supreme Court’s reasoning made some sense during a time of simpler technology. However, the Court suggested in its opinion in United States v. Jones, 565 US ___ (2012) that the Third-Party Doctrine may need to be revisited based on changing technologies and standards of living. In Jones, law enforcement attached a GPS tracker to the petitioner’s vehicle and tracked its position for a month without first obtaining a warrant. The majority opinion of the court, written by Justice Scalia and joined by Justices Roberts, Kennedy, Sotomayor, and Thomas, held in favor of the petitioner, because though the car was within public view, the government “physically occupied private property for the purpose of obtaining information,” and violated the petitioner’s property rights when it “trespassed” and installed the device on the car.

Justice Alito, joined by Justices Ginsburg and Breyer, crafted an important concurring opinion. He found in favor of the petitioner, but not because property rights had been violated; instead, he believed that the majority’s decision was based on antiquated reasoning not suitable to the 21st century, and would have decided the case by “asking whether respondent’s reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.” After criticizing the majority’s analysis for several reasons, the concurrence recognized the rapidly evolving state of technology, citing specifically the smartphone’s ability to collect GPS data, and stated that “The availability and use of these and other new devices will continue to shape the average person’s expectations about the privacy of his or her daily movements.”

Society’s expectation prior to the digital age has been that law enforcement would not, and could not, track every movement of a person’s car for a long period, and for this reason, the concurring justices would still rule in favor of the petitioner.

Throughout the digital age, courts have frequently struggled with applying the Fourth Amendment to ob-tainment of digital evidence, with little guidance from the Supreme Court. Hopefully this will soon change, as pending before the Court is Carpenter v. United States. In Carpenter, the petitioner was arrested based on information gathered from his cell phone provider (specifically, cell site location information, CSLI), which allowed law enforcement to connect him to certain robberies. Under the Stored Communications Act, enacted in 1986, law enforcement was able to obtain an order for disclosure of these records upon offering “specific and articulable facts showing that there are reasonable grounds to believe that the contents of...records or other information sought, are relevant and material to an ongoing criminal investigation” — a standard lower than the warrant standard requiring a showing of probable cause. 18 USC § 2703(d) (emphasis added).

In applying Miller, the Sixth Circuit upheld Timothy Carpenter’s conviction, finding that law enforcement did not violate the Fourth Amendment when it gathered the CSLI without a warrant, because it was in possession of a third party — the cellular carrier, and therefore, no search had occurred. Mr. Carpenter has petitioned the Court to overturn the Sixth Circuit’s decision, and asked that it find that a “totality of the circumstances” test should apply to the Third-Party Doctrine. In applying this test, Mr. Carpenter suggests that the Court should consider that people do not voluntarily provide CSLI to the cellular provider, and that CSLI is particularly sensitive information, as cell phones provide information about activity in places historically protected by the Fourth Amendment, like a home. He also asked the
that the defendant has shared purposely, upon taking an affirmative, knowing, and physical action. Or, perhaps a search occurs when it is seeking data that originated from a place in which the defendant had a reasonable expectation of privacy, such as his or her home. The Court could, however, agree with the United States, which asked the Court to simply apply Miller and Smith to hold that no search occurs when records obtained were held by a third party, and also recognize that people voluntarily enter into contracts with their service providers, and therefore, they are voluntarily submitting the data to their cellular providers for collection.

Based on the concurring opinion in Jones and the questions the justices asked at oral argument,
it seems that the justices are very interested in how the Fourth Amendment applies to advancing technology. It is unknown whether the Court will issue a broad, sweeping rule that affects all digital information, or whether it will just limit the rule to CSLI or to information gathered over a longer period of time, as in Jones. Should the Court issue a very limited rule, attorneys may still analogize the new rule to other types of digital evidence, like bank and credit card records, or any other type of digital evidence. Still, others could question how such a rule may apply outside the Fourth Amendment realm — for example, whether private companies can limit a customer’s speech under the First Amendment, based on the premise that the company is so big, people in society cannot live without using its services.

Ami Imbrogno is an associate attorney with Ross, Brittain & Schonberg Co. LPA, currently focusing on Employment and Labor Law defense. She has previously worked in civil rights defense and criminal defense, and enjoys studying Constitutional law and economics in her spare time. She has been a CMBA member since 2014. She can be contacted at (216) 643-4513 or aimbrogno@rbslaw.com.
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Our online CLE programming allows you to take CLE courses on a wide variety of topics, any time of the day, any day of the week. And, at only $45 per hour for members and $60 per hour for non-members, our online CLE is also cost-effective.

For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
Sizzling Hot Topics in Professional Conduct Video

CREDITS 3.0 CLE Hours Professional Conduct CLE requested

Friday, January 11
REGISTRATION 8:30 a.m.

PROGRAM 9 a.m.

Pot Topics: Rules Regarding Representation in Medical Marijuana Matters
Thomas G. Haren, Frantz Ward LLP
Klevis Bakiaj, Frantz Ward LLP

Motions to Withdraw
Karen E. Rubin, Thompson Hine LLP
Dante A. Marinucci, Squire Patton Boggs (US) LLP

Walk the Line: Relationships with Clients
Joseph N. Gross, Benesch, Friedlander, Coplan & Aronoff LLP

Nonrefundable Fee Agreements
Jamie A. Price, Walter | Haverfield LLP

Lawyer Participation in Online Referral Services
Dan Lear, Director of Industry Relations, Avvo, Inc.
Michael P. Harvey, Michael P. Harvey Co., LPA
Jeffrey A. Brauer, Hahn Loeser & Parks LLP
Moderator

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

Friday, January 19
CREDITS Submitted for 3.50 CLE Hours
REGISTRATION 8:30 a.m.

PROGRAM 9:00 a.m. – 12:30 p.m.

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 83.3. Further information regarding admission to practice before the U.S. District Court can be obtained from the office of the Clerk at (216) 337-7000.

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

Federal Practice Overview, Standing Orders and Early Case Resolution
The Honorable Patricia A. Gaughan, Chief Judge, United States District Court, Northern District of Ohio

Anatomy of a Federal Criminal Prosecution from Indictment to Sentencing
Eric C. Nemecek, Friedman & Nemecek, LLC
Margaret A. Sweeney, United States Attorney’s Office

Perspectives from the Clerk’s Office: E-Filing, ADR and Corporate Disclosure
Vicky Mizell, Chief Deputy Clerk, United States District Court, Northern District of Ohio

Early Civil Case Obligations: Initial Disclosure, Meet and Confer and E-Discovery
Amy Ryder Wentz, Littler Mendelson, PC

Personal Jurisdiction and Venue in the 6th Circuit
Jeff Krueger, J.W. Krueger & Associates

Conduct in Court and Depositions (.50 hour Professional Conduct)
Cathleen M. Bolek, Bolek Besser Glesius, LLC

The CMBA’s Estate Planning, Probate & Trust Law Section presents
44th Annual Estate Planning Institute Video 2017

Wednesday, January 24
CREDITS Submitted for 6.50 CLE Hours with 0.75 professional conduct
REGISTRATION 8:30 a.m.

PROGRAM 9:00 a.m. – 4:30 p.m.

Welcome & Introductions
David M. Lenz, Schneider Smeltz Spieth Bell LLP, Institute Chair

Ohio Law Update
Joseph M. Ferraro, Tucker Ellis LLP

Litigating Claims Against Decedent’s Estates
Matthew T. Wholey, Ulmer & Berne LLP

Helping Clients Understand the Donor Registry Enrollment Form
Heather Melissa, Chief Hospital and Clinical Services Officer, Lifebanc

Planning for Vacation Homes and Real Estate
David W. Woodburn, Buckingham, Doolittle & Burroughs, LLC

Ethical Considerations for Estate Planners (0.75 hour Professional Conduct)
Deborah A. Coleman, Coleman Law LLC

Federal Law Update
Kimberly E. Stein, Schneider Smeltz Spieth Bell LLP

Form 8971: Basis Reporting Requirements
Kimon P. Karas, McCarthy, Lebit, Crystal & Liffman Co., LPA

Social Security
James R. Bright, Schneider Smeltz Spieth Bell LLP

Navigating Difficult Trustee Succession Issues
Andrew W. Kirkpatrick, Glenmede

What to Do with Old Life Insurance Policies?
Charles L. Ratner, Senior Director, Washington National Tax, RSM US LLP

Sizzling Hot Topics in Professional Conduct Video

CREDITS 3.0 CLE Hours Professional Conduct CLE requested

Friday, January 31
REGISTRATION 12:30 p.m.

PROGRAM 1 p.m.

Pot Topics: Rules Regarding Representation in Medical Marijuana Matters
Thomas G. Haren, Frantz Ward LLP
Klevis Bakiaj, Frantz Ward LLP

Motions to Withdraw
Karen E. Rubin, Thompson Hine LLP
Dante A. Marinucci, Squire Patton Boggs (US) LLP

Walk the Line: Relationships with Clients
Joseph N. Gross, Benesch, Friedlander, Coplan & Aronoff LLP

Nonrefundable Fee Agreements
Jamie A. Price, Walter | Haverfield LLP
Lawyer Participation in Online Referral Services
Dan Lear, Director of Industry Relations, Avvo, Inc.
Michael P. Harvey, Michael P. Harvey Co., LPA.
Jeffrey A. Brauer, Hahn Loeser & Parks LLP
Moderator

Destination CLE: Spring Training
The CMBA, Akron Bar Association and Maricopa County Bar Association are taking our CLE show on the road with three days in beautiful Phoenix!

Take in a few Indians spring training games and enjoy all that the Valley of the Sun has to offer.

Spring Training Games:
• Thursday, March 22 – 1:05 p.m. – Indians vs. Padres
• Friday, March 23 – 6:05 p.m. – Indians vs. Diamondbacks (Fireworks Night)

Tickets for the games are $36 per ticket, per game and include food and non-alcoholic beverages.

LOCATION Renaissance Glendale Resort & Spa
Discounted rooms at $289 available March 20 through March 25 at the Renaissance.

Wednesday, March 21
Opening Happy Hour at 6:00 p.m.
(Location TBA)

Thursday, March 22
CLE PROGRAM 8:30 – 11:45 a.m.
First Pitch at the Goodyear Stadium at 1:05 p.m.
Group Dinner at the Renaissance Glendale Hotel & Spa

Friday, March 23
CLE PROGRAM 8:30 – 11:45 a.m.
Pre-Game Social at 3 p.m.
(Location TBA)
First Pitch at the Goodyear Stadium at 6:05 p.m.

Saturday, March 24
CLE PROGRAM 8:30 – 11:45 a.m.

Health Care Law Update & Medical/Legal Summit 2018
April 13 & 14

William J. O’Neill
Great Lakes Regional Bankruptcy Institute 2018
Save the Date
May 3 & 4
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

INTRODUCING MY CMBA

We are excited to introduced our new, interactive community called My CMBA. The new members-only platform gives you instant, interactive access to your sections, committees and colleagues anytime, anywhere. Gone are the days of only connecting in person or getting one-way emails from your groups. Now you have easy access to share, post, comment, ask questions, and get connected with your CMBA network. Learn more on page 10.

Log in today at Community.CleMetroBar.org.

HOT TALKS SERIES & VIDEOS

One way the CMBA fulfills its mission “to promote the rule of law,” is by creating opportunities for the open, civil exchange of ideas and viewpoints across a vast array of subjects – both for our members and the community at large. As the temperature rises on hot topics, the CMBA continues to open its doors and invite Cleveland to meet us at the bar for these “Hot Talks” conversations the second Tuesday of every month.

These programs are being streamed on Facebook and saved there for later viewing. If you can’t make it in person, join us on Facebook Live.

Catch up on past topics at Facebook.com/CleMetroBar and CleMetroBar.org/HotTalks.
Don’t miss our Bar Foundation’s signature fundraiser on February 10 at Music Box Supper Club. Themed for Mardi Gras this year, the party kicks off with live jazz music by Transportation Blvd. and the introduction of the third annual Richard W. Pogue Award for Excellence in Community Leadership & Engagement to Frank Sullivan, Chairman & CEO of RPM International, Inc. Add in the food, open bar, prizes, live entertainment from Nitebridge and acoustic guitarist Nate Jones, and it is THE party of the year.

Rock the Foundation benefits the Lawyers Giving Back community and pro bono legal service programs of the CMBA. These programs promote equal access to justice, diversity and inclusion, law-related education and community service provided by members of our legal community — all of which are critical to strengthening the fabric of our community.

More info at CleMetroBar.org/RockTheFoundation.

Open to all students enrolled in a JD or LLM program at an ABA-accredited law school are invited to participate in the CMBA’s Ethics and Professionalism Committee’s Ethics and Professionalism Essay Competition, sponsored by AmericanLawRadio.com and the Law Office of David B. Malik.

First Prize: $1,500
Second Prize: $1,000

The first-place essay may be published in a future edition of the Bar Journal.

Submission Deadline is February 9, 2018.

Competition rules and the submission details at CleMetroBar.org/Essay
ACCESSIBILITY TO JUSTICE: AN INTERVIEW WITH CERTIFIED JUDICIAL INTERPRETER ROXANE KING

BY TODD PERSSON & ROXANE KING

Accessibility to all is one of the truly inspiring hallmarks of 21st century American society. Whether it’s the court reporters working tirelessly to caption the entirety of video content on the Internet for the benefit of the hearing impaired, or the Certified Judicial Interpreters who break down language barriers to ensure due process in our justice system, countless legal industry professionals are out there making great strides to see to it that we become a more accessible nation for disabled and non-English speaking persons.

As a veteran court reporter, I have witnessed my share of depositions involving an interpreter, ranging anywhere from perfection to the comically outrageous, from having my audio subpoenaed to having the entire deposition thrown out completely. It didn’t take me long to realize that interpreting in a deposition or trial involves a great deal more than being fluent in a source and target language. There is extensive training involved in effective judicial interpreting, and I set out to learn more about this extremely demanding profession.

On January 1, 2013, Ohio Supreme Court Rule 88 took effect, making Ohio one of many State Supreme Courts that certify interpreters to work in all aspects of criminal justice and civil litigation. I recently had the absolute pleasure of interviewing Roxane King, one of Cleveland’s most respected and recognizable Supreme Court Certified Judicial Interpreters, to learn all about her training and education, and to find out exactly what it is that can stop a deposition with an interpreter from turning into a disaster.

THE ROXANE KING INTERVIEW

TODD PERSSON: Roxane, you are a Supreme Court Certified Interpreter?

ROXANE KING: Yes. For the Ohio Supreme Court and the Superior Court of California.

TP: What is the role of a Supreme Court Certified Interpreter?

RK: The role and duty of the interpreter is to act as a medium between the court and the non-English speaking person, allowing the defendant or plaintiff to be linguistically and cognitively present in a legal proceeding. The interpreter is required to transfer all meaning he or she hears from the source language into the target language without editing, summarizing, neither adding nor omitting content or meaning.

TP: What is the training and education involved with becoming a Supreme Court Certified Interpreter?

RK: Certified interpreters undergo extensive training and education. We are taught a breadth of legal terminology and various techniques to be mastered, such as the simultaneous, consecutive and legal sight translation techniques. All three must be mastered and learned to precision to become certified.

TP: What is the testing involved?

RK: The Supreme Court of Ohio administers the certification testing, and there are two phases. The first phase is a written examination, which includes complex legal terminology, court language, and professional ethics and canons. The examinee must pass all areas of the test to move on to the next phase. After passing the written portion of the test, the examinee takes an oral exam, which consists of demonstrating oral proficiency in simultaneous and consecutive interpreting, as well as legal sight translation in both languages. A successful candidate must pass both the written and oral portions of the examination.

TP: What is simultaneous interpreting?

RK: Simultaneous interpreting is extremely complex. We not only listen and speak simultaneously for reasonable lengths of time and speed, but also carry out complex transformations on the source language message while uttering the interpretation in the target language. Every single word that is being said in the courtroom or deposition is being said in the target language without stopping or summarizing.

TP: What is consecutive interpreting?

RK: Consecutive interpreting is used in a question and answer format. The interpreter retains large amounts of information through symbol notetaking techniques and then renders the answer or question without omissions or embellishments. It involves complex mental tasks of language perception, storage, retrieval and generation. Because of this complexity, many interpreters consider consecutive interpreting more difficult than simultaneous.

TP: What is interpreter’s fatigue and why team interpreting?

RK: Interpreters must work in teams in all hearings or trials that last more than two hours. Consecutive and simultaneous interpreting are mentally taxing. We are under a great deal of pressure to retain every single element of the source language while delivering in the target language, and we must rely primarily on memory and notetaking. This leads to a cognitive overload. Therefore, team interpreting is key to protect the record.

TP: So why the need for certification when it comes to interpreting in the legal arena?

RK: Well, first and foremost, it is the law. Certified Judicial Interpreters ensure the
highest quality of interpretation. Professional judicial interpreting is provided to assist the Court in overcoming the linguistic barrier in the administration of justice for parties and/or individuals not fluent in English.

TP: Does this tie into Rule 88?

RK: Absolutely. The Supreme Court of Ohio adopted Rule 88, which took effect January 1, 2013, in an attempt to provide language access services that comply with not only Constitutional guarantees, but also with Title VI of the Civil Rights Act, and some of the other regulations that the Department of Justice has established for language access services in cases with individuals with limited English proficiency.

TP: What is the difference between a Certified Judicial Interpreter and an ad hoc bilingual acting interpreter?

RK: An ad hoc acting bilingual is a person who was either born overseas where they learned the language, or a person who was raised in the United States and spoke that second language at home. Certified Judicial Interpreters have a high expert proficiency in their specialized language. This is a skilled profession. A Certified Judicial Interpreter has passed a valid and reliable certification exam administered by the Supreme Court of Ohio, and are also mandated by the Supreme Court to maintain continuing education credits.

TP: What are the major advantages of hiring a Certified Judicial Interpreter over a traditional ad hoc bilingual in depositions?

RK: As Certified Judicial Interpreters and impartial Officers of the Court, it is our duty and ethical obligation to protect the record, bound and under oath as neutral parties. As such, we adhere to all ethical standards and maintain the highest quality of personal and professional conduct. We are highly-skilled, disciplined members of a challenging profession and are dedicated to public service as we strive to promote public confidence in the administration of justice.

Conversely, an ad hoc acting bilingual interpreter has no interpreter training. He or she will not know the proper techniques or standards. Additionally, if the interpreter has no judicial training or ethics instruction, they will not be familiar with the vast amount of legal terminology and ethical obligations to the Court. As a result, a proceeding interpreted by an ad hoc bilingual interpreter can be stricken from the record and may not be reviewable by higher courts.

Without a competent interpreter that is capable of facilitating the complete and accurate flow of information, vital information may not be included, the drawing of facts may get twisted, misunderstanding may be frequent, and most importantly, justice may be denied. Only with competent interpreting and translation will non-English persons have access to justice, due process, fundamental fairness, and equal protection under the law.

TP: We just talked about ad hoc bilinguales and the differences between Certified Judicial Interpreters. Is there a different type of interpretation that maybe bilinguals are more used to, such as in a business setting or in a meeting, as opposed to what you do?

RK: Judicial interpreters are trained to deliver every element of meaning, including paralinguistic features such as audible gestures, pauses, nuances and word connotations without changing, adding, omitting, or summarizing. Therefore, we do not give a gist or summarize what is being said but rather deliver the complete element of meaning in the whole message exactly and precisely for the record. We interpret all testimony in the first person and are only
permitted to speak in the third person when addressing the Court or counsel. When rendering witness testimony especially, we must maintain the same demeanor, register and language of the speaker.

TP: As court reporters, we work with many interpreters in depositions and oftentimes see that interpretations of witness testimony are challenged, and either our audio will be subpoenaed by counsel or the deposition will need to be taken again using a different interpreter. As a Certified Judicial Interpreter with all your training, education and testing by the Supreme Court of Ohio, is your interpretation less likely to be challenged in contentious cases?

RK: Absolutely. Certified interpreters are the stamp of approval of the Supreme Court of Ohio. Additionally, if counsel wants to challenge an interpretation made by someone other than a Certified Judicial Interpreter, we can provide expert testimony as to discrepancies, deficiencies or irregularities. In fact, Rule 604 of the Federal Rules of Evidence states, “The Interpreter shall be qualified as an expert.”

TP: In addition to being CEO and President of Certified Interpreters United, you are also a member of an organization here in Ohio?

RK: Yes, I am. The Community and Court Interpreters of Ohio.

TP: What does that organization do?

RK: It’s a professional organization of certified individuals and also non-certified individuals who are in the process of becoming certified. We gather as a support group within our profession. We attend workshops that give certified interpreters additional continuing education credits. My colleagues put workshops together as well where I have participated. I am also on the advocacy committee for NAJIT, the National Association of Judiciary Interpreters and Translators.

TP: Roxane, thank you so much for meeting today. There is so much information here that I never even thought about and I hope will be helpful to litigators in Ohio who find themselves in need of a Supreme Court Certified Interpreter for a deposition or trial.

RK: Absolutely. Thank you, Todd.
NO NEED TO BE NERVOUS
Legal Aid Makes It Easy for First-Time Volunteer Lawyers

Abigail Greiner

As a new attorney without any particular expertise in housing or expungement law, I was nervous about attending my first Legal Aid brief advice clinic. I worried I would not know the answers to the most basic questions and that I would look silly in front of the clients. My fears were quickly quelled when I was matched with a more experienced attorney for our first client interaction. As I sat and listened while the client explained the eviction issue, I realized that being familiar with the legal process and reading through legal documents with the proper framework were key skills to helping the client through an uncertain and difficult time.

I was lucky to have started my legal career working for Judge Joan Synenberg, who recognizes the importance of pro bono work in our community. I got to see first-hand as Judge Synenberg not only gave of her own time to educate attorneys and the community about expungement, but also emphasized the importance of lawyers volunteering their time to help bridge the justice gap. She encouraged me to participate and demonstrated how much of an impact an attorney can have outside the traditional office or courtroom role.

After attending a few brief advice clinics, I realized that for most clients, having an attorney to listen, reassure, and help guide them through this stressful process is a huge deal. They also need what, for any attorney, seems like common sense advice and guidance. For example, if they are being evicted, people might not know the importance of showing up for the hearing or filing a simple written answer to the complaint. A lot of people aren’t familiar with the court system, so something as simple as the physical layout of the Justice Center — which elevators to take or where to park — can be helpful insights. The brief advice clinic is analogous to a starting block for them: it lets them know where to go and what paperwork to bring to stop their legal troubles from escalating.

I also found Legal Aid does a lot of the heavy lifting ahead of time. They screen client questions before sending them your way. In the event that a question or issue arises outside my areas of expertise, there is always a knowledgeable Legal Aid staff member on hand and plenty of pamphlets, forms and other helpful materials right there.

Not only did I find that most of my fears about volunteering were unfounded, but I also discovered a number of deeply rewarding benefits to my involvement in pro bono work with Legal Aid. For the clients we help it means so much to have an attorney listen to their questions and walk them through the paperwork. Their gratitude is evident, just for taking 30 minutes to listen and give what may seem like basic advice. It means a lot more to the clients than we probably know.

In my personal experience, volunteering at Legal Aid Clinics has increased my own appreciation for the situations families living in poverty face. On a human level, I find Legal Aid clinics a great way to give back. Professionally, it has also expanded my network and is a great way to get to know other attorneys.

Since that first brief advice clinic a few years ago, I’ve branched out to Legal Aid’s monthly expungement clinics and their Women and Children in Crisis clinics at West Side Catholic Center. I still understand the reservations many attorneys might have, but I’m confident it will be a rewarding experience. If you’re hesitant or nervous, reach out to me, and I’ll do it with you!

Abigail Greiner is an insurance defense lawyer at Gallagher Sharp and Vice Chair of the CMBA’s Young Lawyers Section. She has regularly volunteered at Legal Aid’s brief advice, expungement, and Women in Crisis clinics and encourages other young lawyers to do the same. She has been a CMBA member since 2011. She can be reached at (412) 877-0015 or agreiner@gallaghersharp.com.
There is an extremely important but often overlooked duty that lawyers have, and that is community involvement. Our profession is often begun with passion. Passion to apply to law school for some deep rooted goal to represent the indigent, to win the unwinnable case, or to draft a fault proof contract. However when we begin our careers, it’s likely what motivated us to get there was some passionate dream.

Along the way, especially starting out our careers, we may notice injustices in the world — areas needing extra attention or just attention at all. There may have been times where you have felt helpless to improve a situation or advocate for a matter. This is a natural feeling, but that energy can be redirected towards a meaningful purpose. That is where discovering what you want to fight for is so important.

Finding Your Nonprofit Passion

This leads to our duty as lawyers to give back to our community and to make the necessary changes that are so badly needed. Young lawyers have that ability and have the motivation to make the change. They just need to focus on their passions. Sometimes those passions can be discovered in moments you least expect. I discovered, through the drafting of search warrants for animal abuse cases, that I could directly impact my community through fundraising and animal rescue efforts. Coincidentally, a local animal nonprofit in my area needed help with promoting adoptable rescue animals and subsequently fundraising for their medical costs. While I instantly thought my attorney skills could be best used for grant writing, I was pleasantly surprised at how much fun planning fundraisers could be and how many more serious animal medical cases our organization could take on with financial stability. Those initial volunteer steps I made with marketing and fundraising gave me experience and training within the organization. That eventually led to me serving on the Board for the Citizens Committee for the Lakewood Animal Shelter (CCLAS) and dedicating spare time to this cause. Animal welfare was a passion that revealed itself from legal work. Sometimes finding the needs of your community is as simple as discovering what is lacking, and what we as lawyers are able to do about it.

Benefits of Nonprofit Work

There are so many opportunities out there to learn and to grow through nonprofit work — not only in giving back but to grow as an individual. You learn to work closely with others outside of a work setting, and also fine-tune your people skills and delegation strengths. By working to progress your nonprofit’s goals, you may discover camaraderie, self-worth and networking opportunities. Advancement through a nonprofit network may not only open your eyes to other opportunities, but it also may give you your first experience in managing other professionals.
If you are new to the area or just on the lookout for like-minded individuals to befriend, then attending nonprofit fundraising events may be the best route for you. Many nonprofit and fundraising opportunities mask as social events. So, you may be able to volunteer and make great connections while enjoying a really great event. When I started my journey through the Junior League of Cleveland’s Management Council, I was shocked at how many young, professional women there were in our area who were looking to make connections and serve their community. The reason they joined The Junior League of Cleveland; they didn’t know how to make those connections or serve the Cleveland area. That is exactly why nonprofit organizations such as this exist. There are promising young people in the world who are already motivated to make change, but need guidance on how to make that happen. If you happen to be one of those people, there are many organizations in the Cleveland area that will accommodate your needs. They will teach you how to lead, how to throw a fabulous fundraising event, or even how to start your own nonprofit. Some provide webinars designed to your focus and passion, others train you through direct nonprofit work such as tutoring or mentoring children. Whatever your journey is, Cleveland has the right organization for you.

There are endless benefits to community involvement, but one of my favorites has to be getting to know and respect your local organizations and agencies. Tremendous amounts of people are already doing amazing work in Cuyahoga County, and once you start to work synonymously with some of those organizations you may realize the sacrifice and drive these people have. The alliance with another person involved in a similar nonprofit can lead to great partnerships such as shared fundraising and promotions.

Feasibility

Once you have discovered your passion and the appropriate training or nonprofit organization to help, your next step is to figure out your balance. As attorneys, we can be accustomed to a fast-paced lifestyle and it can be easy to overextend ourselves. That makes it all the more important to be honest about your time commitment. Be prepared to have an idea of the time commitment you wish to give and be honest on your ability to deliver. Some organizations require more hands-on volunteering and others may allow your nonprofit work to be done by the comfort of your home. Some may be team efforts, and others may be individually focused. If you have a family, there are some nonprofit organizations that are family friendly and great learning experiences for children. From personal experience, there is nothing more rewarding than watching your children enjoy nonprofit work. If you can’t commit the time to a nonprofit, financial support
may be a more feasible route for you. Even hosting a donation drive can be a simple and beneficial support to an organization when time is sparse.

Making sure your selected nonprofit suits your lifestyle is paramount, especially if you are going to designate a large amount of willpower and time to it. Educate yourself in the beginning to ensure an educated decision. Great questions for your selected organization include: what are my job duties/descriptions, what is the expected weekly time commitment, what is the mission statement and/or goals, are there any opportunities for other volunteers to help, are there any family friendly events, etc.?

Proposed Pledge for the Legal Profession: Follow My Lead

The medical profession has a meaningful, albeit shortened version, of their duty to others: “Do no harm.” As lawyers, we are often looked at by others as examples to follow, advocates for justice. Clients may turn to you for guidance, family may look to you for approval, and friends may seek you out for advice. That is a powerful influence to have, which makes our duty to be involved with nonprofit work so important. What we get involved in may motivate others to do the same and may inspire another person to find their own passion in their own community. Our modern pledge should become: “Follow my lead.” By being exceptional professionals in our craft and by being meaningful volunteers, we can inspire others, including clients to give back. Courtroom ingénue by day, soup kitchen volunteer by night. Follow my lead. Proposal drafting at work and fundraising planner for fun. Follow my lead.

We live in an age where due to technology, everyone has a more influential voice. The benefit of having more voices, is that working together can make change occur. Find your passion, inspire others and let it surround every aspect of your life so the next group of young lawyers will rise to your example. Soon, they will follow your lead.

For the past 10 years, Kira Kittoe-Krivosh has dedicated her life to public service and nonprofit work. She joined the Cuyahoga County Prosecutor’s Office as an Assistant Prosecuting Attorney in 2013. Prior to that she has worked for the City of Canton Law Department, City of Garfield Heights Law Department and the Stark County Family Court. She is the Board Vice President for the Citizen’s Committee for the Lakewood Animal Shelter, the Board of Directors - Nominating Director for the Junior League of Cleveland and she volunteers, along with her family, with other nonprofit organizations. She joined the CMBA in 2017. She can be reached at (330) 268-9111 or Kirakrivosh@yahoo.com.
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Volunteering à la Carte

The 3Rs
Rights • Responsibilities • Realities
Volunteers provide law-related education in local high schools. Each volunteer serves on a team that visits an assigned classroom in a Cleveland or East Cleveland public high school to present six lessons on the U.S. Constitution and career counseling. Curriculum and volunteer orientation are provided.
Dates: Oct. 2017–May 2018 (One classroom visit per month)
CleMetroBar.org/3Rs

3Rs+
Volunteers provide college and career counseling, tutoring, and mentoring services to 11th and 12th graders in the Cleveland and East Cleveland schools, upon request.
Dates: Oct. 2017–May 2018 (scheduled as needed)
CleMetroBar.org/3Rs

The Legal Clinics at the Cleveland Metropolitan School District
Volunteers staff regular brief advice clinics at Glenville and Lincoln-West high schools for CMSD students and their families.
Dates: Scheduled Thursdays throughout the school year
CleMetroBar.org/TLCattheCMSD

Cleveland Mock Trial Competition & Middle School Mock Trial
Volunteer attorneys and law students serve as team legal advisors to Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.
Dates: Coaching Feb.–May 2018; Competitions in May
CleMetroBar.org/ClevelandMockTrial

Ohio Mock Trial Competitions
Volunteers serve as judicial panelists for teams of high school students from public, private, and home schools across the region. Volunteers can also serve as team legal advisors.
Dates: Cuyahoga District Competition Jan. 26, 2018; Cuyahoga Regional Competition Feb. 16, 2018
CleMetroBar.org/OhioMockTrial

Speakers Bureau
Volunteers address groups from throughout the community on a wide variety of legal topics.
Dates: As needed throughout the year

Reach Out: Legal Assistance for Nonprofits
Reach Out seminars held quarterly feature free presentations on the law for both nonprofit leaders and volunteer attorneys, followed by brief advice sessions. Volunteers assist by presenting at clinics, participating in teams at brief advice sessions, and/or agreeing to take on further representation as needed.
Dates: Seminars scheduled quarterly throughout the year
CleMetroBar.org/ReachOut

Cleveland Homeless Legal Assistance Program (CHLAP)
Volunteers can provide service by: (1) providing brief advice and counsel at intake sessions at homeless shelters and social service providers, or (2) providing follow-up service on legal matters needing further attention.
Dates: Sessions scheduled regularly throughout the year
CleMetroBar.org/CHLAP

Pro Se Divorce Clinics
Volunteers guide participants through the paperwork and process of securing a simple divorce pro se.
Dates: 3rd Friday monthly unless otherwise noted
CleMetroBar.org/ProSeDivorce

Volunteer Lawyers for the Arts (VLA)
Volunteers provide pro bono assistance and advice for legal issues faced by artists, and a series of free law-related education events held in Cleveland’s many unique arts venues and schools.
Dates: Committee meets monthly, other services TBD throughout the year
CleMetroBar.org/VLA

COMING SOON
- Jan. 19 – Pro Se & Pro Se “Plus” Divorce Clinics
- Jan. 26 – Ohio Mock Trial Cuyahoga District Competition
- Feb. 10 – Rock the Foundation 13 at Music Box Supper Club, in support of Bar Foundation programs
- Feb. 16 – Ohio Mock Trial Cuyahoga Regional Competition
- Feb. 23 – Pro Se Divorce Clinic
- March 8 – VLA seminar: “Artists & Social Media” at Praxis Fiber Workshop

For more about volunteering, please visit CleMetroBar.org/VolunteerNow or contact Jessica Paine, Director of Community Programs, at (216) 696-3525 or jpaine@clemetrobar.org
UPCOMING CAP EVENTS

Monthly Meetings
Held the third Wednesday of every month at varying locations (unless otherwise noted)
January 17, 2018 – noon – location CMBA Offices
February 21, 2018 – noon – Call in meeting

CLE Lunch 'n' Learns
CAP will be hosting the following topics
January 26, 2017 – Cloud-Based E-Discovery Tools
February (date TBA) – Ethics and UPL for Paralegals
*CLE sessions are held at the CMBA starting at noon.

Future Events
CAP is planning its 2018 Technology Seminar; more details coming soon!

Congratulations!
Congratulations to CAP member Teresa (Teddy) Negron who just passed her National Federation of Paralegal Association’s (NFPA) Paralegal Advanced Competency Exam (PACE®). PACE is a voluntary national exam covering federal law. Only paralegals with a comprehensive education in paralegal studies plus years of practical experience can apply and sit for the exam. Paralegals holding the registered paralegal (RP) designation have demonstrated a level of competence, knowledge and analytical skills in various areas of law and ethics that makes those paralegals the top in the paralegal profession. This is an outstanding accomplishment for Teddy, well done!

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Not a member of CAP — why not? Join today!
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IN MEMORIAM
TIMOTHY J. OCHSENHIRT
1946-2017

Roetzel & Andress mourns the loss of its dear friend and colleague, Tim Ochsenhirt.

Our Chairman and Chief Executive Officer for 27 years, Tim was a mentor, guiding light, and fierce champion of our firm and its people.

He was brilliant, gregarious, tough as nails, and without doubt, a visionary leader.

We extend our deepest condolences to Tim’s children, grandchildren, and many beloved family and friends.

That man is a success who has lived well, laughed often and loved much. Ralph Waldo Emerson
The recent accusations of sexual misconduct against celebrities and other high-profile individuals have not only exposed an alleged epidemic of sexual exploitation in Hollywood and other high-profile circles, but also overshadowed an equally concerning issue in a similar vein — universities and institutional findings of responsibility for sexual misconduct of its students pursuant to Title IX of the United States Education Amendments of 1972 (known commonly as Title IX).

Title IX is a federal law that prohibits discrimination based on sex for schools and programs that receive federal funding. This includes protection from sexual harassment, sexual assault and other forms of sexual misconduct. See 20 U.S.C. §§ 1681–1688.

In September 2017, the Department of Education announced its reversal of guidance initiatives issued in 2011 and 2014 by the Obama Administration, on how schools should investigate, adjudicate, and resolve allegations of student-on-student sexual misconduct under Title IX.

Education Secretary Betsy DeVos’ office announced that the department was concerned that the Obama administration’s guidance denied proper due process in institutional proceedings to students accused of sexual misconduct in violation of Title IX, and noted that said guidance “imposed improper pressure upon universities to adopt procedures that do not afford fundamental fairness.” U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter, September 22, 2017. According to Assistant Secretary for Civil Rights Candice Jackson, “as a result [of the Obama administration’s guidance], many schools established procedures for resolving allegations that ‘lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation.’” Id.

The Department of Education expressed its intent to instead, “develop an approach to student sexual misconduct that responds to the concerns of stakeholders and that aligns with the purpose of Title IX to achieve fair access to educational benefits [and] to implement such a policy through a rulemaking process that responds to public comment.” Id.

With the official rulemaking process in flux, allegations of Title IX violations remain a deeply troubling aspect of today’s college environments. The concern, however, exists for not only the misconduct alleged, but also, the processes by which institutions investigate and adjudicate these allegations.

All this being said, it begs the ultimate questions of (1) what types of due process rights do accused students have before being found responsible by institutions for Title IX related misconduct, and (2) what types of sanctions/measures can a college/university impose upon a student accused of, or even found responsible for a Title IX violation?

Accused Students’ Due Process Rights

In general, “sexual misconduct” can be defined as “Conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. Includes sexual harassment, sexual violence, relationship violence, and stalking. Sexual misconduct is a form of sex- and gender-based discrimination.” See The Ohio State University (OSU’s) Code of Student Conduct, Sexual Misconduct Policy.

While the specific due process rights afforded to accused students varies among institutions, certain due process protections remain consistent across the board. Notice of the allegations, an opportunity to respond, an “equitable” investigation by the institution into the merits of the allegations, a hearing, and an appeal process, are generally afforded to students accused of violating Title IX.

That being said, whether these due process safeguards, in practice, are
meaningful in any way, seems to differ from
school to school.

For example, some institutions permit
accused students to have an attorney present
during the hearings, while others only permit
a student advisor to be present. Nevertheless,
the vast majority of schools prohibit the
attorney or advisor to take any role in the
hearing, such as questioning witnesses,
presenting evidence, or making legal or
procedural arguments.

As to evidentiary standards, some schools
require a preponderance of the evidence to
prove that misconduct occurred, while other
schools employ a higher evidentiary burden
clear and convincing evidence. Also, the
right of an accused to cross-examine witnesses
during such hearings appears noticeably
absent in most schools’ hearing procedures.

Moreover, some schools require the
accused to testify or otherwise respond to
the allegations, and the student’s failure to
do so (silence) even on advice of counsel,
can be considered by the decision making
body when reaching a finding. In cases
where criminal misconduct is alleged, such
a policy clearly flies in the face of a “right
against self incrimination” afforded to
criminal defendants.

As for appeals, while most, if not all,
universities permit an accused to appeal a
finding of misconduct, the appellate process
varies among institutions. While some permit
in-person appeals, and appeals filed by legal
representatives, others permit only written
appeals, and require the accused student to
submit the written appeal themselves.

Thus, the specific due process safeguards
in place for an accused student, quite
literally, depends on where that individual
decided to attend college. Such a lack
of uniformity causes great concern that
the alleged “equitable” investigations
and hearings are not “equitable” at all; a
finding of Title IX misconduct may result
at one university, where no finding may
result at another, based upon the same
exact evidence. Considering the potential
sanctions and/or measures that a school may
impose for findings of Title IX misconduct,
such seemingly arbitrary dissimilarities
in due process safeguards among colleges
raises significant cause for alarm.

Sanctions/Measures Imposed for Violating
Title IX

Naturally, a student who is found responsible
for sexual misconduct or a related Title IX
violation can be expelled and/or suspended
from the university, even without the filing of
criminal charges.

For example, in 2012 Xavier University
made headlines for expelling basketball
player Dezmine Wells following an allegation
and finding of sexual misconduct. Although
a grand jury declined to indict Wells, and
Hamilton County Prosecutor Joe Deters
referred to Xavier’s investigation into the matter
“fundamentally unfair,” Xavier maintained
Wells’ responsibility for the misconduct. Wells
appealed the school’s finding and transferred
to the University of Maryland, before suing
Xavier for violating his right to a fair hearing
under Title IX.

More recently, Yale University expelled
basketball player Jack Montague following a
finding of sexual misconduct, even
though no criminal charges were filed.
Like Wells, Montague appealed and sued
Yale, claiming that it “wrongfully and
improperly” expelled him and seeking
reinstatement to the University. Yale
alumni have even contributed thousands of
dollars to help Montague in his legal battle
against the school.

However, even before a formal “finding” is
made, however, universities are empowered
to take initial steps, based on allegations of
misconduct alone, during the course of its
investigation into the merits of the allegations.

Many student handbooks require that,
for cases involving sexual misconduct,
the conduct administrator and/or Title
IX coordinator at the school, must, at
least, take what are referred to as
“interim measures” such as placing a no-
contact directive between the accused and
the accuser, making “modifications to work
or class schedules” and making “changes in
work or housing locations,” following an
allegation of sexual misconduct. See Office
for Civil Rights, Revised Sexual Harassment

Thus, based upon allegations alone, a school
can order an accused student to transfer dorm
rooms, change his or her class schedule, and
even change his or her work schedule or job all
together (if employed by the university).

Short of expulsion, and in addition to any
“interim measures” imposed, the school may
also issue mere warnings to cease certain
behavior, impose periods of probation,

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The CMBA requests nominations for the Hon. William K. Thomas Professionalism Award to honor a lawyer or judge who has significantly contributed to the enhancement of professionalism in the Greater Cleveland legal community by exemplifying the goals of the Ohio Supreme Court’s A Lawyer’s Creed and A Lawyer’s Aspirational Ideals and by furthering the ideals expressed in the Mission of the CMBA. The award will be presented at the CMBA’s Annual Meeting in June.

Submit Nominations by Friday, April 13, 2018 To:
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Attn: Jeffrey Brauer, Chair
1375 East 9th Street, Floor 2
Cleveland, Ohio 44114
or e-mail to Heather Zirke at hzirke@clemetrobar.org

or a temporary suspension upon students found responsible for Title IX misconduct. Nevertheless, even less severe sanctions may result in collateral consequences such as the loss of scholarships or stipends from university or third-party donors.

Opinion & Conclusion
Sexual misconduct, in any form, and regardless of where it occurs, presents a particularly serious problem and we must do everything possible to eliminate such behavior. All individuals, students or otherwise, who engage in such misconduct must face the appropriate consequences for their actions and should be punished accordingly.

However, that is not to say that such punishment should come as the result of an allegation alone or arbitrarily structured proceedings that serve as an impediment to findings of fact and truth; basic due process requires more than that and any attempt to erode away the due process rights of an accused constitutes an attack on fundamental principles of fairness and equity altogether.

Due process exists for a reason. Although students involved in institutional hearings do not have their liberty at stake, the outcome of the proceeding, especially where there is a finding of misconduct, will result in extremely significant, life-altering changes for the student.

Given the severity of these allegations and findings, we must hold our educational institutions to a higher standard, and demand that the Department of Education draft and implement a series of uniform, truly equitable regulations, that both protect an accused’s right to due process and uphold the rights of accusers. Our continued failure to do so, and the continued use of seemingly arbitrarily imposed evidentiary standards and due process safeguards, only increases the chances of injustices, miscarriages of justice — holding innocent students responsible for sexual misconduct, and letting students responsible for sexual misconduct remain unpunished.

Larry W. Zukerman is the managing partner of Zukerman Daiker & Lear Co., L.P.A., a criminal defense law firm based in Cleveland, Ohio. Mr. Zukerman’s practice focuses primarily in the areas of criminal defense, professional licensure defense, and administrative proceedings. He has been a CMBA member since 1985. He can be reached at (216) 696-0900 or lwz@duiohio.com.
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5 — 5:45 P.M. NETWORKING  /  5:45ISH — 6 P.M. SPEAKER  /  6 P.M. SCREENTIME
WEDNESDAY, FEBRUARY 7 — MARSHALL  /  WEDNESDAY, MARCH 7 — HIDDEN FIGURES
WEDNESDAY, APRIL 4 — AMERICAN WINTER (IN PARTNERSHIP WITH UNITED WAY OF GREATER CLEVELAND)

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They don't have to convict you. They don't even have to charge you with a crime. But they have your property.

- Henry Hyde (former R-Ill., U.S. House of Representatives, Judiciary Committee Chairman as quoted in CNN article)

This year U.S. Supreme Court Justice Clarence Thomas, in response to the Court’s denial of certiorari in *Leonard v. Texas*, asked “whether modern civil forfeiture statutes can be squared with the Due Process Clause and our Nation’s history.” In other words, why is the government still permitted to seize property from persons without ever charging them with a crime?

Under Ohio law, there are primarily three situations where assets may be frozen or forfeited: (1) criminal forfeiture post-conviction (R.C. 2981.04); (2) preservation of assets pre-trial (R.C. 2981.03); and (3) civil forfeiture, where no charges are necessary (R.C. 2981.05). Each situation has its own procedure and requirements. Importantly, each has different collateral consequences for the owner of the property.

**Ohio Forfeiture Law**

Ohio forfeiture laws have been reformed twice recently. The first amendments went into effect July 1, 2007 (“2007 Amendments”), while the second went into effect April 6, 2017 (“2017 Amendments”). The 2007 Amendments were passed following a comprehensive review of Ohio’s forfeiture statutes that started in 2000. The goal was to create laws that were easier to understand, more consistent, and fairer to all parties. The 2007 Amendments streamlined the existing criminal and civil asset forfeiture laws by creating a consolidated forfeiture provision located in Chapter 2981. The new Chapter set forth the following objectives: (1) providing economic disincentives and remedies to deter and offset the economic effect of offenses; (2) ensuring that seizures and forfeitures are proportionate to the offense committed; (3) protecting third parties from wrongful forfeiture; and (4) prioritizing restitution to victims. R.C. 2981.01(A).

While the 2007 Amendments did much to simplify Ohio’s forfeiture laws, many argued that Ohio’s law did little to protect individuals from wrongful forfeiture. Fixing what was seen as a broken system was the main purpose of the 2017 Amendments.

**Property Subject to Forfeiture**

Prior to the 2007 Amendments, property subject to forfeiture varied from statute to statute. However, a catch-all provision existed that made all “contraband” subject to forfeiture, which defined “contraband” to include all property used in a crime, including property that was lawfully possessed. With the 2007 Amendments, three categories of property, with precise definitions, became subject to forfeiture: (1) contraband involved in an offense; (2) proceeds derived from or acquired through the commission of an offense; and (3) an instrumentality used in or intended to be used in any felony or, when specifically authorized by statute or ordinance, in a misdemeanor when the use is sufficient to warrant forfeiture. R.C. 2981.02(A).

“Contraband” is defined as “any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property’s involvement in an offense.” R.C. 2981.01(A)(13). The definition eliminated the lawful possession of items used in a crime. Those items, now if forfeitable, must fall within the definition of “proceeds” or “instrumentality.”

Prior to the 2007 Amendments, property acquired through the sale or transfer of “contraband” was considered “contraband,” not “proceeds.” Now, the category of “proceeds” has been added to the statute, and is specifically defined to cover ill-gotten gains. R.C. 2981.01(B)(11).

Proposed 2007 Amendments attempted to create a narrow scope of the term “instrumentality” to cover only “property otherwise lawful to possess that is substantially connected to an offense.” But the 2007 Amendments’ “instrumentality” definition dropped the “substantially connected” language, and instead covers “property otherwise lawful to possess that is used in or intended to be used in an offense.” R.C. 2981.01(B)(6). Accordingly, the term “instrumentality” is still all encompassing.

**Criminal Forfeiture**

The 2007 Amendments created consistency in criminal forfeiture law, which had been dependent on the predicate offense triggering forfeiture. The 2017 Amendments focused on affording property owners greater protections.

Criminal forfeiture only applies if a defendant is convicted of, or enters intervention in lieu of conviction for, an offense, and the charging document specifies: (1) the nature and extent of the alleged offender’s interest in the property; (2) a description of the property; and (3) if the property is an alleged instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense. R.C. 2981.04(A)(1). Following conviction, or entry of intervention in lieu of conviction, the trier of fact determines whether the person’s property shall be forfeited, and forfeiture shall be ordered only if the State proves by clear and convincing evidence that the property is in whole, or part, subject to forfeiture. R.C. 2981.04(B). Additionally, if property is forfeitable because it was an “instrumentality,” the State must also “prove by clear and convincing evidence that the amount or value of the property subject to forfeiture is proportionate to the severity of the offense.” R.C. 2981.09(A). The 2017 Amendments altered the burden of proof to the clear and convincing standard from the prior preponderance of the evidence standard.

After an order of forfeiture is entered, any person, other than the offender, who asserts a legal interest in the property subject to the forfeiture order may petition the court to adjudicate the validity of their alleged interest in the property. R.C. 2981.04(E)(1). If the interested party is a secured party or other lienholder of record, the party may file an affidavit in lieu of the petition. R.C. 2981.04(E)(2). Often an interested party will not avail itself of the process because of the time and monetary costs associated with the proceeding.

**Preservation of Assets**

While criminal forfeitures require a conviction,
prosecutors have the ability to seize property in advance of conviction, and even in advance of the filing of formal charges. A prosecutor can seek an order protecting property when filing a charging document. R.C. 2981.03(B)(1)(a). Where a prosecutor is not ready to charge, he can seek an order protecting the property. R.C. 2981.03(B)(1)(b). A court may not grant the prosecutor’s pre-charging request unless it determines: (1) there is a substantial probability the State will prevail on the forfeiture issue; (2) there is a substantial probability that failure to enter the order will result in the property being made unavailable; and (3) the need to preserve the property outweighs the hardship on the property owner. Id. Despite notice provisions, a court may issue an order preserving property without giving notice or a hearing to a person known to have an interest in the property, if the prosecutor demonstrates that the property is subject to forfeiture and that giving notice will jeopardize the availability of the property for forfeiture. R.C. 2981.03(B)(3).

In addition to requesting a hearing on the order, a person with an interest in seized property may seek the conditional release of the property by requesting possession from the person with custody of the property. The request must show that the person meets all of the following: (1) has a possessory interest in the property; (2) has sufficient ties to the community to provide assurance that the property will be available at the time of trial; and (3) that failure to conditionally release the property will cause the claimant a substantial hardship. R.C. 2981.03(D). If the custodian does not surrender the property within 15 days, a petition for conditional release may be filed with the court. R.C. 2981.03(D)(2).

However, there are exceptions to the hardship release of property. Property cannot be released if there is probable cause to believe that it is: (1) contraband; (2) property that must be held for a reasonable time as evidence; or (3) property that is likely to be used in additional offenses. R.C. 2981.03(D)(3). In addition, the property may not be released if the State establishes by a preponderance of the evidence that the property was acquired during the commission of the offense, or within a reasonable time after that period, and there is no likely source for the interest in the property other than as proceeds derived from or acquired through the commission of the offense. Id. Once property is seized, it will be costly to have it returned and difficult given the State’s low burden of proof.

Civil Forfeiture

After the 2007 Amendments, prosecutors, instead of filing for criminal forfeiture or the preservation of property pending criminal forfeiture, could seek civil forfeiture. Civil forfeiture was fraught with problems leading to perceived abuses and innocent individuals having their property taken from them. These abuses were the catalyst for the 2017 Amendments.

The 2017 Amendments limit the circumstances under which civil forfeitures are permitted. When the property sought to be forfeited is valued at $15,000 or less, generally a criminal conviction or intervention in lieu of conviction is required. R.C. 2981.05(C). The civil forfeiture action may be commenced simultaneously with, or after, the filing of criminal charges, but the proceeding will be stayed during the pendency of the criminal proceeding, and shall not proceed until after the defendant is convicted or enters intervention in lieu of conviction. Id. The only situations where a conviction will not be required is where property has been seized, a specified time has elapsed (either three months or one year) based on the facts, and: (1) the property owner is deceased; (2) an
indictment for a felony or a gambling offense has been filed against the property owner and an arrest warrant issued, and the property owner is unable to be extradited or brought back to Ohio, or reasonable efforts have been made to locate and arrest the property owner, but the property owner has not been located; or (3) the property owner has not claimed the property subject to forfeiture or asserted an interest in the property. R.C. 2981.05(A).

A civil forfeiture that may proceed without a criminal conviction is permitted to be filed "against any person who is alleged to have received, retained, possessed, or disposed of proceeds, in an amount exceeding fifteen thousand dollars, knowing or having reasonable cause to believe that the proceeds were allegedly derived from the commission of an offense subject to forfeiture proceedings in violation of section 2927.21 of the Revised Code." R.C. 2981.05(D)(1). If charges are filed against the person, the civil action will be stayed. R.C. 2981.05(D)(2). During the civil action the State has the burden to prove by clear and convincing evidence: (1) that the person received, retained, possessed, or disposed of the proceeds involved; (2) that the person knew or had reasonable cause to believe that the proceeds were derived from the alleged commission of an offense specified in R.C. 2927.21; and (3) the actual amount of the proceeds involved exceeds fifteen thousand dollars. R.C. 2981.05(D)(3). In addition, the State cannot directly or indirectly transfer or refer any property seized to any federal law enforcement authority or federal agency for purposes of forfeiture unless the value of the seized property exceeds $100,000. R.C. 2981.14(B).

The 2017 Amendments have severely curtailed the State’s ability to use civil forfeiture, forcing the State to rely on criminal proceedings prior to seizing assets.

**Conclusion**

Ohio has taken drastic steps to better safeguard an individual’s property rights. Previously, we had a system where civil forfeitures could be used to take small amounts of money or property. These civil forfeitures were often uncontested because the cost of litigating the issue exceeded the value of the property seized. In addition, the General Assembly revised the burden of proof from a preponderance of evidence standard to a clear and convincing standard. These changes have recently been enacted, and it will take time to determine if these revisions will work in protecting everyday citizens from having their assets legally taken from them by the State, or if further amendments are necessary.

John F. McCaffrey is a Fellow of the American College of Trial Lawyers and a former FBI special agent and prosecutor. A partner with Tucker Ellis LLP, his practice focuses on white collar criminal defense, complex business litigation, and professional malpractice. He has been a CMBA member since 1994. He can be reached at (216) 696-3486 or john.mccaffrey@tuckerellis.com.

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DOES STATE OR FEDERAL LAW GOVERN A DISABILITY INSURANCE CLAIM AND WHAT IS ERISA?

Andrew November & Gregory Michael Dell

To effectively represent a Social Security disability client, an attorney must think beyond the Social Security disability case. Approximately one third of U.S. employers offer long term disability insurance coverage as an employee benefit. It is quite common that a claimant for Social Security disability benefits may also have a concurrent claim for long-term disability insurance benefits (LTD benefits). A claim for LTD should always be top of mind when preparing and litigating your client’s SSDI case. Claims for LTD are significantly different than SSDI claims as eligibility for LTD is defined by the terms and conditions of the claimant’s disability policy. There are more than 50 different insurance companies that sell long-term disability policies and the policy language and terms for eligibility are often different in every policy. Unlike an SSDI claim, the statutes of limitations are different in every policy and the definition of disability is different in almost every policy. It is often a challenge to determine whether the disability policy is subject to state or federal law (ERISA) and failure to choose appropriately could result in a claim dismissal with prejudice. The purpose of this article is to make you aware of some of the intricacies and potential minefields associated with an LTD claim. We asked Gregory Dell, a nationwide disability insurance attorney with Attorneys Dell & Schaefer, to discuss the importance of complying with the appropriate law for an LTD claim.

In any LTD claim, it is imperative to first determine if the claim is governed by state or federal law. The general rule is that if an individual purchased their LTD coverage from anyone other than their employer, then the policy is almost always governed by state law. In a state law claim, a disability insurance company’s failure to pay LTD benefits gives the claimant the right to file a first-party breach of contract cause of action. If a claimant obtained their LTD coverage through their employer as an employee benefit, regardless of who paid the premiums, then the policy is usually governed by the Employee Retirement Income Security Act (ERISA). An ERISA-governed policy is referred to as a group disability policy and a non-ERISA policy is known as an individual disability policy. More than 85% of people with LTD have a group disability policy governed by ERISA. Most ERISA disability policies require a claimant to apply for SSDI as the disability insurance offsets the LTD monthly benefit by the amount of the SSDI benefit.

ERISA is a complex law that provides specific administrative requirements, guidelines and time frames that must be complied with during both the application and denial stage of a claim. For example, if an ERISA governed disability claim is denied, then a lawsuit can never be filed without the filing and resolution of an administrative appeal. Some ERISA LTD policies require two appeals, and the appeal is reviewed by the same insurance company that made the initial denial. A lawsuit filed in an ERISA claim is a breach of fiduciary duty action, and a highly litigated issue is whether the court will apply either a de novo review or a deferential arbitrary and capricious standard of review. The deciding factor in determining the standard of review will be whether the subject disability plan contains a discretionary clause. A discretionary clause is policy language that grants the insurance company or plan administrator the power to administer and interpret the terms of the disability plan. If a plan contains a valid discretionary clause, then the arbitrary and capricious standard will apply.

The state of Ohio has not abolished discretionary clauses in ERISA disability policies, but more than 15 states have passed laws preventing insurance companies from selling LTD policies containing discretionary clauses. A valid discretionary clause puts significant limitations on a judge’s ability to reverse a claim denial, as the judge must be able to determine that the insurance company was not only wrong in their claim decision, but that the company also acted unreasonably in their claim review and handling. Furthermore, in every ERISA lawsuit, the judge can only consider information that was submitted prior the insurance company’s final decision of an administrative appeal. If a claimant gets hit by a bus the day after a final administrative appeal decision is made, then the court would not be permitted to consider the new information. Unlike an SSDI final hearing, most ERISA lawsuits are resolved by a summary judgment motion and the court is prohibited from conducting a trial to hear any new evidence. The discovery in an ERISA disability claim is usually limited to conflict of interest fact-finding in an effort to get the court to apply a denovo standard review rather than arbitrary and capricious. Jury trials are unfortunately prohibited in an ERISA action.

The Department of Labor regulations governing ERISA disability claims have recently been revised by the department of labor and the new regulations are planned to be effective sometime in 2018.

Andrew November is chair of the Social Security and Disability Section. He is a shareholder at Liner Legal where he represents clients before the Social Security Administration. He has been a CMBA member since 2009. He can be reached at (216) 282-1773 or anovember@linerlegal.com.

Gregory Michael Dell, is the Managing Partner of Dell & Schaefer Charted, a nationwide disability insurance law firm that has helped thousands of claimants collect disability insurance benefits. Mr. Dell and his team of disability insurance lawyers help claimants apply for benefits, appeal claim denials, file ERISA disability lawsuits, and negotiate lump sum buyouts. Additional information about Mr. Dell and his law firm is available at www.diattorney.com or by calling (888) 682-8331.
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<td>Office Closed</td>
<td>Estate Planning, Probate and Trust Law Section Grievance Committee Meeting</td>
<td>CMBA Board of Trustees’ Meeting</td>
<td>Family Law Section Meeting &amp; CLE Small &amp; Solo Section Happy Hour – 5 p.m. (Location TBA)</td>
<td>Federal Practice Video Replay – 9 a.m. Pro Se Divorce Clinic – 10 a.m. (Law Library) Division of Fees Committee Meeting Pro Se Plus – 1 p.m. (Law Lib.)</td>
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<td>Mental Health Meeting CMBF Endowment Committee Meeting – 4 p.m.</td>
<td>Estate Planning Institute Video Replay – 8:30 a.m. Membership Comm. Mtg. Bar Admissions Appeal Hearing – 1 p.m.</td>
<td>Thought Leadership Committee Mtg. – 8 a.m. CMBA Leadership Academy – 11 a.m. Court Rules Comm. Mtg. Women in Law Game Night – 5 p.m. (Tabletop Cafe)</td>
<td>Thought Leadership Committee Mtg. – 8 a.m. CMBA Leadership Academy – 11 a.m. Court Rules Comm. Mtg. Women in Law Game Night – 5 p.m. (Tabletop Cafe)</td>
<td>Ohio Mock Trial Cuyahoga District Competition (Justice Center &amp; CC Courthouse)</td>
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**February**

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<td>CMBF Executive Committee Meeting – 8 a.m.</td>
<td>Grievance Committee Meeting</td>
<td>CMBF BOT Meeting WIL Section Meeting Pillars Program CMBA Movie Night – 6 p.m.</td>
<td>Ethics Committee Real Estate Law Section Lunch</td>
<td>Pro Se Divorce Clinic – 10 a.m. (Cleveland Law Library) MCP Interviews – 3 p.m.</td>
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<td>Ohio Mock Trial Cuyahoga Regional Competition (Cuyahoga County Courthouse)</td>
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<td>Estate Planning, Probate &amp; Trust Law Section Grievance Committee Meeting</td>
<td>Fee Dispute Hearing – 10:30 a.m. CMBA Board of Trustees’ Meeting Labor &amp; Employment Section Lunch and CLE Balancing the Scales – 5 p.m.</td>
<td>President’s Day Seminar – 10 a.m. Thought Leadership Committee Meeting – 8 a.m. CMBA Leadership Academy – 9 a.m. Court Rules Comm. Mtg. Family Law Section Meeting and CLE</td>
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- **Westlake** - Newly renovated law office. 3,000 square feet, move-in ready, immediate occupancy. Reasonable rent. Contact Michael Kulick at (440) 503-9685 or staff@kulickdds.com to schedule a visit.

### Office Space/Sharing

- **Suburbs – East**
  - **Beachwood** - Office space. Inside parking. Small office/windows. Reasonable. Some possible overage. (216) 244-3423
  - **Beachwood** - Office space 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 - corner of Richmond and Cedar Road. Large windowed office with amenities and free underground parking. Reasonable rent. For more information, call or email (216) 292-4666 or limlaw@sbcglobal.net.

- **Suburbs – West**
  - **Avon** - New office space with multiple professionals. Great for networking. Desirable location across from Avon Commons on Detroit Road. Many included amenities. Contact Doug: (440) 937-1551.
  - **Avon** - Office space – One newly furnished office in attractive two attorney suite with conference room and reception area. Historic building. Excellent location with free parking. Please contact mscroth@sicroth-law.com for details.
  - **Fairview Park** - Beautifully remodeled. Many amenities included. As low as $475 per month. Call (440) 895-1234 to schedule a visit.
  - **Lakewood** - Furnished office available in nicely decorated suite. $500/month includes office, WiFi, utilities, conference room and free parking. (216) 246-1392.
  - **Lakewood** - Office space in a newly updated modern suite available. First floor, Library, Internet, copy, fax, scanner, receptionist. Call: Skip Lazzaro (216) 226-8241.
  - **Westlake** - One/Two offices in Gemini Towers across from Crocker Park; includes phones, fax, copier, wi-fi, receptionist, conference room. Call: (440) 250-1800 to schedule a visit.
  - **Sheffield Village** - Law office for rent in prime location near I-90, has ample parking and handicap accessibility. Furniture is available for sale. Call (440) 503-9090.

### Downtown

- **55 Public Square** - Office available in nicely decorated suite with receptionist, fax and copier. (216) 771-8084
- **75 Public Square** - One completely furnished office – Gary (216) 621-9181
- **820 W. Superior Ave** - Two large offices available in existing suite with 4 other attorneys. Full amenities. Support staff space available. Call (216) 241-3646.
- **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.
- **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.

### For Rent

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

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Gallagher Sharp LLP is pleased to announce that Bradley N. Ouambo has joined the firm as an Associate. Mr. Ouambo is a member of the firm’s General Litigation and Transportation Practice Groups.

Buckley King congratulates the following attorneys named to the 2018 edition of The Best Lawyers in America: Brent M. Buckley, J. Timothy Bender, J. Scott Broome, Theodore M. Dunn, Jr., Harry W. Greenfield, Rosemary Sweeney, and Jeffery C. Toole.

Ulm & Berne LLP is ranked in the top half of all firms in BTI Consulting Group’s 2018 Client Service A-Team survey.

The law firm of Dinn, Hochman & Potter is pleased to announce that attorney Steven B. Potter, partner with the firm, has been named a 2018 Ohio Super Lawyer. Benjamin D. Carnahan and Jared Klebanow, attorneys with the firm, have been named 2018 Rising Stars. Michael C. Hennenberg and David C. Weiner, of counsels to the firm, have been named 2018 Ohio Super Lawyers for the 15th consecutive year. Justin Withrow, associate attorney for Michael C. Hennenberg, has also been a 2018 Ohio Rising Star.

The law firm of Bonezzi Switzer Polito & Hupp Co. LPA. congratulates Jeffrey W. Van Wagner who has been selected for inclusion in The Best Lawyers in America for 2018.

Ian N. Friedman, of Friedman & Nemecek, L.L.C., has been elected President of The American Board of Criminal Lawyers for the year 2018.

The law firm of Meyers, Roman, Friedberg & Lewis is pleased to announce that its offices have moved to the newly renovated 6th floor of Eton Tower.

The Ohio Association of Civil Trial Attorneys presented its 2017 Public Service Award to Cuyahoga County Common Pleas Court Judge Michael P. Donnelly.

Power management company Eaton honored Rooney Rippie & Ratnaswamy LLP for their strong commitment to inclusion and diversity as part of the Eaton Law Department’s supplier recognition program. The firm was chosen for the Supplier Inclusion and Diversity Excellence Award from a select group of nominated firms.

The National Court Reporters Association, the country’s leading organization representing stenographic court reporters, captioners, and legal videographers, has announced that Donnalee Cotone has earned the nationally-recognized Certified Realtime Captioner certification.

U.S. News – Best Lawyers® ranked Kaufman & Company, LLC on the 2018 “Best Law Firms” list in Cleveland for their work in real estate, commercial and intellectual property litigation. The firm was also nationally also ranked for their real estate litigation work.

Kaufman & Company, LLC has once again been ranked as a “Recommended Firm” in Ohio in the 2018 edition of Benchmark Litigation. Additionally, this marks Managing Member Steven Kaufman’s sixth consecutive year being named as an Ohio Litigation Star. Cavitch Familo & Durkin, Co., LPA. announces their Super Lawyers: Michael Cohan, Roger Kleinman, Roy Krall, Gregory O’Brien, Timothy Warner; and Rising Stars: Jennifer Himmelein and Komlavi Atsou.

Ulmer & Berne, LLP is proud to announce the following partners have been recognized in the 2018 edition of Benchmark Litigation as State Litigation Stars: Jeffrey S. Dunlap, Frances Floriano Goins, and Michael N. Ungar.

The law firm of Dinn, Hochman & Potter, is pleased to announce that attorney Steven B. Potter, partner with the firm, has been named a 2018 Ohio Super Lawyer. Benjamin D. Carnahan and Jared Klebanow, attorneys with the firm, have been named 2018 Rising Stars. Michael C. Hennenberg and David C. Weiner, of counsels to the firm, have been named 2018 Ohio Super Lawyers for the 15th consecutive year. Justin Withrow, associate attorney for Michael C. Hennenberg, has also been a 2018 Ohio Rising Star.

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