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Andy Dorman
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CMBA Join Date: 1994
Undergrad: Bowling Green State University
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**CAN YOU PLAY AN INSTRUMENT?**
No, but I love karaoke.

**EAST SIDE OR WEST SIDE?**
Neither. I live on the south side in Broadview Heights. The south side does not get enough recognition. There are excellent schools, restaurants, and gathering places, in addition to the Metroparks, several golf courses, and many places to go for a walk or a hike.

**WHAT ADVICE WOULD YOU GIVE TO A LAW STUDENT?**
Your success as a lawyer will depend on the following personality traits and factors: strong work ethic, competitiveness, attention to detail, and excellent writing.

**WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?**
I am a first-generation Scotsman. My mom and dad and sister were all born in Glasgow, Scotland. All of my aunts and uncles and cousins still live in Scotland.

**A RECENT MILESTONE?**
2016 was a great year for our family. My wife (Lynn) and I celebrated our 25th wedding anniversary, my daughter (Lindsay) turned 16, and my son (Luke) graduated from high school and started college. Over the summer, my son and I went on a trip with a group of golfers to Ireland and played some of the best golf courses in the world, including Old Head.

### Heather Zirke

Company: CMBA
Title: Bar Counsel
Undergrad: Baldwin-Wallace College
Law School: Cleveland-Marshall College of Law

**TELL US ABOUT YOUR FAMILY.**
I have been married to my husband Chris for 13 years and we have a 9-year-old daughter Aurelia and a 7-year-old son Kip. We are a busy family with school and work so we love to get away and travel together.

**A RECENT MILESTONE?**
We visited San Francisco and walked all the way across the Golden Gate Bridge (and back). We also had epic lightsaber battles outside Lucasfilm Studios and in Muir Woods. Did I mention we also love Star Wars?

**HOW DID YOU MEET YOUR HUSBAND?**
We met as first-year law students at Cleveland-Marshall. We sat next to each other in legal writing for the entire first year but barely spoke to each other. We started dating the summer after that first year when we worked together as law clerks for the Cleveland Municipal Court. We give the credit to Judge Michelle Paris and Greg Clifford who hired us. Who knew you could find love in the Justice Center?

**WHAT’S YOUR FAVORITE BOOK?**
Atlas Shrugged. I picked it up before a week-long vacation to Aruba and I spent the entire time under a hat reading. My husband still can’t believe it.

**WHAT WOULD REALLY-surprise people about you?**
As a teenager, I was a punk rocker. Long black hair, painted studded leather jacket, piercings, the whole bit.

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**Eric J. Cherry**
Firm/Company: Law Offices of Eric J. Cherry
CMBA Join Date: 2016
Undergrad: Cleveland State University
Law School: Cleveland-Marshall School of Law

**TELL US WHY YOU LOVE CLEVELAND!**
I’ve long called Cleveland the biggest small town in America, and that is the core of its charm. I consider it the best kept secret in the U.S. It is a town with all of the amenities of a metropolis while also maintaining the homy feeling of a close-knit community. It seems that everyone in Cleveland is connected through friends of friends, colleagues, and associates. We have great sports teams, a vibrant arts and musical community, many entertainment districts, beautiful and extensive parks, all with less traffic and a low cost of living.

**MOST EMBARRASSING MOMENT IN COURT?**
My first court appearance on my own was in housing court in Cleveland Heights. I had failed to notice that the Defendant was delayed and as a result his 28 days to answer the complaint had not run. In addition, I erroneously coached my client in haste to state that she posted the 3-day notice on the same day she filed the complaint. It ended up not mattering because the Defendant was removed from the home for other reasons. Nevertheless, I was embarrassed.

**DESCRIBE YOUR IDEAL SUNDAY.**
On a cool autumn morning with the windows cracked to let in a bit of the chill, I slumber until the late hour of 7 a.m. Upon arising, I dine on a light breakfast of eggs and toast before hitting the trails for a ride. I return to an afternoon of frivolity with family and friends capped off by a fire and a home cooked meal. The evening is filled with the comfort of loved ones, to end by slowly dozing off while reading a great book.

**IF YOU COULD GO TO DINNER WITH A FAMOUS PERSON, LIVING OR DEAD, WHO WOULD IT BE AND WHY?**
I would love to meet Galileo. I have a childlike fascination with the universe, something I believe Galileo shared. I would love to show him some of the beautiful pictures created through our use of the Hubble Telescope, and share with him our ever-growing knowledge of astrophysics and the cosmos. That is, of course, if I could speak Italian.

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The Scoop
CMBA Member Q&A

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Living to Leave a Legacy

It's all Hugh McKay's fault.

Hugh, the Partner-in-Charge of Porter Wright's Cleveland office, wrote a wickedly witty little ditty that I got to perform in a skit at the Grand Assize of the Court of Nisi Prius in April. Playing the role of Alexander Hamilton, I rapped and sang Hugh's modified lyrics to the introductory number of the smash hip-hop musical, Hamilton. The song was so catchy, I still can't get it out of my head. And it inspired me to check out the rest of the score and introduce it to my family.

Fast-forward ... My three daughters have the entire musical memorized, I am reading everything I can get my hands on about the musical and the man it's all about, and I had to empty my 401(k) to see the show in October. So I'll be working a lot longer than I had hoped. Thanks, Hugh.

In a fresh, approachable and profound way, Hamilton explores timeless and universal themes, and the challenges, triumphs and drama of our nation's founding that echo to this day. For instance, lest we think that recent political partisanship is anything new or even extreme (well, ok, this year's election was a bit extreme), the musical reminds us, through rapped "cabinet battles" and otherwise, that there was little love lost between Hamilton's Federalists and Jefferson's Democratic Republicans.

I actually took a sabbatical from Squire about a decade ago to research and critique our nation's two-party political system, attempting to lay the foundation for a new major political party — a centrist party. The thesis of the work was that the establishment of an active party of fiscally conservative/socially liberal individuals would widen the fulcrum of the political see-saw, forcing cooperation and moderation, and creating stability and productivity. Unfortunately, my co-author died in a tragic accident, and our endeavor never fully formed, although Google informs me that various incarnations of the concept exist. I still think it's an interesting topic to kick around at parties. (And I wonder why everybody avoids me at parties.)

Among the other multifarious issues it examines, Hamilton causes us to confront the legacy of the title character, and contemplate our own. In final song of the musical, a poignant ballad that I dare anyone to watch through dry eyes, Eliza Hamilton sings a song about her late husband's legacy, and what she herself leaves behind: "And when my time is up, have I done enough?"

This question hit me hard recently, as my family gathered to remember the life of my mother, who died of ALS two years ago. Like Hamilton, she lived her whole life like she was running out of time. Even in her retirement years, she combined her passion for educating children with a skill in spoken Spanish and an unquenchable desire to make the world a better place — and made 30 trips to Guatemala to install and educate communities about clean water systems. Her actions have rippled waves across time and space.

Eliza Hamilton's melodic question was also amplified for me when I read the stirring tributes made upon the passing of Isaac Schulz, former President of the Cleveland Bar Association. Bar leaders called him an "ubermensch," "great, great lawyer," "true professional," "gentleman's gentleman," "great family man," "one of the pillars of our profession," "role model," "bright, funny and kind," "great friend and colleague," "mentor," one "who could always be counted on to step up and fight for a worthy cause," one "who added much to this community," and "what all of us in bar service aspire to be: a lawyer who not only practices law to earn a living, but who contributes to society and makes the world more good and just through being a lawyer."

We are inspired and our lives have been affected by the life of Isaac Schulz. Even if we didn't know him, something in our soul stirs when we hear people talk about him. Our better nature yearns to live as he lived, and we want to be remembered as he is being remembered — each within our own life's context. We want to leave a legacy.

At the end of the Hamilton musical, Alexander reflects, "Legacy. What is a legacy? It's planting seeds in a garden you never get to see." Living in such a way as to leave a lasting legacy — to plant those seeds — adds dimension, color and meaning to life, and each aspect of it. Toward that end, we each define our own goals, values and measures of success — our own mountain; produce plans, make microdecisions and develop habits to climb the mountain; and seek out guides who know the path.

Within its humble sphere, and at its best, our Bar serves to help each member establish a legacy within the legal community and beyond. We have much to offer.

With respect to monetary legacies, our Bar Foundation's "Legacy Fellows Program" provides ways to leave gifts (through wills, trusts, life insurance policies, retirement plans, and annuities) that will support the charitable outreach programs of the Bar Association for generations. Any gift to the Foundation's burgeoning endowment has that same effect. And discussions are underway to create new donation opportunities that would have lasting impacts.

To help develop non-monetary legacies, the Bar Association fundamentally does two things — it assists us all in becoming consummate professionals, and it offers myriad opportunities to serve and improve our community: from practical and creative continuing legal education (including "destination CLEs"), to networking, mentoring, leadership development, and connecting with those in the same
substantive area of law or with similar law-related passions and interests; from leading community efforts to improve diversity and inclusion, to serving core city school children, building community trust to ease social tensions, providing assistance to the homeless, the artists and nonprofits, inspiring the next generation of barristers, pursuing access to law and justice for the underprivileged, and preserving the integrity of the profession. Our new publication, Get Plugged In – CMBA Involvement Guide (available on our website), sums up the ways that our Bar can help each one of us to make a profound and lasting impact on our profession and community.

To build a legacy.

Rick Manoloff, President of the Cleveland Metropolitan Bar Association, went to divinity school and was the Issues and Research Director for a U.S. Senate campaign prior to joining then-Squire, Sanders & Dempsey. He may or may not be appearing as an ‘80s big-hair rocker in an ethics video to be shown at an upcoming CLE. He has been a CMBA member since 1993. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.

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Regular Meeting
Last Wednesday of the month, noon at the CMBA

What is your goal?
Helping the students of Cleveland and East Cleveland high schools learn about the law and plan for their future through face-to-face lessons and mentoring.

What can members expect?
Members oversee and guide the award-winning 3Rs program, now in its 11th year, to make a positive impact on thousands of local youths with the help of hundreds of volunteers from across the legal community.

Upcoming Events
The Committee is focused on enlisting and recruiting new teams and volunteers, to reach our goal of a team in every classroom.

Recent Event
For 2016–17, the Committee formed eight new teams from major law firms/corporations as part of a new recruitment effort, and created a new “best of the best” curriculum for classroom lessons based on feedback from the schools, volunteers, and students.
Go Us, Go!

The first week of every month I get a polite nudge from Jackie Baraona, our graphic designer at the CMBA, reminding me that I owe her a new column for the Bar Journal. For those who are regular contributors, you know that Jackie is our Journal mastermind. In addition to managing the editorial calendar that identifies which sections, committees and topics will be spotlighted in each of the 11 issues printed during the year, she also coordinates the call for articles, the collection of articles and all of the design-related aspects of laying out the Journal each month. And then there’s the proof reading ... which actually takes a village.

Jackie is also our Journal enforcer. In order for us to make our printing deadlines, all materials need to be received by Jackie a month before an issue goes to print. It is she who has the unenviable job of reminding section and committee chairs, presidents and executive directors to get their work in on time.

Despite my best intentions to deliver my articles by the first of every month, 20+ years of being a litigator have made me a last minute writing monster. Inspiration usually strikes only as the bell is tolling ... or as Jackie is reminding me for the third time that she really, really, really needs my article.

And so, thanks to an insanely full October, I am writing my November article well, well, well after it was due. (Note to all future Bar Journal contributors: I may game the publishing system occasionally, but you may not. The deadline is the first of the month!) Today, my writing day, is Friday. Two days post the World Series conclusion.

I still can’t believe it’s over. What an incredible season capped off by a Game 7 none of us will ever forget. What a rollercoaster. 1–0 Cubs at the end of the 1st inning. All tied up in the 3rd. Cubbies up 5–3 in the 5th. The Indians — in true Believeland spirit — pull even 6–6 in the heart-attack inducing 8th.

We believed. We truly believed that victory would be ours. And then came the 17-minute rain delay just before that 10th inning. Oh, that 10th inning. It still leaves a pit in my stomach.

While my heart broke right along with every other #RallyTogether #Windians heart in town, I am still so damn proud of what our team — and our city — accomplished throughout the season and the post-season. Our home team left nothing on the field this season. They gave it their all, as did their fans.

One of the Series highpoints for me — surprisingly — occurred during the Cubs’ incredible Game 5 victory. Remember Game 5 when the Indians walked into their third night at Wrigley leading 3 games to 1? ‘The Indians had stunningly taking the first two games on the Cubs’ home turf. What a show of strength, teamwork and grit.

From my perch, Game 5 felt different from the moment I turned on my television. Sure, the setting was the same ... a full house, excited players, Fox Sports’ Joe Buck endlessly lavishing praise on the Cubbies and, in particular, Kyle Schwarber. But the energy seemed different. Even when the Indians jumped out to an early lead, the sheer determination in that sea of Cubs fans was evident for all to see. They absolutely were not going to let their boys go down. As they stood and cheered, and cheered, and cheered, the power of the people lifted that Cubs team up to a tide-turning victory. And when victory arrived, the 42,000+ crowd sang “Go Cubs, Go!” with such a singular joy, my daughter (up way past her bedtime) and I watched in silent awe.

So what does this have to do with our Bar?

In my head, I still hear that Cubs crowd singing. Except instead of “Go Cubs, Go!” I hear “Go Us, Go!” And the faces I see belong to you, our members. I keep thinking about how we — as the CMBA, as a Bar, as Clevelanders — can and do come together beyond the thrill of sports to sing together in support of our communities’ common good. We do it every day, even though the spotlight of the national and local media doesn’t usually catch us.

To highlight just a few of this fall’s exemplars, together we are:

• Marking the 11th Anniversary of 3Rs with more than 60 teams of lawyers, law students, paralegals and other professionals who are enabling us to be inside more Cleveland and East Cleveland classrooms than ever before;
• Counting down the days until our very first 3Rs & Stokes Scholars Alumnum, Brandon Brown, graduates from Cleveland-Marshall College of Law in May 2017, while at the same time we are cheering on five other law students who are graduates of the CMBA’s Pipeline Programs;
• Developing the first-of-its-kind Cleveland Legal Inclusion 2020 plan for action that will bring together law firms, in-house legal departments and other organizations to fundamentally change our community’s approach to creating an inclusive profession;
• Spotlighting the incredible work of local high school students and Case Western Reserve law student, Amanda King, through the Shooting Without Bullets exhibition inside the CMBA;
• Hosting more than 300 high school students involved in a Model UN Conference at our Conference Center; and
• Celebrating that nearly 700 people walked, ran, skipped and ... in the case of one little tot dressed as a bunny ... hopped their way through the Halloween Run for Justice to raise money in support of our Justice for All Programs.

Even without a World Series victory, Cleveland is a community of champions. Thank you all for your generous contributions of time, talent and support for our Bar, for the kids in our community and for the future of our profession and our region. Go Us, Go! Happy Thanksgiving!

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.
The Trademark-Licensee Uncertainty in Bankruptcy Continues: Adding Crumbs to the Mix

BY UKEME AWAKESSION JETER

In Bankruptcy sales, trademark rights are second-class citizens to other forms of intellectual property. Under the U.S. Bankruptcy Code (the Code), trademarks are not included in the enumerated definition of “intellectual property” found in 11 U.S.C. §101(35A), and consequently they have not been treated in the same fashion as other forms of intellectual property under §365(n) of the Code, which provides that licensees of certain enumerated forms of intellectual property may continue to use the license property after rejection of the license agreement. This omission of trademarks from the enumerated categories of protected intellectual property, and a legislative history that indicates the absence was intentional, has led to unclear consequences for trademark licensees in bankruptcy sales. This article examines the rationale behind the omission of trademark rights from the Code, the consequences of the omission and the future reality for Trademark Licensees.

The Consequences of the Omission of Trademarks from §365(n).

Licensees have so much at stake if a licensor files bankruptcy. Many companies rely on intellectual property licenses and spend millions of dollars on research, development, and ultimately commercialization of products incorporating the licensed intellectual property. Since a license is typically held to be an executory contract in bankruptcy sales — that is, a contract that has not yet been fully performed — a licensor in bankruptcy has the option to “assume” the license agreement (i.e., accept it in full, both benefits and responsibilities, and render performance according to its original terms) or “reject” the license agreement (i.e., terminate the agreement and excuse itself from any further performance obligations). Most licensees will not object to the assumption of their license as long as the debtor can actually continue to perform. However, without the special protections of §365(n), trademark licensees risk losing their rights to their licensed mark if the license agreement is rejected by a licensor in bankruptcy.

The legal consequences of the rejection of a license agreement for trademark licensees is also unpredictable. Some courts have followed the decision in Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043 (4th Cir. 1985), in which a debtor-licensor moved to reject the intellectual property license it had granted to a particular licensee and hold that trademark licensees do not have the right to continued use of a debtor-licensor’s trademarks after rejection. See also In re HQ Global Holdings, Inc., 290 B.R. 507, 513 (Bankr. D. Del. 2003). These courts infer that the exclusion of trademarks from the Code’s definition of “intellectual property” can only lead to the conclusion that trademark licensees lose their rights upon the debtor’s rejection of the license agreement. Other courts have declined to apply Lubrizol, holding that rejection of a trademark-licensing agreement does not necessarily deprive a nondebtor-licensor of the right to use the trademark reasoning that rejection is nothing more than a breach of the agreement and that breach alone does not terminate a licensee’s rights. See, Sunbeam Prods., Inc. v. Chicago Mfg., LLC, 686 F.3d 372, 277-8 (7th Cir. 2012); In re Exide Techs., 607 F.3d 957, 964-8 (3d Cir. 2010).

History of §365(n) and the Rationale Behind the Omission of Trademarks

Prior to the enactment of §365(n), the Fourth Circuit had issued a decision in Lubrizol, holding that Lubrizol, a nonexclusive patent licensee whose patent license was rejected as an executory contract in the bankruptcy case of Lubrizol’s licensor, debtor Richmond Metal Finishers, could not “rely on provisions within its agreement with [the debtor] for continued use of the technology.” Id. *1048. According to the Lubrizol court, when Congress enacted §365(g) of the Bankruptcy Code, governing the effect of rejection of an executory contract, “the legislative history of §365(g) makes clear that the purpose of the provision is to provide only a damages remedy for the non-bankrupt party,” and no specific performance remedy. Id. The court ultimately held that the rejection of an intellectual property license deprives the licensee of the rights previously granted under the licensing agreement maintaining that the licensee could not retain its contractual rights, and thus the licensee was stripped of the rights it previously held under the licensing agreement. The decision in Lubrizol caused concern that any intellectual property licensor could go into Chapter 11 and invalidate a license perfectly valid under contract law.

In direct response to Lubrizol, in 1988 Congress added §365(n) to the Bankruptcy Code, expressly permitting licensees of intellectual property to elect to retain their rights to the intellectual property. However, Congress also added to the Bankruptcy Code, under §101(35A), its own definition of “intellectual property” for §365(n) purposes, and decided not to include trademarks to the section’s definition. As a result, trademark licensees have none of the protections of §365(n) which, in part, allows the licensee of a rejected license of intellectual property to elect either to treat the license as terminated or to retain its rights under the license and continue to pay royalties under the license.

Moreover, the omission of trademarks from the definition of “intellectual property” was intentional. Congress’s explanation in the Senate committee report, as to the omission of trademarks, states as follows:
§365(n), Crumbs withdrew the rejection, but the licensees could elect to retain their rights under Bankruptcy Code. When it was asserted that the assets to be rejected by Crumbs pursuant to §365 of the Bankruptcy Code, Crumbs — the Debtor — tried to sell substantially all its assets in a §363 sale. As sustainable retail expansion strategy had of the Code, stating that declining sales and oversize gourmet cupcakes, specialized in the retail of cupcakes and other baked goods. As part of its business, Crumbs entered into licensing agreements with third parties, which allowed the third parties to use the Crumbs trademark and trade name and service mark licenses, notwithstanding that the Code's definition of protected “intellectual property” does not expressly include trademarks. He maintained that “Congress intended the bankruptcy courts to exercise their equitable powers to decide, on a case by case, whether trademark licensees may retain the rights listed under §365(n).”

The omission of trademarks from the definition of “intellectual property” means that a trademark licensee is not privy to the special protections of §365(n) and is at risk of losing its trademark license rights if the licensor files bankruptcy.

Adding Crumbs in the Mix
Crumbs Bake Shop, Inc. (Crumbs), a retailer based in New York and best known for its oversized gourmet cupcakes, specialized in the retail of cupcakes and other baked goods. As part of its business, Crumbs entered into licensing agreements with third parties, which allowed the third parties to use the Crumbs trademark and trade secrets and sell products by the licensee. Since these matters could not be addressed without more extensive study, it was determined to postpone congressional action in this area and to allow the development of equitable treatment of this situation by bankruptcy court. The S. Rep. No. 100-505, at 5 (1988)

The impact of Crumbs and the Future Reality for Trademark Licensees

The Crumbs decision further extends the trend set by the Third Circuit in Exide and Seventh Circuit in Sunbeam to provide protection for risks encountered by trademark licensees in the event of a licensor's bankruptcy, because trademark licensees could not avail themselves of the protections of §365(n).

But, there remains a split in federal circuit court authority, until such time as either the United States Supreme Court elects to review the issue or Congress amends the Bankruptcy Code to expressly clarify whether trademark licenses are within the purview of §365(n).

Till then, the uncertainty for trademark licensees will continue. A bill recently passed by the U.S. House of Representatives seeks to include “trademarks” in the Bankruptcy Code definition of “intellectual property,” and further seeks to add language to §365 which would provide that “in the case of a trademark ... the trustee shall not be relieved of a contractual obligation to monitor and control the quality of a licensed product or service.” Innovation Act of 2013, H.R. 3309, 113th Cong. §6(d) (2013).

The Crumbs decision also places the burdens of trademark license issues squarely on the purchaser. Judge Kaplan acknowledged that with the continuation of trademark licenses under §365(n), those that are not assumed by the debtor and acquired by the purchaser results in the purchaser — now, owner of the trademarks — never becoming party to the rejected agreements and, thus, unable to enforce their terms (such as quality control standards).

Given the uncertainty, a licensee contemplating taking a license from a licensor whose financial condition is weak should have bankruptcy counsel determine what, if anything, local bankruptcy and district courts have decided about whether a licensee can keep its trademarks, and should take steps based on local law to reduce the risks.

Conclusion
Under current bankruptcy law, a trademark licensee cannot be certain it can retain its trademark rights after its licensor is in bankruptcy. However, by adopting forward-thinking strategies in drafting of the license agreement, and seeking bankruptcy counsel at the time when a trademark license agreement is being considered, trademark licensees can reduce the risk of losing their rights in bankruptcy proceedings.

Ukeme Awakessien Jeter is an attorney at McDonald Hopkins, LLC specializing in protecting clients’ intellectual property rights, both in the U.S. and internationally. Her practice focuses primarily on counseling, protecting and enforcing patent and trademark rights. Ukeme has been a member of the CMBA since 2010. She can be reached at (216) 348-5403 or ujeter@mcdonaldhopkins.com.
Attorney Advice for Paralegals and Paralegal Advice for Attorneys

BY LINDSEY A. WRUBEL

The vast majority of lawyers take a school to career path that takes them straight from an undergraduate degree to law school, then to their first professional job as an attorney. I have garnered a unique perspective that many lawyers do not have — that is, having almost a decade of legal experience before becoming a licensed attorney, and attending law school in the evenings for three and a half years. Having been a paralegal for almost nine years prior to being admitted to the bar, I have almost done it all — literally, everything from answering phones, to acting as a runner for filings, to handling a diverse litigation case load as an attorney.

The paralegal-attorney relationship is a special one, which requires trust, camaraderie, and most of all, effectiveness, efficiency, and communication. Lawyers can only be as good as the people who support them everyday. Working with a great paralegal is like a godsend — it makes the day-to-day operations essentially as flawless as they can be in the legal field, allowing lawyers to focus on the most contentious and intricate legal issues. I have also been very fortunate to work with excellent attorneys during my paralegal days as well. Over the years, I have often pondered what one side should know about the other, not only to be an effective team, but to make both of our jobs easier, and to give our clients the best service and results possible. Being on the same page is key. I realize that every firm and relationship is different, depending on the firm environment, seniority of attorneys and paralegals, number of staff, etc. That being said, the following suggestions are based upon what I have come to know throughout the years.

ATTORNEY ADVICE TO PARALEGAL

This advice is more so what I wish I could have done differently in the past, when I didn’t quite understand the dynamics of the paralegal-attorney relationship.

1. Don’t be afraid to point out a mistake. Chances are, if I made a mistake once, I will likely make it again if you don’t bring it to my attention. This is mostly concerning bigger issues, not necessarily the placement of every comma.

2. I know you care about your job very much, but please remember that my head is on the line, and most of the accompanying stress is mine. I am often the one to deliver bad news to the client. My name is on the case. I stay up all night thinking about a trial the night before. I understand that you have a stake in this, too, but I cannot even describe the increase in responsibility that becoming an attorney means. Keep this in mind when I forget to answer your email or I transpose numbers in an address.

3. Learn to prioritize. If there are 100 tasks on your plate, it is important for you to be able to discern which tasks are a priority, and which can wait a few days. I will tell you when something needs to be done right away, but please use logical reasoning to determine what must be done. (Lawyers often need help doing this, as well!)

4. Please proofread carefully. I have been working on this brief for the past 10 hours straight, and I spent last night with visions of negative reciprocal easements in my head. I looked at this written diatribe so many times my head is spinning. While I try my best to make it perfect, I do make mistakes. I count on you to catch these with your fresh eyes.

5. Look before you ask, think before you ask. Before you ask me a question, please look up the answer yourself, or review the notes for the file. While I want you to ask if you are really unsure, I am disappointed if it takes me a minute or two to find the answer to a question that you could have found on your own.

6. I rely on you to convey accurate information to our clients. Double-check dates, times, deadlines, courtroom numbers, attendance requirements, etc. It is embarrassing for both of us, and may result in the dismissal of a case, if incorrect information is given. (Yes, I have done this before — and I will never forget it!).

7. Double check, triple check! If you are making copies for exhibits, make sure all of the pages copied correctly (ever been in the middle of a hearing to realize you only have every other page?). If I ask about the latest electronic filing options for a certain court, if you are not sure, double check. I would rather you tell me you need to check than find out we can’t do electronic filing right before it is due. The most simple things can make or break a case.

PARALEGAL ADVICE TO ATTORNEY

1. Don’t give me last minute projects that are important. If you spend 20 hours working on an appellate brief, please don’t hand it to me two hours before it must be filed to

MUTUAL RESPECT IS A KEY TO A GREAT ATTORNEY-PARALEGAL RELATIONSHIP.
be proofread and copied. I can't do my best in proofreading, putting together a table of authority, and fixing citations that quickly. If it is important and involved, at least a day or two of advanced notice is preferable. (Disclaimer: this applies to projects that had advanced notice. I realize that unexpected emergencies abrogate this suggestion.)

2. Begin preparing exhibits, etc., for trial a week before trial instead of the day before trial. Not only does last-minute attorney preparation for a trial lead to less organization and success, but it can lead to impossible situations. While we go leaps and bounds to be best friends with the copy company, sometimes it is impossible to get 80 oversized copies in the next hour and custom tabs for exhibit books. We need adequate time to plan accordingly.

3. Sometimes you are wrong. Yes, as the paralegal, sometimes I know something different on a certain subject, but I try to be as respectful as possible when I bring it up. This was particularly my experience when working with new attorneys. Let me explain it if I know it — it will make you a better attorney and save us mistakes in the future. (I have learned that law school does not teach you everything, particularly the day-to-day basics of being an attorney.)

4. No one understands what you just wrote. As attorneys, you become so ingrained in your case, at times, that you forget that your audience needs a general explanation of the situation instead of only intricate details. If your experienced paralegal does not understand what you are trying to convey, likely the Court will not, either. Tell the story, and try to avoid a brief laden with technical mumbo jumbo. Listen to critiques of documents or oral arguments.

5. Please respect me and properly utilize my services. While I have had very few experiences with attorneys who looked down on me because I was a paralegal, I have heard horror stories from fellow paralegals who were treated more like 24-7 personal assistants, rather than paralegals. While I understand that this differs from firm to firm, remember what a paralegal does, and that is to support a lawyer in completing legal tasks. For example, if you need to have me work late, give me a heads up.

6. Acknowledge when I go above and beyond. If I did something particularly well, or a client compliments me, please let me know. I work hard and care about my job very much.

7. Say please and thank you, and don't scream at me. Mutual respect is a key to a great attorney-paralegal relationship. Barking orders disrespectfully does not get us anywhere. Again, I am lucky that these situations have been few and far between for me, but it stresses out the entire team, and sometimes results in good people leaving because they can't handle it anymore. This is also true for communications with paralegals not within your own firm.

8. Make it clear who is keeping track of deadlines. If there are deadlines that I need to keep track of, let me know. If there are case management orders, let me know. I was not at the pre-trial you just went to, so unless it shows it on the docket, I don't know about it. The worst situation is one where one person thinks the other one was doing it, and it is not done.

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The Sword and The Shield
Federal Rule 68 Offers of Judgment

BY JOSEPH S. SIMMS & AMY A. JEFFRIES

HOW IT WORKS
Federal Rule of Civil Procedure 68 is an underutilized defendant’s tool that holds more strategic value than its scant implementation would seem to indicate. The rule provides:

A. Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

B. Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

C. Offer After Liability Is Determined. When one party’s liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time — but at least 14 days — before the date set for a hearing to determine the extent of liability.

D. Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

The purpose of the rule is to encourage settlement and avoid prolonged litigation. Marek v. Chesny, 473 U.S. 1, 6–7 (1985). While Rule 68 does not apply where a plaintiff loses a case outright, it does impose a penalty on a plaintiff who prevails in a case but failed to accept an offer of judgment that was more favorable than the judgment ultimately obtained. See 28 U.S.C. § 1920; Delta Air Lines, Inc. v. August, 450 U.S. 346 (1981).

Specifically, by refusing a defendant’s offer of judgment, a plaintiff who wins but recovers a less favorable judgment could find itself liable for the defendant’s “costs,” that is, court costs such as fees for printed transcripts, fees of the clerk or marshal, and docket fees.

WHY IT WORKS
Rule 68 offers of judgment have the effect of forcing a plaintiff to have skin in the game. Although of relatively little economic impact since “costs” in a given case may be relatively minimal, the risk imposed by an offer of judgment can be a strong psychological advantage for a defendant. Whereas a plaintiff may customarily pursue a claim (oftentimes on a contingency-fee basis) with little or no risk to their own capital, an offer of judgment changes the playing field by exposing a defendant to the risk of having to pay something to a defendant — even if the plaintiff wins.

Further, and of much more import than the imposition of relatively de minimis costs — both psychologically and financially — in cases where one or more of the statutory claims asserted allow for the recovery of attorneys’ fees, the ability to recover any fees incurred after the offer is made is lost if a plaintiff doesn’t “beat the offer.” In other words, if a defendant makes a Rule 68 offer early in the proceedings, and the plaintiff does not accept it and then fails to obtain a more favorable judgment in the case, all attorneys’ fees incurred by the plaintiff after the offer was made must be paid by the plaintiff even if the controlling statute otherwise shifts responsibility for fees to a losing defendant.

Thus, if an offer of judgment is properly timed, it not only significantly limits a defendant’s potential exposure, but also substantially increases the risk that any recovery obtained by a plaintiff will be eaten up by paying the plaintiff’s uncovered post-offer attorneys’ fees as well as the defendant’s costs.

HOW TO USE IT
When drafting an offer of judgment, attention to proper wording is of paramount importance to cut off a plaintiff’s ability to recover costs (and fees where statutorily prescribed). Specifically, when writing up the offer of judgment, make absolutely clear what the offer does and does not include, so as to avoid a scenario where: (1) fees or costs could be added to an accepted offer of judgment; or (2) the addition of a separate award of costs or attorneys’ fees could make the total value of a judgment exceed a refused offer.

Envision, for example, an offer of judgment in the hypothetical amount of $5,000, with no further clarification. In Marek v. Chesny, the Court determined that when an offer is silent as to costs, the district court should award appropriate costs in addition to the amount of the offer. Thus, if the hypothetical $5,000 offer is made late in the proceedings, a plaintiff could accept the $5,000 and then recover its costs (and attorneys’ fees where permitted by statute), resulting in a situation where a defendant could end up paying much more than anticipated due to a poorly-worded Rule 68 offer.

Further, consider the implication of a rejection of the $5,000 hypothetical offer. Even if the plaintiff ultimately only recovers, say, $3,000 after trial, the addition of costs and attorneys’ fees as part of the recovery raise the value of the judgment beyond the original $5,000 offer, thus precluding the defendant from recovering its costs and cutting off plaintiff’s right to recovery of fees and costs.

Consequently, when fashioning an offer of judgment, take care to specify what’s included and what’s not. Make sure to expressly state, for example, whether the amount offered is intended to satisfy all claims for relief, including any claims for fees and costs, or whether fees and costs will be calculated separately and added to the recovery. Consider whether to offer a set dollar amount for the costs and fees in addition to the judgment, or whether to include “all reasonable costs and fees” in the offer. And read the applicable case law to know how the courts have interpreted the language you intend to use.
WHERE TO USE IT
Ohio state-court practitioners take note, however: Ohio Civil Rule 68 lacks the teeth of its federal counterpart, providing that:

An offer of judgment by any party, if refused by an opposite party, may not be filed with the court by the offering party for purposes of a proceeding to determine costs. This rule shall not be construed as limiting voluntary offers of settlement made by any party.

But, if the main point of an offer of judgment as codified in Federal Rule 68 is to shift costs to the plaintiff and cut off plaintiff’s ability to recover costs and fees, thus giving a defendant the incentive to extend a reasonable, good faith offer as early as possible, why, then, would the Ohio Supreme Court’s Rules Advisory Committee take away the rule’s bite in state court, while still encouraging offers of settlement and voluntary resolution of litigation? Why even have Ohio Rule 68, which expressly forbids cost shifting? The Court in Cooper v. Morris, 84 Ohio Misc.2d 1, 680 N.E.2d 735 (1997) provided some explanation:

Prior to the creation of the Ohio Rules of Civil Procedure, there were statutory procedures allowing for offers of judgment. These provisions were found in former R.C. 2311.14 through 2311.20. For instance, former R.C. 2311.17 contained a procedure where a defendant in an action for recovery of money only was able to, at any time before trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him, for the sum specified therein. If the plaintiff accepted the offer and gave notice to the defendant or his attorney within five days, the plaintiff could file the offer, as well as an affidavit that the notice of acceptance was delivered, or the defendant could file the acceptance, verified by affidavit. Judgment would thereupon be rendered accordingly. If the offer was not accepted, the offer was deemed withdrawn, and if the plaintiff failed to obtain judgment for more than the amount offered by the defendant, the plaintiff was required to pay the defendant’s costs from the time of the offer.

Civ.R. 68 ended this practice, for the reason that the use of offers of judgment as a basis of costs proceedings has in the past often had a one-sided, coercive effect. See Staff Note to Civ.R. 68. It can be seen that such a procedure would be one-sided, because the defendant in the money action would be paying court costs anyway if the plaintiff was awarded judgment in the vast majority of situations under pre-Civil Rule law, and the defendant therefore had nothing to lose in making such an offer, whereas the plaintiff would end up having to pay court costs imposed after the offer was made, even though he or she was not the wrongdoer, if the plaintiff was awarded less at trial than the offer of judgment.

It seems that there was concern that plaintiffs were effectively being forced to accept lowball offers of judgment because (1) the potential award of costs to the defendant was too high for the plaintiff to go forward, or (2) the possible loss of an award of costs made the proceeding potentially too expensive for cash-strapped plaintiffs. So, when the state civil rule was enacted, the perceived unfair advantage of the cost-shifting impact of offers of judgment was removed.

Consequently, defendants facing suit in Ohio should promptly evaluate the claims against them and take heed of the potential tactical and strategic value that removal to federal court and a subsequent Fed. R. 68 offer of judgment may have.
Smooth Subpoenaing
Ohio Joins the Majority of States by Adopting the Uniform Interstate Depositions and Discovery Act

BY ERIC B. LEVASSEUR & BETH K. KAVOURAS

In a significant change to Ohio law that will streamline the process for out-of-state litigants to obtain discovery in Ohio, effective September 14, 2016, the Ohio legislature adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). Designed to eliminate the procedural hoops one would typically need to jump through to obtain discovery and enforce a subpoena in a foreign jurisdiction, the UIDDA — already adopted in nearly 40 other states — simplifies the foreign discovery process to the benefit of Courts and practitioners alike.

Generally, a state court’s power to subpoena is limited to the state in which it sits. As a result, each state historically had its own procedures to deal with the situation where parties in discovery in a second state sought to depose or obtain discovery from a non-party in the first state. This resulted in a complicated patchwork of laws with requirements that varied from state to state, often requiring parties to obtain discovery commissions in the first state and then local counsel in the second state to complete the process.

Before Ohio adopted the UIDDA, a non-Ohio party who wished to depose a person located out of state. In the Ohio Senate, the UIDDA was introduced in May 2015, and was passed unanimously in both the House and Senate. The UIDDA has already been adopted by the vast majority of states, including Ohio—adjacent states like Pennsylvania, West Virginia, Michigan, Kentucky, and Indiana. The other states and territories that have adopted the UIDDA are Alabama, Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, Wisconsin. The UIDDA is also currently pending legislative approval in Arkansas.

Efforts to simplify and streamline the foreign discovery process are not without precedent. In 1920, the Uniform Foreign Depositions Act was introduced, and while it was adopted in Ohio under the now-repealed §2319.09, only 12 other states followed suit, meaning that the Act was hardly uniform. Even worse was 1962’s Uniform Interstate and International Procedure Act, which was adopted by only four states. Before the UIDDA was enacted in Ohio, Ohio’s laws on the subject remained unchanged since 1920, spanning a period of time in which interstate discovery has only been growing more and more common.

In the Ohio Senate, the UIDDA was sponsored by Bill Seitz, R-Cincinnati. It was introduced in May 2015, and was passed unanimously in both the House and Senate.
The process established by the UIDDA is much more straightforward than the previous rule. Under the UIDDA, a subpoena from the state in which the action is pending may be reissued as a subpoena from the state in which discovery is being sought. For example, now that Ohio has enacted the UIDDA, a party located outside of Ohio seeking to depose a person within Ohio need only to submit a foreign subpoena (read: no commission) to a clerk of court in the county in which discovery is sought, requesting that the clerk issue the subpoena. Then, the UIDDA requires the clerk to promptly issue the subpoena to be served upon the person to which the foreign subpoena is directed. The new Ohio subpoena must adhere to the Ohio Rules of Civil Procedure and to any statute relating to service of subpoenas and compliance with subpoenas. The terms of the new Ohio subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

Out-of-state attorneys will no longer need to obtain local counsel in Ohio simply to obtain issuance and service of a subpoena. This is because the UIDDA specifies that causing the Ohio clerk of courts to issue a subpoena does not constitute an appearance in the court, but is still sufficient to invoke jurisdiction over the deponent. Since the clerk of courts is able to oversee the process, this means that judges do not need to add this administrative task to their already overloaded dockets. The UIDDA also further minimizes judicial oversight by eliminating preliminary steps like obtaining a commission, letters rogatory, or filing a miscellaneous action. In so doing, the UIDDA parallels Rule 45 of the Federal Rule of Civil Procedure, with which many practitioners are likely already familiar.

Even though the new statute imposes fewer burdens on out-of-state litigants and requires less oversight from Ohio courts and judges, it does not mean that Ohio courts are relinquishing all control over subpoenas served here. The UIDDA requires that any application to the court for a protective order or motions brought to enforce, quash, or modify a subpoena issued in Ohio under the UIDDA must comply with the Ohio Rules of Civil Procedure. Furthermore, these motions must be submitted to the court in the county in which discovery is to be conducted. This means that Ohio courts are still able to protect Ohio residents from overly burdensome or harassing discovery requests. It also means that if there is a discovery dispute, the non-Ohio attorney will likely need to retain local counsel in Ohio.

With the passage of the UIDDA, Ohio has joined the ranks of the vast majority of states that have adopted versions of the law in a bid to make interstate discovery less arduous. Streamlining this process will likely save time and money for all involved, and will spare attorneys the headache of having to interpret a new set of rules every time they need to subpoena discovery in another state. Non-Ohio attorneys who wish to serve subpoenas in Ohio can start enjoying the UIDDA’s benefits immediately; while the new rule went into effect September 14th, it is important to note that it applies to requests for discovery not only in all new matters, but also in all cases pending on that date.
On September 20, 2016, a new subsection to Prof. Cond. R. 1.2(d) — Prof. Cond. R. 1.2(d)(2) — took effect. Prof. Cond. R. 1.2(d)(2) was adopted by the Ohio Supreme Court to clarify the legal services lawyers can provide to clients seeking counsel regarding H.B. 523, Ohio's medical marijuana law, which took effect on September 8, 2016.

Prof. Cond. R. 1.2(d)(2) provides:

A lawyer may counsel or assist a client regarding conduct expressly permitted under Sub. H.B. 523 of the 131st General Assembly authorizing the use of marijuana for medical purposes and any state statutes, rules, orders, or other provisions implementing the act. In these circumstances, the lawyer shall advise the client regarding related federal law.

H.B. 523 grants three state regulatory agencies — the Ohio Department of Commerce, the State Pharmacy Board, and the State Medical Board — the power to regulate medical marijuana in Ohio. The Department of Commerce has the power to issue licenses to medical marijuana cultivators, processors, and testing laboratories; the State Pharmacy Board has the power to register patients and caregivers and to issue licenses to medical marijuana retail dispensaries; and the State Medical Board has the power to decide which physicians can recommend treatment with medical marijuana.

Prior to the adoption of Prof. Cond. R. 1.2(d)(2), the Board of Professional Conduct had issued a non-binding advisory opinion stating that lawyers cannot counsel or assist clients regarding conduct expressly permitted under H.B. 523 because such counsel or assistance would subject lawyers to discipline under Prof. Cond. R. 1.2(d). Prof. Cond. R. 1.2(d) provides that a lawyer shall not recommend to a client the means by which an illegal act may be committed. Since medical marijuana is illegal under federal law, the Board of Professional Conduct concluded that advising a client regarding conduct permitted under H.B. 523 ran afoul of Prof. Cond. R. 1.2(d). The Board of Professional Conduct's advisory opinion also states that lawyers cannot use medical marijuana or have ownership interests or non-ownership roles in medical marijuana businesses because such use or ownership subjects a lawyer to discipline under Prof. Cond. R. 8.4(b) and 8.4(h).

Prof. Cond. R. 1.2(d)(2) and the Board of Professional Conduct’s Advisory Opinion

Prof. Cond. R. 1.2(d)(2) trumps part of the Board of Professional Conduct's advisory opinion. As previously mentioned, Prof. Cond. R. 1.2(d)(2) permits Ohio lawyers to counsel or assist their clients regarding conduct expressly permitted under H.B. 523, so long as they also advise their clients of the illegality of their conduct under federal law. The Board of Professional Conduct’s advisory opinion states that a lawyer cannot negotiate and draft a contract to buy commercial real estate on behalf of a client who wants to open a medical marijuana dispensary. But given that the Ohio Supreme Court has the sole authority to amend the Rules of Professional Conduct, Prof. Cond. R. 1.2(d)(2) now permits a lawyer to negotiate and draft a contract to buy commercial real estate on behalf of a client who wants to open a medical marijuana dispensary without being subject to discipline, again provided the attorney provides advice to the client “regarding related federal law.” Thus, with the addition of Prof. Cond. R. 1.2(d)(2), individuals in the medical marijuana business can now seek legal assistance from Ohio lawyers regarding conduct expressly permitted under H.B. 523.
have the ability to obtain the legal services they need to effectively establish and operate their businesses. Additionally, Prof. Cond. R. 1.2(d)(2) allows lawyers to represent clients before the Ohio Department of Commerce, the State Pharmacy Board and the State Medical Board as well as assist clients with paperwork to be submitted to those regulatory agencies.

Prof. Cond. R. 1.2(d)(2) does not trump the Board of Professional Conduct’s advisory opinion in its entirety because Prof. Cond. R. 1.2(d)(2) does not address all of the issues raised by the Board in its advisory opinion. Therefore, Ohio lawyers should not ignore the Board of Professional Conduct’s advisory opinion in its entirety. Ohio lawyers should still refrain from using medical marijuana because such use subjects lawyers to discipline under Prof. Cond. R. 8.4(b) and 8.4(h). Additionally, Ohio lawyers should refrain from having ownership interests or non-ownership roles in medical marijuana businesses because such ownership would subject lawyers to discipline under Prof. Cond. R. 8.4(b) and 8.4(h). Thus, because the Ohio Supreme Court did not adopt amendments addressing lawyers’ use of medical marijuana and lawyers’ ownership interests or non-ownership roles in medical marijuana businesses, the Ohio Supreme Court likely agreed with the Board of Professional Conduct on those issues.

Conclusion
The Ohio Supreme Court recognized that the Board of Professional Conduct’s advisory opinion deprived individuals in the medical marijuana business of the ability to obtain the legal services they need to effectively establish and operate their businesses. As a result, the Ohio Supreme Court adopted Prof. Cond. R. 1.2(d)(2), giving individuals in the medical marijuana business the ability to obtain the legal services they, like other lawful business owners, need to effectively establish and operate their businesses.

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School Is In!
The ABCs of an Impactful Partnership
Working Together to Educate and Empower Cleveland’s Youth

In my first article for the Cleveland Metropolitan Bar Journal, I had the pleasure of writing about one of the truly great Cleveland teams. No, it was neither the Cavs nor the Tribe, although their positive impact on the psyche of the City is immeasurable. Instead, I focused on the longstanding, immutable partnership between the Cleveland Metropolitan Bar Association and the Cleveland Metropolitan Bar Foundation. I remain convinced that the CMBA–CMBF combination is one of the strongest forces for good in a community where caring for each other is second nature. Yet, I couldn’t help but feel that an essential party was missing from this formidable alliance.

The light bulb started to flicker for me when I attended the National Conference of Bar Foundations Annual Meeting with other leaders of the Cleveland Bar: CMBA President Rick Manoloff, Executive Director Becky McMahon, and Director of Development and Community Programs, Mary Groth. The Conference taught me a lot about the fundamentals of fundraising, but it did so much more. According to the nationally-renowned speakers, metrics matter — but not nearly as much as the personal messages from the people whose lives are positively impacted by our fundraising efforts and the programs they support. We undertook what initially appeared to be a simple task: complete a “Mad Lib” exercise that will become the one-minute elevator speech for your foundation. After considerably more than a minute, I came up with the following:

The Cleveland Metropolitan Bar Foundation believes that lives can be changed, one student at a time, by lawyers giving back. Every day we support the impactful programs of the Cleveland Metropolitan Bar Association for the often less fortunate youth of our community. We do this because our Bar programs make a real and lasting difference to our young people, their friends, their schools, their current and future families, our greater community, and our culture.

This is still a work in progress, because the CMBA’s programs aren’t exclusively focused on the young people of Greater Cleveland. But, it was a start and another step towards discovering the missing link which completes that dynamic duo, the Bar Association and the Bar Foundation.

My epiphany came on September 14, 2016, when the CEO of the Cleveland Metropolitan School District, Eric Gordon, eloquently and persuasively delivered his 2016 State of the Schools Address. I’m not sure what impressed me most: the power of the Cleveland Plan or the man who has worked tirelessly to implement and ensure its success. It was refreshing in this age of political discord to witness a leader who attributed the achievements of the Cleveland Plan and the CMSD to his fellow administrators, teachers, employees, and students. And it was remarkable to hear the thoughtful and thought-provoking questions asked by the many students who have been the primary beneficiaries. Now, the light bulb in my mind was glowing brightly: this great Cleveland team is not a twosome; it’s a dedicated trio wholly committed to the education, advancement and well-being of our younger generation.

As mentioned above, metrics matter to a point. Since the CMSD opened its doors to the CMBA over a decade ago, 30,000 students and 2,000 volunteers have participated in the 3Rs program (“Rights, Responsibilities, and Realities”). Test scores continually improved, graduation rates grew, and our Bar was energized and united. Some 7,000 students learned how our system of justice works through participation in the Cleveland Mock Trial Program; another 100 competed in the Ohio Mock Trial Program. We now have 58 Stokes Scholar Alumni and 170 graduates of the Stephanie Tubbs Jones Summer Legal Academy. We even have a Law School Admissions Boot Camp. Our Bar outreach touches high school students, college students and law school students, and it all started with our partnership with the CMSD.

Quantitatively, the impact of CMBA programs funded by Foundation grants is self-evident. Qualitatively, the lasting positive effect is so much more. At our recent Spotlight on Programs, retired award-winning Cleveland high school teacher Mike Hanrahan explained how The 3Rs program evolved from a one-day-a-month classroom visit to a much-anticipated event where student preparation began days in advance and follow-up discussions continued well after the session concluded. The topics were relevant and timely, Mr. Hanrahan explained,
mentioning that the brother of Tamir Rice was one of his students. Improving test scores were almost a secondary byproduct of his students’ growing interest, knowledge and maturity. Listen to what else Mr. Hanrahan had to say:

I’m thrilled that you are doing an article on The 3Rs. I do believe it was the best program that I was associated with in my 26 years of teaching. It was absolutely the BEST program that CMSD had for involving students in real life situations that impacted their lives. My students were engaged during the sessions without being intimidated by the lawyers, judges and law students. While the sessions were helpful in preparing for the OGT, it was the practical application side that got them motivated. Learning is more than remembering facts, figures and dates. To me learning, especially in Social Studies, involves taking an issue, looking at how it impacts our lives and using critical thinking skills to come up with an “answer.” Whether or not I agree with your answer, I will respect it as long as you can justify it. The 3Rs Program fosters this. Students would ask, “Yeah, but what if…,” to elicit responses from not only the presenters, but from their classmates as well.

There were many weeks when students would ask on Monday, “Is this 3Rs week?” Students would ask, “Why can’t we have 3Rs every week?” Probably their biggest disappointment would be those times that we would have to postpone our meetings because of the weather, testing or other events.

Being retired, 3Rs is one of the things that I miss the most about not being in the classroom. I think that the CMBA should be proud of those individuals and companies that donate their time to the students of Cleveland. Thanks again for your interest in the 3Rs and CMBA’s support of the students of Cleveland.

Space limitations don’t allow me to paint a complete picture, but I encourage you to take a brief journey through our website: the heartfelt testimonials of high schoolers, college students and law school graduates who have benefitted from the CMSD / CMBA / CMBF association tell the true, personal success story. And thank you Mr. Hanrahan, for your incredible career and life-changing contributions over the years!

The children in our schools represent the future of our city. They are our future leaders and will make up our future work force. They are our most valuable resource. Ensuring that they receive the necessary education, opportunities and experience to succeed is the common mission of the CMSD, CMBA and CMBF partnership. With lawyers and educators committed to giving back to our young people, and making a real and lasting difference in their lives each and every day, the success of this mission is assured.

The partnership between the Cleveland Metropolitan Schools and the Bar Association goes back many years. CBA leaders volunteered to speak at public meetings to quell tension and violence during the years of school desegregation (1978-79). Adopt-a-Class programs for elementary school students were conducted from 1978 – 1995. The Education Initiative of 1996-97 was a precursor to the 3Rs and Mock Trial programs, focusing on social studies, Street Law, and trial advocacy and procedure. The CBA’s Young Lawyers Section presented programs for CMSD high school students on Law Day during the 1980′s and 1990′s. 3Rs, 3Rs +, Mock Trial programs, Stokes Scholars and other school initiatives followed.

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.
Welcome.

We here at the CMBA are meeting planners ourselves, so we know how many details go into executing a successful event. We do our absolute best to make sure every experience is seamless. You forget an easel, or need an extra registration table? We got you covered, free of charge. Our “all inclusive approach” lets you deal with one contact for all set up, AV, and catering needs. We can host board meetings, trainings, receptions, staff retreats, yoga, the list goes on. Best of all, our doors are open to all of Cleveland, whether or not you are part of the legal community. If you are someone who needs space, we have it. Check us out today!

The Conference Center at the Cleveland Metropolitan Bar Association offers excellent options to meet your needs and save you money for groups of four to 400.

CleMetroBar.org/ConferenceCenter

Contact Melanie Farrell at (216) 539-3711 or mfarrell@clemetrobar.org.
Cuozzo Speed Technologies v. Lee: Supreme Court Upholds PTAB Inter Partes Review Rules

BY NATALY MUALEM

The Supreme Court brought clarity to the Leahy-Smith America Intents Act’s inter partes review process in the June 2016 decision of Cuozzo Speed Technologies v. Lee. Inter partes review allows for disgruntled competitors to challenge validity of an issued patent based on novelty or obviousness. The Patent Trial and Appeals Board (PTAB) decides these challenges in a procedure incorporating elements of the examination process and the judicial process.

Preliminary Decision to Institute Review

Here, Garmin International sought review of Cuozzo Speed Technologies’ patent claim 17. The Board can institute inter partes review if a reasonable likelihood that the challenger would prevail exists. The PTAB accepted, and ultimately invalidated claim 17 along with claims 10 and 14. On appeal, Cuozzo argued that the Board erred by instituting a review of the other claims because they were not specifically challenged in the petition. The Federal Circuit rejected the challenge, holding that it was statutorily barred by 35 U.S.C. §314(d), which reads:

“The determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable.”

First, the Supreme Court was faced with the question of whether the provision can bar a court from considering whether the Patent Office wrongly determined to institute an inter partes review, when it did so on grounds not specifically mentioned in a third party’s review request.

Justice Breyer, writing for the majority, agreed that the decision to institute inter partes review should be final and not appealable. The majority noted that an alternate reading would undermine the congressional objective of giving the Patent Office power to reconsider and review previously issued patents. The Court proffered that Congress would not have granted the Office’s authority to continue proceedings in spite of settlements by the original petitioner, if the decision could be undercut by a technical challenge regarding the preliminary decision to institute review.

The dissent, on the other hand, read the statute to limit the right to appeal only final agency action. Justice Breyer dismissed this argument pointing to the Administrative Procedure Act which already limits review to final agency actions, making the statute superfluous otherwise. In addition, the majority postulated that the strong presumption in favor of judicial review was overcome by clear and convincing evidence from specific language, legislative history, and inferences of intent. Lastly, the majority clarified that this decision only effects appeals based on determinations but does not preclude constitutionality arguments, nor does it enable the agency to step outside the statutory limits.

Substantive Standard for Inter Partes Review

Second, the court moved on to the issue of whether it was proper for the PTAB to apply the broadest reasonable interpretation standard for inter partes review. The conundrum lies in the mixed nature of the review. Before a patent is issued, the standard is the broadest reasonable interpretation. Review is conducted by the agency similar to the pre-issuance examinations. Alternatively, in litigation, patent claims are invalid if the ordinary meaning of the claims brings them into the realm of prior inventions. Both litigation and review involve patent examination after issuance. The PTAB adopted the broadest reasonable interpretation standard despite the lack of direction from Congress. 35 U.S.C. §316(a)(4) reads:

“The Director shall prescribe regulations … establishing and governing inter partes review under this chapter and the relationship of such review to other proceedings under this title.”

Cuozzo argued that its inability to amend its claims, a remedy only available pre-issuance, calls for the ordinary meaning standard. Patent-holders cite the general unwillingness of the Board to allow amendments during the inter partes review process, claiming that it creates an inequitable predicament. The Court began its analysis of the issue by first determining that the statute was ambiguous and left a gap. Applying Chevron, the Court then gave great deference to the agency determination and affirmed their ability to use the broad standard. In doing so, the Court reiterated the concern about the large quantity of ill-conceived patents. The majority argued that the broadest reasonable interpretation would protect the public by encouraging patent drafters to construe their claims more narrowly, therefore making sure the public is receiving novel and non-obvious inventions in the quid pro quo. Although the Court acknowledged that both arguments have merit, deference left the choice squarely with the Board.

Conclusion

The Court clarified two highly debated issues in Cuozzo Speed Technologies v. Lee. First, the Court held that preliminary decisions to institute review are not appealable. Second, the Court gave deference to the PTAB’s decision to adapt the broadest reasonable interpretation, despite recognizing the merits of both standards. Patent drafters must now err on the side of caution when construing claims so that they can, not only ensure issuance, but also maintain validity in inter partes review.

Nataly Mualem is a third year law student at Ohio Northern University. Claude W. Pettit School of Law. Nataly holds a Bachelor’s of Science in Chemistry from Baldwin Wallace University and is pursuing a Master’s of Biology from Cleveland State University. She has been a CMBA member since 2014. She can be reached at (216) 312-4700 or n-mualem@onu.edu.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

CONGRATULATIONS!

We congratulate all the new Ohio Lawyers who passed the July Bar exam and were sworn in on November 7. The CMBA will host its Celebration for New Lawyers reception on December 8 to welcome these new attorneys to the profession.

The Celebration for New Lawyers also caps off the 2016 New Lawyer Bootcamp. The Bootcamp, held December 6-8 at the CMBA, is a hands-on, practical program designed to help new attorneys find their path in the practice of law. Our presenters include administrative judges and prominent local attorneys. This course satisfies the NLT requirements too.

For more information on this event, please contact Krista Munger at (216) 696-3525 or kmunger@clemetrobar.org.

MEMBER SAVINGS

Membership can save you money on more than CLE and room rentals. The CMBA offers saving on personal expenses like coffee, lunch, dinner, theater tickets, cars, dry cleaning and more, as well as bottom line business expenses like insurance, office equipment, printer solutions, conference calls, shipping, IT support, AVV needs and beyond.

Visit CleMetroBar.org/Benefits for full details on your benefits.
CLE SEASON

Our CLE department has dozens of single and multi-hour programs available before Dec. 31. There are plenty of opportunities to get any remaining hours you need or get a jump on next year’s reporting period. Check out the full calendar and our new, handy Sections & CLE Guide on the Go at CleMetroBar.org/CLE.

59th Annual Cleveland Tax Institute
November 30 and December 1, 2016

PILLARS PROGRAM SERIES

The Pillars Program 2016-17 Series is underway and continues through June. Pillars is planned and designed to help our members reestablish the pillars of their career, providing support for unemployed/under-employed legal professionals. Whether you are an unemployed lawyer, in a career transition, or just beginning the job search process, the structure and support provided by the Pillars Program will be invaluable.

The next session will be December 15 on Resume Basics and Formats. The small group sessions will be led by knowledgeable experts offering practical advice, tips, and resources. Pillars will also give you the opportunity to connect and share with people that are in a similar situation. Visit CleMetroBar.org/Pillars to register or see full series details.

DESTINATION CLE

The Akron Bar Association & the Cleveland Metropolitan Bar Association present our first destination seminar Thursday, January 26 & Friday, January 27, 2017 at the Palm Beach Marriott Singer Island Beach Resort & Spa.

Book your room by December 18th to guarantee our special, discounted rate! Group rate block details at http://goo.gl/Vw3VDs. In addition to our general sessions and professional conduct hours, choose between two exciting tracks — Hot Topics in Probate Law and Hot Topics Straight from the Headlines.

10.0 Ohio CLE requested with 3.0 hours professional conduct; Florida CLE & Ohio advanced specialization hours in probate law also requested.
Dealing in “Good Faith”
A Discussion of the Implied Duty of Good Faith and Fair Dealing

BY GREGORY P. AMEND & ANDREW HARING

It is well-established under Ohio law that every contract has an implied covenant of good faith and fair dealing. Although a seemingly straightforward concept, this doctrine is commonly utilized by litigants, in an effort to impose contractual obligations and/or liability in relation to conduct that is not affirmatively addressed in the express language of the underlying agreement. Such claims primarily focus upon whether or not a party’s actions were reasonable and/or legitimate in purpose, as determined on a case-by-case basis. As a result, the application of the doctrine of good faith and fair dealing can seem somewhat amorphous.

The purpose of this article is to highlight certain “bright lines” that Ohio courts have identified regarding the application of this implied covenant and to direct the reader to relevant case law that explores the type of conduct that does, and does not, give rise to legitimate claims.

OVERVIEW
The doctrine of good faith and fair dealing applies to contract claims arising out the Uniform Commercial Code and the common law.

The UCC defines the term “good faith” as meaning “honesty in fact and the observance of reasonable commercial standards of fair dealing.”

Under the common law, Ohio courts have held that good faith requires the parties to act honestly and reasonably towards one another, with an emphasis on the “faithfulness to an agreed common purposes and consistency with the justified expectations of the other party.”

Put another way, good faith prohibits parties to a contract from doing “anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.”

With that being said, Ohio courts have held that good faith does not mean one party must put the other party’s interests above its own. Moreover, parties are prohibited from relying upon the doctrine to “create rights and duties not otherwise provided for in the contract” or otherwise “construct the contract the party ‘would have liked to have had.’”

If, however, the contract is silent, Ohio courts do utilize principles of good faith to “fill the gap.”

NOT AN INDEPENDENT CAUSE OF ACTION, MUST BE ROOTED IN CONTRACT
Unlike other jurisdictions, in Ohio (with the exception of insurance contracts), a claim for breach of good faith and fair dealing does not exist as a separate cause of action and cannot stand alone. Moreover, unless alleged within the context of an insurance contract, claims for breach of good faith and fair dealing are rooted in contract and are not actionable in tort. Accordingly, without an underlying breach of contract, a party has no claim for breach of the implied covenant of good faith and fair dealing.

GUIDANCE FROM RELEVANT CASE LAW
Because the application of the doctrine is fact specific, it is impossible to provide a complete catalogue of the types of conduct that constitute bad faith. With that being said, various Ohio courts have adjudicated such claims and the resulting decisions are instructive.

BAD FAITH CONDUCT
Unreasonably Withholding Consent/Cooperation
Parties who are granted the contractual right to consent cannot withhold said consent unreasonably. Additionally, a party who fails to reasonably cooperate with another party’s attempt to perform its respective obligations can be found to have acted in bad faith.

Bad Faith Interpretation/Enforcement/Termination
When contractual language gives rise to two or more interpretations, parties are required to
adopt the interpretation that is most consistent with enabling the parties to mutually realize the benefits of the agreement. Specifically, Ohio courts have held that a party may not take 'opportunistic advantage in a way that should not have been contemplated at the time of drafting, and which therefore was not resolved explicitly by the parties.' In other words, a party cannot utilize an inarticulately drafted term to create a contractual right/obligation that undermines the purpose of the agreement.

**GOOD FAITH CONDUCT**

**Enforcement of Express Contractual Rights**

Parties who act to enforce express contractual rights in a commercially reasonable manner (e.g., termination or enforcement) will not be deemed to have acted in bad faith, even in instances where the parties are actively engaged in negotiations relating to the underlying agreement. As numerous Ohio courts have held, “[f]irms that have negotiated contracts are entitled to enforce them to the letter, even to the great discomfort of their trading parties, without being mulcted for lack of ‘good faith.”

Reasonably Withholding Consent/Cooperation

Although parties may not withhold consent/ cooperation unreasonably, Ohio courts have held that such consent and cooperation may be withheld when there is a “legitimate reason” to do so.

Refusal to Further Fund/Finance

A party’s refusal to further finance, or to deny funding to, another does not itself constitute a breach of good faith.

Conclusion

All lawyers should be knowledgeable of the implied covenant of good faith and fair dealing and be in the position to counsel their clients concerning their resulting rights and obligations related thereto. The information set forth herein in intended to serve as a resource for all practitioners in the position of having to prosecute, or defend against, such claims.

1. R.C. 1301.201(20) (UCC 1-201(20)); see also R.C. 1385.01 (UCC 5-102) (defining good faith to mean “honesty in fact in the conduct or transaction concerned”).
3. Pertoria, Inc. v. Bowling Green State University, 2014-Ohio-3793 (10th Dist.).
4. Lawvere v. Fifth Third Scs., Inc., 2012-Ohio-4016 (1st Dist.).
10. CVG Shops, Inc. v. Fifth Third Center Assoc., 1996 WL 691449 (1st Dist. 1996) (holding that defendant acted in bad faith when refusing to negotiate a lease renewal, as required by the express terms of the contract); Bire Progressive Medina Real Estate LLC, 2012-Ohio-1071 (holding that defendant acted in bad faith when defendant failed to make a good faith effort to obtain permits required in the underlying agreement); JCV 671, LLC v. MIMA Mogul, LLC, 579 F.Supp.2d 909 (N.D.Ohio 2008) (defendant obligated to act in good faith to obtain necessary permits); Littlejohn, 2005-Ohio-4850 (bank acted in bad faith by withholding consent to permit customer to prepay a note).
11. PHH Mortgage Corp. v. Ramsey, 2014-Ohio-3519 (10th Dist) (holding that a bank acted in bad faith when not assisting a customer in making a required payment via a third-party electronic payment system that was not operable and subsequently claiming a default predicated upon non-payment); DiPasquale v. Costac, 2010-Ohio-8352 (2nd Dist.) (holding defendant landlord acted in bad faith by rejecting plaintiff’s proposed improvements and refusing to consider said improvements under any circumstances).
12. Davis v. Tenet v. Gray-Sacrause, Inc., 796 F.Supp. 1078 (S.D.Ohio 1992) (holding that a party may act in bad faith when terminating an agency relationship “merely to escape the payment of the agent’s commission” – even if relationship was terminable “at will”); Rolling v. Clevecop Corp., 20 Ohio App.3d 113 (6th Dist. 1984) (rejecting defendant’s interpretation of a severance agreement, which would have enabled defendant to “diminish or withdraw” the contractual benefits owed to plaintiff and otherwise “avoid its primary liability”).
17. Vlaz v. McDonough, 2008-Ohio-3698 (1st Dist.) (holding that defendant did not act in bad faith by refusing to consent to a line of credit when plaintiff had failed to provide necessary financial information for defendant to evaluate the necessity of the loan).
Software Protection via Patents Making a Comeback

BY PATRICK R. ROCHE

In 2014, the United States Supreme Court in the case of Alice Corporation Pty Ltd v. CLS Bank International, et al., 134 S. Ct. 2347 (2014) decimated patent protection for business method software patents and squeezed the validity of software patents in general. The case involved software implementation of an escrow system for facilitating financial transactions, and contrary to the usual court judgment invalidating a patent for failing to be a non-obvious novelty, the unanimous decision via Justice Thomas, ruled that the purported invention was patent ineligible subject matter, regardless of novelty — a mere “abstract idea of intermediated settlement” implemented conventionally on a computer which fails to “improve the functioning of the computer itself” or “effect an improvement in any other technology or technical field.” The Court found the subject patent to “amount to nothing significantly more than an instruction to apply the abstract idea of intermediated settlement using some, unspecified, generic computer.”

The economic consequence of the ruling has been devastating. In the two years since, over 370 software-related patents have been invalidated in the United States Federal Court system, most for failing to measure up to the requirement of “something significantly more” than an abstract idea, the Alice case standard. Pending applications at the U.S. Patent Office that were classified upon receipt as software implemented business method systems went to a single-digit allowance rate. In the recent multi-billion dollar acquisition of Yahoo by Verizon, Verizon essentially left a substantial portion of the Yahoo patent portfolio abandoned on the side of the road. And so … some of the most meritorious and economically consequential inventions of our time were suddenly no longer valuable IP assets protectable via the patent system, and the time-proven benefits to innovation and commerce realizability by patent protection were seemingly lost to a whole category of products — software apps. But the times they are a-changing.

Many non-U.S. patent systems have already imposed a tougher standard for patenting software-based inventions based on a worry that such patent assigned exclusive rights to broad functional steps rather than physically implemented technological inventions. The European Patent Office has long held the standard that an invention which is primarily software based in implementation, must be defined in the patent as a technical solution to a technical problem. The Alice decision, and the guidelines for satisfying it recently set by the U.S. Patent Office, are clearly a convergence toward the type of standard that the European Patent Office imposes. Patent practitioners have responded to both the Alice decision and the PTO guidelines to change the way that software based patent applications are drafted to now more clearly define the subject invention as something significantly more than an abstract idea by characterizing the invention as novel technological tools solving a technological problem. Such practitioners are always conscious of how their patent applications will clearly satisfy such standards upon Patent Office review.

The Court of Appeals for the Federal Circuit (CAFC) has recently issued some important decisions confirming the validity of granted software-based patents where the invention was properly described and claimed with meaningful limitations that were found to be something significantly more than an abstract idea.

In early summer this year the CAFC, in Bascom Global Internet Services v ATT Mobility LLC, 827 F.3d 1341 (Fed. Cir. 2016), reviewed some patents involving an Internet content filtering system in which “individuals are able to customize how requests for Internet content from their own computers are filtered instead of having a universal set of filtering rules applied to everyone’s requests.” It was apparently important to the Court that the claimed invention of the patents comprised “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end-user.” Thus, “the inventive concept harnesses this technical feature of network technology in a filtering system by associating individual accounts with their own filtering scheme and elements while locating the filtering system on an ISP [Internet Service Provider] server.” The invention was properly patent eligible since it was claimed as “a technologically-based solution (not an abstract-idea-based solution implemented with general technical
components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems.” A software implemented filtering system was successfully described and claimed in the patent as a new technological tool — a customized filter at a remote server.

Even more recently, in September 2016, with the case McRO, Inc. v. Bandai Namco Games America Inc., et al. (Fed. Cir. 2016), the CAFC reviewed patents that were directed to automatically synchronizing lips and facial expressions of speaking animated characters. Needless to say, Hollywood and the video game industry were more than seriously watching this one. The invention clearly did a better job of generating automated lip synchronization in associated facial expressions for 3D animated characters. Facial orientation would change based on differences in vertex values disposed across the character’s face from those assigned to the face at rest. Prior to the invention, animators suffered an inefficient and tedious process of manually setting character face vertex values in order to make the animated facial expressions actually match a recording. The patented invention automated the process by feeding time-aligned phonetic transcripts into a computer and setting rules for how to apply various vertex value targets to manipulate the 3D character’s facial expression based on the time-aligned phonetic transcripts that were input. According to the Court, “these rule sets aim to produce more realistic speech by taking into consideration the differences in mouth positions for similar phonemes based on context.” In finding that the invention was properly described and claimed in a patent eligible way, the Court was impressed that the “computer automation is realized by improving the prior art through the use of rules, rather than artists, to set the morph weights [vertex values] and transitions between phonemes.” Because the invention was particularly defined as a set of rules to a specific method to improve animation technology, not just the result of a generic process operated by generic machinery, i.e., it was defined as a technical solution/tool to a technical problem, and the patents’ validities were upheld.

Practice Guidelines
Given the vagaries between understanding the differences between an abstract idea — aren’t all ideas abstract at least in some ways — and defining an invention as a technical solution or tool to resolve a technical problem, patent practitioners will have to work with their inventors to elicit a disclosure of the invention in a manner that will satisfy subject matter eligibility in a post-Alice world. Almost everything that is practical in implementation should somehow be able to be characterized in a technological fashion so that the Patent Office when reviewing patentability can once again spend most of its time focusing on the more common and conventional standard for awarding a patent — is it new and useful to the American public.

Patrick R. Roche is a partner at Fay Sharpe LLP. With more than 30 years of practice, Mr. Roche has honed his expertise of intellectual property law. He counsels clients regarding patent, trademark and copyright prosecution as well as IP counseling and licensing & technology transfer. His practice serves to protect clients’ ideas and promote innovation. He has been a CMBA member since 1978. If you have questions about the subject matter of this article or IP law in general, you may reach Patrick Roche at (216) 363-9110 or proche@faysharpe.com.

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Below are CLE programs that offer 3.0 credit hours or more. The CMBA also offers a vast number of 1.0 hour CLE options.

Visit CleMetroBar.org/CLE for a full schedule.

NOVEMBER
15 You CAN Go Your Own Way: Building and Starting Your Own Firm
16 Lawyers Mental Health & Wellness Professional Conduct
17 Anatomy of a Hack: Top Threats to Business Security
22 Fundamentals of Federal Court Video Training
30 59th Annual Cleveland Tax Institute

DECEMBER
1 59th Annual Cleveland Tax Institute
2 Advanced Medical-Legal Workers’ Compensation Seminar
3 Legal Eagles Year End Update (at St. Edward High School)
6 Becoming a Rock Star Researcher
6 – 8 New Lawyer Bootcamp
9 White Collar Crime Institute
10 Municipal Court Update (at the Independence Civic Center)
13 Appellate Practice Update
14 Professional Conduct Live with the OWBA and ABA (details pending)
15 Pitfalls and Pointers for Litigators
16 Health Care Law Institute Video
17 Disorder in the Court: Professional Conduct Live
20 Fundamentals of Federal Court Video Training
20 Crisis Management & Communications for Lawyers and Their Clients
21 – 22 38th Annual Real Estate Law Institute Video
22 Sex, Drugs & Rock ’n’ Roll Professional Conduct Video
27 43rd Annual Estate Planning Institute Video
27 Sex, Drugs & Rock ’n’ Roll Professional Conduct Video
28 – 29 O’Neill Bankruptcy Institute Video
29 Disorder in the Court: Professional Conduct Live
30 Sex, Drugs & Rock ’n’ Roll Professional Conduct Video
30 – 31 Labor & Employment Conference Video

Contact the CLE Dept. at (216) 696-2404 or visit CleMetroBar.org/CLE for updates or registration.

You CAN Go Your Own Way: Starting and Building Your Own Firm

Tuesday, November 15

CREDITS 3.00 CLE hours requested

REGISTRATION 12:30 p.m.

PROGRAM 1:00 – 4:15 p.m.

Nuts and Bolts: The Logistics of Starting Your Own Practice

Topics include:
• Necessary equipment and software
• Important office documents (engagement letters, demand letter, etc.)

It’s All About the Bottom Line

Topics include:
• How to bill
• How to invoice
• How to maintain an IOLTA account

Making Connections

Topics include:
• Networking to build a book of business
• How to build your practice while working with someone else

Making It Work

Topics include:
• How to have work-life balance
• Transitions from corporate practice or large firms to solo practice

INSTRUCTORS
Dianne Einstein, Managing Attorney, Einstein Law LLC, Columbus
Mary Lewis, Associate, Einstein Law LLC, Columbus

Lawyer Mental Health & Wellness Seminar

Wednesday, November 16

CREDITS Submitted for 2.50 CLE Hours

REGISTRATION 1:00 p.m.

PROGRAM 1:30 p.m. – 4:30 p.m.

Welcome & Introductions
Frank R. Osborne, Tucker Ellis LLP, Seminar Chair

Welcome to the Asylum: The State of the Practice In 2016

Mental Health: The Medical Facts
Patrick S. Runnels, M.D., Director of Ambulatory Psychiatry, University Hospitals; Medical Director, The Centers for Families and Children

Recognizing Depression
Susan K. McGrath, Ph.D., Instructor, LifeAct, formerly known as Suicide Prevention Education Alliance (SPEA)

Lawyer Duties When a Colleague Is Impaired: The Ethical Rules
Mary L. Cibella, McGinty Hilow & Spellacy Co., LPA

A Mindful Practice: A Discussion and Demonstration of Techniques to Help Lawyers Manage Stress and Maintain Composure
Lori Wald, Esq., Mindfulness Mediation Instructor, Intentional Lawyer
Meet us at the Bar for lunch, networking, and CLE. Check out these one-hour CLEs, sponsored by our Sections.

All programs are held at noon at the CMBA Conference Center, unless otherwise noted.

**November 15**

**ADR Section**
Regulating Consumer Arbitration: Good, Bad and Complicated

**November 15**

**Estate Planning, Probate & Trust Law Section**
Two Hot Ethics Topics + Diminished Capacity: What You Should Know

**November 16**

**Labor & Employment Law Section**
The Elephant in the Room: How Failing to Acknowledge Unconscious Bias Puts Employers at Risk

**December 6**

**CMBA Litigation Section**
(completed at the Court of Common Pleas)
Commercial and Business Litigation Update

**December 7**

**International Law Section**
Overview of International Intellectual Property Protection and Strategies

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**Anatomy of a Hack: Top Threats to Business Security**

*Thursday, November 17*

**CREDITS** 3.00 CLE

Meet us at the Bar to learn the 10 biggest threats to client, law firm and personal technology security. We’ll provide real-world examples of risk and exposure, and provide examples to manage your risk.

**Our Top 10 Risks for Businesses**
- Phishing / Vishing
- Ransomware and Malware
- Social Engineering
- Lack of Threat Intelligence
- Missing Endpoint Security
- Poor Incident Response
- Internal Threat Actors
- Vendors
- Cloud (In)Security
- Data Loss

**Show and Tell: Examples of Risk and Exposure**
- How to Spot a Weaponized or Rogue Network Device
- How the Devices Operate
- Common Tools and Techniques
- Used to Attack and Compromise

**Risk Mitigation**
- Specific Measures to Reduce Chances of Security Breaches
- How to be Proactive: Threat Intel, Risk Assessment, and Testing
- What to Do if You or Your Client Are Breached

**_PRESENTER**
Nicholas Hinsch, CEO, eVAL Agency

eVAL is an Information Security firm, based in Columbus, dedicated to improving the security practices of businesses.

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**59th Annual Cleveland Tax Institute 2016**

*Wednesday, November 30*

**CREDITS** Up to 13.00 CLE Hours

**Opening Remarks**
David R. Tavolier, Taft Stettinius & Hollister LLP, Chair

**Current Developments and Washington Update Featuring U.S. Representative Jim Renacci**
Mitch Thompson, Squire Patton Boggs (US) LLP, Panel Chair
Jeff H. Paravano, BakerHostetler LLP, Panel Chair
United States Representative
Jim Renacci, 16th District of Ohio
Thomas J. Callahan, Thompson Hine LLP
Erik M. Jensen, Case Western Reserve University School of Law
Melinda L. Reynolds, Eaton Corporation
Kevin R. Tabor, Thompson Hine LLP
Paul M. Schmidt, BakerHostetler LLP

**State and Local Tax Update**
J. Donald Mottley, Taft Stettinius & Hollister LLP, Panel Chair
Edward J. Bernert, BakerHostetler LLP
Michael Ryba, City of Cleveland Central Collection Agency
David H. Seed, Brindza McIntyre & Seed LLP

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**Thursdays, December 1**

**Tax Procedure and Controversy**
Mario J. Fazio, Meyers Roman Friedberg & Lewis, Panel Chair
J. Scott Broome, Bender, Alexander & Broome Co., LPA
Nancy Klingshirn, IRS Office of Chief Counsel

**Corporate Tax and Related Topics**
Salvatore J. Totino, Calfee, Halter & Griswold LLP, Panel Chair
John R. Lehrer II, BakerHostetler LLP
J. Troy Terakedis, Dickinson Wright PLLC
Robert Mangine, Deloitte

**What Small/Closely-Held Business Advisors Need to Know About International Tax**
Matthew F. Kadish, Kadish Hinkle & Weibel, Panel Chair
Lesley Keller, CPA, Skich, LLP

**Breakout Sessions:**
- Retirement Benefits: Department of Labor’s Final Fiduciary Rule
  - Ann M. Caresani, Tucker Ellis LLP, Panel Chair
  - Steven W. Day, Calfee, Halter & Griswold LLP
  - Deborah K. Bracy, Charles Schwab & Co. Inc.

- Tax Exempt Organizations Charitable Giving Options and Private Foundation Exit Strategies
  - William J. Culbertson, BakerHostetler LLP, Panel Chair
  - Ellen E. Halton, BakerHostetler LLP
  - Ginger F. Miklar, The Cleveland Foundation
Advanced Workers’ Compensation Medical Legal Seminar 2016

Friday, December 2

CREDITS 6.0 CLE with 1.0 hour professional conduct; 6.0 hours Advanced Workers’ Compensation Specialization credit requested

REGISTRATION 8:00 a.m.

PROGRAM 8:20 a.m. – 4:15 p.m.

Opening Remarks
Anthony A. Baucco, Ross Brittain & Schonberg Co., LPA

Concepts in Mental Health: Application in Workers’ Compensation Claims
Joel S. Steinberg, M.D., Disability and Impairment Evaluations, Inc.

Head Injuries and Traumatic Brain Injuries
John (Jack) Conomy, M.D., J.D., Truenorth Medical Services, Inc.

Industrial Commission Update
Thomas H. Bainbridge, Chair
Jodie M. Taylor, Member
Karen L. Gillmor, Ph.D., Member

Medical Marijuana: Implications for Workers’ Compensation
Elizabeth A. Crosby, Buckley King LPA

A Hearing Officer’s View of the Hearing Process
William J. Heine, District Hearing Officer; Industrial Commission of Ohio
John D. Gibbons, District Hearing Officer; Industrial Commission of Ohio

Ethics in Workers’ Compensation (1.0 Professional Conduct)
Brian K. Brittain, Ross Brittain & Schonberg Co., LPA

Adjourn to Section’s Networking Happy Hour

SEMINAR LEADERSHIP
Carol D. Braxsmann, Honorary Chair; Ross Brittain & Schonberg Co., LPA
Anthony A. Baucco, Moderator; Ross Brittain & Schonberg Co., LPA

New Lawyer Bootcamp

December 6, 7 & 8

The New Lawyer Bootcamp is a hands-on, practical program designed to help new lawyers find their path in the practice of law. Our presenters include judges and prominent local attorneys. Join for a Courthouse tour and begin the process for a Courthouse ID and notary credentials during an optional session on December 7. This is a special benefit, exclusively for our participants. Wednesday’s session will be held at the Courthouse and participants will be sent to participants prior to the program.

DAY ONE – DECEMBER 6

(at CMBA Conference Center)

Networking Lunch
Welcome and Program Overview
Ian N. Friedman, Friedman & Nemecek, Chair

A Day in the Life – Managing Your Practice (Law Practice Management credit)

Government Practice
Antoinette T. Bacon, United States Attorney’s Office
Laura Creed, Cuyahoga County Court of Common Pleas

Small Firm/Solo
Joseph P. Dunson, Dunson Law LLC
Ashley L. Jones, Law Offices of Ashley Jones

In-House
Kelly A. Albin, Sherwin-Williams
Rosalina M. Fini, Cleveland Metroparks (invited)

Large Firm
Rick Manoloff, Squire Patton Boggs (US) LLP
CMBA President
Joseph J. Morford, Tucker Ellis LLP

Ethics in a Social Media World (1.0 hour Professional Conduct)
Jason Beehler, Kegler Brown

IOLTA and Ethical Traps (1.00 Client Fund Management credit)
Monica A. Sansalone, Gallagher Sharp

DAY TWO – DECEMBER 7

(at the Court of Common Pleas, 12th Floor Training Room, Justice Center)

Optional session. Court tours and start steps for Courthouse ID ($20 fee) and notary ($55 fee). Participants should bring their attorney registration cards and certificate of good standing. More details will be provided in advance of the program.

Boxed lunches will be provided at 12:30 p.m.

Welcome and Review
Ian N. Friedman, Friedman & Nemecek, Chair

How to Screen a Case
Larry W. Zukerman, Zukerman Daiker & Lear Co., LPA

Skillfully Handling Your First Deposition
Mary Jane Trapp, Thrasher Dinsmore & Dolan LPA

Pro Bono and Access to Justice
Mary C. Groth, Director of Development and Community Programs, CMBA

View from the Bench – What to Know and What to Do When Appearing in Court
Hon. Ronald B. Adrine, Cleveland Municipal Court
Hon. John J. Russo, Cuyahoga County Court of Common Pleas
Hon. Rosemary Grilda Gold, Cuyahoga County Domestic Relations Court
Hon. Kristin Sweeney, Cuyahoga County Juvenile Court

If Only I Had Known Then What I Know Now
Alexander B. Reich, Caiffe-Halter & Griswold LLP
Young Lawyers Section Chair
Chelsea Mikula, Tucker Ellis LLP

DAY THREE – DECEMBER 8

(at CMBA Conference Center)

Welcome and Review
Ian N. Friedman, Friedman & Nemecek, Chair

From the Bottom of the Heap to the Top of the Hill
Adrian D. Thompson, Taft, Stettinius & Hollister LLP
Stephen M. O’Bryan, Taft, Stettinius & Hollister LLP

Interviewing Clients
Nicholas A. DiCello, Spangenberg, Shibley & Liber LLP

Networking & Client Relations
James Vaughn, JDD INC.
Myra Barsoum Stockler, Reminger Co., LPA
Brian C. Lee, Reminger Co., LPA

Marketing and PR: Setting Yourself Apart from the Crowd
Judy Bodenhamer, Revenue Resources

End of the Day Q&A
Ian N. Friedman, Friedman & Nemecek, Chair
Rebecca Ruppert McMahon, Friedman & Nemecek, Chair

Becoming a Rock Star Researcher

Tuesday, December 6

CREDITS 3.00 CLE & NLT credit

REGISTRATION 8:30 a.m.

PROGRAM 9 a.m. – 12:15 p.m.

ABOUT OUR PRESENTER
Eric Voigt teaches legal research and writing at Faulkner University, Jones School of Law. As the founder of R+W Legal Consultants, he presents interactive CLE courses and blogs on how to persuade judges. Prior to teaching, Eric practiced for seven years in complex business litigation at Faruki Ireland & Cox PLLC in Ohio. Eric has published articles on Google Scholar; research tips, persuasive writing, and class actions. He graduated magna cum laude from Indiana University Maurer School of Law.

DESCRIPTION
Professor Voigt delivers an interactive program that teaches key strategies for researching issues governed by statutes and the common law. In this seminar, attorneys will learn skills critical to effective and efficient research — how to craft a research plan and identify issues; how to think beyond a client’s specific factual situation, when to use print or electronic sources, and when to stop researching. They will also learn that the right research pro-cess will result in reliable conclusions.

Steps to Stellar Common Law Research
Topics include:
• Twelve-step guide
• Application of the twelve-step guide
• Solve hypothetical based on Ohio Law

Steps to Stellar Common Law Research
Topics include:
• Eight-step guide
• Application of the eight-step guide
• Solve hypothetical based on Common Law

Welcome and Program Overview
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Monica A. Sansalone, Gallagher Sharp
WE REMEMBER PAST PRESIDENTS

SAUL EISEN
The CMBA extends our deepest sympathy and heartfelt condolences to the friends and family of Saul Eisen, who served as past president of the Cuyahoga County Bar (2000–2001). Among his many ways of giving back to the community, Saul served on the Beachwood School Board and as a councilman for the city. He joined the school board in 1972 and served through the end of 1999, taking on a leadership role as president or vice president 13 times. Saul demonstrated his commitment to the pursuit of justice by working for both the U.S. Department of Justice and at Weston Hurd. Saul will be deeply missed.

ISAAC SCHULZ
We were profoundly saddened to learn of the passing of Isaac Schultz, our friend, colleague and past Cleveland Bar Association President (2001–2002). He was a true statesman and bar diplomat and the consummate citizen lawyer. Isaac was an avid reader, follower of politics, student of history, and great family man. Our thoughts and hearts are with the entire Schulz family, as well as Isaac’s Ulmer & Berne LLP family.

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MARRIOTT AT SINGER ISLAND IN FLORIDA
on October 11, 2016 the U.S. Supreme Court heard its first design patent case in well over a century. The impact of this case could send massive ripples through the patent litigation field.

On April 15, 2011 Apple filed suit against Samsung alleging that some of Samsung's Galaxy cell phones and computer tablets infringed Apple's design patents. Apple's design patents were for the shape of the outer shell of the iPhone. More specifically, at the heart of the dispute was a design patent that protects a rectangular electronic device with rounded corners. Apple asked for $2.75 billion in damages, which is a record for a patent case, and a court order forbidding Samsung from selling some its phones and tablets in the United States.

A jury found that Samsung infringed Apple's patent rights and diluted Apple's trade dress. The jury awarded Apple over $1 billion in damages. The jury foreman, Velvin Hogan, said Apple's arguments about the need to protect innovation were persuasive during deliberation. Hogan told Reuters that "We didn't want to give carte blanche to a company, by any name, to infringe someone else's intellectual property." Further, the jury "wanted to make sure the message we sent was not just a slap on the wrist. We wanted to make sure it was sufficiently high to be painful, but not unreasonable."1

Samsung appealed to the Federal Circuit, which handles all patent appeals. That court reversed the trade dress jury findings, but kept the bulk of the damage award intact. The Federal Circuit based their ruling on the language of 35 U.S.C. § 289 which deals with design patents.

Damages for patent infringement generally are awarded under 35 U.S.C. § 284, which allows for an award of "damages sufficient to compensate for the infringement, but in no event less than a reasonable royalty." 35 U.S.C. § 289 provides an additional remedy for the infringement of design patents. Under this part of the law, the infringer "shall be liable to the owner to extent of his total profit, but not less than $250." The Federal Circuit, and the jury, interpreted this language to mean Samsung's total profit from the sale of any infringing phone, regardless of what percentage of the phone's sale price was represented by the infringing design.

Samsung appealed to the Supreme Court, arguing that damages for design patent infringement should be apportioned. They argued that damages should be limited to the portion of Samsung's profits that were attributable to the phone's outer shell, rather than Samsung's profit on the entire phone. The Federal Circuit had rejected this argument, finding that the clear language of § 289 authorizes an award of the infringer's total profits on "any article of manufacture to which such design or colorable imitation has been applied."

Apple on the other hand argues that a Supreme Court ruling in favor of Samsung would weaken protections afforded to new creations. Apple argues that Congress's statement that "It is the design that the sells the article" combined with the fact that profits attributable to design are often hard, if not impossible, to apportion, means the Supreme Court should uphold the lower court ruling.

This case is an excellent example of how slowly the law moves compared to technology. In fact, none of the supposedly infringing phones have been sold in the market in years.
This case has garnered widespread news coverage in the intellectual property field because of its far reaching consequences. An award of “total profits” rather than apportioning the infringer’s profits can lead to an absurd situation where a company that infringes a design patent for a small, negligible part of the final product will be liable to the patent holder for any and all profits made on the final product regardless of how important the infringing part may be to the final sale of the product.

The potential impact of a Supreme Court ruling has resulted in multiple amicus curiae briefs filed by varying parties, from tech giants to small farmers. The dispute between Apple and Samsung has caused a split amongst tech companies about which side they should support. For example, the Internet Association, the Software & Information Industry Association, Dell, eBay, and 50 intellectual property law professors have filed briefs in support of Samsung. Whereas, the App Association and 113 industrial design professionals and educators have filed briefs in favor of Apple. The Industrial Designers Society of America (IDSA) has filed a brief in support of neither party.

According to the brief filed by the industrial design professionals and educators, Congress was correct when it stated in 1887 that “It is design that sells the article, and so that makes it possible to realize any profit at all.” In essence, design drives sales of consumer and commercial products to the point that a product’s visual design becomes the very product itself in the mind of consumers. A design patent’s very purpose is to protect from misappropriation not only a product’s overall visual design, but also the underlying attributes consumers attach to the design of the product. When an infringer steals the design of a product, they steal not only that, but also in the consumer’s mind the qualities that the product brings to the table. According to this brief, the more technologically complex a product becomes, the more consumers rely on the visual design of the product to define its functionality.

In contrast, the brief filed by 50 intellectual property law professors argues that awarding an infringer’s entire profit makes no sense in the modern world. They note that design patent infringement, like utility patent infringement, is a strict liability claim that requires no knowing appropriation. They argue that modern products tend to incorporate more than one patented design and design patents on virtual features are particularly likely to overlap. Of particular note, they argue that it is outlandish to believe that the shape of the Apple iTunes icon is the only motivating force that convinces people to buy the whole iPhone.

One party has taken a rather unique approach in support of Samsung. The Software Freedom Law Center (SFLC) sees “ornamental designs” as a form of speech protected under the First Amendment and argues that state-granted monopolies over speech protected by the First Amendment must be limited. The SFLC would prefer that the Supreme Court invalidate 35 U.S.C. § 171, which is the statute that grants design patents to “[w]hoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor.” Since neither Apple, nor Samsung, nor the Federal Circuit considered the validity of §171, this issue will likely not be considered by the Supreme Court.

In essence, awarding damages without considering the proportionality of the damage award to the patentee’s loss or to the infringer’s independent contribution to its own profits could be considered confiscation. As the Supreme Court stated in Seymour v. McCormick, “[b]y this doctrine even the smallest part is made equal to the whole, and ‘actual damages’ to the plaintiff may be converted into an unlimited series of penalties on the defendant.” By one estimate, something over 200,000 patents arguably cover various aspects of a smartphone. To argue that the design claimed in one design patent alone drives the entire sale of a smartphone is absurd. This is not to say that industrial design is not important, it needs to be protected as Congress intended. Section 289 provides an important deterrent effect on potential infringers by requiring disgorgement of all profits. However, a broad reading of this section leads to absurd results. Apportionment appears to be the best solution for preventing such results while still maintaining a deterrent effect. In a best-case scenario, Congress will act to revise § 289 and introduce an apportionment limitation in the statute. Until then, in order to keep up with ever-changing technology, the Supreme Court should find that some measure of apportionment is appropriate in this case.

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Matthew Moldovani just recently graduated Cum Laude from Case Western Reserve University Law School in May 2016. He has a degree in mechanical engineering and a minor in electrical/computer engineering from the University of Dayton. He has worked with Pearne & Gordon since the summer of 2014. He has been a CMBA member since 2014. He can be reached at (216) 534-9317 or mmoldovani@pearne.com.

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2 57 U.S. 480, 490-91 (1853)

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CDMBA Conference Center
For the past five years, I've sat down just about every day to practice mindfulness meditation and only recently have I realized exactly what it is I am practicing.

The revelation came a few months ago when I was about to undergo some outpatient surgery. Deep in the cavernous space of the surgery prep area, a nurse with a well-practiced monotone directed me to remove all my clothes, place them in the plastic bag and change into the hospital gown, opening in the back. Nothing says you're not in control like "hospital gown, opening in the back."

Still I followed her orders, hopped up on the gurney, pulled the thin sheet over me and waited to see what the next person would do to me. The next person was a nurse anesthetist with a cool surfer-dude personality and even though he put me at ease a little bit, it was starting to sink in that someone would be cutting something off of me soon. By the time the anesthesiologist came around to approve the silly sauce about to be injected into my veins, I was at full-tilt worry and anxiety. She introduced herself and then remarked to me how unusually calm I appeared. What was my secret, she wanted to know.

That's when I realized something about my meditation practice. I do sit down daily to practice something, but calling it meditation makes it seem a little loftier than it actually is. So much of the real estate in my brain has been staked out by anxiety and fear, grief and despair, doubt and uncertainty and misgivings.

It's not that I'm calm while I'm sitting in stillness, I'm just practicing remaining calm as my emotions toss me around.

So when the nurse pulled the curtain shut behind her and separated us into the very clear categories of patient and healthcare professional, I felt my anxiety level shoot up and I observed my thoughts race to terrifying conclusions. This was stress and this was appropriate for anyone about to have surgery. I was not feeling calm. In fact, I was extremely anxious. But there was something different about me than the other people hooked up to IVs in the pre-op center whom this doctor was about to anesthetize. I was comfortable with my anxiety. I was comfortable with my anxiety because for the past five years I have practiced remaining calm as emotions roll through my body.

Substitute in any anxiety-producing situation of your own making for my stint in the land of outpatient surgery. It might be a client asking you a tough question you never anticipated; it might be your co-worker blaming you for something that is not your responsibility but now somehow it seems that it is. It might be an unreasonably demanding judge or an adversary counsel who some might label abusive. It might be all the unkept promises and long-lost deadlines that haunt you. It might be the expectations of your spouse or the needs of your children or the changing responsibilities you have for your aging parents. It might be all of the above.

You can say I meditate, but I say I observe the anxiety while I cultivate the calm. There is a radical difference between renouncing anxiety while trying to bully it into submission and learning to be on intimate terms with your anxiety in order to shift the way you handle stressful situations. This takes a lot of practice.

Before she learned to meditate, Lori Wald practiced law for about 20 years. She now teaches meditation workshops for lawyers and other people with busy brains. She has been a CMBA member since 2015. You can read her musings on meditation at IntentionalLawyer.com. She can be reached at (216) 570-7396 or loriwald1@gmail.com.

WWW.CLEMETROBAR.ORG
The Business Judgment Rule
Protecting Ohio-Specific Values

BY BRIAN J. LAMB

Thirty years ago Ohio strengthened its statutory “business judgment rule,” the law that protects corporate directors from liability for their good faith business judgments. On the 30th anniversary of the 1986 amendments to Ohio’s business judgment rule, it is worth taking a moment to reflect on those changes and the reasons they were made.

At the first sign of uncertainty regarding Ohio corporate governance law, some lawyers and judges look receptively to Delaware for guidance. But Ohio law is intentionally different from Delaware law in several important respects, including the heightened liability protection afforded to directors of Ohio corporations under the business judgment rule.

There are good reasons why Ohio may wish to be more protective of its directors than Delaware. Companies that are incorporated under Ohio law “are largely native to its soil ... and still maintain sizable operations within the State.” David Porter, Competing with Delaware: Recent Amendments to Ohio’s Corporate Statutes, 40 Akron L. Rev. 175, 185 (2007). Delaware, on the other hand, is usually a “situs of convenience” for the incorporation of companies that have no business operations or employees in Delaware. Id. Accordingly, Delaware may feel less inclined to protect jobs through strong anti-takeover measures or to allow directors to consider the interests of non-shareholder constituencies, such as employees, who are probably not citizens of Delaware in any event. Id. These disparate conditions have led Ohio and Delaware to take differing approaches to the liability protections afforded to their directors.

THE CORPORATE GOVERNANCE CRISIS OF THE 1980S

The business judgment rule suffered an existential crisis 30 years ago. In the mid-1980s, the Delaware Supreme Court rattled the cage of corporate directors everywhere by issuing a series of director-unfriendly opinions, particularly in the takeover context, calling into question the effectiveness of the business judgment rule as a shield for directors against breach of fiduciary duty claims. See, e.g., Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985). Commentators pulled the fire alarm, claiming “a jurisprudential fire has broken out deep in the hold of American corporate jurisprudence in the container marked ‘business judgment rule’.” Bayless Manning, Current Issues in Corporate Governance: The Business Judgment Rule in Overview, 45 Ohio St. L.J. 615 (1984); see also Deborah Cahalane, Comment, 1986 Ohio Corporation Amendments: Expanding the Scope of Director Immunity, 56 U. Cin. L. Rev 663, 667-71 (1987).

Closer to home, the Ohio Supreme Court had recently issued a controversial ruling in the employer intentional tort context, which had “succeeded in creating a gray area between an intentional act and a mere negligent act.” Jones v. VIP Dev. Co., 15 Ohio St. 3d 90, 106 (1984) (Holmes, J., dissenting). If this kind of ambiguity were to spill over to the business judgment rule — where the difference between intent and negligence is almost certainly outcome determinative — directors might be found liable for conduct previously thought protected by the business judgment rule. Cahalane, at 669-70.

The uncertainty resulting from these judicial decisions in the 1980s led to an enormous increase in the cost of director and officer insurance, curtailed the ability of corporations to attract qualified outside directors, and caused board members to hesitate in taking risks for the benefit of their corporations for fear of personal liability. Cahalane, at 670-72. Indeed, the Corporation Law Committee of the Ohio State Bar Association, which played a role in drafting the 1986 Amendments, went so far as to report that most of the Committee members “agreed that, except under extraordinary circumstances, we would not recommend to any client that he serve as a director.” Edward A. Schrag, Jr., Report of the Corporation Law Committee, 59 Ohio St. B. Ass’n Rep., 1691, 1694 (Nov. 3, 1986).

OHIO STRENGTHENS ITS BUSINESS JUDGMENT RULE

The Ohio General Assembly responded to this crisis in 1986 by amending Ohio law in a number of ways, including by increasing the indemnification options available to corporate directors; by giving directors more defensive weapons in the face of unwanted change in control transactions (the so-called “takeover amendments”); and by strengthening director immunity through amendments to the statutory business judgment rule. Am. Sub. H.B. No. 902, 1986 Ohio Laws 6107, 6122-26 (amending R.C. 1701.59 and 1701.60(a)). The 1986 Amendments to the business judgment rule were animated by the belief that corporations must be able to attract highly-qualified directors who can “feel free to use their best judgment in making business decisions that are in the best interest of the corporation and its shareholders without undue concern for personal liability.” R.C. 1701.59 (LexisNexis 2016) (1986 Committee Comment). The drafters of the 1986 Amendments were also motivated by economic competition: “Ohio is unusual in that many of its largest corporations continue to be domiciled in this state, rather than in Delaware or some other jurisdiction. We would like to keep it that way.” Schrag, Jr., at 1695.

The 1986 Amendments changed the basic formulation of a director’s fiduciary duties, by adding the underlined language to R.C. 1701.59(B):

A director shall perform the director’s duties as a director, including the duties as a member of any committee of the directors on which the director may serve, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

In baseball, a tie goes to the runner. And, after 1986, in a duty of loyalty dispute, a tie goes to the director.

The 1986 Amendments made other important changes to Ohio’s business
judgment rule, as reflected in R.C. 1701.59 and 1701.60:

- The director’s liability shield (the heart of the business judgment rule) was extended to actions involving arguably the most sensitive situation a director can face: a “change or potential change in control of the corporation.”
- Limitations were placed on the circumstances under which a director can be liable for money damages (while leaving open the possibility of injunctive or other relief).
- A “clear and convincing evidence” standard of proof was added, increasing a plaintiff’s burden when bringing fiduciary duty claims against directors.
- The time horizon that directors may consider in their deliberations was expanded so that directors could now consider the “long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.”

Overall, these amendments were designed “to significantly increase the protection afforded to corporate directors.” 

_non-shareholder Constituencies

Potential Changes in Control

Delaware has watered down the protections of the business judgment rule in the context of potential change in control situations, such as tender offers or mergers. Ohio has explicitly refused to follow Delaware’s lead in diluting the business judgment rule. Unlike Delaware, in Ohio the business judgment rule expressly applies with full force in change of control situations, protecting Ohio directors when the stakes are highest – when the barbarians are at the gate.

Clear and Convincing Evidence Standard

Ohio has adopted the “clear and convincing evidence” standard for a claimant pursuing breach of fiduciary duty claims against a director, whereas Delaware relies on the more lenient “preponderance of the evidence” standard.

DIFFERENCES BETWEEN OHIO AND DELAWARE REGARDING THE BUSINESS JUDGMENT RULE

After the 1986 Amendments, the gulf widened between Ohio law and Delaware law on the business judgment rule.

• The director’s liability shield (the heart of the business judgment rule) was extended to actions involving arguably the most sensitive situation a director can face: a “change or potential change in control of the corporation.”
• Limitations were placed on the circumstances under which a director can be liable for money damages (while leaving open the possibility of injunctive or other relief).
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Overall, these amendments were designed “to significantly increase the protection afforded to corporate directors.” Stepak v. Schey, 51 Ohio St. 3d 8, 13 (1990) (Holmes, J., concurring).

Statutory Versus Common Law

In Ohio, the business judgment rule is codified in a statute, so it is relatively constant and difficult to modify. In Delaware, the business judgment rule, though having conceptual underpinnings in the Delaware general corporations code, is primarily a creation of the common law. Delaware courts are continually modifying the contours of the business judgment rule, on a case-by-case basis, depending on the facts of each dispute before them (which can be unsettling for a director who is a defendant in a Delaware case).

Those seeking comfort in judicial precedents will quickly conclude that Ohio pales in comparison to Delaware in terms of the volume of governance cases. When in doubt, Ohio lawyers and courts have a propensity to defer to the much more plentiful body of Delaware case law to provide guidance on thorny corporate law issues. Given the widely-acclaimed expertise of Delaware courts in matters of corporate law (boosted by, among other things, the enviable opportunity to handle a higher volume of cases involving corporate law matters), it makes sense, at some level, to look to Delaware for guidance when filling in the gaps between certain universal aspects of corporate law. But there is no need or basis to resort to Delaware gap-fillers where the Ohio Revised Code pointedly reflects Ohio-specific values in the very text of the statute, as it does with respect to the business judgment rule.

Brian Lamb is a partner at Thompson Hine LLP in Cleveland. Brian represents companies and their directors and officers in complex business disputes, including in securities and shareholder litigation, corporate governance and fiduciary disputes, litigation arising out of mergers, acquisitions and tender offers, and complex contract disputes. He is the firm-wide practice group leader for Business Litigation. He has been a CMBA member since 1999. He can be reached at (216) 566-5590 or brian.lamb@thompsonhine.com.
Employment of Certified Legal Interns as Law Clerks

A recent inquiry from an Ohio law school legal clinic prompted the Ohio Board of Professional Conduct to consider potential issues faced by law firms when hiring certified legal interns. According to the request, many law school legal clinic interns also simultaneously serve as law clerks in firms as a source of income or to gain additional and valuable experience. In June, the Board issued Opinion 2016-4 in response to the question whether law firms must consider conflict of interest issues when hiring legal interns certified by the Supreme Court, and by rule have the ability to engage in the limited representation of clients. The Board concluded that law firms must carefully consider the imputation of conflicts created by the employment of a legal intern as a law clerk.

Legal interns certified under Supreme Court of Ohio Rules for the Government of the Bar, Rule II are permitted to work in legal clinics, public defenders offices, and legal aid organizations under the supervision of a licensed lawyer. The Board determined that legal interns are engaged in the limited practice of law based on the types of legal services they perform and due to the fact that their conduct is governed by the Rules of Professional Conduct. Legal interns can engage in the dispensing of advice to clients and represent municipal corporations in the handling and prosecution of civil and criminal matters. They are also permitted to sign correspondence, pleadings, and legal documents on behalf of a client, with the designation “legal intern.” In contrast, law clerks obviously are not permitted to engage in the practice of law.

The Board’s opinion uses an example to describe the types of conflicts that may arise when a law firm hires a legal intern as a law clerk. If a legal intern is representing Client A in a matter through the legal clinic, and the law firm where she works as a law clerk is representing Client B, who is directly adverse to Client A in any matter, the intern’s conflict is imputed to all members of the law firm. Prof.Cond.R. 1.7(a). Using the same example, the legal intern’s former representation of Client A equally prevents the law firm from representing Client B in the same or substantially related matter, when Client B’s interests are materially adverse to former Client A.

In the opinion, the Board also recognizes that Prof.Cond.R. 1.10, cmt[4] addresses conflicts that can be handled with appropriate screening methods when law firms hire paralegals, secretaries, and other nonlawyers. However, based on the conclusion the law clerk also working in a legal clinic is engaged in the limited practice of law, the Board concluded the exception in the comment did not apply.

Understanding the need to encourage the employment of qualified law students as law clerks in firms, the Board considered the procedures firms could implement to ameliorate the conflicts that may arise when hiring legal interns. Turning to Prof.Cond.R. 1.10(d), the Board opined that a legal intern can be timely screened from participation in matters due to a former client conflict under Prof.Cond.R. 1.9, provided that the law firm also gives written notice to the affected client. In addition, conflicts arising from the legal interns’ current clients may also be waived under Prof.Cond.R. 1.7. Of course, there may be some conflicts that cannot be handled through screening or client consent.

In contrast, the legal intern’s employment as a law clerk does not give rise to conflicts that can be imputed to other legal interns in the clinic or his or her supervising lawyer. However, the Board cautions the law clerk/legal intern to maintain confidential information obtained during their employment with the law firm and that the clinic employ appropriate screening procedures.

Eventually, every certificate held by a legal intern expires due to the passage or failure of the bar exam. The former legal intern is likely to seek future employment with law firms. At this stage in the new lawyer’s career, the Board’s opinion advises that no conflicts arising from the legal intern’s limited and former practice are imputed to lawyers in the new firm, but that the former intern should still be screened in matters involving the intern’s former clients.

The Board of Professional Conduct considers requests for advisory opinions from lawyers and judges. A written request that complies with Board Reg. 15(B)(1) may be submitted to the Board Director, Richard A. Dove at the Board of Professional Conduct, 65 S. Front Street, Columbus, OH 43215. The Board’s legal staff also accepts informal ethics questions from Ohio lawyers and judges in a confidential manner. Staff may be contacted at (614) 387-9370 during regular business hours.

D. Allan Asbury has served as Senior Counsel to the Board of Professional Conduct since 2014. He previously served as the Supreme Court of Ohio’s Administrative Counsel and Secretary to the Board on the Unauthorized Practice of Law. He also chaired the Columbus Bar Association’s unauthorized practice of law committee and prosecuted cases before the Board on the Unauthorized Practice of Law. He can be reached at a.asbury@sc.ohio.gov or (614) 387-9370.
The CMBA's Green Initiative Committee hosted its Greener Way to Work Week September 26 – 30. The week encourages the Cleveland community to spend one or more days choosing greener ways to commute to work. The highlight of the week, the annual luncheon, welcomed a panel of three speakers: Jerry Crabb, Senior Director of Ballpark Operations of the Cleveland Indians; Matt Gray, Director of the City of Cleveland’s Office of Sustainability; Kathleen Rocco, Education Specialist of Cuyahoga County Solid Waste District.

The Green Initiative Committee also awarded our first Green Sustainability Award to David E. Nash of McMahon DeGulis LLP. The Green Sustainability award recognizes an individual who: Demonstrates leadership by promoting efficient energy use and other environmentally responsible practices; Used a unique approach to green practices; and Implemented a green technique that is adaptable or adoptable by others.

A donation has been made to the Legacy Fund of the Cleveland Metroparks in honor of David. The donation will help to support tree and wildlife plantings throughout the Metroparks.

A completed list of current Green and Green+ certified firms and offices can be found at CleMetroBar.org/Green.
Thank you, Sponsors!

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CORPORATE SPONSOR
Greater Cleveland Regional Transit Authority
We gratefully acknowledge these CMBA members who have become Partners for Community Engagement! Their generous contributions will support the work of the CMBA’s Judicial Selection Committee and Judge4yourself.com whose collective purpose is to educate voters about judicial candidates and build more effective courts. Since its inception in 2015, the number of Partners for Community Engagement has grown exponentially! And it’s not too late to join! Contribute $50 or more and we will add your name to our distinguished list of Partners for Community Engagement at CleMetroBar.org/Partners. A special thank you to our friends at Tucker Ellis who provided firm-wide support for this important initiative.
### November/December

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<th>MONDAY</th>
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<tr>
<td>21</td>
<td>PLI – 8:30 a.m.</td>
<td>Federal Court Training Video – 8:30 a.m.</td>
<td>Thanksgiving Day – Office Closed</td>
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<td>Membership Committee Meeting</td>
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<td>30 Cleveland Tax Institute – 8:30 a.m.</td>
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<td>23 CMBF Executive Committee Meeting – 8:15 a.m.</td>
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<td>CMBF Board of Trustees Meeting – 4:30 p.m.</td>
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<td>14 CMBF Executive Committee Meeting – 8:30 a.m.</td>
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<td>Appellate Court Seminar – 1 p.m.</td>
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<td>15 Pillars Program</td>
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<td>Disorder in the Court – 1 p.m.</td>
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<td>31 Labor &amp; Employment Law Conference Video – 8:30 a.m.</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.
Law Practices Wanted/For Sale

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

Office Space/Sharing

Downtown

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

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

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

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

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

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

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

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

Suburbs – East


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

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

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

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

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

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

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

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

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

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

Suburbs – South

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

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

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

Suburbs – West

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

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

Lakewood – Office Space – Comfortable, completely renovated century law office building on Madison Avenue with free parking. Large conference room. Contact Kenneth J. Knabe (216) 228-7200 (phone) or knabe@brownandszaller.com (e-mail).

Rocky River – No frill, inexpensive office in Bridge Building overlooking Rocky River. Perfect for sole practitioner just starting out or not quite ready to retire. Safe harbor. Call (440) 331-5223.
**Services**


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

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


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

**JD / Banking / CRE** – Brown Gibbons Lang Real Estate Partners – Highly-experienced dealmakers in Healthcare, Hospitality, Industrial, Multifamily. Brian Lenahan (216) 920-6656 or blenahan@bgco.com.

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

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


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

**Video Conference, Deposition Facility** – Plaza West Conference Center; Rocky River offers conferencing and remote video, “smart” whiteboard conference facilities for 5–33 participants. plazawestcc.com (440) 333-5484.

**Advertise Here!**
First 25 words are free for members ($1 per additional word, all words $2 for non-members). Contact Jackie Baraona at jbaraona@clemetrobar.org.

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Bruce Nardini | Thom Fladung
Nora Jacobson | Howard Fenc
Richard parachute | Stephanie York

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New Associations & Promotions

Koehler Fitzgerald LLC is pleased to announce the additions of **Robert Barr** and **Amy Jeffries** to the firm. Robert has joined the firm as a partner; he has over 20 years of experience in commercial litigation, bankruptcy and real estate, with an emphasis on representing bankruptcy trustees. Amy has joined the firm as an associate. Her primary focus is in commercial litigation. Previously, she served as an Assistant Attorney General for the State of Ohio in the Health and Human Services section.

**The law firm of Gallagher Sharp is pleased to announce that Steven D. Strang has become a Partner.**

**The law firm of Gallagher Sharp is pleased to announce that Shane A. Lawson has become a Partner.**

Squire Patton Boggs is pleased to announce that **Leah Brownlee** has re-joined the firm as of counsel in the Global Corporate Practice. She most recently served as Executive Vice President of Compliance and Operations and Corporate Secretary at Cleveland BioLabs, Inc., a clinical-stage NASDAQ-listed biotechnology company with a focus on biodendritic and oncology drug product development.

**Administrative Judge Larry A. Jones, Sr. and fellow judges of the Eighth District Court of Appeals of Ohio announce the selection of Erin M. O’Toole to Court Administrator, effective January 1, 2017.**

Honors

Cuyahoga County Common Pleas Court **Judge David Matia** will be presented the 2106 C.J. McLin Award from the Ohio Justice Alliance for Community Corrections.

**Richik Sarkar**, a member in McGlinchey Stafford’s Cleveland office, has been featured in Crain’s Cleveland Business’ “Who to Watch in Law 2016.”

**Tim Warner** has been recognized in The Best Lawyers in America for Commercial Litigation. Mr. Warner serves as the Chairman of Cavitch’s Litigation Practice Group. Mr. Warner joins fellow Cavitch partners Jim Aussem, Mike Cohan, Jim Dickinson, Tim Johnson and Roy Krall who have previously received recognition in The Best Lawyers in America.

Reminger Co., LPA is proud to announce that **David Ross** has garnered the Best Lawyers® 2017 “Lawyer of the Year for Professional Malpractice Law – Defendants” recognition for the Cleveland market.

Reminger Co., LPA’s Best Lawyers for 2017 include: **Hugh J. Bode** (Product Liability Litigation – Defendants); **Joseph E. Cavasinni** (Construction Law); **Mario C. Ciano** (Personal Injury Litigation – Defendants, Professional Malpractice Law – Defendants); **Andrew J. Dorman** (Commercial Litigation, Insurance Law); **Adam M. Fried** (Elder Law, Litigation – Trusts & Estates) **Daniel R. Haude** (Product Liability Litigation – Defendants); **Roy Hulme** (Ligation-Intellectual Property); **Barbara B. Janovitz** (Trusts and Estates); **Frank Leonetti III** (Transportation Law); **Clifford C. Masch** (Appellate Practice; Insurance Law); **William A. Meadows** (Legal Malpractice Law – Defendants, Medical Malpractice Law – Defendants); **Russell J. Meraglio, Jr.** (Ligation – Trusts & Estates); **John Patrick** (Corporate Law); **David Ross** (Insurance Law, Professional Malpractice Law – Defendants); **Christine Santoni** (Medical Malpractice Law – Defendants); **James J. Turek** (Transportation Law) **Stephen E. Walters** (Medical Malpractice Law – Defendants, Personal Injury Litigation – Defendants); and **Leon A. Weiss** (Ligation – Trusts & Estates).

Ulmer & Berne announces that seven of the firm’s partners have been recognized in the 2017 edition of Benchmark Litigation as “State Litigation Stars”: **Jeffrey S. Dunlap** (General Commercial Litigation), **Frances Floriano Goins** (Securities Litigation), and **Michael N. Ungar** (General Commercial Litigation, Securities Litigation).

Eaton honored **Hughes Hubbard & Reed LLP** for their strong commitment to diversity as part of the Eaton Law Department’s supplier recognition program.

**Judge Jean Murrell Capers** was honored at the Eighth Annual Ohio Civil Rights Hall of Fame induction ceremony as a trailblazer and public servant.

**Carter Strang’s** article “Slip Slidin’ Away — Down the Slippery Slope in ‘Take-home’ Cases” was recently published as the feature article in DRI The Voice, as well as in the OACTA Update and in HarrisMartin COLUMNS-Asbestos. Carter is a partner with Tucker Ellis LLP and a former CMBA president.

**David Freeburg** and **Antoinette (Toni) Freeburg** announce the start of their partnership in The Freeburg Law Firm, LPA. David will combine his real estate, small business and litigation practice with Toni’s Bankruptcy and Social Security/Disability practice. In addition, to the law firm David has started a title agency (Specialist Title Agency LLC) as part of the practice. Freeburg Law Firm will continue to be located in Mayfield Village, with the same contact information.

**Magistrate and Court Administrator Ute Lindenmaier Vilfroy** will retire from the Ohio Court of Appeals – Eighth Appellate District at the end of 2016. Ms. Vilfroy has been in court service for more than 39 years.

**Something To Share?**

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
SAVE THE DATE
MUSIC BOX SUPPER CLUB
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