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Hon. Diane M. Palos

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By Jennifer M. Himmelein

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BAD CHECK SCHEMES AIMED AT GOOD LAWYERS
By Ryan P. Nowlin

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Lucy Jackson
Firm/Company: CMBA
Title: Receptionist and Catering Coordinator
Start Date: March 27, 2011

IF YOU WERE NOT THE CMBA RECEPTIONIST, WHAT WOULD YOUR PROFESSION BE?
Chef (I know you were thinking a celebrity hair stylist)

WOULD YOU CONSIDER A ONE-WAY MISSION TO MARS? WHY OR WHY NOT?
Nope, I don’t do heat on Earth so I definitely won’t be going to Mars.

WHAT DO YOU LOVE ABOUT THE CMBA?
The staff — this is my home away from home.

WHAT ARE YOUR HOBBIES OUTSIDE OF WORK?
Volunteer Cleveland Muny League (cheerleading coach), Cooking and hair styling (#hairdubylu).

Danielle O. Doza
Firm/Company: Empowering and Strengthening Ohio’s People
Member Since: 2013
Undergrad: The Ohio State University
Law School: Cleveland-Marshall College of Law

WHAT IS YOUR FAVORITE CLEVELAND HOT SPOT AND WHY?
I love being in the Metroparks. There are so many places to walk, hike, and just relax. This year I’m hiking with a group of friends in every Metroparks reservation.

WOULD YOU CONSIDER A ONE-WAY MISSION TO MARS? WHY OR WHY NOT?
Absolutely not. Space freaks me out! However, my Dad works for NASA. My name was actually on a list that went with the Mars Polar Lander, which landed on Mars December 3, 1999.

WHY DID YOU RENEW YOUR CMBA MEMBERSHIP?
I often enjoy the events and CLEs. I am also the co-chair of the CMBA LGBT & Allies Committee and getting involved with the Diversity and Inclusion Committee.

WHAT ARE YOUR HOBBIES OUTSIDE OF WORK?
I’ve coached the Lakewood High School Girls Rugby team for the past five years. I’m in the Fantastic Book Club. And I’m very excited to be a member of the Cleveland Bridge Builders Class of 2016.

Ian N. Friedman
Firm/Company: McCarthy, Lebit, Crystal & Liffman Co., L.P.A.
Member Since: 2002
Undergrad: Ohio University
Law School: Cleveland-Marshall College of Law

WOULD YOU CONSIDER A ONE-WAY MISSION TO MARS? WHY OR WHY NOT?
With the wisdom that comes with age, I would go today only if Jamie and the kids could come, I knew we would live, and the kids could be happy while making positive contributions. Chances are that those guarantees could not be given so I’ll stay on Earth for now.

WHY DID YOU RENEW YOUR CMBA MEMBERSHIP?
I renewed my CMBA membership because I need to be involved in organizations that better our profession. I like being around good lawyers who are proud of what we do. All lawyers have a duty to give back in my opinion. The CMBA exposes me to professionals from many different practice areas and I always have a good time at the events.

WHAT ARE YOUR HOBBIES OUTSIDE OF WORK?
When not working, I like just hanging out with my family. A perfect day is exploring the outdoors with them and then going for a fun dinner. Some nights it’s a good restaurant and others may be at home on my charcoal grill. We travel frequently and are always looking to the next vacation destination. Of course, some days, particularly after trials, are made for the couch and flipping. There’s nothing better than laughter.

INTERESTED IN BEING FEATURED OR KNOW SOMEONE WHO MIGHT?
E-mail Jackie Baraona at: jbaraona@clemetrobar.org.
8TH ANNUAL MEETING
HONOREES

Hon. William K. Thomas
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For enhancing professionalism and ethics in the Greater Cleveland legal community

Hon. Michael P. Donnelly

Justice for All Volunteer of the Year

HON. DAN AARON POLSTER
For outstanding service to the community of Greater Cleveland

Dan Aaron Polster

The Roger S. Aaron Award

HON. KATHLEEN M. O’MALLEY
A Clevelander who has made great contributions to the legal profession beyond Cleveland’s borders

Hon. Kathleen M. O’Malley

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GINGER F. MLAKAR
For outstanding service to the Cleveland Metropolitan Bar Association & Foundation

Ginger F. Mlakar

President’s Award

HUGH E. MCKAY
For outstanding service to the Cleveland Metropolitan Bar Association & Foundation

Hugh E. McKay
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Employer: Cleveland Metropolitan Bar Association
Law School: OSU College of Law
Member Since: 1995

KOMLAVI ATSOU
Firm: Cavitch, Familo & Durkin Co., LPA
Law School: Case Western Reserve University School of Law
Member Since: 2012

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Firm: Vorys, Sater, Seymour and Pease LLP
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Member Since: 1989

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last week, my husband brought home Chinese food at the request of our younger daughter, who loves General Tso’s chicken. My weakness, of course, is the fortune cookie. Sometimes apt, sometimes off-base, but always interesting — plus crunchy. Here is the fortune in my cookie last week: “In great attempts it is glorious even to fail.”

I elected to take this as a good omen for the bar year ahead, even though I’m hoping for something more than glorious failure, because I do believe we are making great attempts.

As have all of my predecessors at the lectern today, I want to welcome each of our distinguished guests: justices and judges, other public servants, fellow attorneys of all stripes, students, friends and family. You all have agreed to support the mission of the Cleveland Metropolitan Bar Association by sharing our luncheon today. Thank you all so much for being here.

With you this afternoon, I have applauded the presentation of awards and honors to many extraordinary attorneys. Every one of them, irrespective of age or practice, has something to teach us about honoring and being our best selves. I congratulate each award recipient. I also have a special word of thanks for our 50- and 65-year practitioners: you inspire all of us to see the word “lawyer” as a way to live, not just a way to earn a living.

Our Heritage in the Law
That notion of being a lawyer, rather than just working as a lawyer is as old as our profession, and indeed is integral to an understanding of what elements make our life’s work a profession.

“Historically there are three ideas involved in a profession: organization, learning, i.e., pursuit of a learned art, and a spirit of public service. These are essential. A further idea, that of gaining a livelihood is involved in all callings. It is the main if not the only purpose in the purely money-making callings. In a profession it is incidental.”

The Lawyer from Antiquity to Modern Times, With particular reference to The Development of Bar Associations in the United States, 6, Pound, (West, 1953).

Legal scholar Roscoe Pound, writing at the behest of the American Bar Association, identifies these three essentials to the historical definition of a profession. His further discussion, though, clarifies that he also believes this is a current, pragmatic and proper way to think of the law — at least as of 1953, when the book was written. Even 60 years later, I share this belief.

If the law is a profession, then, according to Dean Pound, an essential first element of that status is organization. This is where the local bar association comes in.

“By a bar association, then, we mean an organization of lawyers to promote and maintain the practice of law as a profession, that is, as a learned art pursued in the spirit of a public service — in the spirit of a service of furthering the administration of justice through and according to law.”

Id., 14.

The bar association provides the organiza-tional structure to support both the pursuit of a learned profession — in other words, continuous learning throughout one’s career — and the spirit of public service, which enriches our community at the same time it adds depth to our lives. Indeed, the closing sentence of our mission statement mirrors Dean Pound’s words: “The CMBA works to advance the greater Cleveland legal community as a world-class center of professional excellence and model of community service.”

Public Service v. Making a Living
Before reading Dean Pound’s book, I confess that I had never considered making money from my labors as a lawyer to be “incidental” to my status as a professional. And yet, I had a powerful example of this spirit of professionalism before me as I grew up. Most of what I know about being a professional I learned early from the man in the tie — my father.

Come, Meet Me at the Bar
Delivered June 5, 2015 at the Annual Meeting

Anne Owings Ford
Clyde Lacy Owings, M.D., Ph.D., was a professor at the University of Michigan, teaching in both the medical school and the college of engineering. Although we lost Dad in 2009, my mother, Virginia Owings, who will be 84 next month, is here with us today. Thanks, Mom. At his core, Dad was a pediatrician, never happier than when he had a toddler on his lap.

At home, Dad’s armchair was hidden by stacks of medical and electrical engineering journals, and these were his reading of choice every evening. Dad wore multiple pagers on his belt, to be available to the doctors, nurses and social workers at the hospital. In addition to his usual “on-call” schedule, Dad was called out frequently to consult and advise on possible cases of child abuse and neglect — his reputation in this difficult area was national, and he taught doctors, nurses, social workers, prosecutors and others the basics of recognizing physical and social signs and symptoms of abuse.

The idea of Dad’s work being a “job,” like, say, the one I held with McDonald’s the summer after graduating from high school, was absurd on its face, even to a child. Dad was part of something larger than himself. To be a physician and to have the privilege of training others to become physicians was his greatest happiness.

Plainly, Dad had a much better handle on the spirit of public service than I have ever demonstrated, in that he never had a private medical practice — he practiced exclusively through the university. He literally practiced his profession in a spirit of public service, and only secondarily — if that — for personal gain.

“The best service of the professional man is often rendered for no equivalent or for a trilling equivalent and it is his pride to do what he does in a way worthy of his profession even if done with no expectation of reward. This spirit of public service in which the profession of law is and ought to be exercised is a prerequisite of sound administration of justice according to law.”

Id. 10.

Most of us would recognize Dean Pound’s statement as an aspirational ideal, if not precisely as words to live by. It is our good fortune that we need not give up a viable income in favor of providing legal services “for a trilling equivalent.” This good fortune arises from the CMBA’s numerous opportunities for serving the public in our own backyard.

Most of the CMBA’s public service programs — programs like The 3Rs, Cleveland Mock Trial, Louis Stokes Scholars — demonstrate our commitment to education. For decades, we have been going into Cleveland and East Cleveland schools, teaching, coaching, mentoring and making friends.

Our efforts make a difference to the students — a measurable one. We are coming up on our 10-year anniversary with The 3Rs program, and over that time, OGT social studies passage rates in the schools we have served have doubled. There are many such numbers, statistics and data, and all of them make us look good. To understand the true impact of our programs, though, you have to look beyond the numbers.

A number of years ago, I coached the mock trial team at the Martin Luther King, Jr., School for Law and Municipal Careers. We worked after school every week for more than two months. To ensure the students had the best shot possible, I undertook to give a crash course in how to reason, talk and write like a lawyer. When we got to the difference between “probable cause” and “reasonable doubt,” I was floored. These kids engaged with such intelligence, enthusiasm and fire that I was amazed — and then energized. I kept going back, year after year, both to coach them and to renew myself.

Another year, I recall teaching a 3Rs class with my team, which included two law students. I was energized, as always, by the students’ spontaneous enthusiasm and engagement. I found myself moving around the room like a game show host, delivering my portion of the lesson in a sort of call and response with the students. When we left, I felt great — like I was leaving the courtroom with a favorable jury verdict. One of the law students sighed and said, “Man, I wish my professors taught like that.” We started talking about teaching and learning styles, and I realized that the connections that drew me back to the schools were not only with the students but with my fellow volunteers, as well.

Recently, my favorite program has been the Louis Stokes Scholars. We have a table of current and former Scholars here today — please stand and be recognized. These college students, each of whom graduated from the Cleveland or East Cleveland schools, are pursuing a career in law, and they are determined to take advantage of the networking, learning and earning opportunities of being a Scholar. I have been impressed by their dedication and sacrifice to participate in the program.

The program ends with a graduation luncheon. Each Scholar is encouraged to bring a person who is important in his or her life. Last year, I approached one particularly hard-working and fiery young woman, who in the general chaos of the event was cuddling a beautiful child. “Who’s this?” I asked. She explained that this was her six-month-old daughter. She told me the rest of the story: how she had had her baby and graduated from high school within a three month period; how she had been accepted to college; and how she was going to be part of a new housing program at the college for young mothers working on their college degrees. I have had babies. Based on what I remember, this woman clearly was an irresistible force. She looked me in the eye, and said, “I’m going to make it. For her.” I looked at the dimpled baby and I believed her.

These students — these people — are worth our time and our best efforts. Not just to contribute to their education, but even more to establish relationships that are enriching on both sides. It has been my privilege to meet many remarkable young people through the CMBA’s public service programs. If these folks are our community’s future leaders, then we are in good hands.

Pro bono is a special category of public service. When we use our training as lawyers to help people in a way that nobody else can — through pro bono legal work — we surely are practicing law in a spirit of public service. Whether through a clinic or taking on a full-service matter, CMBA lawyer volunteers ensure fair access to justice.

And in breaking news, we are working with Legal Aid on a timely initiative, called ACT 2: Attorneys Committed to Justice. Retired and semi-retired attorneys will have options for using their wealth of legal knowledge and experience to mentor those just starting out in our profession while serving needy people. The founding joint committee for this program is being formed right now. Please let us know if you want to help shape this program.

At least in part, the CMBA exists to make the “spirit of public service” accessible to all of us. These programs and many others achieve just that.

It’s My Turn

So where does my ascension to this glittering pinnacle fit into the humble notion of public service I’ve described? Is all this glitter and pomp just a “me” festival? The connection between this presidency and the spirit of public service is closer than it might appear. Because although this is a special day for me, this moment was not
on my mind or in my heart when I agreed to seek the office of President of the CMBA.

When I am called upon to speak, whether to a panel of judges, to some 500 of my closest friends, like today, to several hundred Cleveland Metropolitan School District Mock Trial participants, or to my youngest daughter's first grade class (many years ago), invariably, the inspiration that carries the day strikes hours or even bare minutes before the speech. So it was when I came before the 2013 Nominating Committee.

As I stood to enter the conference room for my interview, I was still struggling with why. Why should the Committee select me? Extremely well-qualified attorneys had tossed their hats into the ring — why me? As I walked down the hall and opened the door, the answer finally, blessedly, came to me: it was my turn.

Not my turn to be photographed and feted, not my turn to tell others what to do, not my turn to snatch the permanent plastic nametag engraved with my name and the rank: PRESIDENT. Instead, it was my turn to carry the burdens of the organization, as those burdens have been carried by so many capable hands before mine. This year will bring its own unique challenges. But from my first Justice For All Committee meeting well over a decade ago to the present, I have been given so much as a member of the CMBA, that it is fair for me to carry the load for a while. By this, I say “thank you” to my predecessors in this office.

You see, it is my turn to put in the time, effort and, I hope, talent I have seen so many wonderful lawyers quietly devote to the mission and projects of the CMBA. Every past president in this room knows what I mean: this is a year of putting the CMBA first, being available at any time to make an appearance or speak a word on behalf of our profession. A year of committee meetings, rubber chicken and too much coffee; a year of fielding questions, concerns, new concepts and opportunities. A year, in fact, to say “thank you” to the CMBA and its members, for the matchless experiences the CMBA has given me.

One “thank you” is our new website and member communication platform, to be implemented this year. We will be crafting a system in which you can find the information you want and need, without wasting time on material you don’t. We want to make your communications with the bar exactly what you want and need them to be.

I also want to say “thank you” through our continuing effort to provide top-caliber CLE at reasonable prices, including our new partnerships with other bar associations, which broaden our reach and our curriculum offerings.

And I want to say “thank you” through what I consider the ultimate purpose of this or any other bar association: to facilitate collegial interaction of lawyers of all ages, specialties, races, genders and other forms of self-definition.

In other words, I want to throw you a party. Actually, I want to throw you a lot of parties. And we’ve already started. From meeting the local judges and general counsel in our new space last month, to summer happy hours on the patio at the Galleria, to free classic legal movies (with popcorn and everything) in our 398-seat theater later this year, we are thinking big for you. We all know that being a lawyer is not exclusively a serious, somber intellectual pursuit. Let’s enjoy the other side of our profession together.

I don’t want the CMBA to try to be “all things for all lawyers.” But I do want to ensure that every one of you finds something, it doesn’t matter what, something that draws you to the CMBA. We want you here; we need you here; and we believe you’ll enjoy being here.

I am deeply honored to be the president and therefore the public face of the Cleveland Metropolitan Bar Association for this year. As my fortune cookie foretold, we will make a “great attempt” to improve our already strong bar association. And I already know what my next fortune cookie will foretell:

“Now is a great time to meet me at the bar.” Thank you so much.

Anne Owings Ford has over 25 years’ experience in the world of litigation, from her first judicial clerkship to, most recently, her partner status at a national law firm. She has been a CMBA member since 1991. Anne currently is a litigation consultant, and she can be reached at aoford@roadrunner.com.
Happy Birthday, 3Rs!

-r-really hard to believe it has been 10 years since LeBron James agreed to appear on our video to help get the Cleveland students — and our lawyer volunteers — excited about a new program called The 3Rs. Louis Stokes, Judge Jose Villaneuva, Fred Nance, Stephanie Tubbs Jones and other leaders did likewise. And more than 500 of you got out of your comfort zone and went into the Cleveland and East Cleveland 10th grade classes. Thanks to you, like LeBron, The 3Rs is going strong 10 years later. Thanks to your support of the CMBF and 3Rs, we have looked more than 25,000 Cleveland and East Cleveland school kids in the eye to get them focused on graduating and on their potential beyond graduation.

As we enter the 10th year of the 3Rs program, it is a good time to reflect on how and why the CMBF’s — and your — support of the program is so important.

The words of 3Rs students, volunteers and the Cleveland Metropolitan School District itself are testament to why your support of the CMBF is essential and impactful. LaQues Harrison, Miami University Class of 2015, is a former 3Rs student:

“As a student, The 3Rs was the first time someone told me I could be something other than the stereotypical hairdresser. I had never been told before that ‘You could be a lawyer, you could be successful.’ For me, without The 3Rs program, I honestly don’t know where I would be today.”

The candid feedback we’ve received from other 3Rs students just this past year reminds us of the importance of the CMBF’s mission:

**Collinwood**

“They gave us support and a roadmap to help us later on in life.”

**Ginn**

“The 3Rs is awesome!”

**JFK**

“The 3Rs helped me to see what I really want to be in life.”

“They answered all my concerns, told me about college, and were real with the situation.”

**Lincoln West**

“I loved The 3Rs program! They were so helpful and cool!”

“They gave me a lot of helpful advice and information that I’m sure I’ll be using in the future.”

**Max Hayes**

“I really liked how you guys had time for us. Thank you!”

“The lessons were really thorough and clear. They helped me understand and they were amazing lessons.”

“The 4th Amendment lesson was my favorite one — it was interesting and fun to discuss. Also I did a project on it so … bonus!”
“I got some really good information to use in the future.”

It’s cool how you kept coming back.”

At the outset, I saw the 3Rs program as an opportunity to contribute to the Cleveland Metropolitan School District. I believe that the future of Cleveland is inextricably tied to the success or failure of CMSD, so that there is no more important place for one to volunteer.

I have found that there are many dedicated teachers and many students eager to learn, but of course both the teachers and students face a very challenging environment.

We have succeeded on all fronts, and that is why the District wants us back each year, and why we have been able to retain and recruit the large cadre of volunteers necessary to sustain the program.

I enjoy the interaction with the students, and I believe they are grateful that a group of adults care enough about them to come back to their class every month. Each year, I have combined one class with a courthouse visit during which the students observe a criminal proceeding, typically either a sentencing or a change of plea hearing. This gives me the opportunity to share some insights into my work, as well as to engage in a dialogue about the criminal justice system.

At this point, I can’t imagine a year without 3Rs.”

Eric Gordon, the CEO of the CMSD, adds:

“I want to congratulate the Cleveland Metropolitan Bar Association as it begins the 10th year of The 3Rs Program. This nationally-recognized, Naward-winning program has most definitely made a difference in the lives and the education of thousands of Cleveland high school students over the past 10 years. We are most fortunate to have this partnership with the bar association whereby hundreds of lawyers volunteer their time to come into our classrooms on a regular basis to talk with our students about their constitutional rights and the legal profession, while also providing practical career counseling. I along with the Board of Education, our students and our teachers thank the Bar Association and its members for their commitment to Cleveland’s students. We look forward to the next 10 years of this valuable partnership.”

In keeping with our 10th Anniversary theme, here are:

“Top 10 Things to Know about The 3Rs”

10. The 3Rs is the largest community outreach volunteer initiative ever undertaken by the Bar Association in scope and scale, with 500 volunteers needed each school year to form enough teams to reach every 10th-grade classroom. The 3Rs has engaged 1,900 volunteers so far and is looking to increase those numbers with your help.

9. The 3Rs is flexible and has adapted well to transformational changes in the Cleveland and East Cleveland schools, from block schedules to the 40-minute class period and from school closings to new school openings (goodbye East and South High Schools, hello Ginn Academy and New Tech). Big changes are ahead in our 10th school year, with the potential phasing out of the Ohio Graduation Test and introduction of the new end-of-year assessment examinations mandated by the State of Ohio.

8. Since its start, the program has been supported financially by the Cleveland Metropolitan Bar Foundation, through the generosity of Cleveland’s legal community who have supported the CMBF at its annual fundraising special events (Halloween Run for Justice and Rock the Foundation) and annual gifts to Friends of The 3Rs, along with the Fellows program and gifts to the Endowment Fund.

7. In each year so far, 3Rs student surveys reveal their favorite lessons are the First Amendment — Freedom of Expression and the Fourth Amendment — Search and Seizure. This year, they appreciated the new lesson introduced on the timely topic of staying safe in police encounters.

6. The 3Rs volunteer pool is the most diverse of any of the Bar Association’s programs. Every demographic of lawyer is involved, including members of the bench from every level of court, lawyers from all practice types, retired lawyers, in-house counsel, government lawyers, Legal Aid lawyers, law school faculty and nonprofit organizations. Law students from Cleveland-Marshall and Case Western Reserve volunteer in big numbers, and paralegals are also involved on many volunteer teams.

5. Springing from the success of The 3Rs and to extend the “pipeline,” the Louis Stokes Scholars Program was started four years ago by the CMBA for graduates of the Cleveland and East Cleveland schools who are enrolled in college and who are interested in pursuing legal careers. In its four years, the program has welcomed a total of 45 Scholars, all of whom were inspired by The 3Rs. Out of the 45 Scholars, two are currently enrolled in law school, five more have been accepted or are applying to start in 2016, and at least another five are preparing for the LSAT and admission in 2017.

4. Since the start of The 3Rs in the 2006-2007 school year, passage rates on the Ohio Graduation Test — Social Studies section have risen in Cleveland from 22% to 56% and in East Cleveland from 29% to 63%. District graduation rates have also risen from below 50% to 56% in Cleveland and 66% in East Cleveland. There has been progress, but still more work to be done.

3. LeBron James: As noted above, when The 3Rs launched, our ultimate superstar, who also cares deeply about the kids in Cleveland, contributed his time and talent to introduce The 3Rs in the program’s video. Lebron and The 3Rs are still on a roll!

2. The 3Rs has reached more than 25,000 students in its first nine years.

1. The 3Rs is still going strong because the Cleveland legal community really cares about the students in the Cleveland and East Cleveland schools — they are our city’s future. No bar association in the country has demonstrated such a high level of commitment to the schools.

While the “metrics” on the positive impact of The 3Rs are significant, the program’s pervasive positive impact is immeasurable. As a Shaw High teacher said of The 3Rs, “The greatest gift you lawyers give the kids is getting them to believe in themselves.”

In addition to the sweat equity of 500 committed Cleveland lawyers and law students, your financial support of the CMBF allows for the additional equity that is needed to sustain the 3Rs and other impactful programs such as Mock Trial and the Stokes Scholars programs. So, as we celebrate the 10th year of The 3Rs, please continue to invest in the CMBF and The 3Rs. Your generosity with your time and your treasure is having a major positive impact on the students and the community. Let’s stay “All In.” LeBron James approves of this message!

CMBF President Hugh McKay grew up in East Cleveland, attended Brown University (BA ’78) and the University of Pennsylvania (JD ’81). He is the former President of the CMBA, creator of The 3Rs program, and is Partner-in-Charge of the Cleveland office of Porter Wright where he practices complex commercial litigation. He has been a CMBA member since 1982. He can be reached at (216) 443-2580 or hmckay@porterwright.com.
The Purpose of Foreclosure Mediation

BY JOHN A. MINTER

Parties often enter foreclosure mediation thinking the sole issue is whether a homeowner’s income allows him to qualify for a loan modification under the applicable lender’s and/or government guidelines. Having this mindset, however, limits the process’s opportunities. At the beginning of the mediation process, each party is asked to discuss how he ended up in foreclosure. This opportunity allows embarrassed homeowners to overcome their embarrassment by explaining how they got behind on their payments. A homeowner’s explanation often reveals a real hardship as opposed to recklessness or negligence in making the payments. Common hardships include the homeowner or another financial contributor in the home having his hours cut at work or losing his job, suffering through a serious illness or having to pay for an unexpected car or home expense. While on the surface this information may seem irrelevant to the lender or other foreclosing party, it often provides valuable information. A homeowner’s story that contains information about his hardship can guide the parties as to what options are available under the applicable guidelines. Homeowners also often have information about previous loss mitigation attempts with the lender or other foreclosing party. This information can be helpful to Plaintiff’s counsel because clients don’t always provide detailed information regarding prior loss mitigation attempts and these prior attempts can give rise to legal issues.

An explanation from the lender and other parties regarding how they arrived in foreclosure is also valuable information. For example, a lender’s story can identify and explain how much is owed on the loan and the estimated market value of the home. Often homeowners enter into the process, and maybe even a prior modification, without focusing or even identifying the amount they owe in comparison to what the home is worth. While this information, especially early in the process, does not usually change the mind of a homeowner that wants to keep his home, providing this information gives the homeowner an opportunity to think about it. Homeowners that have time to reflect on paying $100,000 for a home with a $35,000 market value are usually willing to at least discuss non-retention options later in the process.

Attorneys that pay attention to the parties’ stories often reveal a real hardship

Attorneys that pay attention to the parties’ stories will not be alone. The foreclosure mediator is also listening and is trained to identify the issues between parties. The mediator is looking for subject matter issues and process related issues. A common foreclosure subject matter issue is which retention and non-retention options exist. An example of a process related issue is how well the parties communicate during the mediation process. Addressing this issue requires a mediator to determine when the next mediation contact will be, how often the contacts will occur and what form (e-mail, telephone conference or in person meeting) they will take. A client’s attorney can help the mediator identify the issues and create the appropriate mediation process by listening to the parties’ stories and ensuring his client’s concerns are expressed.

Parties often come into mediation with a strong idea regarding what they want, their “position”, but not always why they want it, their “interests”. Because parties come into mediation focused on their positions, after they tell their stories and the issues are identified, the mediator asks questions to help bring out the parties’ interests. Parties often view these inquisitive challenges to their positions as a negative, “Why are we discussing selling the home when I want to keep it?” and “Why are we focusing on the cost of the homeowner’s insurance and taxes when the guidelines already determined a mortgage payment is not affordable”? An attorney that tolerates the mediator asking these types of questions and participates in asking them will increase the chance the mediation’s outcome will be the best one possible.

Attorneys that use the mediation process to help their clients identify interests have several tools available to them. One such tool is the caucus. A caucus is a private conversation between an attorney, his client and the mediator. Caucuses provide a safe space for the mediator and the party’s counsel to ask a client challenging questions. A mediator tries to determine when to caucus based on his own observations, but an attorney should also feel free to request one. Whether in caucus or not, an attorney should consider asking his client hypothetical questions to explore options that differ from the client’s initially stated position. Hypothetical questions give a client the ability to discuss other possibilities, without committing to an option in a specific case. Attorneys can also use the mediator as a scapegoat when challenging a client’s position or when asking the client to explore an unpopular option. For example, an attorney can say, “I don’t like this option either, but I know the mediator is going to ask about it, so we might as well be prepared.” The above are just a few ways attorneys can use mediation and mediators to challenge a client’s position. Challenging a client’s position in mediation, if done appropriately, is a way to advocate for him. An attorney that questions a client’s position helps create a mediation focused on interests. A focus on interests creates more possible options to resolve a case. The more options discussed, the more likely a client’s final decision will be the best decision possible.
What does mediation look like where attorneys and the mediator help the parties focus on interests instead of positions? Assume a homeowner comes into foreclosure mediation and when asked what she would like to see happen says, “I want to keep my home.” This is the homeowner’s position. A follow-up question from the mediator, or even a well prepared attorney, could be, “why do you want to keep it?” This helps the homeowner start to think about her interests. Answers from the homeowner might be, “I want to stay in the neighborhood so my kids can go to the same school.” Based on this information, it appears one of the homeowner’s interests is to ensure stability for her children. While the homeowner’s position of staying in the home would satisfy this interest, there are other options that could satisfy it as well. This interest may also be satisfied if the homeowner does not try to keep the home, but instead uses her mortgage and home maintenance money to rent a home in the same school district. This option might actually meet the homeowner’s interest better as a cheaper rent payment may increase the chance of financial stability for the family, which would increase the child’s overall stability. By focusing on the interests, non-retention options like short sale, deed in lieu and consent with waiver of deficiency also become possible ways to resolve the case.

On the other side of the table, let’s say the lender comes into the foreclosure mediation and states, “There are no retention options available because of the investor’s guidelines.” This is the lender’s position. From this statement, the participants in the mediation can determine the lender has an interest in following the investor guidelines. When this interest is explored, the parties may determine that when the lender says “no retention options are available” he really is referring just to loan modifications. The investor might be more than willing to accept a reinstatement payment, a repayment plan or a full loan payoff. If the parties focus on the lender’s position, “there are no retention options available” there are no options to discuss to resolve the case; however, by focusing on the parties’ interests, several possible options appear. The parties may not be able to agree on any of these options, but they can leave mediation with confidence that they had a thorough discussion regarding all possible resolutions. While this understanding will often be insufficient consolation for a homeowner that wanted to keep her home but couldn’t, helping her identify her interests is valuable now that she has to determine the best option available other than a negotiated agreement. The above example is simplified as neither homeowners’ nor servicers’ interests are singular, and while taking all additional interests into consideration may eliminate some options, even focusing on multiple interests will bring to light more possible options than just focusing on positions.

So while agreements are a common and beneficial consequence of mediation, the lack of an agreement does not mean mediation was a failure. Attorneys that focus on identifying the issues that separate the parties and understanding the interests behind each party’s position will ensure that each mediation they attend, regardless of whether an agreement is reached, is a productive one.

John Minter is the Director of the Foreclosure Mediation Program with the Cuyahoga County Court of Common Pleas. Prior to coming to Cuyahoga County, John was an Assistant Prosecutor with Marion County, Ohio and a solo practitioner. He has been mediating for over a decade and was the 2007-2009 Langdon Fellow in Dispute Resolution at The Ohio State University Moritz College of Law. He joined the CMBA in 2014. John can be reached at (216) 698-7138 or jminter@cuyahogacounty.us.
Domestic Relations Court Updates

BY HON. ROSEMARY GRDINA GOLD & HON. DIANE M. PALOS

The Domestic Relations Court has been working on several projects to enhance and increase attorney participation in family law cases while serving the parties whose family dispute has landed in the Court. Some of the projects are outgrowths from the Ohio Domestic Relations Summit, while others are efforts to respond to gaps in service.

Neutral Evaluation Days
Cuyahoga County Domestic Relations Court, with the help of volunteer attorneys from the CMBA’s Family Law Section, The Center for Principled Family Advocacy, and The Academy of Collaborative Professionals, conducted three successful Neutral Evaluation Days at the Court to help resolve difficult cases heading for trial. The first two were held during Celebrate Court to help resolve difficult cases heading for trial. The first two were held during Celebrate Court to help resolve difficult cases heading for trial. The first two were held during Celebrate Court to help resolve difficult cases heading for trial. The first two were held during Celebrate Court to help resolve difficult cases heading for trial. The first two were held during Celebrate Court to help resolve difficult cases heading for trial.

Another was held on May 1 (Law Day) this year. “The concept of ‘Settlement Days’ has been used in different contexts by courts for some time,” said Judge Rosemary Grdina Gold, who headed up the committee organizing the events. “We have had such positive responses from the volunteer attorneys and litigants that we hope to schedule more on a regular basis throughout the year.” Cases are selected that we hope to schedule more on a regular basis throughout the year. “Sometimes it just takes another person’s view of the issues to get people to agree,” said Amy Keating, co-chair of the Family Law Section, who participated as a legal neutral facilitator by monitoring the progress of each group and assisting where needed.

The sessions are generally conducted for one-half day. Cases are matched to volunteers by the Court’s Mediation Department. Many of the cases resulted in agreements which were written up that day and presented to the Judge with a Judgment Entry of Divorce. In other cases, the parties and counsel requested that they continue the process with the assigned evaluator.

For more information, interested parties and attorneys can contact Stacy Paghis in the Court’s Mediation Department (216-443-3758) or at spaghis@cuyahogacounty.us.

The Domestic Relations Court Summit
In April 2014, the Supreme Court of Ohio held a Domestic Relations Summit in Columbus where each county’s Domestic Relations Court was invited to send a team to participate in a two-day symposium on best practices and evidence-based presentations on parenting disputes, interfamilial violence, and case management. As a result of the participation of the five Domestic Relations Court Judges, Chief Magistrate Serpil Ergun and the attorney team, Barbara Roman, Alexandria Ruden, Edward Jansen, Stephen Daray, and Facilitator Amy Wirtz, projects are underway and a CLE, in co-sponsorship with the CMBA, occurred in April 2015.

CLE: Resolving Parenting Matters
To meet the needs of the Domestic Relations Court GALs and other attorneys and professional court staff, the DR Court co-sponsored a day long CLE for attorneys and held a half day CLE for court staff only. Gabrielle Davis, J.D., of the Battered Women’s Justice Project (BWJP) was invited to explain how to use the Practice Guides developed by the BWJP for decision-making in domestic abuse related parenting matters. This guide includes a screening tool. The screening tool helps identify family abuse by assisting attorneys in interviewing clients to obtain a clearer picture of what is happening.

The questions are designed to help the professional recognize if family violence is occurring and to help sort the cases where there is an allegation versus a reactive event versus coercive control. It helps put allegations in context. The interview protocol begins with sample open ended questions, and provides examples of more concrete questions that should be asked as a follow up, if the initial questions raise the suspicions of the questioner that the issue of violence should be explored. Attorney Ed Jansen said, “After hearing the presentation, I understood that family violence has an impact on all aspects of the divorce case. The Practice Guides will help me sort fact from fiction.”

Henry County Family Court requires that all attorneys use the questionnaire at intake with all clients. This Court is exploring how to use the instrument to improve screening internally and encourages all attorneys to familiarize themselves with it.

The other function of the Practice Guides is to assist the professional in designing an appropriate parenting plans based upon the clearer information obtained from the screening and follow-up questions. If anyone is interested in obtaining a copy of the Practice Guides please email Judge Diane M. Palos at dpalos@cuyahogacounty.us.

In addition to the Practice Guides, other topics of interest to attorneys and GALs were presented at the full day CLE. Tim Bohnlein of the Domestic Violence and Child Advocacy Center presented on the implications of substance abuse on parenting. He focused on the co-occurrence of addictions in families.

Bryan Hegyes, an attorney and South Euclid police officer, presented on situational awareness. He warned that there are three attitudes which can increase risk to attorneys and GALs when meeting with clients or doing home visits. These are complacency, routine and an inflated sense of ego. His advice: know your surroundings, plan ahead and don’t be afraid to leave or end an interview.

GALs Edward Jansen, Stephen Daray and Becky Blair addressed best practices for GALs...
Unbundled Legal Services
The Summit Team hopes to make “unbundled” legal services a topic of discussion.

While the Ohio Rules of Professional Conduct allow attorneys to enter into limited scope representation contracts where that is reasonable (Rule 1.2(c)), family law attorneys have been resistant to embrace the concept. This is mysterious since transactional attorneys have always provided clients with unbundled services such as ghostwriting a termination letter for an employer or coaching a client on how to behave or respond at events with legal ramifications. Additionally, case law elsewhere has protected the limited scope relationship of an attorney in a family law case. Lerner v. Laufer, 359 N.J. Super. 201 (App. Div.), certif. denied, 177 N.J. 223 (2003).

As many working, but limited resource clients struggle to represent themselves through family law matters and attorneys struggle to find clients, the match of providing pleadings, coaching, negotiation or drafting of agreements would seem to be a benefit to both and to a court struggling to manage all of the self-represented litigants.

GAL Open House and Mentoring
The best use and training of GALs has been a priority of the Summit Team, starting with the CLE discussed above. There are new GALs on the Domestic Relations Court list who have not had a case assigned and there are experienced GALs who have a wealth of information to share. The Domestic Relations Court sponsored a Court Open House July 9. This was an opportunity for attorneys to meet all of the GALs, not just the familiar faces. In addition, a mentoring program was launched where new GALs were paired with volunteer experienced GALs. The mentoring program allows the new GALs to share good practices and to aid the new GALs in meeting attorneys and court staff. Participants joined Judges and Magistrates in welcoming new GALs to help focus on the children’s best interests.

AFFC Regional Conference Listening to the Voice of the Child: Columbus, Ohio
The Association of Family and Conciliation Courts (AFCC) is an interdisciplinary, international organization dedicated to improving the lives of children and families through the resolution of family conflict. Attorneys, GALs, Mediators, Social Workers, Clinical and Forensic Psychologists, Judges and Magistrates, and researchers are welcome in the organization.

The 2015 annual meeting was held in New Orleans in May. At that event, the new Ohio Chapter of the AFCC was officially approved one year after its inception. Chief Magistrate Serpil Ergun was elected in 2014 as the first president; attorney Jacob Kronenberg and DR Court psychologist Frank Ezzo both are serving on the Board of Trustees for the Ohio Chapter. This year, in November, the regional conference will be held in Columbus, Ohio and will focus on the voice of the child. Having the regional meeting so close gives our local professionals the opportunity to see and hear national presentations on various topics. Please consider attending this important event and supporting the AFCC and the Ohio Chapter. See www.afcc.org for more information.

Post Decree Access to Parenting Mediation
Divorce and dissolution decrees for many years have included a requirement that the parents mediate a contested parenting dispute prior to filing a motion with the Court. The DR Judges and the Mediation Department are working on a process to allow a case to directly enter mediation to fulfill that requirement and to avoid litigation if the matter can be resolved in mediation. This service will be taxed as costs just as any other mediation at the Court. Look for more details on the Court Website later this summer: http://domestic.cuyahogacounty.us.

Hon. Rosemary Grdina Gold is a Domestic Relations Court Judge. She has served on the Court since April 5, 2010. She is currently in her second (first full) term which will end in January 2021. Prior to joining the Court, Judge Grdina Gold practiced family law and civil trial litigation for 27 years. She brings this experience to the bench in the handling of her docket. She has been a CMBA member since 2003. She can be reached at (216) 443-8812.

Hon. Diane M. Palos is a Domestic Relations Court Judge. She was elected to the Court of Common Pleas, Division of Domestic Relations, in 2010. She was previously appointed to fill the unexpired term commencing in April, 2009. She was elected by the Judges in this division to be the Administrative Judge. She has been a CMBA member since 2010. She can be reached at (216) 443-8849.
The Standards and Procedures For Obtaining a Domestic Violence Civil Protection Order, a Civil Stalking or Sexually Oriented Offense Protection Order and Juvenile Protection Order as it Relates to Family Law Clients

BY JENNIFER M. HIMMELEIN

When dealing with clients that have family law issues, spotting the need for a protection order is not always as simple, straightforward or easy as one may think. In order to identify whether and what type of protection order is appropriate, it is important to understand the standards and procedures for obtaining those various orders.

Domestic Violence Civil Protection Order (DVCPO)

Before issuing a DVCPO, a court must find that the petitioner (victim) has shown by a preponderance of the evidence that the petitioner (and/or family or household member) is in danger of domestic violence from the respondent (alleged perpetrator). Felton v. Felton, 79 Ohio St.3d 34, 679 N.E.2d 672, paragraph two of the syllabus (1997); see also R.C. 3113.31.

Only a family or household member of the respondent, as defined by statute, may seek a DVCPO. A family or household member can be any of the following: spouse, former spouse or child of respondent, natural or foster parent of respondent, natural parent of respondent’s child, other relative by blood or marriage of petitioner or respondent who has lived with respondent at any time, or a person living as a spouse of respondent (now cohabitating or cohabitated with within five years before alleged act of domestic violence). R.C. 3113.31(A)(3).

When there is (1) an attempt to cause bodily injury, (2) reckless causing of bodily injury, (3) threat of force placing petitioner in fear of imminent serious physical harm, (4) menacing by stalking as defined by statute, (5) aggravated trespass as defined by statute, (6) a sexually oriented offense or (7) any act with respect of a child that would result in the child being adjudicated as an abused child, domestic violence has occurred. R.C. 3113.31(A)(1).

Immediate and present danger of domestic violence, including threats by respondent of bodily harm or sexually oriented offense, or where respondent has been convicted of, pleaded guilty to, or adjudicated a delinquent child for a domestic violence offense against the victim, constitutes good cause for an ex parte DVCPO. Establishing fear of imminent serious physical harm does have a subjective element to it, so a court must determine if the petitioner’s fear is reasonable under the circumstances. A victim’s history of past physical and verbal abuse with the perpetrator may cause the victim to experience reasonable fear of the perpetrator’s threats of domestic violence. Eichenberger v. Eichenberger, 82 Ohio App.3d 809, 613 N.E.2d 678 (10th Dist.1992); see also R.C. 3113.31(D)(1).

To seek relief, a victim must file a petition with the domestic relations court in the county where they reside, which alleges domestic violence, including a description of the nature and extent of the alleged domestic violence, the relationship of the respondent to the petitioner or victim, and a request for relief. The petitioner must also prepare the other mandatory forms provided. If the petitioner seeks an ex parte order, the court is required to hold an ex parte hearing the same day that the petition is filed. For good cause shown, the court may enter any temporary orders it finds necessary to protect the victim.Immediate and present danger of domestic violence from the respondent (and/or family or household member) is in R.C. 3113.31(C), (D).

After issuing an ex parte order, the court must hold a full hearing, with notice to respondent and an opportunity to be heard, within seven to ten days. R.C. 3113.31(D)(2). A DVCPO is valid until a date certain, not later than five years from the date of issuance. A temporary protection order (TPO) issued by a criminal court in a domestic violence action is generally only effective until the disposition of the criminal proceeding. R.C. 2919.26(E). So a DVCPO is usually recommended in addition to the TPO in the criminal matter.

Civil Stalking Protection Order (CSPO) or Sexually Oriented Offense Protection Order (SOPO)

For a CSPO/SOPO, the petitioner must show that, by a preponderance of the evidence, the respondent engaged in menacing by stalking or committed a sexually oriented offense against the person(s) to be protected by the order. R.C. 2903.214.

A person seeking a CSPO/SOPO must file a petition for relief in the common pleas court of the county where the person to be protected resides. R.C. 2903.214(A)(1). Nothing precludes a party from seeking a CSPO/SOPO in the general division of a court while an action is also pending in the domestic relations division. Wildi v. Wildi, 159 Ohio App.3d 568, 824 N.E.2d 1011 (10th Dist.2005).

The family and household member definition is the same for a CSPO/SOPO as for a DVCPO. R.C. 2903.214(A)(3). Victims can seek protection for themselves or on behalf of another family or household member against any other person. R.C. 2903.214(C). For example, a CSPO/SOPO can be issued against an ex-spouse (Tisani v. Snyder, 11th Dist. No. 2000-G-2325, 2002-Ohio-2107), an ex-boyfriend (Guthrie v. Long, 10th Dist. No. 04AP-913, 2005-Ohio-1541), a neighbor (Rauser v. Ghaster, 8th Dist. No. 92699, 2009-Ohio-5698), a father (Cooper v. Manta, 11th Dist. No. 2011-L-035, 2012-Ohio-691547), or a postal carrier’s customer (Strausser, 2009-Ohio-3597).

A petition for CSPO/SOPO must alleged that respondent is at least 18 years of age and engaged in menacing by stalking or committed a sexually oriented offense against the person(s) to be protected by the order, including a description of the nature and extent of the violation, and a request for relief. Additional
threatening."

actions may not, in isolation, seem particularly consideration "even if some of the person's

must take every action and prior history into

what constitutes a pattern of conduct, courts

incident. R.C. 2903.211(D)(1). In determining

whether or not there has been a prior

actions or incidents closely related in time,

distress has been caused."

testimony is not required to establish mental

distress, and the court "may rely on its knowledge

and experience in determining whether mental
distress has been caused." Smith v. Wunsch, 162
Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d
757 (4th Dist.). Additionally, the testimony of

the victim as to his/her fear is sufficient by itself
to establish mental distress. Strauser v. White,
8th Dist. No. 92091, 2009-Ohio-3597.

Pattern of conduct means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incident. R.C. 2903.211(D)(1). In determining what constitutes a pattern of conduct, courts must take every action and prior history into consideration "even if some of the person's actions may not, in isolation, seem particularly threatening." Guthrie v. Long, 10th Dist. No.

04AP-913, 2005-Ohio-1541.

If an ex parte order is requested, the court must hold a hearing as soon as possible after the petition is filed, but no later than the next day that the court is in session. Good cause for the issuance of temporary orders is the same as for a DVCPO. Likewise, immediate and present danger is the same, including the conviction of pleading guilty to menacing by stalking or a sexually oriented offense against the person(s) to be protected by the order. If an ex parte order is issued, the court must hold a full hearing within ten days, with notice to respondent and an opportunity to be heard. R.C. 2903.214(D). There must be clear and convincing evidence at the full hearing to permit the court to issue orders for electronic monitoring. R.C. 2903.214(E)(1)(b). A CSPO/SOPO shall be valid until a date certain, but not later than five years from the date it was issued, and can be renewed in the same manner as the original was issued. R.C. 2903.214(E)(2).

Juvenile Civil Protection Order (JCPO) or Juvenile Domestic Violence Civil Protection Order (JDVČPO)
The JCPO/JDVČPO are very similar to the aforementioned protection orders but are issued against a juvenile offender, i.e., when the respondent is under the age of 18. R.C. 2151.34(A)(6). Family and household members have the same statutory definition as defined for a DVČPO. A person may seek a JCPO/JDVČPO by filing a petition with the juvenile court division. R.C. 2151.34(A)(1). A parent or adult family or household member can file a petition on behalf of another family or household member. R.C. 2151.34(C).

The petition filed in juvenile court must allege respondent engaged in a statutory violation of felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass or any substantially similar municipal ordinance, or committed a sexually oriented offense against the person(s) to be protected, including a description and nature of the extent of the violation, a request for relief and, where requested, the necessary allegation for electronic monitoring. R.C. 2151.34(C).

Good cause and immediate and present danger have the same definition as that for CSPO, with the addition that a JCPO/JDVČPO must be issued until a date certain but no later than the date the respondent reaches the age of 19. R.C. 2154.34(D), (E)

The Ohio Supreme Court has forms located directly on their website at http://www.supremecourt.ohio.gov/JCS/domesticViolence/default.asp.

Jennifer Himmelein joined Cavitch in 2004 and became an associate attorney in 2009, after earning her Juris Doctor degree from Cleveland-Marshall College of Law. Jennifer focuses her practice on family law and regularly practices in domestic relations, juvenile and probate courts throughout Northeast Ohio. Jennifer is a co-editor for Matthew Bender & Co's Ohio Transaction Guide and leads The Legal Aid Society/CMBA's monthly Pro Se Divorce Clinics and Pro Se Plus Divorce Clinics. Jennifer is the 2015–16 Co-Chair of the CMBA Family Law Section. She has been a CMBA member since 2009. She can be reached at (216) 621-7860 or jhimmelein@cavitch.com.
BY MATTHEW MENNES

INTRODUCTION
As an attorney, you are called upon to be many things to your clients: trusted advisor, zealous advocate, tough negotiator, and above all else, problem solver. Previously, clients would simply ask their lawyer to win at trial. Now, they are coming to you with a complex set of legal and nonlegal problems; looking for you to help them craft a solution that meets their needs and interests. Clients are also becoming sophisticated consumers of legal services. Increasingly, they are aware of the wide spectrum of dispute resolution options ranging from pre-suit negotiation to an adjudicated verdict. One popular dispute resolution process is mediation. This article is about mediation of civil cases in Cuyahoga County Court of Common Pleas (“Court” or “Common Pleas”). The purpose of this article is to assist attorneys in helping clients maximize their chances of having a productive and successful mediation.

WHAT IS MEDIATION?
Mediation is a powerful and well-established process for resolving disputes. Over the years, mediation has grown from a fledgling litigation alternative to a popular and primary method for resolving disputes. A Judge may refer a case to mediation sua sponte or the parties may request mediation. Mediation is a voluntary process that emphasizes party self-determination. Even in Court-ordered mediation, any agreement reached by the parties is voluntary. Mediators in our Court primarily utilize a facilitative mediation style. Though the mediator may help the parties evaluate the strengths and weaknesses of their case, the mediator’s primary role is to facilitate the parties’ negotiation. The mediator does not act as a Judge or Arbitrator. Mediation communications are privileged under Chapter 2710 of the Ohio Revised Code. This privilege allows the parties and counsel to speak openly with the mediator and to explore settlement options without negatively impacting the pending litigation. The parties may also agree to make the mediation outcome confidential.

FIVE MEDIATION TIPS

I. BUILD A STRONG FOUNDATION FOR SUCCESS

Whether to Mediate
The threshold decision is whether to mediate. Mediation and other dispute resolution alternatives should be considered in every case. The following is a brief list of considerations to discuss with your client.

Privacy: If your client wants an adjudicated decision, ask them why. If their goal is to set a legal precedent, then mediation is not the right process for them. Mediated agreements are not precedential. The flipside is that mediated agreements are private and can be kept confidential. If your client wants to keep the outcome private for personal or professional reasons, they can do that in mediation.

Finality: Many clients want adjudication because they want closure. Even if your client prevails at trial, consider the appeals process and any post-judgment enforcement or collection issues. Mediated agreements are final and have a higher degree of compliance than decisions imposed by a 3rd party. Plus, Court mediation works with the existing trial calendar, and does not unduly delay the trial date.

Their “Day in Court”: Your client may want to tell their story and to be heard and understood by someone in a Court setting. If so, mediation will afford them a greater opportunity to speak and be heard than at trial. It is possible your client may never speak in open court during the litigation process. In mediation, they’ll have the opportunity to tell their story and to actively participate in the negotiation.

Control: Mediation will allow your client to have a high degree of control over whether and how their case resolves. Litigation is a one-size-fits-all process and litigated outcomes are limited to legal remedies imposed by a 3rd party. Mediated outcomes are broad and can accommodate creative nonlegal resolutions (e.g., apologies, letters of reference, etc.). The mediation process and outcome can be tailored to meet the parties’ needs.

When to Mediate
Timing is important in mediation. Legal disputes can be mediated at any point from pre-filing to the final appeal. However, the optimal
time to mediate depends on the particular facts and subject matter of the dispute.

For most cases in Common Pleas, the optimal time to mediate is after some minimal essential discovery, but before too much time and money has been spent preparing for trial. Remember the 80/20 rule (the Pareto Principle): 80% of the information can be obtained for 20% of the total discovery cost. Work with the Court to set appropriate dates and deadlines. Discovery and other litigation deadlines should complement the mediation referral.

Where to Mediate
Many Common Pleas cases are referred to in-house Court mediators. Cuyahoga County Common Pleas employs two trained and experienced full-time civil mediators. Certain cases are referred to the Court’s roster of outside Business Mediators. At times, it may be optimal to use a private mediator. In such cases, the Court and counsel can work together to integrate the parties’ mediation schedule into the trial calendar.

2. PREPARE, PREPARE, PREPARE
Once you have decided to mediate, preparation is the single most important thing an attorney can do to aid the mediation process. Lawyers prepare the pleadings and prepare for trial, but far too often they do not adequately prepare for mediation. Once the mediation date is selected, set a calendar to ensure you and your client will be prepared to mediate.

Prepare Yourself
Advocacy in mediation is different than at trial. At mediation, you will have an opportunity to demonstrate confidence in your case, but the primary focus of mediation is to explore collaborative alternatives to trial. Prepare a neutral opening statement. Knowing the facts and the law gives you a solid foundation for negotiating. Knowing your client’s and your opponent’s strengths and weaknesses, as well as your client’s goals for the mediation signal a seriousness of purpose. Bring key factual documents with you to mediation. Prepare sample settlement documents in advance, and bring copies that can be modified when an agreement is reached. A lawyer’s lack of preparedness should never be a barrier to settlement.

Prepare Your Client
Advise your client about how to talk directly with the mediator and with the other side. In mediation, it’s often helpful to allow clients to talk about their experience and to engage them in brainstorming solutions. Also, let them know you will advocate differently in mediation than you will at trial. Before coming to mediation, discuss their “BATNA” (best alternative to a negotiated agreement) and their “WATNA” (worst alternative). Discuss the other side’s likely BATNA and WATNA. Explore possible mediated outcomes including how monetary settlements translate to net results after accounting for the anticipated fees and costs.

Collaborate With the Mediator
Talk about who will attend the mediation. Ensure that all decision-makers and those with full settlement authority attend the mediation. Submit a pre-mediation summary to the mediator in advance of mediation. Contact opposing counsel to clarify any pre-mediation settlement positions. Identify all perceived barriers to settlement and be prepared to discuss whether a case is ripe to mediate. Flag other issues such as strong emotions and factors outside the scope of litigation (e.g., health, employment or financial concerns). Anything that may influence your client and the possible outcome should be discussed with the mediator.

3. BE CANDID AND OPEN
Be candid about settlement with the mediator. The more information the mediator has, the more they can help the parties achieve resolution. Discuss the strengths & weaknesses of your position. Explore your client’s underlying inter-
Cases settle when the parties have enough information to weigh settlement against possible litigation outcomes. Some of that information comes through discovery, but oftentimes that information is revealed or clarified in mediation. Talk with the mediator about what information to share with opposing counsel and how to share it. Confidential information can be shared with the mediator in caucus or during a private attorney conference. Barriers to settlement, real or perceived, should be discussed with the mediator.

4. LISTEN
Lawyers are used to talking, but mediation is a unique opportunity for counsel to listen. Often, mediation is the most significant time a client and attorney have spent together in such an intimate setting. Lawyers often learn key facts and information about their client during mediation. That information can be used to help craft a resolution. Mediation can also be used to preview your client as a trial witness. Listen to your client, but also observe them as a prospective witness. The same is true for the other parties. Also, listen to opposing counsel for signals about settlement.

5. BE FLEXIBLE AND OPEN-MINDED
Mediation allows for creative thinking and outside-the-box solutions, including nonlegal and nonmonetary resolutions. In crafting a settlement, counsel should be open to including nontraditional components so long as they meet the parties’ underlying interests. Throughout the mediation, the mediator constantly monitors and calibrates the process to maximize the opportunities to reach resolution. As counsel, you can be open to the mediator’s suggestions, including use of caucus, joint session or reconvening at a later date.

CONCLUSION
Civil mediation is a powerful and proven dispute resolution tool available to parties in Cuyahoga County Court of Common Pleas. But like all tools, the more you and your client know about mediation, and the more you prepare to mediate, the better your chances are to maximize mediation’s potential to resolve disputes. Communicate and collaborate with the mediator, and prepare yourself and your client for mediation and you’ll optimize your client’s chances of having a successful mediation.

Matthew Mennes is the Civil Mediator for Cuyahoga County Common Pleas Court. Matt joined the CMBA this year. He may be reached at (216) 443-8504 or CPMXM@cuyahogacounty.us. General inquiries may be made to civilmediation@cuyahogacounty.us.
February 5, 2009

Niki Z. Schwartz, Esq.
Schwartz Downey & Col., L.P.A.
1616 Guildhall Building
45 West Prospect Avenue
Cleveland, OH 44115

Dear Niki:

I have intended to write you for some time, but have been remiss in not doing so. I just want to join others in expressing my admiration and gratitude to you for the extraordinary job you did in bringing about a settlement of the Christ Hospital/Health Alliance dispute. It was, of course, a "piece of cake" assignment: the parties had litigated bitterly for years; the Boards had developed deep hostilities; all parties felt betrayed; counsel were not fond of one another; many hundreds of millions were in dispute; the operative documents were unclear; the expert economic reports were no longer reliable due to sudden and unprecedented changes in the market; and everyone was working under a deadline. Easy stuff for Niki Schwartz, right?

Despite these challenges, you exerted calm authority, mastered the issues sufficiently that everyone felt that you really understood their positions, pushed each party to be reasonable, creatively suggested your own solutions -- and even dropped bits of humor at apt points. It was a bravura effort, and one of the most impressive I've seen in 35 years of law practice. We -- and the community -- are in your debt. Without you -- and I doubt there are many "Nikis" out there -- this would not have happened.

I hope I never have a mess like that again, but I do hope our professional paths cross again. My work for Case involves me in matters in Cleveland from time to time, so perhaps that will happen. If I am ever asked to suggest a mediator or arbitrator, you can be sure I will sing your praises.

Best regards,

Clifford D. Stromberg

CDS/law
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

BAR FOUNDATION ANNUAL REPORT

Our Cleveland Metropolitan Bar Foundation has posted its 2012–2014 annual report online at CleMetroBar.org/Foundation. The report includes highlights from both the 2012–13 year and the 2013–14 year. The annual report recaps the successes of the Foundation, including the growth of its Fellows Program and its Endowment Campaign, which raised $1.5 million to add to our endowment to help secure the future of our programs. Foundation-supported programs grew too. The 3Rs, High School Mock Trial, Louis Stokes Scholars Program and Volunteer Lawyers for the Arts—highlighted in this report—provided life-changing opportunities and resources to more high school and college students from our community and additional pro bono legal services to our flourishing arts community.

RENEW EARLY AND SAVE

Our new membership year has begun, and we look forward to this year together with you. Membership renewals have been sent, so be sure to review the options available and renew today. To renew, simply return the statement with payment or renew online by logging in at CleMetroBar.org.

If you renew before July 31 the CMBA will include a free electronic version of its 2015–2016 Legal Directory. Want a print edition? Simply add that to your renewal form and save $5 if you order before July 31.

Need CLE? Save big with the CLE Passport. Purchase before July 31 and get 12 hours of CLE for $150! The CMBA CLE Passport is available to members only, so we invite you to take advantage of this incredible deal when you renew. Don’t delay! Maximize your savings now because the cost of the CLE Passport will increase to $300 effective August 1. Some restrictions apply, so please visit CleMetroBar.org/CLE for full details.

CMBA SPOTLIGHTS

Throughout this Journal are a number of CMBA events, updates, and info worthy of your attention. Here is a quick reference:

- 3Rs Sign-Up and JFA Calendar.........44
- Honorees, Officers and Trustees .....10
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- CMBA Conference Center..........47
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- Public Servants Luncheon.........42
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- Small/Solo Expo.....................53
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ARTICLE UPDATE

As a postscript to the article, U.S. Supreme Court may Decide if Individuals can be Directly Liable for Customs Penalties, published in the May Cleveland Metropolitan Bar Journal, we now know that the Court will not decide the issue. On May 26, the U.S. Supreme Court denied the petition for certiorari filed by Trek Leather’s president, Harish Shadapuri. The ruling leaves intact the broad interpretation of “person” and “introduce” in the customs penalty statute, 19 U.S.C. § 1592. The impact of the decision raises the prospect that executives, owners, and other corporate personnel can be held personally liable for gross negligence and negligence penalties under the statute as a result of their pre-importation activities that lead to the introduction of commodities into the commerce of the United States. As a result, importing companies and personnel should review compliance procedures, review and verify the accuracy of information regarding imported goods, and ensure individuals are specifically identified in prior disclosures. 

Information courtesy of Jon P. Yormick

PARTNER FOR COMMUNITY ENGAGEMENT

This new year is giving members the option to financially support a variety of initiatives, including the newly created Partner for Community Engagement. This initiative supports civic and voter engagement, including Judge4Yourself. You know well the critical need for quality jurists who make life- and community-altering decisions, so we thank you for your consideration and hope you’ll chose to be a Partner for Community Engagement.

You can donate to this initiative, as well as our Cleveland Metropolitan Bar Foundation and Diversity & Inclusion Circle using your renewal statement or by contacting the CMBF directly.

UPCOMING EVENTS

August 21  Diversity and Inclusion Career Fair
August 28  69th Annual Public Servants Merit Awards Luncheon (Marriott at Key Center)
September 11  Greener Way to Work Luncheon
September 25  Small/Solo Expo (Holiday Inn Independence)
October 31  14th Annual Halloween Run for Justice (Galleria at Erieview)

Sponsorship opportunities exist for many of these upcoming and high-profile events. If your firm/office is interested in gaining visibility through support of these events, please contact the CMBF at (216) 696-3525.
If you don’t practice family law, where should you refer your clients facing divorce?

The Center for Principled Family Advocacy (CPFA)

www.famad.com

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

Attorneys
Barbara Belovich
David Blocker
James Cahn
Sharon Comet-Epstein
Kyleigh Condon
Gregory Costabile
Sheila Duffy
Sarah English
Greta Fifner
Sarah Gabinet
Leslie Gentile
Pamela Gorski
Amy Hamilton
Olia Harris
Roger Heller
William Hunt
Suzanne Jambe
Heather Johnston
Jonetta Kapusta-Dorogi
Thomas Kelly
Jacob Kronenberg
James Loeb
Anne Magyaros

Attorneys (cont.)
Laurie Malone
Ryan Nowlin
John Ramsey
John Ready
Chris Reynolds
Alice Rickel
Joy Savren
John Sayre
Linda Schuster
Lynn Schwartz
P. Lynn Seifert
James Skibunt
Sharon Skibunt
Harriet Slive
Susan Stephanoff
Amy Wirtz

Financial Professionals
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Brian Potter
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Ed Varco
Leah Villalobos

Divorce Coaches
Vanessa Dvorin-Fremont
Dr. Lisa Green
Dr. Michael Leach
Karen Tomoff

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Mag. Gregory Fuss
Mag. Eileen Gerty
Mag. Marie Hartmann
Mag. John Homolak
Mag. Joan Pellegrin
Mag. Marie Rady
Mag. Janet Rath-Colaluca
Mag. Coleen Reali
Mag. Timothy Spackman
Mag. Ann Weatherhead
Isadora Almaro
Dr. Heather Bohn
Sharon Ditko-Beville
Vincent Dudley
Robert Espy
Dr. Frank Ezzo
Mark Felber
Elevani Fletcher
Michelle Hogan
Stacy Paghis
Anjanette Whitman
Gretchen Yahnke

The Center for Principled Family Advocacy
Visit us online at www.famad.com
Getting Connected

Over the past several years, we have all witnessed our society’s increasing reliance upon electronic gadgets, including the almost obsessive use of new and emerging technologies in day-to-day life. The rapid progression has been astonishing, with no apparent end in sight. To quantify it, a recent Nielsen report indicates that the average American adult now spends more than 11 hours a day watching TV, accessing the Internet, listening to radio, or otherwise using a Smartphone. **11 hours!** Most of us are awake for only 16 or 17 hours a day.

It is hard to deny the mostly positive impact that electronic revolution has had on our lives. Technology clearly enables us to be more efficient, both at work and at home. And nearly everything we could ever want or need to know is just a few seconds (and a few clicks) away. New court decisions. Real-time weather forecasts. Movie times. The Indians’ upcoming schedule. It is just a few seconds (and a few clicks) away. New everything we could ever want or need to know.

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Similarly, organizations across every sector are adapting their business models to attract greater online engagement. Our legal profession is no exception. But the internet has become an increasingly crowded marketplace. For prospective clients, it can be incredibly difficult to know what to believe and whom to trust when in pursuit of an attorney. While more and more websites incorporate testimonials and client reviews that purport to attest to product and/or service quality, are the reviews themselves reliable?

A few weeks ago, I learned about a man named “Frank,” a Cleveland-area physician who experienced his own medical problem for which he sought treatment. Unfortunately, Frank developed a complication that his doctor initially missed and which resulted in additional serious complications that ultimately necessitated surgery. While Frank was reticent to contact an attorney, he eventually did so as he contemplated his long road to recovery.

Because he did not know any medical malpractice attorneys, Frank’s first inclination was to contact the CMBA. Although he had few prior dealings with attorneys, he knew of and trusted our local bar association as a reputable community organization. He hoped we would be able to connect him with an ethical, knowledgeable attorney who could handle his potential claim in an appropriate manner.

Frank called the CMBA’s Lawyer Referral Service (216-696-3532) after hours and thus was not able to immediately reach anyone. Not to be deterred, Frank found his way to the CMBA website. From the comfort of his own home, Frank completed a simple online questionnaire and received several profiles of experienced medical malpractice attorneys. Upon reviewing the profiles, he elected to contact attorney Howard Mishkind, a long-term LRS attorney. Soon after an initial, no-cost consultation, Frank engaged Howard. Eventually, following difficult negotiations but without resorting to protracted litigation, Howard succeeded in negotiating a fair settlement. Frank trusted Howard to resolve his claim and to help make certain the relevant parties accepted responsibility for their actions.

Frank’s outcome is but one success story for our LRS attorneys. We make more than 10,000 referrals annually to 150 LRS panel attorneys. In the 2014-2015 fiscal year that just concluded, **LRS referred matters generated more than $1,000,000 in legal fees for our participating attorneys** — including a number of cases that resulted in high five- and six-figure fees.

While certainly not every referral results in such significant work, LRS can deliver a steady stream of prospective clients. At a recent meeting involving 30 or so LRS attorneys, one person after another described the number and quality of matters that had resulted over the years from LRS referrals. Some described their long-term view of client development, where an initial referral may not result in an engagement, but, when prospective clients are treated respectfully and empathetically, they often return when new issues arise. Every LRS referred matter represents an opportunity to plant seeds for future practice growth. And just as importantly, LRS is a trusted resource that can provide the public with access to our justice system.

Registered with the Supreme Court of Ohio and approved by the American Bar Association’s Standing Committee on Lawyer Referral and Information Services, the CMBA’s LRS bridges the gap between local practicing attorneys and the many individuals and entities throughout Northeast Ohio and beyond who have need for attorneys. Before joining LRS, attorneys must submit an application detailing their experience, malpractice insurance carrier, and other qualifications. All applications are reviewed by the LRS Oversight Committee, chaired by David Gallup and Lee Koosed — two long-standing LRS Attorney-Participants. On staff, LRS is overseen by Jim Smolinski, CMBA’s Manager of LRS. Once approved, LRS Attorney-Participants sign an annual contract, pay a modest $250 participation fee, and begin receiving referrals. Participating attorneys agree to provide an initial phone consultation free of charge, and a 15% co-counsel fee is payable to the CMBA in the case of successfully-referred matters. This fee is used to sustain the CMBA’s operation of LRS.

Let the CMBA Lawyer Referral Online Directory be your web presence — every LRS Attorney-Participant receives a complementary basic listing in the online referral directory hosted at CleMetroBar.org. Enhanced profile that include photos, more-detailed practice and biographical information, and preferred placement on the lawyer’s referral practice area lists are also available. Referrals are made by phone weekdays 9 a.m. – 4 p.m. (216) 696-3532 and 24/7 via the Online Referral Directory at CleMetroBar.org/LRS. For more, please contact the CMBA today. The community needs you, and your practice will benefit from getting connected.

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBE. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Bad Check Schemes Aimed at Good Lawyers

How to Protect Yourself and Your Firm

BY STACY D. BALLIN & STEVEN A. DELCHIN

Bad check scams have cost law firms literally millions of dollars in recent years, and these scams continue to target lawyers. Any Ohio lawyer can fall prey, whether the lawyer works at a big firm or is a solo practitioner. Indeed, some of the smartest, most ethically-minded lawyers have been swindled by fake check scams, including at least one law firm from Northeast Ohio. Such scams not only carry enormous economic costs for the targeted attorney and his or her law firm, but there are ethical implications as well.

This article explores the myriad ways in which fake check scammers operate, including the various red flags that lawyers need to spot. It then provides guidance on how to avoid becoming the next victim.

HOW THE FAKE CHECK SCAMS TYPICALLY OPERATE

The Initial Contact
Fake check scams come in many forms, and scammers constantly are devising new ways to dupe lawyers. The typical scam, however, involves a prospective “client” contacting a lawyer and requesting legal assistance in connection with:

- the collection of a debt,
- obtaining a business loan, or
- securing past due child support or a lump sum alimony payment.

Rather than firing off en masse emails, the scammers shrewdly target attorneys who have particular expertise in debt collection, business litigation, or family law. The contacted lawyers are made to believe that they were selected because of their experience in a particular area. The scammers are smooth, and they try to exploit the lawyer's eagerness to take on new clients. To sweeten the deal, the scammers typically promise to pay a large retainer up front and legal fees at full rate without questions asked.

The Disguise
Scammers will go to great lengths to sell themselves. In the debt collection scams, for example, some of the fraudsters have set up a phony website for a seemingly legitimate business. The website looks and feels authentic, and it includes a link to the person contacting the attorney, making the targeted attorney believe that the attorney is dealing with a real person from a real company.

Other scammers have tried to exploit a lawyer's referral source for legal work. For example, a scammer may contact a real estate broker and ask for the names of several lawyers who could provide debt collection services. The real estate broker's name then will be used to make the targeted attorney believe that the scammer is simply just another potential client from the lawyer’s trusted referral source.

Some of the more brazen scammers may visit the lawyer's office and even may retain the attorney to work on a smaller matter (such as incorporating a business) before launching into the actual scam. The scammer's ultimate goal is to establish trust and credibility.

If the lawyer agrees to take on the representation, things proceed smoothly and swiftly. The “client” promptly returns a signed engagement letter, along with all relevant documents relating to the purported matter. Everything looks legitimate.

The Check's in the Mail
Not much time passes before the lawyer receives the good news: The adversary of the “client” has agreed to a settlement and will be sending a check directly to the lawyer. (Apparently the simple act of hiring the lawyer compelled the other side to capitulate.)

Sure enough, a few days later, a genuine looking check arrives at the lawyer's office via overnight courier. The scammers are highly sophisticated and are able to obtain high-grade counterfeits of cashier's checks from almost any bank, including large national banks.

The Deposit
Shortly after the check arrives, the lawyer deposits it into his or her client trust account, just as the lawyer has done hundreds of other times with other clients.

Sudden False Urgency by the “Client”
Shortly after the check is deposited, the “client” fabricates a false sense of urgency and instructs the lawyer to release a portion of the funds immediately. The reasons for the urgency vary. In one divorce settlement scam, for example, a woman told the lawyer that she needed the funds for an overseas orphanage to which she allegedly had pledged funds. More frequently, the “client” may be a foreign manufacturing company that is seeking to recover payment for goods shipped in the U.S. But the scenarios are constantly changing.

Final Step: The Wiring of the Funds
Regardless of what the ultimate lie is, the targeted lawyer is instructed to wire a portion of the settlement money to another bank account, invariably located overseas. To prompt the lawyer to act quickly, the “client” authorizes the lawyer to keep part of the funds as attorney’s fees. If there is any delay by the lawyer, the “client” may threaten to report the lawyer to the bar disciplinary authorities. Scammers know that lawyers are very sensitive to the threat of an ethical complaint relating to a client's funds. Indeed, Rule 1.15(d) of the Ohio Rules of Professional Conduct states that a lawyer must “promptly deliver” to the client any funds that the client is entitled to receive.

After the money is wired, the bank informs the lawyer that the check was counterfeit. By that time, however, the money is usually long gone, along with the scammer.
Why the Scam Works
Fake check scams work because some lawyers assume that certified checks or cashier’s checks are safe. In fact, there is a difference between funds that are “available” to a depositor and funds that have “cleared.” “Available” simply means that the lawyer can draw on part of the funds, but it does not mean that the check is genuine. It can take weeks for checks to be cleared, and the scammers exploit this time delay.

The Consequences
Fake check schemes have both economic and ethical impacts for the victimized lawyer. When the bank discovers that the lawyer’s deposited check is fraudulent, a shortfall is created in the lawyer’s account, and the bank will charge back the amount to the lawyer’s account. The monetary loss could be staggering depending on the scam.

Lawyers who fall for fake check schemes also have to deal with the ethical implications. Under Ohio law, a bank is required to report an overdrawn trust account to bar disciplinary counsel. See O.R.C. § 4705.10(A)(4). In addition, Rule 1.15 of the Ohio Rules of Professional Conduct could be violated if other client funds are affected by the fake check scam, and Ohio Rule 8.3 would require the affected Ohio attorney to self-report the incident to the bar disciplinary authorities. Finally, on top of all this, the lawyer may become entangled in a criminal investigation as a result of the fraud.

Without a doubt, the fallout from a successful fake check scam can be devastating for the duped lawyer, and this does not even begin to measure the potential reputational damage to the lawyer.

WAYS TO PROTECT YOUR FIRM
The scammers are out there, but there are several things you can do to protect yourself and your firm.

- Verify the authenticity of information contained in unsolicited communications and, to the extent possible, consider requesting and then thoroughly researching references, including the names of other possible attorneys doing work for the prospective client. The prospective client should be admonished not to provide confidential information
until conflicts are cleared and the engagement is accepted.

- Perform a conflict check as well as a business due diligence check on all prospective clients, especially unknown clients, and particularly if the introduction arrives via unsolicited email. If your firm has a business intake department, provide it with all available background information so it can flag requests that appear out of the ordinary.
- If something doesn’t add up, probe deeper. Run Google searches, review websites and corporate filings, check all email addresses and persons/entities listed in the correspondence, use reverse phone lookup services, verify all addresses, and search geographic locations using Google Maps.
- Secure a retainer. It is unlikely a scammer will bother responding to such a request. But be careful. Some scammers deliberately will pay an excessive retainer to an unsuspecting law firm using a bad check and then urgently request the firm to send a wire transfer with the refund. At least two law firms have been scammed out of $500,000 in this manner.
- Carefully inspect the envelope or package in which the check was delivered. Handwritten addresses are an obvious red flag. So are packages sent from locations that seem to have no connection to the persons or matters involved. Do not verify the funds by calling the phone number on the check because the scammer’s accomplice may be on the other end of the line.
- Never be in a hurry or otherwise pressured to disburse funds from your client trust account. Always wait for bank verification that deposited funds have been collected from the check issuer’s account.
- Develop policies for when funds may be wired from your firm. Consider adopting a “wired in, wired out” policy under which only money that is wired in can be wired out.
- If the nature of the proposed work is out of your firm’s areas of expertise, consider declining it. Ultimately, the best course of action when in receipt of a suspicious email, particularly one you were not expecting, is to hit the delete button and never click on any links.
- Educate your firm’s lawyers and staff on common types of bad check scams. Junior lawyers and support staff can (and do) play a valuable role in ferreting out law firm scams.

CONCLUSION
The ultimate advice is to do your due diligence, use your common sense, and err on the side of caution. Trust your gut instinct when something is too good to be true (because it often is).

Stacy Ballin is the General Counsel of Squire Patton Boggs. In addition to her extensive responsibilities as the head of the firm’s Office of General Counsel, Stacy maintains an active litigation practice specializing in professional liability claims and complex contract disputes. She has been a CMBA member since 2007. She can be reached at (216) 479-8523 or stacy.ballin@squirepb.com.

Steve Delchin has spent a substantial portion of his career focused on the field of professional ethics, counseling Squire Patton Boggs lawyers in offices worldwide. Steve also is highly experienced in general litigation matters and has a specific focus on appellate and Supreme Court practice. He has been a CMBA member since 2013. He can be reached at (216) 479-8500 or steven.delchin@squirepb.com.
## Welcome New Members

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<th>Office/Company</th>
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<td>Katherine J. Bonilla</td>
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Financial Misconduct By a Divorcing Spouse

How Should You Proceed?

BY RYAN P. NOWLIN

The termination of a marriage is usually caused by an array of factors. Whether it be a paramour, money troubles, substance abuse, or simply falling out of love, a potential divorce client ends up in your office for complex reasons. Many times, financial distress plays a significant role in the unraveling of a marriage, and the spouses are left pointing fingers at each other about who is responsible for running out of money and/or going into debt. In an initial client meeting, it is not uncommon to hear about husbands who have lavished their mistresses with expensive dinners, jewelry and exotic trips, or about wives who have drained a bank account while sitting at a blackjack table. How does a family law attorney adequately advise his or her client about these claims? More importantly, can the “bad actor” spouse be held accountable for such actions?

Ohio Revised Code § 3105.171(E)(4) states: “If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.” To find that a party committed financial misconduct, “a court must look to the reasons behind the questioned activity or the results of the activity and determine whether the wrongdoer profited from the activity or intentionally dissipated, destroyed, concealed, or fraudulently disposed of the other spouse’s assets.” Thomas v. Thomas. 2012-Ohio-2893, 974 N.E.2d 679, 690, ¶ 63 (5th Dist.). For example, courts have determined the following acts constituted financial misconduct: committing arson and insurance fraud regarding a rental property (Eggeman v. Eggeman, 2004-Ohio-6050, ¶ 20 (3rd Dist. Auglaize)); spending “extravagant amounts” on “clothing, jewelry, restaurants, fitness clubs and dance lessons instead of spending it for [its] intended use (mortgage, car payments)” (Dilley v. Dilley, 2011-Ohio-2093, ¶ 31 (11th Dist. Geauga)); withdrawing over $225,000 from ATMs at various casinos in less than four and a half years (Putman v. Putman, 2009-Ohio-97, ¶ 15 (12th Dist. Clermont)); and “spending anywhere from $20 to $100 per week for alcohol” during the marriage (Shinkle v. Shinkle, 12th Dist. Clermont No. CA95-06-034, 1996 WL 12840, *2 (Jan. 16, 1996)). Financial misconduct goes beyond simply “dishonest behavior”; it must enrich the “bad actor” spouse or take money out of the pockets of the victim spouse. See Thomas v. Thomas, supra, at ¶ 63, citing Jacobs v. Jacobs, 2003-Ohio-3466, ¶ 23 (4th Dist. Scioto), and Eggeman v. Eggeman, supra, at ¶ 24.

If the court determines that a party committed financial misconduct, it may award the victim spouse a greater portion of marital property, or it may order a distributive award.

The court has discretion to punish the “bad actor” spouse for his or her economic transgressions. “[T]he decision regarding whether to compensate a party for the financial misconduct of the opposing party is discretionary with the trial court”. Thomas v. Thomas, supra, at ¶ 62, citing Leister v. Leister, 5th Dist. Delaware No. 97CA-F-07027, 1998 WL 751457, *5 (Oct. 23, 1998). If the court determines that a party committed financial misconduct, it may award the victim spouse a greater portion of marital property, or it may order a distributive award. See R.C. 3105 (E). A distributive award is defined as “any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support [. . .]” R.C. § 3105.171 (A)(1). Essentially, the court will reach into the offending spouse’s portion of assets (whether it be his or her portion of marital assets or his or her separate property) and award it to the other spouse to compensate for the financial misconduct. However, the purpose of the financial misconduct statute is to “neutralize losses caused by the offending spouse’s conduct and not to simply reward one spouse for the other’s wrongdoing when no loss in value has occurred.” Eggeman v. Eggeman, supra, at ¶ 26.

What should you do when you suspect the opposing party has committed financial misconduct? First, you must determine whether or not the suspected behavior meets the definition of financial misconduct as set forth in Thomas v. Thomas, supra. Next, you must gauge approximately how much money your client could receive as a result of any potential effort to
prove financial misconduct. Unless your client kept impeccable records of the alleged misdeeds, he or she may only have a hunch about how much has been spent. Accordingly, at the outset of the case, you will need to obtain records verifying the spouse's income, as well as bank account statements for any accounts the spouse uses. Even if you have all the necessary source material, your journey is only beginning — it may cost tens of thousands of dollars to retain a forensic accountant to prove that marital funds were improperly spent or concealed. This can be a difficult sell for your client, as he or she may be so convinced that his or her spouse acted wrongly that hiring an expert may seem unnecessary. However, if your client believes that her husband regularly takes his mistress out to dinner at an expensive steakhouse, she will need to prove that her husband is not simply taking out potential clients for business purposes. This may involve subpoenaing business records (including those of the steakhouse and the husband's expense account), interviewing potential witnesses (e.g., the maître d' or server at the restaurant), or even deposing the husband's claimed business dinner guest. Of course, this tactic could backfire: if you start to involve the spouse's business associates in your investigation, you run the risk of interfering with client relationships and potentially affecting the spouse's level of income, which could adversely affect an award of child support and/or spousal support.

If you suspect that your client's spouse is underreporting income (for example, if the spouse has a side job plowing driveways or bartending, for which he or she is paid in cash, and the spouse does not disclose the full amount of how much he or she is making), you will need an expert to perform an analysis of the spouse's lifestyle and bank accounts to effectively prove your case. If the underreported income is relatively minimal in comparison to the expected cost to retain the expert, you may want to think twice about pursuing such a strategy. Either way, you will need to advise your client about the tax implications of underreported or unreported income: if your client signed joint income tax returns containing false information about income levels, the parties will need to amend the inaccurate returns. Unfortunately, some concealment cases may be nearly impossible to prove. If the "bad actor" spouse withdrew small amounts of cash on a regular basis over the course of a long-term marriage, and he or she has hidden the cash in an undisclosed place or places, you may never be able to find the cash hoard or even prove that it exists.

Though nearly every divorce involves some level of financial conflict, the successful prosecution of a financial misconduct claim is relatively rare. However, you owe a duty to your client to vet any such potential claims. If you correctly identify the economic misdeeds, and your client is willing to spend the money necessary to move forward with the claim, you may end up greatly improving your client's financial outcome in the divorce.

Ryan P. Nowlin is a partner at Schneider, Smeltz, Ranney & LaFond, P.L.L., where he represents individuals in every phase of divorce and custody proceedings. Ryan’s experience with complex family law matters includes the valuation of assets, the determination of premarital/separate property, the allocation of parental rights and responsibilities, and the establishment of appropriate child and/or spousal support obligations. Ryan also prepares and reviews prenuptial agreements. Additionally, Ryan counsels clients regarding a variety of litigation matters, including commercial and probate litigation. Ryan resides in Lakewood with his wife and five children. He has been a CMBA member since 2005. He can be reached at (216) 696-4200 or rnowlin@ssrl.com.
Courts traditionally apply law to settle disputes. Increasingly, however, Cleveland’s Housing Court, under the stewardship of Judge Raymond L. Pianka, finds itself engaged in problem solving rather than simple decision making.

A case in point: Some months ago, a family living in subsidized housing faced the threat of eviction. The mother’s eighteen year old son engaged in criminal conduct that impacted their neighbors. Management responded with a forcible entry and detainer action directed at the entire family. It seemed that all would pay for the actions of one.

A decade ago the outcome of the case would have been stark: somebody winning and somebody losing with no middle ground. Things have changed thanks to mediation. The parties were able to sit down with the court’s mediator and work out a solution. The mother agreed her adult son, presently incarcerated, would not return to the housing complex. Management agreed not to seek eviction so long as the mother honored her commitment, but wanted assurance that the presence of the son on site would trigger a judgment.

Management got that assurance. The Court crafted an agreement and retained jurisdiction. To date the agreement remains in place.

Last year, 92% of the court’s civil cases, mediated by an ADR specialist, avoided contested trial. The majority of those cases were resolved when the parties reached an agreement, with the assistance of court staff.

Why do so many cases settle? Cost and risk/benefit come to mind. And traditional mediation technique comes into play, most notably the use of inquiry by a mediator to advance movement from a party’s announced position to their actual interest. What a party really wants is often a blend of intellect and emotion, somewhat removed from what appears on a pleading. Getting to fundamental need can expand the range of settlement options.

But I want to suggest something else: A great number of cases at Cleveland Housing Court settle not because of the use of mediation skills but because the court has invoked an array of procedural tools that encourage settlement. The environment itself contributes to problem solving.

Let me explain.

Incremental Solutions
Any conflict that has matured to the point of litigation involves mistrust between parties. Just because you promise to do something doesn’t mean you will do it — especially given past history — so what is the point of reaching an agreement? One way to address this issue is to craft an agreed judgment entry — a roadmap — that provides a schedule of obligations to be met one at a time, rather than a complete immediate disposition of an entire case. Each obligation, when met, will result in deferral of the case to a subsequent hearing. Failure to perform, however, will result in an immediate specified judgment.

This situation commonly arises in landlord tenant disputes over rent and the right of possession. Parties will agree that a series of payments will defer the surrendering of possession by a tenant or, alternatively, that the landlord tenant relationship will be made whole again by the making of scheduled payments. Importantly, a court needs to embrace a scheduling practice that honors incremental agreements. If parties do not attend, it is presumed that the agreement has been honored and the case is deferred to the next scheduled hearing.

Inherent in the crafting of an agreed judgment entry is a willingness on the part of the court to avoid a rush to judgment. A properly drafted agreed judgment entry will provide specific consequences in the event there is performance or lack thereof with regard to a stipulated obligation. Deferral of judgment can be particularly attractive to a debtor trying to avoid a public record that will compromise that debtor’s credit status or to a low-income tenant whose eligibility for future housing subsidies may be jeopardized by an adverse judgment. Likewise, a creditor will find such an agreed entry attractive because of the enhanced probability of payment, because of the adverse consequence hanging over the debtor’s head.
Deferred Enforcement and Modified Judgment

Sometimes immediate disposition of a case cannot be avoided. For some claimants, finality of outcome may be a prerequisite, intellectually or emotionally. And courts are required by the Ohio Supreme Court to dispose of cases within a defined period of time: The Cleveland Housing Court must dispose of civil cases within one year of filing.

There are, however, ways to address this constraint and still retain some measure of flexibility once a judgment is in place.

First, an agreed judgment entry can be drafted to reflect the fact that the creditor will refrain from collection or enforcement so long as the debtor honors the terms of payment or performance.

Another technique is to craft an agreement that triggers a modified judgment in the event of performance or non-performance. For example, an agreed judgment entry executed by both counsel and judge can include a present dismissal of creditor’s claim, a prospective schedule of payments by debtor, and a provision that, upon motion and hearing in the event of a default of payments by debtor, and a provision that, upon motion and hearing in the event of a default of payments by debtor, the dismissal will be vacated and a judgment rendered in its stead. A variant on performance, the dismissal will be vacated and a motion and hearing in the event of a default of payments by debtor, and a provision that, upon motion and hearing in the event of a default of payments by debtor, the dismissal will be vacated and a judgment rendered in its stead. A variant on performance, the dismissal will be vacated and a motion and hearing in the event of a default of payments by debtor, and a provision that, upon motion and hearing in the event of a default of payments by debtor, the dismissal will be vacated and a judgment rendered in its stead.

The problem solving procedures described above are abstract concepts. They have no vitality unless embraced with enthusiasm by individuals functioning as mediators. A good mediator will get to the heart of an issue from the perspective of both sides, will educate the parties as to the range of potential solutions, and will assist in the authorship of an agreed entry. A mediator is like an architect. Form will follow function.

Additionally, a mediator needs to have flexibility with respect to the scheduling of conferences. When I teach a class at Case Western Reserve University School of Law, I remind my students of the first words of the Book of Genesis, “In the beginning …” an acknowledgement of the existence of time and that things progress from one day to the next. Not everything happens in the moment. Litigants need time to digest what has been said and the issues that have been debated. A mediator should give them that space and preserve the option of an additional conference. A couple of weeks can be a very useful tool in its own right. We all need time to think.

Does what I have outlined here have applicability beyond the Housing Court? I believe so. To be sure, court proceedings are contextual. The Cleveland Housing Court exists at the intersection of wealth and poverty. Many of our litigators are unrepresented by counsel. This raises the stakes in terms of the role of the mediator. Education of parties as to potential solutions is an essential function. But there is broader applicability. Every court should be prepared to ask the question: How can I solve this problem? And advocates themselves should ask that question and familiarize themselves with the array of tools that might become the basis of settlement.

C. David Witt is an ADR Specialist with the Cleveland Housing Court and an adjunct professor at Case Western Reserve University School of Law. He has been a CMBA member since 2014. He can be reached at (216) 664-6105 or wittc@cmcoh.org.
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### AUGUST (current as of publication date)

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<td>Business Banking &amp; Corporate Counsel CLE &amp; Lunch – 11 a.m. (Union Club)</td>
<td>ADR Section Meeting</td>
<td>CMBA Executive Committee Meeting</td>
<td>VLA Committee Meeting</td>
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<td>Grievance Committee Meeting</td>
<td>CMBA Board of Trustees Meeting – 4 p.m.</td>
<td>Judge for Yourself Interviews – 8 a.m.</td>
<td>Diversity &amp; Inclusion Job Fair Reception – 4 p.m.</td>
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<td>3Rs Committee Meeting</td>
<td>Court Rules Committee Meeting – 11:45 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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*All events held at CMBA Conference Center at noon unless otherwise noted.

### SEPTEMBER (current as of publication date)

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<td>Offices Closed for Labor Day</td>
<td>CMBF Executive Committee Meeting – 8:15 a.m.</td>
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<td>Bar Leadership Series – 8 a.m.</td>
<td>Greener Way to Work Day Lunch</td>
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<td>CMBF Board of Trustees Meeting</td>
<td>CLE &amp; Lunch</td>
<td>CMBA Board of Trustees Meeting</td>
<td>Reach Out for Nonprofits Seminar – 4 p.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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<td>Court Rules Committee Meeting – 11:45 a.m.</td>
<td>Sausalito Party on the Patio – 4:30 p.m.</td>
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The Cleveland Metropolitan Bar Foundation [CMBF] is proud to present the 69th Annual Franklin A. Polk Public Servants Award Luncheon on Friday, August 28, from 12:00 pm to 1:15 pm at the Cleveland Marriott Hotel Downtown at the Key Center. The Award Luncheon celebrates and honors public servants whose everyday commitment ensures full access to the justice system.

Each year city, county and federal courts nominate eligible recipients and these merit awards are given for long and faithful service, devotion to duty, unfailing patience, and assistance to the public and members of the Bench and Bar of Cuyahoga County. The event welcomes hundreds of attendees annually. The honorees are accompanied by their nominating court official or judge.

2015 HONOREES
- Carl Bates, Cleveland Municipal Court Clerk’s Office
- Salvatore G. Bucca, Cuyahoga County Domestic Relations Court
- Mary Elliott, Cleveland Municipal Court Housing Division
- Edward Fink, Parma Municipal Court
- James W. Ginley, Cuyahoga County Court of Common Pleas
- Barbara Happner, Cuyahoga County Public Defender’s Office
- Mary Pat Horwitz, Eighth District Court of Appeals
- Lori Kiefer, Cuyahoga County Probate Court
- Gilbert Glenn King, Cleveland Municipal Court
- David Kozlowski, U.S. Department of Justice, Office of the U.S. Trustee
- Angela Lewis, Cuyahoga County Clerk of Courts
- Melissa Reilly, Rocky River Municipal Court
- Carl Schiller, Cuyahoga County Juvenile Court

This event is unique as it allows the entire legal community the chance to collectively thank the honorees for their demonstrated devotion to the service of the public, our courts, and the judicial system. The honorees are the unsung heroes of our judicial system.

The plan to honor deserving public servants was inaugurated in 1947 by the late Raymond D. Metzner, a past president of the Cuyahoga County Bar Association [CCBA]. CCBA past President Franklin A. Polk served annually as continuous chairman until 1986. Polk was involved with this program until his passing in 1991. In 1986, the Public Servants Merit Award was renamed the “Franklin A. Polk Public Servants Merit Award” to honor Polk’s dedication and outstanding service to the CCBA and the Cuyahoga County Bar Foundation [CCBF]. In 2009 the Cleveland Bar Foundation and the CCBF unified as the CMBF.

This year, the CMBF is especially pleased to announce the redecoration and unveiling of the new public servants award recognition wall located directly inside the entrance to the Old Cuyahoga Courthouse on Lakeside Avenue. This wall plaque is made of granite and has been inscribed with the name of each honoree of this prestigious award from 1947 to the present. Our new honorees will soon take their place on this wall. Thank you to Melanie Farrell and Mary Groth for their work managing this project from design to redevelopment and dedication. Thank you also to the Board of the CMBF for funding the project and to Cuyahoga County and Milano Monuments on the completion and installation of the new wall.

Please join us in celebrating the recognition of our Honorees by purchasing a sponsorship table or tickets for this year’s event. A form for your table order or ticket is available on the next page.
The Cleveland Metropolitan Bar Foundation presents

The 69th Annual Franklin A. Polk Public Servants Merit Awards Luncheon

Friday, August 28, 2015 • 12:00 – 1:15 p.m. (sharp)
Cleveland Marriott at Key Center • Public Square • Cleveland, Ohio 44114

HONOREES
Carl Bates, Cleveland Municipal Court, Clerks Office
Salvatore G. Bucca, Cuyahoga County Domestic Relations Court
Mary Elliott, Cleveland Municipal Court Housing Division
Edward Fink, Parma Municipal Court
James W. Ginley, Cuyahoga County Court of Common Pleas
Barbara Heppner, Cuyahoga County Public Defenders Office
Mary Pat Horwitz, Eighth District Court of Appeals
Lori Kiefer, Cuyahoga County Probate Court
Gilbert Glenn King, Cleveland Municipal Court
David Kozlowski, U.S. Department of Justice, Office of the U.S. Trustee
Angela Lewis, Cuyahoga County Clerk of Courts
Melissa Reilly, Rocky River Municipal Court
Carl Schiller, Cuyahoga County Juvenile Court

PURCHASE TICKETS

☑ $25 Court Employees / Past Honorees
☑ $45 Attorneys / General Public

☐ Check payable to:
Cleveland Metropolitan Bar Foundation

☐ Visa ☐ MasterCard ☐ AmEx ☐ Discover

Credit Card No. ________________________________
Exp. Date ______________

Signature (needed only if using Credit Card)
______________________________________________

Sponsorships available!

☐ $125 Individual – 1 ticket ($80 tax deductible)
☐ $300 Bronze – 4 tickets ($180 tax deductible)
☐ $750 Silver – 5 tickets ($525 tax deductible)
☐ $1500 Gold – up to 10 tickets (up to $1,050 tax deductible)

Tables seat ten. Sponsors will receive recognition at the event, acknowledgement in the program and post-event coverage.

If sponsors choose to donate any of the tickets to the CMBF for deserving law and college students in our diversity pipeline programs, additional tax deductible opportunities are created.

Online Registration:
CleMetroBar.org

Fax Registration:
(216) 696-212

Mail: 1375 E. 9th Street, Floor 2
Cleveland, Ohio 44114

Questions: (216) 696-3525
or ttrodden@clemetrobar.org
We’re having a birthday party!

YOU’RE INVITED

The 3Rs Celebrates 10 Years!

WHO  All members of the Cleveland legal community
WHAT  Volunteer for the 10th Anniversary school year of the nationally-acclaimed 3Rs program
WHEN  September 2015 through April 2016
WHERE  Cleveland and East Cleveland Public High Schools
WHY  To provide law-related education, career counseling, mentoring and encouragement to change the lives of young people through personal connection

The groundbreaking 3Rs program of the CMBA celebrates its 10th Anniversary this fall and YOU are invited to take part in this historic event! The 3Rs has inspired more students, through the tireless efforts of more volunteers from our local legal community, for longer than any other community program in the bar association's history.

Celebrating 10 Years of Positive Impact In Our Community
Since its kick-off in 2006, The 3Rs and 3Rs+ programs have reached more than 25,000 students in the Cleveland and East Cleveland high schools, imparting information about the U.S. Constitution and the rule of law. These provide important citizenship information, concepts needed to passing school achievement tests as well as helping prepare youths for their paths to success in higher education, careers, and beyond. For more about The 3Rs, please see CMBA President Hugh McKay's article on page 16 or visit us online at CleMetroBar.org/3Rs.

Exciting New Developments
The 3Rs needs you and other dedicated, inspired volunteers more than ever, as the Cleveland and East Cleveland schools face a transitional year in state-mandated testing and the potential introduction of The 3Rs in the 11th grade Government classrooms. The time commitment is minimal (six lessons total throughout the school year), the potential impact is infinite. Take the time today to commit to changing lives. Let’s celebrate the role of lawyers giving back this year, and for many more anniversaries to come!

RSVP  COUNT ON ME FOR THE 2015–16 SCHOOL YEAR!
Online Sign-Up Available at CleMetroBar.org/3Rs

____ Yes, I want to volunteer for The 3Rs
____ I am willing to serve as a team captain
____ I have a preferred school

____ Yes, I want to volunteer for The 3Rs+
____ One-on-one mentoring
____ Providing a career shadowing experience
____ Assisting in developing field trips
____ Serving as a speaker in programs for students
____ Serving as a speaker in programs for parents

Name __________________________
Firm/Organization __________________________
Phone __________________________
Email __________________________

Please return by e-mail or fax, or sign up online. For further information, contact Jessica Paine at (216) 696-3525 ext. 4462 or jpaine@clemetrobar.org.

Cleveland Metropolitan Bar Association
1375 E. 9th Street, Floor 2, Cleveland, OH 44114
P: (216) 696-3525 • F: (216) 696-2413
CleMetroBar.org
Volunteering á la Carte

The Justice For All (JFA) programs of the CMBA offer volunteers a true variety of opportunities to give back to their community, with such an extensive range of commitment levels and experience requirements that everyone — attorneys, judges, law students, paralegals, and other legal professionals — can find something to match their interests and availability.

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

THE 3RS – RIGHTS • RESPONSIBILITIES • REALITIES
Volunteers provide law-related education in the high school classroom
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.
Volunteer Schedule: Sept. 2015 – April 2016 (typically 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.
Volunteer Schedule: During school year; Sept. 2015 – May 2016
CleMetroBar.org/3Rs

CLEVELAND HOMELESS LEGAL ASSISTANCE PROGRAM (CHLAP)
Volunteers can provide service in two ways: (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.
Volunteer Schedule: Sessions scheduled regularly throughout the year
CleMetroBar.org/CHLAP

CLEVELAND MOCK TRIAL COMPETITION & MIDDLE SCHOOL MOCK TRIAL
Volunteer attorneys and law students coach Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.
Volunteer Schedule: Coaching Feb. – May 2016; Competition 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.
Volunteer Schedule: Cuyahoga District Competition Jan. 29, 2016; Cuyahoga Regional Competition Feb. 19, 2016
CleMetroBar.org/OhioMockTrial

PRO SE DIVORCE CLINICS
Volunteers guide participants through the paperwork and process of securing a simple divorce pro se.
Volunteer Schedule: 3rd Friday monthly unless otherwise noted

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.
Volunteer Schedule: Sept. 17 and Oct. 29, 2015; 2016 seminar dates TBD
CleMetroBar.org/ReachOut

SPEAKERS BUREAU
Members of the public request speakers on a vast array of legal topics.
Volunteer Schedule: As needed throughout the year

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

Coming Soon!
August 21, 2015: Pro Se Divorce Clinic
September 23, 2015: 3Rs kickoff for the 2015-16 school year (date TBD)
September 17, 2015: Reach Out for Nonprofits seminar: “Legal Aspects of Fundraising for Nonprofits”
September 18, 2015: Pro Se Divorce Clinic
October 25–31, 2015: Pro Bono Week – watch for more information about events celebrating Pro Bono locally and nationwide
October 29, 2015: Reach Out for Nonprofits seminar: “Legal and Practical Advice in Planning Compliant Events” (in partnership with the VLA)
October 30, 2015: Pro Se and Pro Se “Plus” Divorce Clinics
November 20, 2015: Pro Se Divorce Clinic
Green Initiative Committee

Green Family Fun Day

On June 13th the Green Initiative Committee of the CMBA presented it’s first Green Family Fun Day. The morning was filled with games, face painting, prizes, and a movie showing of Dr. Seuss’ The Lorax. The event’s focus was to provide information and tips for families on how to green their lifestyle.

THANK YOU TO OUR SPONSORS Cady Reporting Services; Thomson Reuters; Century Federal Credit Union; Avalon Document Services; Weltman, Weinberg & Reis Co., L.P.A.; and Shea Photography, and donors: Cuyahoga County Solid Waste District and Sherwin Williams!

LOOKING AHEAD

7th Annual David Webster Greener Way to Work Week

Find a Greener Way to Work the Week of September 7.


Luncheon Friday, September 11
Introducing
The Newest DOWNTOWN VENUE
FOR YOUR BUSINESS EVENTS

Free High-Speed Wi-Fi
Classrooms and Lunch Rooms
Reception Areas
Catering Available

Our newly updated space offers you excellent options to meet your needs and save you money for groups of three to 300+.
CMBA members can reserve the conference rooms and CMBA Member Office for free!

Members save at least $100 on all other rooms!

CleMetroBar.org/ConferenceCenter
Please contact the CMBA at (216) 696-3525 for specific rates and details.

Built-in Advanced Audio/Visual Equipment Included
Video Conferencing
300+ Seat Auditorium
Break-Out Meeting Rooms

CleMetroBar.org/ConferenceCenter
Meet me at the Bar.
In partnership with Oswald, CMBA is proud to offer its members an insurance package customized specifically to the unique needs of law firms. We’ve combined our expertise to bring you access to:

- Exclusive premium discounts for CMBA members
- Broad coverage forms
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INSURANCE COVERAGE
- Lawyers’ Professional Liability
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- Business Owners Coverage
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The law firm practice at Oswald partners with hundreds of firms to provide comprehensive insurance and risk management solutions. Our experienced team offers services in the areas of coverage placement, analysis and program recommendations, claims analysis and coverage counseling, risk management and exclusive specialty programs including Intellectual Property Risk Preferred (IPRP) and Collection Lawyers’ Insurance Program (CLIP).

Get to know more about this distinctive program and the features that make it the right fit for your law firm.

Contact us today!
Visit us online at www.clemetrobar.org/insurance or contact Oswald at 216.658.5202
2015 William J. O’Neill Great Lakes Regional Bankruptcy Institute

THE NEW AGE OF BANKRUPTCY

Thank You!

CO-CHAIRS
Robert D. Barr, Dettelbach, Sicherman & Baumgart

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Lawyer Referral Service

600+ Referrals Monthly
Join Today!

Take advantage of the business development opportunity with promotional pricing.*

Or call (216) 696-3532 for your referral needs.

CMBA LRS has provided 600 to 900 referrals every month this past year.

It is an Ohio Supreme Court-Accredited and ABA-Approved Lawyer Referral and Information Service.

*Experience and Professional Liability Insurance requirements apply.

To inquire, contact James M. Smolinski at (216) 696-3525 x5002 or jsmolinski@clemetrobar.org.

CleMetroBar.org/LRS
The 6th annual members-only event, welcomed judges, general counsels, corporate and in-house attorneys to network and celebrate our great legal community among colleagues and friends. Before the event, guests enjoyed a special one-hour CLE panel presentation in conjunction with the Northeast Ohio Chapter, Association of Corporate Counsel titled “The Dual Role of General Counsel and Compliance Officer: Views from the Boardroom and Bench.”

Thank you to Judge Benita Y. Pearson, U.S. District Court, Northern District of Ohio; Judge Stuart Friedman, Cuyahoga County Court of Common Pleas; Judge Brian Corrigan, Cuyahoga County Court of Common Pleas; and Raymond Krncevic, Associate General Counsel, University Hospitals Health System, Inc. for speaking on the panel; and Richik Sarkar, McDonald Hopkins LLC, for serving as moderator.

The reception, held in the CMBA’s Conference Center, welcomed more than 200 excited members and included newly admitted Ohio attorneys sworn in by the Supreme Court in May.
NEW ASSOCIATIONS & PROMOTIONS

Gonzalez Saggio & Harlan LLP is pleased to announce that Edward C. Coaxum, Jr. has joined the firm as Of Counsel, where he will continue to focus his practice in public finance transactions.

Taft partner Michael H. Diamant has been elected a fellow of the College of Commercial Arbitrators.

Gregory A. Thompson has joined Schneider, Smeltz, Ranney & LaFond. His practice is focused on Commercial Litigation, Probate Litigation, Employment Law and Product Liability.

Patricia Krewson and Ryan Morley have joined Littler’s Cleveland office. Trish and Ryan bring significant experience in a range of labor and employment matters, as they counsel clients throughout Ohio and across the country.

Gregory A. Thompson has joined Schneider, Smeltz, Ranney & LaFond. His practice is focused on Commercial Litigation, Probate Litigation, Employment Law and Product Liability.

NEW ASSOCIATIONS & PROMOTIONS

John P. Thomas of Schraff & King Co., LPA, was inducted as a Fellow in the Class of 2015 of the Ohio State Bar Foundation. He also received the 2015 Community Service Award for Attorneys 40 & Under for District 18 from the Ohio State Bar Foundation.

Roetzel & Andress LPA has been ranked as a top Ohio law firm in the 2015 edition of Chambers USA for Natural Resources & Environment. Donald S. Scherzer, a Partner in Roetzel & Andress LPA’s Business Litigation Group, is cited by Chambers as a leading practitioner in the field of Litigation.

Reminger Co., LPA is pleased to announce that attorney Amanda M. Gatti has been named to the Board of the Ohio Women’s Bar Foundation (OWBF) as an At-Large Trustee.

Reminger Co., LPA is pleased to announce that attorney Michelle J. Sheehan has been honored as a YWCA of Greater Cleveland “Woman of Professional Excellence.”

Reminger Co., LPA is pleased to announce that attorney Sherri L. Dahl is cited by Chambers as a leading practitioner in the field of Bankruptcy.

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HONORS

Taft partner Mark J. Valponi was honored by St. Edward High School as the 2015 Legal Eagles Man of the Year.

Gregory A. Thompson has joined Schneider, Smeltz, Ranney & LaFond. His practice is focused on Commercial Litigation, Probate Litigation, Employment Law and Product Liability.

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Flying Solo?

Small & Solo EXPO 2015

“From Start-Up to Sunset, and All the Days in Between”

Friday, September 25th
8:30 a.m. – 3 p.m. • 5.00 CLE
Holiday Inn Independence on Rockside

For more information
CleMetroBar.org or (216) 696-3525
**14th Annual HALLOWEEN RUN FOR JUSTICE**

**Saturday, October 31, 2015**
The Galleria at Erieview

**Entrant Form**

In consideration of your accepting this entry, I hereby for me, my heirs, executors and administrators, waive and release any and all rights and claims for damages I may have against the Cleveland Metropolitan Bar Association, Cleveland Metropolitan Bar Foundation, Hermes Sports and Events, all event chairs, sponsors and co-sponsors, their representatives, successors and assigns for any and all injuries suffered by me in said event or in transit to and from said event. I further attest that I am physically fit and have sufficiently prepared for this event. I will additionally permit the use of my name and/or pictures in Cleveland Metropolitan Bar Association and/or Foundation publications.

| Name: _________________________________________________________________________________ | __________________________________________________________________________ |
| Address: ______________________________________________________________________________ | City/State/Zip: __________________________________________________________________________ |
| Phone: (                )  _______________________ | E-mail: _________________________________________ |
| ___ Age on Race Day ___ Date of Birth ___ / _____ / ______ | Male  ☐ Female  ☐ |
| ☐ Family Entry ($50) Families must mail in registrations by October 16. | Rate not available for online registration. |
| Rate not available for online registration. Families must mail all four entry forms in one envelope with check. (One entry form for each family member. Family fee includes 4 shirts.) | |
| ☐ Team Entry ($90) Teams must register by October 16. (Four-person teams) | Each team must mail all four entry forms in one envelope with check. |

| Team Name and Category _________________________________________________________________ | |

**Shirt size:**

- youth small  ☐  youth medium  ☐  youth large  ☐  adult small  ☐
- adult medium  ☐  adult large  ☐  adult XL  ☐  adult XXL  ☐

I cannot participate, but I have enclosed a tax-deductible donation to the Cleveland Metropolitan Bar Foundation in the amount of $_______

Total Amount Enclosed $__________

signature of parent or guardian if participant is under 18 years date

**Entries**

- runners and walkers welcome
- mail form and entry fee to: Halloween Run for Justice Hermes Sports & Events
  2425 West 11th Street, Suite 2
  Cleveland, OH 44113

Make checks payable to: Hermes Sports and Events

One entry form per participant. Mail-in forms must be received by Wednesday, Oct. 28. Family and Team entries must be received by Oct. 16 and must be in the same envelope. Online registration will close Friday, Oct. 30 at 9 a.m.

**Awards presented**

- Top female and male runners overall (Chip Timed 5K and 5-Mile Runs)
- Top Lawyer, Top Judge, Top Paralegal/Legal Asst., and Law Student (female and male)
- Team Awards – Top teams in these categories: firm/company, law school, college and high school (male, female, mixed) * Teams can compete in the 5K or 5-Mile Run events
- Best Costume – children, adult, families, couples and teams

*All Family and Team entries are mail-in only. Team members must participate in the same event.

This event benefits our Lawyers Giving Back community outreach programs including The 3Rs, helping students in the Cleveland and East Cleveland City Schools. For more information, contact: Hermes at (216) 623-9933 or www.hermescleveland.com, or contact the Cleveland Metropolitan Bar Foundation at (216) 696-3525 or www.clemetrobar.org.

www.hermescleveland.com

**Location** The Galleria at Erieview, 1301 E. 9th St., Cleveland, Ohio 44114 (downtown)

**Time** Race Day Registration: 7:30 a.m.
All events begin: 9 a.m.
Pre-registration packet pick-up Friday, Oct. 30 from 4–6 p.m. at the Galleria

All participants registered before Oct. 16 will receive a long-sleeved Halloween Run shirt. Participants registered on or after Oct. 16 will receive a shirt based on availability.

**Runners and Walkers Welcome**

**Mail form and entry fee to:**
Halloween Run for Justice
Hermes Sports & Events
2425 West 11th Street, Suite 2
Cleveland, OH 44113

**Make checks payable to:**
Hermes Sports and Events

In consideration of your accepting this entry, I hereby for me, my heirs, executors and administrators, waive and release any and all rights and claims for damages I may have against the Cleveland Metropolitan Bar Association, Cleveland Metropolitan Bar Foundation, Hermes Sports and Events, all event chairs, sponsors and co-sponsors, their representatives, successors and assigns for any and all injuries suffered by me in said event or in transit to and from said event. I further attest that I am physically fit and have sufficiently prepared for this event. I will additionally permit the use of my name and/or pictures in Cleveland Metropolitan Bar Association and/or Foundation publications.

| Name: _________________________________________________________________________________ | __________________________________________________________________________ |
| Address: ______________________________________________________________________________ | City/State/Zip: __________________________________________________________________________ |
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| Team Name and Category _________________________________________________________________ | |

**Award Category:**

- Lawyer  ☐  Judge  ☐  Paralegal/Legal Assistant  ☐  Law Student  ☐

**Event:**

- 5-Mile Run  ☐  5K Run  ☐  5K Walk  ☐  1-Mile Walk/Fun Run  ☐

**Shirt size:**

- youth small  ☐  youth medium  ☐  youth large  ☐  adult small  ☐
- adult medium  ☐  adult large  ☐  adult XL  ☐  adult XXL  ☐

I cannot participate, but I have enclosed a tax-deductible donation to the Cleveland Metropolitan Bar Foundation in the amount of $_______

Total Amount Enclosed $__________

signature of participant date signature of parent or guardian if participant is under 18 years date
14th Annual
Halloween Run for Justice

Saturday, October 31, 2015
The Galleria at Erieview

Featuring chip-timed 5K and 5-mile races, 1-mile fun run and 5K walk, along with activities for the whole family.

Proceeds help fund law-related education, tutoring and mentoring in the Cleveland schools and improving access to justice.

Contact the Cleveland Metropolitan Bar Foundation at CleMetroBar.org/Foundation or (216) 696-3525.
There's no defense for insufficient rear legroom.

THE ALL-NEW 2015 INFINITI Q70L.
The sole long-wheel base in its class. Starting at $51,350.*

Airport Infiniti  855-588-6675  
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*See dealer for details.  
clevelandinfiniti.com