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SEPTEMBER 2018

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Thirty-three years ago, I started my career in Cleveland at an unlikely place.

At the time, I was not studying law, but instead was a journalism student at the E.W. Scripps School of Journalism at Ohio University. My studies led me to my first job in Cleveland, an internship at a prominent television news station, WEWS Channel 5. Although I did not continue my pursuit of a career in journalism, the internship, the skills I learned, and my interactions with the professionals at WEWS left a lifelong impression on me.

Because my time spent at WEWS took place during the pre-internet era, a large portion of my internship was spent monitoring the telephones. I took the telephone calls and tips coming in from around the area and relayed the information to reporters, who would then go out and report on the stories themselves.

Some of those reporters were local celebrities. At the time, everyone in Cleveland tuned in to the nightly news at 6 p.m., and the faces they saw onscreen became icons in the area. But despite their bit of fame, those reporters never treated me with anything less than the utmost respect. They mentored me, giving me career advice while treating me not as an inexperienced student, but as their equal.

The team at WEWS had a talent throughout their work hours and putting the way the many elements of litigating a case come together during depositions, mediations, or trials to create something cohesive and effective in its purpose.

One particularly impactful experience I had while interning at WEWS involved my stepping into a role I had not previously experienced and learning on the fly. The team member usually responsible for operating the teleprompter read by the reporters on camera was suddenly unavailable, and I was the one called to action by the producers. I was to operate the teleprompter all by myself during the live newscast. I was new to the task and nervous at the thought of the new responsibility, but it had to be done. Any apprehension I had was overcome, and I learned a new skill by experiencing it firsthand, in an authentic work environment.

Internships and externships offer value beyond measure to students in all fields of study. The unique practical experiences provide opportunities for career exploration, hands-on learning, and connections made with more experienced professionals.

As members of the Cleveland legal community, we have the opportunity and responsibility to connect with law students and propel them into prosperous careers through internships, externships, or simply through friendship.

Laura McNally-Levine, a professor of law and the director of the Milton A. Kramer Law Clinic Center at Case Western Reserve University, is dedicated to helping...
Professor McNally-Levine also had a powerful experience through practical application of the skills she was learning in the classroom during her time in law school. As a student, she worried about being inadequate or not knowledgeable enough to succeed in the courtroom. She was encouraged by a law professor to overcome her nerves by taking a clinic, where she was able to make mistakes and learn from them.

Those are the kinds of experiences Professor McNally-Levine wants to give local law students — real-world practice, without the fear of failure. Externships can be valuable tools for students to use to learn precisely what kind of lawyer they see themselves becoming. But there is also value to be found in simply going to court. Professor McNally-Levine encourages employers to let students see “where lawyers live” by watching lawyers participate in trials, depositions, or other legal proceedings.

Sarah Wyss, a rising second-year student at Cleveland-Marshall College of Law, also agrees that it is important for law students to obtain practical legal experience. According to Ms. Wyss, interning at the U.S. Attorney’s Office in Cleveland has been an invaluable and life-changing experience. Ms. Wyss indicates that during her internship she has been able to hone her legal writing skills and learn complex subjects much faster than in the classroom.

In addition to internship opportunities, Professor McNally-Levine says that she wants attorneys to consider simply connecting with students. Shared advice over a cup of coffee or lunch can go a long way in guiding young people and easing their career-related anxieties. Veteran lawyers can give up-and-comers advice not found in textbooks. There is no substitute for lived experience.

Although I did not become a journalist by trade, the skills I learned and the connections I made during my internship at WEWS left lasting impressions on me. I encourage attorneys, judges, and legal professionals to give a student the gift of lived experience, so that they might be touched in a similar way. The reach of mentorship goes beyond the students we directly advise. By sponsoring and promoting the professional growth of local law students, we ensure that the Cleveland legal community remains prosperous into the next generation and beyond.

If you are an employer who is interested in connecting with law students from Cleveland-Marshall College of Law or Case Western Reserve University about internships, please visit law.csuohio.edu/independent-externships-and/or-law.case.edu/Career-Development/Employers/Join-Our-Network to learn more about how you can positively influence the lives of local young professionals.

SPOTLIGHT ON: MALLORY ROHR
KOEHLER FITZGERALD

Volunteers like Mallory Rohr are a blessing — and not only to the person coordinating the volunteers! Mallory is a true blessing to all the women she serves at the Norma Herr Women’s Shelter through the Cleveland Homeless Legal Assistance Program (CHLAP). CHLAP offers legal assistance the last Thursday of each month to the 170+ homeless women residing at the shelter. After Mallory relocated to Cleveland, she jumped in to serve those in need and CMBA is extremely grateful for her dedication and willingness to help.

Mallory enjoyed volunteering with the Legal Aid Society of Columbus while in law school and after passing the bar. When moving to Cleveland she knew she wanted to volunteer for these types of clinics again. “You meet with people who are so kind and truly appreciate your help. I wanted to help women going through hard times. Giving them a few resources to help their situation is the least I can do.”

Mallory is a commercial litigator and a healthcare attorney advocating for patients at Koehler Fitzgerald. Her daily caseload is very different from the issues presented at the Women’s Shelter. Issues at the shelter often revolve around child support, evictions, expungements, etc. CMBA provides volunteers with a manual which includes basic information about the topics most frequently discussed at the clinics.

Volunteering with CHLAP does not require any previous experience. As Mallory noted, “Many clients just want an ear to listen. I was surprised by how grateful the women are to have someone listen to their issue.” If you have thought about volunteering with CHLAP, take Mallory’s advice, “Just try it! It does not take much of your time and it will be rewarding.”

Thank you Mallory for your assistance at the Women’s Shelter! CMBA is so grateful to you for making a difference in the lives of the women you meet with, listen to and advise. Every time you volunteer, you carry out CMBA’s mission to improve the public trust in the legal profession and enhance Greater Cleveland through your community service. Thank you!
Brian Mulhall

Firm/Company: Mulhall Law, LLC
Title: Founder
College: University of Notre Dame
Law School: Columbia University

HOW DID YOU MEET YOUR SPOUSE/ SIGNIFICANT OTHER?
I was fortunate to meet Colleen at a bar in Virginia Beach during my last Navy tour. She played varsity field hockey at Radford University in Virginia and got a job near the beach after graduation. When she first asked me what I did and I told her I was in the Navy, she just rolled her eyes and said “everyone here is in the Navy.” Luckily I convinced her to take a date with me and the rest is history!

FAVORITE CLEVELAND HOT SPOT?
Punderson State Park has been a favorite destination for my family for decades. The rental cabins are great for us to stay at with our kids. Each summer we get a group of cabins with my parents and two sisters along with their kids. The cousins love filling those weekends with hiking, campfires, swimming and outings on the park’s lake.

TELL US ABOUT YOUR PET(S) IF YOU HAVE ANY?
We have a family dog named Charlie. She’s our little tomboy rat terrier mutt. Charlie is amazing with the kids, but also impressively skilled at escaping from our house and darting around the neighborhood. For being such a small dog, she’s unbelievably fast!

EAST SIDE OR WEST SIDE?
I grew up on the east side in Lyndhurst and later Mentor, but when we moved back to Cleveland we bought a house in Rocky River. Colleen, who’s not from Cleveland, truly didn’t understand what the big deal was about living on one side of a river vs. the other until her work clients started bringing it up all the time. We moved to Brecksville a few years ago and now label ourselves “central” with the hope of avoiding any controversies on this hot-button topic.

Tami Bolder

Firm/Company: CBIZ
Title: Practice Leader, NEO – Valuation & Litigation
College: University of Akron
Graduate School: Case Western Reserve University

IF YOU WERE NOT IN YOUR CURRENT PROFESSION, WHAT WOULD YOU BE?
I love teaching! I taught an MBA-level finance course for eight years. I also love working with young children. I have been volunteering with Junior Achievement for the last several years teaching financial literacy concepts to elementary school children. So I would either be a college professor or a kindergarten teacher.

WHAT WAS YOUR FIRST PET? ITS NAME?
My first pet was an American Eskimo dog. I got him for my 5th birthday. His name was Cotton.

TELL US ABOUT YOUR FIRST EVER JOB!
My first job was working at the main library in downtown Akron, Ohio. This was the perfect after-school job! Especially since I love to read. The hours were great too since the library closes early on Friday and Saturday nights.

WHAT CITY DO YOU LIVE IN, AND WHAT DO YOU LIKE ABOUT IT?
I live in Rootstown. It’s a very small rural town. It’s quiet and we have great neighbors.

FAVORITE CLEVELAND HOT SPOT?
My favorite Cleveland hot spot is Playhouse Square. I usually attend several performances each year. We recently took my son to see Aladdin and it was fantastic!
For information on how to join a section or committee, contact Samantha Pringle, Director of CLE & Sections, at (216) 696-3525 x 2008 or springle@clemetrobar.org

**Bankruptcy & Commercial Law**

**Chair**
Phil Lamos  
Office of the Chapter 13 Trustee, Lauren Helbling  
plamos@ch13cleve.com

**What is your goal?**
Our goal is to expand the profile and improve the quality of the Bankruptcy and Commercial Law bar in Greater Cleveland through education, access, publicity, and attorney development.

**What can members expect?**
Members can expect regular education seminars, access to the shared knowledge of the other members, a platform for exchanging ideas and information, and the section newsletter.

**Upcoming Events**
Annual seminar with the TMA on October 18. The Pat E. Morgenstern-Clarren Consumer Bankruptcy Institute, to be held on December 6th.

**Recent event to highlight?**
The William J. O’Neill Regional Bankruptcy Institute, held this past May.

**Business, Banking & Corporate Counsel**

**Chair**
Tom Peppard, Tucker Ellis LLP  
thomas.peppard@tuckerellis.com

**What is your goal?**
To re-engage and re-energize this great Section with new, fun and interesting topics and events.

**Regular Meeting**
TBD, but we are creating bi-monthly meetings and events, with regular meeting times to be determined.

**What can members expect?**
Current topics, interesting speakers, valuable information and great networking opportunities.

**Mental Health & Wellness**

**Chair**
Lori Wald  
Intentional Lawyer  
loriwald1@gmail.com

**Regular Meeting**
3rd Thursday of every month at noon

**What is your goal?**
According to The Report of the National Task Force on Lawyer Well-Being, to be a good lawyer, one has to be a healthy lawyer. We are looking to educate the legal community on lawyer well-being issues and to instill greater well-being in the profession.

**What can members expect?**
Lively discussions and dynamic programming that focus on bringing awareness of mental health issues to the legal community.

**Upcoming Events**
In the fall, Rita Bryce, JD, LISW and Dr. Laura Rocker will present an overview of assessment and diagnosis of mental health issues in our fall mental health and wellness conference.

**Recent event to highlight?**
Not an event, but we are proud to have launched our Mental Health and Wellness Committee website at CleMetroBar.org/Wellness.

**Get engaged!**
Some of you probably figured out by now, I long ago drank the Bar Kool-Aid. I fundamentally believe that our organization helps make our 5,400 lawyers, paralegals, business folks, and law students stronger, happier and healthier professionals. I’m also an advocate for continuously improving the reputation of our profession within the broader community. Usually, I perform these roles by spotlighting the many, many things that are right about our Bar. Occasionally, my role calls for shining a light on what goes wrong.

This summer, on a picture-perfect day in June, we hosted our annual golf outing at the gorgeous Westwood Country Club. During the event, more than 125 players — all of whom were CMBA members or guests of CMBA members — had the chance to breathe in lots of fresh air, enjoy a fun afternoon of golf cart riding with friends, and celebrate the occasional moment of athletic greatness (or dumb luck) that keeps us duffers coming back for more.

Our Golf Committee — expertly led by our returning chair, Phyllis Ulrich, and members Dan Finer, Dan McClain, Tom McNally, Justin Powell, Nick Rennillo, Nancy Valentine, Greg Watkins, and Deborah Wilcox — put significant effort into organizing a fantastic outing during which there were lots and lots of high points. Unfortunately, to my profound disappointment, I learned several weeks after the event that there were also some disturbing low points.

Among those from Team CMBA who helped with the logistics for the outing were two of the CMBA’s five summer interns. Both interns are smart, talented, driven college students who have an interest in pursuing careers in law. Throughout the past year as the #MeToo movement has bloomed, I’ve heard some men express confusion over what is and what is not acceptable conduct when interacting with women. Using this real-life experience as a teaching moment, I offer the following specific examples of comments that players made to our interns while stationed on the golf course in June:

- “If I hit a hole-in-one, can I win you and Cleveland?”
- “Wow, you’ve got some seriously long legs hiding in those shorts.”
- “What do you like living and working in Cleveland?”
- “How do you like working in Cleveland?”
- “Do you know what kind of law you might want to practice?”
- “Are you enjoying your internship?”
- “Why don’t you hop in my cart and be my girl this afternoon?”
- “How do you like working in Cleveland?”
- “If I hit a hole-in-one, can I win you and the car?”
- “What do you know kind of law you might want to practice?”
- “Are you enjoying your internship?”
- “Do you know what kind of law you might want to practice?”
- “How do you like living and working in Cleveland?”
- “Are you enjoying your internship?”
- “Do you know what kind of law you might want to practice?”
- “Why don’t you hop in my cart and be my girl this afternoon?”

All of these comments: inappropriate.

When I described this incident to some people, every one — male and female — reacted with dismay. Unfortunately, three of the men with whom I shared the comments — men who in my experience treat women with nothing but respect — also reacted in a way that defended or explained the inappropriate comments.

One man replied, “I’m sure [the men] were only kidding.” Attempted humor is not an excuse. Nothing about these inappropriate comments was funny to the women at whom the comments were directed.

A second man asked, “Did the interns identify themselves as CMBA interns?” Whether or not the two women were CMBA interns, Westwood staff, committee volunteers, sponsor reps or others, the inappropriate comments were inappropriate.

And a third man shared, “Well, at least they didn’t say these things at the office.” Saying these things at a CMBA event is just as offensive as saying them in an office.

The impact of these comments? The college intern told me she is rethinking whether becoming a lawyer would be a good choice “if that’s what is waiting for me.” The law student intern told me Cleveland probably wouldn’t be the best place for her future legal career “if this is how male lawyers act here.”

My heart is heavy knowing I placed our interns in an environment where they were subjected to such comments. While I know the vast majority of men did not and would not have made these same or similar comments, the ripple effect caused by a few has the power to hurt us all.

Enough is enough.

Rebecca Ruppert McMahon is the CEO of the CMBA. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Smiles, pure joy and lots of hugs kicked off the program year for the Cleveland Metropolitan Bar Foundation at the Public Servants Merit Awards Luncheon. This uplifting event is just one of the many ways that the Foundation supports the Greater Cleveland community and the people who serve it. We recognize the unsung heroes of our justice system who have dedicated many years of their lives assisting the bench and bar and to serving members of the public who come into the justice system, whether willingly or unwillingly. The public employees who are chosen for the Franklin Polk Merit Awards are special individuals who perform their responsibilities with patience and grace. They keep calm and carry on. We appreciate them and salute them.

This year’s deserving award recipients all fulfilled the criteria of:
• a minimum of 20 years of faithful service to the court or public office;
• demonstrated devotion to duty;
• a record of giving wise counsel to the public and attorneys; and evidence of a desire to help, patiently and courteously, the public and members of the Bench and Bar.

The 2018 public servants of merit are:
• Phyllis Burk, Cleveland Municipal Court, Clerk’s Office
• Melissa M. Cummings, Cuyahoga County Probate Court
• Charles E. Fleming, Federal Public Defender’s Office
• Maureen Gregory, Office of the Chapter 13 Trustee
• Elizabeth Heraghty, Cuyahoga County Domestic Relations Court
• Kathleen Kilbane, Cuyahoga County Court of Common Pleas
• Steve Kunsman, Cuyahoga County Court of Common Pleas, Clerk’s Office
• Analee Leibowitz, Shaker Heights Municipal Court
• Renee Sykora, U.S. Attorney’s Office
• Jolan Vagi, Cleveland Municipal Court
• Damon Wright, Cuyahoga County Court of Appeals, Eighth Appellate District
• Etoi Shaquila Young, Cleveland Municipal Court, Housing Court Division

Their names will be added to the distinguished granite recognition wall in the lobby of the historic Cuyahoga County Courthouse on Lakeside Avenue. Dating back to 1947, the original recognition wall reached capacity when the 2016 class of honorees were added. This year, the Foundation provided the funds to install an additional recognition wall, carefully complying with the historic registry requirements that apply to this Beaux Arts architecture style building. Made of jet black granite matching the original wall, there is enough space on the new wall to inscribe the names of awardees for another 46 years, starting with the classes of 2017 and 2018.

I want to thank Lynn Lazzaro, longstanding Chair of the Public Servants Committee, for leading the arrangements to design and install our new recognition wall. This is one of Lynn’s many accomplishments during his stellar years of leadership. Lynn has been on the committee or chaired the event since the early ‘90s, and has been chair or co-chair since about 2000. He brought his endless enthusiasm for the event to every Foundation meeting. Many thanks to Lynn! He was joined in this year’s event by co-chair Christopher Thorman. My thanks go to Chris for his time and leadership.
3Rs-Rights, Responsibilities, Realities
This award-winning program is entering its 12th year! It is time for 3Rs teams to form up and begin their important work in the classrooms of the Cleveland and East Cleveland city schools. The Foundation is proud to support The 3Rs with the time, talent and financial contributions of its Fellows and to recognize and congratulate the 2017-2018 Teacher of the Year, Milena Wick. She teaches at Lincoln West High School. The 3Rs volunteer group is the most diverse of all the CMBA programs. It brings together lawyers, judges and law students from all practice areas and of all ages, including the federal and state courts, public defenders, prosecutors, private law firms and law school faculty. All are welcome. Please sign up to join a team, meet new volunteers, and be moved by the students you will inspire and motivate. The students will inspire and motivate you, too!

Stephanie Dutchess Trudeau is a partner at Ulmer Berne LLP, where she has been a trial lawyer in its Litigation Department for 33 years. She is a certified specialist in Employment and Labor Law. Stephanie is President of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1985. She can be reached at strudeau@ulmer.com.
During its 2017–18 Term, the United States Supreme Court made three pronouncements in bankruptcy cases. Non-bankruptcy practitioners also should be mindful of these decisions, however, because some of them may have implications outside the insolvency arena.

The proper standard of review for mixed questions is ... well, it depends

In U.S. Bank N.A. v. Village at Lakeridge, LLC, SCOTUS elucidated the appellate standard of review for mixed questions of law and fact. The bankruptcy issue in Lakeridge was whether someone who purchased a debt was a “non-statutory” insider of the debtor. (Whether a creditor is an “insider” is important in bankruptcy for various reasons, none of which we need consider.) Lakeridge owed money to its sole owner, which unquestionably was an “insider” as defined in the Bankruptcy Code. That insider sold the debt to a purchaser with whom the insider’s principal had a “romantic” relationship. U.S. Bank alleged that the purchaser also was an insider, albeit “non-statutory,” because the statute’s list of “insiders” is non-exclusive. The bankruptcy court rejected that argument. The Ninth Circuit affirmed, because (under the legal standard it applied to determine whether someone is a “non-statutory” insider) the bankruptcy court’s decision that the parties negotiated the debt purchase “at arm’s length” was factual, had to be reviewed for clear error, and could not be reversed under that deferential standard. The only issue before SCOTUS was whether an appellate court should review the bankruptcy court’s determination for clear error, with deference (as a factual finding), or de novo, without any deference (as a legal conclusion).

To decide whether a creditor is a non-statutory insider, the bankruptcy court must tackle three questions. Only the last question was contested. First, the bankruptcy court must select a legal test to determine whether someone is a “non-statutory” insider. Both parties agreed that that is a legal question that is reviewable de novo. Second, the bankruptcy court must make findings of “historical” fact — i.e., “who did what, when or where, how, or why.” Both parties agreed that such findings are reviewable only for clear error. The final question is whether the historical facts satisfy the legal test for conferring “non-statutory” insider status — a “mixed question” of law and fact. Here, the parties diverged.

Both parties pointed to the same query: “What is the nature of the mixed question here and which kind of court (bankruptcy or appellate) is better suited to resolve it?” According to SCOTUS, “the standard of review for a mixed question all depends — on whether answering it entails primarily legal or factual work.” Mixed questions are not all alike. Some require courts to expound on the law. In that event, “when applying the law involves developing auxiliary legal principles of use in other cases,” an appellate court should review the lower court’s decision without deference. Other mixed questions involve factual findings that require the trial court to weigh evidence, make credibility judgments, and the like. The basic question in Lakeridge was whether, given the basic facts found, the purchaser’s acquisition of the debt had been conducted “as if the two were strangers to each other.” Because “[t]hat is about as factual sounding as any mixed question gets,” clearly erroneous review was the proper standard.

Lakeridge does not break new bankruptcy ground. Its succinct explication of mixed questions of law and fact, however, may be instructive in non-bankruptcy litigation too.

When defending an “avoidance” lawsuit, always make sure you know which transfer is under attack

Any practitioner whose client has been sued to disgorge a “preferential” payment knows the value of a good statutory defense. The Bankruptcy Code permits trustees to recapture transfers, including fraudulent transfers “of an interest of the debtor in property.” Section 546(e) establishes a “safe-harbor” for certain transactions. It prevents recapture under any of the bankruptcy avoidance powers (except for actual fraud) if the transfer is (among other types) “a ... settlement payment ... or transfer made by or to (or for the benefit of) a ... financial institution ... in connection with a securities contract[.]” Various federal circuit courts interpreted this section to insulate leveraged buy-outs of privately-traded securities (not just transactions involving publicly-traded securities), if the transferor that later entered bankruptcy paid the target company’s shareholders for their stock via an intermediary bank.

Merit Management Group, LP v. FTI Consulting, Inc. changes that. SCOTUS decided whether section 546(e) protects transfers in which financial institutions are mere conduits, rather than the ultimate payees. It does not. In Merit, Valley View and Bedford Downs competed for the last available harness-racing license in Pennsylvania. Ultimately, they agreed that Bedford Downs would withdraw and that Valley View would purchase all of Bedford Downs’ stock after Valley View obtained the license. Once Valley View got the license, Bedford Downs’ shareholders (including Merit) received the purchase price from Valley View — through two intermediary (conduit) banks. Valley View filed bankruptcy. Its litigation trustee sued Merit, alleging that Valley View’s payment to Merit was constructively fraudulent because Valley View was insolvent at the time and “significantly overpaid” for the stock.
To “determine whether a transfer was made by or to or for the benefit of a covered [protected] entity” under the statute, such as a bank, SCOTUS instructed lower courts to “first identify the relevant transfer to test in that inquiry.” In other words, to decide if the “safe-harbor” exception applies, the only relevant transfer is “the transfer that the trustee seeks to avoid” under one of the bankruptcy avoidance provisions. Here, the trustee sought to avoid the transfer from Valley View to the shareholders (Merit), not any transfer to or from an intermediary bank. Neither Valley View nor Merit was a “financial institution” or other entity protected by section 546(e). Therefore, the payment between them fell outside the safe-harbor.

Merit clarifies that in transactions involving privately-traded securities, at least, a transferee should not assume that section 546(e)’s “safe-harbor” will insulate payments it receives from someone who later files bankruptcy, merely because those payments flowed through a conduit bank.

In bankruptcy, sometimes even a dishonest debtor wins

Bankruptcy gives “honest but unfortunate debtors” a fresh start. Sometimes it can help dishonest debtors, too.

In Lamar, Archer & Cofrin, LLP v. Appling, SCOTUS considered whether an individual who makes a false verbal statement about a single asset to a creditor can discharge that creditor’s claim in bankruptcy. SCOTUS unanimously decided “yes.”

In bankruptcy, debts that are "obtained by fraud" — e.g., verbal or written misrepresentations — can be rendered non-dischargeable under section 523(a)(2)(A). But that subsection has an exception. If the alleged fraud is a statement "respecting the debtor’s ... financial condition," then section 523(a)(2)(B) applies instead. That subsection renders false statements non-dischargeable only if they are in writing.

Appling (the debtor) hired Lamar (a law firm) in business litigation. Appling was unable to pay his legal bills. Lamar agreed to continue working because Appling said (verbally) he was expecting a $100,000 tax refund. Lamar learned that Appling's tax refund was only a fraction of that amount — and that Appling had received and spent it. After Lamar obtained judgment against Appling, he filed bankruptcy. Lamar invoked section 523(a)(2)(A), hoping to prevent its debt from being discharged.

The issue presented was whether the "exception" in section 523(a)(2)(A) (regarding statements "respecting a debtor’s financial condition") applied to trigger section 523(a)(2)(B) and its “writing” requirement. If it did, Lamar would lose because Applings false statement was verbal.

The parties agreed about what "statement" and "financial condition" mean. The decision turned on the word "respecting." The Bankruptcy Code does not define “respecting,” so its plain meaning governed. SCOTUS cited dictionary definitions, all of which suggested that the word “respecting” means something like “regarding” or “relating to.” SCOTUS consistently has interpreted the phrase “relating to” in other statutes broadly, and it saw no reason to interpret the same phrase in section 523(a)(2)(A) differently. According to SCOTUS, “a statement is ‘respecting’ a debtor’s financial condition if it has a direct relation to or impact on the debtor’s overall financial status.” A single asset can have such a relation or impact, making a misrepresentation about that asset a “statement respecting the debtor’s financial condition.” The exception to section 523(a)(2)(A) applied, triggering section 523(a)(2)(B)’s requirement that the misrepresentation be written. Appling’s statement was verbal. Appling could discharge Lamar’s debt.

Appling is a cautionary reminder for creditors: Always get debtors’ promises in writing!

Looking ahead: SCOTUS's 2018–19 Term

In its 2018–19 Term, SCOTUS has been asked to decide several bankruptcy-related issues, including:

- whether state courts can treat undisclosed executory contracts as having been "assigned and assigned" to a purchaser under a chapter 11 plan, based upon a plan’s boiler-plate language that executory contracts are “assumed, unless rejected” (Noble Energy, Inc. v. ConocoPhillips Co., No. 17-1438);
- whether a debtor can be compelled to arbitrate an alleged violation of the bankruptcy discharge injunction, due to Epic Systems Corp. v. Lewis — in which SCOTUS ruled that federal labor-law claims are subject to the Federal Arbitration Act’s mandate to enforce arbitration agreements (Credit One Bank, N.A. v. Anderson, No. 17-1652); and
- whether a debtor/licensor’s “rejection” of a trademark license in bankruptcy terminates the licensee’s right to use that trademark, and whether the exclusive right to sell a product in a particular territory must be treated (for purposes of “rejection”) the same way “intellectual property” is under the Bankruptcy Code (Mission Product Holdings, Inc. v. Tempnology, LLC, No. 17-1657).

SCOTUS is scheduled to consider these cert. petitions on September 24. It remains to be seen which of them, if any, SCOTUS may accept. Stay tuned.

1 By William Shakespeare, Henry V, Act III, Scene I

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WHAT JUDGES SAY ABOUT TOP NOTCH WRITTEN ADVOCACY

Jill Shankar

Straight from the mouths of the judges that hear our cases, the quality of our written legal advocacy matters, a lot. Hoping to learn more specifically what the courts consider to be best practices of legal writing, I interviewed Judge Karen Nelson Moore of the Sixth Circuit Court of Appeals; Judge Sean Gallagher of the Eighth District Court of Appeals; and, from the Cuyahoga County Court of Common Pleas, Administrative and Presiding Judge John Russo; his staff attorney, Caitlin Carlin; and Judge Nancy Fuerst.

What they told me is quite useful, though not especially surprising; we learned much of it in law school, and have incorporated it into our practices. Here, I share the wisdom not only to refresh our collective memories, but to present a little something new as well.

I classified the insights into three categories: organization, substance, and professionalism. With respect to the first, this always has been, and will forever be a crucial element of good advocacy. Remember that you are telling a story; use real names, walk the court through what happened, and how the parties ended up where they are. The legal analysis should flow from there.

After setting up your narrative, the best practice is to use the IRAC method, which provides the structure for your presentation of the issues, rules, analyses and conclusions. Indeed, the judges and their staff attorneys are often frustrated by the difficulties they have following the arguments because the briefs do not lay them out in a cogent manner. Naturally, this diminishes the advocate’s ability to persuade the court to rule in his or her client’s favor.

Here are the other tips the interviewees had to offer:

• At the outset of the brief, summarize your position with a cohesive overview, an “in a nutshell” sort of section. Chronicle the facts succinctly, declare what you want the court to do, and why.

• Be clear. The judges start their analyses with the briefs, and one lamented that he did not know how many times these documents had left him with an empty feeling about what the case was really all about. That same judge told me that clarity with respect to the story and controversy, written in simple English, creates sensitivity to the advocate’s position. In appellate work, it is especially critical to properly identify the issues, because the court can only resolve those presented. Similarly, if there are discrepancies between the record and the issues presented. Similarly, if there are discrepancies between the record and the lower court’s disposition, explain them; the appellate court utilizes the former for its analysis.

• Be concise. Regardless of the strength of your position, enhance it by keeping your writing free of excessive legalese, flowery language, useless repetition, and a meandering structure.

• Break up your brief into discreet, visually discernable sections by utilizing outline formatting, headers, bullet points, bold and italicized fonts, and the like.

• Avoid hiding the ball when your case is not ideal; simply do your best to analogize or differentiate your situation from others, and leverage the case law as best you can. Not only can judges see through the tactic of filling space in a brief with irrelevant and unproductive words, a sub-optimal position is not necessarily a losing one if established credibly and eloquently.

• Let the applicable rules of the court guide you, because the judges rely on adherence to these instructions when discerning the particulars of the case. For example, both the state and federal rules of appellate procedure specify what the appellant’s and appellee’s briefs must contain and in what order, among other things. Loyalty to this guidance shows diligence and respect.

As for the second category, substance, the interviewees were unanimous in their emphasis on the importance of sound legal reasoning, and expressed frustration with briefs that skimped in this area. Here are the practices that were called out as being especially useful:

• Rely most heavily on case authority that is recent, and from courts in the same jurisdiction, to the extent that this is feasible.

• Provide a sound legal basis when asking a court to take on a novel issue or position. Judges are not disinclined to contemplate making new law, but there must be viable justification for doing so. Deploy existing precedent by analogizing or differentiating your position, and explaining how your stance is a logical next step.

• Provide the court with the standards, elements and factors that are relevant to your case, and use them with integrity. For instance, if you are citing an opinion in which the court set forth some case-specific factors that went into its determination of an issue, a judge would frown upon referring to those factors as a conclusive test or a finite list. These kinds of misrepresentations taint your advocacy.

• Identify and correct the other side’s fabrications, distortions, and legal flaws.

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But understand that insulting or acting uncivilly toward the other side does not emphasize the miscalculation; to the contrary, it makes a lawyer — even one with a strong argument — look weak.

The third category, professionalism, is just as important as the other two; it is the polish that makes your advocacy shine. Here is what the interviewees identified as the game changers:

- Make sure your document satisfies a legal objective, rather than a personal one, and make certain that whatever you write is purposed in helping you reach that objective.
- Put aside whatever hostility you have toward the other side. It is worth repeating the fact that bickering not only fails to advance your client’s cause, it irritates the court and diminishes your work.
- Do not ignore the court's schedule, rules, orders and other guidance, and including reaching out to a staff attorney if you need assistance.
- Refrain from lying. This seems obvious, but more than one judge felt it necessary to mention it.
- Correct any grammatical and typographical errors out of your briefs. A good practice is to have a different set of eyeballs proof your documents.
- Use case authority honestly, as noted above.
- Adhere as closely to the applicable rules of citation as possible. While imperfect conformity is not the worst of practices, good form comes through as care and attention to detail, which ultimately serves your client most effectively.
- Represent each aspect of your case fairly and accurately.

It is true that judges, their clerks and/or staff attorneys do their own research, and decide cases on the merits. They start with the briefs to gain an understanding of the facts, law and the parties’ positions, so if they have trouble discerning any of these things, they can get sidetracked, or worse, go down the wrong path by failing to see what you need them to. For that reason, you can never be too organized, too brilliant, or too professional.

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TOOLS TO RESOLVE TAX COLLECTION CASES WITH THE IRS

BY JAMES H. ROWND

Many times with a tax collection case, the Internal Revenue Service (IRS) has assessed a significant amount of tax against the taxpayer, and the taxpayer is not able to fully pay the liability in a lump sum payment. Congress has given the IRS broad powers to collect such tax liabilities, some of which include: filing federal tax liens, levying (including seizing funds in bank accounts), garnishing wages, reducing Social Security payments, revoking or restricting the taxpayer’s passport, filing suit to reduce tax claims to a judgment and assessing a 100% “responsible person” penalty for unpaid employment taxes. Fortunately, attorneys representing the taxpayer have a range of tools to counter the IRS’ broad collection powers, and some of the more frequently used tools are discussed below.

1. Collection Due Process (CDP) Hearing Request (IRS Form 12153)

A taxpayer has a right to request a CDP hearing after receiving a Notice of Levy, Notice of Federal Tax Lien, or Notice of Intent to Levy. Requesting a CDP Hearing within 30 days of the IRS notice stops the IRS from collecting until the CDP process is concluded; however, it also tolls the collection statute of limitations. The taxpayer can request and receive a CDP hearing any time within a year of the applicable IRS notice; however, if the CDP request is filed within 30 days of the IRS notice, the taxpayer can appeal the results of the hearing to the U.S. Tax Court.

2. Offer-in-Compromise (IRS Form 656)

An Offer in Compromise (OIC) allows the taxpayer to ask the IRS to accept a payment for the full amount owed. The IRS must suspend collection efforts while an OIC is pending, but the collection statute of limitations is also tolled while the OIC is pending. Most Offers are submitted for Doubt as to Collectability (i.e., whether the taxpayer has enough assets/income to pay the full liability) which are almost entirely math-driven based on the taxpayer’s “Net Asset Value” and “Net Income Value.” The taxpayer must submit an IRS Form 433-A(OIC) financial disclosure showing the taxpayer’s assets, liabilities, income and expenses. For several of the key monthly living expenses, the IRS has established standard amounts that the IRS uses as the maximum expense amount allowed in the OIC calculation, and the use of any higher actual expenses must be justified by the taxpayer based on special facts and circumstances.

3. Penalty Abatement Requests

Many tax penalties have an exception allowing the IRS to waive penalties for “reasonable cause.” Negligence and ignorance of the law generally will not be sufficient to establish reasonable cause. The IRS looks for facts not within the taxpayer’s control, such as illness, bad professional advice or other unusual circumstances, that believably prevent the taxpayer from meeting the taxpayer’s obligations to file tax returns and pay the tax owed.

4. Innocent Spouse Relief Request (IRS Form 8857)

Unfortunately, many times one spouse who is not in control of the family finances, tax returns or tax payments (innocent spouse), finds out after the fact that the other spouse who is in control of such financial matters (controlling spouse) did not file returns and/or pay taxes. The innocent spouse may learn of the failure at the time of a divorce or the controlling spouse’s death, leaving the innocent spouse jointly and severally liable with the controlling spouse on the unpaid taxes, penalties and interest from any joint tax returns. By filing IRS Form 8857, the innocent spouse can request innocent spouse relief from such liability.

5. Application for Certificates of Lien Discharge/Subordination

An IRS tax lien can be a serious impediment to a taxpayer selling property (especially real estate) to pay the taxpayer’s tax liability and straighten out the taxpayer’s finances. Filing an IRS Form 14135, the taxpayer can request that the IRS tax lien be discharged. By filing an IRS Form 14134, the taxpayer can request that the IRS subordinate its lien to a new creditor, which can be useful in a refinancing. The IRS will generally accept such requests only if the IRS believes that it is in the best interest of the government to do so, which may mean that the IRS receive a payment in order to grant the request.

6. Installment Payment Agreements (IRS Form 9465)

Pursuant to IRS Form 9465, the taxpayer can request an installment payment arrangement whereby the taxpayer makes monthly payments for up to a maximum of 72 months in certain circumstances, to pay the liability owed to the IRS. Before the IRS will approve an installment payment request, the IRS will require that it receive from the taxpayer a financial disclosure from the taxpayer on IRS Form 433-A (discussed further below). The IRS may not levy on the taxpayer while the installment payment request is pending, during the 30-day period following a rejection of the request or while the installment agreement is in effect.

7. Statute of Limitations

The IRS generally has three years to assess a tax from the date the return was filed, which can be extended to six years if there was an omission of income of 25% or more on the return. There is no statute of limitations if a false or fraudulent return was filed or if no return is filed. For the trust fund penalty tax, there is a three-year statute of limitations from the April 15th of the year following the quarter for the unpaid payroll tax. There is a 10-year statute of limitations on collections which begins on the date of assessment. However, the running of a statute of limitations can be suspended by a variety of circumstances, including by the filing of an OIC.
8. Taxpayer’s Financial Statement (IRS Form 433-A)
For most of the collection alternatives, the IRS will first demand that it receive a disclosure of the taxpayer’s assets, liabilities, income and expenses by having the taxpayer complete and submit an IRS Form 433-A for personal financial information and an IRS Form 433-B for business financial information. The IRS’ approval of and payment amount for the resulting collection alternative, are both very dependent on the information contained in the Form 433’s. As mentioned above regarding the Form 433-A(OIC) used for Offers, the IRS has established standard maximum amounts for several of the key monthly living expenses, and the use of any higher actual expenses would have to be justified by the taxpayer based upon special facts and circumstances. The taxpayer’s accountant and attorney should assist the taxpayer in the preparation of the Form 433s, especially regarding asset values where there is discretion or subjectivity as to the fair market value and regarding the disclosure of any circumstances and information which warrant special consideration by the IRS.

9. U.S. Tax Court
U.S. Tax Court (Tax Court) is the only court where a taxpayer can have the taxpayer’s case reviewed by a judge without the taxpayer having to first pay the underlying tax liability. The Tax Court’s jurisdiction is very specific, and the taxpayer needs to timely file a Petition with the Tax Court in response to a Petition with the IRS. The Tax Court’s jurisdiction is very specific, in order for the Tax Court to have jurisdiction over the case, the taxpayer needs to timely file a Petition with the Tax Court in response to a Petition with the IRS. The Tax Court has jurisdiction over the case.

10. Refund Claim and U.S. Federal District Court
If the Tax Court is not an available venue, an alternative is Federal District Court, but the taxpayer must first pay the tax liability in question, file a refund with the IRS and have that refund denied by the IRS, before the taxpayer can file a complaint in District Court. Obviously, the taxpayer having to pay the tax liability upfront is a major disadvantage for choosing District Court as the venue.

11. Bankruptcy
Under certain conditions and depending under what bankruptcy chapter the bankruptcy petition is filed, certain taxes (generally older taxes) may be dischargeable in bankruptcy. The issue of which taxes are dischargeable in bankruptcy is best answered by consulting with a bankruptcy attorney.

12. Account Transcripts
Many times the taxpayer is not sure exactly how much tax, penalty and interest have been assessed against the taxpayer and/or for what tax periods. An “account transcript” from the IRS lists the amount of the tax, penalty and interest the IRS claims is owed for each tax period requested. Account transcripts can be requested online or by phone at (800) 908-9946.

13. Freedom of Information Act Requests
A taxpayer can make a Freedom of Information Act request to the IRS, and in response thereto the IRS is required to disclose (with certain exceptions) the documents regarding the taxpayer contained in the IRS’ administrative files.

14. Taxpayers Advocate Service
If the attorney representing the taxpayer is having problems resolving a case with the IRS through the “regular channels” discussed above, then an IRS Form 911 can be filed with the IRS’ Taxpayer Advocate’s Office requesting the assistance of the Taxpayer Advocate Service.

Conclusion
Although the discussion above lists numerous tools possibly available to the attorney to resolve a tax collection case, a taxpayer’s particular facts and circumstance will often limit what tools are actually applicable to the case and available to the attorney. As a general rule, the more quickly the taxpayer seeks legal advice, the more tools will generally be available to the attorney to resolve the case, and given the IRS’s broad powers to enforce collection, the attorney will need as many tools as possible to resolve the case and achieve a good result.

1 IRC §6321 (the IRC section references are to sections of the Internal Revenue Code of 1986, as amended).
2 IRC §6331(a).
3 IRC §6331(e).
4 IRC §7445.
5 IRC §7402.
6 IRC §6762.
7 IRC §66320 et seq.
8 IRC §7722.
9 IRC §6610.
10 IRC §6625(b).
11 IRC §6625(d).
12 IRC §6159.
13 IRC §6501(a).
14 IRC §6501(e)(1)(A).
15 IRC §6501(c).
16 IRC §6502(a).
18 Many thanks to Matt Kadish and Steve Kadish for their assistance on this article.

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Trademark Licenses
Is That the Way the Cookie Crumbles?

The treatment of trademark rights in bankruptcy has far-reaching consequences. Intellectual property rights are increasingly valuable components of businesses, and trademark rights are frequently at the forefront of these assets.

The evolution of the case law since the 1988 legislation, peaking with the Sunbeam decision, generally had trended in favor of licensees. That is, until the Tempnology case moved through the courts. The case law impacting the rejection of trademark licenses began to take shape before the 1988 legislation with the Fourth Circuit’s ruling in Lubrizol. In Lubrizol, the Fourth Circuit held that a debtor-licensor’s rejection of a patent license was in essence absolute, and resulted in the non-debtor licensee losing any rights to use the patented technology. Recognizing many businesses are based on the license of trademark rights and that the Lubrizol case created the potential for a licensor to abuse its licensee by filing bankruptcy and rejecting the patent license, Congress took action. Section 365(n) carved out a series of rules applicable to the rejection of “intellectual property” licenses, essentially permitting licensors to be relieved of the burdens of a license through rejection, while permitting licensees the option of either (A) simply asserting a claim for money damages upon rejection, or (B) preserving its investment by retaining its contractual rights to use the intellectual property while paying the royalty due under the contract. However, Congress applied Section 365(n) to limited types of “intellectual property,” specifically defined in Section 101(35A) to include patents, copyrights and trade secrets, but, significantly, not trademarks.

Section 365(n) has operated relatively smoothly as to patents and other specified “intellectual property,” while bankruptcy courts were left to navigate the murkier waters of trademarks. One path the bankruptcy courts could take after the 1988 legislation when confronted with the rejection of a trademark licenses to allow for “more study” and “the development of equitable treatment of this situation by bankruptcy courts.”

The specific question on which Supreme Court review is sought is: “Whether, under Section 365 of the Bankruptcy Code, a debtor-licensor’s ‘rejection’ of a license agreement — which ‘constitutes a breach of such contract,’ 11 U.S.C. Section 365(g) — terminates rights of the licensee that would survive the licensor’s breach under applicable non-bankruptcy law.” The petition for certiorari arises out of a First Circuit case, In re Tempnology, LLC, 879 F.3d 389 (1st Cir. 2018), which concludes that upon rejection the licensee’s rights to use the trademark are terminated, while a Seventh Circuit case, Sunbeam Products, Inc. v. Chicago American Manufacturing, LLC, 686 F.3d 372 (7th Cir. 2012), holds the licensee retains valuable rights post-rejection, setting up a Circuit split that the Supreme Court may decide to resolve this coming term.

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license to use the trademark post-rejection, the First Circuit observed that imposing burdens like monitoring and control on the debtor-licensor “diminished [the trademarks’] value to Debtor, whether directly or through an asset sale.” Id. The First Circuit in Tempnology declined to deprive the debtor-licensor of the benefits of being relieved of future obligations that underpins rejection under Section 365. The First Circuit perceived that permitting the licensee to use the trademark post-rejection would inevitably burden the debtor-licensor and undermine the benefits of rejection. Id., at 403-04.

Betty Baker’s Bakery is not keeping its cool, and fears the “Crinkly Cookies” will crumble! In the Seventh Circuit, Betty Baker’s Bakery knows the “Crinkly Cookies” will not be vaporized. In fact, in the Seventh Circuit, Betty Baker’s Bakery has a recipe (no pun intended) for continuing to produce delicious “Crinkly Cookies.” In the First Circuit, however, Betty Baker’s Bakery will lose the right to use the “Crinkly Cookies” trademark to produce and market the cookies. In the Sixth Circuit (as in most other Circuits), advising Betty Baker’s Bakery whether a bankruptcy court will permit it to make any use of the “Crinkly Cookies” trademarks post-rejection certainly requires consideration of the Circuit Court decisions in Tempnology and Sunbeam, as well as an analysis of the recent bankruptcy court cases on trademark licenses. Among these, In re crumbs Bake Shop, Inc., 522 B.R. 766 (Bankr. N.J. 2014), and In re SIMA International, Inc., Case No. 17-21761, 2018 WL 2293705 (Bankr. D. Conn. May 17, 2018), are particularly pertinent, and align with Sunbeam. While decided before Tempnology, the crumb decision is useful for its well-reasoned argument, commencing with the observation about Section 365(g) relied upon in Sunbeam (a rejection is a breach, not a vaporization), and then offering analysis including analogies to the treatment of non-debtor lessees under real property leases from debtor-lessees to address the scope of the non-debtor licensee’s rights and obligations under the rejected trademark licenses at issue. Decided after Tempnology, the court in SIMA acknowledges the holding in Tempnology and then “respectfully declines to follow the First Circuit holding and similarly aligns with the plain language reading of Section 365 advanced by Judge Easterbrook in the Seventh Circuit.”

Will the Supreme Court provide a clear answer to Betty Baker’s Bakery’s question? By the time of this publication we may know whether the Supreme Court will review the Tempnology case. And how will that cookie crumble?

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Stayed cool even during exercise. The vaporized. “nothing about [rejection] implies that any rights of the [non-debtor licensee] have been relieved of the ongoing obligations under a license, rejection does not terminate the licensee’s rights — to use the trademark — or the licensee’s related obligations — such as maintaining quality control over the trademarked product. As Jude Easterbrook memorably concluded: “nothing about [rejection] implies that any rights of the [non-debtor licensee] have been vaporized.” Id. at 377.

Tempnology had developed exercise gear that stayed cool even during exercise. The Tempnology court kept its cool, and refused to vaporize the licensee’s rights, but concluded that upon rejection the licensee’s rights consist of “a prepetition claim for [money] damages.” In re Tempnology, LLC, 879 F.3d at 402. Turning to whether some basis existed to support the licensee retaining rights to use the trademark post-rejection, the First Circuit examined the non-bankruptcy treatment

of a licensee when its licensor breaches, failing to support the trademark. The First Circuit observed that a licensor’s failure to monitor and exercise control over its trademarked products “results in a so-called ‘naked license,’ jeopardizing the continued validity of the owner’s own trademark rights.” Id. Ultimately, a licensor’s failure “to exercise reasonable control over the use of the designation by the licensee can result in abandonment.” Id., at 403. The Tempnology court reasoned that imposing burdens like monitoring and control on the debtor-licensor “diminished [the trademarks’] value to Debtor, whether directly or through an asset sale.” Id. The First Circuit in Tempnology declined to deprive the debtor-licensor of the benefits of being relieved of future obligations that underpins rejection under Section 365. The First Circuit perceived that permitting the licensee to use the trademark post-rejection would inevitably burden the debtor-licensor and undermine the benefits of rejection. Id., at 403-04.

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BACK TO THE FUTURE

Matt Mennes

It is often said that mediation is about looking to the future, not the past. In this column we would like to take a moment to reflect back on the court’s long history of helping the public resolve disputes. We would also like to announce some exciting changes for the future. Next year, we celebrate 30 years of mediating civil cases at Cuyahoga County’s Common Pleas Court. For many readers, that’s longer than they’ve been practicing law. For some readers, that’s longer than they have been on this earth. Since the civil mediation program began in 1989 with Bob Revello, the first court mediator, it has grown from a fledgling alternative to trial into an established and effective forum for resolving civil disputes. Along the way, the Ohio Legislature passed the Uniform Mediation Act in 2005, codifying many aspects of the mediation process. Today’s lawyers recognize mediation as a powerful and primary tool to fully explore settlement. Not to mention, the 10th floor hearing rooms come with views of Lake Erie, the mall, and downtown Cleveland. Having a window to the outside world serves as a subtle reminder to the mediation participants to keep the current litigation in the proper perspective to the rest of their lives.

Some readers will recognize the 10th floor as the home of the Foreclosure Mediation department. Since 2008, the court has mediated foreclosure disputes. The court will continue to offer foreclosure mediation on the 10th floor. Other readers of a certain vintage will remember a time when the ADR department was previously located on the 4th floor. Beginning with arbitrations in 1970 until the move to the 4th floor in 1998, the ADR department was located in the same 10th floor space we currently occupy. In a sense, we have come back to where it all began. We invite you to come visit us on the 10th floor. Our Dispute Resolution staff is happy to give you a tour of our new facility.

New Name – Dispute Resolution
Mediation is no longer alternative. Recognizing the popularity of the court’s civil mediation and arbitration programs, the department dropped the “alternative” from its name. Henceforth, the department will be known as Dispute Resolution. This name change recognizes the primary role mediation plays in helping parties resolve civil disputes. It also aligns our court’s nomenclature with other organizations such as the Ohio Supreme Court’s Dispute Resolution Section and the American Bar Association’s Section of Dispute Resolution.

Same Great Service
Mediators Rebecca Wetzel, Matt Mennes, John Minter, and Elizabeth Hickey continue to mediate disputes for the court. We remain committed to providing high quality dispute resolution services to litigants and their counsel. The court’s mission is to provide a forum for the fair, impartial and timely resolution of litigated matters. The recent growth of civil mediation and the expansion to the 10th floor builds on a strong foundation of decades of resolving disputes, and further enhances the Dispute Resolution department’s ability to help the court satisfy its mission. Our entire department is very excited about the recent changes. We hope to see you on the 10th floor.

Matt Mennes is the civil mediator for Cuyahoga County Common Pleas Court. He has been a CMBA member since 2015. Matt may be reached at cpmxn@cuyahogacounty.us or (216) 443-8504.

For over forty-five years we have become renowned statewide for providing timely, high quality title and escrow closing services at competitive prices in all 88 counties.

Matt Mennes is the civil mediator for Cuyahoga County Common Pleas Court. He has been a CMBA member since 2015. Matt may be reached at cpmxn@cuyahogacounty.us or (216) 443-8504.
LRS – Year in Review

Congratulations to the following attorneys who were recognized at the 2018 LRS Update on May 23.

Peter C. Mapley
Sobel, Wade & Mapley
LRS Rookie of the Year

Christopher P. Fisher
The C.P. Fisher Law Firm, LLC
LRS Community Service Award

Douglas P. Whipple
Whipple Law, LLC
LRS Community Service Award

LRS attorneys earned $1,000,000 in business from LRS referrals

LRS – Year in Review

Received approximately 20,000 inquiries & provided 13,625 referrals in the 2017-18 fiscal year

160 CMBA members participated in the LRS, most of whom practice in small firms or are solo practitioners

LRS attorneys earned $1,000,000 in business from LRS referrals

Top 10 Areas of Referrals
1. Torts
2. Family Law
3. Real Estate
4. Consumer Law
5. Employment Law
6. Probate Law
7. Criminal Defense
8. Social Security
9. Bankruptcy
10. Business Law

Top 10 Sources of Referrals
1. Attorneys
2. Online Search
3. Knew of/Used Before
4. Legal Aid Society
5. Family/Friend
6. Agency
7. Bar Association
8. Courts
9. Government
10. Libraries & Law Schools

WELCOME to our newest LRS attorneys!

Alexander Carr
Philip J. Henry
Leigh S. Prugh
Sean H. Sobel
Scott J. Friedman
Karen Ireland-Phillips
Patrick J. Quallich
Michael Teitelbaum
Eric W. Henry
Heather Johnston
Erin M. Schmidt
Shaleika Vargas

Thank you to all who participate in the Lawyer Referral Service!

We appreciate your dedication to helping provide this public service.

If you are interested in joining the LRS contact Katie Donovan Onders at konders@clemetrobar.org or find the application on the CMBA website.
Attorneys who represent closely held businesses and their owners need to address transitioning the ownership of the business. This can be an uncomfortable topic for the client, because it brings up sensitive topics, such as the owner’s own mortality. Founders have a particularly difficult time addressing the topic, as they often have a much deeper pride of ownership and fear that without their involvement, the entire enterprise could collapse. Other owners have a very different fear — that the company will thrive in their absence and undermine their contributions to the success of the business.

As attorneys, we enjoy a special relationship with our clients. While there may be a collective professional reluctance to initiate these types of conversations with a reluctant client, it is a disservice to your clients to ignore these issues entirely and wait for the client to initiate the discussion. As a trusted business advisor, keeping these topics at the forefront of your engagement will position your business clients for continued success while simultaneously strengthening your relationship.

1. The Obstacles to Developing a Plan

For attorneys advising their clients, one of the primary obstacles in initiating these conversations is the client’s apathy. Most attorneys can relate to the scenario where a client is able to acknowledge or understand the need, but is unwilling to devote the time and resources to address the issues.

The other frequently encountered challenge is a client who lacks a full understanding of what they need, why they need it and where the planning fits in with other initiatives of the business. For an owner, especially one who is running a business in “growth mode,” the time needed to plan for what seem like abstract, far off eventualities can simply be a chore. In this context, cost becomes a planning obstacle as well. If the client doesn’t appreciate the need for completing a plan, then even the smallest investment in the process will be deemed too high.

The other common obstacle is the owner who has simply outgrown their plan. Contrary to the aforementioned challenges, this owner may be very committed to having a plan in place, but does not see any need to revisit completed documents — even if time and circumstance warrant it. A shift in any of the following may signal a need to revisit existing documents:

- The owner’s objectives;
- The presence or introduction of additional equity owners;
- The company’s financial position;
- The owner’s personal financial position and needs;
- The owner’s level of involvement with the company; or,
- The departure of any key employees who are running the company’s day-to-day operations.

2. The Planning Need

The odds against a business successfully transitioning to the second generation are as well-known as they are alarming — less than 30 percent of the companies that attempt to transition to the second generation will succeed. Even fewer will make it to the third generation. However, most businesses fail to adequately prepare for their succession event, which contributes significantly to these statistics. Informing a client of these risks and pursuing one or more of the possible solutions outlined below will help them avoid the common pitfalls that result in failure.

For most owners, their business represents the largest and best performing asset in their financial portfolio. It is not unusual for middle market business owners to have minimal retirement assets outside of their business, due to the capital investment required to grow the company.

This fact, combined with the fact that over half of all owners intend to depart their businesses within the next decade, illustrates that a well-constructed succession plan is a necessity for business owners. However, various studies have shown that almost 75 percent of all business owners have no plan in place. Moreover, nearly two-thirds of business owners have not initiated any conversation with an advisor about their future plans.
As a consequence of avoiding planning discussions, many business owners are unaware of critical information that will ultimately dictate their ability to successfully leave their company. Fundamental issues are left unresolved, such as: who will take over the business in the owner’s (expected or unexpected) absence; which type of training should be implemented so key employees can run the business in the event of such an absence; whether key employees who are capable of running the business are in fact willing to do so; and whether adequate programs exist to ensure those employees who will be relied on to keep the business on track will be retained through the completion of the transition and beyond.

These statistics suggest an obvious need for planning conversations between business owners and their advisors. However, in spite of these surprising statistics and the obvious planning deficit for many owners, there still exists a general reluctance to start the process amongst clients.

3. Some Solutions
The good news in all of this is that when given the choice, most owners do want their companies to succeed and continue beyond their involvement. With this goal in mind, it is possible to begin the process of building a succession strategy that positions the company for sustainable success in the absence of the owner. Some solutions that have proven effective in addressing the planning needs that may otherwise go unresolved include the following:

- Spend considerable time identifying the owner’s objectives. Understanding the owner’s motivations and concerns is the most critical factor in crafting effective planning documents. When drafting buy-sell documents and other items related to business continuity and transition, one size rarely fits all. Discussing the owner’s goals is a great way to ensure that he or she ultimately understands the various provisions in the executed document.
- Offer options that aren’t overly complicated or comprehensive. Instead of trying to solve all of the problems, work to solve the most pressing one first.
- If you do go the comprehensive route, take a phased approach — working from highest priority to lower priority. Set deadlines for completing each phase of the process and stick to them. Steady progress over the course of the year will keep the owner engaged in the process. While your client may need some reminders along the way as to what he or she is trying to accomplish, the odds of having a successful outcome increase significantly when all parties are on the same schedule and held accountable to it.
- Consider charging ongoing fees for annual reviews and updates of documents. With your continued involvement, you and your client can anticipate the issues that can cause documents to become outdated or inappropriate over time. By completing annual reviews with your client, you can make incremental changes and avoid pitfalls that stem from old and neglected documents. These fees must be sufficient for your client to deem the work as “important”; otherwise, the client may assume the work has limited value and will not make the review meetings a priority.
- Bring in outside specialists when appropriate. This is a challenge for lawyers and professionals of virtually all disciplines; however, refusing to acknowledge that a problem is beyond your comfort zone will negatively impact your client’s trust. If you insist that each and every issue needs to be handled by another professional, this could also cause problems in your client relationship. If you handle the bulk of the work and tell the client that certain issues may be better addressed by an outside expert, the client will almost certainly gain confidence in your ability to help them now and in the future.

The work that you do for your client in this regard is important and the stakes are high. The successful outcome will have an impact that extends beyond the financial well-being of your clients and their families. In fact, it will impact the families of all of the employees and, to some extent, the firms that are suppliers or customers of the company. For these reasons, this planning conversation must be top of mind even when the owner is inclined to put it off.

Aaron Harrison is the Director of Succession Planning for Legacy Business Advisors in Medina and also serves as the Executive Director of Legacy Advisors Network — a national practice group of business advisors with offices across the country. Aaron has been a CMBA member since 2016. He can be reached at (330) 635-3002 or aharrison@dormanlegacyadvisors.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

VOLUNTEER LAWYERS FOR THE ARTS SUMMER SOCIAL

On June 26, VLA members and guests enjoyed a beautiful day at the Edgewater Park Beach House, one of Cleveland’s unique and fascinating venues for summer fun. Our group heard from several Beach House architects about its design and place in Cleveland history, before enjoying refreshments and social time together as a thank you for a great year of volunteer service and an invitation for more to come in 2018–19.

SWEET NEWS ABOUT THE LRS

During the 2017-18 fiscal year, CMBA’s Lawyer Referral Service (LRS) attorneys earned $1,000,000 in business from LRS referrals. These referrals were in areas of bankruptcy, consumer law, criminal law, employment law, family law, probate, real estate, social security, tax, torts and worker’s compensation.

To learn more about CMBA’s LRS, please contact LRS Coordinator, Katie Donovan Onders konders@clemetrobar.org or visit CleMetroBar.org/LawyerReferral
JULY HOT TALKS SPECIAL EDITION: IMMIGRATION CRISIS

Zero-tolerance, detention centers, a wall. Politicians have plenty of ideas to deal with the current status of America’s immigration system, but where does this rhetoric fit within the established legal framework?

The CMBA explored all sides of the issue with David Leopold (Ulmer & Berne), the past president and past general counsel of the Washington, D.C.-based American Immigration Lawyers Association (AILA) and Peter Kirsanow, partner with Benesch’s Labor & Employment Practice Group. Experienced immigration attorneys Heather Drabek Prendergast and Aleksandar Cuic, Partner at Robert Brown, LLC also led a discussion highlight their experience handling complicated immigration issues in Ohio and beyond.

WHAT I DID THIS SUMMER ...

Our Louis Stokes Scholars and Stephanie Tubbs Jones Summer Legal Academy Class of 2018 enjoyed the opportunity to travel to Columbus to visit the Supreme Court of Ohio. They listened to an oral argument and debriefed with a law clerk and participated in interactive meet and greet sessions with Chief Justice Maureen O’Connor, Justice Judith French and Justice Mary DeGenaro. They also toured the Education Center and law library. It was a very interesting and educational day for all.
The Child Support Unit of the Office of Cuyahoga County Prosecutor Michael C. O’Malley is dedicated to providing the highest quality legal support and representation so that our client agency, the Cuyahoga County Office of Child Support Services (OCSS), can accomplish its critical mission of “promoting economic self-sufficiency and personal responsibility for families.” We assist with furthering this mission by seeking out new and innovative ways to increase the collection of child support. One of the most successful of these has been through our bankruptcy workgroup.

Child support/spousal support obligations are not dischargeable in bankruptcy. In bankruptcy lingo, these are collectively referred to as **domestic support obligations** (DSO), defined at 11 USC 101(14) (C) (See Q1 below under FAQs). Any arrears that remain at the time of discharge will survive the bankruptcy and still be owed. In most cases, our client receives notification from the state Office of Child Support whenever an obligor has listed OCSS as a creditor on a Chapter 7 or Chapter 13 bankruptcy petition. OCSS forwards the notice to our office for review to see if there is an opportunity to recover past due support through the bankruptcy estate.

**FRUITS OF LABOR: OVER $6.1 MILLION COLLECTED IN TWO YEARS**

Within the Child Support Unit, we have established a Bankruptcy Workgroup consisting of six Assistant Prosecuting Attorneys — myself, Natalie Thomas, Danielle Taylor, Charlie Wu, Marilyn Weinberg, and Steven Ritz — along with two paralegals — Maria Emery and Sarah Preston. In partnership with OCSS, the Bankruptcy Workgroup, has developed a practice that has allowed our client to maximize collections from the bankruptcy estate to secure funds for the families of Cuyahoga County. Per OCSS records, the total collected from Bankruptcy cases in 2016 was $2,255,866.52, and the total collected for 2017 was $3,912,598.26, for a combined total of more than $6.1 million over a period of two years.
FAQS FOR DEBTOR’S COUNSEL

Q1: What is a Domestic Support Obligation?
A debt constitutes a Domestic Support Obligation if it meets four requirements. First, it must be “owed to or recoverable by a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative” or a governmental unit. Second, the nature of the debt must be “alimony, maintenance, or support (including government assistance) without regard to whether such debt is expressly so designated.” Third, the debt must arise from “a separation agreement, divorce decree, or property settlement agreement,” “an order of a court of record,” or a lawful determination by a governmental unit (e.g., an administrative support order). Finally, the debt must not have been assigned to a nongovernmental entity unless for collection purposes.

The full definition can be found at 11 U.S.C. 101(14A). In simple terms, child support, alimony, and spousal support fall under this category. Typically, all support orders that are administered by OCSS are considered domestic support obligations and should be listed in the bankruptcy filing.

Q2: How can I get information about my client’s DSO, such as the total amount my client owes and other questions I might have?
We suggest that all attorneys have their clients complete an “Approval of Authorized Representation” form and forward it to OCSS. The form permits OCSS and our office to communicate with debtor’s counsel about their client’s child support orders. Absent completion of the requisite form, you may have trouble obtaining information due to the confidentiality rules governing the release of child support information. A link to the Authorized Representation form is available on the OCSS website.

Once you have submitted this form to OCSS, questions about your client’s child support orders may be directed to the OCSS Customer Contact Center, which is accessible by phone, email, online chat, or via the Child Support Customer Service Web Portal. Phone numbers, mailing and email addresses, and links to the online chat and Web Portal may be found on the Child Support Services page of the OCSS website.

These tools will allow you to obtain the information you need to properly advise your client and ensure the accuracy of your bankruptcy filings. If you have further questions after contacting OCSS, please feel free to contact our office at (216) 443-5807 and ask to speak to someone in the Bankruptcy Workgroup.

Q3: How does the automatic stay apply to DSO?
Section 362 of the Bankruptcy Code (automatic stay) is a fundamental protection provided to a debtor for the purpose of stopping all creditor collection efforts and harassment of the debtor and to provide the debtor an opportunity for a fresh start. It gives a debtor “a breathing spell from creditors by stopping all collection efforts,” Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1204 (3d Cir. 1991). For child support purposes, the automatic stay precludes the following enforcement actions:

• sending general default/past due notices
• initiating new court actions such as a motion to show cause to enforce the order
• filing/enforcing child support liens against real or personal property.

The bad news for debtors is that Section 362(b) carves out quite a few exceptions to the automatic stay related to DSO. Specifically, it does not prevent the following:

• a civil action to establish paternity or to establish or modify a DSO
• the collection of a DSO from property that is not property of the estate, such as lottery winnings
• income withholding
• suspension of a driver’s license or other professional/recreational license
• interception of a tax refund (in all Chapter 7, and some Chapter 13 cases).

Q4: What if the order is arrearages only?
The issue of whether the DSO is arrears only or a combination of current support and arrears is significant if the debtor has filed under Chapter 13. In a Chapter 7 case, the discharge does not depend upon whether the DSO is arrears only.

In order to receive a discharge under Chapter 13, the DSO must be paid in full by the end of the reorganization period. 11 USC 1328(a). If the DSO is arrears only at the time the petition is filed, the amount required to be paid in full is limited to the amount due when the petition was filed, or as otherwise provided for by the plan. If the DSO is a combination of current support and arrears, then 11 USC 1328(a) is very clear that: (1) any current support obligation should be fully satisfied — i.e., no new arrearages should be accumulated; and (2) any arrears owed as of the petition filing date should be paid as required by the confirmed plan.

Q5: The obligee on my client’s child support order is deceased but OCSS says that my client still owes arrears? They can’t collect that, can they?
If DSO is owed to an obligee at the time of his/her death, OCSS retains the authority to collect the outstanding obligation. See Sweeney v. Sweeney, 2016-Ohio-1384 (8th Dist.). Arrears are not extinguished by the death of the obligee. If not waived by the obligee during his/her lifetime, arrears owed at the time of the obligee’s death may only be waived by a representative of the deceased’s estate.

Any issues involving DSO arrears owed to a deceased obligee must be addressed by the appropriate state court or administrative agency. If your client has such a case with the OCSS, we suggest you reach out to our office for assistance. For a sample Probate Court order involving arrears owed to a deceased obligee, see the Judgment Entry filed on 09/10/2015 in Cuyahoga County Probate Court Case No. 2009EST149587, available on the Probate Court’s web site.

Q6: Can my client pay his/her DSO arrears outside the plan?
The general answer is yes, but it should be addressed in the Chapter 13 Plan. If the debtor has been making regular payments through an income withholding order and wants to continue doing so during the bankruptcy case, OCSS will typically have no objection. However, payment outside the plan does not encompass payments made directly to the obligee; such payments are deemed a gift under Ohio law. If paying outside the plan, it is the Debtor’s responsibility to ensure that the arrearage balance will be paid off during the life of the plan in order to ensure their entitlement to a discharge at the end of the case.

Q7: What if the DSO is not paid off during the life of the Chapter 13 bankruptcy?
At the end of the Chapter 13 case, the debtor is required to certify to the Bankruptcy Court that the domestic support obligation requirements set forth in the Chapter 13 plan have been satisfied. This means that all current support and support arrearages have been paid in full. Without that certification, the Debtor is not entitled to a Chapter 13 discharge. 11 USC 1328. A debtor who fails to meet this requirement may have his/her case closed by the Bankruptcy Court without a discharge. Regardless of whether or not the discharge is granted, any child support arrears that remain at the end of the case will not be discharged. The certification requirement simply underscores the importance that the bankruptcy laws place on the timely payment of domestic support obligations.

Contributions to this article were also made by Assistant Prosecuting Attorneys Natalie Thomas, Charlie Wu, Marilyn Weinberg, and Steven Ritz.

For the past 10 years, Kira Kittoe-Krivosh has dedicated her life to public service and nonprofit work. She joined the Cuyahoga County Prosecutor’s Office as an Assistant Prosecuting Attorney in 2013. Prior to that she has worked for the City of Canton Law Department, City of Garfield Heights Law Department and the Stark County Family Court. She is the Board Vice President for the Citizen’s Committee for the Lakewood Animal Shelter, the Board of Directors – Nominating Director for the Junior League of Cleveland and she volunteers, along with her family, with other nonprofit organizations. She joined the CMBA in 2017. She can be reached at (330) 268-9111 or Kirakrivosh@yahoo.com.
Retail Bankruptcies: A Landlord’s Introduction

By Patrick A. Hruby

Every commercial landlord, especially retail landlords, should be familiar with the phrase “retail apocalypse,” which refers to the epidemic of retail store closings over the past several years. Many of these closings such as Toys “R” Us, Radio Shack, Gymboree, hhgregg, The Limited, Claire’s, Nine West, among many more, were the result of those companies filing for bankruptcy.

Unfortunately for retail landlords, store closures are a trend that does not appear to be slowing. Accordingly, landlords should be aware of their rights in bankruptcy as well as potential traps for the unwary. While there are numerous considerations for a landlord dealing with a debtor tenant, this article addresses the most common, namely the automatic stay, first-day motions, assumption, rejection or assignment of leases, and claims issues.

The Automatic Stay

The first thing that a landlord should be aware of is the automatic stay. 11 U.S.C. § 362. Once a tenant files for bankruptcy, it is protected from many self-help remedies that a landlord would normally have available such as commencing an eviction action, changing locks, or even demanding payment of past-due prepetition rent. A willful violation of the automatic stay may allow the debtor to recover actual damages, including attorneys’ fees; and, in some cases, punitive damages. 11 U.S.C. § 362(k).

Often, a landlord can file a motion with the bankruptcy court to seek relief from the automatic stay if certain conditions are met. While that can be a very useful strategy, it can be costly and may be premature early in the case depending on the tenant’s postpetition plans for the property, as discussed more below.

It must be noted that the automatic stay is applicable even if the terms of the lease state that the lease is terminated upon the filing of a bankruptcy case. Such clauses, known as ipso facto clauses, are generally unenforceable in bankruptcy. 11 U.S.C. § 365(e).

First-Day Motions

When a debtor files a case under Chapter 11 of the Bankruptcy Code, it will immediately file a series of motions known as “first-day motions.” It is important that landlords review these motions as the debtor may seek to alter the landlord’s rights in a variety of manners, including attempting to have leases deemed rejected as of the petition date, which may result in a tenant remaining in the leased premises postpetition without paying rent; enforcing the automatic stay; approval of debtor-in-possession (DIP) financing, in which the debtor may attempt to offer the lender liens that prime the landlord’s lien; and myriad others. Additionally, in conjunction with its cash collateral and DIP financing motions, the debtor will provide operating budgets, which a landlord must review to ensure that the debtor has included proper post-petition rent in its budget.

Lease Assumption and Relegation

Under Section 365 of the Bankruptcy Code, a debtor may elect to assume or reject any unexpired lease. If the debtor fails to make an election within the earlier of 120 days after the petition date or the date of an entry confirming the debtor’s plan of reorganization, then the lease is deemed rejected and the debtor must immediately surrender the leased property to the landlord. 11 U.S.C. § 365(d)(4). That period may be extended by 90 days upon motion.

Oftentimes, if a lease is burdensome or not economically viable, the debtor will reject the lease. Upon rejection, the landlord becomes a general unsecured creditor holding a claim for rejection damages in an amount equal to any unpaid rent due under the lease, as of the earlier of the petition date or the date on which the debtor surrendered possession, plus the greater of one year’s rent, or 15 percent, not to exceed three years, of the remaining term of the lease. 11 U.S.C. § 502(b)(6). However, as a result of being a general unsecured creditor, a landlord will likely receive less than the actual amount of the rejection damages claim.

In addition to the potential to recover little, the rejection of a lease (other than a lease deemed rejected under § 365(d)(4)) does not remove a tenant from the leased premises. As a result, the landlord may incur additional expenses in removing the holdover tenant through an eviction action in state court, after seeking relief from the automatic stay in the bankruptcy court.

Fortunately, even if the debtor rejects a lease, it is liable to the landlord for rents that became due post-petition and before the debtor rejected the lease, the debtor also must perform its other obligations under the lease prior to rejection. 11 U.S.C. § 365(d)(3). Post-petition rent and other monetary lease obligations are entitled to be paid as administrative expenses, which allow the landlord to recover those amounts as a priority claim.

It is clear that, from the landlord’s perspective, it is preferable that the debtor assumes the lease. Not only does assumption assure the continued occupancy of the premises, but in order to assume a lease the debtor must first cure or provide adequate assurance that it will cure all defaults, including nonmonetary defaults, compensate or provide adequate assurance of compensation to the landlord for any actual pecuniary losses resulting from the defaults, and provide the landlord with adequate assurance of future performance under the lease. 11 U.S.C. § 365(b)(1). When a debtor proposes to assume a lease, the landlord...
should ensure that the debtor has stated the correct amount necessary to cure the defaults and compensate the landlord for losses.

In addition to assuming or rejecting the lease, the debtor may also assume and assign the lease. This is most common when the lease has value (i.e. below market rates) but the debtor may not want to continue to operate in that location. Because the Bankruptcy Code provides that anti-assignment clauses in leases are generally not enforceable in bankruptcy, the debtor has a lot of leeway in determining whether to assign a lease. 11 U.S.C. § 365(f)(1). In order to assign a lease, the debtor must assume the lease, including curing all defaults, and provide adequate assurance of future performance by the assignee of the lease, 11 U.S.C. § 365(f)(2).

If the lease involves premises within a shopping center, the landlord generally has more protections against assignment. In order to assign a lease in a shopping center, the debtor must also provide adequate assurance of the financial condition and ability to perform under the lease of the proposed assignee; that any percentage of rent due under the lease will not decline substantially; that the assignment of the lease is subject to the terms of the lease, including radius restrictions, exclusivity provisions, use restrictions and any master agreement relating to the shopping center; and that assumption or assignment of the lease will not disrupt any tenant mix in the shopping center. 11 U.S.C. § 365(b)(3).

The Bankruptcy Code does not define “shopping center,” so whether a leased premises is in a shopping center must be determined by the bankruptcy courts. Generally courts examine such factors as a combination of leases, one single landlord, all tenants engaged in the commercial retail distribution of goods, a common parking area, fixed store hours, the existence of a master lease, restrictive use provisions in the lease, percentage rent provisions in the leases, the right of a tenant to terminate its lease if an anchor tenant leaves, among others. See, e.g., In re Joshua Slocum Ltd., 922 F.2d 1081 (3rd Cir. 1990).

Proof of Claim
A landlord must file a proof of claim for its damages claims. In each case, there will be a claims bar date, which is the last day to file a proof of claim. However, the landlord may not know the amount of a damages claim by the proof of claim deadline if the debtor has not made an election to assume or reject the lease. As a result, the notice of the bar date normally contains an additional provision giving the landlord a certain amount of time to assert damages resulting from the rejection of a lease after the debtor rejects the lease. It is very important that a landlord be aware of these dates and file its proof of claim timely.

As explained above, when the debtor rejects a lease, the landlord has a general unsecured claim for rejection damages and prepetition rent arrearages. Additionally, a landlord may have an administrative claim for any unpaid postpetition use of the premises, which is entitled to priority treatment.

The debtor may object to the landlord’s proof of claim. Fed. R. Bankr. P. 3007(a). A debtor may object if it disputes the amount of the damages claimed, if the proof of claim was untimely, or for numerous other reasons. A landlord can respond to the objection, however, depending on the nature and extent of the objection, it is often in the parties’ best interest to resolve the objection on mutually agreeable terms than to litigate the dispute.

Conclusion
With rumors of other large retailers, and many small ones, on the brink of bankruptcy, it is clear that the “retail apocalypse” is not ending soon. Landlords should be aware of their rights and restrictions when dealing with a tenant in bankruptcy. Failure to take the correct action can lead to an inability to recover money and affirmatively taking the wrong action can result in assessments of damages against a landlord.

Patrick Hruby is an attorney in Walter | Haverfield LLP’s Corporate Transactions Group, where he focuses on Bankruptcy and Creditors’ Rights. Previously, he focused on representing bankruptcy trustees and clerked for Hon. Marilyn Shea-Stonum in the U.S. Bankruptcy Court. Patrick has been a member of the CMBA since 2011. Patrick can be reached at (216) 619-7878 or phruby@walterhav.com.
LET ME THINK ABOUT THIS

Jay Milano

T he title is, to my mind, the First Rule of Professional Conduct. More to the point of this article, it is the first step in the process of applying ethical principles to the practice of law.

But you do not need to take my word for it. “If I had an hour to solve a problem I’d spend 55 minutes thinking about the problem and 5 minutes thinking about the solution.” – Albert Einstein (Maybe — call me if you would like an explanation)

The issues presented here were presented at the last meeting of the Ethics and Professionalism Committee. They were analyzed and discussed. This article is the result of both the significance of the issues and the fact that they represent a clean look (I hope) at how to analyze an ethical issue.

So what is the problem?

A third party has offered to pay the legal fees for your client. We’ll limit it to people, not companies paying for employees. It could be a parent, spouse, family member, friend or co-conspirator.

Sounds good. The lawyer gets paid. In these days as fewer individuals can afford legal fees, that is serendipity.

So what are the issues?

Let’s look at Conflicts and Confidentiality. Before we go further, let’s invoke step 2: Read the rules.

RULE 1.7: Conflict of Interest: Current Clients

(a) A lawyer’s acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(1) The representation of that client will be directly adverse to another current client;
(2) There is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by the lawyer’s own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

(1) The lawyer will be able to provide competent and diligent representation to each affected client;
(2) Each affected client gives informed consent, confirmed in writing;
(3) The representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

(1) The representation is prohibited by law;
(2) The representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

Interest of Person Paying for a Lawyer’s Service

A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer’s duty of loyalty or independent judgment to the client. See Rule 1.8(f), and the special notice requirement for clients of insurance defense counsel in Rule 1.8(f)(4).

If acceptance of the payment from any other source presents a substantial risk that the lawyer’s representation of the client will be materially limited by the lawyer’s own interest in accommodating the person paying the lawyer’s fee or by the lawyer’s responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of division (b) before accepting the representation.

RULE 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (d) of this rule.

(b) A lawyer may reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary for any of the following purposes:

1. To prevent reasonably certain death or substantial bodily harm;
2. To prevent the commission of a crime by the client or other person;
3. To mitigate substantial injury to the financial interests or property of another that has resulted from the client’s commission of an illegal or fraudulent act, in furtherance of which the client has used the lawyer’s services;
4. To secure legal advice about the lawyer’s compliance with these
5. To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding, including any disciplinary matter, concerning the lawyer’s representation of the client;
6. To comply with other law or a court order;
7. To detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of firm, but
only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to the representation of a client.

(d) A lawyer shall reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary to comply with Rule 3.3 or 4.1.

Conflict
With most of the potential payers — parent, family member, spouse — the most prevalent issue is one of benign control. The clearest example is the first: parent. You are sitting at your conference table with a child in trouble and a parent feeling angry and guilty, but supportive. They should operate as a family — but the client is the child. You have a number of problems to deal with. First, in my experience, too often the juvenile in trouble is sitting in a lawyer’s office truly believing his parents will buy his way out of this problem. The parents naturally expect to control the situation. You are not a social worker. Everyone should work together.

Confidentiality
This is more simple, but equally important. The secrets belong to the client, and do throughout the representation. That is also true of other information, such as strategies. These issues need to be explained and addressed in writing 1.7 (b) (2).

Equally important, you should, at the first meeting that the parent is present, excuse yourself with the client. Explain that you are giving the client the ability to talk to you privately. Then explore with the client any issue they might wish to keep confidential and their willingness to allow open dialogue. Assume them that you are their lawyer. Any secret they wish to tell, now or in the future, will be kept.

Go back into the room together, take the money, and begin the case.

P.S: Write a fee letter — every time.

Jay Milano does trial work, both civil and criminal from his office in Rocky River. He has taught Trial Tactics at Case Law School for 25 years and Media Law and Ethics to journalism students at Ohio State for the past three years. He has been a CMBA member since 1982. He can be reached at (440) 356-2828 or jm@milanolaw.com.

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Lloyd O. Brown came from humble beginnings, a life experience that is reflected by his remarkable legacy. He moved to Cleveland as a child with his parents and two siblings and began his first job at age five; selling five copies of the Call and Post newspaper each week.

Brown was only 12 when his father died at 43. The tragedy sent the family down a long road of hardship. Brown's mother, Lillie, moved the family into public housing while working hard as a beautician to support herself and her children. Brown held onto the work ethic his father fostered by working in the Call and Post pressroom and a shoe store.

As an adult Brown started out as a radioman in the Coast Guard for three years. His service earned him the educational benefits provided to servicemen, and he used those and worked in a potato chip factory to fund his education at Ohio State University, from which he graduated with three degrees in 1955.

Following graduation Brown returned to Cleveland, where he began his legal career. He worked for the practice of a Cleveland city councilman, as an assistant attorney general, and as a Cuyahoga County prosecuting attorney. After working as judge of the Cleveland Municipal Court for four years, Gov. John J. Gilligan appointed Brown as a Cuyahoga County prosecuting attorney. Afterward, the Cleveland Municipal Court appointed Brown as a judge of the Cleveland Municipal Court, serving as judge of the Cleveland Municipal Court as a Cuyahoga County prosecutor. Afterward, the Cleveland Municipal Court appointed Brown as a judge of the Cleveland Municipal Court, serving as judge of the Cleveland Municipal Court as a Cuyahoga County prosecutor.

In addition to his dedication to the law and its protection of citizens, Brown was generous and charitable, giving considerable time and money to service and youth organizations. His scholarship fund has been maintained for more than 30 years and has awarded more than $200,000 to law students at Case Western Reserve, Cleveland State and Howard Universities.

Rogers said among Brown's many notable accomplishments, the most significant mark he left on the Cleveland and Ohio law communities stemmed from that charitable spirit. What started as a golf outing meant to fund Brown's campaign for reelection to the Supreme Court became a fundraiser that helped many aspiring lawyers continue their educations.

"He wanted to give back," Rogers said. "As one of the founders of the Lloyd O. Brown scholarship fund, I can tell you he was very interested in helping those who had an interest in the law, but otherwise might not be able to afford it without some assistance."

Brown died in 1993 at the age of 64. He continues to be celebrated as a historic figure in the Cleveland law community, a trailblazing member of the Supreme Court of Ohio, a knowledgeable and fair judge, and a generous benefactor who valued students and their education. Brown's legacy has spread beyond those whose lives he touched directly. His strength, determination, and personable character continue to be remembered and valued, serving as an inspiration for both lawyers and judges in Cleveland and beyond.

Alexis Eichelberger is a senior in the E.W. Scripps School of Journalism at Ohio University. She also works as a freelance journalist for The Review in Alliance, Ohio, and is the culture section editor of the independent student publication The Post. She can be reached at ae595714@ohio.edu.
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SEPTEMBER 2018
13 Take Control of Your Inbox
27 Professional Conduct: Why Lawyers Strike Out and My Cousin Vinny
28 2018 Small & Solo Expo: Driving Your Practice Forward (Embassy Suites Independence)

OCTOBER 2018
18 Joint Annual CMBA & TMA CLE & Happy Hour
26 45th Annual Estate Planning Institute
30 ABC’s of ADR: Best Practices Guide for Litigators and Neutrals
31 Professional Conduct 2018: Super Scary Edition

NOVEMBER 2018
2 Beyond Reason: Negotiating the Non-Negotiable with Dr. Daniel Shapiro
8 & 9 40th Annual Real Estate Law Institute
13 Technology & The Law: Blockchain, IoT, Al, Oh My!
14 & 15 61st Annual Cleveland Tax Institute

DECEMBER 2018
3 Monday “Movie” – Afternoon Video – Media & The Law Summit
5 Pitfalls and Pointers for Young Litigators
6 Pat E. Morgenstern-Clarren Consumer Bankruptcy Institute
7 Advanced Workers’ Compensation Medical/Legal Seminar
8 Legal Eagles Year End Update
10 Monday “Movie” – Afternoon Video – #MeToo and #TimesUp in the Workplace
16 Biennial White Collar Crime Institute
20 Monday “Movie” – Afternoon Video – Health Care Law Update
29 On the Brain: A Lawyer’s Guide to Understanding the Brain
30 The Cyborgs are Coming! The Cyborgs are Coming! Ethical Concerns with the Latest Technology Disruptions (2.5 hours Professional Conduct)
30 Fluff Is for Pillows, Not Legal Writing

Gaining Traction: Driving Your Small & Solo Practice Forward
Friday, September 28
Embassy Suites Independence

Topics Include:
Liar, Liar, What to Do When Your Client Lies?
Cocktail Law: Answers to Questions You’ll Likely Be Asked at Parties
“Must Have” Technology Tools for Your Law Firm
Judges Panel: Pet Peeves and Pointers

For more information, please visit CleMetroBar.org or call (216) 696-2404
CMBA Diversity & Inclusion Master Class Series

**CREDITS** 1.00 Hour Professional Conduct CLE Requested For Each Session

**Join The Conversation.** Looking to move the needle on the diversity and inclusion with your organization? Need practical advice to implement a successful program?

Meet us at the Bar for a series of programs, led by nationally renowned attorneys, designed to provide specific answers to your diversity and inclusion questions.

**Tuesday, September 25**
Creating an Effective Diversity, Inclusion and Outreach Committee – How To Do It and Why It Matters
Carole S. Rendon, BakerHostetler LLP

**Wednesday, October 24**
Best Practices for Recruitment and Retention of a Diverse Workforce
Carl D. Smallwood, Vorys, Sater, Seymour and Pease LLP and Stacia Jones, Abercrombie & Fitch

**Wednesday, November 28**
Best Practices for Business Development for Minority Partners and Associates
Reginald M. Turner, Clark Hill PLC

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**PHONE** ___________________________ **E-MAIL** ___________________________

**TEAM CAPTAIN(S)**
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**TEAM MEMBERS**
__________________________________________________________

___ For more information, contact Jessica by email or at (216) 696-3525 x4462. **Sign Up Online! CleMetroBar.org/3Rs**
Increasing gender diversity in the legal profession is not a women's issue. It is a business issue. More and more, clients are demanding inclusivity and are looking at a firm's diversity when deciding who gets their business. Our male colleagues can be involved by advocating, promoting, and supporting women's advancement into leadership roles, including setting targets to increase the number of women in senior positions and embedding diversity into the firm's culture and values at every level.

To that end, the CMBA Women in the Law Section and the law firm of Koehler Fitzgerald invite both men and women to a complimentary lunchtime roundtable discussion on gender diversity and how male leaders can become “allies” for their female colleagues.

Being an ally means being willing to act with and for others in pursuit of equal opportunity. Beyond agreeing with the principle of gender diversity, male leaders can become allies by engaging in panels and roundtable discussions with women on gender diversity and engaging in mentorship/sponsorship. Men, you are pivotal in helping women to succeed and advance to greater leadership levels!

We are all aware of the statistics regarding women in the legal profession. Even though women make up 50.3% of current law school graduates, they will make up under 35% of lawyers at law firms. According to a 2016 survey by legal search firm Major, Lindsey & Africa, female partners are taking home smaller paychecks because it appears that men are better at receiving origination credit. In Cleveland specifically, 30.18% of lawyers are women, yet only 19.02% of those lawyers are partners.

Our conversation on October 3 will center around how positive change can be made through allyship, including what it means to be an ally for gender diversity, and how men can and should be involved in the process. “Talking the talk,” and agreeing that gender diversity is important and should happen, is different than “walking the walk” to make it happen. It can be an uncomfortable conversation, but isn’t it worth having to move our profession forward?

While we could wax all day about the importance of diverse teams bringing diverse and innovative perspectives to firms, in the end, true change will not be made without the help of allies. To make a real difference, we all need to realize that sustainable progress can only come from men and women working together. The power of a simple conversation will make the greatest step towards positive change. Please join us for that conversation on October 3!
Mallory Rohr practices commercial litigation and Out-of-Network defense at Koehler Fitzgerald LLC. She is a graduate of Capital University Law School. Before joining Koehler Fitzgerald LLC, Mallory was the National Coordinating Analyst for Vorys, Sater, Seymour and Pease LLP. She served as an intern at the White House for President Obama’s Administration in Washington D.C., the Ohio Department of Rehabilitation and Correction in Columbus, Ohio, and the Court of Common Pleas of Franklin County, Ohio. Mallory is currently an active member of the Women In Law Section of CMBA and volunteers with the Cleveland Homeless Legal Assistance Program. She has been a CMBA member since 2017. She can be reached at (216) 539-9370 or mrohr@koehler.law.

Amy A. Jeffries practices commercial litigation and Out-Of-Network defense at Koehler Fitzgerald LLC. Previously, she served as an Assistant Attorney General for the State of Ohio in the Health and Human Services section, where she handled administrative hearings and appeals on behalf of the Ohio Department of Medicaid and the Ohio Department of Job and Family Services. Amy is currently an active member of the Women in Law Section of CMBA, an “Emerging Leader Cohort” in the CMBA’s 2018-2019 Leadership Academy, and volunteers for the Arthritis Foundation. She has been a CMBA member since 2016. She can be reached at (216) 539-9375 or ajeffries@koehler.law.

Complimentary Lunchtime Roundtable Discussion on Gender Diversity

Co-sponsored by the CMBA Women in the Law Section and the Law Firm of Koehler Fitzgerald

Wednesday, October 3, 2018
CMBA Conference Center
11:30 a.m. Registration
11:45 a.m. – 1:00 p.m. Lunch and Program
On June 25, the CMBA hosted our Annual Golf Outing at Westwood Country Club in Rocky River. We were thrilled to have yet another successful outing at this beautiful course, for the fourth year in a row.

We couldn’t have asked for a more perfect day for our golfers to network, relax and of course play on this prestigious, local course.

A special congratulations goes out to our foursome and putting contest winners:

**Winning Male Foursome:**
Rick Perez, Mike Hennenberg, Bob Leach & Marc Collins

**Winning Co-ed Foursome:**
Nancy Valentine, Kevin Garvey, MJ Hilker & Sarah McIntosh

**Putting Contest: Jim Marra**

Well done to all 2018 participants! Thank you to all event sponsors. Without your generous support, we could not host such a successful event.
We look forward to seeing everyone again in 2019!

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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!

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

Your meeting. Our team. Success.

Clemetrobar.org/ConferenceCenter
### September

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<tr>
<th>MONDAY</th>
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<td>Office Closed</td>
<td>Grievance Committee Meeting</td>
<td>PLI – 8:30 a.m.</td>
<td>YLS Council Meeting</td>
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<td>ADR Section Meeting</td>
<td>Hot Talks</td>
<td>CMBA Executive Committee Meeting</td>
<td>Take Control of Your Inbox CLE</td>
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<td>Diversity &amp; Inclusion Committee Meeting</td>
<td>Stokes Scholars Committee Meeting</td>
<td>Ethics Committee Meeting</td>
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<td>UPL Committee Meeting</td>
<td>CMBA Law Student Welcome Program</td>
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<td>Workers’ Comp Section Meeting</td>
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<td>VLA Committee Meeting</td>
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<td>Probate Court Brief Advice Clinic</td>
<td>Pro Se divorce Clinic</td>
<td>How to Stay Out of Court</td>
<td>PLI – 8:30am</td>
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<td>(Law Library)</td>
<td>– 10 a.m.</td>
<td>Family Law Section &amp; CLE</td>
<td>Pro Se Divorce Clinic</td>
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<td>Estate Planning, Probate &amp; Trust Law Section</td>
<td>Mental Health Committee Meeting</td>
<td>(Cleveland Law Library)</td>
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<td>Grievance Committee Meeting</td>
<td>CMBF Endowment Committee Meeting</td>
<td>Greener Way to Work Day Luncheon</td>
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<td>PLI – 1:30 p.m.</td>
<td>Pro Se “Plus” Divorce Clinic</td>
<td>Pro Se “Plus” Divorce Clinic</td>
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<td>Real Estate Law Section Happy Hour</td>
<td>(Cleveland Law Library)</td>
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<td>Diversity Master Class</td>
<td>PLI – 8:30 a.m.</td>
<td>Leadership Academy</td>
<td>Small &amp; Solo Expo</td>
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<td>JFA Committee Meeting</td>
<td>3Rs Committee Meeting</td>
<td>– 3 p.m.</td>
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<td>Food for Thought Kick-Off</td>
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### October

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<td>Anatomy of Justice</td>
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All events held at noon at the CMBA Conference Center unless otherwise noted.
**Employment**

Schraff & King Co., L.P.A. is accepting applications for a Probate and Medicaid paralegal position. Please send resume and cover letter to John Thomas at jthomas@schraffking.com.

Job posting for Director of Offender Services, Summit County Court of Common Pleas. Go to http://www.summitcpcourt.net/default.aspx for application information.

**Law Practices Wanted/For Sale**

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

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

**Office Space/Sharing**

820 W. Superior Ave – 2 large offices available in existing suite with 4 other attorneys. Full amenities. Support staff space available. Call (216) 241-3646.


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.

Ohio City – Share comfortable 1846 Ohio City mansion with small AV-rated law firm. Two spacious offices with assistant space, large reception area, conference room, kitchen, and all amenities including wireless. Gorgeous but affordable. Minutes from all courts. Call Robin at (216) 348-1100.

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 courthouses, restaurants, and parking. Call Pam MacAdams (216) 621-4244.

Suburbs – East

Beachwood – office space. Inside parking. Small office/windows. Reasonable. Some possible average. (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.

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Beachwood – LaPlace – corner of Richmond and Cedar Road. Large windowed office with amenities and free underground parking. Reasonable rent. For more information, call or email (216) 292-4666 or limlaw@sbcglobal.net.

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

Cedar-Center – Area Class “B” property available 565, 1200 and 1500 sq ft. We do capital improvements (216) 381-6570 Waterstone Property Management

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 lawfirmchagrinf0@gmail.com.

Chardon Square – Offices and large conference room in prime storefront location on Main Street opposite Geauga County Courthouse for possible space sharing or partial sublease. Contact Bill Hofstetter at (440) 285-2247.

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


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

Suburbs – South

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

Suburbs – West


Avon – Office space – One newly furnished office in attractive two attorney suite with conference room and reception area. Historic building. Excellent location with free parking. Please contact m Schroth@m Schroth-law.com for details.

Crocker Park/Westlake area – Deposition, Video-ready-conferencing and meeting rooms for rent. Hourly, weekly rates available. Secure network. Reliable WiFi. Easy I90 access. Contact Aimee at aimee lennox@msmctech.com or (440) 892-9200 x 111.

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

Lakewood – Furnished office available in nicely decorated suite. $500/month includes office, Wifi, utilities, conference room and free parking. (216) 246-1392.

Lakewood – Office space in a newly updated modern suite available. First floor, library, Internet, copy, fax, scanner, receptionist. Call Skip Lazzaro (216) 226-8241.

Rocky River – 5 individual offices available in signature Rocky River Law Building. First class public space, conference room, and interview office included. Reduced rates for lawyers < 5 years. Contact Debby Milano (440) 356-2828, dmi@milanolaw.com.

Westlake – One/Two offices in Gemini Towers across from Crocker Park; includes phones, fax, copier, wi-fi, receptionist, conference room. Call (440) 250-1800 to schedule a visit.

For Rent

Lake Erie Rental – Upscale 2 bedroom/2 bath house on Lake Erie in Willowick; Beautifully furnished, wifi and air conditioning, fire pit and patio. Rent for getway weekend or week. (440) 725-1224.
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Forensic Engineers — I-Eng-A of Northeast Ohio by Scheeser Buckley Mayfield provides timely investigative support with concise findings. neoh@ienga.net – 330-526-2700 – neoh.ienga.net

Investment Real Estate — Premier Development Partners — Looking to acquire industrial/office sale and lease back or excess corporate real estate. Contact Brian Lenahan (216) 469-6423 or brian@premierdevelop.com

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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.vaccanello@pentelc.com


Security Expert — Tom Lekan — tlekan@gmail.com — (440) 223-5730

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.
We’re fresh!
Take a look at our new online CLE program at CleMetroBar.ce21.com
Reminger Co., LPA is pleased to announce that Julian T. Emerson was named to the National Bar Association’s 2018 “40 Under 40” list.

Ulmer & Berne LLP is pleased to announce that Trevor J. Hardy was recently elected to the Board of Directors of the Little Italy Redevelopment Corporation.

Ulmér & Berne LLP is pleased to announce that William D. (Bill) Edwards, Chair of Ulmer’s Employment & Labor Practice Group, has been elected Vice-Chair of the Wittenberg University Board of Directors.

Frantz Ward LLP is pleased to announce that partner Keith A. Ashmus has been appointed to the prestigious Regulatory Fairness Board as a representative from Region V, which covers Ohio, Michigan, Indiana, Illinois, Wisconsin and Minnesota.

Frantz Ward LLP is proud to announce that partner David C. Lee has been named Co-Chair of Architects and Engineers/Construction Liability; Allison M. Mcmeechan has been named Chair of Probate Administration, Trust Administration and Guardianships; Clifford C. Masch has been named Co-Chair of Appellate Advocacy; and Julian T. Emerson has been named Co-Chair of Environmental/Mass Tort/Class Action.

Reminger Co., LPA is pleased to announce that Brian D. Sullivan was recently elected President of The Lawyers Guild of the Catholic Diocese of Cleveland.

Reminger Co., LPA is pleased to announce that Holly Marie Wilson has been named a member of the Ohio State Bar Association Amicus Committee.

Ulmer & Berne LLP is pleased to announce that Charles W. (Chap) Frantz, the firm’s Managing Partner, has been elected to the Board of Trustees for the Greater Cleveland Sports Commission.

Ulmer & Berne LLP is pleased to announce that Honda T. Sullivan was named Co-Chair of Appellate Advocacy; and Franklin T. McMeechan has been named Chair of Engineers/Construction Liability; Allison M. Mcmeechan has been named Chair of Probate Administration, Trust Administration and Guardianships; Clifford C. Masch has been named Co-Chair of Appellate Advocacy; and Julian T. Emerson has been named Co-Chair of Environmental/Mass Tort/Class Action.

Announcements

Justin J. Roberts founded J. Roberts, LLC, a law practice focused on government investigations and white collar criminal matters. Prior to founding the firm, Justin was a Partner at Vorys, Sater, Seymour and Pease LLP where he headed the Government Investigations and White Collar Defense practices. Justin also served over a decade as an Assistant United States Attorney in the Major Fraud & Corruption Unit of the Northern District of Ohio. The firm’s website is: www.jrobertslegal.com. Justin can be reached at: justin.roberts@jrobertslegal.com.

Koblentz & Penvose, LLC is excited to announce the relocation of their law firm to a new office situated at 3 Summit Park Drive, Suite 440, Cleveland, Ohio 44131. Their telephone number (216-621-3012), fax number (216-621-6567) and web address (www.koblentzlaw.com) remain the same. They are pleased to continue to represent their clientele at their new location.

Brouse McDowell and Thacker Robinson Zinz (TRZ) announced that the lawyers of TRZ have joined Brouse McDowell. Operating under the name Brouse McDowell, the combined firm will consist of more than 80 attorneys across five offices.

Something To Share?
Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 15th of the month, two months prior to publication to guarantee inclusion.
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