THIS ISSUE

Real Estate Law
Environmental Law

15 The Airbnb Trend: What Homeowners Need To Know
17 Title Defects May Not Be Defects at All
37 Innovation in Urban Revitalization
OCTOBER 2016

content

FEATURES

11 7 DEADLY LANDLORD SINS
By Theresa Morelli

13 VAPOR INTRUSION UNFORTUNATELY, BREATHING IS STILL MANDATORY
By Matt Knecht

15 THE AIRBNB TREND
By Amanda A. Barreto
Valerie J. Gamertsfelder

17 TITLE DEFECTS MAY NOT BE DEFECTS AT ALL
By Kathryn Carlisle-Kesling

20 REVISIONS TO OHIO’S FORECLOSURE PROCEDURES HAVE ARRIVED
By Larry R. Rothenberg

26 CLEVELAND’S MIDWAY — MORE THAN A BICYCLE PLAN, A TRANSPORTATION AND COMMUNITY SOLUTION
By Kevin Cronin

32 OF LAWYERS AND ENVIRONMENTAL MANAGEMENT SYSTEMS
By Jay Finegan
Dan Loreta

35 VLA RENAISSANCE
By George Carr

37 INNOVATION IN URBAN REVITALIZATION
By Donald Wiggins, Jr.

42 REVISIONS TO OHIO REVISED CODE HOPE TO CLARIFY FIDUCIARY DUTIES OWED BY OFFICERS TO CORPS AND LIMITED LIABILITY COMPANIES
By Gregory L. Watkins

44 FAULKNER AND REACHING HIGHER IN TODAY’S ADR WORLD
By Peggy Foley Jones

46 WRAP-UP

DEPARTMENTS

05 FROM THE CMBA PRESIDENT
Education, Cleveland, and the Bar
Richard D. Manoloff

09 FROM THE EXECUTIVE DIRECTOR
Get A Room!!!
Rebecca Ruppert McMahon

22 BAR FOUNDATION
Ready to Run! The CMBF Halloween Run for Justice Celebrates 15 Years
Drew T. Parobek

34 JUDGES CORNER
Access to Justice — Attainable For All
Laura Creed

39 ETHICS PERSPECTIVE
Medical Marijuana and Attorney Ethics: An Evolving Topic
Tom Haren
Ian Friedman

46 WRAP-UP
Public Servants Merit Awards

WWW.CLEMETROBAR.ORG

43 Brouse McDowell
33 Ciuni and Panichi
2 Dave Bell Law
19 First American Title
57 Hennes Communications
46 HZW Environmental Consultants
40 Kabib Law Firm
45 McMahon DeGulis LLP
40 Meaden & Moore
58 Oswald Companies
41 Rosner Ortman & Moss Partners
18 Ulmer | Berne | LLP
36 Ultimate Air Shuttle
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LAWYER REFERRAL SERVICE
Education has always been the linchpin of our democracy. It's an important focus of our Bar Association, and it's been an important part of my life.

The son of immigrants, my dad grew up in a working class Macedonian enclave in South Lorain, and didn't really learn English until attending a public elementary school. He fought and was injured in World War II, and snuck back into the Navy to serve the United States again in Korea. Thanks to the GI Bill, he got a college degree and went into teaching. My dad grew up in a working class Macedonian enclave in South Lorain, and didn't really learn English until attending a public elementary school. He fought and was injured in World War II, and snuck back into the Navy to serve the United States again in Korea. Thanks to the GI Bill, he got a college degree and went into teaching.

With two parents (and two brothers) in the public education field, I suppose it is not surprising that, as a lawyer, I gravitated toward the public education field. I became a member of the Rocky River School Board. At Squire Sanders, I was fortunate to have had the opportunity to be involved with the legislation (HB 269) that rethought what school governance in Cleveland might look like — legislation that created a mayor-appointed school board of a "municipal" school district. More recently, I had the opportunity to work on a portion of the legislation (HB 525) that reenvisioned fundamental aspects of school structuring, operations and finance — legislation that implemented the "Cleveland Plan."

The Cleveland Plan legislation created the framework for the pursuit of a 15-mill property tax levy, which the voters approved in 2012, with 14 mills being directed to Cleveland Schools per se, and 1 mill being directed to partnering community schools. That levy is up for renewal on November 8. Failure of the levy, which would blow an annual hole of upwards of $65 million in District's general fund budget starting in calendar year 2017, is simply not an option.

Nor is it warranted. We all know that Cleveland Schools CEO Eric Gordon is one of the most innovative, dedicated, and hard-working leaders in public education. Under his leadership, and with the support of the Board of Education, administrators, teachers, the community, and parents, the Plan is getting traction and achieving results, as described during the State of Schools Address on September 14.

The selection of our next U.S. President on November 8 is of obvious importance. But, independent of who we choose as President and the Congress we elect, America will do well. We, the People, are like that — always have been.

But we won't do well as a country if we fail in the education of our youth. Listen to what our country's founders and luminaries had to say about the education of our youth. Listen to what our country's founders and luminaries had to say about the education of our youth.

- Horace Mann, champion of public education: "A human being is not attaining his full heights until he is educated." ... "[B]eyond all other devices of human origin, [education] is the great equalizer of the conditions of men, the balance-wheel of the social machinery" ... "Education is our only political safety. Outside of this ark all is deluge."

- James Madison, architect of our Constitution: "The advancement and diffusion of knowledge is the only guardian of true liberty."

- George Washington, father of our country: "Knowledge is in every country the surest basis of public happiness."

- John Adams, second cousin of the brewer-statesman, Sam Adams: "Liberty cannot be preserved without a general knowledge among the people ...."

- Horace Mann, champion of public education: "A human being is not attaining his full heights until he is educated." ... "[B]eyond all other devices of human origin, [education] is the great equalizer of the conditions of men, the balance-wheel of the social machinery" ... "Education is our only political safety. Outside of this ark all is deluge."

Deeper still, consider this observation from Epictetus from a couple thousand years ago: "Non schola sed vita decimos." Or — "Don't let the scholars decimate the vitamins." ... Or really — "Only the educated are free."

When it comes to the education of the children of our community, the stakes are huge (to use le mot du jour) — for society at large, for the local economy (I note that GCP has endorsed the Cleveland Schools renewal levy issue), and, most of all, for the students, for their realities, for their dreams. We all need to step up, each in our own way, to help the kids of Cleveland succeed.

To that end, we at the Bar Association have been hard at work in the classrooms of Cleveland and East Cleveland Schools, teaching the fundamentals of the U.S. Constitution, preparing students for related tests, and mentoring them as they prepare for life after high school. A decade ago, none other than a youthful LeBron introduced our "3Rs" program to the community. A decade later, more than 30,000 students' lives have been touched by nearly 2,000 volunteers through this CMBA program.

And we are actively planning to help further. With CEO Eric Gordon and Dean Louise Dempsey, we are developing a pilot project to organize the Bar Association's army of lawyers to supply pro bono legal advice in the schools. Sometimes legal assistance with a single issue can make the difference between school attendance and absence, between high school graduation and dropping out — issues encompassed by family law, landlord-tenant law, immigration law, public benefits rules and regulations, and beyond. (And with apologies to Michele Obama, I stole that last sentence from a speech, although it was my own speech, so I think I should be OK.)

Many thanks to Judge Dan Polster, Hugh McKay, Addisah Sherwood, Carter Strang, and others, for stepping up to help steer this effort.

What else can we, some 6,000 strong, do to improve the lives of students in our community specifically, and improve our system of education generally? For instance, and as a discussion starter, are we not well-suited, as a "thought leader" in this area replete with laws and lawyers, to convene
stakeholders for a summit on education to discuss whether and to what extent education laws, rules and regulations are genuinely helpful to the goals, which controls and forms of assistance are appropriate for which levels of government, which types of support the modern educational system needs to shore up, etc.

Let’s engage in conversation in this important area. And let’s continue to work hard for the next generation. It’s the sine qua non for the advancement of society.

Rick Manoloff is a partner at Squire Patton Boggs (US) LLP, where he works primarily for Ohio public school districts on finance matters. He is a co-author of Thomson Reuters’ Ohio School Law treatise, frequently speaks throughout the State on matters of interest to Ohio school business officials, and co-chairs the Ohio K-12 Public Finance Practice Group of his firm, which was named “Law Firm of the Year” for Public Finance Law in the U.S. News – Best Lawyers® 2015 “Best Law Firms” publication and “Law Firm of the Year” for both Public Finance Law and Education Law in the U.S. News – Best Lawyers® 2014 “Best Law Firms” publication. He has been a CMBA member since 1993. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.
Mom and Dad! and support have made me who I am today. Thanks My parents without a doubt. Their unconditional love still go back occasionally to say hi. met a lot of really hard working people there and high school I was opening and closing the store. I really enjoyed working there. By the time I graduated In high school I worked at a bagel bakery. I actually Tell US about your first ever job? TeLL US about your pets. My husband and I have a 16-year-old dog named Bailey and a 4-year-old cat named Felix. It’s fun to watch their interactions. Bailey likes to sneak up on Felix and lick him across the face. Felix is not a fan. Most people are surprised Bailey is older because she still acts like a puppy. How did you meet your spouse? I sat down next to him at the Treehouse Bar in Tremont late on a Wednesday night. I ordered a water and he told me he was embarrassed to sit next to someone who wouldn’t order a beer and put an empty beer can in front of me. He thought he was hilarious. I attempted to ignore him. Obviously that didn’t work. The rest is history! Where did you go on your honeymoon? We went to St. Croix in the U.S. Virgin Islands. We ignore him. Obviously that didn’t work. The rest is history! Tell us about your family. My parents without a doubt. Their unconditional love and support have made me who I am today. Thanks Mom and Dad! Who has influenced you in life? My parents without a doubt. Their unconditional love and support have made me who I am today. Thanks Mom and Dad! It’s my tiny peaceable kingdom and we love it. I have four pets. My first pet is Stella, she’s a tiny little Morkie dog. Next, I adopted Carl, a bunny who weighs only a little over one pound and his “girlfriend” Gracie who is a tiny fluffy jersey wooly. We call her a hopping wig! A couple of years ago, we took in a stray cat named Lyla who is so cuddly it’s ridiculous. She is my 2-year-old niece, Isla, who is just a hilarious little ray of sunshine! I always say that she is five pounds of sunshine and 500 pounds of personality. The west side is the best side! As a Cincinnati native, I polled everyone I knew who I thought may have an opinion on this matter. After an overwhelming majority west side response and some investigation of my own, I now call the Detroit Shoreway home. What’s on your bucket list? One of the biggest things on my bucket list is to just “go” one day, not necessarily for long or far, but to have the courage to do it. Whether that be on a spontaneous solo road-trip or catching a cheap flight across the country. I have been happily infected by the travel bug since studying abroad in college and can’t wait to see where my next adventure will take me. What would you consider volunteering for a one-way mission to Mars? No way! I hate space! I couldn’t even comfortably get through the movie Gravity with Sandra Bullock. Thinking about being up there miles away from help with danger and death just a spark away?! It gives me claustrophobia. I would however happily go into a submarine on a deep sea dive — go figure. Tell us about your pets. It’s my tiny peaceable kingdom and we love it. East side or west side? The west side is the best side! As a Cincinnati native, I polled everyone I knew who I thought may have an opinion on this matter. After an overwhelming majority west side response and some investigation of my own, I now call the Detroit Shoreway home. What’s your favorite part of Cleveland? We also like to explore Cleveland together. There are so many places right in our backyard that I don’t think we will ever see it all, but we can try! What do you do for fun? My husband Alex and I love to hike. We are fortunate to be able to travel a lot and we look for great hiking spots wherever we go. We also do a lot of photography together. Just recently we have gotten into night hiking and photography, it’s really unique! We also like to explore Cleveland together. There are so many places right in our backyard that I don’t think we will ever see it all, but we can try!
JUDICIAL SELECTION COMMITTEE

Jill Okun, Chair
Porter, Familo & Durkin Co., LPA
jokun@porterfamilo.com

Kenneth Callahan, Vice Chair
Buckley King LPA
callahan@buckleyking.com

Regular Meeting
We interview judicial candidates for the primary and general elections at the CMBA. We endeavor to interview candidates as early in the election cycle as possible to provide information to the voters as early as possible.

What is your goal?
To improve, strengthen and engender confidence in our judiciary by educating and informing the voting public about the judicial candidates and their qualifications. We try to engage the electorate.

What can members expect?
Members enjoy the satisfaction of being civically engaged and helping to educate the electorate in an effort to improve the judiciary. Members meet and interview the candidates and have the opportunity to voice their views and opinions through the judicial rating process. Membership also affords the opportunity to meet and get to know a diverse circle of attorneys and lay individuals with similar civic goals, although not necessarily similar opinions.

Upcoming Event
Primary Election Interviews

Recent Event
General Election interviews – June 23, 2016

JUdIcIal SElEcTIcE cOMMITTEE

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Porter, Familo & Durkin Co., LPA
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Upcoming Event
Primary Election Interviews

Recent Event
General Election interviews – June 23, 2016

ENVIRONMENTAL LAW SECTION

Keely O’Bryan, Chair
McMahon DeGulis, kobryan@mdllp.net

Regular Meeting
Quarterly lunch meeting/CLE presentation at CMBA Conference Center

What is your goal?
Our goal for this year is to diversify and expand our membership base. We want to partner with other CMBA Sections for cross marketing and outreach. We are also planning an exciting and informative CLE seminar on cutting-edge environmental law topics, as well as a community event/fundraiser for our environmental scholarship.

What can members expect?
Our members can expect a sense of community in being a member of the Environmental Law section. Many of us have practices that span throughout the US (as well as globally), so the Environmental Section provides a “home-base” for the Northeast Ohio environmental practitioners. The Section gives the practitioners a means of giving back to the community by sharing experiences and participating in Section events. Our members can network with other practitioners, regulators and clients through our quarterly lunch CLEs and CLE seminars.

Upcoming Events
We have our first quarterly lunchtime CLE presentation at noon on October 26th. We will introduce our new officers and hear about the experiences of our environmental scholarship recipient. We will also present a CLE session on the new Toxic Substances Control Act amendments.

Recent Event
We completed the Great Lakes Symposium in June 2016. It was a well-attended CLE seminar with high-profile speakers, including the Ohio EPA director, USEPA Region V and Headquarters regulators, and Rep. Betty Sutton from the St. Lawrence Seaway Development Corporation. We partnered with the City Club of Cleveland and its annual State of the Great Lakes program during which Rear Admiral June Ryan presented an inspiring speech on working her way up the ranks of the U.S. Coast Guard.
Get A Room!!!

So we live in an age of information overload. Everyone knows it. Work front. Home front. Volunteer front. Making time for me front. There’s a lot of stuff coming at us by text, tweet, e-mail, phone. The occasional snail mail — except in election season when mailboxes overflow with “Vote for me!” flyers. And then there’s the digital side — TV. DVR. Streaming. Print media? Yep, that too. Some of us still read actual newspapers. Magazines. Scholarly periodicals. And of course my personal favorite, the Bar Journal!

It’s a lot to digest, let alone to retain. My brain hurts just thinking about how many unanswered emails I have sitting in my inbox just from the time it takes me to write this article.

I feel your pain. I share your pain.

We struggle inside the CMBA with how best to communicate with our members in light of the fact that we know you’re getting hit from every front. We hate adding to the volume ... but we’ve got so many good messages to share. (Yep, I’m biased.) So we take advantage of all those different outlets, including the one tool many members say they love — while a few say they hate it — our Bar Briefs. It’s our daily email that usually arrives before lunch each day (unless you have opted out of receiving it) that gives you a quick look at what’s hot inside the Bar during the coming days, as well as a glimpse at a news story or two that we think you might be interested in knowing. Rita Klein, our Director of Communications and PR, typically writes the bar activity updates, and Jessica Paine, our Assistant Director of Community Programs, handles the legal updates.

If you’ve read this far in the article, I have an ask of you: would you please shoot me a quick email (rmcmahon@clemetrobar.org) and let me know what you think about the Bar Brief? Love it or hate it, I would love to know. We’re always looking for ways to improve what we say and how we say it.

One of the messages that we inside Team CMBA feel as though we say all the time in every vehicle available to us is how much we love our home within the CMBA Conference Center. At the end of September, we celebrated our second anniversary. Two years certainly goes by quickly. Fortunately, the number of people who walk into our home these days and say, “So I didn’t know you left the Galleria...” has dwindled to just the occasional visitor.

Our move to the Conference Center has really changed things up for us. We are now not only able to meet the day-to-day CLE, meeting, and event needs of our membership, we are also able to welcome all of Cleveland inside our doors to take advantage of the many, many options that are available. Members regularly ask me what kinds of groups and individuals come the CMBA. It’s an interesting mix. Consider these:

- **KeyBank** hosted both its 2015 and 2016 Annual Shareholders Meetings in our auditorium, and has committed to return again in 2017.
- **The Cleveland Council on World Affairs** rents out our entire facility two days a year to host a Model UN Conference for nearly 400 high school students.
- **The Cleveland Leadership Center** is a repeat renter, including a recent day-long program and luncheon for a couple hundred people who used every room in the house when they gathered for “We Are Cleveland Leading for Change.”
- **ILEA – The International Live Events Association** – has hosted a couple of high energy, highly social, networking events for 70–80 people, taking advantage of our newest opportunity to offer a cash bar to guests.
- And just last month, both the **William K. Thomas Inn of Courts** and the Junior League of Cleveland began hosting their monthly meetings here at the CMBA — we are delighted to have them here! Because we love our membership so, we have reserved some special Conference Center perks just for you. Did you know ...
  - We have a **FREE member office** that you can use anytime you want. Just call our main number (216) 696-3525 to reserve it — or grab it on the fly when you stop by.
  - We also have **two FREE member conference rooms** that can be reserved in the same way.

- **You will receive discounted member rates** for any of the **seven other larger meeting rooms, plus our 398-seat auditorium.** (I’ll even add two more seats in the room for free if you need space for 400.) And to make certain we remain competitive with the rest of the world, anyone who uses our Conference Center for any event will receive:
  - Access to free Wi-Fi.
  - State-of-the-art A/V equipment and video-conferencing including in the costs of renting a room.
  - On-site, experienced event planners who can help you with any and all of your catering, beverage and other event planning needs. Call Melanie Farrell at (216) 539-3711 if interested!

We would love to help you, your clients, friends and family next time you host a deposition, an arbitration or mediation, a board retreat or staff training, or simply a happy hour.

Come meet us at the Bar!

---

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.
Welcome.

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

CleMetroBar.org/ConferenceCenter

Contact Melanie Farrell at (216) 539-3711 or mfarrell@clemetrobar.org.
By Theresa Morelli

This is not an article about pride, envy, gluttony, sloth, lust, avarice, or wrath in rental housing. My primary goal is to save landlords, property owners, and other housing providers from frustration, unnecessary costs, and pain (plenty of them tell me about that). I compiled seven deadly landlord sins, because they are not only ineffective but may lead to a protracted, expensive, and undesirable outcome.

Deadly Sin #1: Misunderstanding Assistive Animals
Multiple cases feature landlords that failed to reasonably accommodate tenants with disabilities by impermissibly denying assistive animals. Most recently in 2016, Kent State University denied a student with disabilities living in university-operated housing an assistive animal. Universities must maintain civil rights programs for Title IX, accessibility, students with disabilities, etc. HUD ruled against KSU, yet KSU did not change its position. The student filed a lawsuit, and the Dept. of Justice stepped in. The university settled for $145,000, including damages and attorney fees.

Deadly Sin #2: Misunderstanding HUD’s Enforcement Reach
Most recently, I heard a seasoned real estate professional opine that HUD did not have authority to issue the disparate impact notice concerning criminal and arrest records it issued in April 2016; he thought HUD lacked authority to issue that notice unless a landlord has rental properties across state lines. That a real estate professional believes this in 2016 is astounding. The original federal Fair Housing Act took effect in 1968 and has been amended to include more protected classes over the years. With a few exceptions, all landlords are covered by the federal Fair Housing Act. That is why unlawful discrimination charges can be heard in federal courts, why HUD has enforcement authority, and why the Department of Justice may enforce the laws, too. A tenant who has a viable disparate treatment or disparate impact claim based on race, color, religion, sex, having minor children (familial status), national origin, or disability status can take the matter to federal court or to federal agencies in most circumstances.

Deadly Sin #3: Failing to Document/Bad Documentation
Where to begin? I bet you have heard the old adage that if you did not document it, then it did not happen. One of my most time-worn comments is that a lawyer is not a magician. If a landlord does not give its lawyer contemporaneous and credible documentation (correspondence, pictures, ledgers, and much more), it may have no viable claim or no viable defense to support its position. Here is a recurring failure to document I found: lacking pictures or other documentation (alternately, bad or grainy pictures or poor written documentation) to show extraordinary wear and tear caused by a tenant or damages by a tenant. When tenants dispute the retention of a security deposit or dispute the validity of a debt,
remember that they can bring small claims court lawsuits or file consumer complaints with agencies like the Better Business Bureau and governmental consumer assistance agencies. Will the landlord have sufficient documentation to avoid a finding in the tenant's favor? Landlords need a system of documentation and to maintain records consistently, regularly, and in a manner that would not embarrass them in front of a jury/judge or agency.

**Deadly Sin #4: Shortcuts That Cost More and Cause Real Pain in the Long Run**

This covers a whole spectrum of territory — at worst, self-help eviction by shutting off utilities or changing locks in lieu of eviction proceedings; maintenance shortcuts that are a bandage only for a recurring problem; using advice or forms the landlord got from someone else but that do not fit state/local laws, etc.

I often advise to non-renew tenants causing a lease violation if they are close to their lease expiration dates (note: this advice is not for federally-assisted households or some other affordable housing tenants). Non-renewal is less costly for the landlord and avoids eviction both for the landlord and tenant. I also provide a critical proviso: do not non-renew a lease for reasons that appear unlawfully discriminatory. Do not use a non-renewal notice when you should have notified the tenant about a particular lease violation during the tenancy (see #5 below), and similar action was not taken against other tenants committing similar lease violations. If the tenant to be non-renewed is in a protected class, landlords create undue fair housing risk if persons not in the protected class were renewed despite having similar lease violations to the tenant who got a non-renewal notice. Ohio’s regional HUD offices and the Ohio Civil Rights Commission may request for a period of two to three years the relevant notices given to all tenants. Will the landlord’s records support that it is non-renewing the tenant in a protected class AND non-renewing tenants not in the protected class for the same violative conduct? If the landlord’s answer is no, non-renewal is unduly and unreasonably risky.

**Deadly Sin #5: Failing to Handle Problems When They Arise**

It is much easier to solve a problem when it is a two or three on a scale of one to 10 than when it gets to a seven and higher. Most times, things ignored will not disappear or improve; they usually worsen. Here is one example. Usually, tenants do not become hoarders quickly. When a tenant pays rent regularly and gets along with others, it is much easier to overlook the gradual process leading to excessive debris and clutter. I have seen landlords ignore increasing levels of hoarding until a crisis hits like the discovery of bed bugs or unreasonably unsanitary conditions affect the safety and health of other tenants and employees like fecal or urine odors in the apartment and even emanating outside the apartment. The landlord needs to issue an O.R.C. Section 5321.11 notice to cure in 30 days. If there is no cure after 30 days, determine the tenancy termination notice appropriate for the housing type.

**Deadly Sin #6: Rent Overrides Unacceptable Tenant Actions**

I get that landlords are in business to make profits. What is the landlord’s tipping point for terminating a tenancy? I will give an especially painful example. A couple in an upscale community pays $2,500 monthly rent and pays for two parking spaces and a storage room, too. They pay rent on time and keep the apartment clean. However, the couple harasses your employees with regular, abrasive emails and abusive remarks for inconsequential things about your common areas and the other tenants. One-half of the couple routinely makes offensive remarks about minor children, people who use wheelchairs and scooters, and people of color. Both employees and other tenants routinely complain to the landlord. Does the $30,000 plus coming in from this couple for one year override other tenants’ and employees’ right to be free from a hostile housing and work environment? Will the landlord wait and see if another tenant or an employee files a fair housing or civil rights complaint before taking action? Will the landlord wait and see how many tenants fail to renew before taking action? Set a tipping point that minimizes litigation risk, liability, and harm to the landlord’s reputation.

**Deadly Sin #7: Making Comments About Tenants That Can Be Perceived as Ill Will or Bias**

Whether a tenant’s actions are vulgar, abusive, or anything else that is not civil or appropriate, the temptation to vent about the offender in an email, text, software entry, letter, etc. to another employee or someone else can be overwhelming. Instead, the landlord should follow #3 above and document in an incident report any conduct that violates the lease or otherwise disrupts the livability of the housing community. Keep documentation neutral and factual — document what the landlord observed specifically. Do not make personal comments that the “tenant is crazy” or “his home is a pigsty” when writing to supervisors or on-site co-workers. In the same vein, the landlord should not write their opinion that the “tenant walks without a cane and does not need a closer parking space” or “is using the system and does not need a service animal.” Why? If a lawsuit is later filed, the landlord’s emails, texts, letters, software entries, etc. are likely discoverable. That means a judge/jury may see them. Writing that a tenant is “a drunk” or “someone with mental problems” may subject the landlord to fair housing claims that the landlord’s comments prove animus or prejudice against that particular tenant. Landlords who need support after a hostile or otherwise upsetting incident with a tenant need to pick up the phone or talk face-to-face with a trusted person — especially with their attorney to protect attorney-client privilege.

Any one of the deadly sins poses undue and unreasonable risk to a landlord’s investment, assets, and reputation. Avoiding the sins is not onerous and takes:

- training;
- effective recordkeeping;
- resolving issues at their onset without the use of temporary fixes;
- setting clear boundaries and tipping points for tenancy termination; and
- talking on the phone or in person if a written communication can be misunderstood or used against the landlord.

Whether a landlord has two months, 12 years, or four decades of experience, avoiding these seven deadly sins will go a very long way to decreasing the landlord’s frustration, costs, and pain.

Theresa Morelli is an attorney at Theresa Morelli Law LLC. Her solo practice is limited to residential property management law for landlords and other housing providers. She has represented property management companies as well as tenants since 1991. She earned her J.D. and B.A. from the University of Akron. She has been a CMBA member since 2013. She can be reached at (330) 592-4636 or tmorelli@theresamorellilaw.com.
Vapor Intrusion
Unfortunately, Breathing is Still Mandatory

By Matt Knecht

It was 10:15 a.m. on a Friday in August of 1996 when the telephone on my desk rang. An environmental attorney client/friend was calling. He had a crisis. He represented a local northeast Ohio bank. This particular bank had a very busy branch located in an eastern Cleveland suburb. The branch had opened at 9:00 a.m. It had been business as usual until, at approximately 9:20, a female teller who was 8 months pregnant with her first child lost consciousness and collapsed while waiting on a customer. The branch manager dialed 911, and an ambulance arrived at the site in less than 5 minutes. The teller had regained consciousness. She was still on the floor, but sitting up and communicating. EMS personnel administered oxygen, and the woman was placed on a stretcher and removed to a local hospital for observation at around 9:45 a.m. Business resumed at the branch — as usual — until, at approximately 9:45 a.m. Business resumed at the branch — as usual — until, at approximately 10:00 a.m. The branch manager again dialed 911 and, while the ambulance was being dispatched, called her supervisor to report the situation. The supervisor, in turn, had called my environmental attorney friend.

The attorney said that, now, the two remaining tellers at the branch were also complaining of vague symptoms. He had two questions: “what’s happening?” and “what should we do?” To his first question, I replied that I wasn’t entirely sure, but that we would get to the bottom of it. To his second question, I recommended that the branch be closed until we figured it out. “Matt,” he said, “it’s Friday…payday. We cannot close the branch. It is a high traffic location. Closing the branch — today — is out of the question.”

We immediately dispatched field staff to go to the branch and check it out. As it turned out, the question of closing the branch resolved itself. By the time our person reached the site at around 11:30 a.m., an ambulance had been called for a third teller and the branch manager had made the unilateral decision to close the branch, because she now lacked the staff to carry out banking operations adequately.

This was one of the first — and clearly one of the most dramatic — incidents of vapor intrusion into a structure in my 30-year career. We determined that the bank branch building had been constructed on a property that was formerly a gasoline service station. The service station had closed in the 1960s, well before there were regulations requiring the clean-up of petroleum released from underground storage tank systems. It had rained for three straight days before that Friday in August 1996. This resulted in a rise in the groundwater level beneath the branch building, such that gasoline vapors were seeping into the building via a floor drain in the utility room. Plugging the floor drain solved the problem. A pathologist who examined the pregnant teller theorized to me that she must have had a heightened sensitivity to petroleum vapors due to her pregnancy, which caused her to feel faint and briefly lose consciousness. What caused the symptoms of the second and third tellers was less clear (the pathologist suggested “mass hysteria”). But all four of the tellers who walked into the branch on that Friday morning in August 1996 refused to work in that building again, and all of them were re-assigned to other branches. Even though plugging the floor drain solved the problem, the stigma attached to the building did not subside, and by mid-1997 the branch had been closed permanently.

In the 1990s, little was known about vapor intrusion. However, since 2000, vapor intrusion has come into focus as being a primary (often “the”) primary consideration when evaluating “environmental risk” in both re-development and due diligence scenarios. So much so, in fact, that today — not a week goes by that our Company is not assessing/addressing vapor intrusion risk on multiple projects.

As discussed below, recent developments have resulted in an unprecedented level of scrutiny of vapor intrusion issues. Before discussing these developments, it is important to understand how vapor intrusion issues are evaluated.

Figure 1 is a cartoon from Ohio EPA’s Sample Collection and Evaluation of Vapor Intrusion to Indoor Air guidance document (http://www.epa.ohio.gov/portals/30/rules/vapor%20intrusion%20t%20indoor%20air.pdf) depicting the conceptual site model and criteria for vapor intrusion to occur. As noted in Figure 1, one needs all of the following for vapor intrusion to occur:

1. An occupied (or “occupiable”) structure, typically with a floor slab (either slab on grade or a basement), four walls and a roof. Open structures, such as pole barns or parking garages, generally do not qualify as an “occupiable” structure since they are not enclosed or capable of being enclosed.

2. The presence of one or more “volatile contaminants” in soil and/or groundwater and/or soil gas beneath or near our structure. These “volatile contaminants” generally fall into one of four categories: petroleum-based constituents

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2. The presence of one or more “volatile contaminants” in soil and/or groundwater and/or soil gas beneath or near our structure. These "volatile contaminants" generally fall into one of four categories: petroleum-based constituents
associated with gasoline or diesel fuel; solvents associated with industrial processes or paints; dry cleaning solvents (and their degradation products); and solvents used to clean/degrease metals parts (and their degradation products).

3. An "exposed population", i.e., human beings who occupy a structure either on a residential or workday basis.

If any one of these three criteria are absent — an occupied structure, the presence of volatile contaminants in soil and/or groundwater and/or soil gas, or an exposed population — the vapor intrusion pathway is considered incomplete.

Several recent developments have converged making vapor intrusion the hot button environmental issue in Ohio. First, both Ohio EPA and U.S. EPA have released updated vapor intrusion guidance last year. Second, in June of this year Ohio EPA announced it would no longer follow previously used modeling (Johnson & Ettinger). Instead, Ohio EPA would adopt a far more conservative approach to evaluating whether contamination in indoor air standards. The day care tenant space was closed immediately. Ohio EPA (in conjunction with the Ohio Department of Jobs and Family Services) re-located the children to other day care service providers within 48 hours. Finally, Ohio EPA revoked the legal release issued to the property owner associated with the cleanup.

This incident spurred the Ohio EPA to conduct a thorough review of all active and closed sites in Ohio where TCE was among the contaminants present. This review was comprehensive, and a number of sites received follow-up notifications indicating that further investigation and/or remediation was warranted to address TCE. The Agency's investigation of sites with TCE contamination is ongoing.

On August 25, 2016, Ohio EPA released brand new guidance— Recommendations Regarding Response Action Levels and Timeframes for Common Contaminants of Concern at Vapor Intrusion Sites in Ohio. This new guidance establishes “trigger” concentration levels and “response timeframes” for TCE in indoor air, groundwater and soil gas. Trigger concentration levels are based upon land use (residential vs. commercial/industrial), and response timeframes are listed as being “accelerated response” (within a few days to two weeks), “urgent response” (within a few days), or — in the case of indoor air — “imminent hazard” (coordinate immediately with state and local health authorities). This guidance is new, and the immediate and long-term impacts to environmental consultants and environmental attorneys are yet to be seen. The agency sets forth its rationale for this new guidance with its trigger concentrations and response timeframes:

“...In September, 2011, [U.S. EPA] updated the toxicity assessment for TCE which concluded, in part, that women in the first trimester of pregnancy are one of the most sensitive populations to TCE inhalation exposure due to the potential for fetal cardiac malformations. Because the key steps for cardiac development occur within the first 8 to 10 weeks of pregnancy, exposure to TCE during early pregnancy is of concern.”

Thus, the agency is responding out of a stated public health concern that targets women of child-bearing age who are, or may become, pregnant, since the first 8 to 10 weeks of pregnancy is the “critical window”.

The vapor intrusion issue continues to evolve. One thing that is clear is that this heightened awareness on the public health aspects of vapor intrusion in general (and vapor intrusion by TCE specifically) is a “new normal” in Ohio. Given Northeast Ohio’s long industrial past and TCE’s widespread industrial use since the early 1950s, environmental practitioners — both technical and legal — need to remain highly engaged and on top of evolving developments if we are going to provide practical guidance and clear instruction in light of the recent guidance document to our Clients.

**Matt Knecht** has been involved in Brownfield assessment and remediation his entire professional career, and has also been active with Ohio’s Voluntary Action Program since its inception in 1994. He is President of HZW Environmental Consultants, LLC. He can be reached at (440) 357-1260 or mknecht@hzwenv.com.

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Short-term rentals have become a trend in recent years due to the popularity of websites like Airbnb.com, homeaway.com, and vrbo.com. These websites connect homeowners with potential short-term renters who are looking for a lodging alternative to commercial hotels. The profits can be large for homeowners who are willing to rent out their entire home (or even just a bedroom) for as little as one night, especially when hotel prices surge during prime events (like the RNC in Cleveland earlier this year).

Seems like a no brainer for homeowners who travel often, or who have the ability to leave their home at a moment's notice. Use of these websites could also be beneficial to investors: instead of renting an investment property to a long-term tenant, there may be the opportunity for higher returns by focusing solely on higher rate, short-term rentals.

Before you go running to sign up online, consider what your community association or city has to say about these new rental practices. You may face covenant restrictions or zoning prohibitions that could stifle your plans to make a quick buck.

What do your community association documents say?
When is the last time you read your community association's (condominium or homeowners association) governing documents? Before becoming a short-term rental mogul, review your governing documents for any short-term rental prohibitions.

Many governing documents prohibit leasing all together. Such language typically states:

No dwelling shall be leased by an Owner to others for business, speculative, investment, or any other purpose, whether for compensation or not.

Even if a community allows for leasing, standard language in most governing documents prohibit short-term rentals. Such language typically states:

In no event shall the dwelling be leased by the Owner for transient or hotel purposes, which is defined to mean: (i) rental for any period less than six (6) full calendar months, or (ii) any rental if the occupants of the dwelling are provided with such rentals, customary hotel services such as furnishing of linen or maid service.

Leasing prohibitions are created in community associations for many reasons. Typically, a no leasing provision is implemented in order to keep the community full of resident owners, who arguably have a higher interest in keeping the property values high. Even in a community where leasing is permitted, short-term rentals are banned in order to promote safety, reduce noise and pollution, and limit liability.

Living in a shared space, especially in a condominium property, can raise safety issues. When a unit is rented, the renter gains access...
Although rental of not more than one room to not more than one person is permitted by some municipality’s zoning ordinances, if an owner is renting to more than one person or renting the entire home, she would need to be aware of the home occupation guidelines of the municipality. If a community association has leasing or short-term rental prohibitions, it is likely that such rules are being monitored closely. Our office has seen an increase in the number of Airbnb.com, homeaway.com, and vrbo.com listings for properties with restrictive covenants banning short-term rentals. Because these postings are publically available, a quick search can expose an illegal rental.

In Ohio, a community association’s board of directors has the obligation to enforce the provisions of the governing documents. If a short-term rental is uncovered, the board is required to notify the homeowner of the violation and take appropriate steps to force a cure of the violation.

In one case that our firm handled, an Airbnb.com listing showed a property for $170/night for rental of the entire home. The home was located in a homeowners association that prohibited rentals, including short-term rentals. A board member discovered the listing during a routine search for rentals. The owner was notified of the violation and had the opportunity to cure by removing the listing from Airbnb. If the listing was not removed within the requisite time, the homeowner would be subject to enforcement of the violation and had the opportunity to cure.

If you are a member of a community association, it is imperative that you review and understand your leasing restrictions before listing your home for a short-term rental. If the members of your community are in favor of short-term rentals, proper amendment procedures should be followed to change any restrictive covenants.

What city regulations must you comply with?
Local municipalities address the renting of rooms in a variety of ways. Some provide very basic guidelines, while other municipalities have recently adopted very extensive guidelines for limited lodging rental and rental of a dwelling unit that is used as a primary residence for an owner.

For many municipalities, this issue is addressed in the “Accessory Uses” section of their zoning codes. Municipalities use language such as: the renting from a resident family, of not more than one room to not more than one person, shall be permitted in any Residential District (North Royalton Codified Ordinances 1270.03, Strongsville Codified Ordinances 1252.03, Parma Codified Ordinances 1153.03.) This is a very basic guideline that does not address the amount of time a renter is permitted to stay, or any safety standards that the homeowner may be required to meet, or any permits that the homeowner may be required to obtain.

Local ordinances may define temporary occupancy, in order to provide time restrictions on the rental of residential property. One municipality defines "temporary occupancy" to mean: the accommodation of lodgers conducted in a dwelling unit, the primary use of which is for household living, and where the total accommodations of lodgers provided is for fewer than ninety-one (91) days per calendar year but where the provision of lodging to any particular lodger is for no more than thirty (30) consecutive days. Cleveland Codified Ordinances 337.251. Basic safety standards such as smoke detector and carbon monoxide detector requirements are also addressed in limited lodging ordinance language. Notifying lodgers about trash and recycling procedures for the home, as well as providing contact information of a person who can take action to resolve any problem with the home, are also a requirement in one local municipality’s ordinances.

Additionally, it is important to check to see if a permit of any type is required for a “home occupation” accessory use in the home. Although rental of not more than one room to not more than one person is permitted by some municipality’s zoning ordinances, if an owner is renting to more than one person or renting the entire home, she would need to be aware of the home occupation guidelines of the municipality. Once renting turns into a home occupation, there are numerous requirements the owner must abide by that can include obtaining permits, limiting traffic flow and maintaining normal utility usage levels.

Municipalities mirror condominium and homeowner associations in their desire to maintain the normal standards of a residential community. Limited lodging and rental of a room in a primary residence are accessory uses and are not meant to disrupt the community around the homeowners who are renting out their home.

In conclusion, regulations set by community associations and municipalities should be researched before jumping on the short-term rental train. What a homeowner considers as a harmless one-night rental every month or so could actually be an enforceable violation that could cost more in the end than it is worth.

Amanda A. Barreto is an Associate Attorney for Ott & Associates Co., LPA. Amanda primarily works with the Firm’s community association clients to handle litigation matters for the associations. She is a member of the CMBA’s Real Estate Section. She has been a CMBA member since 2012. She can be reached at (216) 771-2600 x 113 or abarreto@ottesq.com.

Valerie J. Gamertsfelder is a Certified Paralegal for Ott & Associates Co., LPA. Valerie primarily works with the Firm’s community association clients to handle collection matters for the associations. She is a paralegal member of the CMBA and currently serves as Director of Membership and Student Membership Coordinator for CAP. She has been a CMBA member since 2013. She can be reached at (216) 771-2600 x 115 or valerie@ottesq.com.
Title Defects May Not Be Defects at All

BY KATHRYN CARLISE-KESLING

A title defect may be cured by a court through a curative-type action if it falls within the category permitted or the required time period. However, by applying Ohio’s curative and corrective statutes some title defects may not be defects at all and may be easily eliminated.

High Stakes Title Issues: Standards & Exceptions

Regardless of the type of real property, home, suburban strip mall, retail, or downtown mixed use, sellers, buyers and/or investors invariably never want to face a title issue — especially at the closing table. Title issues are generally never solved quickly and are not clearly understood (especially if there is no real estate attorney or title agent involved at the beginning of the deal). It doesn’t matter where the real property is located, when you are asked to consider a title issue or review an opinion of title, the stakes are high and time is of the essence.

The first consideration is the title standard applied and agreed upon between the parties. The applicable title standard can be elusive to some practitioners because of choice words employed (most commonly in the sale contract) with differing meanings and risk. These words, whether carefully crafted or just another unfortunate case of a boilerplate contract, may not be agreed upon between the parties.

The standard of conveyance is usually followed by the exception clause or exceptions to the grant of title. Examples of exceptions would include: covenants; conditions; restrictions; items shown on a filed plat, condominium or association declarations, mineral interests; gas and oil leases; municipal, state and federal laws; zoning; legal highways; taxes, both special and general, not yet due and payable; and any items not approved by the Buyer as shown on Schedule BII of the issued title policy. When the standard of title and the exceptions are considered in “whole,” this encompasses the complete title being conveyed or granted to the Buyer.

Bear in Mind the Marketable Title Act

The standard may be for an absolute or perfect title/conveyance or some lesser standard. The buyer may not demand a perfect title but, customarily, may ask for a “Marketable Record Title.” Defined in R.C. 5301.50, “Marketable Record Title” means that the record title of the property operates to extinguish such interests and claims existing prior to the effective date of the root of title as stated in R.C. 5301.50:

Any person having the legal capacity to own land in this state, who has an unbroken chain of title to record any interest in land for forty years or more, has a marketable record title to such interest as defined in section 5301.47 of the Revised Code, subject to the matters stated in section 5301.49 of the Revised Code. R.C. 5301.48.

Although beyond the scope of this article in all its intricacy, a few features of the Marketable Title Act should be born in mind that could serve to understand how to extinguish certain interests which may arise before the statutory time period. Caution should be observed to note whether certain interests (not specifically excluded by statute) effective earlier than a forty-year period immediately following the effective date of the root of title may be extinguished. The root of title must be established.

In addition, “marketable title” is explained in McCarthy v. Lingham, 111 Ohio St. 551 as ownership which insures to the owner the peaceful enjoyment and control of the land as against all others. It is also defined as a title which is sufficient to support or defend an action of ejectment. Thus, a marketable title should show a full and perfect right of possession in the vendor. It should appear reasonably certain that the title will not be called in to question in the future so as not to subject the purchaser to the hazard of litigation. It must, in any event, embrace the entire estate or interest sold free from the lien of all burdens, charges or encumbrances which present doubtful questions of law or fact. Id. at 558.

Further, the Ohio State Bar Association Title Standards 1.1 defines a marketable title as one which a purchaser would be compelled to accept in a suit for specific performance. Objections to a title should not be made by an attorney when the irregularities or defects do not impair the title or cannot reasonably be expected to expose the client to the hazard of adverse claims, litigation or expense in clearing the title.

True Defects vs. Potential Defects

Once the title standard is understood the next step is to discern whether there are true defects — liens, burdens, charges, encumbrances, etc. — that affect the value of the property or render the title unmarketable, and whether the defects are curable. Should the Buyer object to the title or can a curative action be found?

Consider these hypothetical scenarios:

1. A distressed seller reports that the buyer is going to walk away from the deal because a mechanic’s lien has been filed against the property;
2. An objection is made because an old mortgage appears filed of record;
3. The seller acquired title from a partnership wherein the grantor’s former business partner is threatening that her interest still encumbers the property which was sold out from under her;
4. The seller is ready for take down of sublots and has worked a “deal of a lifetime” with a major
builder, having obtained both county and city approval and recorded the subdivision plat, when restrictive covenants prohibiting certain development are discovered encumbering one-third of the platted lots; or

5. The seller’s brother alleges that the apartment building should have been probated, and he owns a one-half interest, as the conveyance into the father’s trust did not effectively transfer the property.

Situations such as these are endless and often encountered. While appearing at first to be a deal breaker, applying a creative application of the following Ohio statutes and other curative tools can resolve the problems above.

• R.C. 5301.07 (correction of instruments defectively executed; when instrument conveying title is of record for more than 21 years)
• R.C. 5301.071 (validity of certain instruments not affected by certain actions or omissions — not defective)
• R.C. 5301.30 (expiration of mortgage lien-limitation)
• R.C. 2719.01 (court may correct defects in interests)
• R.C. 5301.252 (affidavit of facts relating to title)
• R.C. 5302.11 (quit-claim deed could be used to release an interest)
• R.C. 5301.50 ( Marketable Record Title Act)
• OSBA Title Standard 3.19 (re-recording of defective deed, after corrections)
• R.C. 5301.45 (instrument executed and acknowledged on different sheets)
• OSBA Title Standard 3.7 (conveyance dates — omissions and inconsistencies)
• R.C. 5301.332 (a lawsuit to quiet title)

The following highlights a few references specifically and the interplay between the scenarios. R.C. 5301.07 states that an instrument conveying real estate or any interest therein, that is of record for more than twenty-one (21) years, corrects certain instruments defectively executed.

There are three specific areas in which such potential defect shall be deemed statutorily cured:

A. The instrument was not properly witnessed;
B. Such instrument contained no certificate of acknowledgment; and
C. The certificate of acknowledgment was defective in any respect.

R.C. 5301.071 states no instrument conveying real property nor any interest in real property and of record shall not be considered defective, nor shall the validity of that conveyance be affected because of any of the following:

A. The dower interest of the spouse of any grantor was not specifically released, but that spouse executed the instrument in the manner provided in R.C. 5301.01.

B. The officer taking the acknowledgment of the instrument having an official seal did not affix that seal to the certificate of acknowledgment.

C. The certificate of acknowledgment is not on the same sheet of paper as the instrument.

D. The executor, administrator, guardian, assignee or trustee making the instrument signed or acknowledged the same individually instead of in a representative or official capacity.

E. The grantor or grantee of the instrument is a trust rather than the trustee or trustees of the trust if the trust named as grantor or grantee has been duly created under the laws of the state of its existence at the time of the conveyance and a memorandum of trust that complies with R.C. 5301.255 and contains a description of the real property conveyed by that instrument is recorded in the office of the county recorder in which the instrument of conveyance is recorded.

In scenario five, the grantor conveyed out of the mother’s trust into the father’s trust and signed as an individual (not as a successor trustee). Secondly, the deed did not reference in the acknowledgement clause that the grantor was the successor trustee. In addition, the conveyance was made to the father’s named trust, not to the trustee of the trust. Therefore,

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under R.C. 5301.07 and R.C. 5301.071, this would not be found to be a defect.

R.C. 5301.30 states that the record of any mortgage which remains unsatisfied or unreleased of record for more than twenty-one (21) years after:
A. Date of the mortgage;
B. The stated maturity date of the principal sum, if a stated date of maturity is provided in the mortgage; or
C. Whichever is later secured as shown in the record of such mortgage.

In scenario two above, the buyer's objection to a defective title should not result in a failure of condition. The seller can convey marketable title to the buyer, free and clear of the old mortgage, because the mortgage did not contain a maturity date of the principal sum, and it was recorded with the county recorder where the property is located more than twenty-one (21) years prior to the determination of marketability (the closing and title transfer).

The Ohio Marketable Title Act serves to extinguish interests which appear of record prior to the "root of title" in scenario four. The prior restrictive covenants, which prohibited certain building and construction, were found to be recorded in the chain of title and arising out of a title transaction which had been recorded subsequent to the effective date of the root of title, for which the unbroken chain of title or record is started. It therefore does not encumber or restrict the property.

In scenario three, the business partner, after being paid for her portion of the sold interest and/or entering into some other type of settlement agreement, agrees to convey her interest to the current title owner by a valid quit-claim deed, thereby clearing the prior interest and vesting "marketable" title in the buyer. There may still be a question as to whether this vests insurable title, since a quit-claim deed was used. The title insurance underwriter should be consulted before accepting a quit-claim deed.

In scenario one, a quiet title action may be brought to clear the filing of a wrongful mechanic's lien. If the allegations are proven, this will effectively strike the mechanic's lien.

Pre-emptive Action
The potential defects identified in the majority of the scenarios above would have been eliminated as concerns by hiring, early in the transaction (preferably prior to preparing the sales contract), an experienced and qualified real estate attorney and title/closing agent to fully examine the record title and analyze the potential defect. When hiring a title/closing agent, keep in mind that more and more lenders are requiring that the title/closing agent (3rd party vendor) pass lender vetting requirements. A growing number of lenders require that they be American Land Title Association "Best Practice" certified. This certification assures lenders that the agents comply with all of the pillars of best practices.

By understanding the nuances of the property and hiring real estate professionals at the onset of a deal, you may find that what initially appears to be a title defect is not a defect at all.

Disclaimer
This article is meant to provide general information only and is not a substitute for legal advice. Statutory references have been paraphrased for purposes of simplicity and ease of reading. Readers should seek the advice of their attorney or contact the author.

Kathryn Carlisle-Kesling is a partner with the law firm of Buckley King. She is an Ohio State Bar Association Board Certified Specialist in Residential Real Property Law and possesses a thorough understanding of the intricacies of real estate and title matters. She has been a CMBA member since 1999. She can be reached at (216) 685-4761 or carlisle@buckleyking.com.

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Revisions to Ohio’s Foreclosure Procedures Have Arrived

BY LARRY R. ROTHENBERG

In an abrupt move to beat the summer recess, the Ohio legislature passed H.B. 390, which became effective September 28. Among the new provisions are a procedure to expedite foreclosures on vacant and abandoned residences; and a standardized process to request the use of a private selling officer in lieu of the sheriff, to conduct the sale. The details are too extensive for this article to cover completely, but a summary follows.

Vacant and abandoned residential properties (R.C. §2308.01 et seq)
The new procedure to request an expedited foreclosure on vacant and abandoned property applies to residential property only. The statute defines “residential property” as a structure containing four or fewer dwelling units, each of which is intended for occupancy by a separate household; a residential condominium unit; or a manufactured or mobile home that is taxed as real property.

The plaintiff may file a motion, and the court may determine that a residential property is vacant and abandoned upon finding that all of the following exist:
1. The preponderance of the evidence shows that the loan is in monetary default;
2. The preponderance of the evidence shows that the plaintiff is the party entitled to enforce the instrument secured by the mortgage;
3. The property is shown by clear and convincing evidence through multiple indicia on a list specified by the statute, that the property is vacant and abandoned;
4. No defendant has filed an answer asserting a defense or objection, which if proven, would preclude the entry of a judgment for foreclosure; and
5. No defendant has filed a written statement indicating that the property is not vacant and abandoned.

To show that a property is vacant and abandoned, at least three of the indicia shown the statute’s specified list, must be shown. The list includes: utilities disconnected; windows or entrances boarded up or broken; accumulation of trash, or hazardous or unhealthy materials on the property; furnishings, window treatments, or personal items absent; vandalism, loitering, criminal conduct, or physical destruction or deterioration of the property; a written statement expressing the intent of all mortgagors to abandon the property; no owner or tenant appearing to reside in the property at the time of an inspection by governmental officials; a written statement by an official indicating that the structure is vacant and abandoned; or other reasonable indicia of abandonment.

If the motion is filed before the last answer date has expired, the statute directs the court to decide the motion within 21 days after expiration of the last answer date, or within the time consistent with local rules. If the motion is filed after the last answer date has expired, the court is to decide the motion within 21 days of its filing, or within the time consistent with local rules.

If the court finds that the property is vacant and abandoned and enters a final judgment for foreclosure, the property is to be offered for sale not later than 75 days after the clerk of court’s issuance of the order of sale. However, this directive does not supersede other procedures adopted by the court, including mediation, to resolve the residential mortgage loan foreclosure action.

A “private selling officer” may be appointed to conduct the sale, in lieu of the sheriff (§2329.152).

In any foreclosure, the judgment creditor may file a motion for an order authorizing a specified private selling officer, who is an Ohio resident and is licensed both as an auctioneer under R.C. Chapter 4707, and as a real estate broker or real estate salesperson under R.C. Chapter 4735, to sell the real estate at a public auction. The property must still be appraised by the Sheriff, in order to establish the minimum bid of two-thirds of the sheriff’s appraisers’ appraised value.

The private selling officer may market the real estate and conduct the public auction online or at any physical location in the county. If online, the auction is to be open for bidding for a minimum of seven days.

The private selling officer is also authorized to hire a licensed title insurance agent or a title insurance company to assist in performing administrative services, including title, escrow, and closing services related to the sale; and the private selling officer is authorized to execute and record the deed to the purchaser. Fees of the title agent or the title insurance company are to be taxed as costs, but fees exceeding $500 are to be paid only if authorized by a court order.

The cost of the appraisal and the advertisement required by R.C. §2329.26 are to be taxed as costs in the case. The private selling officer’s fee and other costs are to be taxed as costs in the case up to an amount equal to one and one-half percent of the sale price. Any excess is not to be included in the amount necessary to redeem the property under R.C. §2329.33 or in the calculation of any deficiency judgment under R.C. §2329.08, but is to be paid by the judgment creditor or from the judgment creditor’s portion of the proceeds of the sale.

The judgment creditor may instruct the private selling officer to postpone the sale one or more times, for up to 180 days after the initial sale date. The judgment creditor may also instruct the private selling officer to cancel the sale.

A second sale is to be scheduled to take place if there are no bidders at the first sale (2329.52).

At the time a sale is being scheduled, a second sale will also be scheduled to take place between seven and 30 days after the first sale. If there are no bidders at the first sale, the second sale will proceed as scheduled, with no minimum bid requirement. If there
are no bidders at the second sale, additional sales may be scheduled with no minimum bid requirement. If there is a bidder at the second or a subsequent sale, the judgment creditor and the first lienholder (if different) will each have the right to redeem the property within 14 days after the sale by paying the purchase price, and thereby become the purchaser.

**Deposits by bidders at the time of sale** (§2329.211).

For foreclosure sales of residential property, the judgment creditor will no longer be required to pay a deposit at the time of sale. Other successful bidders must pay a standardized deposit amount, as follows:

- For residential property appraised at less than or equal to $10,000, the deposit is to be $2,000.
- For residential property appraised at an amount from $10,001 to $200,000, the deposit is to be $5,000.
- For residential property appraised at greater than $200,000, the deposit is to be $10,000.

For commercial property, any requirement for a deposit is to be established for the sale, presumably by court order or local rule.

The county prosecutor may cause a sale to be scheduled in an inactive post-judgment mortgage foreclosure (R.C. §2329.071).

If a post-judgment foreclosure of residential real property does not have a sale completed or underway within 12 months after the entry is filed, the prosecuting attorney may file a motion for authority to sell the property in the same manner as if the prosecuting attorney were the attorney for the party in whose favor the decree of foreclosure and order of sale was entered. The court is to decide the motion not sooner than 30 days after it is filed, and if granted, the prosecuting attorney may be ordered to issue a praecipe directing the property to be sold at the next available public auction, with no set minimum bid. If such a sale occurs, the judgment creditor will have the right to redeem the property within 14 days after the sale by paying the purchase price to the clerk of the court.

If the deed is not prepared and recorded within 14 days after confirmation and payment, the purchaser may file a motion for a court order, which may be used to complete the conveyance, without the need for a deed.

**A statewide website is to be established allowing foreclosure sale bids to be entered online** (2329.153).

The state department of administrative services is to arrange for an official public sheriff sale website and integrated auction management system to provide for a standardized method of posting sales, receiving bids, and postponing or canceling sales. For residential property, the use of the website is initially at the sheriff’s option, but it becomes mandatory five years after the system becomes operational. For commercial properties, the sheriff may use the website, but unlike residential property, there is no provision for the website for sale of commercial properties to become mandatory.

**Criminal Mischief** (R.C. 2308.04 and 2309.07)

New R.C. 2308.04 essentially duplicates R.C. §2909.07, in stating that a person is guilty of criminal mischief if the person knowingly and with purpose to diminish the value or enjoyment of the residential real property moves, defaces, damages, destroys, or otherwise improperly tampers with the person's own residential real property that is subject to a mortgage, after having been served with a summons and complaint for foreclosure, and at any time until confirmation of the sale. While R.C. §2308.04 applies to a person's own residential real property, R.C. §2909.07 also pertains to the property (not limited to residential real property) of another.

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Larry Rothenberg is a partner in the real estate department of Weltman, Weinberg & Reis Co. LPA. He is the author of the Ohio Jurisdictional Section of The Law of Distressed Real Property, and the two lead articles in Ohio Foreclosures, both of which are published by Thomson Reuters; and is a multi-year selection as an Ohio Super Lawyer in real estate. The firm handles foreclosures, bankruptcies, evictions, and related matters throughout Ohio, Kentucky, Indiana, Michigan, Pennsylvania, and Illinois; and nationwide collections. He has been a CMBA member since 1983. He can be reached at (216) 685-1135 or lrothenberg@weltman.com.
Drew T. Parobek

Ready to Run!
The CMBF Halloween Run for Justice Celebrates 15 Years

Calling all runners (and joggers, waddlers, walkers, and stroller pushers)! I am writing to enthusiastically invite you to join me at the Cleveland Metropolitan Bar Foundation’s Halloween Run for Justice on Saturday, October 29, 2016 at Burke Lakefront Airport.

Happy Anniversary, Halloween Run! 2016 marks the 15th anniversary of the CMBF’s annual Halloween Run for Justice. The event is open to all and includes a variety of activities to appeal to both the serious and recreational runner, plus those who want to join us for some outdoor exercise and family fun! Participation in the Halloween Run has grown each year, from a group of 50 runners at the inaugural event in 2002 to nearly 700 runners in 2015. All told, 6,075 runners have participated in the Run. It’s a great way to start the Halloween weekend and to celebrate fall in Northern Ohio.

The Run is for Runners
According to Runner’s World magazine, Cleveland is one of the best cities for runners in the country (ranked #36). The Halloween Run is one of the reasons why. Halloween Run events include chip-timed 5K and 5-mile runs, the ever-popular 1 mile Fun Run, and a 5K walk (my personal specialty). This year, the 5-mile run is part of the Hermes Cleveland Sports and Events Road Race Series. CMBF partners with Hermes for course and race management. Hermes has designed a fabulous, entirely new, and affordable, healthy, fun event for the entire family!

The Run is for Families
...and ghosts and goblins and lions and tigers and bears, oh my! Whether you’re a runner or not (unequivocally, I am not), if you are a kid, have a kid, or ever were a kid, you’ll love the Halloween Run. This is truly a family-friendly event with Halloween tricks and treats and activities for children, and special pricing for families. Costumes are encouraged for runners and spectators and kids of all ages. Prizes are awarded for best costumes to children and adults. This year, our special costume categories are “Spirit of Aviation” and “Cavs Spirit.” At last year’s run, I ran into Captain Jack Sparrow, the Wicked Witch of the West, several hundred terrifying attorneys, and the entire Addams Family (including Cousin Itt; I’m still smiling over that memory!) What more could you ask for on an October Saturday in Cleveland — an affordable, healthy, fun event for the entire family!

The Run is for Champions
The Cavaliers Scream Team, Spirit Squad, and Moondog are scheduled to participate in the Halloween Run again this year. In fact, the Run occurs during the opening week of the Cavs’ 2016-17 season. World Champion Cleveland Cavaliers! World Champion City! Repeat! Has a nice ring to it, don’t you think? With the possible exception of Mayor Jackson (another Halloween Run supporter), no one is more appreciative of what the Cavs have done for this City — and our Bar Foundation — than I am.

The Run is for The Bar and Our Entire Community
The Halloween Run is one of the CMBF’s most important fundraising events. Through event sponsorships and registrations, the Bar Foundation raised over $45,000 in 2015. The CMBF has raised over $466,000 through your support of the Run during its first 14 years. The dollars are an essential source of funding for the Cleveland Metropolitan Bar Association’s impactful pro bono and public service programs focused on youth education, social justice, the arts, and nonprofit communities, including the award-winning 3Rs — Rights, Responsibilities, Realities; the Louis Stokes Scholars Program; and Volunteer Lawyers for the Arts. It hardly seems coincidental that the Halloween Run for Justice marks the end of Celebrate Pro Bono Week!

How Do I Sign Up?
It’s easy! Registration for runners and participants is open at CleMetroBar.org/HalloweenRun. Sponsorships are an easy and very affordable way to show support for this popular Foundation and community event and the CMBA programs it supports. Firm and organizational sponsors get their logos on the event’s official long-sleeve race tee shirts; individual sponsors are on the sleeve.

For information about sponsorships and event details, contact Sarah Charlton, Special Events and Facility Planning Coordinator, at scharlton@clemetrobar.org or (216) 539-5974.

The Presidential Challenge
As noted above, although I have the utmost respect and admiration for runners, I am not one. Back in the day, running was a necessary evil to get in shape for the sport I was then trying to master (or at least make the team). I still chuckle at the tee shirt worn by my son when he was on the high school track team: “My sport
is your sport's punishment,” and I unabashedly display a “0.0” magnetic sticker on the back of my car. Notwithstanding this general aversion to running, I love everything about the Halloween Run — the talented runners and the little trick-or-treaters; the donuts and apple cider; the costumes and the Cavs; the chill and race-day excitement in the air; and the important connection to the Bar Foundation and the Bar Association.

So, here’s my challenge to you: for every person who signs up as a participant in response to this challenge, I’ll run .1 of a mile; for every sponsorship, I’ll run .2. At a minimum, I’ll waddle. Or walk. Or I’ll serve you coffee and donuts, with a grateful smile on my face.

See you on October 29!

Drew T. Parobek is a partner at Vorys, Sater, Seymour and Pease LLP. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1993. Drew can be reached at (216) 479-6162 or dtparobek@vorys.com
Open to the public, this event benefits the Cleveland Metropolitan Bar Foundation which funds charitable community outreach programs, including The 3Rs, helping students in the Cleveland and East Cleveland City Schools.

For information, contact: Hermes at (216) 623-9933 or HermesCleveland.com, or contact the Cleveland Metropolitan Bar Foundation at (216) 696-3525 or CleMetroBar.org.

**Location**  Burke Lakefront Airport, 1501 N. Marginal Road, Cleveland, OH 44114 (downtown)

**Time**  Race Day Registration: 7:30 a.m.
            All events begin: 9 a.m.
            Packet pick-up Friday, October 28 from 4 – 6 p.m. at Burke Lakefront Airport

All participants registered before October 18 will receive a complimentary long-sleeved t-shirt. Participants registered on or after October 18 will receive a shirt based on availability.

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

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

**HermesCleveland.com**

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**ENTRY FORM**

Name: ____________________________
Address: ____________________________
City/State/Zip: ____________________________
Phone: ____________________________ E-mail: ____________________________

_____ Age on Race Day Date of Birth _____ / _____ / _____  Male  Female

☐ Individual Entry ($25) before October 18. October 18 and after ($30)

☐ Family Entry ($60) Families must mail in registrations by October 18.
Rate not available for online registration.
Families must mail all four entry forms in one envelope with check.
(One entry form for each family member. Family fee includes four shirts.)

☐ Team Entry ($90) Teams must register by October 18. (Four-person teams) Each team must mail all four entry forms in one envelope with check.
Team Name and Category ____________________________

☐ 5-Mile Run ☐ 5K Run ☐ 5K Walk ☐ 1-Mile Walk/Run Run
☐ youth small ☐ youth medium ☐ youth large ☐ adult small
☐ adult medium ☐ adult large ☐ adult XL ☐ adult XXL
☐ Lawyer ☐ Judge ☐ Law Student ☐ Paralegal/Legal Assistant

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

Signature of participant ____________________________ date ____________________________
Signature of parent or guardian if participant is under 18 years ____________________________ date ____________________________

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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.
The Cleveland Metropolitan Bar Foundation presents

15th Annual

HALLOWEEN RUN FOR JUSTICE

Saturday, October 29th
Burke Lakefront Airport

- CHIP-TIMED 5K and 5-Mile Runs, One-Mile Fun Run, and 5K Walk by Hermes Sports and Events
- FUN ACTIVITIES for the whole family including crafts, face painting, bounce house, balloon artist, and DJ
- AWARDS presented to overall winners, age-level top finishers, fastest teams ... and best costumes!
- LONG-SLEEVED T-SHIRT for all participants registered on or by October 14. Those registering after will receive a shirt based on availability.

NBA Champion Cleveland Cavaliers are back!

FEATURING
Scream Team, Q Spirit Squad, and Moondog!

Special prizes donated by the Cavs for best costumes!

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
$25
BEFORE OCT. 14
($30 AFTER)
More cyclists are emerging in Northeast Ohio every season. That's good news for the environment, taxpayers funding road repair, beneficiaries of reduced traffic and parking congestion and improved personal and public health. But where should they ride?

While experienced cyclists comfortably ride in the street, where both laws and safety data direct them, less experienced riders and families are often intimidated by street traffic. Consequently, many cyclists and potential cyclists simply choose not to ride. How do we encourage and support riding safety? The answer may be non-profit organization Bike Cleveland's plan for a protected bike lane network, dubbed "The Midway," taking over some of Cleveland's central median street space abandoned by trolley cars in the 1950s. The Midway would link neighborhoods citywide, providing protected routes to work, school, shopping, entertainment, the lake and parks. The 100-mile linear park would also offer rain water remediation through a grassy border and a comfortable rest stop for the young, old or disabled, unable to cross wide city streets in a single traffic cycle.

Could the Midway be the answer that reduces street congestion, demand for expensive car parking and increased carbon emissions, boosts personal and public health, while improving safety for cyclists, pedestrians and motorists alike? Cleveland planners and cyclists are counting on it.

By Kevin Cronin

Cleveland’s Midway — More Than a Bicycle Plan, A Transportation and Community Solution
The Opportunity: Cycling is booming in Northeast Ohio

From coast to coast, the number of cyclists is growing rapidly, with Ohio experiencing a 36% increase in the number of bike commuters, between 2005-14. Cyclists represent less than 1% of Cleveland’s commuters. But their numbers grew 269% from 2000-10, ranking Cleveland as one of the nation’s fastest growing locations. Commented Cleveland Councilman Tony Brancatelli, “Every time we put bike lanes in, we start seeing bike numbers go up.” In 2013, Cleveland, along with Lakewood, Cleveland Heights and Shaker Heights, were honored by the national League of American Bicyclists with a bronze level award as a Bike Friendly Community. In more recent years, however, Cleveland’s cycling infrastructure investment has not kept pace with other cities. While the city’s master bike plan calls for 180 miles of bikeways, local cyclists point out there are no timelines or benchmarks for progress. Cities like Chicago, Minneapolis and Boston are moving faster. Also, equity in cycling investment is a concern, with Cleveland Councilman Zack Reed commenting, “You don’t see bike lanes in Collinwood or Glenville.”

Bike Cleveland’s Midway Plan

The Midway would provide separated, two-directional travel lanes, stitching together a 100-mile park to link all city neighborhoods. While design would depend on specific road conditions, the model would utilize central median road space. Cleveland roads can safely go on a diet, slimmed down to offer safety for residents. The Midway will also incorporate other features, such as benches and tables, to encourage safe street crossing for the elderly, young or disabled, as well as landscaped buffers to the path, to absorb water run-off and prevent overwhelming sewers during heavy rains and discharging polluted water into the lake and streams.

An Opportunity for a Transportation Correction

Cleveland’s current 388,000 residents shoulder a heavy, unfair burden, supporting an excessive road infrastructure. Based on square footage of streets per capita, today’s residents support more miles of streets than in any point in Cleveland history. A population boom of 900,000 that never materialized, businesses out-migration and the demise of trolley cars, have left behind an unsustainable network of wide streets with generally low traffic volumes, propped up...
THE MIDWAY WOULD OPERATE AS 100-MILE LINEAR PARK, STITCHING TOGETHER NEIGHBORHOODS THROUGHOUT THE CITY.

by local taxes. Even worse, wide streets and light traffic contribute to routine excessive speeding, a safety risk for cyclists, seniors and kids.

The Midway offers an historic opportunity to “right size” several main roads. The Midway would remove one or two travels lanes along a route corridor, maintained by a private organization, paid through a dedicated maintenance endowment. Assuming a one hundred-mile Midway, an estimated 200 lane miles of current roadway would be removed from service, saving millions of dollars for city taxpayers.

The Cost and Community Benefit
Bike Cleveland, from the outset, committed to a cost-effective funding plan, presenting a “big bang for the buck.” Working with traffic engineers, Bike Cleveland has developed an estimated cost of $1.5 million per mile (or $400,000 per mile for a modest approach), depending on the number of intersections, signals, paint and the type of physical barrier. The plan would also provide up to 300 acres of storm water capture. Projected construction costs for the 100-mile network would be $150 million, with an additional $50 million for the maintenance endowment. Cleveland could create the envy of the nation, a robust 100 miles, city-wide network, for the price of only a few miles of highway, about half the cost of the three-mile Opportunity Corridor.

Cycling is also good news for the neighborhood economy, as cyclists are more likely to spend money along their route than motorists. One study found a 41% increase in activity for businesses located along a protected bike lane, while nearby streets experienced increases as well, reaffirming studies world-wide. Cycling also enhances property values, with over 80% of real estate agents indicating proximity to trails would make a home easier to sell. The Indianapolis Cultural Trail, an eight-mile urban trail, has seen property values on the trail increase by 148% since its 2008 opening. Cycling supports important neighborhood commercial activity.

A Responsible Investment:
Cycling infrastructure investment is overdue. Approximately, 12% of all trips made in America today are biking and walking trips, yet only 1.5% of federal transportation dollars address sidewalks and bikeways. This under investment has tragic consequences, as cyclists and pedestrians represent 14% of traffic fatalities.

Bike Cleveland participates in Vision Zero, a nation-wide coalition to improve safety for cyclists, pedestrian and drivers. Vision Zero stands for the simple principle that there is no acceptable level of death on the roads. By elevating riders in the middle of the road, the Midway enhances visibility for cyclists and motorists are more likely to see them and respond accordingly. The Midway will improve safety for cyclists, pedestrians and motorists.

Investment in cycling is fair and equitable. In many Cleveland neighborhoods, as many as 40% of people do not have a car. Cleveland residents also face the burden of a state government that does not support public transportation at levels equal to other Midwest states. All RTA buses and trains are equipped to carry bicycles. More bike road infrastructure will expand RTA range and help families leverage the assets of public transportation. Federal highway officials report that 71% of Americans indicate they would bike more often, but find biking in traffic intimidating. The Midway plan engages these riders, to realize the benefits of increased riding. More riders improve safety for everyone, as motorists grow more familiar, encountering cyclists with greater frequency and predictability.

Health and Cleveland’s Future
Of course, the Midway offers an infrastructure to promote personal and public health. National data identify that 64% of American adults and 30% of children are overweight. By helping more residents meet the US Surgeon General’s weekly goals for exercise and activity, the Midway could help thousands achieve better health, saving our region millions in health care costs, missed work and lost productivity.

Cycling draws strong support, particularly among the young residents and families that are Cleveland’s future. More than 80% of American women view cycling positively and two-thirds think their community
would be a better place to live if bike riding were safer and more comfortable. Favor is even stronger among young residents, where surveys report 90% of 18-29 year-olds support more funding for sidewalks, bike lanes, and bike paths. The Midway also compliments the City’s recently initiated Bike Share program by offering users, who may be less experienced cyclists, physically separated lanes within which to travel and explore the City.

However, the Midway is not solely for the young and current or potential cyclists, offering support for elderly residents as well. Cleveland’s wide streets and low traffic volume encourage motorists’ speeding, a safety risk for the elderly, disabled and school children. The Midway narrows the roadways, protecting pedestrians who may have difficulty crossing in a single crosswalk cycle, with an attractive landscaped median. Ohio’s older population is rising faster than our overall population growth and faster than the national average. The Midway improves safety for vulnerable residents.

Cycling attracts a broad audience. By wide margins, Americans, regardless of race, ethnicity, education or income level support biking and walking. Many Northeast Ohio leaders seek to capture the world’s imagination as a global, welcoming and growing city. The more Cleveland resembles the world’s cities in offering the globally recognized amenity of cycling support, the more welcoming we truly are. Cycling demonstrates that Cleveland is an attractive place to live, work, study, visit, have fun and raise a family.

The Midway offers the opportunity to “right size” Cleveland’s streets and creates an attractive, more vibrant street environment. This 100-mile linear park creates an attractive and functional midpoint for Cleveland streets, supporting Cleveland residents of all ages, creating connectivity and health opportunities, while providing a vibrant draw to visitors and residents alike.

"The Midway" is both descriptive of the typical location of the bike network, as well as a nod to the nostalgic notion of a carnival’s midway: the place where you see people and are seen. When complete, the Midway will offer enhanced safety for cyclists, pedestrians and motorists, contribute to meeting our region’s clean water obligations, create street vibrancy and beautification and serve as an impetus for a neighborhood-based resurgence and economic growth. Meet me at the Midway!

Kevin Cronin is grateful to Jacob VanSickle and Rob Thompson of Bike Cleveland, Bialosky + Partners Architects, the YMCA, go media, as well as the ad hoc Midway Committee of John McGovern, Barbara Clint, Melissa Thompson, Ted Ferringer and others for their contributions to Cleveland cycling and the Midway project.

Kevin Cronin is a cyclist, local attorney and a member of the Cleveland Metropolitan Bar Association Environmental Law Section. He is Board Member of Bike Cleveland, volunteer and former Board Officer of the Ohio City Bicycle Co Op, and a cycling instructor through the League of American Bicyclists. He has been a CMBA member since 2015. He can be reached at (216) 377-0615 or kevin@kevincronin.us.
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

Celebrate national Pro Bono Week with the CMBA and The Legal Aid Society of Cleveland Oct. 23-29. Pro Bono Week was an initiative created to respond to the increasing need for pro bono services nationwide and to celebrate the services of attorneys who volunteer to meet this unprecedented need. Pro Bono Week is intended to increase pro bono participation, expand legal services to low income individuals and groups, and showcase the efforts of volunteers who donate their time and efforts yearlong.

The full calendar of events and volunteer opportunities during Pro Bono Week is on page 52 and at CleMetroBar.org/ProBonoWeek.

LEGAL DIRECTORY ORDERS

The 2016-17 Legal Directory will be in stock this month in both print and electronic formats. If you have not yet placed an order, you can do so by calling the CMBA or visiting www.CleMetroBar.org/directory. Members save at least $20.

CLE SEASON IS HERE

Our CLE department has dozens and dozens of programs available before Dec. 31 — 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 at CleMetroBar.org/CLE.
PILLARS PROGRAM SERIES

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

2016–17 Series
December 15, 2016  Resume Basics and Formats
February 9, 2017  Effective Job Hunting
April 13, 2017  The Art of Networking
June 8, 2017  Interview Techniques for Speaking with Confidence to the “Big Dogs”

The sessions will be led by knowledgeable experts offering practical advice, tips, and resources. Pillars will also give you the opportunity to connect and share with people that are in a similar situation. Stay tuned to your email or visit CleMetroBar.org/Pillars for more details or to register.

SAVE THE DATE

October 23 – 29  Pro Bono Week
October 28  43rd Annual Estate Planning Institute
October 29  Halloween Run for Justice at Burke Lakefront Airport
November 10 – 11  38th Annual Real Estate Law Institute
Nov. 30 – Dec. 1  59th Annual Cleveland Tax Institute
December 6 – 8  New Lawyer Boot Camp
December 8  Celebration for New Lawyers
Of Lawyers and Environmental Management Systems

BY JAY FINEGAN & DAN LORETA

“Defendant shall … develop a compliance-based Environmental Management System.” [Consent Decree, U.S. v. D.G. Yuengling and Son, Inc. (No. 16-01252, M.D. PA., June 23, 2016), available at https://www.justice.gov/sites/default/files/enrd/pages/attachments/2016/06/23/yuengling-filed_consent_decree.pdf.] With words like these, the Environmental Protection Agency (EPA) frequently mandates that organizations implement an Environmental Management System (EMS) to promote regulatory compliance and curb future environmental impacts. This article explores EPA’s commitment to EMSs, describes the essential elements of an EMS, and examines the lawyer’s role in implementing and maintaining an EMS.

Why is EPA committed to Environmental Management Systems?
The underlying assumption of all management systems is that, when effectively implemented, regular assessment identifies unlimited opportunities which, when acted upon as appropriate, lead to continually improved performance. An EMS, therefore, helps to prevent future violations as well as establishes the systemic processes necessary to manage them should they occur. EPA describes an EMS as a framework that helps an organization achieve its environmental performance, fulfill its compliance obligations, and manage environmental compliance. Of course, an EMS in and of itself cannot guarantee that an organization will never (again) violate environmental requirements. But if effectively implemented, it can help the organization identify these requirements, implement protective measures to help ensure that a violation does not occur, and — notwithstanding these measures, if a violation does occur — understand what alternative or additional measures are necessary to protect against future violations.

What is an Environmental Management System?
An EMS may be defined as “a system and database which integrates procedures and processes for training of personnel, monitoring, summarizing, and reporting of specialized environmental performance information to internal and external stakeholders.” [Sroufe, Robert. “Effects of Environmental Management Systems on Environmental Management Practices and Operations.” Production and Operations Management. 12-3 (2003).] Based upon the famous four-step PDCA (Plan-Do-Check-Act) cycle, an organization’s EMS describes how it will manage its resources in a comprehensive, calculated, and systematic manner to continually enhance its environmental performance, fulfill its compliance obligations, and achieve its environmental objectives. [See ISO-14001:2015, §3.3.]

Substantially revised in 2015, the internationally dominant ISO 14001 standard outlines the following requirements for an EMS:

- Operation (Controlling environmentally significant processes, Change management, Emergency planning & response);
- Performance Evaluation (Monitoring environmental performance, Internal audits, Compliance reviews, Management review);
- Improvement (Corrective & preventive action)

However, unlike many environmental regulations, which delineate complex and detailed compliance requirements, ISO 14001 provides merely an aspirational framework intended to balance environmental protection with socio-economic needs. [See ISO 14001:2015, §3.2.2.] For example, while ISO 14001 mandates that an organization must systematically evaluate how well it is fulfilling its compliance obligations, the standard (through a companion guidance document) offers only superficial suggestions regarding how the organization might accomplish this evaluation, e.g., by gathering information and data through facility inspections and reviewing legally required documents and records. [See ISO 14004:2016, §9.1.2.]

But, as Robert Sroufe intimates, policies, procedures and records are only part of an EMS. It also includes the tools, which, in today’s world, typically means software. For relatively straightforward organizations with low environmental complexity and impact, simple spreadsheets and databases may be completely sufficient to effectively monitor and manage environmental compliance. However, larger and more environmentally complex organizations will need more sophisticated tools.

The right mix of software tools can be a vital to an effective EMS in many ways:

- Providing timely updates regarding regulatory changes which may affect the organization. Such insight allows decision makers to identify potential gaps and begin implementing appropriate countermeasures well ahead of compliance deadlines, particularly important if
substantial capital investment is required.

• Providing mechanisms for monitoring the real-time status of corrective and preventative actions and other key EHS-related performance indicators;

• Providing mechanisms for sharing EHS information across the entire organization. Such failure contributed in part to Dupont, purveyor of a world-class behavior based safety program, finding itself on OSHA’s Severe Violator Enforcement Program.

• Providing a central repository for ‘institutional EHS knowledge. As droves of “Baby Boomer” EHS professionals leave the workforce, a wealth of knowledge and experience is at risk of being lost. [See The Generational Cliff, EHS Today, Dec. 8, 2015.]

• Providing mechanisms for prioritizing risks and allocating limited resources. Under the modern tenets of lean manufacturing, waste — something which does not directly add value to the product or service — must be aggressively identified and eliminated.

• Standardizing data collection, analysis, and reporting. Consistent with lean philosophy, EHS reporting can be replete with waste, collecting and cobbled together the requisite data and information from a multitude of facility or organizational sources, crunching the numbers, and transcribing the information to EPA systems. Software eliminates such waste, from basic typographical errors to ensuring correct and consistent application of complex analytical models to electronic data exchange with EPA databases.

The Lawyer’s Role

After countless hours of inquiry and analysis, the lawyer has managed to avoid costly litigation and successfully negotiated a consent decree between the client and the EPA. What now?

To start, someone has to actually develop and implement the EMS. Most lawyers aren’t directly responsible for these actions, but they may actively participate in selecting consultants and software tools. Even when relying on resources with whom the lawyer has a long-standing relationship, it is vital that the lawyer understand not only the technical details but the business impacts. There is no one-size-fits-all EMS. Every organization is unique, so the EMS must be custom tailored to its culture and its processes. The lawyer should carefully balance available resources against the needs of the client — and the expectations of the EPA — to ensure that those selected are the most appropriate.

Second, the cost to implement and maintain an EMS can be substantial. Cost can range from tens to hundreds of thousands of dollars per year, depending upon the size and complexity of the organization. [See https://www.pca.state.mn.us/quick-links/environmental-management-systems-faqs.] While avoiding fines is commonly used to help justify this expense, a fine (in a practical sense) may never happen. After all, the cost of implementing and maintaining the EMS isn’t so much about the real and tangible penalties levied under the consent decree, it’s about a system intended to preclude future penalties. To this end, an organization’s management will clearly understand the persistent outflow of cash necessary to support and manage the EMS, but it will find the countervailing benefit of a contingent fine much less persuasive. The informed lawyer can help a management team inspired by profit-loss statements to recognize the very real and tangible benefits achievable through higher efficiencies, reduced costs, and improved environmental performance. [See ISO 14001 Key Benefits, International Standards Organization, 2015.]

Third, people naturally resist change, even more so when it is imposed upon them by the government. Despite the fact that the new EMS is a legal obligation deriving from actual (or alleged) illegal environmental behavior, it will be confounded with a multitude of unrelated government mandates, such as safety requirements, labor regulations, and tax codes, with which business must contend. No EMS will be effective over the long term unless it is perceived to bring value to the organization. The lawyer can dramatically affect how the new EMS will be received and perceived, especially with those who matter the most — senior management.

Finally, all consent decrees include a host of follow-up reporting requirements. Compliance with the consent decree is satisfied by submittals that meet its specified content and timing requirements. Rather than being a mere gatekeeper, the lawyer should review materials, as appropriate, to see that they are also consistent with the ultimate objective of the EMS — continual improvement in environmental performance and compliance with requirements.

Conclusion

A lawyer may appropriately offer guidance that is not narrowly couched in legal terms. [See Comment on Rule 2.1, Model Rules of Professional Conduct, American Bar Association, 2016.] Consequently, the lawyer who understands and believes in management systems is in an exceptional position to help company leadership recognize that an EMS is not a burden and cost. Rather, it is an investment that, like any other investment, supports the organization’s strategic business objectives.

Jay Finegan is in the Compliance Services group at Dakota Software, a premier supplier of software, content, and consulting to the world’s leading organizations to manage risk and improve EHS performance. Before joining Dakota, he was a member of the EHS staff at a major aerospace manufacturing company. He can be reached at 216-455-1944 or jfinegan@dakotasoft.com.

Dan Loreta is also in the Compliance Services group at Dakota Software. Before joining Dakota, he accrued many years of experience in EHS consulting for a large engineering consulting firm. He has been a CMBA member since 1991. He can be reached at (216) 455-1946 or dloreta@dakotasoft.com.

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Access to Justice — Attainable For All

Over the past 20 years, I have met many of you in my role as Chief Judicial Staff Attorney and Staff Attorney to Judge Michael Russo. Recently, though, I have taken on a new role for the Court. I am the Cuyahoga County Common Pleas Court’s first Legal Support Coordinator. And everyone has the same question. “So, what are you doing?”

I am addressing an ever-growing need experienced by courts across the country, I research and implement initiatives for access to justice.

Did your eyes just glaze over? Did you just wonder, “What exactly does access to justice mean?”

I asked Common Pleas Domestic Relations Court Judge Diane Palos, a member of the Ohio Supreme Court Task Force on Access to Justice, to answer that for me.

“Access to justice is not just about poverty, it is a much bigger picture. Many more people are impacted, such as those that are non-English speaking or differently abled,” says Judge Palos. “Self-represented litigants need to understand our legal system and be able to meaningfully participate in it. Our civil justice system is for everybody and not just for people who can afford to be represented by lawyers.”

The biggest obstacle to accessing the civil justice system in Ohio is inadequate funding. Legal aid organizations do not receive general revenue funds from the State. Funding for civil legal aid is primarily derived from interest on lawyers’ trust accounts (IOLTA and IOTA), from amounts designated as part of civil filing fees, by federal funds appropriated to the Legal Services Corporation, and from charitable contributions. According to the ABA Resource Center for Access to Justice Initiatives, revenue from trust accounts has decreased 90% since 2007 due to lower interest rates. With limited funding, legal aid organizations must focus their resources where they can do the most good, but this means not everyone who needs representation will receive it.

On July 1, 2014, Ohio Supreme Court Chief Justice Maureen O’Connor established the Task Force on Access to Justice, which was chaired by former Justice Yvette McGee Brown and 10 other esteemed members. The Task Force submitted a final report with 11 recommendations to improve access to civil justice in Ohio.

Some of these recommendations went into effect on July 1, 2016, including increasing pro hac vice fees and implementing a voluntary $50 add-on fee for attorney registration to help fund civil legal aid services. An Emeritus Rule, which is effective September 15, 2016, will allow non-active attorneys to engage in limited legal practice providing pro bono service.

But some recommendations must be implemented on a state level. This includes asking that the Ohio General Assembly include a general revenue appropriation for civil legal aid in every biennial budget. The state could also create a Supreme Court Access to Justice Director Position and require that an “access to justice impact statement” be filed with any proposed amendment to the Ohio Rules of Court. Other suggestions include developing and maintaining a statewide website devoted to providing free and accurate legal information to Ohio residents, revising Ohio’s license requirements in support of military spouse attorneys, and developing and implementing standardized forms.

Other recommendations can best be implemented on a local level, such as self-help centers to meet the needs of those who are ineligible for legal aid, but who cannot afford an attorney. The Cuyahoga County Court of Common Pleas created an Access to Justice Committee. It found that while standardized forms exist in Domestic Relations, Probate, and Juvenile Courts, there were very few for litigants in the Common Pleas Court General Division. The committee created templates to aid unrepresented litigants in doing the most basic tasks, such as filing an answer or a motion. The templates include easy-to-understand instructions.

When I began my new job, I wanted to build upon the good work started by the committee. My initial goal was to gather information about where I could refer unrepresented litigants. I met with the CMBA, the Legal Aid Society of Cleveland, the Cleveland Law Library, and local law schools. It became clear that there aren’t enough resources to serve every unrepresented litigant. Because of this, some people have to represent themselves.

My next goal is to create a self-help center in the Justice Center to assist unrepresented litigants with completing forms, preparing for hearings, and simply navigating the civil justice system.

“Our Court’s mission statement says that we are here to serve the public by providing fair and equal access to justice,” says Administrative and Presiding Judge John J. Russo. “The Court should never be about how much you have in the bank or who you know.”

I hope one day that access to civil justice will be attainable for all.

THAT is my job.

Laura W. Creed is the Legal Support Coordinator for the Cuyahoga County Court of Common Pleas. Ms. Creed has been with the Court since 1995, previously serving as the Chief Judicial Staff Attorney and as the Assistant Chief Judicial Staff Attorney. She is a lifetime member of the 8th District Judicial Conference and has been a member of the CMBA since 2003. She is active in the Women in Law section and currently serves as the Secretary/Treasurer for the section. She can be reached at (216) 348-4011 or CPLWC@cuyahogacounty.us.
In recent years, the Volunteer Lawyers for the Arts Committee of the CMBA (VLA) has experienced a renaissance, in tandem with Cleveland’s arts community. Originally founded decades ago, and still one of a few in the nation, Cleveland’s VLA connects artists and arts organizations who need pro bono assistance with arts-minded lawyers with appropriate knowledge and expertise. Over the group’s long history, active periods have inevitably alternated with quiet periods, but the current upswing in activity may well be the busiest in the group’s history.

Over the past two years, the VLA has received 32 formal applications for pro bono assistance. Most frequently, the applicants are seeking advice with common issues such as entity formation, contract review, intellectual property registration, and real estate transactions; we’ve also been presented with more complex issues, such as jointly-owned intellectual property, securitization of nonprofit debt, commercial eviction and replevin disputes, and the permissibility of public advocacy activities by tax-exempt organizations. And like most potential clients, VLA applicants present a variety of seek counsel at various stages in their careers: new artists often seek assistance with forming their first entity or protecting their half-finished intellectual property, while others are established artists looking for help with stalled or broken transactions, sometimes with related litigation. Most eligible applicants are accepted, and some declined applicants are eligible for referral to other CMBA programs. Some applicants have been so pleased with their pro bono assistance, and so successful in Cleveland’s burgeoning arts scene, that they have “graduated” out of eligibility for pro bono assistance, and have engaged their VLA-referred lawyer for a fee.

One recent “success story” has been the Cleveland Classical Guitar Society, which first contacted the VLA in 2009. With assistance from longtime VLA member Steven Day, the Society’s founders immediately formed a nonprofit corporation and began charitable arts work, from musical education in several local public high schools to high-profile concert presentations. Since then, the Society has achieved remarkable growth: it has been able to present some of the world’s great guitarists and lutenists, including Paul O’Dette, Nigel North, David Russell and Manuel Barrueco, to Cleveland audiences, and boasts recent sponsorship support from the National Endowment for the Arts, the Cleveland Foundation, Cuyahoga Arts & Culture, and the Ohio Arts Council. Now, less than a decade after its founding, the Society has become one of the most popular and financially robust of its peer organizations in America.

But the Society is only one of many such stories. VLA lawyers have recently resolved a wide variety of pro bono matters for local artists and arts organizations, involving such diverse
issues as copyright infringement claims, entity formation consulting, dunning letters, and even the dissolution of a nonprofit corporation and appropriate distribution of its assets. And in addition to direct referrals of pro bono assistance requests, the VLA also presents numerous lectures and clinics for lawyers, the arts community, and the general public. In recent years, VLA presentations have addressed a wide variety of topics pertaining to the arts, including the creation, registration, and protection of intellectual property; nonprofit entity formation, compliance, and governance; employment and taxation issues; estate planning in regards to art objects and the rights of their owners to reproduction in various new media; and the use of pre-existing artworks for various purposes, such as incorporation into new work, applications for grant funding, and “fair use” in the educational context. In addition, VLA lawyers have presented to students in colleges and law schools throughout the region, including the Cleveland Institute of Art and Cleveland-Marshall’s seminar on “Representing the Musical Artist.”

At the VLA’s monthly luncheon meetings, lawyers convene with arts community leaders to discuss new opportunities for collaboration, new and ongoing applications for pro bono assistance, and upcoming initiatives. In the upcoming year, we hope to broaden the VLAs relationships with local arts education institutions, by boosting and diversifying our output of lecture programming for artists and arts administrators and by strengthening our existing relationships. We also hope to improve our visibility to the arts community, by expanding our marketing and social media activity, and building new relationships with educators and institutions that support the arts.

The VLAs history with local arts institutions goes back a long way, but recent trends in professionalization of the arts community have made such relationships even more important. As one example, the VLA has a robust partnership with the Community Partnership for Arts and Culture (CPAC). VLA lawyers contribute to My Creative Compass, CPAC’s online knowledge base for Cleveland artists, and the two organizations have co-hosted and co-sponsored numerous events, lectures, and roundtables. Along with The 3Rs program of the CMBA, the VLA co-sponsored the unique photo exhibit on display at the CMBA from Sept. 15-Oct. 14 for artwork from the Shooting Without Bullets program, a revolutionary youth advocacy program that focuses on identity development in black teens in Cleveland through expressive arts healing and photography.

Providing a broad swath of individual pro bono assistance, lectures and presentations, and institutional knowledge sharing, the VLA is a proud resource for Cleveland’s growing arts community. CMBA members have found greatly rewarding work through VLA membership, and Cleveland artists and arts institutions have received a wide array of educational and legal assistance over the years. With the continuing support of the CMBA and its members, the VLA is invigorated by its recent successes, and looking forward to many more years of worthwhile collaboration with Cleveland’s arts community.

For more about how you can be a part of the VLA, please contact CMBA staff liaison Jessica Paine at j疼痛e@clemetrobar.org.

George Carr focuses his practice at Janik L.L.P. on professional liability and commercial litigation. As Chair of the VLA, George has handled cases on publishing contracts, nonprofit filing, and business entity formation. In his off-duty hours, he plays the trombone and records with a number of local bands. George has been a member of the CMBA since 2012. He can be reached at George.Carr@janiklaw.com or (440) 838-7600.
Innovation in Urban Revitalization

BY DONALD WIGGINS, JR.

Jane Jacobs, renowned journalist, activist, and author, in her book *The Death and Life of the Great American Cities* stated, “neighborhoods built up all at once change little physically over the years, as a rule... [yet it is] peoples’ feelings about it... that change. The neighborhood shows a strange inability to update itself, enliven itself, repair itself, or to be sought after, out of choice, by a new generation. It is dead.” Jacobs statement touches on the life cycle of neighborhoods — growth, stability, decline, and revitalization.

All great cities that have come into existence, grown to be known for their splendor, sense of charm and character, palpable feeling of hope and prosperity, and sense that anything is possible, often times have neighborhoods that begin to decline and fall into a state of despair and blight. The life cycle of neighborhoods can be observed from the history, development, and eventual decline in cities throughout the country, such as, Detroit, Cleveland, Philadelphia, Chicago, Baltimore, and the list goes on. As it is said, “all good things must come to an end eventually, but the next experience awaits.”

**Neighborhood Anchors**

Universities, hospitals, large well-established corporations, and museums have and continue to serve as anchors for neighborhoods. These institutions serve neighborhoods as a central bank for knowledge and intellectual property development, and for some neighborhoods, as a last hope or beginning efforts, to save the neighborhood from urban decay. As the University of Pennsylvania’s 2014 research report *The Power of Eds and Meds: Urban Universities Investing in Neighborhood Revitalization and Innovation Districts* highlights, anchor institutions provide neighborhoods with well-trained human capital, serve as large scale neighborhood employers, and often have large scale landholdings. Accordingly, anchor institutions provide a vital service to the community and the public through job creation and employment opportunities, and adding to municipalities and states tax base through payroll and property taxes or Payment in Lieu of Taxes (PILOT) payments.

**Challenges Faced by Urban Universities**

Urban universities are at the core of cities that are surrounded by blighted neighborhoods as a result of urban flight, increased in crime rates, and decline in overall neighborhood wealth. Urban universities understand not only their value to the neighborhoods in which they exist and to the surrounding areas, but that their very existence is a mutually symbiotic relationship tied to the socioeconomic health of the very same areas. Accordingly, as discussed in Alana Semuels article *Should Urban Universities Help Their Neighbors?* urban universities are faced with an interesting dilemma —whether or not the university should get involved with neighborhood revitalization and development?

In responding to this question, urban universities balance two competing concerns. On the one hand, urban universities must assess the possibility of push back from members of the community as a result of expansion or intervention activities in a neighborhood. As the University of Pennsylvania study points out, the amount of pushback faced by urban universities expansion is a function of the institutions history of community outreach, current political environment, and other competing interest. On the other hand, urban universities failure to attempt to address declining neighborhood conditions pose the risk of universities very existence. Simply stated, urban universities must balance possible expansion or intervention activities as a means of attempted neighborhood stabilization for institutional survival purposes, with the concern for pushback by various actors, as a result of intervention.

**Opportunities In Face of Challenges**

Despite challenges and tough considerations...
faced by urban universities, as to the question of intervening in neighborhood development and revitalization activities, urban universities are uniquely positioned to act as an engine of revitalization and new hope. As stated earlier, universities provide the neighborhoods in which they are positioned with employment opportunities for local residents, a source of tax revenue or PILOT payments for municipalities, innovators of intellectual property assets, and large scale landowners. Chieﬂy, urban universities as non-proﬁt actors are not faced with the same proﬁt motive as their corporate counterparts. In the modern economy of strained government resources, urban universities, as with other urban anchors, are experimenting and implementing innovative strategies to address urban blight and assist in neighborhood revitalization.

In Detroit, Wayne State University’s Office of Economic Development started the Detroit Revitalization Fellows Program. The program seeks to recruit and cultivate high talented individuals to be placed in various positions with local non-proﬁts and government agencies. Ultimately, the fellows program seeks to assist in the revitalization of Detroit’s neighborhoods through building the overall capacity of Detroit’s economic development landscape by engaging the fellows in civic, community, and economic development efforts.

Anchor institutions such as Case Western Reserve University, have partnered with several other local institutions to build a partnership in the Greater University Circle district. The partnership utilizes the institutions combined resources to advocate and promote development in the square-mile that is center of the partnership’s development focus area. As Aaron Bertley’s Huffington Post article The Rise of the Anchor Institution: Setting Standards for Success highlights, the partnership with the assistance of Democracy Collaborative, provided the funding to help launch the Evergreen Cooperatives — a network of worker-owned cooperatives that now provide industrial laundry services.

Similarly, the power of urban universities in development and revitalization can be seen in Chicago. In efforts to address the economic conditions of the Woodlawn area, located directly to the south of the University of Chicago, the university initiated an employee housing assistance program. The program has provided university employees with down payment assistance for purchase of homes in the Woodlawn area. The employer-assisted housing program is the university’s way of assisting in stabilizing neighborhoods and promoting mixed-income housing in economically depressed areas.

Another hometown example, worth noting is the work of the Ohio State University’s community revitalization organization — Campus Partners. Working in collaboration with the community, the university, and the city of Columbus, Campus Partners has spearheaded the planning and development of blighted and crime ridden areas surrounding the university. Leveraging private investments and collaborative approach, Campus Partners remains at the forefront of the development of the University District Area, High Street Corridor, and the once heavily crime-ridden Weinland Park area. Campus partners has strategically approached development by seeking to address both underlying neighborhood issues to both stabilize neighborhoods and promote economic development and growth. In the Weinland park neighborhood, Campus Partners is helping to create, maintain, and promote a truly mixed-use/mixed-income neighborhood. The organization already has preserved and increased the stock of affordable housing through the acquisition and investment in Section 8 housing, assisted current neighborhood residents in the repair to the exterior of their homes, and continue to work with local partners to add to the neighborhoods current housing stock.

Takeaways and Road Ahead
Urban universities innovation and assistance in economic development is an acknowledgment of the symbiotic relationship these universities share with the neighborhoods in which they are located and a reﬂection of the increasing complexity and need for partnership in neighborhood revitalization. The various strategies implored by urban universities engaging in economic development activities reﬂect the diversity of challenges and varying complexity level of problems that exist. Universities engaging in or wishing to assist in economic development and revitalization activities must be aware of the myriad of community, economic, and political challenges that awaits them.

Jane Jacobs once said “there is no logic that can be superimposed on the city; people make it, and it is to them, not buildings, that we must ﬁt our plans.” The increase in involvement in neighborhood revitalization provides urban universities an opportunity to further engage with the community, serve as a resource not just for the students that attend but for the neighborhoods in which they exist, and to truly develop a functional model of neighborhood development. The assistance of urban universities in revitalization efforts, may be the beginning of an economic development era in which neighborhoods can receive an architectural and economic facelift without the devastating side effects of gentriﬁcation.

Donald Wiggins, Jr. will be a December 2016 graduate of Capital University Law School. Donald is currently the Lake Erie Engagement Coordinator with the Ohio Environmental Council. He is interested in the areas of real estate development, zoning and land use, and environmental law. He has been a CMBA member since 2015. He can be reached at (347) 409-3221 or wigginsjrd@gmail.com.
On June 8, 2016, Governor Kasich signed House Bill 523 (codified in Chapter 3796 of the Ohio Revised Code) into law, and the new law took effect on September 8 of this year. House Bill 523 legalized medical marijuana in Ohio, and, among other things, provided for the licensing of medical marijuana cultivators, processors, testing facilities, and dispensaries. Shortly after it was signed by the Governor, however, concerns began to be raised about the allowable scope of an attorney’s involvement in the medical marijuana industry, both personally and professionally. This article summarizes the proceedings to date, including the recent amendment to Prof.Cond.R. 1.2.

Applicable Statutory Provisions and Ethical Rules

Section 3796.24(A) of the law attempted to clarify that lawyers should be free from discipline “solely for engaging in professional or occupational activities related to medical marijuana.” However, the Modern Courts Amendment to the Ohio Constitution provides that attorney discipline is exclusively within the purview of the Ohio Supreme Court. Therefore, attorneys are required to comply with the Ohio Rules of Professional Conduct when advising medical marijuana clients, notwithstanding R.C. 3796.24(A).

At the time H.B. 523 was passed, the Rules of Professional conduct contained a prohibition against advising or assisting clients in conduct "the lawyer knows is illegal" (Prof.Cond.R. 1.2(d)), a prohibition against committing an "illegal act that reflects adversely on the lawyer’s honesty or trustworthiness" (Prof. Cond.R. 8.4(b)), and a prohibition on "any other conduct that adversely reflects on the lawyer's fitness to practice law” (Prof.Cond.R. 8.4(h)). These provisions were implicated because, while more than half of the country has legalized marijuana in some form, it remains illegal at the federal level under the Controlled Substances Act.

The Board of Professional Conduct's August Advisory Opinion Limited the Services Attorneys Can Provide to Medical Marijuana Clients

This past summer, a number of Ohio lawyers sought an advisory opinion from the Board of Professional Conduct regarding three distinct issues:

1. Whether an Ohio lawyer may ethically counsel, advise, and represent medical marijuana clients;
2. Whether an Ohio lawyer may operate or hold an ownership interest in a medical marijuana business; and
3. Whether an Ohio lawyer may ethically use medical marijuana as provided by Ohio state law.

On August 5, the Board issued Advisory Opinion 2016-6, and opined that the current version of Rule 1.2 prohibited lawyers from providing traditional legal services to the Ohio medical marijuana community. The Board began its analysis noting that Rule 1.2(d) prohibits a lawyer from assisting a client engaging or seeking to engage in conduct the lawyer knows is illegal, either under state or federal law. With that in mind, the Board decided that a lawyer "cannot deliver legal services to assist a client in the establishment and operation of a state regulated marijuana enterprise that is illegal under federal law.” The prohibited services included, but were not limited to:

1. Completion and filing of marijuana license applications;
2. Negotiations with regulated individuals and businesses;
3. Representation of clients before state regulatory boards responsible for the regulation of medical marijuana;
4. Drafting and negotiating of contracts with vendors for resources or supplies;
5. Drafting of lease agreements for property to be used in the community.
cultivation, processing, or sale of medical marijuana;
6. Representation of clients relating to commercial paper, tax, and zoning issues;
7. Corporate entity formation;
8. Representing a property owner, lessor, supplier or business in transactions with a marijuana regulated entity, if the lawyer knows the transferred property, facilities, goods or supplies will be used to engage in conduct that is illegal under federal law; and
9. Statutory agent services.6
However, the Board also clarified that Ohio lawyers could advise clients about the conflict between state and federal law, the consequences of engaging in conduct that is permissible under Ohio law but contrary to federal law, and the likelihood of federal enforcement under the current administration.7 Ohio lawyers could also counsel and advise about the meaning of Ohio law, and the requirements imposed by Ohio’s medical marijuana law.8

The Board also stated that Ohio lawyers can represent clients in the following situations:
1. A client charged with violating Ohio’s medical marijuana law;
2. A professional license holder before professional licensing boards;
3. An employee in a wrongful discharge action arising out of the use of medical marijuana; and
4. Aiding a government client in implementing and administering the state’s medical marijuana program (including state or local governments involving the establishment, operation, or implementation of the regulatory system).9

The Board stated that when assisting clients pursuant to Ohio’s medical marijuana program, Ohio lawyers should enter into a written fee agreement that “encompasses a mutual understanding about the exact scope of services the lawyer is ethically and lawfully able to provide under Prof.Cond.R. 1.2(d).”10

As it relates to an attorney’s personal involvement in Ohio’s medical marijuana industry (whether as a business owner or medical marijuana patient), the Board’s analysis was more nuanced. The Board concluded that the single use of medical marijuana (illegal under federal law) would not violate Prof.Cond.R. 8.4(b) but that repeated use might.11 In addition, the Board concluded that other misconduct relating to the use of medical marijuana, such as “lying to federal investigators or obtaining a prescription
for medical marijuana for purposes of resale or providing it to a minor” could implicate Prof.
Cond.R. 8.4(h).12

The Board did clarify, however, that Prof.
Cond.R. 8.4(h) — engaging in conduct that adversely reflects on the lawyer’s fitness to practice
law — can be violated even when no other Rule is violated.13 Interestingly, the Board specifically
cites to the case of Disciplinary Counsel v.
Bowling, 2010-Ohio-5040, and describes that case as one where a magistrate was charged, but not
convicted for marijuana possession under state
law and violated Prof.Cond.R. 8.4(h). However,
in Bowling the parties actually stipulated that the
magistrate violated Canon 2 of the former Code of
Judicial Conduct by using marijuana occasionally
to self-medicate after a stroke, and Disciplinary
Counsel dismissed the alleged violation of Prof.
Cond.R. 8.4(h).14

The Board’s caution that “repeated” use of
marijuana is troubling in light of the fact that Ohio
lawyers with chronic conditions would likely use
medical marijuana on a repeated basis to manage
the condition. From a practical standpoint, the
Board’s conclusion would allow a lawyer using
marijuana once for the purposes of getting high
to escape discipline, while a chronically ill lawyer
could be disciplined for using medical marijuana
repeatedly under the treatment of a physician.
Furthermore, it is not clear how an Ohio lawyer
can own or operate a medical marijuana business
in accordance with Prof.Cond.R. 8.4 — for instance, is owning one business allowable, even though the business engages in repeated
transactions?

The Ohio Supreme Court Amends Rule 1.2
Clarifying that Attorneys may Advise Medical
Marijuana Enterprises

Following the issuance of Advisory Opinion
2016-6, Chief Justice Maureen O’Connor issued
a statement saying that the Ohio Supreme Court
would be considering proposed rule changes
to address the concerns raised by the advisory
opinion. The Court quickly acted by proposing
and then subsequently adopting an amendment
to Prof.Cond.R. 1.2(d) separating the Rule
into two distinct subsections, with subsection
(1) retaining the Rule’s original text and a new
subsection (2) reading:

(2) A lawyer may counsel or assist a client
regarding conduct expressly permitted under Sub.
H.B. 523 of the 131st General Assembly authorizing
the use of marijuana for medical purposes and any
state statutes, rules, orders, or other provisions
implementing the act. In these circumstances, the
lawyer shall advise the client regarding related
federal law.15

This language is notably more limited than
language used in other states. In Alaska, for

 instance, the state adopted a new Rule 1.2(f)
that allowed lawyers to advise regarding
conduct the lawyer “reasonably believes” is
authorized by Alaska’s marijuana laws.16 The
rule proposed by the Ohio Supreme Court,
however, specifies that a lawyer’s advice must
relate to conduct “expressly permitted” under
H.B. 523. The Rule retains language common
in other states requiring attorneys to advise
about conflicts with federal law.

This failure to include a “reasonably believes”
clause becomes meaningful where a client’s
intended course of conduct is not authorized
explicitly by H.B. 523 and the client seeks legal
advice to determine whether the proposed
conduct is legal. Under the current amendment,
the lawyer may risk discipline if he or she
incorrectly determines, albeit in good faith, that
the course of conduct is permissible and advises
the client accordingly.

Additionally, while the Court’s proposed
amendment would address concerns relating to
attorney representation of medical marijuana
businesses, there were no corresponding
proposals to amend Prof.Cond.R. 8.4 relating to
an attorney’s personal use of medical marijuana
or ownership in a medical marijuana business.

Conclusion

The need to change the Rules of Professional
Conduct following an advisory opinion that
limits an attorney’s ability to represent medical
marijuana companies is not unheard of. In
fact, Colorado experienced a similar situation
after it legalized recreational marijuana in 2012.
By adopting the amendment to Prof.Cond.R.
1.2(d), attorneys have the green light (no pun
intended) to represent medical marijuana clients
by providing the types of traditional legal services
offered to clients in other industries. Questions
remain, however, about the precise scope of
those services and whether an Ohio lawyer can
ethically use medical marijuana or own a medical
marijuana business.

Tom Haren is an attorney with the law firm of
Secley, Savidge, Ebert & Gourash Co., LPA, where
he is a member of the firm’s Regulated Products,
Litigation, and Criminal Defense Practice Groups.
Tom advises entrepreneurs, investors, physicians,
and other stakeholders on House Bill 523 and Ohio’s
bouging medical marijuana industry. Tom is a
member of the National Cannabis Bar Association,
National Cannabis Industry Association, and
NORML Legal Committee. He has been a CMBA
member since 2011. He can be reached at (216)
566-8200 or tharen@seg-law.com.

Ian Friedman is a partner at Friedman & Nemecek,
L.L.C. His practice is focused on criminal, cyber,
& white collar matters. He is past-president of the
Ohio Association of Criminal Defense Lawyers
which named him their first ever “Lawyer of the
Year.” He is an Adjunct Professor at CM|LAW
where he teaches Cybercrime. The CM|LAW
Alumni Association recently announced that Ian
will be the 2017 Alumni of the Year. He is a Fellow
and president-elect of the American Board of
Criminal Lawyers. He has been a CMBA member
since 2002. He can be reached at (216) 928-7700
and info@fanlegal.com.
Revisions to Ohio Revised Code Hope to Clarify Fiduciary Duties Owed by Officers to Corporations and Limited Liability Companies

BY GREGORY L. WATKINS

The Ohio Revised Code (O.R.C.) has codified the duty of care and the duty of loyalty with respect to directors of corporations and managers of limited liability companies for quite some time. However, it was unclear whether such duties extended to the officers of those entities, thus creating a disconnect in the O.R.C. Recently, the Ohio legislature sought to remedy the issue and establish the fiduciary duties owed by officers. The resulting additions and revisions provide clarity to the O.R.C. and promote uniformity among its provisions.

On June 10, 2015 legislators introduced Senate Bill 181 (the “Act”) in the Ohio Senate. The Act’s analysis indicates its purpose is to, among other things, (i) prescribe the fiduciary duties of corporate and limited liability company officers, (ii) specify that certain officers are not required for limited liability companies, (iii) permit a written waiver or elimination of the fiduciary duties of limited liability company members, managers, or officers, (iv) clarify when a limited liability company manager’s or officer’s duties can be the same as a member’s duties, and (v) declare the policy of Ohio’s limited liability company law generally to give maximum effect to freedom of contract. The Ohio Senate and House of Representatives unanimously passed the Act on October 14, 2015 and February 24, 2016 respectively. The amendments to Ohio’s corporation act (O.R.C. section 1701.01, et seq.) and Ohio’s limited liability company act (O.R.C. section 1705.01, et seq.) took effect on July 6, 2016.

The Act adds O.R.C. section 1701.641 to Ohio’s corporation act. Section 1701.641(A) establishes that the fiduciary duties an officer owes to a corporation (with the exception of any additional duties established in the articles, regulations or a written agreement between the officer and a corporation) are set forth in section 1701.641(B). Section 1701.641(B) requires an officer to perform his or her duties to the corporation in good faith, in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing his or her duties, an officer may rely on information, opinions, reports, or statements prepared by either: (i) one or more directors, officers, or employees of the corporation who the officer reasonably believes are reliable and competent in the matters prepared or presented; or (ii) counsel, public accountants, or other persons as to matters that the officer reasonably believes are within the person’s professional or expert competence.

Section 1701.641(C) also sets forth a “clear and convincing” evidentiary standard that must be met to prove an officer has not acted (i) in good faith, (ii) in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, or (iii) with the care that an ordinarily prudent person in a like position would use under similar circumstances. Further, section 1701.641(C) sets forth guidelines in determining whether an officer is acting in good faith (i.e. if the officer has knowledge concerning the matter in question that would cause reliance on information, opinions, reports or statements to be unwarranted).

Section 1701.641(D) specifies that an officer will be liable for damages under Section 1701.641(B) only if it is proved by clear and convincing evidence that the officer’s action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation. Notwithstanding, section 1701.641(D) will not apply if, at the time of the officer’s action, (i) the articles or the regulations of the corporation state by specific reference to section 1701.641(D) that its provisions do not apply to the corporation or (ii) a written agreement between the officer and the corporation states by specific reference to section 1701.641(D) that its provisions do not apply to the officer.

The foregoing provisions parallel those found at O.R.C. sections 1701.59(B)-(E), applicable to corporate directors. Ohio courts refer to section 1701.59(B) as the codified “business judgment rule.” Miller v. Miller, 132 Ohio St. 3d 424, 433 (2012). In short,
the business judgment rule is a common law rule whereby Ohio courts will not usually inquire into the wisdom of actions taken by a director in the absence of fraud, bad faith or abuse of discretion. *Stepak v. Schey*, 51 Ohio St. 3d 8, 12-13 (1990). Typically, the protections afforded by the rule are extended only to a director of a corporation and it has been argued on at least one occasion that officers are not permitted to assert the rule as a defense. *Cullen v. Milligan*, 10th Dist. No. 89AP-396 (June 21, 1990).

Such arguments may prove futile in the future, however, as the implementation of section 1701.641 permits courts to extend the protection of the business judgment rule to officers of a corporation. In any event, the addition of section 1701.641 promotes uniformity among the Ohio corporation act as corporate officers are now held to similar standards and afforded similar protections as corporate directors.

Uniformity is also achieved through the Act’s amendment of Ohio’s limited liability company act. Newly added O.R.C. section 1705.292 clarifies fiduciary duties owed by an officer to the limited liability company and the other members. Specifically, section 1705.292(A) indicates that unless the operating agreement or an ancillary agreement between the officer and a limited liability company establish otherwise, the fiduciary duties an officer owes to the limited liability company or its members is dependent on the individual’s status as a manager. In short, section 1705.292(A)(1) states if the individual is a member of the limited liability company, but not a manager, then the individual owes the duties that would be owed by a member. On the other hand, section 1705.292(A)(1) states if the individual is a member of the limited liability company and a manager, and in that capacity owes the duties that would be owed by a member, then the individual owes the duties that would be owed by a member.

In the event the individual falls outside of the foregoing classifications, section 1705.292(B) requires the officer to perform his or her duties in good faith, in a manner the officer reasonably believes to be in or not opposed to the best interests of the limited liability company and with the care that an ordinarily prudent person in a like position would use under similar circumstances. This standard resembles the newly enacted provision applicable to corporate officers. In fact, many of the newly enacted provisions with respect to officers of a limited liability company resemble those found in newly enacted O.R.C. section 1701.641 (officer standards set forth in Ohio’s corporation act). These include the previously discussed evidentiary standard, an exception to the officer’s reliance on information, opinions or reports, an officer’s liability for damages, and the promotion of an officer and the entity to freely contract.

With the additions and revisions provided by the Act it is evident the Ohio legislature is hoping to provide some direction and clarity with respect to officers of corporations and limited liability companies. Indeed, case law will further develop these concepts, especially with respect to the extension of the business judgment rule to officers, but for the time being the provisions provide a solid foundation moving forward. Ultimately, the newly enacted provisions provide uniformity across the O.R.C., thus promoting efficiency and ease of practice.

Gregory L. Watkins is an associate with Frantz Ward LLP where his practice focuses on business and corporate law. He has been a CMBA member since 2011. He can be reached at gwatkins@frantzward.com.
“Always dream and shoot higher than you know you can do. Do not bother just to be better than your contemporaries or predecessors. Try to be better than yourself.” – William Faulkner

BY PEGGY FOLEY JONES

When I started at Giffen & Kaminski nearly 10 years ago, the best advice that I got was from my law partner, Kerin Kaminski. She gave me a brochure for an advanced mediation training seminar being put on by ABA in Toronto, Canada. Why would I need that, I thought? I was a Common Pleas Judge for 12 years; I knew how to “mediate” a case. Boy was I green behind the ears! That seminar changed my life. I met an amazing faculty and ADR practitioners like Tracy Allen and Professor Lela Porter Love who taught me techniques and skills that maximize opportunities for settling cases.

So I want to pay it forward and encourage you to take the time to attend skills training in your area of expertise, whether that is the CMBA, ABA, DRI or OSBA. Just do it! You will meet remarkable, experienced practitioners who will enhance your skills and make you better at what you do. And perhaps, along the way, you too can impart your knowledge to someone or join a section or committee that will expand your horizons and increase your networking opportunities.

This Spring, I attended the ABA’s Section of Dispute Resolution’s Annual Conference in NYC. Over the course of four days, the attendees could pick from over 100 programs put on by leading scholars and ADR practitioners from all over the world. Here are some interesting concepts that I learned about in three of the most impactful sessions.

1. “The science of making better decisions”
   As hard as it is to get up early after a night out in NYC, I am so glad I got up to hear Professor Francesca Gino speak at 8:00 am about “The Science of Making Better Decisions.” Wow! Professor Gino is a professor of business administration in the Negotiation, Organizations & Markets Unit at Harvard Business School. (Gino’s full bio is available at www.francescagino.com) Her research focuses on judgment and decision-making, negotiation, motivation, productivity, and creativity.

   According to Professor Gino, our brain is hard-wired to make decisions and we need to understand that wiring and become architects of the context of our decisions. She stressed the importance of recognizing the limitations in the way we make decisions and that, by changing the psychology of making decisions, we can be more successful in our professional and personal lives. By way of example, she talked about an experiment that was done to look at consumers’ behavior in completing a car insurance form. The result of the experiment was that, on average, by moving the customer’s signature line from the bottom to the top of the form, there was a 2,400 mile difference in mileage claimed on new policy forms.

   “What does all this have to do with mediation?” you may ask. My takeaway from Professor Gino is that we as mediators and attorneys need to understand the psychology of how parties make decisions. People are more thoughtful in making a decision if they are reminded of the importance of the decision they are making. Also, there is so much more to settling a case than just talking about money. Mediation is about understanding the parties’ emotions and needs, and as suggested by Professor Gino, offering them something that will be helpful to them other than just money. You can learn more about the “science of making better decisions” by visiting Professor Gino’s website at http://francescagino.com/judgment-decision-making-negotiation.

2. Venting in Mediation: Helpful or Harmful
   Another session I attended at the conference was “Venting in Mediation: Helpful or Harmful?” This seminar focused on examining evidence from neuroscience and psychology as to whether venting can be either helpful or harmful in the mediator setting. I believe parties oftentimes use the mediation process as their “day in court” and it is my experience that expressing their emotions or venting is beneficial to the process; however, I learned that not everyone agrees with me on this.

   Martha K. McClinton, Ph.D., the David Lee Shillinglaw Distinguished Service Professor in Psychology at the University of Chicago, discussed a number of studies that focus on the problems of venting negative emotions. One such study challenged the catharsis theory (a popular theory that venting one’s anger will produce a positive improvement in one’s psychological state). The researchers compared whether distraction or rumination works better to diffuse anger. In this study, angered students hit a punching bag and thought about the person who angered them (rumination group) or thought about working out in order to get in physical shape (distraction group). After hitting the bag, the participants reported how angry they felt. The conclusion was that people in the rumination group felt angrier than did people in the distraction group. Also, the study found that doing nothing at all was more effective than venting anger. (“Does Venting Anger Feed or Extinguish the Flame? Catharsis, Rumination, Distraction, Anger and Aggressive Responding.” Brad Bushman, Iowa State University.)
In another study examining how people process negative emotions, it was suggested by Professor McCintock that focusing on one’s negative feelings and their causes increases stress and anger. The better approach is to “self distance” the individual from the negative emotion and focus on the reasons underlying the emotions, rather than focus on what was experienced. (“When Asking ‘Why’ Does Not Hurt. Distinguishing Rumination From Reflective Processing of Negative Emotions.” Ethan Kross, Ozlem Ayduk, Walter Mischel.)

3. Dispositive Motions in Arbitration:
When to File and When to Hear them
When I started as an arbitrator 10 years ago, there was reluctance among many of my arbitrator colleagues to hear and grant dispositive motions. Some of the reasons for the concern back then were: 1) arbitration was supposed to be an efficient and expedient process and dispositive motions delay the hearing date; 2) AAA and ADR providers did not have rules authorizing arbitrators to consider motions; and 3) there is always the concern that granting a motion may make the award vulnerable to being challenged in the courts. However, times have changed and now there is a trend for dispositive motions being filed in arbitration.

Neither the Federal Arbitration Act (“FAA”), nor the Uniform Arbitration Act (“UAA”) expressly provide for dispositive motions. However, AAA Commercial Rule No. R-33 and AAA Employment R-27 provide that an arbitrator may allow the motion only if the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case. See also JAMS Comprehensive Rule No. 18 and FINRA Code of Procedures for Customer Disputes Section 12206 and 12504.


There was a lot of discussion and disagreement among the attendees at the conference on dispositive motions. Some of the commercial arbitrators stated that they would never allow parties to file a dispositive motion because it delays the proceedings and increases the parties’ costs. Many of the arbitrators in employment matters felt that because there is almost always a factual question in employment arbitrations, they would never allow a summary judgment motion to be filed. Another issue that was addressed was whether the arbitrator should have the motion submitted on the briefs only or also allow an oral argument. And should the arbitrator schedule an evidentiary hearing if requested by the non-moving party? A good reference for advice on issues that arise in arbitration is The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration, 3rd Edition (2014).

In conclusion, attending an ADR conference made me a better mediator and arbitrator — and it will do the same for you. The conference introduced me to practical, interesting perspectives from experts across various disciplines, all of them grounded in research and experience. Learning from those perspectives has made me more thoughtful in asking questions so as to diffuse anger and emotions, while I continue learning how to be a better listener.

The ADR experience is transformative and the information gained and discourse heard are empowering. Now, let me empower you. Consider attending a skills training conference and expand your horizons even more, for in the words of Faulkner, you can “always dream and shoot higher than you know you can.”
on September 9, the Bar Foundation hosted its 70th Annual Franklin A. Polk Public Servants Merit Awards Luncheon at the Westin Hotel in downtown Cleveland. More than three hundred family members, colleagues and friends gathered to celebrate the outstanding accomplishments of 10 individuals who have dedicated their professional lives to public service. Together, we laughed, we cried and we laughed again while honoring the chosen nominees for their unfailing patience, commitment to service and devotion to duty. We could not have been more proud to highlight this group during our best — and most favorite — awards show of the year!

The honorees’ names are now permanently inscribed on the Public Servants Recognition Wall inside the Cuyahoga County Courthouse.

THANK YOU TO ALL COMMITTEE MEMBERS; LYNN LAZZARO, COMMITTEE CHAIR; AND JACOB KRONENBERG, EVENT EMCEE.

2016 HONOREES:
Erika D. Bush, Cuyahoga County Court of Common Pleas
Mary Davidson, Cuyahoga County Juvenile Court
Lucy DeLeon, Cuyahoga County Domestic Relations Court
Theresa (Terri) Lee, Cuyahoga County Prosecutor’s Office
Susan E. Little, Cleveland Municipal Court
Gregory Nunn, U.S. Bankruptcy Court, Northern District of Ohio

David Sierleja, U.S. Attorney’s Office
Tina Simeone, Cleveland Municipal Court, Clerk’s Office
Alethia Wordlaw, Cuyahoga County Clerk of Courts
Colleen Corrigan Zitello, Cuyahoga County Probate Court

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Join the CMBF next year as we celebrate our 71st year of honoring devoted public servants!
ALL PROGRAMS WILL BE HELD AT THE CMBA CONFERENCE CENTER

At One Cleveland Center, 1375 E. 9th St., Floor 2, Cleveland, Ohio 44114 – Unless otherwise noted

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

Visit CleMetroBar.org/CLE for a full schedule.

OCTOBER
25 Fundamental of Federal Court Video Training
26 Sex, Drugs & Rock 'n' Roll – Professional Conduct
28 43rd Annual Estate Planning Institute

NOVEMBER

1 Bullying: A Legal Perspective
3 Brush with Art at MOCA Cleveland
10 – 11 38th Annual Real Estate Law Institute
15 You CAN Go Your Own Way: Building and Starting Your Own Firm
16 Lawyers Mental Health Professional Conduct
17 Anatomy of a Hack: Top Threats to Business Security
19 Municipal Court Update (Independence Civic Center)
22 Fundamental of Federal Court Video Training
30 59th Annual Cleveland Tax Institute

DECEMBER

1 59th Annual Cleveland Tax Institute
1 Advanced Medical-Legal Workers’ Compensation Seminar
3 Legal Eagles Year End Update (St. Edward High School)
6 – 8 New Lawyer Bootcamp
6 Becoming a Rock Star Researcher
9 White Collar Crime Institute
10 Municipal Court Update (Independence Civic Center)
10 Risk Management – Professional Conduct Video
13 Protecting the Media: Lawyers and the Press
21 – 22 38th Annual Real Estate Law Institute Video
22 Professional Conduct Video Presentation
27 43rd Annual Estate Planning Video
27 Professional Conduct Video
28 – 29 O’Neill Bankruptcy Institute Video
29 Disorder in the Court: Professional Conduct Live
30 Professional Conduct Video
30 – 31 Labor & Employment Conference Video

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

Sex, Drugs & Rock ’n’ Roll – Professional Conduct

Wednesday, October 26

CREDITS 3.50 hours Professional Conduct CLE

REGISTRATION 12:30 p.m.

Welcome & Introductions
Kimberly M. Baga, OEEconnection LLC
Chair, CMBA Ethics & Professionalism Committee

Whole Lotta Trouble: Relationships with Clients and Conflicts of Interest (Sex)
Jonathan E. Coughlan, Kegler, Brown, Hill + Ritter, Columbus
Past Disciplinary Counsel for the State of Ohio

Takin’ Care of Business: Preparing Your Firm for Life’s What Ifs (What If Preparedness)
Deborah A. Coleman, Coleman Law LLC

Up in Smoke: Medical Marijuana and the Practice of Law (Drugs)
Patrick F. Haggerty, Frantz Ward LLP

Keeping it Clean: Plagiarism and Copyright Infringement (Rock ‘n’ Roll)
Mark E. Avsec, Benesch, Friedlander, Coplan & Aronoff LLP

43rd Annual Estate Planning Institute 2016

Friday, October 28

CREDITS 6.50 CLE Hours

REGISTRATION 8:00 a.m.

PROGRAM 8:30 a.m. – 4:30 p.m.

Materials sponsored by Key Private Bank

Welcome & Introductions
Maureen Beaver, Calfee Halter & Griswold LLP, Institute Chair

Ohio Law Update
Maryann Fremion Thomas, Schneider Smeltz Spieth Bell LLP

Fiduciary Litigation – Including In Terremor Clauses, Arbitration Clauses, and Privity Issues
Robert M. Kincaid, Jr., BakerHostetler LLP

Break Sponsored by the Jewish Federation of Cleveland

Drafting Trusts to Enhance (or Restrict) Flexibility
Patrick J. Saccogna, Thompson Hine LLP

Case Studies in the Exercise of Trustee Discretion
Michael Barnes, Johnson Trust Company

Lunch Sponsored by Glenmede (included with registration)

Federal Law Update
Scott E. Swartz, Wellspring Financial Advisors

ESOPs as an Estate Planning Tool: An Introduction to Employee Stock Ownership Plans
Erica E. McGregor, Tucker Ellis LLP

WWW.CLEMETROBAR.ORG
Meet us at the Bar for lunch, networking, and CLE. Check out these one-hour CLEs, sponsored by our Sections.

October 26
Environmental Law Section
TSCA Reform in a Nutshell: What’s happened and what to expect under the Frank R. Lautenberg Chemical Safety for the 21st Century Act

November 9
Workers’ Compensation
Revisions to the Hearing Officer Manual (now titled Adjudications) Before the Ohio Industrial Commission

November 15
Estate Planning, Probate & Trust
Two Hot Ethics Topics and Diminished Capacity — What You Should Know

November 16
Labor & Employment
The Elephant in the Room: How Failing to Acknowledge unconscious Bias Puts Employers at Risk

Ann M. Carensan, Tucker Ellis LLP
Leslie A. Lauer, UBS Wealth Management
Break Sponsored by BNY Mellon
Planning with the Ohio ABLE Act
Amanda M. Buzo, Community Fund Management Foundation
Planning for College? What You Need to Know about the FAFSA and CSS Profile
Robert Durham, Director of Scholarship Services and Financial Aid, College Now Greater Cleveland
Kittie Warshawsky, Chief External Affairs Officer, College Now Greater Cleveland

Prenuptial Agreements, Treatment of Pre-Marital Assets, and Trust Interests in Divorce
Carl A. Murway, Taft Stettinius & Hollister LLP
H. William Beseth, III, Taft Stettinius & Hollister LLP

Bullying: A Legal Perspective
Tuesday, November 1
CREDITS 3.25 CLE Hours
Welcome & Introductions
Aimee Gilman, Agins & Gilman, LLC, Seminar Chair
Bullying: A Victim’s Perspective
Joseph Galloway
Issues Facing School Districts – Obligations and Liability
Helen S. Carroll, Roetzel & Andress, LPA

Bullying and Students with Disabilities: Remedies for Students and Parents
Aimee Gilman, Agins & Gilman, LLC
Kerry M. Agins, Agins & Gilman, LLC
Panel Discussion
Helen S. Carroll, Roetzel & Andress, LPA
Aimee Gilman, Agins & Gilman, LLC
Kerry M. Agins, Agins & Gilman, LLC

A Brush with the Law
Thursday, November 3
CREDITS Credits 3.00 CLE Hours
PROGRAM 9:00 a.m. – 12:15 p.m.
LOCATION Museum of Contemporary Art Cleveland
11400 Euclid Avenue
ABOUT A BRUSH WITH THE LAW
Does the visual world of art have something to teach the verbal world of law? Join lawyer and painter Bruce Petrie and discover the common ground between the paintbrush and the briefcase. Explore how principles in the visual arts apply to law—principles of design, inspiration, composition, focal point, balance, craftsmanship. The course will look at a legal masterpiece, the U.S. Constitution, through the lens of art masterpieces that illuminate constitutional principles. You don’t have to have an art background; just bring your curiosity. We’ll see that painters and lawyers are engaged in problem-solving—working to craft something purposeful and whole that may not piece together without a bit of craftsmanship.

ABOUT OUR PRESENTER
Lawyer, painter, and author Bruce I. Petrie, Jr. is a partner in the Cincinnati law firm of Graydon Head & Ritchey LLP, where he focuses his practice in healthcare, education and public sector law. He has written two books about law and painting: Constitutional Conversation: A New Lens on America’s Best Masterpiece and Trail of the Brush: A Painter’s Guide. His artwork can be viewed at BrucePetrie.com.

This isn’t a program about art that depicts lawyers, or about the legal rights of artists. Instead, this course takes a fresh look at law from the perspective of the visual arts. Looking at law through this lens, we’ll see that the worlds of art and law share important, common principles. We’ll discuss these principles and how they manifest themselves in both worlds. Ultimately, we’ll discuss how, by expanding our viewpoint to look for and appreciate these common principles, we can better understand the art of lawyering and hone our craft.

THE SIX PRINCIPLES OF ART & LAW
Design, Inspiration, Composition/Unity Focal Points, Balance, Craftsmanship

AGENDA
A Brush with the Law: Six Principles of Art & Law
Group Viewing of Selected Works in Museum Gallery with Commentary
Bruce Petrie

Register at CleMetroBar.org/CLE!
For questions or to register over the phone, call (216) 696-2404.
38th Annual Real Estate Law Institute 2016

CREDITS 12.75 CLE Hours

Thursday, November 10

Welcome and Opening Remarks
Paul J. Singerman, Singerman, Mills, Desberg & Kauntz Co., LPA, Institute Co-Chair

Current Developments
Lori Pittman Haas, Ulmer & Berne LLP
Irene M. MacDougall, Tucker Ellis LLP
John W. Waldeck, Jr., Walter | Haverfield, LLP

Commercial Lending 101: From Term Sheet to Closing
David C. Ricco, Walter | Haverfield LLP, Moderator
Kenneth M. Lapine, Miller Goler Faeges Lapine LLP
Peter C. Bergan, Jones Day
Daniel P. Hinkel, Kadish, Hinkel & Weibel
Frank C. Santioemmo, Singerman, Mills, Desberg & Kauntz Co., LPA

Lunch & Presentation of the Rosewater Award

Tax Increment Financing: From Cradle to Grave
Keith H. Raker, Tucker Ellis LLP, Moderator
Robert J. Hanna, Tucker Ellis LLP
David Ebersole, Assistant Director of Economic Development, City of Cleveland

Debt and Equity Financing
Brian J. Lenahan, Brown Gibbons & Lang Company Real Estate Partners, Moderator
John Joyce, Jr., RHM Real Estate
Tracy Ols, Director of Commercial Property Management, Hanna Commercial Real Estate

1031 Exchanges
Kevin M. Hinkel, Kadish, Hinkel & Weibel
Raymond C. Novinc, First American Exchange Company, LLC

I’m From the Government, I’m Here to Help – SBA Loan Programs
Paul J. Singerman, Singerman, Mills, Desberg & Kauntz Co., LPA, Moderator
Kimball E. Rubin, Kimball E. Rubin & Associates
John Kropf, Growth Capital Corp.

Program Concludes Cocktail Hour Begins

Friday, November 11

Welcome and Opening Remarks
Joseph M. Saponaro, Dinn Hochman & Potter, LLC, Institute Co-Chair

West 25th Lofts Adaptive Re-Use: “What’s Old is New Again”
Thomas B. Bruce, Love Funding
Dave Srachan, Love Funding
Andrew Mazak, Vogt Strategic Insights
Chris Smyth, Smyth Real Estate Advisors

Fight Blight – Ohio City Infill Program
Rose Marie L. Fiore, Kaufman Drozdowski & Grendell, LLC, Moderator

Gillian E. Hall, Knez Homes
Chris Garland, Assistant Planning Director, City of Cleveland
Ben Trumble, Senior Director of Real Estate and Planning, Ohio City Incorporated

Serial Sub-Tenants and Subleasing Issues: Financing Eviction & Bankruptcy
Lori Pittman Haas, Ulmer & Berne LLP
Adam Gimbel, Allegro Realty Advisors

Bioremediation: From the Traditional to the Sublime
Joseph M. Saponaro, Dinn Hochman & Potter, LLC, Moderator
John J. Fasbhender, Fasbhender Law Office
Dan Brown, Partners Environmental Consultants, Inc.

“If I Build It, You Will Pay” Construction Claims and Coverage Issues
Michael A. Poklar, Law Office of Michael A. Poklar, Moderator
Andrew J. Natale, Frantz Ward LLP

Contractor
Michael D. Goler, Miller Goler Faeges Lapine LLP, Moderator
Frank R. DeSantis, Thompson Hine LLP
Hon. Michael P. Donnelly, Court of Common Pleas, Hon. Dan Aaron Polster, U.S. District Court, Northern District of Ohio
Linda A. Streifskey, Thompson Hine LLP
Mark I. Wachter, Wachter Kurant LLC

Program Concludes

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

Tuesday, November 15

CREDITS 3.00 CLE hours requested

REGISTRATION 12:30 p.m.

PROGRAM 1 – 4:15 p.m.

Nuts and Bolts: The Logistics of Starting Your Own Practice:
• Necessary equipment and software
• Important office documents (engagement letters, demand letter, etc.)

It’s All About the Bottom Line
• How to Bill
• How to Invoice
• How to Maintain an IOLTA Account

Making Connections
• Networking to Build a Book of Business
• How to Build Your Practice While Working with Someone Else

Making It Work
• How to have work-life balance
• Transitions from corporate practice or large firms to solo practice

Lawyer Mental Health & Wellness Seminar

Wednesday, November 16

CREDITS Submitted for 2.50 CLE Hours

REGISTRATION 1:00 p.m.

PROGRAM 1:30 p.m. – 4:30 p.m.

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

Mental Health: The Medical Facts
Patrick S. Runnells, M.D., University Hospitals

Recognizing Depression
Susan K. McGrath, Ph.D.

A Mindful Practice: A discussion and demonstration of techniques to help lawyers manage stress and maintain composure
Lori Wald, Esq.

Anatomy of a Hack: Top Threats to Business Security

Thursday, November 17

CREDITS 3.00 CLE

REGISTRATION 12:30 p.m.

PROGRAM 1 – 4:15 p.m.

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

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

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

Nuts and Bolts: The Logistics of Starting Your Own Practice:
• Necessary equipment and software
• Important office documents (engagement letters, demand letter, etc.)
Risk Mitigation
- Specific Measures to Reduce Chances of Security Breaches
- How to be Proactive: Threat Intel, Risk Assessment, and Testing
- What to do if You or Your Client is Breached

PRESENTER
Nicholas Hinsch, CEO, eVAL Agency

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

59th Annual Cleveland Tax Institute 2016

CREDITS Up to 13.00 CLE Hours

Wednesday, November 30

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

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

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

Breakout Sessions:

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

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

Thursday, December 1

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

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

Register at CleMetroBar.org/CLE!
For questions or to register over the phone, call (216) 696-2404.

The CMBA & Akron Bar are taking the show on the road!
Spend a long weekend in sunny Florida, and pick up 12 hours of CLE in between visits to the beach and our networking events.

Discounted Resort Rates Available!
http://goo.gl/Vw3Vds

Save the Date
January 26–27, 2017
MARRIOTT AT SINGER ISLAND IN FLORIDA
<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Event Description</th>
<th>Location</th>
<th>Staffed by</th>
<th>Sponsored by</th>
</tr>
</thead>
<tbody>
<tr>
<td>SATURDAY, OCTOBER 1</td>
<td>10:00 AM – 11:30 AM</td>
<td>Intake Hours; Brief Advice and Referral Clinic</td>
<td>West Side Catholic Center, 3135 Lorain Avenue, Cleveland 44113</td>
<td>St. Ignatius alumni volunteers</td>
<td>Legal Aid</td>
</tr>
<tr>
<td></td>
<td>12:00 PM – 1:00 PM</td>
<td>Special Clinic for U.S. Veterans</td>
<td>4200 Park Avenue, Third Floor</td>
<td></td>
<td>Legal Aid</td>
</tr>
<tr>
<td></td>
<td>2:00 PM – 3:00 PM</td>
<td>CLE: Access to Justice for Low Income Individuals - Legal Aid and Pro Bono Service</td>
<td>Cleveland, OH</td>
<td></td>
<td>Legal Aid</td>
</tr>
<tr>
<td>THURSDAY, OCTOBER 20</td>
<td>2:00 PM – 4:00 PM</td>
<td>Community Outreach Clinic</td>
<td>Oberlin Community Services, 285 South Professor Street, Oberlin</td>
<td></td>
<td>Legal Aid</td>
</tr>
<tr>
<td>SATURDAY, OCTOBER 15</td>
<td>4:30 PM – 6:00 PM</td>
<td>Brief Advice and Referral Clinic</td>
<td>West Side Catholic Center, 3135 Lorain Avenue, Cleveland 44113</td>
<td>Clifford Natural Resources and Giffen &amp; Kaminski LLC</td>
<td>Legal Aid</td>
</tr>
<tr>
<td>FRIDAY, OCTOBER 21</td>
<td>4:30 PM – 5:30 PM</td>
<td>Volunteer Lawyers for the Arts Presentation on Estate Planning for Artists</td>
<td>78th Street Studios, Cleveland 44102</td>
<td></td>
<td>Cleveland Metropolitan Bar Association</td>
</tr>
<tr>
<td>SATURDAY, OCTOBER 22</td>
<td>9:30 AM – 11:00 AM</td>
<td>Intake Hours; Brief Advice and Referral Clinic</td>
<td>Fatima Family Center, 6600 Lexington Avenue, Cleveland 44103</td>
<td></td>
<td>Cleveland Metropolitan Bar Association</td>
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<tr>
<td></td>
<td>12:00 PM – 1:00 PM</td>
<td>Special Clinic for U.S. Veterans</td>
<td>4200 Park Avenue, Third Floor</td>
<td></td>
<td>Legal Aid</td>
</tr>
<tr>
<td></td>
<td>2:00 PM – 4:00 PM</td>
<td>Pro Se divorce clinic – Cuyahoga County</td>
<td>78th Street Studios, Cleveland 44102</td>
<td></td>
<td>Cleveland Metropolitan Bar Association</td>
</tr>
<tr>
<td></td>
<td>5:00 PM – 7:00 PM</td>
<td>Evening Law Firm Clinic</td>
<td>Cleveland Metropolitan Bar Association, 1223 W. 6th Street, Cleveland 44113</td>
<td></td>
<td>Legal Aid</td>
</tr>
</tbody>
</table>

**Registration for events is now open!**

Visit www.lasclev.org/2016probonoweek or www.lasclev.org/registration to sign-up!

Check website for calendar updates and other events.
TUESDAY, OCTOBER 25
5:30 PM – 7:30 PM
Brief Advice and Referral Clinic
Location TBD
See www.lasclev.org/events for more information
First come, first served
Staffed by volunteers from
Volunteer Lawyers for the Arts
Sponsored by Legal Aid and the CMBA

Intake Hours: 5:00 – 7:00 pm
Brief Advice and Referral Clinic
Maple Heights Branch –
Cuyahoga County Library
5225 Library Lane
First come, first served
Staffed by volunteers from the BPA
Sponsored by Legal Aid

WEDNESDAY, OCTOBER 26
Pro Se Divorce Clinic – Lake County
By appointment only,
clients 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

THURSDAY, OCTOBER 27
Intake Hours: 2:30 PM – 4:00 PM
Brief Advice and Referral Clinic
Main Branch – Cleveland Public Library,
525 Superior Avenue, Cleveland 44114
First come, first served
Staffed by volunteers from
Legal Aid’s ACT 2 program
Sponsored by Legal Aid

4:30 PM – 7:15 PM
Reach Out: Legal Assistance
for Nonprofits Educational
Seminar and Brief Advice Clinic
“Contract Review for Nonprofits”
Cleveland Metropolitan Bar Association
1375 East 9th Street, Floor 2,
Cleveland 44114
Free and open to attorneys
and nonprofit leaders
Register at www.clemetrobar.org/ReachOut
Sponsored by the CMBA, NEOACC,
and the Federal Bar,
Northern District of Ohio Chapter

FRIDAY, OCTOBER 28
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

12:00 PM – 1:00 PM
CLE: Domestic Relations Law 101
Cleveland Metropolitan Bar Association
1375 East 9th Street, Floor 2,
Cleveland 44114
Free with lunch provided for
Pro Se Divorce Clinic volunteers
Register at: www.clemetrobar.org
Sponsored by the CMBA and
Cavitch, Familo & Durkin Co., L.P.A.

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

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

SATURDAY, OCTOBER 29
7:30 AM (Registration)
Cleveland Metropolitan Bar
Foundation’s 15th Annual
Run for Justice
Burke Lakefront Airport
1501 North Marginal Road,
Cleveland 44114
(216) 696-3525
Register at www.clemetrobar.org
Sponsored by the CMBA

Intake Hours: 9:30 AM – 11:00 AM
Brief Advice and Referral Clinic
for Refugees
Catholic Charities, Office of
Migration and Refugee Services
St. Augustine Towers
7800 Detroit Avenue –
First Floor, Cleveland 44102
Staffed by volunteers from the
American Immigration Lawyers
Association, the Catholic Lawyers
Guild and the C. Lyonel Jones
Pro Bono Immigration Committee
Sponsored by Legal Aid and
Catholic Charities

Take a peek at the
Terminal Tower during the
last week of October one
night, lights will be BLUE
to honor Pro Bono Week!

REGISTRATION FOR EVENTS IS NOW OPEN!
Visit www.lasclev.org/2016probonoweek or www.lasclev.org/registration to sign-up!
Check website for calendar updates and other events.
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Our online CLE programming allows you to take CLE courses on a wide variety of topics, any time of the day, any day of the week. And, at only $45 per hour for members and $60 per hour for non-members, our online CLE is also cost-effective.

For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
Law Practices Wanted/For Sale

Multi-State motorcycle injury law firm for SALE. It is highly suggested that the interested firm or party have a lawyer motorcyclists. Unlimited potential for future growth and opportunity to obtain a national reputation. THIS IS NOT A CASE ASSUMPTION SITUATION. Please send inquiries to newkerryanne@yahoo.com or call (440) 413-1927.

Office Space/Sharing

Downtown

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

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

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

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

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

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

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

Unique Cleveland Warehouse District

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

Suburbs – East

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

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

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


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

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

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

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

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

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

Solon – Newly remodeled, yet vacant law office suite. Mint condition. Reception, copy room, large conference room, 2-3 attorney offices; lounge; modern kitchen; storage area; file cabinets; desks; furniture. Premier building. Modest rent with first few months waived. (440) 519-0900, ext. 106.

Suburbs – South

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

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

Suburbs – West

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

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

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

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

listings

Services


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

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

Experienced Attorney – Retired litigator, trial and appellate court judge, and law school professor available for litigation consultation. No charge. (440) 356-2728. rmmarkus1@cs.com


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


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

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


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

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

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

Walter | Haverfield LLP is pleased to welcome Susan M. Bungard and Christian J. Ondrey to the firm. Ms. Bungard joins Walter | Haverfield as an associate in its Public Law group. Mr. Ondrey also joins Walter | Haverfield’s Public Law Group as an associate.

Robert I. Chernett joins Weston Hurd LLP as Of Counsel. Bob focuses his practice on litigation and transactional matters regarding real estate.

Honors


Announcements

E.V. Bishoff Company is proud to bring it Corporate Neighbor Program to Columbus, Cleveland, and Pittsburgh. The program is designed to support its surrounding Corporate Neighbors with a myriad of facility related needs including, employee outplacement, data center, parking, back office needs, call centers, file storage, war rooms and project space.

The Lawyers Guild of the Catholic Diocese of Cleveland gave a Special Recognition to Mark and Christi Tripodi and the staff at Cornerstone of Hope, A Center for Grieving Children, Teens, and Adults in conjunction with the Annual Red Mass at The Cathedral of St. John the Evangelist on October 7, 2016.

Skoda Minotti is pleased to announce that Sean Saari, CPA/ABV, CVA, MBA was selected as recipient of the 2016 American Institute of Certified Public Accountants Forensic and Valuation Services Standing Ovation Recognition.

Ice Miller LLP announces the Ice Miller Foundation Day of Service, in which Ice Miller teams across all markets will spend the day volunteering with local nonprofits.

On October 6, President Obama commuted the sentence of Tucker Ellis pro bono client Arthur Clinkscale of Youngstown, Ohio. Mr. Clinkscale has served more than 14 years of a 20-year mandatory minimum sentence for a non-violent drug crime. He is now scheduled to be released in February 2017. Tucker Ellis received the case through the firm’s participation in the Department of Justice’s Clemency Initiative. Tucker Ellis attorneys Jon Oebker, Adrienne Kirshner, Jennifer Mesko, and Anthony Petruzzi worked on Mr. Clinkscale’s case.

Elections & Appointments

Thompson Hine LLP is pleased to announce that Julia Ann Love is one of 13 employee benefits lawyers selected nationally as a Fellow by the American College of Employee Benefits Counsel.

Something To Share?

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
The HALLOWEEN RUN is LANDING in a NEW LOCATION

BURKE LAKEFRONT AIRPORT

15th Annual Halloween Run for Justice
Saturday, October 29