The 69th Annual Franklin A. Polk Public Servants Merit Awards Luncheon
A crowd of more than 450 packed the Marriott at Key Center on August 28th to congratulate and thank thirteen deserving men and women for their time, dedication, and service to the public and justice system every day!

The thirteen honorees were awarded proclamations from Mayor Frank Jackson for their service and were also recognized on the front page of the Daily Legal News. The honorees’ names will now be permanently placed on the Public Servant’s Memorial Wall inside the Cuyahoga County Courthouse.

Thank you to Lynn Lazzaro for serving as chair of the event and Jacob Kronenberg, event emcee.

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

**Thank You, Sponsors!**
- Benesch, Friedlander, Coplan & Aronoff
- Calfee Halter & Griswold
- Case Western Reserve University School of Law
- Cleveland-Marshall College of Law
- Hon. Diane Karpinski
- Kronenberg + Belovich Law LLC
- Lynn A. Lazzaro
- Scott Lewis
- Barbara Roman
- Squire Patton Boggs (US) LLP
- Tucker Ellis LLP
- Ulmer & Berne LLP
- Walter | Haverfield LLP

Join the CMBF next year as we celebrate our 70th year of honoring devoted public servants!
What is the Most Important Holiday at the End of October?

The Cleveland Metropolitan Bar Foundation celebrates one of the October holidays with its Halloween Run, but that’s not the only celebration at the end of this month.

I am a nut for both pro bono legal services and public service in our community. Pro bono, in particular, is my obsession. By virtue of our licenses to practice law, which grant us exclusive rights to represent people and corporations in court, we attorneys collectively are obligated to ensure that those who need and can’t afford legal representation get it. Period. Some of us provide the representation either as our day job or in addition to it; some of us contribute money and other resources to organizations that provide the representation through staff or volunteers. However we contribute, each of us must honor this obligation.

The members of the Cleveland Metropolitan Bar Association and its predecessor bars, the Cuyahoga County Bar Association and the Cleveland Bar Association, have been honoring our obligations for many decades. Think of the Guardian Ad Litem project, Reach Out to Nonprofits, the Pro Se Divorce Clinics, the Cleveland Homeless Legal Assistance Program, and so many more programs that we operate either separately or in concert with other organizations. We lawyers in Northeast Ohio have our choice of outlets for our pro bono efforts. In all the years we’ve been providing pro bono service, that hasn’t changed.

The national dialogue on pro bono has changed, though: it’s gotten louder. In 2009, the American Bar Association, perhaps inspired by the success of various metropolitan and regional programs, brought focused, national attention to the efforts of lawyers to serve their communities. Thus was Celebrate Pro Bono — a week-long festival of pro bono — born. The last week in October was designated for this celebration. The ABA’s Standing Committee on Pro Bono and Public Service sponsors the Celebration, and defines it: The Celebration is a coordinated national effort to meet the ever-growing needs of this country’s most vulnerable citizens by encouraging and supporting local efforts to expand the delivery of pro bono legal services, and by showcasing the great difference that pro bono lawyers make to the nation, its system of justice, its communities and, most of all, to the clients they serve. (AmericanBar.org or CelebrateProBono.net)

For a pro bono junkie like me, this is pretty heady stuff. But the focus is right: doing the good work, not just talking about it.

Needless to say, we at the CMBA are celebrating pro bono during the last week of October, even as we do all year long. We are offering our signature programs and even more collaborative opportunities with the Legal Aid Society of Cleveland and our community partners. Please check out these websites for your own favorite pro bono opportunities: CleMetroBar.org and lascle.org.

The capstone to Cleveland lawyers’ week of service is the Halloween Run, which this year will be held on... surprise! — Halloween, Saturday, October 31. This event is perfect for serious runners and even us uncertain walkers, whether we’re two or 92 or anywhere in between. With official race timing and administration provided by Hermes, we lawyers provide the fun stuff: face painting, pumpkin decorating, snacks, costumes and awards. Prizes are awarded to runners in each age group for the 5K and 10K runs, as well as for the best costumes of the day — and some are remarkable. The best part of the whole event, for me, is that the CMBF uses the funds raised to support such CMBA programs as The 3Rs, Volunteer Lawyers for the Arts pro bono programs, Louis Stokes Scholars, and more.

Celebrate Pro Bono is a wonderful opportunity to remind ourselves and our community of the good every lawyer can do, individually or as a participant in pro bono programs.

Our neighbors need us, and at the end of October — just as in every other week of the year — we will be there. Thank you for everything you have done and will do to help the needy in Northeast Ohio.

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

Firm/Company: CMBA
Title: Conference & Facility Planning Coordinator
Start Date: July 2000
College: Ashford University, MAED

IF YOU HAD ONE SUPER POWER, WHAT WOULD IT BE AND WHY?
If I had one super power, it would be self-multiplication so I can be everywhere: where my children, family, and co-workers want me to be, when they want me to be there.

TELL US ABOUT YOUR FAMILY.
I come from a very small close-knit family. I have a twin brother, a younger sister and three children, ages 4, 6 and 12.

FAVORITE CMBA MEMORY
Twelve years ago when I was pregnant with my firstborn, I walked into what I thought was a staff meeting and saw my friends/co-workers with bigger bellies than mine. They surprised me with a baby shower and stuck balloons under their shirts!

WHAT ARE YOUR HOBBIES?
I'm completely obsessed with do-it-yourself YouTube videos.

Ashley Jones

Firm/Company: Ashley Jones Law
CMBA Join Date: 2011
Undergrad: Ohio University
Law School: Cleveland-Marshall College of Law

WHAT ARE YOUR HOBBIES?
My hobbies include traveling and playing with my dog, Leroy!
A special week honoring pro bono service — the National Pro Bono Celebration boasts thousands of special events nationwide. In Northeast Ohio, the celebration includes Legal Aid, numerous bar associations, the judiciary, community based organizations and volunteer attorneys.

**THURSDAY, OCTOBER 8**

4:30 PM - 6:30 PM  
Lawyer to Lawyer Give Back for Justice  
Cleveland Metropolitan Bar Association  
1375 East Ninth St., Cleveland 44114  
Contact lori.keating@sc.ohio.gov with questions

A networking and information event about giving back and promoting access to justice.  
Sponsored by The Supreme Court of Ohio’s Lawyer to Lawyer Mentoring Program in collaboration with the CMBA and Legal Aid

**SATURDAY, OCTOBER 17**

Intake Hours: 10:00 AM - 11:30 AM  
Brief Advice and Referral Clinic  
West Side Catholic Center  
3135 Lorain Avenue, Cleveland 44113  
First come, first served  
Staffed by volunteer attorneys from Giffen & Kaminski and Scott Fetzer Company  
Sponsored by Legal Aid

**WEDNESDAY, OCTOBER 21**

5:30 PM - 8:00 PM  
Lawyers for Women in Crisis Outreach Clinic  
By appointment only  
Staffed by volunteers from the Women in the Law Section of the Cleveland Metropolitan Bar Association  
Sponsored by Legal Aid and the CMBA

**SATURDAY, OCTOBER 24**

Intake Hours: 9:30 AM - 11:00 AM  
Brief Advice and Referral Clinic  
Fatima Family Center  
6600 Lexington Avenue, Cleveland, 44103  
First come, first served  
Staffed by volunteer attorneys from the Northeast Ohio Chapter of the Association of Corporate Counsel, Jackson Lewis and the Lancer Lawyer alumni group from Gilmour Academy  
Sponsored by Legal Aid

**MONDAY, OCTOBER 26**

5:00 PM - 7:00 PM  
Evening Law Firm Clinic  
Legal Aid Society of Cleveland  
1223 West Sixth Street, Cleveland 44113  
By appointment only, call (888) 817-3777  
Staffed by volunteers from Calfee and Medical Mutual  
Sponsored by Legal Aid

**TUESDAY, OCTOBER 27**

8:00 AM - 9:00 AM  
CLE: History of Legal Services  
1.0 Hour Professional Conduct  
Meyers Roman LLC  
28601 Chagrin Boulevard, Suite 500, Cleveland 44122  
Register at www.lasclev.org/registration  
Sponsored by Legal Aid and Meyers Roman LLC

11:30 AM - 1:00 PM  
CLE: ABCs and FAQs about Basic Family Law Issues  
Lawyers for Women in Crisis  
Cleveland Metropolitan Bar Assn.  
1375 East Ninth St., Cleveland 44114  
Register at www.lasclev.org/registration  
Sponsored by Legal Aid and the Women in Law Section of the Cleveland Metropolitan Bar Association

**THURSDAY, OCTOBER 29**

Take a peek at the Terminal Tower tonight...  
It’s lights are BLUE to honor Pro Bono Week!

**FRIDAY, OCTOBER 30**

**SATURDAY, OCTOBER 31**

**WEDNESDAY, OCTOBER 28**

9:30 AM - 12:00 PM  
Pro Se Divorce Clinic - Lake County  
By appointment only, call (888) 817-3777  
Staffed by volunteers from the Lake county Bar Association’s Family Law Section  
Sponsored by Legal Aid and the Lake County Bar Association

REGISTRATION FOR EVENTS IS NOW OPEN!  
Visit www.lasclev.org/2015probonoweek or www.lasclev.org/registration to sign-up!  
Check website for calendar updates and other events.
THURSDAY, OCTOBER 29
4:30 p.m. - 7:15 PM
Reach Out: Legal Assistance for Nonprofits Educational Seminar and Brief Advice Clinic "Legal and Practical Advice for Nonprofits in Planning Compliant Events"
Cleveland Metropolitan Bar Association
1375 East Ninth St., Cleveland 44114
Free and open to attorneys and nonprofit leaders
Register at www.clemetrobar.org/ReachOut
Sponsored by the Cleveland Metropolitan Bar Association, NEOCCA, and the Federal Bar, Northern District of Ohio Chapter

4:30 PM - 6:30 PM
Expungement Clinic - Cuyahoga County
Legal Aid Cleveland Office
1223 W. 6th Street, Cleveland 44113
By appointment only, call (888) 817-3777
Sponsored by Legal Aid

FRIDAY, OCTOBER 30
And Justice for All: An ABA Day of Service #ABAdayofservice

8:30 AM - 4:00 PM
CLE: Judicial Forum and Practice Update
Willoughby Municipal Court
4000 Erie Street, Willoughby 44094
Register at www.lasclev.org/registration
Sponsored by Judges of Ashtabula, Lake and Geauga Counties, the Ashtabula, Lake and Geauga County Bar Associations and Legal Aid

4:00 PM
Fundraiser for Legal Aid
Immediately follows the Willoughby CLE event
The Morehouse Willoughby
4054 Erie Street, Willoughby 44094
Visit www.lasclev.org/2015MorehouseParty for info!

10:00 AM - 11:00 AM
Pro Se Divorce Clinic - Cuyahoga County
By appointment only, call (888) 817-3777
Staffed by volunteers from the Cleveland Metropolitan Bar Association Family Law Section
Sponsored by Legal Aid and the Cleveland Metropolitan Bar Association

FRIDAY, OCTOBER 30
12:00 - 3:00 PM
Cuyahoga County Juvenile Court Child Support Clinic
By appointment only, call (888) 817-3777
A Collaborative Project of Legal Aid Cleveland-Marshall College of Law and Cuyahoga County Juvenile Court

1:00 PM - 3:00 PM
Pro Se Plus Clinic - Cuyahoga County
By appointment only, call (888) 817-3777
Staffed by volunteers from the Cleveland Metropolitan Bar Association Family Law Section
Sponsored by Legal Aid and the Cleveland Metropolitan Bar Association

9:00 AM - 12:30 PM
CLE: Update on Consumer Law: Including Bankruptcy, Student Loans and Property Tax Lien Foreclosures
Cleveland Public Library - Main Branch
525 Superior Avenue, Cleveland 44114
Register at www.lasclev.org/registration
Sponsored by Legal Aid

1:00 - 4:15 PM
CLE: Immigration Practice and Procedure
Stokes Federal Courthouse - Immigration Court Suite 13 -100
801 W. Superior Cleveland 44113
Register at www.lasclev.org/registration
Sponsored by Legal Aid and AILA

SATURDAY, OCTOBER 31
7:30 AM (Registration)
Cleveland Metropolitan Bar Foundation's 14th Annual Run for Justice
Galleria at Erieview
1301 East Ninth Street, Cleveland 44114
(216) 696-3525
Register at www.clevemetrobar.org
Sponsored by the Cleveland Metropolitan Bar Foundation

REGISTRATION FOR EVENTS IS NOW OPEN!
Visit www.lasclev.org/2015probonoweek or www.lasclev.org/registration to sign-up!
Check website for calendar updates and other events.
In consideration of your accepting this entry, I hereby for me, my heirs, executors and administrators, waive and release any and all rights and claims for damages I may have against the Cleveland Metropolitan Bar Association, Cleveland Metropolitan Bar Foundation, Hermes Sports and Events, all event chairs, sponsors and co-sponsors, partners, their representatives, successors and assigns for any and all injuries suffered by me in said event or in transit to and from said event. I further attest that I am physically fit and have sufficiently prepared for this event. I will additionally permit the use of my name and /or pictures in Cleveland Metropolitan Bar Association and/or Foundation publications.

______________________________  ________________________________
signature of participant          date

signature of parent or guardian if participant is under 18 years  date
The Cleveland Metropolitan Bar Foundation presents

14th Annual

Halloween Run for Justice

Saturday, October 31st
The Galleria at Erieview

We are partnering with the Cavs!

FEATURING
Cavs Scream Team, Cavs Q Spirit Squad,
In-Arena Host Ahmaad, and Moondog!

Costumes encouraged!

Run, Walk, Scream, and Cheer!
Come celebrate the Cavs new season
and Halloween with us this year!

Proceeds help fund charitable community outreach programs,
 improving access to justice and providing law-related education and
 mentoring in the Cleveland and East Cleveland city schools.

CleMetroBar.org/HalloweenRun or (216) 696-3525

ONLY $20
BEFORE OCT. 16
($25 AFTER)
Lou Stokes: An Inspiration

The CMBF’s motto is “Lawyers Giving Back.” Lou Stokes gave back immensely to our Bar, our community, and our country.

On top of all his myriad achievements and endless commitments for the common good, Lou Stokes was “all in” for the programs of the CMBF which you and the CMBF support. When we kicked off The 3Rs program 10 years ago, our rally on the Mall was a remarkable event — most especially thanks to the “keynote address” by Lou Stokes. On that brisk, sunny day, he captivated the crowd. His words were inspiring then and now:

“Hello! Oh you can do better than that. Hello! I can’t hear you. Hello! Now you sound like a rally. Now, hey, JFK, let me hear that little thing you play for everybody. All right. All right. Let’s give JFK cheerleaders a great big hand! And let’s give the John Marshall lawyers another great big hand!

Ladies and gentlemen, this is a historic day in our city. It’s a landmark day in our city. It’s a day that makes me very, very proud. I have stood on podiums on this public square for all kinds of causes. I’ve stood on podiums on public square here with candidates for the presidency of the U.S. I’ve stood here with presidents of the U.S. I’ve stood here with civil rights leaders for civil rights. I’ve stood here with women fighting for women’s rights. I’ve stood here for all kinds of causes. This is the first day in my career I’ve been asked to stand on a podium on public square on behalf of the students in the Cleveland public school system. First time. Thank you. First time. And it makes me so proud. That’s why I thank you all for taking the Bar Association to the next level. First time in the history of our city that we’ve seen lawyers get involved in a project of this sort. Let’s give the Bar Association a great big hand.

I guess the reason I’m so proud to be here today is because my brother Carl and I are products of the Cleveland public school system. We started out in Giddings Elementary School on East 71st and Cedar between Cedar and Central. Now I went to the old Central Junior and Central Senior High School at the corner of 55th and Cedar, which is today torn down. But I graduated from Central High School on East 40th Street between Cedar and Central. Carl is a graduate of East Technical High School. Carl was a dropout. Dropped out of school at 16 and went into the Army and came out. And because he saw that I had come out of the Army and taken advantage of the GI Bill and gone off to Case Western Reserve University and enrolled as a student, he followed me. At the age of 21, he went back to East Tech HS, got his diploma, and the rest is history.

And so, when I think about the fact that he and I came out of the Outhwaite projects, where we were raised in a home that had a mother with only an 8th grade education. Realizing that Carl and I were the first in our family to ever go to college, one of the things that meant so much to me about becoming a lawyer — it gave me the knowledge of what my rights were and what other’s rights were. It gave me the knowledge of knowing about responsibilities. And reality. Some years ago I took a case up to the U.S. Supreme Court. It became a landmark case in criminal law. It’s taught in every law school in America. It’s taught in every police department in America. That case involved my knowing what my constitutional rights were and what the rights of my defendants were in that case. And so I was able to take that case up to the U.S. Supreme Court. To stand up in front of nine Supreme Court justices and tell them what the Constitution of the U.S. said about the rights of individuals on the streets of America. That’s because I knew the Constitution.

That’s what this program is about. Teaching you about your rights and responsibilities under the Constitution. I commend these 700 lawyers who are taking time out of their busy schedules to go into courtrooms — go into classrooms and work with students. Help them select careers. Help them to motivate them. Help you to know how important you are. Help you to know that a Carl Stokes, coming out of the projects in Cleveland, being taught in the Cleveland public schools, could become the first black democrat every elected to the Ohio legislature. To follow that by becoming the first black mayor of a major American city when he was elected the mayor of Cleveland. Leaving Cleveland and going to New York where he became the first black anchorman in the city of New York. Left there and came back to Cleveland. Became a lawyer again, then became a judge, and then the Presiding and Administrative Judge of the Cleveland Municipal Court. And then President Clinton appointed him as our Ambassador to the Seychelles.

And that’s what it means to be able to come into the Cleveland public school system, to spend 30 years in the U.S. Congress, where I had to know the Constitution, had to know law. So I come before you today. I can say how important it is for you to know and understand. When I heard these three fine students talking about the Constitution. It was in the Cleveland public schools that I learned “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights.’ That whenever any rights become destructive to these ends it shall be ‘the Right of the People to alter or to abolish it, and to institute new Government’ ‘deriving their just powers from the consent of the governed.’ That’s what its about. That why we’re here today. Thank you.”

Lou Stokes then went on our video to further speak to the Cleveland school kids to get them excited about the 3Rs, and in doing so he also excited Cleveland lawyers who have been inspired by his spirit. He later lent his name and spirit to the Stokes Scholars Program, and in general he was always there for us at the CMBA and CMBF. He will be sorely missed in so many ways, but his spirit of giving back lives on in our Bar and our programs. Let’s all continue to give back in the spirit of Lou Stokes.

Hugh E. McKay

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Hugh E. McKay
Volunteering à la Carte

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

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

THE 3RS – RIGHTS • RESPONSIBILITIES • REALITIES
Volunteers provide law-related education in the high school classroom
Each volunteer serves on a team that visits an assigned classroom in a Cleveland or East Cleveland public high school to present six lessons on the U.S. Constitution and career counseling. Curriculum and volunteer orientation are provided.

Volunteer Schedule: Sept. 2015 – April 2016 (typically one classroom visit per month)
CleMetroBar.org/3Rs

3RS+
Volunteers provide college and career counseling, tutoring, and mentoring services to 11th and 12th graders in the Cleveland and East Cleveland schools upon request.

Volunteer Schedule: During school year, Sept. 2015 – May 2016
CleMetroBar.org/3Rs

CLEVELAND HOMELESS LEGAL ASSISTANCE PROGRAM (CHLAP)
Volunteers can provide service in two ways: (1) providing brief advice and counsel at intake sessions at homeless shelters and social service providers, or (2) providing follow-up service on legal matters needing further attention.

Volunteer Schedule: Sessions scheduled regularly throughout the year
CleMetroBar.org/CHLAP

CLEVELAND MOCK TRIAL COMPETITION & MIDDLE SCHOOL MOCK TRIAL
Volunteer attorneys and law students coach Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.

Volunteer Schedule: Coaching Feb. – May 2016; Competition in May
CleMetroBar.org/ClevelandMockTrial

OHIO MOCK TRIAL COMPETITIONS
Volunteers serve as judicial panelists for teams of high school students from public, private, and home schools across the region.

Volunteer Schedule: Cuyahoga District Competition Jan. 29, 2016; Cuyahoga Regional Competition Feb. 19, 2016
CleMetroBar.org/OhioMockTrial

PRO SE DIVORCE CLINICS
Volunteers guide participants through the paperwork and process of securing a simple divorce pro se.

Volunteer Schedule: 3rd Friday monthly unless otherwise noted

REACH OUT: LEGAL ASSISTANCE FOR NONPROFITS
Reach Out seminars held quarterly feature free presentations on the law for both nonprofit leaders and volunteer attorneys, followed by brief advice sessions. Volunteers assist by presenting at clinics, participating in teams at brief advice sessions, and/or agreeing to take on further representation as needed.

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

SPEAKERS BUREAU
Members of the public request speakers on a vast array of legal topics.

Volunteer Schedule: As needed throughout the year

VOLUNTEER LAWYERS FOR THE ARTS (VLA)
The VLA reaches the public by providing pro bono assistance and advice for legal issues faced by artists, and by presenting a series of free law-related education events held in Cleveland’s many unique arts venues.

Volunteer Schedule: Committee meets monthly, other services TBD throughout the year
CleMetroBar.org/VLA

Coming Soon!

October 25–31, 2015: Pro Bono Week
October 27, 2015: VLA brief advice clinic at El Barrio
October 29, 2015: Reach Out for nonprofits seminar: “Legal and Practical Advice in Planning Compliant Events” (in partnership with the VLA)
October 30, 2015: Pro Se and Pro Se “Plus” Divorce Clinics
October 31, 2015: Halloween Run
November 20, 2015: Pro Se Divorce Clinic
January 29, 2016: Ohio Mock Trial Cuyahoga District Competition
February 19, 2016: Ohio Mock Trial Cuyahoga Regional Competition
JUDICIAL SELECTION COMMITTEE

Chairs
Jill G. Okun, Chair
Porter Wright Morris & Arthur LLP
jokun@porterwright.com

Hon. Kenneth R. Callahan, Vice-Chair
Buckley King
callahan@buckleyking.com

Staff Liaison
Carrie Cravener
cgravener@clemetrobar.org

Regular Meeting Time
The Committee’s meetings are for the most part to interview and rate judicial candidates. Accordingly, the meetings revolve around judicial elections. The next full-scale meeting will be set to rate candidates for the May 2016 primary.

Goals
To educate the voting public about judicial candidates to both improve the caliber of the bench and to raise awareness of the importance of the judiciary.

What Can Members Expect?
Members have both the privilege and responsibility to thoughtfully consider and rate judicial candidates. They have the opportunity to question candidates and discuss qualifications in a confidential setting with other members of this Committee, as well as members from the three other bar associations which make up the Judicial Candidates Rating Coalition, known as Judge4Yourself.com.

Recent Events
On August 20, 2015, the Committee met, interviewed and rated candidates for this year’s municipal court election. The Committee interviewed 12 candidates for several different municipal courts, including Lakewood, Cleveland and Bedford. The Committee’s ratings were approved by the CMBA’s Board of Trustees and will be published in conjunction with the ratings of the three other bar associations.

JUSTICE FOR ALL COMMITTEE

Chairs
Lisa Gasbarre Black, Chair
Catholic Charities – Diocese of Cleveland
gblack@ccdocle.org

Staff Liaisons
Mary Groth
mgroth@clemetrobar.org

Jessica Paine
jpaine@clemetrobar.org

Next Meeting Date
November 10th at noon

What is your goal?
To provide oversight, support and evaluation of JFA programs; to work with community partners and the courts to understand and address unmet legal needs; and to evaluate proposals for new CMBA programs to address unmet needs.

What can members expect (e.g. benefits of belonging)?
The opportunity to work with fellow dedicated volunteers on interesting programs and issues supported by the volunteer service of Cleveland lawyers, helping community members in need.

Upcoming Events/Activity
Join us in pro bono programs and at events during Celebrate Pro Bono Week, October 24th through 31st. Don’t forget to sign up for the Halloween Run for Justice on October 31 – Cavaliers Spirit Edition.

REAL ESTATE LAW SECTION

Deborah D. Zielinski, Chair
Chicago Title Insurance Company
Debbie.Zielinski@ctt.com

Katheryn J. McFadden, Vice Chair
McFadden & Freeburg Co., LPA
kmcfadden@mcfaddenlaw.us

Regular Meeting Time: We typically meet the last Tuesday of each month (except summer months and December)

What is your goal? To provide leadership in the practice of real estate law in our community; improve the education of real estate legal professionals; and promote the interests of its members

What can members expect?
Opportunities to network with other real estate professionals, learn about real estate law initiatives in the community and State of Ohio, and opportunities to participate in continuing education within the field of real estate law

Upcoming Events: Each year we provide a Spring Seminar (in June) and The Real Estate Law Institute (in the Fall). The upcoming Real Estate Law Institute will be November 12 and 13.

ENVIRONMENTAL LAW SECTION

Tamar P. Gontovnik, Chair
Benesch, Friedlander, Coplan & Aronoff LLP
tgontovnik@beneschlaw.com

Regular Meeting: Quarterly lunch CLE meetings

What is your goal? Bringing environmental practitioners in Northeast Ohio together to learn, network and socialize, and give back to the community.

What can members expect?
Great CLE programming and the opportunity to get to know others in the environmental legal community.

Upcoming Events: The Section will be bringing back the Great Lakes Symposium in the Summer of 2016, last held in 2013. The event will highlight issues affecting the Great Lakes and will provide an opportunity for discussion of these issues.
Walking the Talk in Cleveland

A decade or so ago, as an in-house attorney, I attended a meeting of the CMBA Minority Roundtable as a last minute stand-in for my boss. I didn't know much about the group before walking in the door other than it was a fairly new initiative run by the bar association, that membership was by invitation only, and that the group had taken on responsibility for coordinating efforts to improve the state of diversity and inclusion (D&I) within Cleveland’s legal community. At that time, organized diversity efforts within Cleveland’s legal community were just beginning to gain traction.

Twenty or so people attended the Roundtable meeting that day. I recall just one item on the agenda for discussion: collection of demographic data. As the meeting progressed, I learned that while national statistics regarding racial and gender representation could be easily accessed from a variety of sources, similar data for Cleveland did not exist. Those assembled that day all agreed that without data, it would be difficult, if not impossible, to establish meaningful diversity goals that could lead to sustainable change within our community. As I recall one member of the group — a prominent general counsel — saying: “In the business world, if something isn’t measured, then it isn’t important.”

When I left my inaugural Roundtable meeting, I was excited to report back that something significant had occurred: a first-of-its-kind D&I survey would be sent out to the greater Cleveland legal community. For months, I waited for news of the survey. When nothing happened nearly a year later, I asked someone at the bar association about the status of the project and learned that a first-of-its-kind D&I survey would be sent out to the greater Cleveland legal community. At that time, organized diversity efforts within Cleveland’s legal community were just beginning to gain traction.

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Fast forward to 2015. Still no data in Cleveland. However, data continues to abound at the national level thanks to organizations like the American Bar Association and the National Association for Law Placement, Inc., and books like the recently released The Trouble With Lawyers, authored by Stanford University law professor Deborah L. Rhode. Nationally we know:

- 88% percent of lawyers are white;
- African Americans, Latinos, Asian Americans and Native Americans now constitute about a third of the population and a fifth of law school graduates, but they make up fewer than 7% of law firm partners and 9% of general counsels of large corporations;
- in major law firms, only 3% of associates and less than 2% of partners are African American;
- women constitute more than a third of the profession, but account for less than 20% of law firm partners, general counsels for Fortune 500 corporations and law school deans; and
- only seven of the nation’s 100 largest firms have a woman as chairman or managing partner.

How does Cleveland compare to the national data? Are we more diverse? Less? Are we more diverse today than we were ten years ago? We can guess, but we don’t really know.

What we do know is that many Cleveland organizations have expended significant resources — both in terms of financial support and human capital — in the D&I space. The CMBA Diversity & Inclusion Committee, for example, reaches several hundred people a year through impactful programs and events ranging from annual D&I conferences and career fairs, to pipeline programs like the Stokes Scholars Program and the Minority Clerkship Program, to the “Dialogues in Diversity” speaker series sponsored by the CMBA in conjunction with the Greater Cleveland Partnership’s Commission on Economic Inclusion. In addition, we know anecdotally from presentations, press releases and websites that many area law firms and legal departments are actively engaged in expanding recruitment efforts, creating affinity groups, developing C-Suite diversity positions and more, all in an effort to improve representation within our profession and build genuinely inclusive cultures. A commitment to inclusion clearly exists within our community.

But are these efforts working? If so, how so? If not, how do we do better?

The time has arrived for the greater Cleveland legal community to join together to take a comprehensive look at where we stand today as a profession and as a community. Under the leadership of Majeed Makhlof, Vice President of D&I, the CMBA D&I Committee is launching a comprehensive diversity and inclusion survey to the entire Greater Cleveland legal community. The survey seeks both demographic information as well as details regarding D&I efforts that are producing results.

In Phase I, arriving in mailboxes this month, law firms, in-house legal departments, courts, prosecutors, defenders and other organizations that employ legal professionals will be invited to complete similar surveys. Thereafter, in Phase II, every individual attorney who is registered to practice law in the greater Cleveland area will receive his/her own invitation to participate. In total, more than 300 law firms and more than 8000 attorneys will be invited to participate.

We need you. We need all of you.

All data will be compiled by CMBA staff. Any individually identifying information — whether for an organization or an individual attorney — will be removed. Results will be compiled and reported only in an aggregate form. No individual organization or attorney information will be disclosed to anyone at any time — not to the D&I Committee, not to CMBA leadership and not to anyone else.

Every voice matters as we take this profoundly important step that will enable us to benchmark where we are and provide guidance for where we want to move in the future. Please join us in walking the talk in Cleveland.

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.
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Amy Whitacre
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he past term of the United States Supreme Court has been marked by a number of high-profile cases and the decision regarding same-sex marriage will likely be remembered as the most significant of the term. However, there was another important decision handed down by the Supreme Court this past term that has been largely overlooked by the media and commentators alike. The decision, much like the Court’s pronouncement in Obergfell, will have substantial and far-reaching effects on arguably the most sacred prerequisite to attaining the American Dream: owning real estate.

In a far-reaching decision, the U.S. Supreme Court upheld the use of the disparate impact theory of liability to forge a claim for a violation of the Fair Housing Act (the “Act”). On June 25, 2015 the Supreme Court announced its decision in Tex. Dept of Hous. & Cnty. Affairs v. Inclusive Cnmts. Project, Inc. ___U.S.____, 135 S.Ct. 2507, 192 L.Ed.2d 514 (2015). The case arose from a federal statute that grants tax credits to construct low-income housing. The credits are paid for by the federal government and are distributed to developers through designated state agencies. As a part of the program, Congress directed that the state agencies distributing the tax credits show a preference for certain low-income housing units to “contribute to a concerted community revitalization plan” and be built in areas where low-income housing already predominates that particular area’s housing stock. Id. In the state of Texas, the department charged with the responsibility of allocating the tax credits is the Texas Department of Housing and Community Affairs (the “Department”). An organization known as the Inclusive Communities Project, Inc. brought suit against the Department because of the tax-credit policy. The Inclusive Communities Project, Inc. is a nonprofit organization that assists low-income Texans obtain affordable housing. The Inclusive Communities Project sued the Department, alleging that the policy that favors the distribution of tax credits to build low-income housing in areas that already have a high concentration of low income housing causes segregation, and, therefore, violates that Fair Housing Act.

The Fair Housing Act (the “Act”) was signed into law by President Lyndon B. Johnson as part of the Civil Rights Act of 1968. The Act prohibits discrimination in housing decisions because of race, color, sex, religion, or national origin. 42 USCS § 3601. The term “housing decision,” broadly defined, includes the decision to rent housing, the decision to provide financing for housing, and the practice of indicating a certain preference or dislike for a prospective tenant or purchaser’s race, color, religion, sex, or national origin. The importance of the Inclusive Communities cases comes from the Court’s 5-to-4 decision upholding the use of the disparate impact theory of liability to hold a defendant liable for a violation of the Act. The watershed case for disparate impact liability was the 1971 United States Supreme Court Decision in Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, L.Ed.2d 158 (1971). The Court held that a company’s prerequisite that a candidate for promotion possess a high school degree had a discriminatory impact on African-American applicants.

While the Inclusive Communities case was still pending at the Circuit level, the Secretary of the Department of Housing and Urban Development issued a set of regulations outlining the framework on how a plaintiff can prove disparate impact liability. First, a plaintiff has the burden of proving that a challenged practice caused or predictably caused a discriminatory effect, this is almost always proved by statistics evidencing one-sided or discriminatory impact or preference of a protected class. 24 CFR §100.500(c)(1). If a statistical discrepancy is caused by factors other than the defendant’s alleged discriminatory practice, the plaintiff’s case has failed and they cannot make out a claim for disparate impact liability. If the plaintiff can make out a prima facie case by demonstrating that the statistical discrepancy is due to the defendant’s alleged discriminatory practice, then the burden shifts to the defendant and they are given the opportunity to defeat the claim. The burden shift gives the defendant an opportunity to prove that the challenged practice is necessary to achieve “one or more substantial, legitimate, nondiscriminatory purposes.” Id. at §100.500(c)(2). If the defendant can prove that the alleged practice has a substantial and legitimate nondiscriminatory purpose, then the defendant has defeated the claim.

The Inclusive Communities Project alleged that the Department’s practice of doling out tax credits to projects that would construct low-income housing in areas where poverty was already concentrated has discriminatory impact because it causes segregated housing. In return, the Department argued that Congress never intended for disparate impact liability to apply to claims under the Act. The Court’s majority found the Department’s argument unconvincing. The Court held that Congress’s 1988 amendments to the Act did not remove the operative language of the Act that nine circuits had relied upon to make a finding that disparate impact liability can be used to make out at claim under the Act. The specific phrase that the Court relied upon was “[t] o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable…a dwelling…” 42 USCS § 3604(a). (Emphasis added.) The Court reasoned that Congress, in the 1988 Amendments to the Act, knew full well that a majority of the federal circuits had ruled that the phrase “or otherwise make unavailable” allowed for disparate impact claims under the Act and did not remove that phrase. In other words, the Court found that Congress has consented to disparate impact liability.

The majority also contends that disparate impact liability is consistent with the spirit of the Act and is an important tool in helping eradicate the types of discriminatory housing practices that the Act was aimed at stopping. Inclusive Cnmts. Project, Inc. at 2521. The Court emphasized the requirement of a causal connection between the alleged discriminatory practice and the unfair impact upon a protected class under the Act. The Court believed that this emphasis would counter concerns that expanding disparate
The Court notes that “Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision.” Id. at 2524.

The Court also explained that, for instance, a developer’s decision to locate a residential real estate project in one area of a city rather than another would not necessarily put that decision under the specter of disparate impact liability because such a decision would be one-time and not necessarily a consistent policy. Id. The Court warned that if lower courts do not exercise caution in insuring a causal connection between a defendant’s alleged discriminatory policy and discriminatory impact, then developers and government agencies alike will shy away from constructing or renovating housing for low-income individual. Id. Such an aversion to remedying the lack of low-income housing in many cities because of too much exposure under the Act would undermine the Act itself, the Court cautioned. Id.

To conclude, the impact of Inclusive Communities Project, Inc. on low-income building projects will be an interesting development not just for developers that engage all or part of their business in low-income housing, but also for lenders, large multi-unit residential real estate landlords, and realtors. The decision in Inclusive Communities Project, Inc. could present a serious issue for the future of low-income housing. The majority in this case was confident that the causal connection requirement will protect against frivolous claims or claims that impose liability where an otherwise excusable legitimate interest would obviate that liability. Whether or not the majority’s guidance is enough will bear out soon enough. The near constant struggle to remedy over one-hundred and fifty years and beyond of discriminatory housing practices and the effects of those practices is complicated, imprecise, and at many times fraught with politics. All real estate attorneys should be keenly aware of the manner in which the Inclusive Communities Project, Inc. decision aggravates or remedy’s the issues surrounding discriminatory housing practices.

Jonathan J. Hartman is a licensed attorney with the State of Ohio and an Associate Attorney at Ott & Associates Co., LPA. He concentrates in the areas of real estate law, community association law, business law, corporate law, and litigation. He joined the CMBA this year. He can be reached at (216) 771-2600 x116 jhartman@ottesq.com.
Biking to Work — It’s Good for the Environment and it’s Good for You!

The good news is, over the last fifteen years the U.S. has seen a 40% increase in bicycle commuters, with numbers approaching 1 million. In contrast, however, there are more than 204 million personal vehicles traveling on U.S. roads. Of course, there are many reasons why proponents suggest commuting by bike: it’s good for the environment; it’s cheaper than driving; it’s a good workout; it cuts down on road maintenance; etc. Whatever your motivation is, I’m here to tell you it’s possible.

A few years ago, the idea of riding a bike to work just seemed silly. Why anyone who worked in a professional environment would want to work up a sweat on their way to the office, was beyond my comprehension. Then, it happened ... as I cruised into my mid-thirties, I began to take on more responsibilities at work. On top of that, my wife and I had two children; an 87 year old house; a dog and two cats; church, non-profit and community commitments; family and friendly gatherings; etc. Before I knew it, I had enough responsibilities and commitments to fill a freshly minted legal pad. Hitting the gym or my treadmill was the last thing I wanted to do with my roughly 30 minutes of “free time” after the kids went to bed.

After a few months without any physical activity, my wife bought me a hybrid bicycle for Christmas. While I was excited about my shiny new toy and the idea of getting back in shape, I was quickly overwhelmed again by the fact that I had no time to exercise. It was about that time, that I ran across an article on cleveland.com about our city’s attempt to become bicycle friendly. Suddenly, I started noticing bike lanes on many major streets — Detroit, Euclid, etc. Maybe they had been there forever and I just didn’t notice, but it gave me an idea. Why not spend my 30 minute commute exercising, instead of fighting the delays caused by accidents and construction?

With this idea in mind, I challenged myself to ride to work two days a week, beginning in May. I committed to Mondays and Wednesdays, because these were the days that I didn’t have to pick the kids up from daycare.

In order to accomplish my goal, I first had to develop a rout to deliver me to the office quickly and safely. I used the bicycle version of Google Maps (just Google directions to any address and then click the bicycle icon instead of Google Maps (just Google directions to any address and then click the bicycle icon instead of the car) to determine my best options. With Google Maps, I was able to locate area bike paths and, more importantly for my commute, streets that encompassed dedicated bike lanes for safer travels.

After determining my route, I decided to focus on safety. My goal was to make my bike as visible as possible to motorists. I should note that my usual routine is to arrive at the office by no later than 6:30 a.m. I didn’t want my riding to interfere with my work schedule, so I knew I would have to leave my house by 5:00 a.m., in order to make it in and shower before my 6:30 start time. With this in mind, I went to my local bike shop and purchased an 800 lumen headlight, a taillight that blinks brighter than the top of a radio tower and enough reflective tape to cover a 1960’s Impala. As far as the tape goes, I used red on the back of my bike, white on the front and yellow on the sides — just like a car. I even put some yellow dots on my wheels so that motorists approaching from the sides would see them spinning, and take notice of my presence. Thanks to some lucrative spring sales, I was able to purchase both lights and the tape for about $75.00.

Now, I was ready to roll. All I needed was to figure out how I was going to clean up once I arrived at the office. Fortunately, I have access to a shower at work. Our building has a small gym — no membership required — with a locker room and shower in the basement. The idea was that I would arrive at work, stash my bike in my office and head down to the shower before anyone else arrived. In order to do this, I had to prepare, pack and bring my clothes and toiletries the day before I wanted to ride. So, if I was riding to work on Monday, I would have to bring my clothes on the previous Friday. If riding on Wednesday, I would bring clothes on Tuesday.

On May 13, 2015, I rode to work for the first time. It was exhilarating! I woke up at 4:50, threw on some reflective clothing, brushed my teeth and headed out the door. By 5:00, I was pedaling north-east on Pearl at 18mph. I arrived at the office at 5:35 and had plenty of time to cool down, shower and suit up before my 6:30 start. From that day forward, I rode to and from work twice a week through the month of August. I lost 10 pounds, and I was the talk of the office for at least a day.

More importantly, I proved to myself that a busy young professional can find time to take care of himself, without sacrificing hours at work, or crucial time at home with loved ones. Don’t get me wrong, I ran into some speed bumps along the way. I’ve forgotten a belt or a watch on occasion. I’ve been rained on, and I even had a slow leak one day that left me with a flat tire — good thing for CO2 cartridges. But, I’ve never encountered anything that made me feel like riding to work was too difficult. If you’ve ever considered it, I urge you to give it a shot. It’s good for you, it’s good for the environment and it’s good for our city. You won’t regret it!


David Brown is an attorney at Weltman, Weinberg & Reis Co., LPA who is based in the Cleveland office and handles commercial collection matters. He is a member of the CMBA Green Initiative Committee. He has been a CMBA member since 2007. David can be reached at (216) 685-1062 and dbrown@weltman.com.
The sun set on another beautiful summer on August 20 as Cleveland Metroparks wrapped up its second season of Edgewater LIVE, the wildly popular weekly event with music, recreational activities, and food trucks. A day later, a few short miles east along Lake Erie, Euclid Beach LIVE wrapped up its second season of a burgeoning concert series that has connected the neighborhood to the lakefront harkening back to a time when Euclid Beach Park was alive and well.

Earlier in August, along the banks of the once-joked-about Cuyahoga River, Merwin’s Wharf celebrated its first successful year of operation as a restaurant, activity hub, and gateway to riverfront recreational activities.

Cleveland Metroparks is partnering with various nonprofits, public agencies, and the private sector to connect people to what used to be the industrial backbone of our region and a large factor in making Cleveland an industrial powerhouse, the waterfront. Now, Cleveland Metroparks and others are making significant strides to again make these key shipping channels the pride of our region, but for entirely different reasons. We have a long way to go, but the strides we have made are real and lasting. However, opportunity and progress is not without challenges. Cleveland Metroparks has faced its own hurdles and issues in its effort to connect people to the waterfront, particularly in acquiring the lakefront parks, acquiring land along the Cuyahoga River; and continuing to create connections via urban trails.

Cleveland Metroparks, founded in 1917, is the oldest Park District in the state of Ohio and operates within the confines of O.R.C. 1545. It is governed by three volunteer commissioners appointed to three-year terms by the presiding judge of the Cuyahoga County Probate Court, currently the Honorable Judge Anthony J. Russo.

The Commissioners have adopted Bylaws and a Code of Regulations to govern the Park District which includes more than 23,000 acres of land across 18 reservations, eight golf courses, a nationally acclaimed zoo (with over 2,000 animals), 300 miles of all purpose, hiking, biking, and bridle trails, 23 fishing areas, seven nature centers, 14 miles of lakefront, and two refrigerated 700-foot toboggan chutes. Cleveland Metroparks owns land in five counties (Cuyahoga, Lake, Lorain, Summit, and Medina). Every Cuyahoga County resident lives within a 10 minute drive of Cleveland Metroparks land, and the Park District experienced 17 million recreation visits in 2014.

However, being a growing Park District in a heavily developed county with little undeveloped land is not without its challenges. Cleveland Metroparks is a connected network of parks along waterways on the outskirts of Cleveland, hence the Emerald Necklace moniker. Acquiring and conserving land in the industrial core, such as the Cuyahoga River valley, can create legal issues and complications necessitating extra resources for environmental testing, soil management plans, and/or risk mitigation plans. Cleveland Metroparks is becoming more familiar with those complications. The payoff for the return to the natural state and opening up former industrial brownfields to recreational use is often worth the extra resources.

Much of Cleveland Metroparks renewed focus on the urban core correlates closely to the Trust for Public Land (TPL) 2013 Study (The Economic Benefits of Cleveland Metroparks) that outlines enhanced property values for property close to Cleveland Metroparks land, savings in storm-water retention costs, air-pollution removal, tourism, and improvements in human health and savings in health-care costs. Specifically, the study shows that property within 500 feet of Cleveland Metroparks property enjoys a 20 percent greater valuation than a similar property farther away. That leads to the inevitable conclusion that if Cleveland Metroparks can focus on creating parks/connections in urban areas, property values will increase and human health and wellness will improve, which helps urban revitalization and raises the property tax base. In a sense, a rising tide lifts all boats. In particular, Cleveland Metroparks has pursued three opportunities over the past few years to invigorate the waterfront in our urban core.
Acquisition of Lakefront Parks

On June 6, 2013, Cleveland Metroparks acquired 581 acres of Cleveland lakefront parks (Edgewater Park, Edgewater Marina, East 55th Street Marina, Gordon Park north of I-90, Euclid Beach Park, Villa Angela Park, and Wildwood Park) and five yacht clubs (Edgewater, Wildwood, Forest City, Inter-City, and Lakeside) by way of a 99-year lease for $1.00 per year between the city of Cleveland and Cleveland Metroparks. The state of Ohio previously controlled the lakefront parks with a 1978 lease agreement, but members of the business community helped facilitate conversations between Ohio, Cleveland, and Cleveland Metroparks that led to the parks return to local management. As part of the negotiations with Ohio and Cleveland, Cleveland Metroparks received $14 million for capital improvements. Upon acquisition of the parks, these funds were immediately utilized to address needed maintenance and more recently supported major capital projects like the Euclid Creek pedestrian bridge (connecting Wildwood and Villa Angela Parks) and the Edgewater beach house, which is scheduled to begin construction this fall. After only two years of ownership, Cleveland Metroparks has quickly reinvigorated the lakefront parks, reconnecting communities with Lake Erie and the Cuyahoga River. Edgewater LIVE and Euclid Beach LIVE gave people a chance to Come Out And Play. The early results are promising.

On June 2, 2014, Cleveland Metroparks and Cuyahoga County entered into a Sale-Purchase Agreement for Cleveland Metroparks to acquire Whiskey Island and Heritage Park I along the Cuyahoga River for $1. Heritage Park I closed on August 29, 2014 and Whiskey Island closed on December 17, 2014. Also, as part of the deal, Cleveland Metroparks agreed to invest at least $6,250,000 in capital improvements.
at Whiskey Island. Initial operational improvements are underway.

The lakefront parks and Whiskey Island transactions involved submerged land subject to submerged land leases with Ohio, representing additional legal instruments in Cleveland Metroparks' toolbox to work effectively in the urban core.

**Acquisition of Land along Cuyahoga River (Rivergate Park)**

From former industrial land along the Cuyahoga River in Cleveland’s urban core, Cleveland Metroparks created Rivergate Park, a 2.8 acre parcel in the center of the Flats District, by cobbling together different parcels, easements, and licenses with TPL, Cleveland Rowing Foundation, and the city of Cleveland. All parties embraced Cleveland Metroparks’ vision for a green corridor along the riverfront as an opportunity for future connectivity. Cleveland originally planned to construct the skatepark along the Cuyahoga River, but after discussions with Cleveland Metroparks, the city entered into a lease agreement that swapped out the riverfront land with land to the north. The land swap allowed Rivergate Park to become a recreational hub along the Cuyahoga River containing a skatepark, bicycle co-op, bike share station, and rowing club. Merwin’s Wharf restaurant, owned and operated by Cleveland Metroparks, now provides an opportunity for families and recreation enthusiasts to extend their park visit and enjoy high-quality meals while offering diners up-close views of passing freighters, rowers, recreational paddlers, and dragon boat races.

**Creating Connections (Cleveland Foundation Centennial Trail and Red Line Greenway)**

In 2015, Cleveland Metroparks, TPL, and L.A.N.D. studio, Inc. (LAND) entered into a Project Development Agreement to develop the Cleveland Foundation Centennial Trail, which was kick-started by a $2,000,000 grant from the George Gund Foundation in 2013. The Cleveland Foundation Centennial Trail, formerly known as the Lake Link Trail and now bears the name of Cleveland Foundation due to the Foundation’s generous $5 million gift, will link the Towpath Trail from the south to Lake Erie at Whiskey Island and to Lake Erie, and the Towpath as it is set to connect with the Cleveland Foundation Centennial Trail at Columbus Road. Cleveland Metroparks will continue to pursue its core tenets of conservation, education, and recreation into its 100-year anniversary in 2017. Acquiring and restoring land in the urban core to connect urbanites to the waterfront delivers on the core value of connecting people to the natural world. It is exciting to dream up the ways Cleveland Metroparks will adapt to serve the people of Greater Cleveland over the next 100 years, and provide them numerous opportunities to Come Out and Play.

Kyle G. Baker is Assistant Legal Counsel at Cleveland Metroparks. He was previously an Associate at Thompson Hine. In addition to practicing law, Kyle is a member of the city of Lakewood’s Planning Commission, the Past-President of the Lakewood Rangers Education Foundation, and the Vice President of the Northeast Ohio Chapter of the American Constitution Society. He has been a CMBA member since 2009. He can be reached at (216) 635-7011 or kgb@clevelandmetroparks.com.
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Meet Me at The Bar
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

NATIONAL PRO BONO WEEK

The CMBA is pleased to join The Legal Aid Society of Cleveland and other community service providers to promote Celebrate Pro Bono Week Oct. 24–31. Pro Bono Week is a national event recognizing and promoting pro bono and community service and focuses the attention on the increased need for services throughout the year.

The full calendar of events and volunteer opportunities during Pro Bono Week is on page 8.

SAVE THE DATES

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<td>October 23</td>
<td>42nd Annual Estate Planning Institute</td>
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CMBA LEADERSHIP SERIES

The CMBA is launching a leadership series this fall and are pleased to kick off the 4-part series by serving as local site host for the ABA’s 2015 LEAD LAW program. The next three sessions in January, March and May will focus on leadership training and education for associates, women attorneys and in-house counsel.

**Session 1: Lead Law – October 23**

Whether you are a new attorney or in the prime of your career, LEAD LAW offers a leadership development experience designed to equip you with new perspectives and practical tools in the area of lawyer leadership. Don’t miss this unique opportunity to hear from the top minds and leaders in the legal industry.

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FASTCASE LIVE

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The 2015–2016 Legal Directory has arrived! Available in print and electronic format, if you have not yet placed an order, you can do so online or by phone. Members save at least $20. Call the CMBA at (216) 696-3525 or download the order form at CleMetroBar.org/directory.

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Our CLE department has more than 50 programs available before December 31st — not counting all the section lunch CLEs — there are plenty of opportunities to get any remaining hours you need this season or get a jump on next year’s reporting period. Check out the full list of programs online.
Tackling Real Estate Portfolio Deals
You Take the Good, You Take the Bad

BY LEE KORLAND

Here continues to be very strong demand for high quality commercial real estate. From 2011–2014, the volume of commercial real estate transactions nationally grew at an annualized rate well in excess of ten percent, and projections for the next 24 months suggest that transaction activity will again approach the levels seen at the height of the market back in 2007. While there are a combination of factors that have fueled this resurgence, including historically low interest rates, reduced vacancy, rental growth following years of stagnation, and large amounts of capital looking to be placed, the end result has been clear… much greater competition among potential purchasers that are chasing deals and a spike in prices being paid. The biggest challenge many real estate investors are facing is that there are just too few well-positioned assets being marketed for sale, and there are just too many other bidders looking to buy these properties at extremely aggressive prices.

For many buyers looking to pursue new investments in such a competitive market, the primary tactic being used to secure potential acquisitions is through multi-property portfolio deals. From a seller’s perspective, portfolio deals allow for the sale of struggling and less desirable properties that are often pooled together with prized, high demand assets. Portfolio sales also potentially reduce the time and transaction costs that might otherwise be required to sell numerous individual properties on a one-off basis. For a buyer that might otherwise be outbid on a single property, portfolio transactions can provide greater potential returns and possible discounted pricing based on the volume of the overall deal. Of course, the buyer is then stuck acquiring additional challenged real estate that may be in a poor location, have environmental concerns, require re-tenanting or redevelopment, or have other red flags.

Structuring a Portfolio Transaction
Whether a deal involves two properties or 20 or more properties, acquiring multiple properties brings about many additional challenges and unique considerations than are encountered when just a single asset is being purchased. Perhaps the biggest initial question the parties will face is if the portfolio transaction will be an all or nothing deal. A seller typically wants to ensure that a buyer is going to acquire each property in the portfolio, effectively being forced to take the good with the bad. From a buyer’s perspective, they may need the flexibility of being able to drop one or more assets from the deal, especially if circumstances arise that are beyond the buyer’s control.

For example, if a piece of real estate is subject to a casualty or condemnation action, can the buyer kick out that property from the deal? Similarly, what if previously unknown environmental contamination is discovered, a major anchor tenant at a certain property was to declare bankruptcy during the course of the transaction and look to terminate its lease, or the seller provided inaccurate representations in the purchase agreement as to a specific property? In all of these circumstances, a buyer may want the right to remove a property from the deal so as to avoid incurring significant transaction expenses only to have one unexpectedly “rotten apple” spoil the entire deal right before closing. Conversely, a seller would push to force the entire portfolio to remain a package deal, especially since the best assets are typically priced at some discount, and it is that very discount that is intended to compensate for the added risk surrounding the less desirable properties that a buyer is expected to acquire.

The parties also need to determine if a straightforward real estate transfer is most appropriate, or if the transaction should be structured as a stock or membership interest purchase where the actual ownership entities are acquired. This issue is often largely dependent on how the selling entities are owned and structured. The parties should also carefully review the tax considerations that come into play, the buyer’s proposed debt and equity sources, and if there will be an assumption of any existing loans or other liabilities.

Another key issue to initially address will be how the aggregate purchase price is allocated across the various properties.
Again, prime assets will often sell at some discount in exchange for the purchase of second-class assets that are in the portfolio. However, it may make sense to spread the total pricing across the properties in a manner that better promotes tax and transaction cost efficiencies. For example, transfer tax rates, title insurance premiums, and mortgage tax applicability vary across jurisdictions and should be considered when allocating pricing. Furthermore, current and future real estate tax rates and property assessment values should be reviewed across the portfolio so as to not inadvertently trigger significant property tax increases on certain assets.

The structure of the selling entities across the properties will also be an important factor in negotiating a portfolio transaction. Should there be a seller default during the course of the transaction, or should there be a post-closing breach of a representation or warranty made by a seller, a buyer will typically push to have all the selling entities jointly on the hook for any potential liability. However, if all the selling entities have ownership structures that don’t mirror each other or if the selling entities are part of a joint venture among unrelated parties, then those selling entities may be unwilling to allow for joint liability.

**Juggling Due Diligence and Loan Issues**

Perhaps the greatest challenge on a sizable portfolio transaction is coordinating the due diligence needed to review a large number of properties in what is often a very condensed period of time. It is not uncommon for portfolio buyers to have only 30 to 60 days (and sometimes even less) to review all aspects of a pool of properties, including title status, environmental, property condition, zoning and leasing matters. Given these time constraints, it is crucial to have your diligence team assembled quickly and to rely on a team of third party service providers that can facilitate the process, while also maintaining comprehensive diligence checklists throughout the transaction. Also, to the extent the properties are spread across several different states, then local counsel may need to be obtained at the outset of the deal. If much of the necessary diligence materials can be compiled and thoughtfully organized by the seller when the properties are first being marketed for sale, that can also help streamline the diligence process.

To avoid getting bogged down by the vast amounts of information to be reviewed and synthesized in such a short period of time, it is important that buyers focus on those crucial issues unique to the portfolio that may present the greatest risk of exposure or lost value. Each deal may have different primary considerations that demand immediate attention, whether it is focusing on potential third party or tenant purchase rights, property condition matters, opportunities for add-on development, or potential leasing issues (including violations of existing tenant exclusives, ongoing co-tenancy requirements, and leakage on tenant reimbursements of property expenses). The key is understanding what those critical issues may be on each different portfolio deal very early in the process. Many of these issues can also be examined during diligence through estoppel requests, although sellers will typically push to limit any estoppel requirements that might otherwise impede a potential closing.

Financing is another key item typically addressed during diligence, although many buyers will have this largely resolved even before bidding on a portfolio so as to make the buyer’s bid more attractive. If a large equity raise is required, if many different lenders will be involved on the transaction, or if existing loans are being assumed, this can make the overall deal much more complicated and can add to the time and expense necessary to get the deal closed.

**Getting Over the Finish Line**

Closing portfolio transactions presents another unique set of issues. Depending on the number of properties involved, the sheer volume of closing documents to be signed and delivered may require lengthy planning and careful coordination. Also, will all the properties close simultaneously (which may be imperative on an all or nothing deal), or will there be a staggered closing in stages? Many buyers often look to immediately flip portions of a portfolio to unrelated third parties, which then also brings additional parties to the closing table and may complicate funding issues and the closing process.

Furthermore, the greater the number of properties that are part of the portfolio, the greater the chances are that there may be ongoing work or repairs at a property at the time of closing, or that new leases are in the process of being put in place as closing occurs. Accordingly, the parties may need to address whether seller will retain, or buyer will assume, the responsibility for some or all of such ongoing work and tenant leasing costs. Additionally, mechanic’s lien issues will need to be resolved from a title insurance and lender approval perspective based on any such ongoing work.

As portfolio transactions continue to be prevalent in the market, buyers can realize significant gains but will also face many unique obstacles and risks to be overcome that are not typically found on sales of single properties. With careful planning and a strong team in place to manage the transaction, portfolio deals offer the chance to acquire prized assets that might otherwise be difficult to secure in today’s real estate market.

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Lee Korland is a Partner in the Real Estate and Environmental Practice Group at Benesch Friedlander Coplan & Aronoff LLP. He represents national and regional property owners, developers, lenders and borrowers, including private equity funds and large public REITs, in all facets of commercial real estate transactions. He has been a member since 1999. Lee can be reached at (216) 363-4189 or at lkorland@beneschlaw.com.
Ground Lease Fundamentals

BY MITCHELL COHEN

To Rent or To Buy?
When it comes to commercial real estate, most owners and investors have plenty of experience with the traditional land purchase. Far less common is the option to rent land, which can be a confusing concept for those unfamiliar with its use. Entering into a "land lease" (or "ground lease") transaction can offer significant advantages, but from the real estate lawyer's perspective, the ground lease has its fair share of legal complications. In this article, we will introduce the basics, identify when a ground lease makes sense, and highlight a few key concepts typically involved in the negotiation, documentation, and most importantly, financing of a ground lease.

Ground Lease Basics – It’s about Time and Money
The ground lease is a long-term contract entered into by the fee owner (referred to in the ground lease as the “Landlord” or “Ground Lessor”) who grants a possessory right to a developer (referred to in the ground lease as “Tenant” or “Ground Lessee”) to build certain agreed upon improvements. The nature of the improvements can range from the simplest uses (such as surface parking lots), to more sophisticated uses such as mixed-use, retail, hotel and other commercial buildings. For owners who lack the funds or the appetite for the risks of land development, a ground lease provides a means to shift those expenses and risks to experienced developers.

Why would a developer commit the time, effort, and capital into building improvements on someone else’s land? Obviously, there must be sufficient income potential over a long enough period for a developer to recapture his investment and earn a significant profit. As a result, ground leases usually have a term lasting 20 or more years, and in many cases as much as 99 years. This makes ground leases long-term commitments and big dollar contracts (multiplying the rents over that many years), so the stakes are high. As draftsmen, lawyers are keenly aware of the objectives of keeping lease terms simple, but when it comes to pre-determining, for example, a fair amount of rent be paid over 99 years, the significance of such economic outcomes merit the lawyer’s careful consideration.

When a Ground Leases Make Sense
For the Landowner, ground lease advantages often relate to estate planning. The foremost priority of the landowner is the ability to retain ownership and create value in the form of rental income (usually from a creditworthy tenant) over an extended period of time. Most ground leases are structured as "triple net" (i.e., the tenant is solely responsible for all aspects of the building and other improvements constructed upon the land, including payment of all taxes, insurance, and maintenance). This makes ground leased property desirable because it is easy for the ground lessor to manage. The owner need only sit back and collect the rents, usually with fixed rent increases over the term of the lease.

For the tenant/developer, the ground lease is about gaining access to well-located, desirable property that would not otherwise be available for sale, as many landowners desire to keep their prized property in the family. Additionally, the tenant/developer is able to avoid the costs associated with land acquisition, making available additional capital toward the cost of the buildings and other improvements.

The interests of the fee owner and tenant are aligned in many respects, but negotiation of the ground lease details can be challenging, particularly when it comes to financing and the competing interests of the tenant's lender.

Lender Issues
Financing the capital needed to develop the property is critical to the ground lease. From the lender's perspective, the tenant's leasehold interest is both capable of being mortgaged and insured by title companies. Commercial lenders, however, will only agree to lend if the collateral for the loan provides adequate security.

Risks of Leasehold Mortgages
A leasehold mortgage is inherently riskier than a traditional mortgage. Whereas most lenders need only be concerned with a borrower's default under the loan documents, a leasehold lender must also consider the risks in the ground lease which can be terminated following a tenant default. This would effectively wipe out the lenders collateral security entirely. Additional risks include interests held by third parties, such as fee mortgages or other liens (e.g., mechanic’s liens), which are potentially superior to the leasehold mortgage. A foreclosure of these competing interests can also terminate the leasehold mortgage. Finally, if the leasehold lender forecloses, it can only step into the shoes of its borrower (the ground lessee) and therefore remains subject to all of the lease covenants.

Reducing the Mortgagee's Risks
Each of these risks can be mitigated or eliminated by including certain protections in the ground lease (or in a separate agreement called a subordination, non-disturbance, and attornment agreement, or "SNDA"). The ground lease must be "financeable" by including provisions adequately protecting the lender's interests (called "mortgagee protections"). In the universe of potential lenders, however, some lenders require more protection and others will accept less depending on the deal terms. To discuss the myriad of issues facing a prospective leasehold lender is beyond the scope of this article, so we will touch on only the most salient points here.

Subordination – Getting the Words Right
Typically, when a loan is used to finance improvements, the lender will require a “first and best lien” on the property as collateral. In a ground lease, however, the owner’s fee simple interest in the land will always be senior to a later recorded leasehold mortgage. As such, a lender will usually require the landowner not only consent to the lien of the leasehold mortgage but also agree to “subordinate” its interests.

Subordination generally refers to the competing priority of claims and ownership interests in the property. The owner in a ground lease has two separate interests (i) a fee simple interest in the land (the "Fee Interest"); and (ii) a lessor’s interest in the ground lease (the "Leasehold Interest"). But it’s not always clear which of these two interests are intended to be subordinated. The parties themselves may have differing understandings, and the legal interpretations of the ground lease and SNDA will usually depend on the exact wording used in the documents.

When an owner agrees to pledge his “Fee Interest” as additional collateral for the tenant’s
lender, this is often called a “Subordinated Ground Lease.” In an “Unsubordinated Ground Lease,” no lien is placed against the fee. Instead, the leasehold estate is the primary security for the loan. But don’t let these titles mislead you. A Fee Interest can’t really be ‘subordinated’ to a leasehold mortgage since the leasehold mortgage derives directly from the lease, not the fee.

If the intent is to have the Fee Interest encumbered by a lien in favor of the tenant’s lender, the fee owner should be required to execute the leasehold mortgage itself or in a separate agreement called a “Joinder in Mortgage.” The key is in drafting language that unambiguously conveys not just a subordination of the owner’s interest in the ground lease but a lien on the fee. A recommended example may provide, “Owner hereby executes this Mortgage (or Joinder) as Mortgagor to subject this Mortgage to the fee simple estate of Owner.” In the absence of such clear intent, a court interpreting the agreement is without authority to enforce the intended subordination. This was the unfortunate result in one Ohio appellate case that involved the terms of a joinder agreement which provided: “execution of this joinder of mortgage is for the limited purpose of subjecting and subordinating lessor's interest created in the lease.” The Court held the fee simple interest was not an “interest created by the lease” and therefore refused to enforce the lender’s lien. *Culbertson Transportation Serv. v John Alden Life Ins. Co.* (Court of Appeals, Tenth Appellate District, Franklin County, 1997)

Where a subordination agreement is ambiguous, a court may use parole evidence to help interpret the meaning, but that may not be possible under long-term ground leases where the original parties may no longer be available to affirm their intent. This was the situation in a matter in which I was recently involved where my client purchased the leasehold interest of a tenant on a ground lease that was over 20 years old. The original parties to the lease were no longer available to explain their intent in a subordination clause which simply provided “owner agrees to subordinate its fee.” The client was at risk since the ground lease contained no restriction on the owner’s sale of the fee nor the ability to mortgage the fee interest. As it turned out, the owner’s heirs had collected enough annual rents and were finally ready to sell. In fact, they entered into a contract to sell the fee to an investor just days after the leasehold purchase. We took the position that subordination of the “fee” was sufficient to require the owner execute a subordination and joinder to the leasehold mortgage. The investor disagreed. Fortunately, we did not have to litigate the issue as the investor’s lender refused to close in the face of threatened litigation and a potential action for specific performance.

In the end, we successfully negotiated for an outright purchase of the fee at a significant discount, which enabled the client to control both the leasehold and fee interests.

The lesson learned? When it comes to ground leases that last for decades, a few key words can import dramatic legal significance that can result in one party realizing an economic windfall, or another incurring a significant loss. When in doubt, you had better spell it out.

Mitchell Cohen is a partner with the law firm of Chernett Wasserman, LLC. Mr. Cohen is licensed in Ohio and New York and has over 20 years experience handling all aspects of commercial real estate with emphasis on acquisition, development, leasing and finance. He has been a CMBA member since 2009. He can be reached at (216) 861-6229 or mc@chernettwasserman.com.
Pot Topics
Tuesday, October 20, 2015 – 3.00 hours CLE
CMBA Conference Center
1 p.m. – 4:15 p.m.
To legalize or not legalize? That is the question. The Ohio Marijuana Legalization Initiative, Issue 3 on the November ballot, is the talk of the town and the state. Join experienced Cleveland attorneys for an interactive and informative discussion about the rapidly growing marijuana industry as they examine a variety of practical issues within this emerging field of law, including: advising businesses and investors on the legal obstacles within the marijuana industry; navigating bank regulations; and workplace ramifications.
In addition, representatives of Responsible Ohio and Ohioans Against Marijuana Monopolies will present their respective cases for the passage/defeat of Issue 3.

Speakers
Kevin P. Murphy, Walter & Haverfield LLP
Christopher D. Stock, The State and High Group (representing Responsible Ohio)
Representative from Ohioans Against Marijuana Monopolies TBA
Richard D. Manoloff, Squire Patton Boggs (US) LLP, Moderator

The CMBA’s Estate Planning, Probate & Trust Law Section presents 42nd Annual Estate Planning Institute 2015
Friday, October 23, 2015 – Submitted for 6.75 CLE Hours
CMBA Conference Center
7:45 a.m. registration & breakfast 8:15 a.m. – 4:30 p.m. Program
8:10 a.m. welcome & Introductions
Erica E. McGregor, Tucker Ellis LLP, Institute Chair
8:15 a.m. ohio Update
Timothy J. Pillari, Wickens Herzer Panza Cook & Batista Co.
8:45 a.m. ohio Trust Company Legislation
Robert R. Galloway, BakerHostetler LLP
9:15 a.m. Come back to ohio!
Robert M. Brucken, Retired Partner, BakerHostetler LLP
9:45 a.m. break
10:00 a.m. Estate Planning Issues facing LGBT Clients
Joan M. Burda, Attorney at Law
10:30 a.m. Federal Update
Scott E. Swartz, Wellspring Financial Advisors, LLC
11:15 a.m. Administering Third Party Wholly Discretionary Trusts
David S. Banas, Hickman & Lowder Co., L.P.A.
11:45 a.m. Lunch (included with registration)
12:45 p.m. Use of Beneficiary Designations, PODs and TODs in Estate Planning
Jaclyn M. Vary, Schneider, Smeltz, Ranney & LaFond PLLC
1:15 p.m. Financial Effects of Basis Step Up and Estate Tax Inclusion
Thomas J. Pauloski, J.D., National Managing Director for Wealth Planning and Analysis, Bernstein Global Wealth Management Private Client Group

Call (216) 696-2404 or visit CleMetroBar.org/CLE for full schedule, updates, or registration.
LEAD LAW 2015 (Simulcasts)

Friday, October 23, 2015 (Live Simulcast) or Tuesday, December 8, 2015 (Simulcast Replay) – CMBA Conference Center – 5.5 hours CLE
Registration: 9:00 a.m.
Seminar: 9:30 a.m. – 4:30 p.m.

The CMBA is thrilled to be a local site host for the 2015 LEAD LAW program, which kicks off our 2015–16 Leadership Series. The next three sessions will focus on leadership training and education for associates, women attorneys and in-house counsel.

The American Bar Association’s (ABA) LEAD LAW was created to bring together the top minds and leaders in the legal industry.

WHY ABA LEAD LAW?
• Executive leadership development from top legal experts
• Train and equip our next generation leaders
• Build skills to lead each other, clients and our community

9:30 a.m. Welcome & Introductions
Tom Bolt, Chair, ABA LP Division, Managing Attorney, BoltNagi PC Law Firm, U.S. Virgin Islands
John E. Mitchell, Moderator, Chair Elect, ABA LP Division, Principal, KM Advisors, Chicago

PART 1 – LEAD YOURSELF

9:35 a.m. The Mind of the Lawyer Leader: What is “Leadership” and Why Is it Important for Lawyers to Be Skilled In It?
Dr. Larry Richard, Founder and Principal, LawyerBrain, LLC

10:05 a.m. Basics of Application of Leadership to Law Firms
Mark Beese, President, Leadership for Lawyers, Professor at University of Denver College of Law

PART 2 – LEAD YOUR CLIENTS

10:35 a.m. Influencing Clients and Enhancing Their Experience by Maximizing Value
Patrick J. Lamb, Valorem Law Group

11:05 a.m. Break

11:20 a.m. Effective Leadership in Practice: Attorney Client Collaboration
Stewart L. Levine, Founder and Principal, Resolution Works

PART 3 – LEAD YOUR FIRM

11:50 a.m. Leading Lawyers in Times of Uncertainty
Tom Grella, Past Managing Partner, McGuire, Wood & Bissette; member, ABA House of Delegates

12:20 p.m. Lunch On Your Own

1:20 p.m. The Heart of the Law Firm Leader
Linda A. Klein, Baker Donelson, Atlanta, GA: President, ABA

1:45 p.m. Effective Leadership of a Practice Group or Client Project
Pamela Woldow, Partner and General Counsel, Edge International

PART 4 – LEAD YOUR FIRM

2:15 p.m. Panel Discussion: Leadership Through the Organized Bar
Christina M. Liu, Winget, Spadafora & Schwartzbert, Moderator
William C. Hubbard, Nelson Mullins Riley & Scarborough, Columbia, SC; Immediate Past President, ABA
Anne Ellefson, Deputy General Counsel for Academics and Community Affairs, Greenville Health System; President, South Carolina Bar Association
Laneau W. Lambert, Turner Padget, Columbia, SC; President, National Conference for Bar Presidents
Jack Rives, Executive Director, ABA

2:50 p.m. Break

3:05 p.m. The Lawyer as a Servant to Society
Artika Tyler, Assistant Professor, University of Stain Thomas

3:35 p.m. Lawyer Leadership in the Rule of Law Initiative

3:50 p.m. Leading Through a Future of Change
Tom Daschle, Former U.S. Senator and Senate Majority Leader, Founder of The Daschle Group, a public policy advisory of Baker Donelson Law Firm

Best Practices for Mediation and Settlement Conferences

Friday, November 6, 2015 – 5.50 CLE and New Lawyer Training requested – CMBA Conference Center
Registration: 8:30 a.m. Seminar: 9:00 a.m. – 4:30 p.m.

This interactive seminar and workshop will provide insight into settlement conferences, court-ordered mediation and private mediation of civil cases. It is designed for both new and experienced attorneys, as well as staff attorneys who are interested in enhancing their mediation and advocacy skills. Participants will learn how our court processes work and the key differences between settlement conferences and mediation and will observe demonstrations of collaborative problem-solving. You will learn techniques and have an opportunity to practice skills to overcome impasse, conduct caucuses with attorneys and clients and find resolutions that work for all parties.

9:00 a.m. Introduction to ADR
Mark L. Wachter, Wachter Kurant LLC, CMBA ADR Section Chair

9:15 a.m. Review of ADR – Mediation and Arbitration
Deborah A. Coleman, Coleman Law LLC
Rebecca B. Wetzel, ADR Administrator Cuyahoga County Court of Common Pleas
9:45 a.m.  Uniform Mediation Act
Matthew Mennen, Civil Mediator, Cuyahoga County Court of Common Pleas

10:15 a.m.  Break

10:30 a.m.  Everything You Wanted to Know About Mediation
Katie Mercer, Case Western Reserve University School of Law, Moderator
C. David Witt, Cleveland Municipal Court Housing Division
Thomas G. Repicky, Private Mediation Services
Laura W. Creed, Chief Judicial Staff Attorney, Cuyahoga County Court of Common Pleas
Michael H. Diamant, Taft Stettinius & Hollister LLP

11:45 a.m.  Luncheon and 30-Minute CLE Presentation
History of ADR
Hon. James J. McMonagle, Vorys, Sater, Seymour and Pease LLP (invited)

12:45 p.m.  Mock Settlement Conferences/Mediations
Peggy Foley Jones, Giffen & Kaminski, LLC

1:30 p.m.  Simulated Settlement Conferences
– Small Group Exercises

3:00 p.m.  Break

3:15 p.m.  Review and Feedback from Simulated Settlement Conferences by Faculty

3:30 p.m.  Impasse Strategies
Jerome F. Weiss, Mediation Inc.
Niki Z. Schwartz, Schwartz, Downey & Co., LPA

4:15 p.m.  Closing remarks

The CMBA’s Real Estate Law Section presents

37th Annual Real Estate Law Institute 2015
Thursday, November 12 & Friday, November 13 – 12.00 CLE Hours – CMBA Conference Center
Thursday 8:30 a.m. – 4:45 p.m.  Friday 8:30 a.m. – 4:45 p.m.

THURSDAY, NOVEMBER 12 – 6.00 CLE

8:00 a.m.  Breakfast
8:30 a.m.  Welcome and Opening Remarks
Kevin M. Hinkel, Kadish, Hinkel & Weibel, Institute Co-Chair
Anne Owings Ford, CMBA President

8:45 a.m.  Bob Rosewater Award Presentation

9:00 a.m.  Current Developments
Lori Pittman Haas, Ulmer & Berne LLP
Irene M. MacDouggall, Tucker Ellis LLP
John W. Waldeck, Jr., Walter | Haverfield, LLP

10:30 a.m.  Break

10:45 a.m.  New Receivership Statute
M. Colette Gibbons, Ice Miller LLP
Tyson A. Crist, Ice Miller LLP
Linda M. Green, Chicago Title Insurance Company, Moderator

11:30 a.m.  Commercial Evictions: It’s Your (De)Fault
Michael A. Poklar, Law Office of Michael A. Poklar
Michael R. Stavnick, Singerman, Mills, Desenberg & Kauntz Co., LPA
12:30 p.m.  Lunch
Brent Larkin, Plain Dealer

1:45 p.m.  Commercial Leasing Issues – 2015
Steven H. Coven, Stark Enterprises
Leigh A. Hellner, Taft Stettinius & Hollister LLP
Robert A. Fuersz, Meyers, Roman, Friedberg & Lewis LLP

2:45 p.m.  Debt and Equity Financing
Anthony D. Delfre, Brown Gibbons & Lang Company Real Estate Advisors
Robert Katius, Vice President, CiviSta Bank
Brian J. Lenahan, Brown Gibbons & Lang Co. Real Estate Partners, Moderator
Terence L. Thomas, Thomas Legal Counsel Limited, Moderator

3:30 p.m.  Break

3:45 p.m.  CMBS: Then and Now
Jim Doyle, Jr., Sr. Vice President, Bellwether Enterprise
Thomas W. Coffey, Tucker Ellis LLP
Keith H. Raker, Tucker Ellis LLP, Moderator
John C. (Chaz) Weber, Jones Day

4:45 p.m.  Program Concludes & Cocktail Hour Begins

FRIDAY, NOVEMBER 13 – 6.00 CLE

8:00 a.m.  Breakfast
8:30 a.m.  Welcome and Opening Remarks
Paul J. Singerman, Singerman, Mills, Desenberg & Kauntz Co., LPA, Institute Co-Chair

8:45 a.m.  Title Endorsements
Leann Davis, First American Title Insurance Company
Michael J. Sikora III, Sikora Law LLC/Omni Title LLC
Mary Robenalt Porter, NorthStar Title Services
Deborah D. Zielinski, Chicago Title Insurance Company, Moderator

10:15 a.m.  Break

10:30 a.m.  Purchase Agreements: Legal Pitfalls and How to Avoid Them
Nick R. Catanzarite, Walter|Haverfield LLP
Daniel P. Hinkel, Kadish, Hinkel & Weibel
Madeline T. McGrane, Benesch, Friedlander, Coplan & Aronoff LLP
Mark J. Stockman, Frantz Ward LLP
Joseph M. Saponaro, Dinn, Hochman & Potter, LLC, Moderator

12:00 p.m.  Lunch
Jeff Heinen, Heinen’s
Chef Chris Hodgson, The Driftwood Group

1:30 p.m.  Environmental Issues
David B. Waxman, Waxman & Blumenthal LLC
Joseph P. Koncelik, Tucker Ellis LLP
Rob Snyder, The Fedeli Group

2:30 p.m.  Partnership Tax Concepts
That Every Real Estate Lawyer Should Know
John C. Goheen, Ulmer & Berne LLP
Larry Hirsh, McGladrey LLP
Christina Novotny, Baker & Hostetler LLP

3:30 p.m.  Break

3:45 p.m.  Design-Build: Constructing Better Contracts
Barry J. Miller, Benesch, Friedlander, Coplan & Aronoff LLP
Patrick J. Sweeney, Thompson Hine LLP

4:45 p.m.  Program Concludes
Register Early and Save!

Registrations the day of seminar will include an additional $15 fee

Registration must be pre-paid by cash, check or credit card in order to qualify for early registration price. Please keep a copy of your registration information. No tickets or confirmations will be sent for these seminars. Programs subject to change without notice. All events held at the CMBB Conference Center unless otherwise noted.

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Amendments to the Appellate Rules

The last few years have seen a few amendments to the Ohio Rules of Appellate Procedure — some stylistic, but others substantive. It’s not a bad idea to make a regular practice out of reviewing the rule amendments once a year, but for those who haven’t kept up, here’s a brief overview.

First, though, it might help to know the process. Amendments to most of the various state-wide rules go into effect each July 1. The proposed amendments go through a rigorous process before that happens. The Supreme Court has established a Commission on Rules of Practice and Procedure (made up of practitioners, judges, and law professors) to review and recommend amendments, and each amendment goes through two rounds of public comment before the rule is finalized. This process can take two years or longer. Ultimately, the court has final say on which rules are amended, and each amendment goes through a process of implementation. Once a year, but for those who haven’t kept up, here’s a brief overview.

The important amendments to the Appellate Rules from 2014 and 2015 are these:

Time to Appeal (2014): Most attorneys understand the maxim that we have 30 days to appeal. But when does the 30-day period start? If an order is final, the 30-day period usually runs on the date the trial-court clerk enters it. But what if the order is not final — and does not become so until it merges into a final order? Until last year, the rule offered no clarity on that point. Now, App.R. 4(A)(2) specifies that the 30-day period begins to run on the date the trial-court clerk enters a final order into which the prior order merges. And in those rare circumstances when a non-final order survives a voluntary dismissal (such as a monetary discovery sanction), the 30-day window begins to run on the date of dismissal.

Clarification to Rule Governing Manifest-Weight Challenges in Civil Cases (2015): One way to challenge a trial result is to argue that the judge’s findings (in a bench trial) or the jury’s verdict is against the manifest weight of the evidence. But in civil cases, manifest-weight challenges have been complicated by a confusing rule, App.R. 12(C). The rule confusion sprang from the fact that it formerly addressed manifest-weight challenges after only bench trials, leaving the inference that they are not also available after jury trials. App.R. 12(C) was amended in 2015 to clarify that they are available in both circumstances, although the relief is different for each. In a successful manifest-weight appeal from a bench trial in a civil case, the appellate judges can either remand for a new trial or enter a different judgment. But if the judges accept a manifest-weight challenge after a jury verdict in a civil case, the only option is to remand for a new trial (in order not to intrude on the jury’s fact-finding province). The former rule also limited an appellant to a single manifest-weight challenge — meaning a manifest-weight challenge would not be available in an appeal from a subsequent adverse verdict; that limiting provision was removed.

Service Through Clerk (2015): To accommodate the advent of electronic filing (which we now have in the 8th and 10th Districts), App.R. 13(D) now provides that a party may rely on the clerk’s office to accomplish service if the clerk sends out electronic notifications of filings — but only “[i]f a local rule so authorizes.” It is unclear whether the Eighth District’s rule “so authorizes,” because it provides, circularly, that service for e-filed documents “shall be accomplished in the manner prescribed by the appellate rules.” See Loc.R. 13.1(C), Eighth Dist. Ct. App. The court probably intends to authorize service by the clerk, but until the local rule is clearer, it would be wise to serve your adversaries yourself. For those who practice in the Tenth District, the amendment does not change anything: the local rule explicitly precludes reliance on clerk service. See Loc.R. 2(E) of the Tenth Dist. Ct. App.

Transcript Delays (2014): The rules have historically placed on the appellant the duty to “ensure” a complete record, including a transcript. But the transcript is often delayed by circumstances beyond the appellant’s control, such as the court reporter’s schedule. App.R. 9(B)(1) was amended to fix that problem by changing “ensure” to “make reasonable arrangements.” And App.R. 10(A) now specifies that “the appellant is not responsible for any delay or failure to transmit the record” if the appellant has, in fact, made those “reasonable arrangements.” See also App.R. 11(C) (court shall not dismiss an appeal for failure to transmit the record if appellant has made the required “reasonable arrangements”). The rule leaves open the definition of “reasonable arrangements,” but presumably if the appellant orders and pays for the transcript, the court will not dismiss the appeal for failure to file a timely record.

Expedit ed Appeals (2015): The rules for handling expedited appeals — that is, those governing prosecutorial appeals from suppression orders and those governing certain juvenile cases — have been clarified. These clarifications are found in App.R. 3(G), 9(B)(1) and 11.2(D). Among them is a requirement that the appellant identify the appeal as “expedited” in a docketing statement, in order to ensure that the court is aware of the need for speed.

Coming Soon?
Another rule that was on the table for 2015, and that may go into effect in 2016 if approved this year, would permit the parties in their briefs to combine the statements of the case and facts, as the federal rules now authorize. Stay tuned. And if you have a suggestion for a change to any of the rules, feel free to submit your suggestion; for more information, go to http://www.supremecourt.ohio.gov/Boards/practiceprocedure/proposal.asp.

Andrew S. Pollis, an associate professor at Case Western Reserve University School of Law, serves on the Supreme Court Commission on the Rules of Practice and Procedure and co-authors the yearly treatise Ohio Appellate Practice. He has been a CMBA member since 1998. He can be reached at (216) 368-2769 or andrew.pollis@case.edu.
A number of local communities in Ohio have passed laws attempting to ban or severely limit hydraulic fracturing (aka “fracking”). Two such laws — enacted in Munroe Falls and Broadview Heights — were recently challenged and held to be invalid exercises of their home rule powers because of state preemption of oil and gas drilling and related operations.

**Munroe Falls Ordinances**

The Munroe Falls laws were challenged by Beck Energy Corporation (Beck), which had obtained a permit in 2011 from the Ohio Department of Natural Resources (ODNR) to drill an oil and gas well on property within the city of Munroe Falls.

Soon after Beck began drilling pursuant to its permit, the city of Munroe Falls issued a “stop-work” order and filed a complaint seeking injunctive relief, alleging Beck had violated multiple provisions of the Munroe Falls Codified Ordinances. The ordinances created a city permitting requirement for the drilling of oil or gas wells within the city and provided criminal penalties for any violation.

Beck argued that the city's ordinances were in conflict with the State of Ohio regulatory scheme for oil and gas well drilling and operation, as set forth in R.C. Chapter 1509. That chapter provides that ODNR has “sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations” within Ohio, explicitly reserving to the state, and to the exclusion of local government, the right to regulate “all aspects” of those activities, including permitting.

The city of Munroe Falls contended that its ordinances at issue were a valid exercise of the Home Rule Amendment of the Ohio Constitution which provides in Article XVIII, Section 3 that:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

The trial court held for the city of Munroe Falls, ruling that Beck was permanently enjoined from drilling until it complied with the Munroe Falls permitting requirements. The appellate court reversed.

The Ohio Supreme Court agreed to hear the case, and — after applying an analysis of the limits of a city's police powers under the Home Rule Amendment of the Ohio Constitution — struck the local ordinance and held for Beck. The Court concluded — in *State ex rel. Morrison v. Beck Energy Corp.*, Slip Opinion No. 2015-Ohio-485 (2/26/15) — that the Munroe Falls ordinances imposed a separate, additional permitting scheme in direct conflict with that created by R.C. Chapter 1509.

The Court held that city law must yield to state law if (1) the city law is an exercise of its police powers rather than of local self-government, (2) the state law is a general law, and (3) the local law is in conflict with the state statute.

Addressing each element of that analysis, the Court first held that the city law did not regulate the form and structure of local government; rather, it prohibited — indeed criminalized — the doing of something (drilling without a city permit), which constitutes a clear exercise of police powers.

Secondly, the Court held that state law is a general law because it is part of a statewide comprehensive legislative enactment applying uniformly throughout the state, setting forth regulations not purporting to only grant or limit the city’s power to prescribe the regulations, and it prescribes a rule of conduct upon citizens generally.

Finally, the Court held that a conflict between a city and state statute exists where “the
ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” Here, the city law conflicts by prohibiting what R.C. Chapter 1509 allows: state-licensed oil and gas production in Munroe Falls. The Court held that Beck's license from ODNR was rendered meaningless without also satisfying the Munroe Falls permitting process, which imposed a number of additional hurdles above and beyond that required by the ODNR.

The Court further held that the Ohio General Assembly intended to preempt local regulation on the subject by the clear language of R.C. Chapter 1509 which gives “sole and exclusive authority” — to the exclusion of local governments — to ODNR to regulate “all aspects” of oil and gas wells and production operations in Ohio. However, it did not entirely shut the door, stating, “[w]e make no judgment as to whether other ordinances could coexist with the General Assembly’s comprehensive regulatory scheme.”

The lead opinion was written by Justice French, with O’Connor and Kennedy concurring and Justice O’Donnell concurring. Justices Pfeifer, concurring and Justice O’Donnell concurring

in light of these rulings, which hold that such limits and attempted to limit constitutional and statutory rights of violators of the ban. The charter amendment was put on the ballot as a result of a voter initiative petition lead by the “Mothers Against Drilling in Our Neighborhood.”

The charter amendment was challenged in Bass Energy, Inc. v. City of Broadview Heights, Cuy. C.P, Case No. CV-14-828074, 45 ELR 20048 (3/11/15). ODNR filed an Amicus Curiae Brief supporting plaintiffs’ declaratory judgment.

Judge Michael K. Astrab of the Cuyahoga Court of Common Pleas — in an eight-page opinion — applied the same three-pronged analysis used by the Ohio Supreme Court in Morrison, holding that the Broadview Heights Charter Amendment at issue was an invalid exercise of the city’s home rule powers, preempted by R.C. Chapter 1509.

While Bass Energy was pending, a class-action lawsuit was filed — Mothers Against Drilling in Our Neighborhood v. Ohio, Cuy. CP, Case No. CV-14-836899 (7/1/15) — seeking declaratory and injunctive relief to “enforce the Charter Amendment’s provisions and to enjoin the Defendants from violating the people of Broadview Heights’ inherent and unalienable civil and political rights.” Defendants were the State of Ohio, Governor Kasich, the City of Broadview Heights, and two drilling companies.

Cuyahoga Court of Common Pleas Judge Timothy McCormick granted defendants’ motions to dismiss, holding:

Like Bass Energy, this court rules that the principles articulated in Morrison necessitate a finding that Article XV [the Broadview Heights Charter Amendment] is preempted by R.C. Chapter 1509. Thus, Article XV is unenforceable.

An appeal of the trial court’s ruling has been filed.

Conclusion

Local laws enacted by Ohio cities — pursuant to their home rule powers — attempting to ban or severely restrict oil and gas drilling and related operations are not likely to be upheld in light of these rulings, which hold that such laws are preempted by R.C. 1509.

Carter E. Strang is a partner with Tucker Ellis LLP and a member of its Oil and Gas, Environmental Law, and Mass Tort & Product Liability Practice Groups. A member of the CMBA Environmental Law Section, he founded the CMBA Green Initiative. He also co-chairs the CMBA 3Rs Curriculum Committee and continues to support the award-winning Louis Stokes Scholars Program, which he created as CMBA president in 2012. He has been a CMBA member since 1984. He can be reached at (216) 696-3956 or carter.strang@tuckerellis.com.
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A Practical Guide to Sale/Leaseback Transactions

BY DAVID K. HALES

low interest rates, and the correspondingly low capitalization rates that real estate investors are willing to accept, continue to boost sales prices for corporate real estate. Given today’s low cost of funds and high asset prices, stable companies with strong credit are asking themselves if it pays to keep owning their real estate in today’s market? Some companies are deciding it pays to sell that real estate and then lease it back from the buyer. Below are some practical issues the real estate lawyer needs to consider when advising clients on a sale/leaseback transaction.

In a sale/leaseback transaction, a company with a large piece of property that is important to the company’s business can sell that property to a real estate investor, who in turn leases the property back to the company for continued use in the business. The sale/leaseback transaction can monetize the company’s equity sitting in that property, and the company can price the property and the rents under the sale/leaseback lease in light of today’s low interest rates and capitalization rates. Depending on the company’s credit rating, and the significance of the real estate to the company’s business model, the right property will command a significantly higher price than it would without the company’s credit rating behind it. For those companies with investment rated debt, the capitalization rate paid for the property by a real estate investor can approach a small spread over the company’s investment rated bonds. In those instances, the real estate is merely an investment vehicle for the investor, with the company’s promise to pay the rents under the sale/leaseback lease amounting to a real estate backed bond.

A sale/leaseback transaction may sound like a great idea to your company client. Who wouldn’t want to realize a great sales price for their property and still be able to use that property in their business? There has to be a catch, right? What should you discuss with your client when they present this idea to you? First, I suggest you discuss both parts of the sale/leaseback transaction. Your experience may agree with my experience that most clients focus on the net proceeds of sale first, and the sale/leaseback rental obligations last. The net proceeds of sale can be substantial, to be sure, but that is a one-time event. Then the company has to live with the sale/leaseback lease obligations.

To gain the maximum sales price for the property, the term of the sale/leaseback lease will need to be long, sometimes as long as 20 years after the sale. This long term limits the company’s flexibility in adjusting to different business conditions in an economic downturn. You can minimize this inflexibility by negotiating “go dark” provisions and the right to sublease excess space at the facility, but you will not be able to negotiate an early termination right for your client without impacting the property’s sales price. Likewise, you can negotiate a permitted assignment provision to facilitate a sale of the property by the company to a permitted assignee with an equal or greater creditworthiness than the company. But remember that, in an economic downturn, your client will not have the ability to defer maintenance or repairs to the property as most companies do to preserve cash flow in recessions. Instead, sale/leaseback leases are triple net, and “bondable” type leases that obligate the company to maintain the property, with periodic property inspections by the landlord and its mortgage lender.

While many practitioners understand that sale/leaseback leases will limit a company’s flexibility on the downside, a real estate lawyer should consider the impact of a sale/leaseback on a company’s ability to manage the upside as well. For instance, if the entire company is offered for sale after a sale/leaseback transaction, will a potential buyer of the company want to assume the sale/leaseback lease? Presumably the company’s principals benefited from the sales price and net proceeds of sale, but the potential buyer of the company will inherit the ongoing lease obligations. Perhaps that will be a positive, if market rents have risen since the sale/leaseback transaction, and perhaps it will be a negative if market rents have fallen, making the sale/leaseback lease “out of market.” If the potential buyer is a so-called “strategic” buyer and not a “financial” buyer, one that wants to buy the company and then consolidate it with its own operations, the sale/leaseback lease obligations may be unattractive to that strategic buyer. You can attempt to mitigate this scenario by negotiating the right to substitute the real property with property acceptable to the landlord, or to provide another type of defeasance mechanism in the lease, but substitution and defeasance provisions are difficult to negotiate and expensive to exercise.

Another issue arises if the company needs to expand the building at a later date. Sale/leaseback leases can restrict modifications to the building, and the investor’s mortgage will likely prohibit additional mortgage financing, even mortgage financing to pay for a building expansion. You can negotiate the right to expand the building at the company’s expense. You might be able to negotiate the right to place leasehold mortgage financing on the property to pay for the building expansion, on the condition the leasehold mortgage will not encumber the landlord’s fee simple, and on the condition that

A sale/leaseback transaction is a good way to unlock a company’s equity in its real estate while still allowing the company to continue using that property in its business.

Transactions

A Practical Guide

REAL ESTATE LAW

By David K. Hales

October 2015

Cleveland Metropolitan Bar Journal

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you first obtain the consent of the landlord's mortgage lender. This consent by the landlord's mortgage lender likely will require, in turn, an intercreditor agreement between the fee mortgage and leasehold mortgage lenders, which you can imagine will take time to obtain. To minimize this inflexibility and delay, you can try to carve out any excess or vacant land from the premises leased under the sale/leaseback lease, and hold it out of the sale/leaseback deal, so that the company can build on the vacant land later without involving the sale/leaseback landlord or its mortgage lender. In doing so, you will need to consider, among other things, negotiating the right to join the building addition to the original building, and any side yard or other zoning variances needed from the local municipality.

Sale/leaseback transactions have accounting and tax implications as well. Regardless of your accounting and tax background, I suggest you work closely with the company's accountants concerning the recognition of gain, and the capital lease or operating lease treatment of the transaction, and the consolidation for financial reporting purposes of related parties, so that the company has an up front, accurate expectation of its financial reporting and tax treatment.

Many working capital lenders have restrictive covenants in their working capital loan agreements concerning sale/leasebacks. You should review the loan agreements to determine if the company's working capital lender must consent to the sale/leaseback transaction. Also, you should determine whether the company has to obtain a landlord waiver from the sale/leaseback landlord before the company's working capital lender will add the company's personal property at the leaseback facility to the company's borrowing base under its working capital loan agreement. Since the company's working capital lender will likely change during the long term of the sale/leaseback lease, many practitioners add into the sale/leaseback lease the obligation of the landlord to provide a landlord waiver from time to time to the company's working capital lender.

Lastly but importantly, the real estate professional should review with the company what is, and what is not, included in the sale/leaseback transaction. Some of the company's personal property, fixtures, or trade fixtures may be leased by an equipment lessor and not owned by the company, and thus not eligible for inclusion in the sale/leaseback. But less obviously, perhaps the mineral interests for the land, or any cell tower, oil and gas lease, or billboard at the land, should be excluded and not sold as part of the sale/leaseback. Excluding these items from the deal may not reduce the sales price being offered by the real estate investor, who is more focused on the net operating income under the sale/leaseback lease than these items.

A sale/leaseback transaction is a good way to unlock a company’s equity in its real estate while still allowing the company to continue using that property in its business. However, sale/leaseback transactions are long term arrangements, and the prepared real estate lawyer will think ahead about the flexibility needed during the long term of the sale/leaseback lease. An upfront discussion with your client can yield a better, more thoughtful transaction that provides flexibility for your client and the benefits offered by the sale/leaseback transaction.

David K. Hales is a partner in the real estate group of Calfee, Halter & Griswold LLP’s office in Cleveland, Ohio, and David has significant experience counseling companies, lenders, and investors on commercial real estate matters. He has been a CMBA member since 1997. You can reach David at (216) 622-8317 or dhales@calfee.com.
Innovative Local Development Leverages EPA’s New Integrated Planning Framework

BY LOUIS L. McMAHON & KEELY J. O’BRYAN

Cleveland and Northeast Ohio abound with exciting construction projects. A summer of orange barrels and high profile development projects grab headlines. But behind the headlines, generation-long sewer infrastructure investments that dwarf previous public works are happening, and these will shape much of our 21st century metropolis. The works are happening, and these will shape investments that dwarf previous public

Planning Framework

Leverages EPA’s New Integrated Development

Sewer Overflows (CSOs) in the system’s 312 infrastructure program to control Combined Sewer System plus the stormwater sewers that the communities own. With the proper strategy, communities can now utilize EPA’s Integrated Planning approach to create a more efficient and flexible approach to infrastructure upgrades.

EPA offers Integrated Planning Framework to coordinate and innovate.

Integrated Planning, as the name suggests, can be broadly defined as common sense coordination of infrastructure improvements with regulatory compliance, economic affordability, and community development initiatives. In environmental regulatory law, Integrated Planning refers to EPA’s new CWA framework. On June 5, 2012, EPA published its guidance document entitled “Integrated Municipal Stormwater and Wastewater Planning Framework.” This was followed on November 24, 2014 with “Financial Capability Assessment Framework for Municipal Clean Water Act Requirements.” Both documents and other relevant materials are available on EPA’s webpage for Integrated Planning.

Together, the guidance documents outline the Integrated Planning requirements for communities, which include detailed systems analyses, articulation of compliance goals, active and ongoing public participation, and a financial plan to achieve compliance. EPA cites opportunities for Integrated Planning as including: the prioritization of CWA compliance activities to achieve the best environmental improvement for public dollar spent; access to innovative approaches such as use of green infrastructure; and affordable and equitable approaches that can harmonize with other community investments and goals, such as brownfields redevelopment. Both documents concede that communities must be able to prioritize capital investments when implementing CWA upgrade requirements.

Local entities lead Integrated Planning implementation.

Integrated Planning is not a new EPA “program” or regulation. Beyond the guidance documents, there is little legal definition of the process. Integrated Plans will not be approved by EPA, but can form the basis of new permits or revised consent decrees. The burden of developing integrated plans, and getting EPA to agree to implement them in permits and consent decrees, falls completely on the local community. On this path, Northeast Ohio entities already are leading the way.

NEORSD

NEORSD concluded its CSO Consent Decree before EPA formalized the Integrated Planning approach. Nonetheless, NEORSD actively fosters Integrated Planning approaches to achieve water quality improvement. It already has expanded and adjusted its pioneering green infrastructure efforts to leverage community involvement. NEORSD is currently reviewing the feasibility of an intensive Sewer System Evaluation Study of the collection systems that are tributary to its regional system. This study can articulate and lead to prioritization of capital infrastructure investments and reduce the amount of stormwater that unnecessarily mixes with sewage. NEORSD also is reviewing the possibility of a grants program to assist communities with appropriate infrastructure projects. Coupled with NEORSD’s expertise on stormwater and wet weather issues, these activities can provide a strong technical
foundation that EPA’s Integrated Planning documents contemplate.

Lakewood
The City of Lakewood has been implementing Integrated Planning in the context of Clean Water Act compliance since 2007, long before the efforts were recognized with that name. Lakewood owns and operates its own wastewater treatment plant. It also owns a sewer collection “system” that is a unique mixture of classic single-pipe combined sewers, so-called “over-under” sewers (where storm sewers are located directly over sanitary sewers in the same trench), and some fully separated sewers. The Lakewood “system” was developed by connecting many original neighborhood area sewers after they were built into a city-wide network.

Lakewood’s challenge is that, as a community that is densely populated and has been entirely built up since before WWII, it has limited green space and no ‘unused’ space. Any sewer retrofits or upgrades need extensive analyses so that unintended public health impacts, such as new basement backups, can be avoided.

Today, after many years of detailed investigation and computer modeling, Lakewood has the ability to evaluate the impact of new land use developments on potential system overflows. This complements Lakewood’s success in leveraging stormwater retention in recent public and private construction through zoning and other ordinances. Lakewood has made major investments in specific projects, including a project that will eliminate two of its last three permitted CSOs discharging to the Rocky River. Lakewood’s investment in Integrated Planning allows it to nimbly incorporate new developments in its overall plan, and to have assurance that its sewer and plant investments are not too big or too small.

Irishtown Bend — Integrated Planning Moves Toward Collective Solution.
As part of its recent strategic plan, the Cleveland–Cuyahoga County Port Authority undertook the challenge of addressing potential risk of impairment to navigation on the Cuyahoga River at what is called Irishtown Bend, the area of Cleveland roughly between Detroit Avenue and Columbus Road on the west side of the river. The risk of hillside failure imperiled not just commercial navigation, but was a hurdle to several infrastructure and neighborhood development issues. These included replacement of bulkheads on the riverfront, protection of city roads and the future route of the Cleveland Foundation Centennial Trail, risks of damage to a major sewer interceptor, flooding of structures associated with the Veterans Memorial Bridge, and significant limitations on development of the east side of W.25th Street.

Because of the Port’s intensive analysis and coordination with other entities, multiple parties have combined efforts to unlock a major area of greenspace connected to the development occurring along W. 25th Street and around the West Side Market. The players integrating their efforts include the Port, NEORSD, the City of Cleveland (multiple departments), the Cleveland Metroparks, Cuyahoga County, ODOT, CMHA and Ohio City, Inc. This project is a prime example of a broadly defined use of the Integrated Planning process to achieve innovative and collaborative results for our communities.

New Integrated Planning Framework is not a panacea.
Where common sense coordination can fit within existing regulation, there is opportunity. But at this stage of regulatory development, it is critical to understand that Integrated Planning is an emerging arena that does not yet have black letter legal authorities. Much depends on context and the relationship among the relevant local entities and the regulating agencies, such as EPA and Ohio EPA. A local example involves the City of Akron, which sought to make changes to its Consent Decree program to incorporate Integrated Planning. Akron provided the technical basis for the requested change, along with an exhaustive affordability analysis pursuant to EPA guidance. But EPA did not support the request, and Akron’s motion to change the Consent Decree was rejected by the Court on March 18, 2015. See, US v. City of Akron, 2015 WL 1246117, Case No. 5:09CV272 (N.D. Ohio).

Integrated Planning enables innovation and flexibility.
In the world of specialized regulatory law, common sense is not always so common. Where local governments constantly struggle to meet immediate needs, long range planning can present a very significant challenge. But long range planning in the area of CWA compliance is the essential element to any cost-effective approach. Those that can integrate future regulatory requirements with other needs can minimize costs and position themselves for grants. They are equipped to incorporate changes in technologies and land use that can occur over a multi-decade program.

It may not be headline-grabbing, but the long work of cost-effectively re-inventing our local infrastructure is well underway and many of our communities are national leaders leveraging all the flexibility EPA has to offer.
Towing Cars from Private Property Gets More Complicated

BY JOSEPH “JAY” CUSIMANO

On March 23, 2015, a number of changes to Ohio’s laws on towing cars from private property became effective. The primary aim of the new laws is to provide vehicle owners with more rights and stem predatory towing practices by unscrupulous towing companies. While the goals are laudable, the law has already resulted in a reduction in the number of companies willing to tow vehicles. The net effect is that many property owners are finding they are without a viable option to remove vehicles improperly parked or stored on their property. A review of the requirements for towing a vehicle from private property reveals why towing a vehicle from private property in Ohio has become a much more difficult proposition.

Under Ohio law, specifically amended Revised Code §4513.60, if a person parks their car without permission on another person’s property, the property owner can call the police, who can authorize the towing of the vehicle. However, this right only extends to the owner of a property that has three or fewer residents.

Pursuant to newly enacted Revised Code §4513.601, for any commercial property and any community with more than three homes, the property owner can have a vehicle that is parked or stored in violation of the owner’s parking rules towed from the property only if the property is marked as a private tow-away zone. To do so, the owner must post a sign that is at least eighteen inches by twenty-four inches in size, that is visible from all entrances to the property, and that includes all of the following information:

(a) A statement that the property is a tow-away zone;

(b) A description of persons authorized to park on the property. If the property is a residential property, the owner of the private property may include on the sign a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner. If the property is a commercial property, the owner of the private property may include on the sign a statement that only customers may park in the private tow-away zone. In all cases, if it is not apparent which persons may park in the private tow-away zone, the owner must include on the sign the address of the property on which the private tow-away zone is located or the name of the business that is located on the property designated as a private tow-away zone;

(c) If the private tow-away zone is not enforceable at all times, the times during which the parking restrictions are enforced;

(d) The telephone number and address of the place from which a towed vehicle may be recovered at any time during the day or night; and,

(e) A statement that the failure to recover a towed vehicle may result in the loss of title to the vehicle. (Revised Code §4513.601(A)(1))

The new requirements no longer require that the cost of towing a vehicle be included on the sign, though the law still regulates the cost of towing at $90.00, plus $12.00 per day, for storage for typical vehicles, and $150.00, plus $20.00 per 24-hour period, for trucks or buses with a gross vehicle weight rating in excess of 10,000 pounds. (Revised Code §4513.601(G)(1))

(b) Once the signs are posted at each entrance, the owner can begin having vehicles towed.

Tow-away signage that was in place prior to March 23, 2015, must be updated before September 23, 2015. This can be done by replacing the existing sign with a new one, by placing a sticker on the existing sign that includes the new language requirements, or adding a second sign to supplement the existing sign. (Revised Code §4513.601(A)(1))

The creation of the private tow-away zone under the new law is fairly straightforward. The requirements for actually towing vehicles are not.

To begin, before a vehicle is towed, the towing company, not the property owner (though the owner is best protected by doing so as well), must “make all reasonable efforts to take as many photographs as necessary” to show the car is “clearly parked on private property in violation of a private tow-away zone.” The company also needs to record the time and date when the pictures were taken and keep the pictures for 30 days after the owner recovers their car or at least two years if the car owner does not claim the car, whichever happens first. (Revised Code §4513.601(D)(1))

If in the process of removing the vehicle from the property, the property owner (or operator) arrives before the vehicle is actually towed away, the towing service must advise the owner, verbally or in writing, that if they pay half the usual towing fee, the vehicle will be released to them before being towed away. If the vehicle owner agrees and pays the fee, the towing company must provide the owner with a receipt showing the amount of the normal towing fee and the amount actually paid, and release the vehicle. The vehicle owner must then immediately remove the vehicle from the property, so that it is no longer in violation of the property owner’s regulations. (Revised Code §4513.601(C))

If the municipality where the property is located requires towing companies to be licensed, the property owner must use a properly licensed company. (Revised Code §4513.601(B)(2)) The towing service must bring the car to a well-lighted location that is within 20 linear miles of the community, if it is practical to do so, within two hours of being towed. (Revised Code §4513.601(A)(2))

Within the same two hour time period, the tow service must notify the local police with the vehicle’s license number, make, model, and color, from where the vehicle was taken, the time and date of removal, and the telephone number and address of the lot where the owner of the vehicle can retrieve the vehicle. (Revised Code §4513.601(E)(1)) If the municipality where the property is located has public transportation, the tow lot must be within a reasonable distance of a regularly scheduled stop. (Revised Code §4513.601(A)(2)(c))

After towing the car, the towing service is required to conduct an immediate search of the bureau of motor vehicle’s records to determine who owns the vehicle as well as any lienholder of the vehicle. (Revised Code §4513.601(F)(1)) Within five business days of the towing, if the vehicle has not yet been recovered, the
A towing company must also permit a vehicle owner to retrieve any personal property from the vehicle without any fee charged, even if the owner does not reclam the vehicle itself. (Revised Code §4513.601(G)(3))

While the new laws may cause some private property owners to incur some expense in replacing or modifying their existing tow-away signs, the law does not impose financial liability on an owner for not complying with the law. The same is not true for towing companies.

Amended Revised Code Section 4513.611, which became effective September 29, 2015, provides that if the owner of a vehicle that is towed shows that the towing service or storage facility failed to comply with the Ohio towing requirements, the towing company can be charged $1,000.00 for its first violation within a 12-month period. If the towing company commits a second violation within the same 12-month period, a court will award the vehicle owner $2,500 for the second violation and each subsequent violation. After three violations in a 12 month period, a towing company's license is suspended for six months. (Revised Code §4513.611(A)) Also, if the towing company's violation of the law results in damage to the owner's vehicle, the towing company must pay three times the actual damages, plus reasonable attorney's fees. (Revised Code §4513.611(C))

Because of the significant new requirements and penalties for towing services, along with the statutory limitation on fees legitimate towing services can charge, the benefits of towing for many companies no longer justify the potential risks and liabilities. A number of towing companies have notified their clients they are getting out of the private property towing business. The impact on private property owners has been particularly acute in suburban and more rural areas where few companies operate.

Attorney Jay Cusimano focuses his practice exclusively on the representation of community associations throughout Ohio. He is a past Chair of the Real Estate Section of the Cleveland Bar Association and past Co-chair of the Common Ownership Committee of the Real Estate Section. In 2005, he became the second attorney from Ohio to be accepted into the national College of Community Association Lawyers.” He has been a CMBA member since 1992. He can be reached at (216) 696-0650 or jcusimano@kamancus.com.
Classifieds

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### October

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<tr>
<td>PLI: Fundamentals of Swaps &amp; Other Convergence – 8:30 a.m.</td>
<td>Estate Planning Section Meeting &amp; CLE</td>
<td>10th Annual COSE Small Business Convention (Public Auditorium)</td>
<td>CMBA Board of Trustees Meeting</td>
<td>10th Annual COSE Small Business Convention (Public Auditorium)</td>
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<td>Fastcase Training</td>
<td>Grievance Committee Meeting</td>
<td>Intellectual Property Section</td>
<td>Court Rules Committee Meeting</td>
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<td>Pot Topics – 1 p.m.</td>
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<td>Estate Planning Institute – 8 a.m.</td>
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Saturday, October 31st – Halloween Run for Justice – 7:30 a.m. (The Galleria)

### November

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<td>PLI: Antitrust Counseling &amp; Compliance – 8:30 a.m.</td>
<td>Grievance Committee Meeting</td>
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<td>YLS Council Meeting</td>
<td>ADR Seminar – 8 a.m.</td>
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<td>PLI: Think Like a Lawyer And Talk Like a Geek – 8:30 a.m.</td>
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<td>ADR Section</td>
<td>Insurance Law Section</td>
<td>CMBA Executive Committee Meeting</td>
<td>Communications Law in the Digital Age – 8 a.m.</td>
<td>PLI: Communications Law in the Digital Age – 8 a.m.</td>
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<td>JFA Committee Meeting</td>
<td>UPOL Committee Meeting</td>
<td>Real Estate Law Institute</td>
<td>Real Estate Law Institute – 8 a.m.</td>
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<td>WIL Section Meeting</td>
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<td>Workers’ Comp Section</td>
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<td>PLI: Patent Litigation – 8:30 a.m.</td>
<td>Special Education Seminar – 8 a.m.</td>
<td>CMBA Board of Trustees Meeting</td>
<td>CLE Program – Insurance Law – 8 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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<td>Ethics Seminar – 1 p.m.</td>
<td>Estate Planning Section Meeting &amp; CLE</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>Family Law Section Meeting &amp; CLE</td>
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<td>Membership Committee Meeting</td>
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<td>National Business Institute</td>
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<td>WIL Wine &amp; Chocolate Event – 5 p.m. (Heinen’s)</td>
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<td>CMBA Closed for Thanksgiving</td>
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Saturday, November 14th – Municipal Law Update – 8:30 a.m. (Independence Civic Center)

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
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The following Weston Hurd attorneys have been selected for The Best Lawyers in America 2016: Fred J. Arnow (Real Estate Law), Jack S. Kluznik (Employment Law – Individuals/Management; Entertainment Law – Motion Pictures and Television/Music; Labor Law – Management; Litigation-Labor and Employment), Jeffrey L. Tasse (Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants), and Hilary S. Taylor (Insurance Law; Municipal Law).

The following attorneys have been selected for The Best Lawyers in America 2016: Harry D. Cornett, Jr. (Legal Malpractice Law – Defendants), Richard Dean (Mass Tort Litigation/Class Actions – Defendants), Mark McCarthy (Product Liability Litigation – Defendants), and Robert Tucker (Personal Injury Litigation – Defendants).

McGlinchey Stafford PLLC is pleased to announce Barbara Friedman Yaksic is recognized as Litigation – Banking and Finance “Lawyer of the Year” and “Best Lawyer” in Commercial Litigation, Litigation – Banking and Finance, Litigation, Litigation – Bankruptcy by The Best Lawyers in America®.

Howard Mishkind of Mishkind Law Firm Co. L.P.A. has been selected by his peers to be included in Best Lawyers in America 2016 in the areas of Medical Malpractice Law – Plaintiffs; Personal Injury Litigation – Plaintiffs and Professional Malpractice Law.

The Best Lawyers in America has recognized Singerman, Mills, Desberg & Kauntz Co., L.P.A. with a Tier 1 ranking in Ohio for Real Estate Law in the 2016 Edition U.S. News – Best Lawyers’ “Best Law Firms.” In addition, Paul Singerman, Gary Desberg, Troy Brown, Ron Teplitzky, Gary Melsher and Sam Pearlman have been specifically recognized in their individual specialties.

The Ohio Supreme Court has ruled that in order to bring a class action lawsuit under the Ohio Consumer Sales Practices Act, R.C. Chapter 1345, and in accordance with the requirements of Civ.R. 23, all members of the purported class must have suffered injuries as a result of the conduct alleged in the lawsuit. Felix v. Ganley Chevrolet, Inc., Slip Opinion No. 2015-Ohio-3430.

Tucker Ellis LLP attorneys Kevin Young, Karl Bekeny, and Jennifer Mesko have authored the 2015 edition of Ohio Insurance Coverage, published by Thomson Reuters.

Craig A. Marvinney, a partner with Walter | Haverfield, has been recognized for his achievements in the legal field by the Federation of Defense and Corporate Counsel. Not only was Marvinney elected to serve as a member of the FDCC’s Board of Directors for 2015–2016, but he also received the Annual FDCC Connect Award, which recognizes the member whose work best furthers the FDCC attorney referral network.
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