Defining Our Vision

THIS ISSUE
ADR & Family Law

26 Be Prepared: “Prepare for a Chance of a Lifetime; Be Prepared for Sensational News.”

38 Believeland in the 3Rs Classroom: CMBA Volunteers Are Champions for Our Children

53 It’s Not Over Until It’s Over: Drafting an Enforceable Settlement Agreement
content

JULY/AUGUST 2016

THE FUTURE OF ARBITRATION IN FAMILY LAW MATTERS

34

SAME-SEX DIVORCE POST-OBGERFELD: WHY THE DECISION ISN’T THE END OF THE LINE

15 WRAP-UP

34 WRAP-UP

DEPARTMENTS

07 BAR SEEN
3Rs Volunteers and Foundation Fellows Reception and Tips, Tricks and Trends in the Small & Solo Practice

11 FROM THE CMBA PRESIDENT
"All In" for the Bar, for Cleveland, and for Justice
Richard D. Manoloff

15 WRAP-UP
9th Annual Meeting

23 FROM THE EXECUTIVE DIRECTOR
Defining Our Vision
Rebecca Ruppert McMahon

31 JUDGES CORNER
What’s Your Settlement Rate?
Matthew Mennes

32 YOUR CLE METRO BAR
June Recap, Upcoming Events and Opportunities

41 ETHICS PERSPECTIVE
Do You Have a Duty To Report Ethical Misconduct of Your Client’s Former Lawyer?
Karen Rubin

42 THE FUTURE OF ARBITRATION IN FAMILY LAW MATTERS
By Stanley Morganstern

44 CONTROLLING ESI DISCOVERY COSTS
By Barton A. Bixenstine

46 WHAT TO CONSIDER WHEN DIVORCING PARTIES HAVE OWNERSHIP INTERESTS IN PRIVATELY-HEL D COMPANIES
By Sean Saari

51 STRUCTURED SETTLEMENTS WITH COURT ENFORCEMENT
By C. David Witt

53 IT’S NOT OVER UNTIL IT’S OVER
By Aaron Schmidt

FEATURES

24 STAYING TRUE TO ETHICS IN A DIFFICULT SITUATION
By Seth Osnowitz

26 BE PREPARED
By Christopher M. Ernst

29 FACTORS VS. FORMULAS
By John D. Zoller

34 SAME-SEX DIVORCE POST-OBGERFELD
By Christa G. Heckman

38 BELIEVELAND IN THE 3RS CLASSROOM
By Lori Urogdy Eiler

42 THE FUTURE OF ARBITRATION IN FAMILY LAW MATTERS
By Stanley Morganstern

44 CONTROLLING ESI DISCOVERY COSTS
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WWW.CLEMETROBAR.ORG JULY/AUGUST 2016 CLEVELAND METROPOLITAN BAR JOURNAL | 3
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Recent Events
The annual Greet the Judges and GCs members-only event in May provided an excellent opportunity to connect with members of the bar and the bench. We also welcomed the newly admitted Ohio attorneys and are glad to welcome them into this great legal community.

Upcoming Events

It's renewal time. July kicked off our new membership year and we want you to stay plugged in and capitalize on the many programs and benefits the CMBA will have for 2016–17.

Goals
Our goal is to help shape the member experience by developing membership recruitment and retention strategies, assisting individual sections with membership development plans and working to expand and enhance member benefits.

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

Upcoming Events

Fourth Tuesday of the month at noon at the CMBA at the CMBA Conference Center: Participants may also join by phone.

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Thank you to all the 2015–16 committee and section chairs for a great year!

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Marshall Dennehey Warner Coleman & Goggin

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Attorney and Counselor At Law

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Kimberly M. Baga
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INSURANCE
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LITIGATION
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YOUNG LAWYERS
Alexander B. Reich
Calfee, Halter & Griswold LLP
JUNE 8, 2016

3Rs and Fellows

On June 8, we celebrated our 3Rs volunteers and Foundation Fellows with an evening of good food, great views, and wonderful company at the Music Box Supper Club. The social event featured Cleveland schools CEO Eric Gordon, 3Rs leaders and volunteers, Fellows, and our Teachers of the Year for 2014–15 and 2015–16: Mike Hanrahan of Max Hayes and Jimmy Hronek of Ginn Academy. The night was our way of celebrating those who support the award-winning 3Rs program, just completing its 10th year in the Cleveland and East Cleveland schools, and saying thanks during member appreciation month.

MAY 13, 2016

Tips, Tricks and Trends in the Small & Solo Practice

On May 13, the CMBA’s Small Firm & Solo Practitioner Section held their spring CLE. Jamie Price of Walter & Haverfield presented on the new advisory opinion on flat fee agreements. Marv Karp provided an overview of the CMBA’s Professional Conciliation Panel and their services. Our panel of Will Eadie of Spangenberg, Shibley & Liber, Jill Wight of COSE and Jim Smolinski, Director of the CMBA LRS, discussed marketing ideas and new ways to develop business. We wrapped up with a judges’ panel featuring Judge Brendan Sheehan of the Court of Common Pleas and Judge Brian Hagan of the Rocky River Municipal Court.

Save the date for the Section’s Small & Solo Expo, Pilot, Promote & Propel Your Practice, on Friday, September 23. This event sold out last year, so register early at CleMetroBar.org!
Greener Way to Work Week
September 26 – 30, 2016
The Green Initiative Committee is proud to host its annual Greener Way to Work Week that encourages everyone to find greener ways to commute to work one or more days that week and cap it off with the David Webster Greener Way to Work Luncheon on Friday, September 30 at the CMBA.

More details online at CleMetroBar.org/Green for the week, the luncheon and getting your office Green Certified.

David Webster
Greener Way to Work Luncheon

Nominations are open for the first Green Sustainability Award which will recognize an individual who:
1. Demonstrates leadership by promoting efficient energy use and other environmentally responsible practices;
2. Used a unique approach to green practices; and/or
3. Implemented a green technique that is adaptable or adoptable by others.

Send nominations to Krista Munger at kmunger@clemetrobar.org no later than September 9.

Noon at the CMBA
Join us for lunch! In connection with our annual luncheon, we’ll be highlighting information about sustainable practices related to food (farm to table, buying local, etc.), we invite you to share info about sustainable practices (farm to table/local food, etc.) here in the CLE.

The Green Initiative Committee is pleased to welcome:
Jerry Crabb, Senior Director of Ballpark Operations, Cleveland Indians
Matt Gray, Director, City of Cleveland’s Office of Sustainability
Kathleen Rocco, Education Specialist, Cuyahoga County Solid Waste District

Join us to hear information on their sustainability initiatives as well as tips that are transferrable to other organizations for reducing our environmental footprints.

This annual luncheon will also honor new and renewing Green and Green+ Certified Firms and include the presentation of the first Green Sustainability Award. All local law firms/offices employing one or more CMBA members are eligible to apply for CMBA Green Certification. Get started or renew your certification at CleMetroBar.org/Green.

Provide and share your Green tips, “how to” ideas, and resources. Be it pictures, info, links or more, spread the word on being “green.”

Leverage this popular #tbt approach and show your “before and after” approach for sustainability. Have fun, be clever, and enjoy how far we’ve come in Cleveland.

You learn more from watching others! Share a video, post a blog, or tweet about what motivates you to be environmentally conscious. Whether it is internal motivation, client satisfaction or money saved, share what you do to inspire others.

Have everyone else be green with envy and wear green and post a picture with #GreenCMBA to help raise awareness of and share your successes in sustainability.

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Motivation Monday
Tuesday Tips
Provide and share your Green tips, “how to” ideas, and resources. Be it pictures, info, links or more, spread the word on being “green.”

Work It Wednesday
Throwback Thursday
Leverage this popular #tbt approach and show your “before and after” approach for sustainability. Have fun, be clever, and enjoy how far we’ve come in Cleveland.

Foodie Friday

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Michael Goler

Firm/Company: Faeges Lapine LLP
CMBA Join Date: 1977
Undergrad: Union College NY
Law School: Case Western Reserve University

Most Memorable CMBA Moment?
Twenty-five years ago, I reached out to lawyers in town whose practices focused on environmental issues and was able, with their help, to create the Environmental Law Section and its Student Internship Committee. Within only a couple years, the Section ballooned to almost 200 members, and through the support of law firms and vendors whose businesses were in the environmental arena, we were successful not just in creating CLE and communication and networking opportunities for attorneys working in the environmental field, but also in beginning a tradition of funding local law students who wanted to work through unpaid summer internships with NGOs around the country. Today, the CMBA Environmental Law Section is alive and thriving, and we continue to support the Internship Committee, making an award this year to a law student who was able to pass up a paid corporate internship to work on an unpaid internship with the Western Reserve Land Conservancy. I am very proud of the collaborative efforts of so many lawyers and firms in helping to establish and sustain this section.

What Neighborhood do you live?
I live at Shaker Square, which despite its name is actually in the City of Cleveland. I enjoy both living and working in Cleveland, which allows me to be totally urban and near where everything is happening. Shaker Square has been successfully renovated and revived into a vibrant neighborhood. It is loaded with restaurants, service providers, and people-friendly businesses. It has a weekly Farmer’s Market, a multi-screen movie theater, and live music concerts in the summer that attract a wide variety of people eating, drinking, and just relaxing together. It, the sidewalks are often crowded with a diversity of people eating, drinking, and just relaxing together.

What do you like about your job?
I genuinely like the clients with whom I work. Some of them I have represented for more than 20 years and in some instances I’ve had the opportunity to watch and help a new generation come into the business. I enjoy the unusual deals, the ones that make me stretch a bit and think more creatively. I also enjoy the fact that my practice involves real estate, where I can actually “touch” the product. At one point in the late ‘80s, I was involved in a massive project that kept me in the office and away from my kids for far too much time. But at the end, when the client was actually erecting the building, I was able to bring my kids downtown and take them up the construction elevator to the top, hard hats on their heads, and tell them “This is what Daddy’s been working on.” You can’t do that with a tax opinion or a securities prospectus. It just represented a real, physical product my kids could reach out and touch, to put a “face” on the project their dad had been so busy with. I loved that.

One Fun Fact about me?
Something not many people know about me is my musical background. I have played several musical instruments but primarily I was a singer, with the Cleveland Orchestra Chorus. I sang with the Chorus starting in high school and continued with them for 18 years. We performed in Carnegie Hall every few years and made a number of recordings, two of which won Grammys and one a Grand Prix du Disc. It was a great group of people and an immense amount of fun.

Who influenced you the most?
I would have to say that my father was the biggest influence in my life. An obstetrician, he was gone much of the time (babies always seemed to be born in the middle of the night or at dinner time)., but yet he still managed to be around and available to provide a great model of calm and concern for family. I can’t recall a time when he raised his voice to my brothers or me, but he still managed to get his concern across. He was devoted to his patients, his partners and his profession, and he was active in local, state and national medical associations. He also served two summers on the SS Hope, a hospital ship converted from a US Navy WWII hospital ship that traveled around the world bringing modern medical care to countries in need. I think his willingness to serve others was one of the reasons why I have become such a bar “junkie” with CMBA and the ABA where I can work on issues that benefit attorneys around the country. I do enjoy that altruistic effort, as frustrating as it can be from time to time, but I also know it’s necessary if we are to protect and preserve the core values of our profession. I can thank my dad for leading me there.

What’s your favorite book?
I also love reading biographies, history and novels; travel through France with my daughter, Katie, who is 18 years. We performed in Carnegie Hall every few years and made a number of recordings, two of which won Grammys and one a Grand Prix du Disc. It was a great group of people and an immense amount of fun.

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The following speech was presented at the 9th Annual Meeting and Inauguration at the Huntington Convention Center of Cleveland on June 3, 2016.

Good afternoon...

- To the judges, practicing lawyers, still-engaged retirees, paralegals, support staff, and students working hard to enter the legal profession someday;
- To the educators of the next generation of citizens of our democracy;
- To those who volunteer their time, talents, and treasure to promote justice in society;
- To the businesses, non-profits, and individuals who support and enrich our legal community in myriad and invaluable ways;
- To the visionary and dynamic leaders of the bench and bar, who direct us to higher ground;
- To Anne Owings Ford, who seems to know everyone in this room, and whose dedication and diligence over the past year has benefited everyone in this room — in big ways and small;
- To the tireless staff of the Bar Association, who pull it all together and move it all forward;
- And to our honored guests and participants.

I am humbled to address you all... as President of the Cleveland Metropolitan Bar Association.

Over the next 90 minutes, I intend to explain what the Bar Association is doing and what it can do for you, explore why our activities are so important (both to our existential selves and to the community at large), and hopefully excite all of you to be “all in” for the Bar. All in just three hours... Which brings to mind the question — What’s a lawyer? Someone who writes a 20,000-word document ... and calls it a brief.
THANKS; SECTIONS & COMMITTEES HIGHLIGHTS
But first, a few important notes of thanks.

To The Very Reverend Tracey Lind, thank you for setting the tone for this event with your invocation. Through your work at Trinity Cathedral and otherwise, you exemplify the principles of inclusion, sustainability, and community service. Our membership is committed to those principles, as demonstrated by the growth, strength, and good works of our sections and committees like:

- the LGBT & Allies Committee, led by Anthony Andrick and Danielle Doza, with 110 members and plans for a networking and mentoring event on June 24 to mark the anniversary of several Supreme Court rulings;
- the Women in Law Section, currently led by Amelia Leonard, with 459 members, which recently held its inaugural International Women’s Day CLE leadership event, and plans to hold this innovative event again next year;
- the Green Initiative Committee, with Chair Michelle Cook and Vice Chair Katy Franz, which has made our community 6.32% more green — be it known, however, that 74.38% of all statistics are made up on the spot;
- the 74-member Environmental Law Section, with Chair Tamar Gontovnik and Vice Chair Keely O’Bryan — disguised here in the photo [on the screen] as Karl Bekeny and Jim White; and
- our Justice for All programs, led by Lisa Gasbarre Black and managed by our very own “Saint” Mary Groth.

Judge Jones, thanks again for coming up from Cincinnati and being joined by your long-time assistant (and my former boss) Marcia Carter, to swear me in. At 90 years young, you just cranked out an autobiography

— Answering the Call — that is a must-read on United States race relations — past, present and future. [I urge us all] to “answer the call” — the call to serve, the call to continually remake ourselves into a better image as individuals and as a community, the call to become an integral part of something consequential and enduring.

My professors at Divinity School might say that, in doing so, we tap into the essence of existential meaning. Or as Donald Trump might say, “If we all answer the call ... it’s gonna be huge.”

Michele Connell, and my esteemed colleagues at Squire Patton Boggs, thank you for letting me take the next year off with full pay and benefits to attend to Bar Association matters — what? ... no? In any event, thanks for your support of me and my law practice for 21 years and for your support of the Bar Association, particularly its Louis Stokes Scholars Program.

A final note of thanks to, and special mention of, my family members who were able to attend today’s gathering. They are what mean the most to me, and are my motivation. My angelic and eternally patient wife, Molly. We started dating at 14 and she’s still wondering when I am going to grow up. My 20-year-old daughter, Alex, who just got home from college and is not allowed to date until she’s my age. My 17-year-old daughter, Sophie, who played the trumpet in the Rocky River High School Jazz Ensemble that welcomed you here today. And my 11-year-old daughter, Samantha, who recently started her own 501(c) (3) to build a greenhouse so that kids and seniors might grow food together for the needy in the community. Samantha was assisted by our recently departed and beloved colleague, Mike Meissner, whose memory I honor here this afternoon. Mike Thomas has also been a great help.... Welcome also my aunt, Julie. And my brother, D-Man, and his fiancée, Denise. None of them are here to support me, however. They all heard that David Goodman was going to speak.

Brother D-Man, a Cleveland sportswriter, undoubtedly has had the toughest job in town, having had to watch, digest, and write about teams that have failed to deliver a championship in his entire lifetime. (I think only Van Carson here remembers the glory days of the 1920 and 1948 Indians.) But that’s all about to change .... Go Cavs!

BAR INITIATIVES

Strategic Plan
Anne described some of the Bar initiatives of the past year — from launching a dynamic new website, to concluding our first full year with our very own playmaker and All-Star Executive Director, Becky McMahon, to developing and approving a new strategic plan.

Now I know that when anyone mentions the phrase “strategic plan,” half of the people in the audience reach for their phones to check their e-mails. And the other half reach for anything with caffeine in it. But this one is not boring. After all, Bruce Hearey led the charge on this — and he’s anything but boring.

To be sure, our new strategic playbook includes layups and dunks. We are focusing on strengthening the core of the organization through its sections and committees, growing leaders within the organization and within the legal community, and making the Bar Association an indispensable resource for our members.

The new playbook also weaves in plays involving all the players on the floor, working together to create good looks from three-point land. On that front, the Bar Association will continue its evolution as the “go-to”
organization for law and justice issues. We will develop nimble procedures and assemble experts as necessary to respond when new issues arise. More importantly, we will seek to drive the discussion on the significant issues of our day by convening stakeholders and partnering with others for solutions.

For instance, we are exploring a model project developed by The Ohio State University Moritz College of Law, which they call the “Divided Community Project,” where the Bar Association would help lead conversations that address how we might proactively and productively handle divisive community crises.

As the organized Bar, we are well-positioned to take a leadership role in spotlighting critical issues (like education and poverty) and driving important initiatives forward. For example, on May 20, under the leadership of Majeed Makhlouf, our VP of Diversity and Inclusion, we unveiled the results of our deep-and-wide diversity survey. Following up on that, and with a tip of the cap to our friends in Columbus, our strategic plan calls for us to take a leadership role in obtaining widespread substantive and financial support for a community-wide Director of Diversity.

In pursuing such initiatives, we have a leadership role to play. But we all need to collaborate, strive for consensus, and build teams. It is said — if you want to go fast, do it alone; if you want to go far, do it together.

Justice for All
Over the course of the next year, we will also be pursuing initiatives that take me back to my roots with this organization and otherwise, and that underscore the fundamental importance of the legal profession in our society of laws. It’s been a significant focus of Chief Justice O’Connor’s efforts. It’s the topic of this year’s Eighth District Judicial Conference. And it’s what we end our Pledge of Allegiance with — “Justice For All.”

The CMBA is the go-to law-related organization for education and professional development, for business networking opportunities, and for giving back to the community, which can be fulfilling and self-actualizing for those who give, and can be life-changing for those who receive.

It was the give-back aspect of the Bar that first drew me in many years ago, when I worked with Jan Roller, Mary Groth and others to raise money for the Bar Foundation’s endowment in support of the Justice For All programs of the Bar Association. Those community service, pipeline diversity, and pro bono programs now include, among others:

- the Cleveland Homeless Legal Assistance Program, which, in partnership with the Northeast Ohio Coalition for the Homeless, provides pro bono legal assistance to homeless and at-risk individuals;
- the High School Mock Trial Competitions, including the Cleveland Mock Trial Competition, run in partnership with Cleveland Municipal Court, which involves over 500 Cleveland Schools students, and the Ohio Mock Trial Competition, run in partnership with the Ohio Center for Law-Related Education, which involves over 800 students in our district and regional competitions;
- the Pro Se and Pro Se “Plus” Divorce Clinics that Anne mentioned earlier, run in partnership with The Legal Aid Society of Cleveland and the Cuyahoga County Domestic Relations Court, designed to provide access to justice for eligible individuals in need of a simple divorce;
- the award-winning Louis Stokes Scholars Program, a diversity pipeline program for college students who are graduates of Cleveland high schools and Shaw High in East Cleveland and interested in pursuing legal careers, which offers paid internships, mentoring, writing workshops, and large group activities; since Carter Strang launched this Program at his inauguration five years ago, the Program has seen 50 graduates, and
is adding an Law School Admissions Boot Camp for participants; I would like to call an officials’ timeout and ask that the Louis Stokes Scholars in the room stand and be recognized;
• the Bankruptcy Pro Bono Project and Bankruptcy By-Pass Program, once again in partnership with The Legal Aid Society of Cleveland; and, of course ...
• the award-winning 3Rs program, where hundreds of volunteers connect with high school students in East Cleveland Schools and Cleveland Schools to teach the law and civics and to provide career planning and mentoring opportunities.

None other than The King introduced 3Rs to us 10 years ago (see Youtube.com/CleMetroBar for Lebron “3Rs Introduction” video). Over the past 10 years, 1,200 3Rs volunteers have dedicated approximately 83,000 hours to serving students in Cleveland and East Cleveland Schools as educators and mentors. Using a common pro bono multiplier of $150 per hour, the estimated value of the time spent on 3Rs by these volunteers is over $12 million.

The Cleveland Metropolitan Bar Foundation, of which I used to be President, works tirelessly and effectively to support all these programs and more. And now, a word from our sponsor ... literally ... (see CleMetroBar.org/Foundation for video).

I very much look forward to working with incoming Foundation President, Drew Parobek, and the Trustees of the Foundation to keep great things going, expand on what we have, and support exciting new Justice For All initiatives.

Justice For All – Cleveland Schools

Speaking of... we are working hard to develop and implement several targeted initiatives to improve access to justice in our community — starting with the Cleveland Metropolitan School District.

In close collaboration with CEO Eric Gordon and Dean Louise Dempsey, and with an eye to what Buffalo Schools are doing with the Erie County Bar Association, we are developing a pilot project to expand our impact within Cleveland Schools by providing legal services as well. Sometimes assistance with a single legal issue can make the difference between school attendance and absence, between high school graduation and dropping out — issues encompassed by family law, landlord-tenant law, immigration law, public benefits rules and regulations, and beyond.

The Bar Association would develop an extensive training program for the pro bono volunteers, and provide support on the front end through an intake specialist, and on the back end through volunteer attorney reinforcements who agree to take on cases requiring more than brief advice.

There is no serious question as to whether we have, in Eric Gordon, the most innovative, dedicated, and hard-working school district CEO on the planet. And that presents a creative collaboration opportunity for the Bar Association to add significant value.

Justice For All – Modest Means

Colleen Cotter and The Legal Aid Society do an excellent job of leading the charge in this community to provide legal services and thus access to justice to the poorest among us.

There is another large socioeconomic group in our community that lacks access to legal services and justice — those whose income does not meet intake requirements for Legal Aid but who cannot afford legal services at market rates. We at the Bar Association are working on ways that we might address this issue, from developing a network of lawyers willing to accept referrals on a pro bono or “low bono” basis, to studying program models that are popping up like popcorn throughout the country, to implementing an idea to dedicate newer lawyers to serving this population and to support their efforts not only with facilities, client flow, and possibly stipends, but also with training provided by golden lawyers who want to help train the next generation of attorneys in this town.

JUSTICE — IT’S IN OUR DNA

Justice is in our DNA as an organization. One of our stated “Core Values” is that “[w]e will protect access to justice and equal justice, and promote a fair, efficient and competent system of justice for all.”

Justice is also in our DNA as individuals, and as a society.

I was listening to a lecture on Cicero’s On Moral Duties in the car the other day. (I’m a municipal bond lawyer — so my life’s really not all that exciting.) Tying into Platonic thinking at the time, the great Roman orator and philosopher discussed the four over-arching values — shootingqua, dribblingissimus, passingqua, and reboundingissima, which is Latin for wisdom, moderation, courage, and justice. And of these four pillars of leading a good and moral life, justice reigned supreme. (Just as David Justice did as an Atlanta Brave and New York Yankee, but, sadly, never as a Cleveland Indian.)

But back to Cicero ... who explained that justice not only encompasses our affirmative interactions with each other but, importantly, passive injustice — standing by and letting injustice occur. As Rev. Dr. Martin Luther King Jr. said, “Injustice anywhere is a threat to justice everywhere.”

The value of justice is deeply rooted in our civilization. Its essence is how we treat others and let others be treated. It’s the cardinal virtue because there is nothing more central to living together in community. The shared human experience of living together in community through the millennia has baked justice into our very nature.

And as a legal community, ultimately, justice is what we’re all about. Whether you:
• impartially dispense it every day like the judges in this room; or
• fight to make sure its scales aren’t tipped or weighted; or
• seek out the holes in it and swoop in to fill them; or
• write laws and rules to define and refine it; or
• pull all-nighters to help people obtain it; or
• stand up to those who would deny it; or
• teach people how to honor it ...

... you are carrying out the noblest of missions. You are carrying out justice in our society.

So if you feel passion for what you do, if you feel like you are self-actualizing, if you feel like what you are doing is meaningful — it just might be because what you’re doing is resonating with your essential being...

I’m “all in” for Cleveland, for the Bar, and for justice. I was born here and decided to raise my family here — in the best location in the nation. I decided to pursue a career in law because I believed that I could make a positive difference in society — and I still do. And I stand before you today because I believe I can advance that cause by crankning up the volume for a Bar Association that is flat-out ready to rock.

Big picture, at the Bar Association, we’re here to maximize the breadth and depth of your experience in one of the noblest of professions — to your own benefit, and to the benefit of all.

Little picture, please check out the tables at the Expo to see how you might want to tap into the great things the Bar Association offers, and consider signing up for at least one program or activity that interests you. And speaking of taps, the cash bar is open. And Transportation Boulevard is about to get all funky. But I’m afraid we had to cancel the Hugh McKay kissing booth, due to oversubscription ... or was it undersubscription?

In any event ... Go Bar Association! Go Cleveland! And go Cavs!

Rick Manoloff is a partner at Squire Patton Boggs (US) LLP. He is experienced as bond counsel and underwriter’s counsel in debt and lease financings, and as general counsel for Ohio political subdivisions, particularly school districts. He is a past president of the CMBA, and he has been a CMBA member since 1993. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.
Our 2016–17 Bar year kicked off with the inauguration of CMBA President Rick Manoloff at our high-energy political rally-themed luncheon and expo. Luncheon guests were welcomed by a sea of red, white, and blue decor and campaign-style signage. We honored award recipients, 50- and 65-year honorees, and our outgoing trustees, in addition to welcoming and swearing-in our new officers and trustees including CMBF President Drew Parobek. The event began and concluded with the first-ever Membership Expo, allowing guests and exhibitors to interact and learn about opportunities for engagement, volunteering, and business development. Thank you to our sponsors who generously contributed to make this day possible.
CONGRATULATIONS, HONOREES!

The President’s Award
Hon. Jean Murrell Capers

Hon. William K. Thomas
Professionalism Award
David A. Kutik

Justice for All Volunteer of the Year Award
Jennifer M. Himmelein
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Richard D. Manoloff  
**PRESIDENT**  
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“There is a great Bar Association; A well-oiled machine geared to pacing; Brings all up to speed; Then exits the lead; And lets all the drivers start racing.”

Darrell A. Clay  
**PRESIDENT-ELECT**  
Walter|Haverfield LLP  
“The CMBA has given me unparalleled chances to grow personally and professionally, including appearing before the Ohio Supreme Court. I’ll always remember making that first call to volunteer and get involved!”

Joseph N. Gross  
**TREASURER**  
Bensch, Friedlander, Coplan & Aronoff LLP  
“I love the Bar Association because it has helped me help the profession and my colleagues in the profession.”

Marlon A. Primes  
**VICE PRESIDENT**  
United States Attorney’s Office  
“I really like the annual 3Rs field trip to the Stokes Federal Courthouse. Students read scripts for a mock suppression hearing, where they conduct cross and direct examination of an FBI agent and make oral arguments before Judge Solomon Oliver, Jr.”

Scott Heasley  
**VICE PRESIDENT OF MEMBERSHIP**  
Gallagher Sharp  
“What I enjoy the most about my CMBA involvement is the give and the take. I have many opportunities to learn from seasoned attorneys and I have the chance to interact with law students and new attorneys.”

Majeed G. Makhlouf  
**VICE PRESIDENT OF DIVERSITY & INCLUSION**  
Berns, Ockner & Greenberger, LLC  
“The Bar Association is the place that fosters our core values and aspirations as a profession and reminds lawyers why we entered the profession in the first place.”

Rebecca Ruppert McMahon  
**SECRETARY & EXECUTIVE DIRECTOR**  
Cleveland Metropolitan Bar Association  
“Come meet us at the Bar. We have something for everyone.”
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Defining Our Vision

W
We all know the adage “change is the only constant.” Signs are everywhere that our country is changing. So is the legal industry. And so is our bar association.

More than a year ago, in recognition of just how much our world has changed, then-outgoing CMBA President Bruce Hearey launched a strategic planning initiative for our bar. At that point, it had been several years since the CMBA had last taken time to assess where we stood and to think about where we might want to go.

With the approval of the CMBA Board of Trustees, in July 2015 we took two critical, initial steps: we created a Steering Committee and hired an experienced facilitator.

The Steering Committee’s role was to create the framework for our future plan. In addition to Bruce and me, the Steering Committee was comprised of a collection of present and former Board members, as well as CMBA administrative staff: Anne Owings Ford, Rick Manoloff, Darrell Clay, Mike Ungar, Bruce Hennes, Larry Zukerman, Jill Okun, Marlon Primes, Ginger Mlakar, Mary Groth, Alla Leydiker and Rita Klein. We met on several occasions between July and December 2015, spending significant time reviewing (and frequently debating) the demographic and practice trends in the legal profession, in Greater Cleveland, in our local law schools, and in our membership. We also tapped into our individual and collective knowledge of what our bar does well and where we struggle. Perhaps most importantly, we talked at length about the direction we want our bar to take in the future.

From those discussions — skillfully moderated and framed by our facilitator, David Kantor — we developed a 10-year strategic direction for our bar. Our collective vision determined that by 2026, we want to see the CMBA:

- Serve as an indispensable resource for legal professionals, offering a range of programs, services, and networking opportunities among which are relevant offerings for any legal professional, regardless of her/his age, length of time in practice, or practice setting.
- Be among the leading organizations in Northeast Ohio that identifies and addresses priority issues facing the community, with activities that include a significant public service component.
- Expand our collaborations with other bar associations and community organizations to support our capacity to reach out and serve the broader legal and larger community. In doing so, we will also leverage our facility to support this endeavor.
- To help make our way toward this vision, the Steering Committee identified four critical areas of focus to which we should devote significant attention over the course of the next three years:

1. Membership: Growing and strengthening our membership by enhancing our value proposition and member engagement, while targeting specific groups, constituencies, and specialized areas.
2. Programs and Services: Strengthening our sections, committees and bar functions to emphasize bar association fundamentals so the CMBA is an indispensable resource for all of our members.
3. Leadership Development and Continuity: Developing and engaging leaders who have experience in the core of CMBA fundamentals, and identifying and engaging those with leadership potential.
4. Thought Leadership: Continuing our evolution as the “go to” organization for law and justice issues by serving as a community convener to identify and address the significant issues confronting Northeast Ohio and collaborate with others to develop and present positions and educate the community.

Once the Board approved the Steering Committee’s framework, we then spent the first three months of 2016 conducting an even deeper dive into each of the four areas of focus. Individual Action Planning Teams, comprised of both Steering Committee members and nearly 50 additional CMBA members and staff, built detailed, customized work plans designed to move the CMBA, one action step at a time, toward the stated goals. In addition, we identified specific metrics that will be used to establish goals, track our efforts and ultimately assess whether we achieve our objectives.

In May, the Board of Trustees unanimously approved the CMBA’s 2016 – 2019 Strategic Plan. In short, our plan provides specific direction for how we are going to better engage our members, grow our membership, and demonstrate value to our members. This is our plan to make a difference for you, our profession and the community. Over the course of the next three years, all of our members will have an opportunity to help us achieve the ambitious — but doable — goals set forth in our Strategic Plan. And through our Bar Journal, our daily Bar Brief emails, our website, and more, we will provide transparency in sharing how we are measuring up along the way.

I know some of you are probably sighing at this point — if you’ve even made it this far into the article. Strategic plans are almost always built on countless good intentions, but too frequently end up sitting on shelves or buried in filing cabinets. All those hours poured into a document that ultimately remains untouched, untracked, and unloved.

Not this plan. Not this time.

Our Board, our Steering Committee, our Action Planning Teams, and our CMBA administrative team — ALL are committed to rolling up our sleeves and enlisting the support of our entire membership so that over the next three years we get ourselves firmly on track, moving toward our 2026 future state. Come meet us at the bar as we begin making our vision our reality.

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

Rebecca Ruppert McMahon

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FEATuRE ARTicLE

The 2016 Essay Competition Topic: How should a new attorney respond if a supervisor instructs the new attorney to engage in non-criminal conduct that the new attorney believes would violate the Ohio Rules of Professional Conduct?

Staying True to Ethics in a Difficult Situation

BY SETH OSNOWITZ

As a second year law student looking toward summer employment and my first year as a full-fledged practicing attorney, I have mixed feelings of excitement, apprehension and outright fear. The legal profession comes with a large burden of responsibility and expectations. As law students, we learn to read cases, analyze situations and come to sound logical conclusions about what is proper and just, but it is relatively easy to look at situations in a vacuum, safely within the context of a law school. Real-life situations are filled with nuances and difficulties that textbooks cannot quite capture. With these concerns in mind, and an understanding of the Ohio Rules of Professional Conduct, I will answer the essay question.

Faced with the dilemma posed by the essay prompt, the new attorney would have to first resolve whether the conduct actually violated the rules, or whether the conduct questionably violated the rules. Rule 5.2 of the Ohio Rules of Professional Conduct (ORPC) says that all lawyers are bound to the rules, notwithstanding directions of others. Following the rules, the new attorney would be obligated to abide by the rules regardless of what her supervisor has directed. Therefore, a prudent thing for the new attorney to do would be to first gain detailed knowledge of exactly what the supervisor asked her to do. With full details, she could properly assess the situation and decide whether the conduct violated the ORPC. The new attorney’s investigation should start with questioning the supervisor, but this would need to be a delicate procedure. The new attorney will be pressured to not sound incompetent, and likely everyone feels uncomfortable being questioned, especially regarding personal ethics. However, maintaining ethical standards and abiding by the ORPC are paramount. Therefore the new attorney would find herself needing to tread the line of gaining information without creating an uncomfortable work environment, or potentially jeopardizing her position over something that may not even be in violation the ORPC. After the attorney has as much information about the assignment as necessary, she will need to apply the ORPC. A good method would be to research some case law and commentary on the specific rule or rules in question. After research, if the attorney still feels that the assigned task may cause her to violate the rule, she should not go through with the task without discussing the matter with her supervisor. On a personal level, she would not want to put herself in a position to potentially violate the rules, or do something ethically questionable.

Rule 5.2b of the ORPC provides a safe haven for lawyers who act in accordance with a supervisor’s reasonable resolution of a question of professional duty. As the comments say, the Ohio rule was changed from the model rule to put the burden of deciding questions of professional duty on supervising attorneys. This rule serves a dual purpose. The rule protects inexperienced attorneys who rely on instructions from more experienced and knowledgeable supervisors who have power over the new attorneys. The rule also serves as an incentive for supervising attorneys, who have more knowledge and experience, to make judgment calls in questionable situations. Here, despite the difficulties involved, the new attorney would need to approach her supervisor and explain that she has done sufficient research to conclude that if she would perform the conduct the supervisor assigned to her, she would potentially violate the ORPC. The onus would then be on the supervisor to decide the reasonable resolution of the question professional responsibility. Ideally,
the supervisor would recognize the potential harm caused by violating the rules and err on the side of caution. However, the supervisor may recognize that the conduct questionably violates the rules, but nevertheless instruct the new attorney to go ahead. This scenario poses an additional dilemma for the young attorney.

Assuming the new attorney believes that the conduct does violate the rules of professional conduct, then the new attorney will have a duty to report the conduct to the disciplinary committee empowered to investigate or act on the violation. The violation would fall under the purview of rule 8.4 misconduct, which includes knowingly inducing another person to violate the rules. Again, this puts the new attorney in an awkward situation. The attorney carries a legal and ethical responsibility to report the conduct, and in a questionable situation, erring on the side of caution is the morally right thing to do and in the public interest. The harms resulting of the attorney allowing her supervisor, or herself, to violate the rules are potentially much greater than the harms that would result from reporting. If the conduct really does not violate the rules, then the investigative committee will not pursue any sort of reprimand. Further, the language of the rule says the attorney must “knowingly assist, induce … another.” Therefore, if the new attorney discussed the matter with the supervisor prior to reporting to the disciplinary committee, and the supervisor believes in good faith that the conduct is within the rules, then the supervisor would have the defense of not knowingly committing the violation. So, even if the conduct does violate the rules, then the attorney has fulfilled her obligation and protected the public from undesirable attorney practices and the supervisor will not face a serious punishment because of his good faith mistake. However, the act of reporting may have consequences for the new attorney. She may face backlash at her place of employment, or potentially be terminated because she is not a “team player.” Although the new attorney would have legal remedies in the case of unlawful termination, the conflict would cause a great deal of stress and likely create some problems in her career. So, this becomes a serious choice. In the event that the conflict is found to violate the rules, the new attorney would have the defense of the safe haven rule, and the supervisor could say he did not knowingly direct her to violate the rules because he did not know the conduct violated the rules. So, this becomes a very attractive choice. The new attorney has less risk of harming herself by not reporting the supervisor to the disciplinary committee, if the supervisor says that he has a genuine good faith belief that the conduct does not violate the rules of professional conduct. Further, the rules were designed to allow supervisors to settle debates over questionable conduct. So, assuming the new attorney would report conduct that clearly violates the rules of professional conduct, the question becomes what to do at the margins.

Unquestionably, a new attorney would have apprehensions about questioning the instruction of a supervisor. In fact, most would probably want to avoid this at all costs. But the new attorney not only has a duty to abide by the rules of professional conduct, but also has a higher ethical duty that comes with admittance into the profession. Lawyers have the task of helping society work towards achieving justice. In order to do this, lawyers take on the role as fiduciaries. Clients entrust lawyers with protecting their wealth, livelihood and freedom. Therefore, lawyers are in a position of great power and must abide by high ethical standards. The consequence of unethical lawyers is not only great harm to clients, but the erosion of the American legal system. If clients cannot trust lawyers, then clients must either pursue legal issues without representation and suffer a great disadvantage, or succumb to the mercy of an imperfect system that carries harsh consequences for its mistakes. This may be a bit dramatic, but ethics are important in the legal profession. Therefore, the new attorney must be careful to stay on the right side of the line.

Seth Osnowitz is from Toledo, Ohio and went to Ohio State where he majored in Economics and Anthropology. After college, he taught English in South Korea and then spent a winter in Jackson Hole. He is currently working as a summer associate for Squire Patton Boggs this summer. He is interested in transactional law. He can be reached at sdo7@case.edu.

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[1] See Prof.Cond.R.5.2(a)
[2] A A See Prof.Cond.R.5.2(b) (“A subordinate lawyer does not violate the Ohio Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of a question of professional duty.”)
[3] See Prof.Cond.R.8.4(a) (d) (“if the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the resolution is unclear, someone has to decide upon the course of action.”)

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Seth Osnowitz is from Toledo, Ohio and went to Ohio State where he majored in Economics and Anthropology. After college, he taught English in South Korea and then spent a winter in Jackson Hole. He is currently working as a summer associate for Squire Patton Boggs this summer. He is interested in transactional law. He can be reached at sdo7@case.edu.

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By Christopher M. Ernst

In The Lion King, younger brother Scar sings to his band of hyena minions of his devilish plot to kill Mufasa and Simba. In the song, he preaches to his minions of the importance in being prepared for the change of leadership. Failure to be prepared will cause the hyenas to miss out on a "future littered with prizes."

While Northeast Ohio mediations rarely involve deposing large felines from positions of power, it is still important to be prepared when attempting to resolve a case. This preparation must be accomplished by both counsel and client. Failure to be properly prepared for a mediation can cause the client to miss out on a desirable resolution.

All too often, attorneys will describe a good settlement as one where both sides walk away angry. The theory behind this is that, by a party’s concession from its original settlement position, the party will become angry. If both parties become angry, both parties have conceded from their original settlement position. With enough anger, an attorney can easily rationalize such a settlement into being a good settlement. Frequently, though, this is usually not the best resolution for the dispute. Less frequently, the clients realize that and turn their scorn towards the attorney.

With good preparation in advance of a mediation conference, counsel and client alike will be put in the mindset of resolution, rather than mere settlement.

An Attorney’s Responsibility to Be Prepared for Resolution

Attorneys — and, in particular, litigators — always want to be right. That is what they are paid to do. They are paid to take a client’s position and win. It is very difficult, if not impossible, to “win” in mediation. As a result, the mindset that a case should be won is the exact antithesis to what a proper mediation mindset should be. Attorneys who do not prepare themselves and adjust their mindset appropriately do a disservice to their clients.

As a mediator, I have seen, time and time again, attorneys prepare mediation “briefs” which argue, or advocate, for a client’s position in an attempt to win. Submissions like these are wrong. The submission of a “Brief” is a sign of argument. A brief is a document which attorneys file with courts in order to assert or further their client’s position. That is not appropriate in mediation. Rather a “Mediation Statement” should be submitted. A statement sets forth pertinent information about the case and, more importantly, the party’s position towards resolution, without utilizing an attitude of “winning.” A brief is an adversarial document whereas a statement is a neutral document. The latter leads towards resolution while the former leads towards litigation.

An Attorney’s Responsibility to Prepare the Client

It is equally as important, if not more important, to properly prepare a client for mediation. Many clients, particularly individuals, have not experienced the judicial process previously and are uncertain with how ADR works.

As counsel, an attorney has a responsibility to address psychological needs of the client as well. An attorney who fails to be cognizant of the client’s emotional state fails to provide proper counsel to that client for resolution.

Some attorneys think that a slightly modified summary judgment motion is an appropriate document for mediation submission. For the same reason, this is not correct. A motion for summary judgment is used to convince the court that a party should be winning the case. Arguing that reasonable minds could come to but one conclusion is not the approach to take to resolve a dispute; it is an approach to win a dispute. And winning has no place in a mediation.

A good mediation statement sets forth both the strengths and weaknesses of all of the parties in a case. By writing a mediation statement that includes these points, counsel is able to dispassionately analyze the ups and the downs across the board. By doing so, potential pathways to resolution should become more visible. Too often, attorneys are only concerned with the strengths and weaknesses of their case and fail to consider what is transpiring on the other side of the table.

A good mediation statement should also include a thoughtful analysis of the potential settlement positions. Again, it is best if this assessment is done on behalf of all the parties, rather than just the attorney’s client. This thoughtful work helps to set the stage for fruitful discussions with a mediator.

While legal analysis may also be helpful, it may also be a hindrance. Getting lost in intricate (and not so intricate) legal arguments causes both the clients and the attorneys to lose sight of the forest for the trees. Resolution is not about who wins the legal argument; resolution is about parties resolving their differences. Often times, this is irrespective of the legal arguments.
Frequently, being involved in litigation is one of the most stressful or traumatic points in an individual’s life. And, equally as frequently, clients who feel aggrieved, whether plaintiff or defendant, usually want to feel that they had their day in court. Recognizing that a mediation conference may well result in the termination of litigation, aggrieved clients use it as an opportunity for their day in court and come loaded for bear.

For experienced clients, the issue is not too dissimilar. When clients have gone through the mediation process before (such as corporate representatives, in-house counsel or insurance adjusters), it is easy for them to become jaded by the process and revert to a rote tit-for-tat type of strategy. Falling into this trap prevents them from truly considering what a good resolution to the dispute might be. Instead, they focus merely on their reserves or other budgetary constraints while failing to notice the other issues that may be at play.

All of these attitudes run contrary toward resolution and should be appropriately addressed by skilled counsel prior to having fruitful conversations that bring the parties together to a joint resolution.

As counsel, an attorney has a responsibility to address psychological needs of the client as well. An attorney who fails to be cognizant of the client’s emotional state fails to provide proper counsel to that client for resolution. All too often, attorneys limit themselves to the legal arguments and to winning their case. Rather, a skilled attorney will confer with their client in advance and discuss not only the logistics of a mediation conference but also what to expect as the parties jointly work towards resolution.

In a mediation where one party interrupts opposing counsel’s opening statement to blame the opposition for all that has gone wrong in that party’s life, that party is not ready to discuss resolution. A party that brings four bankers boxes of documents to a mediation is not ready to discuss resolution. A client who has failed — in advance to a mediation conference — to mentally and emotionally acknowledge what an acceptable resolution might be is not ready to discuss resolution. All of these instances could have been avoided if counsel had prepared the client properly.

Counsel has a duty to shift the client’s focus and thinking from winning a case to resolving a case. Failure to do that dramatically impedes the process of working towards resolution. By failing to properly frame the client’s expectations as to mediation, the lawyer is doing a disservice to the client. As stated above, a client should not approach a mediation conference with the goal of winning, a client should have in mind that which would constitute a satisfactory resolution in analyzing all of the aspects of the case.

**Conclusion**

Mediation is a wonderful vehicle for resolving differences between parties. But a key component to mediation is the attitude and the approach. If an attorney and client are not properly prepared for a mediation conference — for a fair resolution to be achieved — a mediation is doomed to failure. Skilled counsel can step outside the “must win” mentality and look towards the greater good for the client. One could argue that doing so is what zealous representation epitomizes.

Christopher Ernst is the senior litigation partner in the Cleveland office of Bricker & Eckler LLP. He has served as neutral for over 20 years and heads the firm’s ADR Services practice group. His work as a mediator focuses on business disputes and tort claims. He is the author of Baldwin’s Ohio Practice: Tort Law 2d (West). He has been a CMBA member since 1992. He can be reached at (216) 523-5472 or CErnst@bricker.com.
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.

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FEATuRE ARTicLE

Family Law

BY JOHN D. ZOLLER

Many lawyers and courts use computer software to determine what amount of spousal support, tax deductible for the payer and reported as income to the payee, would result in the same amount of after tax spendable cash for each party. We call this after tax income equalization. The trend toward using this formula is so common that it not only eclipses a deliberate step-by-step statutory analysis, it becomes the beginning and end of the question in many cases. Indeed, many lawyers advocate absolute parity of income in perpetuity as though such outcomes are supported by law. They are not. This article explores some of the attributes of each approach and how they intersect.

A trial court has broad discretion when making a spousal support determination and will not be overturned on appeal absent abuse of that discretion. Our spousal support statute, O.R.C. 3015.18 (C), calls for consideration of 14 specific factors by the court when exercising that broad discretion. The statutory factors are both simple and straightforward in some instances, and quite complex in others. The age and health of the parties, their education and historical contributions as earners and/or caregivers as well as the duration of the marriage are typically self-evident. But, when the court must consider “The retirement benefits of the parties” and the “income derived from property divided” in the divorce case itself, factoring in the ramifications of those facts to a spousal support formula can become difficult or impossible. Evidence of return on investments, cost of living adjustments and Social Security benefits may best come from qualified financial experts.

Since spousal support is presumptively deductible to the payer and income to the payee, computer software, such as Family Law Software, is used to quickly and accurately determine what amount of spousal support, after calculation of the tax ramifications, would result in each party having the same amount of after tax spendable cash. We call this income equalization. This method is relatively simple to determine with few data points. You enter incomes and solve for 50%. The software contains the relevant elements of the Internal Revenue Code. The program essentially prepares a tax return for each party and calculates many variables such as Child Support, dependency exemptions and filing status. Software must also calculate Child Support pursuant to O.R.C. § 3119 in addition to spousal support, because Child Support is tax-free to the recipient and paid out of the after-tax income of the payer. Child Support is directly affected by the amount of spousal support paid. Performing these calculations without a computer would be very dangerous and incredibly time consuming.

Some equalization calculations are as simple as typing in the party’s W-2 incomes, the number of children and then entering the desired net after tax percentage. Software determines the amount of spousal support that would, with or without child support, result in each spouse having the same amount of money after taxes.

This formulaic method is simple, it produces predictable results and it takes into account the incomes of the parties, the tax consequences of the spousal support award and any applicable child support. The method considers three and in some instances four (unearned income from property divided) of the 14 statutory factors. It saves a lot of money for litigants, and in cases where all other factors are equal, the income equalization method may be sufficient. In cases where neither party is going to be able to sustain the standard of living to which the parties had become accustomed during the marriage, or even a reasonable standard of living, equally allocating the pain of insolvency is probably reasonable and equitable.

The income equalization formula, and most formulas, do not factor in the remaining statutory factors. Some couples have lived long, productive and financially conservative lives and find themselves, on the eve of retirement, facing divorce. In many of these cases one or both of the parties is producing income at the highest

Gross Incomes and Income After Child Support, Spousal Support, and Taxes

Income Before Taxes

<table>
<thead>
<tr>
<th>Spouse</th>
<th>Income Before Taxes</th>
</tr>
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<tbody>
<tr>
<td>Spouse 1</td>
<td>$120,000 to $150,000</td>
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<tr>
<td>Spouse 2</td>
<td>$0 to $150,000</td>
</tr>
</tbody>
</table>

Income After Child Support, Spousal Support, Tax Deductions

<table>
<thead>
<tr>
<th>Spouse</th>
<th>Income After Child Support, Spousal Support, Tax Deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse 1</td>
<td>$60,000 to $150,000</td>
</tr>
<tr>
<td>Spouse 2</td>
<td>$60,000 to $150,000</td>
</tr>
</tbody>
</table>
Cross vs Cross

Depicting How Douglas and Johannah's Taxes Broke Down in the Court Trial

Overall Income (Without Alimony/Support)

<table>
<thead>
<tr>
<th>Douglas's Total</th>
<th>Johannah's Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$14,408</td>
<td>$5,364</td>
</tr>
</tbody>
</table>

Income After Tax Deductions

Cross v. Cross

The recent case of Cross v Cross, 8th District No. 102627 (Dec. 17, 2015) affirmed the trial court's decision to award $1,250/mo. in spousal support and $593/mo. in child support to Johannah Cross. The result was a 41% to 59% allocation of after tax spendable cash which Johannah appealed.

The Cross decision held “There is no ‘mathematical formula’ for determining what amount of spousal support should be ordered.” An award of spousal support should be “appropriate and reasonable.” The statute “does not require a spousal support award to provide the parties with an equal standard of living.” Saks v. Riga, 8th Dist, Cuyahoga No 101091, 2014-Ohio-4930. "Rather, an award of spousal support must be designed to allow a party to maintain a reasonable standard of living in light of the standard maintained during the marriage." Howell v. Howell, 2d Dist. Clark No 2002 CA 60, 2003-Ohio-4842.

In the Cross case the Husband's historical bonuses were not averaged or included in his income for spousal support purposes. His bonuses were determined by his company's performance, not by Husband's performance. However, Wife's extra income was included because she was entirely in control of that income. These assignments of error were overruled. Another common “formula” for determining the duration of spousal support was raised in the Cross case.

It is common for practitioners to assume the duration of spousal support is determined by a 1:3 ratio; one year of support for each three years of marriage. However, the 27 year Cross marriage did not yield a 9 year support award. Douglas, the 55 year old payer, was ordered to pay support for 8 years. He will be 63 and eligible to receive Social Security when his spousal support obligation expires. This duration and rationale was also affirmed by the court in Cross.

Using formulas as a rule of thumb or as a yard stick to measure the result of the full array of statutory factors is not only wise, it is essential to a full understanding of “the tax consequences for each party.” However, using nothing more than a formula to determine support, such as strict income equalization, is not the law. It is sometimes a useful short cut and a barometer of a fully considered award. But, “there is no formula.”

John Zoller has been an OSBA Certified Specialist in Family Relations Law since 2000. An Ohio Super Lawyer for 14 years, he is also the Ohio representative for Family Law Software. He has been a CMBA member since 1986. He can be reached at (216) 241-2200 or John@zblaw.net.
What’s Your Settlement Rate?

What's your settlement rate? This is a question every mediator has been asked, and it's often asked of the Court's ADR department. While the majority of cases do settle in mediation, focusing exclusively on settlement rates is limiting and misleading. When asked about settlement rates, I wonder whether they are really asking if they will have a quality mediation and if their own case will settle. I assure them that most cases settle, give my current settlement rate, and then ask about their hopes and expectations for their own mediation experience. This column will identify why focusing exclusively on settlement rates is problematic, and then touch on the many other benefits of mediation.

Apples to Apples

One of the biggest problems with settlement rates is that there is no consensus on how to track them. Some Courts consider only cases that settle in-person at mediation. Others capture cases that settle after mediation but before other significant judicial intervention. Some include every case referred to mediation. Even tracking the type of settlement varies, as some programs capture cases dismissed without prejudice, whereas others only include those dismissed with prejudice. When comparing settlement rates, one should ensure they are comparing apples to apples, not oranges. If asking about settlement rates, ask how they are tallied.

Even if there was parity in tracking settlement rates, placing undue focus on settlement alone ignores the many benefits of mediation. These benefits can be put into three categories: 1. Resolution, 2. Management, and 3. Prevention. A quality mediation process yields high party satisfaction rates, regardless of settlement.

Resolution

At the Court, mediation is part of the Alternative Dispute Resolution (ADR) department. The Court chose to name the department “Resolution” not “Settlement.” While settlement is tied to the dismissal of that particular case, resolution is broader. Settlement suggests compromise in a negative way, and limits litigation to a zero sum game. Resolution speaks to the depth and quality of the parties’ experience in resolving their dispute. Resolution allows for creativity and the possibility of win-win agreements that incorporate both legal and extralegal remedies. Our Court mediations aspire to resolution.

A significant part of the mediation experience is allowing the litigants space to be heard and understood. Having a voice and being able to speak directly to the mediator, and the other side, is an important part of the mediation process. Since most cases never make it to a full trial, this if often referred to as giving parties their “day in court.” Furthermore, hearing directly from opposing counsel, or the other party, can be an important reality check for a litigant. This manages expectations and encourages parties to make informed decisions. Parties' extralegal issues may initially seem peripheral, but can be important in identifying the root cause of their conflict. Mediated resolutions can incorporate issues that would not be part of an adjudicated outcome.

Management

While the ultimate goal of mediation is resolution, sometimes the primary benefit of a particular mediation, at that particular time, is to help manage and streamline the litigation process. Even if a case doesn’t settle at that moment, mediation improves communication between counsel and the parties. Mediation can define and narrow the issues. For instance, if liability is not in dispute, they can focus on damages. In turn, this encourages limited and expedited discovery. While mediation is sometimes jokingly referred to as “free discovery,” mediation can identify where to focus discovery efforts. This can lessen or eliminate the need for motion practice, including both discovery and dispositive motions. Good mediation streamlines litigation, eases the burden on the Court and saves resources, which can ultimately go towards settlement.

Prevention

Mediated agreements are durable and lasting. They are more likely to be complied with than outcomes imposed by a third party. When the parties craft the agreement, they have buy-in and choose terms that are sustainable. Mediated agreements are tailored to fit needs of the parties. Judicial remedies are one-size-fits-all.

Mediation prevents future litigation. The chance of appeals, collection actions, and motions to enforce are greatly reduced in mediation. Improved communication mitigates future problems and empowers people to solve their own problems. Mediation can help to preserve and repair an ongoing relationship, or, terminate a relationship in a dignified way.

Conclusion

The benefits of mediation go beyond mere settlement. By recognizing the many benefits of mediation, parties and their counsel can optimize their mediation experience and begin to define success more broadly. Please contact the author anytime to discuss mediation, resolution and yes, even settlement rates.

Matt Mennes is the Civil Mediator for Cuyahoga County Common Pleas Court. He has been a CMBA member since 2015. He can be reached at (216) 443-8504 or cpmxm@cuyahogacounty.us.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

RENEW EARLY AND SAVE

Our new membership year started July 1, and we look forward to keeping you plugged in again this year. Membership renewal notices 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, you’ll receive a free electronic version of its 2016–17 Legal Directory. Want a print edition? Simply add that to your renewal form and save $5 if you order before July 31. CleMetroBar.org/Directory

The CMBA CLE Passport is available to members only so we invite you to take advantage of this incredible deal when you renew. The CLE Passport can be used on CMBA sponsored CLE through June 2017 (exclusions apply, see CleMetroBar.org/CLE for full details). Lock in your CLE savings with the CMBA’s CLE Passport and get 12 hours of CLE for $180. That’s 50% off regular rates! Order your CLE Passport today! This great offer expires July 31st.

MEMBERSHIP APPRECIATION MONTH

In June, we hosted Member Appreciation Month to say thank you all our members for helping make our Bar year such a success.

Through member spotlights, raffles, and other giveaways, we focused on showing you 30 Ways in 30 Days that we could say thank you. We so greatly appreciate you, our members, and look forward to making this new 2016–2017 membership year a huge success.

Check out more details and photos at CleMetroBar.org/30ways or via our social media channels with #30ways30days.
UPCOMING EVENTS & SPONSORSHIP OPPORTUNITIES

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 CMBA at (216) 696-3525.

- **September 9** – 70th Annual Public Servants Merit Awards Luncheon (The Westin)
- **September 23** – Small & Solo Expo (Holiday Inn Independence)
- **September 30** – Greener Way to Work Luncheon
- **October 29** – 15th Annual Halloween Run for Justice (Burke Lakefront Airport)

GET PLUGGED IN

As you may imagine, the needs and passions of our members are vast, so we continue to work to make sure the opportunities for engagement are as well. That’s where our new “Get Plugged In” involvement guide can help.

We want you to get plugged in where it matters most for YOU. From business needs to parties, this guide highlights the many opportunities — but certainly not all — you’ll find at our local bar. As you renew for another year, we want you to be involved and leverage the CMBA to help you grow your career, collaborate on initiatives impacting the CMBA and profession, collectively give back to Greater Cleveland, and have fun doing it.

Check out the new Get Plugged In guide online at CleMetroBar.org/Membership for a quick peek at what you’ll find here at the CMBA. Whether you are a lawyer, paralegal, business professional or law student, we hope this guide gets you excited and helps you know where to start.

CMBA SPOTLIGHTS

There is great buzz at the CMBA and so much happening. In case you missed some of it, here are some things highlighted in this issue worthy of your attention.

15–16 Section/Committee Chairs .... 5  
16–17 Section/Committee Chairs.... 6  
Greener Way to Work Week......... 8  
Legal Directory............................................10  
Small/Solo Expo.................................19  
New CMBA Officers .....................20  
New CMBA Trustees .................21  
Public Servants Merit Awards......22  
15–16 3Rs Volunteers ...................36  
16–17 3Rs Sign-Up.........................39  
15–16 CLE Seminar Chairs ..........56  
Halloween Run.........................64
Same-Sex Divorce Post-Obergefell
Why the Decision Isn’t the End of the Line

BY CHRISTA G. HECKMAN

On June 28, 2015, the Supreme Court of the United States issued its landmark decision in Obergefell v. Hodges, 577 U.S. ____ (2015), Docket No. 14-556. This decision was the culmination of six different lawsuits from Ohio, Michigan, Kentucky, and Tennessee, involving multiple same-sex couples, several children, a widower, a funeral director, and an adoption agency.

Both before and after Obergefell, an opposite-gendered married couple could pretty well take for granted that when they crossed state lines their marriage would be considered valid in every state from Alabama to Wyoming, through the Full Faith and Credit Clause of the United States Constitution.

State legislatures have not yet caught up with Obergefell. Ohio’s Supreme Court has taken steps to install the use of neutral terms in family law matters and, effective March 15, 2016, has revised its family law forms to use gender neutral terms such as “spouse” and “parent,” in lieu of gender specific terms like “husband” and “mother.”

While that is a start, it is only the tip of the iceberg of statutes that need revision post-Obergefell. Parenting issues are some of the stickiest even when heterosexual couples uncouple and, until the law catches up, the challenges are multiplied for same-gendered couples. Unless the discussion involves adoption, Ohio’s laws generally reference a biological mother and a biological father, leaving open more questions than answers as to how domestic relations courts will deal with these issues.

For example, R.C. §3111.03 provides that children born during a marriage are presumptively the children of the husband of that marriage. But that statute is not gender neutral, and it specifically references “a man” and the “child’s mother.” Moreover, this statute provides a rebuttable presumption of parentage—one that can be rebutted by genetic testing. Clearly, this statute cannot simply be made gender neutral and be expected to have the same effect for same-gendered couples.

There is a statute dealing with parentage in cases of artificial insemination — R.C. §3111.95. But that statute similarly references “a married woman,” and her “husband” who has consented to the artificial insemination. As yet, there is no presumptive parentage in cases where artificial insemination was utilized in a same-sex marriage.

On the other hand, what happens when both parents have some relation to the child, whether legal or biological? For example, some same-sex couples will choose to have one partner provide the egg, while the other partner is impregnated through in vitro fertilization and carries the child as the gestational surrogate. Or, sometimes, genetic material might be used from a family member of one partner in order to maintain genetic

A tremendous victory to many, and a terrible upset to others, Ohio law changed overnight. Moving forward, the rights are much clearer. But, for the enormous number of families who got caught in the quagmire, even post-Obergefell, there is still work to be done.
It remains to be seen what the existence of these gender-specific statutory terms mean for the rights of the parent who falls outside of the basic legal definitions of “mother” and “father.”

In many of these cases, couples may find themselves litigating on two fronts — a divorce in divorce court, and a custody battle in juvenile court. While this is an option and, sometimes, the only option, it is certainly not ideal in terms of cost or expediency. Further, while the juvenile courts and divorce courts could ultimately reach the same parenting outcomes (because the law on custody and parenting time is the same across the courts), practitioners are cognizant of the fact that parents start out a divorce case on more equal footing.

R.C. §3109.03 provides that:

When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.

Logically, the presumption of parental equality should extend to children born of a same-sex marriage. But, as it stands, courts are left without clear statutory direction on this issue, and a couple could find themselves before a jurist who takes a strict reading of the law, possibly as a political statement, or even because they simply feel hamstrung by the restrictive language of “husband/father” and “wife/mother.”

The tools we use for children born to unmarried parents are insufficient to address the problem. Ohio’s Putative Father Registry was specifically designed to be a mechanism for identification of the individual admitting to be the biological father, and the statute at the heart of that — R.C. §3111.31 — at present refers specifically to “the natural father” of the child and the “mother.”

Step-parent adoptions are a possibility post-Obergefell. This is tremendous news for blended families who are finally able to legally formalize these relationships in the same way heterosexual couples can. It is also a potential method for the non-biological parent to overcome the sorts of hurdles outlined in this article. However, for the latter purpose it is neither ideal, nor a long-term solution to the overarching problem because it creates hurdles for homosexual couples that similarly situated heterosexual couples do not face.

As a practical matter, it seems logical for a domestic relations court to nevertheless have subject matter jurisdiction over the children of a homosexual marriage, just as for a heterosexual marriage. Yet, until the law catches up, challenges will continue to arise and it is extremely important to carefully examine the facts of each matter to ensure a couple is getting the best result.

Beyond parenting issues, post-Obergefell, other, more surprising issues are coming to light. What of the civil unions entered into in other states? Do those have continued legal meaning? Ohio did not previously recognize civil unions and, presumably, will not now start. On the other hand, in states where they are recognized, they are often in effect until formally ended. To further complicate things, some states simply converted registered civil unions to valid marriages by operation of law. Theoretically, parties to those unions were informed of the change. But, some couples may have already split and moved apart without realizing the need for further action. Inadvertent bigamy, or even a more willful failure to disclose a prior relationship, are concerns that should be carefully reviewed in these matters.

And, so-called “marriage evasion” or “reverse evasion” statutes were enacted pre-Obergefell in a handful of states, including Illinois, Louisiana, Massachusetts, Vermont, and Wisconsin. Generally, these statutes sought to avoid an influx of couples who were prohibited from marrying in their home state and wanted to take a trip to another state where they could marry. These statutes create unexpected pitfalls that can render an otherwise valid marriage void ab initio.

Still another post-Obergefell challenge is property division. Common law marriage has not been recognized in Ohio since 1991. But, whereas heterosexual couples could have solemnized their union but chose not to, in the pre-Obergefell world, same-sex partners had no option to get married in Ohio. Couples, then, made lives together, often for decades, comingling monies, buying property, accumulating wealth and debt. R.C. §3105.171, the property division statute, permits a court to look outside of the legal dates of the marriage (which would generally extend from the date of the marriage was solemnized to the date of the final hearing) if it determines that the use of such a date would be “inequitable.”

The spousal support statute, R.C. §3105.18, gives a trial court similar discretion. However, until a wide body of case law develops on these issues, it is impossible to give assurance that an equitable result will be reached.

The Obergefell decision turned Ohio law on its head overnight. And, as happens frequently, the law fails to keep up with the pace of life. On the surface, it seems so simple. Same-sex marriage is now legal. Yet moving forward it is apparent that, for the foreseeable future, same-sex family law matters will require even more thorough analysis than the average heterosexual divorce case in order to make sure everything is handled in an appropriate manner.

Christa Grywalsky Heckman is a Domestic Relations attorney with Zashin & Rich Co., L.P.A. She routinely represents clients in all manner of family law matters in domestic relations and juvenile courts throughout northeast Ohio and beyond. Christa has been a CMBA member since 2011 and is co-chair of the Family Law Section. She can be reached at (216) 696-4441 or cgh@zrlaw.com.
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Jeffrey Schnatter
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William Shaklee
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Harry Signer
Angela Simmons
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Jeffrey Sindelar, Jr.
Marilyn Singer
Adam Smith
Paul Smith
James Smolinski
Christine Snyder
Charles Spain
Kelli Steber

David Steiger
Gillian Steiger
Janet Stewart
Tracy Stewart
Marta Stewart-Bates
Carter Strang
K. James Sullivan
Daniel Sweeney
Therese Sweeney Drake
Eric Synenber
Steven Szeglejewicz
JoAnn Szucs
Allison Taller Reich
Marilise Taylor
Taru Taylor
Bethany Thomas
Danelle Spencer Thomas
Angela Thomas-Fain
Adrian Thompson
Michelle Tibbetts-Kaletta
Tina Tricarichi
David Trimble
Franzetta Turner
Barbara Tyler
Kristin Uberson
Michael Ungar
Mariah Vogelgesang
Kelly Voyles
Anastasia Wade
Janice Walker
Hon. Sandra Walker
Justin Washburne
Laura Watson Aquila
Nori Wieder
Christopher Williams
Sonali Wilson
Justin Withrow
Jennifer Woloschyn
Charlie Wu
E. Mark Young
Richard Zeiger
Joshua Zielaskiewicz
Believeland in the Classroom

CMBA Volunteers Are Champions for Our Children

BY LORI UROGDY EILER

This year we lived the miracle of the Cavs’ championship season. They said it couldn’t be done, but we saw the possible in the impossible. Now we can look back and see the moments that made a difference, how the team showed heart, dedication, and tremendous effort despite the naysayers and uncertainty of victory.

Each school year, too, is a new season in the classroom, and as an educator in East Cleveland I’ve witnessed too few to believe. I have also watched the magical plays that come together to empower kids when we have champion teammates with us in the classroom. I have witnessed Believeland in the classroom, and my beloved champions are the volunteers from the CMBA.

Whether you have been a part of The 3Rs, mock trial, Street Law, Stephanie Tubbs Jones Summer Legal Academy (SLA), Louis Stokes Scholars, a field trip, an internship, or served as a mentor — you are a champion making a difference. When powerful people unite for children, powerful things happen. If you have participated in any of the CMBA’s programs with the Cleveland and East Cleveland schools, your touch has been part of that mighty force that has made all the difference in the lives of children. Believeland in the classroom — that’s you!

Maybe you don’t know how you have contributed to excellence or seen the reality of your impact. Certainly there have been no parades or trophies. On some days it may feel like there aren’t even any points on the scoreboard. Why? Well, it’s the nature of teaching and volunteering. You aren’t privy to seeing the scoreboard throughout the whole game of the students’ lifetime. You don’t hear how often our students’ stories include you as a pivotal force in their journeys. However, each minute you were in the game, you were a playmaker for the children. Because you cared, they began caring — about themselves, their dreams, their lives.

Believeland in the classroom — what does it look like?
The 3Rs is now 10 years old. Imagine: 10 years ago at Shaw High School a freshman girl dreams of being an attorney. With the help of 3Rs volunteers Jim Lawniczak and Phil Dawson, she and her classmates were allowed to participate in The 3Rs a year early for a taste of law. Over the next decade, J’zinae Jackson grows on a feast of 3Rs; an internship at Calfee, Halter & Griswold; SLA; mock trial; and as a Louis Stokes Scholar. She is mentored and encouraged by countless champions from the CMBA. The result? This summer, J’zinae successfully rings out her first year at Cleveland-Marshall College of Law.

At a past Legal Aid annual dinner, I had the good fortune to meet Ron Johnson, then-President of the Norman S. Minor Bar Association, and we talked about a new honors class at Shaw, The 3Rs, and how Ron MUST volunteer. Within weeks Ron put together a dream team of 3Rs volunteers for that class, which then became mock trial superstars. Ron led one young man, Conner Hill, to the MLK Jr. Drum Major for Justice Advocacy Competition, and as a junior Conner took second place nationally! Because of his achievement, I and other supporters could write compelling essays recommending him for the Gates Millennium Scholarship, which awarded Conner free education for life. This summer Conner is interning at Legal Aid as a Louis Stokes Scholar.

The building blocks of Na’Tasha Webb-Prather’s legal career were laid by CMBA volunteers. Before graduating with honors from the University of Georgia School of Law this past May, Na’Tasha participated in SLA and 3Rs, and shone as a star attorney for mock trial. As a high school senior, she told Justice Scalia she wanted to be a Supreme Court Justice, to which he replied, “Good luck.” When she got to shake his hand, she rubbed his shoulders like a genie, joking that she was doing so for luck. No luck was needed; she had champions on her team.

As a leader for activists in Ferguson while working for D.C.’s Center for Study of Social Policy (with a B.A. and M.A. from the University of Chicago under his belt), Jonathan Lykes is a champion of justice and equality. Where did he learn many of those lessons first? With you, as a 3Rs student in the first years of the program, as a star of the mock trial team, and as an SLA graduate.
IN ONE HOUR
YOU CAN

Watch your favorite TV Drama

Grab lunch from a food truck

OR

CHANGE A LIFE

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

CHOOSE TO MAKE A DIFFERENCE

Sign up for The 3Rs in 2016–17!

The 3Rs just completed its record-breaking 10th year in service to our local schools, and we need YOU as we head into Year 11!

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

The CMBA thanks the nearly 2,000 members of the legal community who have volunteered for The 3Rs over the years since its debut in 2006, representing nearly 83,000 volunteer hours and connecting with more than 30,000 students. To returning volunteers and new recruits — thank you sincerely for committing to make a positive impact on our schools and our city!

“Working with the students was incredible — they were definitely the best part of The 3Rs.”
— 2015–16 3Rs Volunteer

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

THE 3Rs
R I G H T S  R E S P O N S I B I L I T I E S  R E A L I T I E S

COUNT ON ME FOR THE 2016–17 SCHOOL YEAR!

___ 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

Sign Up Online! CleMetroBar.org/3Rs

NAME ____________________________
FIRM/ORGANIZATION ____________________________
PHONE ____________________________
EMAIL ____________________________

Please return this sheet by e-mail or fax, or sign up online at CleMetroBar.org/3Rs.

For further information, contact Jessica Paine at (216) 696-3525 ext. 4462 or jpaine@clemetrobar.org.
Leading his peers in China and boldly addressing issues of race locally and nationally, Anthony Price stands up for what is right even if he has to stand alone. As he heads to college this fall as a Gates Millennium Scholar to Wesleyan University in Connecticut, many of his foundational experiences have been with CMBA champions. He has had 3Rs twice (in 10th grade and in AP Government), participated in SLA, interned at the Prosecutor's office, and as a Louis Stokes Scholar is enjoying this summer at Squire Patton Boggs.

You have led as star players in our classrooms. Yesterday's students are leading as today's star players in our democracy. Thank you, CMBA volunteers, for making great plays with our students in and outside of the classroom. Thank you for making classrooms Believeland for the students of Cleveland and East Cleveland high schools.

Another season is starting soon ... please join the 3Rs team if you haven't already. Too many home courts go without champions. Help make every class Believeland this year!

Lori Urogdy Eiler is an educator and retired teacher from East Cleveland's Shaw High School who serves on The 3Rs Oversight Committee and as legal advisor for the Cleveland and Ohio Mock Trial Competitions. Lori has received many prestigious awards for her work with our community's youth, including Street Law's Educator of the Year (2009) and the CMBA Liberty Bell Award (2013), and has had an award for Coaching Excellence named in her honor by the Ohio Center for Law-Related Education. Lori can be reached at lori.urogdy.eiler@gmail.com.
Do You Have a Duty to Report Ethical Misconduct of Your Client’s Former Lawyer?

Let’s say that you represent a client in a suit against the client’s former lawyer for misappropriating funds belonging to the client. You negotiate a settlement agreement that compensates your client, and the client approves it — but there is no admission of liability, and the agreement terms mandate confidentiality.

The other lawyer’s conduct in misappropriating your client’s funds would surely be an ethical violation — it constitutes “dishonesty, fraud, deceit, or misrepresentation” barred under Rule 8.4(c) of the Ohio Rules of Professional Conduct. And under Rule 8.3, a lawyer has an affirmative duty to report ethical misconduct to the “appropriate” disciplinary authorities.

So, do you have a duty to report?

In April, the Board of Professional Conduct issued Advisory Opinion 2016-2, in an attempt to clarify how Ohio lawyers should analyze this question. The answer, however, remains somewhat unclear.

No “Strict Reporting Requirement”
The Board began its analysis by noting that the duty to report is a limited one, not a “strict” one. Reporting is required only when: (1) the lawyer has unprivileged knowledge; and (2) the conduct raises a question as to “any lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.”

To invoke the reporting requirement, a lawyer must have “actual knowledge” of a violation of a Rule of Professional Conduct — that is, more than a mere suspicion, although the knowledge may be inferred from circumstances. The duty to report is not lifted, said the Board, just because the lawyer does not admit liability, and the duty can exist even when the misconduct is denied.

But Is It Privileged?
As to whether the reporting lawyer possesses “unprivileged” knowledge of misconduct, the Board said that “[Rule 1.6] should be consulted when determining whether information is privileged or unprivileged,” plus the lawyer should use “professional judgment.”

Here’s where things get a little murky. Rule 1.6(a), the rule on confidentiality, bars a lawyer “from revealing any information related to the representation, including information protected by the attorney-client privilege, without client consent.” Even information that the lawyer has not obtained in confidence from the client is covered. See Rule 1.6 cmt. [3].

Privileged information, on the other hand, is a subset of confidential information. The attorney-client privilege is an evidentiary principle. Its applicability depends on numerous familiar factors not found in the ethics rules, but laid out in Ohio statutory and common law: a communication between a lawyer and client, in connection with seeking or giving legal advice, made in confidence and where the privilege has not been waived.

By using the ambiguous term “unprivileged knowledge,” our Ohio Rule 8.3 seems to mix concepts of evidentiary privilege with the ethics rule on confidentiality, a confusion that the Board’s most recent opinion does not try to resolve. (The ABA’s Model Rule 8.3, in contrast, is much clearer: “A report about misconduct is not required where it would involve violat[ing] Model Rule 1.6” by disclosing confidential information. See Model Rule 8.3 cmt. [2].)

The Answer: “It Depends”
In the case of the lawyer who misappropriated funds from your client, it would seem that if your client’s funds would surely be an ethical violation, triggering an arguable duty to report the misconduct.

But the Board did not answer whether or not, under the circumstances, your knowledge would be “unprivileged.” If you look to Rule 1.6, as the Board suggests, your knowledge about the other lawyer’s misconduct would appear “confidential,” because it relates to your representation of your client. Under that analysis, you would not be required to report. But the term “unprivileged” seems narrower, and arguably would relieve you of a duty to report only if the information about the other lawyer’s misconduct was based on communications that qualified for the actual evidentiary privilege. Evaluating that issue would send you to the substantive law on privilege, not to the ethics rules.

The fact that the parties to the settlement agreement provided for confidentiality is likewise not weighed in the Board’s analysis.

It appears that the Board was unable to resolve the quandary presented by the terminology of Rule 8.3; therefore, Ohio lawyers trying to determine their duty to report misconduct must indeed use their “professional judgment.”

If it is any consolation, violation of the duty to report misconduct under Rule 8.3 appears to be seldom prosecuted within the disciplinary system, although it can and does occur, including when lawyers fail to self-report their criminal convictions. See, e.g., Cleveland Metro. Bar Assn. v. McElroy, 140 Ohio St. 3d 391, 2014-Ohio-3774.

Karen Rubin is counsel at Thompson Hine LLP, where her practice focuses on legal ethics, professional responsibility and business litigation. Karen is the immediate past chair of the CMBA Certified Grievance Committee, and teaches legal ethics at CM|LAW as an adjunct. She has been a member of the CMBA since 1985. Karen blogs at The Law for Lawyers Today.com, and can be reached at (216) 566-5815 or Karen.Rubin@ThompsonHine.com. Any opinions expressed here are solely her own.
The Future of Arbitration in Family Law Matters

BY STANLEY MORGANSTERN

The acceptance of arbitration as a viable, alternative dispute resolution process in family law matters hinges upon the adoption of a statutory framework that encourages the process.

The Ohio Supreme Court recognized arbitration proceedings as being favored in the law. 

Kelm v. Kelm, 68 Ohio St.3d 26 (1993). In Kelm, the Supreme Court upheld an arbitration provision of the parties’ antenuptial agreement. The arbitration agreement specifically provided that matters of division of property and “alimony or child support incident to a termination of the marriage” were to be arbitrated. The Supreme Court had to determine if that provision included temporary support issues. The issues that could be arbitrated excluded custody and visitation as they affect the best interest of children. Temporary and permanent child and spousal support could be arbitrated. Although it was argued that child support issues should be exclusively within the province of the courts under the doctrine of parens patriae, the Supreme Court concluded that there was no statute or rule prohibiting the issues from being arbitrated.

The Supreme Court, however, noted that trial courts have the authority to insure that the arbitration process was “accomplished in an expeditious, efficient and reasonable manner.” Justice Wright, dissenting in part, was concerned that if issues of temporary support were left only to arbitration, parties could be prejudiced by time delay.

The limitation of issues which the Supreme Court held to be strictly within the purview of the courts still stands as Ohio law. The legislature has not chosen to address the issue. The Supreme Court revisited the issue in a subsequent Kelm case. [92 Ohio St. 223 (2001), in which the parties arbitration clause in their shared parenting plan included custody and visitation issues.] The Supreme Court, although noting that the advantages of arbitration in a domestic dispute outweigh any disadvantage, declined to change its prior ruling.

Other jurisdictions allow arbitration of custody and visitation issues, but also allow the arbitration decision to be reviewed de novo by the trial court. The Supreme Court found that process to be “wasteful of time and expense.” The two-stage process, being a duplication of efforts, effectively frustrates the goals of arbitration.

Arbitration is meant to be a more expedient, less expensive, way of resolving complex divorce issues. Arbitration provides a more convenient forum and a more timely resolution of a family law matter that can be offered by a crowded trial court docket. The process can also result in the elimination of protracted litigation, including objections to magistrate’s reports and appeals. Considering all the advantages of arbitration in family law cases, the question arises as to why the process is not widely used. The answer lies in the current state of the law governing the process.

Two arbitration processes are authorized by Ohio statute and Rules of Superintendence. Chapter 2711 makes no reference to family law matters, but the Supreme Court in Kelm, found no reason why the statute could not be applied. The Supreme Court noted that when parties agreed to it, domestic relations matters could also be arbitrated under Sup. R. 15(B) (1).

There are substantial differences between the two authorized procedures. Sup. R. 15(B) (1) specifically addresses juvenile and domestic relations cases. When requested by the parties, a judge may refer the matter to arbitration. The arbitration award has the same legal effect as a judgment unless appealed by any party. If timely appealed, the trial court must hear the matter de novo. Chapter 2711, unlike Rule 15(B), provides for binding arbitration unless one of the circumstances set forth in R.C, 2711.10 and 2711.11 exists that affects the sanctity of the process.

While finality of the proceeding is certainly an objective, parties may be unwilling to waive an appeal on the merits under Chapter 2711. A trial court is much more likely to approve an arbitration process that will bind the parties to the award than one that will simply return the case for a full hearing on its docket.

The Eighth District Court of Appeals, in Cangemi v. Cangemi, 2005-Ohio-772 (2005), examined the parties’ attempt to arbitrate a complex case not involving children. There was no antenuptial agreement providing for arbitration. During the pendency of the litigation, the parties, with the consent of the trial court, agreed to arbitrate. The terms of the arbitration, including the right to test the merits of the award in the Court of Appeals, were journalized. The arbitration was held and Mrs. Cangemi appealed.

The Court of Appeals declined to hear the merits of the appeal, but rather held the arbitration proceeding to be a nullity. R.C. 2711.01 provides for arbitration arising out of a contract, but also under a written agreement to arbitrate a controversy existing at the time of the agreement. Despite the trial court’s journal entry, the Court of Appeals found that there was no arbitration agreement as contemplated by Chapter 2711. It held that the appointment of an arbitrator was an improper designation of judicial powers. Further, the Court of Appeals noted that there was no local domestic relations rule that authorized arbitration as there was in the General Division Rules. There was no mention of Sup. Rule 15 (B) (1). The Appeals Court held it was error for the trial court to have adopted the arbitrator’s award as its final judgment.

A more recent ruling from the Fifth District Court of Appeals in Cecchini v. Cecchini, 2014-
Ohio-4485, 2014, also frustrated the parties’ attempt to arbitrate their differences. The parties clearly intended their arbitration to be conducted in accordance with Chapter 2711. Their arbitration agreement provided for binding arbitration and only modifiable or to be corrected per R.C. §2711.01. Unfortunately, the Court of Appeals did not have the agreement before it as part of the record when the opinion was rendered. Even if the agreement had been part of the record, it appears the Court of Appeals would still have invalidated the arbitration process.

The Fifth District Court of Appeals held that Chapter 2711 can only apply if a pre-existing contract, such as an antenuptial agreement or a parenting plan, as discussed by the Supreme Court in the Kelm cases, existed. Accordingly, to the Cecchini and Cangemi decisions, absent a pre-existing agreement, parties may not, before or during domestic relations proceedings, agree to arbitrate under Chapter 2711. If parties may not arbitrate under Chapter 2711, they are only left with the process under Rule 15(B) which a trial court is unlikely to approve. The Cecchini court acknowledged that option, but held that procedurally, the Rule had not been followed.

A proposed arbitration statute has been submitted to the Family Law Committee of the Ohio State Bar Association. There are also model acts being proposed that are designed to promote the use of arbitration in family law cases. Significant provisions of the proposed Ohio statute include:

- R.C. §2711 shall not apply to R.C. 3105 actions.
- Arbitration may be allowed pursuant to a prior written agreement such as an antenuptial agreement, approved parenting plan or separation agreement.
- Parties may not arbitrate the granting of a divorce, legal separation or annulment itself, custody and companionship issues, paternity or domestic violence matters.
- Agreements to arbitrate may be entered into during the pendency of any proceeding provided for in R.C. § 3105 including post-judgment motions.
- Parties may waive the arbitration provision of any prior, written agreement and limit the issues to be arbitrated.
- The court shall have jurisdiction to compel arbitration as provided in an arbitration agreement and to stay any judicial proceeding pending arbitration.
- The arbitration statute will apply to any arbitration agreement executed before the effective date of the statute to the extent the provisions of the act are not in conflict with the contractual terms of the prior agreement.
- The parties may designate the award is to be binding, or if they may reserve the right to appeal issues of findings of fact and conclusions of law.
- Unless the parties have reserved their right to appeal, they may waive any and all or evidentiary formalities required by any section of the Ohio Revised Code or by the Ohio Rules of Civil Procedure or Ohio Rules of Evidence.
- When the parties have reserved the right of appeal, the arbitration decision must be in writing and contain findings of fact and conclusions of law with consideration of all relevant statutory factors.
- An arbitrator may award a party an unequal division of marital property or a distributive award from separate property upon a finding of financial misconduct.
- An arbitrator may award damages for non-disclosure of assets as provided for in R.C. §3105.171(E)(5).
- An arbitrator may award reasonable attorney fees and other expenses of arbitration.
- An arbitrator may grant provisional or temporary orders to the extent the court has not done so prior to the appointment of the arbitrator.
- An arbitrator may issue subpoenas and manage all discovery issues in accordance with the Ohio Civil Rules.
- An award may be vacated on grounds such as misconduct of the arbitrator, or that the award was procured by fraud or other undue means.
- An arbitration award, once confirmed, is subject to modification subject to the court’s continuing jurisdiction to modify as provided by statute and Civil Rules of Procedure.

Neither the current arbitration statute nor Rule promotes the use of arbitration, especially in light of appellate court decisions. If arbitration is to become a viable alternative dispute resolution in family law cases, a statute designed only for family law cases must be adopted.
Controlling ESI Discovery Costs

Options in Adverse Action Employment Cases (Among Others)

BY BARTON A. BIXENSTINE

The expense of discovery of electronically stored information (ESI) can substantially color how litigation is resolved, particularly Adverse Action employment cases. Commonly, in these cases, the stakes per individual plaintiff are in the five to six-figure range, the volume of relevant ESI is comparatively smaller than in “big data” cases, and the volume of “key” ESI (i.e. trial or dispositive motion exhibits) is far smaller. Yet, depending on how the ESI is processed, and especially the role of eyes-on review, comparatively modest ESI volumes can generate costs disproportionate to the stakes of the case, coloring the parties’ case evaluation and litigation strategy.

Fed.R.Civ.P. 26(b)(1) now dictates that, in federal courts, discovery is confined to items that are (1) relevant, (2) non-privileged, and (3) “proportional” to the needs of the case. Comparable restrictions are found in Cuyahoga County Court of Common Pleas (CCCCP) Local Rule 21.3(F)(2)(c)(iii), and in the rules of several other states. Although the plaintiff’s bar has raised valid concerns about how “proportionality” will be applied, courts are now better armed to prevent either side from imposing ESI-related discovery burdens to gain expense-based settlement leverage.

Correspondingly, in many courts, the parties in Adverse Impact employment cases commonly should have more incentive to cooperatively minimize the cost impact of ESI discovery. The less each side must spend to obtain a knowledge foundation for meaningful settlement discussions, the less costly any settlement is to the employer, and the more attractive any settlement offer is to the plaintiff.

Three features common in Adverse Action employment litigation may generate options to reduce ESI processing costs: (1) a substantial component of the relevant ESI is plaintiff-connected, (2) there is commonly a relatively small number of “key” players, and (3) the plaintiff and his/her attorneys commonly do not have ties to the employer’s competitors, suppliers, or purchasers. Given these features, several options may be available to control ESI processing costs, taking into account that some options may not always be suitable, since the most appropriate ESI processing methods will be “highly dependent on the specific legal context,” and the relative costs and benefits of the available ESI processing options.

Tool 1 – Cooperation and Transparency
No feasible ESI discovery process can guarantee either 100% recall or 100% precision, so cooperation and transparency can generate substantial cost savings, if only by limiting expensive collateral disputes concerning processing methods. Transparency means “telling the other side,” up front, “what you plan to do and what you plan not to do.” Transparency illuminates ESI discovery issues before resources are spent, and facilitates generating a joint strategy for proportionate ESI production at acceptable levels of precision and recall.

Tool 2 – Jointly agree on initial disclosures that facilitate ESI processing negotiations.
Initial disclosures should include: (1) a description of where and how potentially relevant ESI is maintained and how it can be preserved, collected, analyzed, reviewed and produced; and (2) who the litigation hold recipients are and the forms of potentially relevant ESI each may have generated, to reach consensus on an initial list of relevant ESI custodians, ranked by “the likely importance of the data they hold to the facts disputed in the case.”

Tool 3 – Avoid forensic overkill.
As to non-email ESI, avoid forensically sound production of entire drives absent compelling
reasons. If cost savings are involved, avoid forensically sound file production unless for good cause.

Tool 4 – If feasible, cull the universe of potentially relevant ESI (ideally “in place”) before any export to an external review platform.

“[D]ata that is never used still imposes preservation costs,” requiring that “[t]he degree of preservation is properly calibrated to the needs of the litigation process.” Similarly, “the more ESI collected at the beginning of a matter, the higher the downstream eDiscovery costs.” Given the comparatively smaller volumes of relevant ESI in most Adverse Action employment cases, in-place culling may allow the parties to process ESI with comparatively inexpensive third-party tools, or even with so-called “do-it-yourself” tools, which themselves are evolving and increasingly more sophisticated. In some cases, it may be possible to conduct “in place” searches sufficient to capture relevant/responsive ESI within a reasonably small volume of ESI with sufficient recall and acceptable (even if low) precision.

Tool 5 – Conduct phased ESI discovery, limiting phase one to ESI that can be produced by the “least expensive means and is most likely to produce” key documents.

An initial ESI processing stage may prudently focus on appropriately filtered collection of plaintiff-focused ESI that is comparatively inexpensive to process, from (1) the plaintiff’s employer mailbox and personal mailbox(es), if any; (2) employer-controlled mailboxes, that is to/from the core alleged wrongdoer(s) and/or witnesses to alleged wrongdoing, and can be “readily” identified as referencing Plaintiff; (3) non-email sources, of items that refer to the plaintiff or key events, actions or statements; (4) readily collectable HR and payroll databases; and (5) the plaintiff’s personal computer(s).

Tool 6 – Cooperatively test and refine potential search strategies, in an iterative process based on results counts and sampling. Given the special features of many Adverse Action employment cases, term-based searches may be appropriate, at least as an initial culling tool. Any search strategy, term-based or otherwise, should be tested by obtaining results counts, evaluating “precision” via ad hoc or statistical sampling methods, and iteratively refining the search strategy, as the parties “should expect that their choice of search methodology (and any validation of it) will need to be explained ...”

Tool 7 – Use of Confidentiality and Clawback Agreements Adopted Under Fed.R.Evid. 502(d) or its State Equivalent to Limit Expensive Eyes-On Review for Privilege, Privacy and Business Confidentiality

In the view of The Sedona Conference, “…appropriately crafted and tested search terms can be used to improve the thoroughness of privilege detection and to create workflow efficiencies.” Exclusionary searches would be used to withhold communications that are either privileged, confidential, private (or irrelevant), with the goal of the highest possible recall rate even at the sacrifice of some level of precision, with reduced or eliminated eyes-on review. The approach requires a client-approved “clawback” agreement, adopted by the court pursuant to Fed.R.Civ.P. 502(d) or equivalent state law, to protect against waiver of attorney-client privilege due the likelihood of less than 100% recall. Even if the court will issue a clawback order, each party must conduct its own cost- and risk-benefit analysis of the approach.

Tool 8 – Use of More Cost-Effective Privilege Logs

The 1993 Advisory Committee Notes to Fed.R.Civ.P. 26(b)(5) recognized that information provided in a privilege log could legitimately vary depending on the volume of the materials involved. A cost-saving alternative to individualized, hand-created privilege log descriptions is to rely, initially, on an automatically generated log of system and/or item metadata fields for the excluded items and/or on categorical descriptions.

Tool 9 – Reliance on a Jointly Selected Discovery Expert

The parties could agree that before presenting any ESI discovery dispute to the court, they will jointly consult with a third party expert, whose advice will be solicited by the parties, and protected from disclosure, as that of a mediator.

in 2009, the average compensatory award, excluding attorneys’ fees, in all federal court employment cases was about $93,000. Elizabeth Erickson & Ira Minsky, Employers’ Responsibilities When Asking Settlements in Employment-Related Claims, Bloomberg Law Reports (2009).

1 See Chief Judge Randall R. Rader, The State of Patent Litigation, E.D. Texas Judicial Conference (September 27, 2011), http://patentlyours.com/media/docs/2011/09/raderstateofpatentpdf (“I saw one analysis that concluded that 0.007% of the documents produced actually made their way onto the trial exhibit list.”)

2 According to Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery, Rand Corporations Institute for Civil Justice (2012), manual document review comprised 73% of discovery costs, at $15,000 per gigabyte, and 75% of the data reviewed would never be produced.

3 One concern, especially in Adverse Action employment cases, is that discovery limits will disadvantage the plaintiff, who commonly has greater discovery needs. See Patricia W. Hutamoyr Mose, The Anti- Plaintiff Pending Amendments to the Federal Rules of Civil Procedure and the Pro-Defendant Composition of the Federal Rulemaking Committees, 57, Univ. of Cincinnati L. Rev. 1083 (Summer 2015).


9 Craig Ball, “Do-It-Yourself Digital Discovery, Revisited,” February 5, 2015, at https://ballinyourcourt.wordpress.com/2015/02/05/do-it-yourself-digital-discovery-revisited/. See also the tools described by employment attorney Jeff Kerr in his article listed at supra note 6.

10 The Sedona Conference, “Proportionality” section 7.3.4, at https://thesedonaconference.org/node/106463.

11 The Sedona Conference® “Proportionality” section 7.3.4, at https://thesedonaconference.org/node/106463.

12 Barton A. Bixenstine provides mediation and arbitration services for settling civil disputes, specializing in business and commercial disputes, as well as virtually every type of employment-related dispute. He is a CMBA Board Trustee, and he has been a CMBA member since 1983. He can be reached at (800) 410-1339 or bbixenstine@gmail.com.
What To Consider When Divorcing Parties Have Ownership Interests in Privately-Held Companies

BY SEAN SAARI

Remember the excitement and mystery you felt when receiving a giftwrapped present as a child? You probably had an idea of what was inside based on what you had begged your parents for or how heavy the box felt, but you still needed to tear through the wrapping paper to find out for sure (although sometimes you could shake the package to get a better idea). Your guess may have been spot on... or way off. The box you thought might have held that shiny new toy you wanted might have just concealed a sweater. Or, the present that felt like it was just a few pairs of socks could have actually turned out to be that baseball jersey you had been hoping to get. You learned that sometimes the look and feel of a giftwrapped present could be deceiving — you needed to open it up to confirm or deny your expectations. There are many similarities between trying to decipher the contents of gifts as children and determining the value of a privately-held business in a divorce. In particular, sometimes “judging the book by its cover” can lead to a reasonable expectation of value and sometimes looks can be deceiving. Unlike a portfolio of publicly-traded securities, the value of an ownership interest in a privately-held business is not readily ascertainable. Therefore, while each party involved in the divorce process (clients, attorneys, etc.) has his or her own expectation of a privately-held company’s value based on how it looks and feels, one invariably needs to “open it up” and dig into the financial details in order to determine its actual value. The differences in expectations that the parties may have, which are sometimes driven even further apart by the intense emotions that often accompany the divorce process, can make the valuation of a privately-held ownership interest one of the most significant hurdles that must be cleared in order to reach a resolution. This article will focus on concepts and issues that are important for family law attorneys to understand when navigating cases that involve divorcing clients with ownership interests in privately-held entities.

Why Is Business Valuation Relevant in Family Law?
When couples going through a divorce hold an ownership interest in a privately-held business, one spouse typically retains the ownership interest and an equivalent value comprised of other marital assets is allocated to the other spouse as a part of the property division. This creates a natural source of tension as the spouse who will retain the ownership interest understandably seeks a low value while the other spouse seeks a high value. Yet, it is very common that neither party has a good idea of the company’s true fair market value (particularly one that is accurate and realistic). Considering that an ownership interest in a privately-held company is often a couple’s most valuable asset, valuation issues can take center stage in these divorces, with significant dollars at stake.

Do I Need to Hire a Valuation Expert?
When an ownership interest in a privately-held business is identified as a marital asset, counsel must decide whether it is necessary to hire a valuation expert. From a valuator’s perspective, the answer to this question is almost always yes. In evaluating the necessity for such expertise, it is also fair to consider the following factors in making this case-specific determination:
- What is the valuation date.
- What is the valuation experience of counsel on both sides of the case?
- Does the company have a buy-sell agreement in place?
- What is the valuation of counsel on both sides of the case?
- Will opposing counsel hire a valuation expert?
- If the decision is made to hire a valuation expert, a few additional factors should be considered:
- Does it make sense to hire a joint expert? (This typically produces a quicker resolution, gives the expert direct access to both parties to consider their input and concerns, and results in lower overall expenses)
- Is the valuation expert credentialed in valuation? (Simply being a CPA does not qualify someone as a valuation expert)
- By what date will the valuation need to be complete? (Preparing a proper valuation analysis often takes a number of weeks)
- Has the expert prepared valuations for litigated cases in the past and does he/she have testifying experience?

Critical Valuation Concepts
Attorneys are not expected to be experts in valuation, but they should be familiar with the following valuation concepts:
- **Valuation Date** – The valuation date is important because the value of a company fluctuates over time (just as the prices of publicly-traded stocks change regularly). More significantly, governing valuation standards generally preclude a valuation expert from considering any facts that were not known or knowable as of the valuation date.
- **Valuation Approaches** – Each of the following valuation approaches are required to be considered (although not necessarily applied or relied upon) in a valuator’s conclusion of value:
- **Asset Approach** – Focuses on the assets and liabilities of the business.
- **Income Approach** – Uses cash flow and risk/required return to determine value.
- **Market Approach** – Considers valuation multiples indicated by comparable public companies or the sale of similar businesses.

**Normalizing Adjustments** – Normalizing adjustments are made to a company’s historical and/or projected financial statements in order to better reflect economic reality and account for non-recurring or non-operating income and expense items. A company that reported losses historically may be very profitable on a normalized basis (or vice versa). A common normalizing adjustment involves adjusting officer/owner compensation to fair market value if there is overcompensation (or undercompensation) relative to fair market value, which may occur as a result of tax planning, temporary cash flow shortfalls or other factors.

**Valuation Discounts** – When valuing ownership interests in privately-held companies, discounts for lack of control and lack of marketability may be applicable. These discounts take into account the detriment to value associated with (a) not having control of the company (when valuing a non-controlling ownership interest); and (b) the lack of a ready market for the sale of ownership interests in privately-held companies.

**Separate vs. Marital Assets** – When an ownership interest was acquired with marital funds, it is common that the entire value of that interest is included as a marital asset. When an ownership interest was brought into the marriage by one spouse or was acquired with separate funds during the marriage, however, it may be necessary to value the company on multiple dates (often the date of marriage and the current date) in order to determine the appreciation in the ownership interest that may be includable in the marital estate.

**Common Valuation Misconceptions To Avoid**

There are a handful of common valuation misconceptions that family law attorneys should keep in mind when dealing with cases that involve business valuation:

- Just because a company is (a) privately-held; or (b) not for sale, does not mean that an ownership interest in that entity has no value. Discounts for lack of control and lack of marketability can take into account the detriment to value associated with holding an ownership interest in a privately-held company.
- The value of a non-controlling ownership interest in a company is rarely equal to its pro-rata share of the company’s overall equity value. The application of discounts for lack of control and lack of marketability, the extent of which is facts and circumstances specific, can result in a significantly lower value for a non-controlling (minority) ownership interest.

**Conclusion**

There are many complicated issues that must be navigated by family law attorneys and no two engagements are ever the same. When an ownership interest in a privately-held business is present in a divorce, it adds another layer of complexity. It is important that family law attorneys develop a plan for addressing valuation issues early in the engagement so that the guesswork related to business value is minimized and client expectations are appropriately managed.

Sean Saari is a partner at Skoda Minotti and manages the firm’s Valuation & Litigation Advisory Services group. He assists a diverse client base in valuations for litigated matters, domestic disputes, shareholder disputes, estate and gift tax planning, financial reporting and strategic planning. In addition to being a CPA, Sean is Accredited in Business Valuation (ABV) and is a Certified Valuation Analyst (CVA). He became a CMBA member in 2015. He can be reached at (440) 449-6800 or ssaari@skodaminotti.com.
Happy New Year, Believeland!

It may seem odd to say Happy New Year in July, but this is the beginning of a new year for one of Cleveland's greatest partnerships, the Cleveland Metropolitan Bar Association and the Cleveland Metropolitan Bar Foundation. It is also a happy time in Cleveland: the Cavs have been crowned NBA champions, breaking a 52-year jinx and making us the City of Champions; the Tribe is in first place and a World Series appearance seems realistic, even probable (could the Super Bowl be next for the Browns?); and the City came together as the entire world turned its eyes on Cleveland as host of a historical political convention. So, as a new year begins for the CMBF, I thought it only fitting to tell you a little about us and our plans for the next 12 months.

Who is the Foundation?
The Foundation Board is a diverse group of men and women committed to making our Foundation and our Bar Association the best in the nation. (If we’re not there already, we’re certainly going to be under the leadership of new CMBA President Rick Manoloff.) We are solo practitioners and partners, associates and counsel from law firms of all sizes. We are in-house counsel from many of Cleveland’s biggest businesses, financial institutions and philanthropic organizations. We are also community trustees who are deeply involved in everything going on in Greater Cleveland. And we’re supported by a remarkable Executive Director, Becky McMahon, whose enthusiasm and energy are matched only by her dedicated, tireless staff: Jackie Baraona, Kari Burns, Sarah Charlton, Carrie Cravener, Carmen Dorch, Melanie Farrell, Carmen Franklin, Mary Groth, Nestor Hernandez, Lucy Jackson, Rita Klein, Alla Leydiker, Carol Matia, Joel Messe, Krista Munger, Jessica Paine, Samantha Pringle, James Smolinski, Juan Williams, Kris Wisnieski, and Heather Zirke. We’re a working Board, and we have fun!

What does the Foundation do?
As stated in our new and improved, user-friendly website (even this technology-challenged attorney found it easy to navigate): The Cleveland Metropolitan Bar Foundation (CMBF) is the charitable fundraising arm of the CMBA. It raises critical dollars for the association’s nationally recognized “Lawyers Giving Back” public outreach and pro bono legal service programs. Each year, nearly 1,000 attorneys support these programs with volunteer service. The programs supported by the Bar Foundation change individual lives in a way that positively impacts the community. The CMBF is a nonprofit, 501(c)(3) charitable organization. “Lawyers Giving Back” — I couldn’t have said it better!

What are the programs supported by the Foundation?
The Bar Foundation supports the innovative and far-reaching programs of the CMBA:
• The 3Rs – Rights, Responsibilities, Realities
• Cleveland Homeless Legal Assistance Program
• Cleveland Mock Trial and Ohio Mock Trial Competitions
• Pro Se Divorce Clinics
• Reach Out: Pro Bono for Nonprofits
• Volunteer Lawyers for the Arts
• Law Day
• Louis Stokes Scholars Program
• Stephanie Tubbs Jones Summer Legal Academy.

Most of these programs are organized under the Justice For All and Diversity & Inclusion umbrellas of the CMBA; all of these programs provide critical assistance to members of the Greater Cleveland community who need and utilize them.

How does the Foundation do it?
The Foundation raises funds through a variety of programs and special events:
• Franklin A. Polk Public Servant Merit Awards Luncheon (September 9, 2016) – This endearing annual event honors our colleagues who make our legal system work, 24/7, day in and day out. They are truly unsung heroes, and we couldn’t do our jobs without them. The “thank you” and recognition they receive is both deeply appreciated and richly deserved.
• Halloween Run for Justice (October 29, 2016) – The Halloween Run for Justice (or in my case, the “waddle”) is a great family event, attended by attorneys, spouses, kids, and real runners. Last year, the event became even more special with entertainment by the Cavs Scream Team and a special appearance by Mayor Frank Jackson. We’re hoping those partnerships continue.
• Rock the Foundation (February 11, 2017) – Anyone who says “lawyers are boring” has never attended “Rock.” Last year, over 550 people donned “rocktail” attire and enjoyed (“rocked”) an evening of fantastic music, dancing, food, and good times. Valentine’s Day was an added bonus. Rock is both our biggest fun-raiser and fun-raiser!

The Foundation also raises money for its growing endowment through annual dues check-off, the Fellows Program, Legacy Fellows (planned giving), and other donations.

How can you get involved?
It’s simple: volunteer for a CMBA program, make a donation, and attend our events. It’s going to be a fun year together in Believeland!

Drew T. Parobek is a partner at Vorys, Sater, Seymour and Pease LLP. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1993. Drew can be reached at (216) 479-6162 or dtparobek@vorys.com.
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Niki Z. Schwartz, Esq.
Schwartz Downey & Co., 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, masterfully 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

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An Effective Mediation Technique
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BY C. DAVID WITT

The parties stood at the door of the courtroom. The tenant, a mother of three, had been a tenant for more than two years without incident. Then she lost her job and fell several months behind in rent. She just started a new job, but now faced the prospect of becoming homeless. Her landlord, who lived in the downstairs unit of the double, was sympathetic, but resolute: with only three rental units, he could not afford to let a tenant stay in the property without paying rent. He was insistent: he wanted to go to trial.

The court mediator sat down with the parties as they waited their turn for hearing. He proposed a concept: "Settlement may be the preferred option for EACH of you."

The mediator first explained to the landlord that evictions are fraught with uncertainty: notices must be served before the eviction action is filed; the timing and content of the notices varies with the nature of the claim. The conduct of the parties may alter the terms of a written agreement. Principles of equity are a consideration as well. If the landlord receives a federal rent subsidy, an additional layer of complexity is imposed.

Then, he cautioned the tenant, "Eviction is a summary proceeding. Should your landlord prevail, the bailiffs could be there to set you out in seven days. And the judgment against you will make it difficult for you to deal with future potential landlords."

"There is another option available to you," the mediator explained, "that would allow you both some input into how the case is resolved, and give you a result about which you both can be certain." He showed the parties an example of a possible agreement: the tenant would agree to move from the property by a specific date some weeks down the road. The case would be set for hearing the following day. If the tenant did not move as agreed, the landlord would be granted judgment, all defenses waived. If the tenant did vacate as agreed, the case would be dismissed. "This avoids an eviction judgment on your record and gives you some time," the mediator said, focusing on the tenant. "And for you," he said to the landlord, "the agreement gives the certainty of outcome and the likelihood you will not have to spend money to enforce the move out." Anticipating a question, he added another element: a series of interim rent payments so that the landlord's economic status would not worsen. "If payments are not made, you will immediately get your eviction judgment." The assurance? Each payment date would be followed by a scheduled status hearing, the landlord not having to appear if the payments were made.

They reached an agreement. It made good mutual practical sense.

The saga repeats itself every day. Cleveland's Housing Court exists at the intersection of haves and have nots. Earlier this year, the nonprofit research organization, Economic Innovation Group, released a study declaring Cleveland the most economically distressed major American city. It came as no surprise for those of us associated with Cleveland's Housing Court. Eviction is a frequent consequence for those who live on the margins of the economic order. More than 10,000 evictions were filed in Cleveland Municipal Court's Housing Division in 2015, a number greater than the total number of civil actions filed in the Court's General Division.

The majority of cases referred to mediation do settle. With the assistance of the mediator, and the array of tools he or she brings to the table, including vigilant court enforcement, there is an opportunity to craft settlements that meet the needs of the parties.

Settlements regarding possession can go in a variety of directions. First, as with the example described above, parties can agree that trial will be deferred and that the tenant will vacate by a date certain. Such an agreement is reduced to writing by the mediator, signed by both parties and signed by Housing Court Judge Raymond Pianka.

The settlement doesn't always have to end the landlord/tenant agreement; it also can be used as a tool to rebuild a broken relationship. The parties can agree to a series of payments including both current rent and arrearage, the court monitoring performance with a series of status hearings. Payment in full will result in dismissal of the case and full reinstatement of the landlord tenant relationship. Settlement agreements may be useful as well, to clarify aspects of conduct that put a strain on a relationship, when money is not the issue. Additional occupants, access to driveways and basements, parking and pets all can be the subject of agreements that are enforceable by the court.

Money claims, apart from a possession claim, can include rent, abatement of rent, property damage and personal injury. Again, parties can agree to a schedule of payments, performance of which will result in dismissal of claims. Consistent with the earlier examples, payment installments will be paired with a series of brief status hearings. If payments are made, the creditor need not attend, but a failure to pay will result in judgment rendered.

And, occasionally, mediated agreements can reach issues not to be addressed in traditional litigation. An apology, even one made in the context of a court document, may help to restore some aspects of a fractured relationship.

The structured settlements described are contextual. The Housing Court operates within the shadows of the Recession. Other courts dealing with greater financial resources and experiencing a higher volume of attorney participation may find a different route to final disposition. But I suggest this: Mediators and advocates engaged in the business of...
handling contested claims would do well to appreciate that a discussion of merit is only part of the story. Mechanisms for management of outcome can be of equal import. Creating positive road maps for final resolution is an important element of any legal contest.

A crucial element is the pro-active effort of the part of court personnel to educate parties as to settlement mechanisms. Another key element is the flexibility on the part of a court in terms of docket scheduling. Routinely, judicial calendars include case management conferences, motion hearings, pre-trials, and trials. A settlement agreement, on the other hand, can be complex, including a schedule of performance obligations and a series of hearings to monitor that performance and to realize an agreed-upon consequence in the event there is no performance. It is that mechanism — a court moving beyond simple disposition of cases and becoming an agent of enforcement — that enhances the potential for parties to embrace a negotiated solution. Courts must be willing to meet the parties’ investment of time in the process with an investment of its own in the additional time necessary for status hearings and conferences.

My suggestions to mediators (with implications for advocates as well):

- Familiarize yourself with the facts of the case prior to mediation. As Louis Pasteur observed, “Chance favors the prepared mind.” Sketch out possible settlement options.
- Have a good working understanding of the hearing options that are available. Seek the capacity to set status hearings respecting each element of performance.
- Maintain a library of settlement strategies. Have examples to show to the litigants.
- Communicate the range of available settlement mechanisms early on. Introducing the possibility of settlement before the parties have invested heavily in their trial positions increases the likelihood of settlement. The availability of multiple settlement mechanisms can help shape the dialogue, sometimes as much as a discussion of merits.
- Utilize a caucus format to relate the risk and benefit of going forward including the cost of proceeding and the probability of collection. Practicality is always a consideration.
- Be prepared to author the settlement in whole or in part. You will be the party most familiar with settlement language acceptable to the court. A key element of any settlement is moving from abstract ideas to a written statement utilizing enforcement mechanisms acceptable to the court.
- Consider drafting an agreed judgment entry fully elucidating the terms of settlement. It should be signed by litigants, counsel, and judge. A private settlement agreement distinct from a public dismissal entry can be advantageous in terms of confidentiality. But if the agreement is a roadmap for resolution premised upon a series of enforcement terms to be monitored by the court, you will want that enumerated in an agreed judgment entry. Linking commitment and consequence with a series of status hearings is the shortest distance between two points.
- If best effort fails and there is impasse, consider conveying to the parties draft settlement agreements for their further consideration. Mediation is not a moment — it is a process — and positions can evolve with the passage of time and further deliberation. Each of us wants to be wiser tomorrow than we are today.

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.
You and your client have spent a long day in mediation. For hours, proposals have gone back and forth, inching both sides closer to a resolution. Somewhere between late afternoon and early evening, the parties finally reach an agreement. Your client is relieved and eager to escape the conference room. The case is finally over. Or is it?

Your next step is crucial in determining whether you will close the door on this case or leave it open just enough to allow the settlement to unravel over the following days, or worse — create a new round of litigation over whether a settlement was even reached at all.

If the goal of mediation is to resolve disputes efficiently and cost-effectively, a vague agreement that falls apart, or creates more issues for the parties, defeats the purpose of mediation. Your client needs a settlement agreement that will resolve the dispute and be judicially enforceable.

Here are four reasons your mediated agreement may not be enforceable:

1. The agreement is not in writing.
   Anyone who has watched a daytime reality court show knows the golden rule of promises: Get it in writing. But due to the unique nature of mediation, it’s common for a session to end with only an oral agreement and a plan to formalize the terms of the settlement in a document to be drafted later.

   Mediation typically involves hours of discussion between the parties and the mediator. When the parties finally reach a resolution, the offer and acceptance is communicated by an oral agreement. The parties often view this as the end of the mediation and fail to memorialize the agreement in a written document before leaving the conference room. This practice has resulted in frequent attempts to enforce oral agreements that were made in mediation.

   In Ohio, an oral settlement agreement may be enforceable if there is sufficient particularity to form a binding contract. Kostelnik v. Helper, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 15. The terms of an oral contract may be determined from the words, deeds, acts, and silence of the parties. Id. To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. If there is uncertainty, a court should hold a hearing to determine if an enforceable settlement exists. Id. at ¶ 17.

   But this poses a serious problem for mediated settlement agreements because Ohio’s Uniform Mediation Act (UMA) provides that all mediation communications are privileged. See R.C. 2710.03(A). Essentially, a mediation communication includes everything that is said and done in a mediation. Ohio courts have held that evidence that is subject to the mediation-communication privilege, which is not covered by an exception, is neither discoverable nor admissible at trial. See Akron v. Carter, 190 Ohio App.3d 420, 2010–Ohio–5462, 942 N.E.2d 409 (9th Dist.).

   Therefore, if your mediation concludes with only an oral agreement and your client wishes to enforce the settlement, you will have no way of proving that the parties had reached an agreement. Any statements offered to show that an agreement had been reached would constitute a mediation communication under Ohio’s UMA and would therefore be privileged and inadmissible.

Since an oral agreement is unlikely to be enforced and a complete document may be too
complex to prepare and execute at the conclusion of the mediation, the best practice is to draft a simplified document — an outline of the agreement, a memorandum of understanding, or a term sheet — that lists what was agreed upon and is signed by all parties. Even a handwritten document listing the terms that were agreed to would be more beneficial than walking away with nothing to memorialize the settlement. In preparing for the mediation, an attorney may want to bring a standard preliminary settlement agreement with blank spaces for the negotiable terms.

2. The essential terms have not been clearly identified.

When a party seeks to enforce a mediated settlement agreement, the most successful attack on the purported agreement questions whether there was mutual consent on all the essential terms of the agreement.

Settlement agreements, whether mediated or unassisted, are interpreted using the same rules that are applied to contracts. Under Ohio law, there are several principles that determine whether a contract has been formed and is enforceable.

First, a party seeking to prove the existence of a contract must establish its essential elements: (1) an offer; (2) an acceptance; (3) a meeting of the minds; (4) an exchange of consideration; and (5) certainty as to the essential terms of the contract. Juhasz v. Costanzo, 144 Ohio App.3d 756, 762, 2001-Ohio-3338.

Second, in order for a court to find a contract valid and enforceable, its essential terms must be definite and certain, and the parties must have mutually agreed to them. Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations, 61 Ohio St.3d 366, 369, 575 N.E.2d 134 (1991).

The preliminary agreement that is drafted at the mediation can be informal, but it must contain essential terms that are sufficiently specific and mutually agreed upon. If a court finds that the essential terms are not sufficiently certain enough to constitute a “meeting of the minds,” it will likely refuse to enforce the agreement. However, if a few nonessential and ancillary terms are uncertain, or remain to be resolved, the settlement agreement will likely be enforced.

What is an essential term? For contracts other than those for goods, courts have held that the essential terms are, generally, the parties to the contract and its subject matter. Nilavar v. Osborn, 127 Ohio App.3d 1, 13, 711 N.E.2d 726 (1998). Whether a certain term is essential or ancillary depends on the facts and issues in dispute. The attorney drafting the settlement agreement must understand what issues are material to the case and ensure that there has been mutual consent as to those material issues. As a rule of thumb, an enforceable agreement should identify the who, what, when, where, and why of the settlement.

Courts have found the terms of a contract sufficiently certain when they provide a basis for determining the existence of a breach and for giving an appropriate remedy. Mr. Mark Corp. v. Rush, Inc., 11 Ohio App.3d 167, 169, 464 N.E.2d 586 (1983).

3. It’s an agreement to agree, not a final agreement.

If the parties draft a preliminary agreement at the conclusion of the mediation that references the execution of a more formal document to be drafted later, and the settlement falls apart while negotiating the formal document, one of the parties may attempt to enforce the preliminary agreement. The court must then decide whether the preliminary agreement is an enforceable settlement agreement or merely a nonbinding agreement to agree in the future.

Under Ohio law, an “agreement to agree” is not per se unenforceable. The enforceability of such an agreement depends on whether the parties have manifested an intention to be bound by its terms and whether these intentions are
sufficiently definite to be specifically enforced. *Normandy Place Assoc. v. Beyer*, 2 Ohio St.3d 102, 105, 443 N.E.2d 161 (1982).

Therefore, the language used in the preliminary agreement can be critical to determining whether it's enforceable. Where the language states that the settlement is "subject to" a formal agreement, a court will likely refuse to enforce it. But where the language merely states that it is "to be followed by" a formal agreement, it's more likely to be enforced.

If a party seeks to enforce a purported agreement that contains all of the essential terms and is signed by the parties, the mere fact that a later more complete document was contemplated will not preclude the agreement from being enforced.

The preliminary agreement drafted at the conclusion of the mediation should state that the document contains all the essential terms of the settlement and constitutes a binding settlement agreement, even though the parties intend to draft and execute a formal settlement contract.

4. *It's vulnerable to traditional contract defenses.*

Since mediated settlement agreements are enforceable under general contract law, the traditional defenses to the enforcement of contracts — fraud or misrepresentation, mistake, duress, lack of capacity, lack of consideration, lack of authority, unconscionability, etc. — can apply to the enforcement of mediation agreements.

In addition to those traditional contract defenses, claims can arise that are unique to mediation, such as mediator misconduct. A party seeking to set aside a mediated agreement may claim that the mediator had a conflict of interest, coerced the agreement, was biased, or exercised undue influence.

In drafting a settlement agreement, an attorney must be familiar with these defenses and consider how they may affect the agreement. It should be noted that these contract defenses are rarely successful in defeating the enforcement of a mediated settlement agreement.

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Aaron Schmidt is the Vice Chairman of Ohio's State Employment Relations Board, which administers the state's collective bargaining laws for public employers and employees. He is a graduate of Cleveland-Marshall College of Law and the Capital University Law School Center for Dispute Resolution's Intensive Mediation program. Aaron has been a CMBA member since 2004. He can be reached at aaron.schmidt@serb.state.oh.us.

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MANAGING THE MEDIA: LAWYERS AND THE PRESS
Bruce Hennes
Hennes Communications

NEW LAWYER BOOTCAMP
Ian Friedman
Friedman & Nemecek, L.L.C.

PITFALLS AND POINTERS FOR YOUNG LITIGATORS
Clare Gravens
Cuyahoga County Court of Common Pleas

Lisa Sanniti
Special Assistant U.S. Attorney

Bob Terbrack
Gallagher Sharp

ANNUAL PRESIDENT’S DAY MUNICIPAL LAW SEMINAR
Todd Hunt
Walter | Haverfield LLP

Steven Strang
Gallagher Sharp

2016 HEALTH CARE LAW INSTITUTE
Cliff Mull
Benesch, Friedlander, Coplan & Aronoff

2016 MEDICAL/Legal SUMMIT
David Valenti
The Cleveland Clinic

COMMERCIAL & RESIDENTIAL LEASES: WHAT’S IN YOUR LEASE?
Amy Asseff
McFadden & Freeburg Co., L.P.A.

16TH ANNUAL NORTHERN OHIO LABOR & EMPLOYMENT CONFERENCE
Pat Peters
Jackson Lewis, PC

Lauren Tompkins
Giffen & Kaminski, LLC

8TH ANNUAL FAIR HOUSING FORUM
Lisa Gold-Scott
City of Shaker Heights

Marilyn Tobocman
Ohio Attorney General’s Office

DOMESTIC RELATIONS PRACTICE IN 2016
Hon. Diane M. Palos
Cuyahoga County Domestic Relations Court

WILLIAM J. O’NEILL GREAT LAKES REGIONAL BANKRUPTCY INSTITUTE
Deb Booher
Debra Booher & Associates Co., LPA

Kari Coniglio
Vorys, Sater, Seymour and Pease LLP

Eric Goodman
Baker Hostetler LLP

Michael Tucker
Ulmer & Berne LLP

ARE YOU AND YOUR COMPANY — OR YOUR CLIENT — RNC READY?
Brent M. Buckley
Buckley King

HOT TOPICS IN COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE
Myra Barsoum Stockett
Reminger Co., LPA

2016 LITIGATION INSTITUTE
Amanda Quan
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

GREAT LAKES SYMPOSIUM
Keely O’Bryan
McMahon DeGulis LLP

2016 APPELLATE PRACTICE
Tim Fitzgerald
Koehler Fitzgerald LLC

FEDERAL COURT PRACTICE UPDATE
Joe Dunson
Dunson Law, LLC

HOT TOPICS FOR ESTATE PLANNERS
Cristin Snodgrass
KeyBank Family Wealth

Franklin Malemud
Reminger Co., LPA

Thank you!
The Bankruptcy & Commercial Law Section hosted their two-day William J. O’Neill Great Lakes Regional Bankruptcy Institute on June 1 and 2 at the CMBA Conference Center. More than 180 national and local speakers and participants enjoyed two days of quality CLE programming and numerous networking opportunities, including the very popular IwIRC reception following Day One.

The Section thanks the 2016 co-chairs for their leadership and countless hours devoted to the O’Neill Bankruptcy Institute:

**Debra Booher**, Debra Booher & Associates Co., LPA  
**Kari B. Coniglio**, Vorys, Sater, Seymour and Pease LLP  
**Eric R. Goodman**, BakerHostetler  
**Michael S. Tucker**, Ulmer & Berne LLP

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

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

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

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

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### August

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<td>3Rs Committee Mtg.</td>
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### September

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<td>CMBF Board of Trustees Mtg.</td>
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<td>YLS Council Mtg.</td>
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<td>ADR Section Mtg.</td>
<td>Bar Admissions Training CLE</td>
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<td>UPL Committee Mtg.</td>
<td>Workers Comp Section Mtg.</td>
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<td>Estate Planning Section</td>
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<td>Court Rules Committee Mtg.</td>
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<td>Small/Solo Expo – 8:30 a.m.</td>
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<td>Legal Aid &amp; CMBA Joint CLE for Act 2</td>
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All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
The “Greet the Judges and GCs” annual members-only reception was held Wednesday, May 25 as part of the CMBA’s continuing effort to bring together the outstanding individuals who make Northeast Ohio a world-class center of professional excellence. The reception also served to welcome the newly-admitted attorneys into our legal community. The evening was filled with networking, reconnecting with old friends, and meeting new ones. The house was packed and a fabulous time was had by all. We appreciate all of our members who took the time to welcome the newest class of attorneys and mix and mingle with the crowd. Special thanks to all honored members of the judiciary from our federal, state and local courts, as well as general and other in-house counsel from diverse institutions and settings who attended the reception. We also want to extend our heartfelt appreciation to our event sponsors for your generous support.

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Dan Messeloff and Anne Owings Ford
Frantz Ward is recognized in the 2016 edition of Chambers USA. The firm’s rankings in the 2016 edition are as follows: Michael J. Frantz, Labor and Employment – Band 1; T. Merritt Bumpass, Jr., Labor and Employment – Band 2; Brian J. Kelly, Labor and Employment – Band 3; Daniel A. Ward, Labor and Employment – Band 3; Andrew J. Natale, Construction – Band 1; Ian H. Frank, Construction – Band 3; and Marc A. Sanchez, Construction – Band 4.

Miller Goler Faeges Lapine LLP is pleased to announce that Michael D. Goler has been selected to receive the 2016 Outstanding Fundraising Volunteer Award, from the Association of Fundraising Professionals Greater Cleveland Chapter.

Tucker Ellis LLP is proud to announce that partner Carter Strang has been honored as a 2016 Cleveland-Marshall Law Alumni Association (CMLAA) Alumnus of the Year. CMLAA recognized Mr. Strang for his service, leadership, and career achievements — in particular his dedication and longstanding commitment to diversity, inclusion, and mentoring in the legal profession.

The Northeast Ohio region of ORT America presented Jonathan Leiken and Michael Ungar with the 2016 ORT America Jurisprudence Award.

Taft partner David H. Wallace is listed as one of the 2016 Chambers USA “Leaders in their Field.” Wallace is listed for Litigation: General Commercial.

Hahn Loeser & Parks LLP is pleased to announce that the firm has been ranked in the 2016 edition of Chambers USA. The firm has been named a leading law firm in Ohio in four practice areas: Bankruptcy/Restructuring; Corporate/M&A; Labor & Employment; and Litigation: General Commercial. Additionally, nine of the firm’s attorneys have been ranked as leaders in their respective practice areas: Commercial Litigation: Robert J. Fogarty, Steven A. Goldfarb, Rob Remington; Construction: Rob Remington; and Bankruptcy/Restructuring: Rocco I. Debitetto – Up and Coming, Daniel A. DeMarco – Band 1, Lawrence E. Oscar – Eminent Practitioner, Lee D. Powar – Senior Statesmen; and Christopher B. Wick – Up and Coming.

BTI Consulting Group identified Ulmer & Berne as one of the most recommended law firms by corporate counsel.

CMBA Chief Financial Officer Alia Leydiker has been appointed to the board for the Cleveland Hearing and Speech Center.

CMBA Director of Development & Community Programs Mary C. Groth has been appointed to the board for the National Conference of Bar Foundations.

Ulmer & Berne is pleased to announce that Stephanie Harley, partner in the firm’s Employment and Labor Litigation Group, was recently elected to the Board of the United States Organization of Northern Ohio.

In a unanimous vote, the full boards of Equality Ohio and Equality Ohio Education Fund have named Alana Jochum Executive Director. Ms. Jochum has served as Equality Ohio’s Managing Director since July 2015 and previously served as Northeast Ohio Director.
The HALLOWEEN RUN is LANDING in a NEW LOCATION

BURKE LAKEFRONT AIRPORT

15th Annual Halloween Run for Justice Saturday, October 29