Attack of the Drones
SEE PAGE 15

22 Do Limits Exist for Wire Fraud After the Nabisco Decision?

38 Prosecutors Taking a Second Look at Closed Cases

45 I Omitted Crucial "Fine Print" for "Earned-on-Receipt" Fees

THIS ISSUE
Criminal Law & White Collar Crime
Friedman & Nemecek, L.L.C.
Attorneys-at-Law

The law firm that companies and professionals trust to handle sensitive criminal and white-collar matters from investigations to the courtroom.

• Ian Friedman • Eric Nemecek •

The IMG Center
1360 E. 9th Street, Suite 650
Cleveland, OH 44114
216.928.7700
www.FANLEGAL.com
Criminal Liability Arising from Drone Operations

Now Boarding: International Trusted Traveler Programs

Prosecutors Taking a Second Look at Closed Cases

Features

12 Swimming in Different Ponds: Navigating the Criminal and Civil Aspects of Campus Sexual Misconduct Proceedings
By Kristina Supler
Susan Stone

15 Criminal Liability Arising from Drone Operations
By Darrell A. Clay
Jessica Trivisonno

17 When a Criminal Defendant’s Sixth Amendment Right to Present a Defense Trumps the Attorney-Client Privilege
By John F. McCaffrey

22 Do Limits Exist for Wire Fraud After the Nabisco Decision?
By Colin R. Jennings
Thomas E. Zeno
James M. Hafner, Jr.
Brian T. Karalunas

24 When a Not-Guilty Verdict Is Meaningless: Where Relevant Conduct Negates a Jury’s Determination
By Adrienne R. Kirshner

Departments

05 Bar Seen
Photos from LRS Annual Meeting and VLA Summer Social

09 From the CMBA President
Promoting Peace, Justice & Rightful Liberty: Leadership Initiatives at the Bar
Richard D. Manoloff

10 From the Executive Director
Answering the Call to Public Service
Rebecca Ruppert McMahon

15 Now Boarding: International Trusted Traveler Programs
By Jaclyn C. Celebrezze

30 Now Boarding: International Trusted Traveler Programs
By Jaclyn C. Celebrezze

32 New Members

35 Bar Foundation
Dad: Lessons I’ve Learned from His 50-Year Legal Career and a Lifetime of Giving Back
Drew T. Parobek

40 Wrap-Up
Golf Outing

42 CLE

44 CLE

46 CAP

51 CMBA Calendars

52 Classifieds

54 Briefcase

55 Attorney Discipline

Bender, Alexander & Broome Co., LPA ........................................... 23
Michael C. Hennenberg .......................................................... 24
Hennes Communications ......................................................... 4 & 33
The Kabb Law Firm ............................................................... 46
Lawyers Guild of the Catholic Diocese of Cleveland ........... 23
I. & I. Liquidation ................................................................. 13
McManamon & Co., LLC .................................................... 19
Meaden & Moore ................................................................. 44
Micro Systems Management .............................................. 39
Friedman & Nemecek, L.L.C ............................................... 2
Oswald Companies ............................................................... 50
Thomas Repicky ................................................................. 45
Walter | Haverfield LLP ..................................................... 14
Weston Hurd LLP ............................................................... 13
LRS Annual Meeting

In June, after a networking happy hour at the CMBA, Lawyer Referral Service Manager Jim Smolinski, Douglas Whipple, and Susan Tuck continued the celebration of the 2016 LRS Annual Update and CLE with dinner on E. 4th Street.

VLA Summer Social

Volunteer Lawyers for the Arts members and their guests gathered at the Cleveland Public Theater for their annual Summer Social on June 11, where they enjoyed a night of dynamic, ground-breaking theater. Refreshments, social space, and photos were courtesy of the CPT.
The Cleveland Metropolitan Bar Foundation presents

70th Annual
Franklin A. Polk
PUBLIC SERVANTS
Merit Awards

Friday, September 9, 2016
The Westin Cleveland Downtown

CONGRATULATIONS, HONOUREES!

Erika D. Bush, Cuyahoga County Court of Common Pleas
Mary Davidson, Cuyahoga County Juvenile Court
Lucy DeLeon, Cuyahoga County Domestic Relations Court
Theresa (Terri) Lee, Cuyahoga County Prosecutor’s Office
Susan E. Little, Cleveland Municipal Court
Gregory Nunn, U.S. Bankruptcy Court, Northern District of Ohio
David Sierleja, U.S. Attorney’s Office
Tina Simeone, Cleveland Municipal Court, Clerk’s Office
Alethia Wordlaw, Cuyahoga County Clerk of Courts
Colleen Corrigan Zitello, Cuyahoga County Probate Court

THANK YOU, SPONSORS!

Reminger Co., L.P.A.
Squire Patton Boggs (US) LLP
Tucker Ellis LLP
Ulm & Berne LLP
Vorys, Sater, Seymour and Pease LLP
Walter Haverfield LLP
Benesch, Friedlander, Coplan & Aronoff LLP
Calfee, Halter & Griswold LLP
Thompson Hine LLP
Cleveland-Marshall College of Law
Giffen & Kaminski, LLC

Kronenberg + Belovich Law LLC
Lazzaro Luka Law Offices, LLC
Meyers, Roman, Friedberg & Lewis
Schoonover; Rosenthal, Thurman and Daray, LLC.
Rosanne Aumiller
Mary Catherine Barrett
Hon. Diane J. Karpinski
John Lebold
Brian M. McDonough
Deborah W. Yue
Kelly M. Zacharias
Drew T. Parobek

**PRESIDENT**
Yorys, Sater, Seymour and Pease LLP

“I have always viewed participation in the Bar Association and Bar Foundation as a closely-connected obligation and opportunity. As lawyers, we have an obligation to give back to the communities in which we live and work. This giving back is a wonderful opportunity to make a difference in the lives of many people — especially young people — who may be less fortunate. Our programs make a real and lasting difference in their lives with a ripple effect that touches their families, future families, friends, schools, our greater community, and our culture. Get involved in our programs and your life will be touched as well!”

---

Mitchell G. Blair

**PRESIDENT-ELECT**
Calfee, Halter & Griswold LLP

“One of the easiest checks I write every year is my Gold Fellows contribution to the Bar Foundation. I believe we do as much to positively influence the lives of young people in our city as any organization I can think of. I enjoy leadership in the Foundation because of its mission, and because our staff makes it painless.”

---

Rosemary Sweeney

**TREASURER**
Buckley King

“I joined the Foundation Board due to its mission of ‘lawyers giving back.’ The Foundation supports CMBA’s programs which have enhanced the lives of numerous individuals along with earning a national reputation for success. The engagement and passion of the Foundation Board is extraordinary, I am fortunate to be part of an organization that is making a difference.”

---

Ginger F. Mlakar

**VICE PRESIDENT OF ENDOWMENT**
The Cleveland Foundation

“I give back through the Cleveland Metropolitan Bar Foundation because it supports transformative and innovative educational programs, such as the 3Rs program, benefiting thousands of Cleveland students every year. At the same time, these impactful programs provide meaningful volunteer opportunities for our members and others — a win-win for our community!”

---

Patrick J. Krebs

**VICE PRESIDENT OF SPECIAL EVENTS**
Taft Stettinius & Hollister LLP

“I am a proud graduate of St. Ignatius High School here in Cleveland, Ohio, and Villanova University outside of Philadelphia, Pennsylvania. Both schools instilled in me the importance of service to others. In the Cleveland Metropolitan Bar Foundation, I found an organization that has as its central focus a commitment to serving the people of our community through award-winning programs.”

---

Rebecca Ruppert McMahon

**SECRETARY & EXECUTIVE DIRECTOR**
Cleveland Metropolitan Bar Association & Foundation

“The generosity of lawyers giving back to Greater Cleveland is second to none.”
DIVISION OF FEES MEDIATION & ARBITRATION COMMITTEE

Co-Chair
David Wallace
Taft Stettinius & Hollister LLP
dwallace@taft.com

Co-Chair
Michael Murman
Murman & Associates
murmanlaw@aol.com

Goals
We want to help lawyers in different firms resolve their fee disputes under the Rule 1.5(f) of the Rules of Professional Conduct. The CMBA’s division of fees process allows lawyers to have a fast, economical, and confidential resolution, usually without the involvement of the client whose case is the subject of the dispute.

What can members expect?
As mediators, members have a unique opportunity to assist other members of the bar in working through their fee disputes. Arbitrators get to serve as fact-finders and render decisions at the conclusion of hearings. Mediators and arbitrators are paid small fees for their services by the parties.

CRIMINAL LAW SECTION

Chair
Anthony R. Petruzzi
anthony.petruzzi@tuckerellis.com

Regular Meeting
At a minimum, we will be scheduling quarterly meetings at the CMBA Conference Center.

What is your goal?
Our goal is to revitalize the section and create an environment where both defense lawyers and prosecutors have the opportunity to get to know one another and share ideas and thoughts on the criminal justice system. We also intend on looking to our members to provide education on various topics significant in the white collar and general criminal law practice areas. Criminal law is an ever-changing field of practice, and keeping up to date on the latest developments is of utmost importance when dealing with defendant’s constitutional rights.

What can members expect?
Our members can expect to gain great experiences and opportunities. Not only will they have the ability to meet new people and attend great programs, they are also going to be provided with the opportunity to develop and present educational opportunities to our members. Although we are starting with quarterly meetings, which will include continuing legal education credits, we will be open to holding monthly meetings should members show an interest in attending and/or presenting at a meeting.

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Chair
Nicole K. Wilson
Staff Attorney for Judge John P. O’Donnell
Lake County Court of Common Pleas
nkwesq@yahoo.com

Vice Chair
John Hallbauer
Buckley King
hallbauer@buckleyking.com

Regular Meeting
We meet on the 2nd Wednesday of each month at the CMBA.

What is your goal?
Per Rule VII of the Supreme Court Rules for the Government of the Bar, the Committee investigates confidential allegations that non-lawyers may be engaged in the practice of law. The Committee files complaints with the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio to seek injunctions and civil penalties in UPL cases when necessary. In this way, the Committee protects the public and remedies substantial injuries.

What can members expect?
Our members are active and engaged. We investigate alleged UPL, collaborate as a committee to determine strategy, negotiate resolutions, and file and prosecute claims in administrative proceedings before the Board on the Unauthorized Practice of Law. In addition, we help to create the definition of UPL, which is developed on a case-by-case basis by the Ohio Supreme Court.

Upcoming Events
We are holding a CLE for new and experienced committee members on October 12 from 12-2 pm at the CMBA. We will address the committee’s mission, how to investigate a complaint, and how to file a formal complaint. This will be an excellent orientation/training for anyone interested in joining the Committee.
Criminal law is the focus of this month’s Bar Journal. As a municipal bond lawyer for the last 20 years, I should be glad that I have no experience with that. Back in law school, however, I did have the opportunity to “prosecute” my criminal law professor. As a neophylic intern in the New Haven State’s Attorney’s office, I drew the short straw (there was only one straw) of doing initial assessments of hundreds of millions of traffic cases. One by one, alleged violators would appear before me, I would pull their file, and we would discuss their case.

Imagine my surprise when I looked up from my big box of files to see my criminal law professor, who had written the textbook for the course, appearing before me with a sheepish grin. He had been pulled over for going too fast on an off-ramp ... Awkward.

In America, our relationship with law enforcement has always been complicated. We value safety, security, and freedom from interference; and we applaud those who sacrifice to provide it all. But we are also hard-wired in this country to be free, pursue happiness on our own terms, and generally do what we please; and we are a tough crowd to those who would take any of it away.

Liberty, and respecting that of others, form our nation’s binary code. Thomas Jefferson, who helped solder our nation’s motherboard, said it with a touch more flair: “[R]ightful liberty is unobstructed action according to our will, within the limits drawn around us by the equal rights of others.”

Our laws enshrine such rightful liberty (or at least they should). Those who enforce the laws face the immensely difficult — but critically important — task of moving from the shrine to the streets, where judgment calls need to be made, day by day, situation by situation.

Law enforcement excelled at the RNC. Chief Williams and thousands of officers from around the country seemed to transform a powder keg into a keg party. On the Thursday afternoon of the Convention, I was chatting with state troopers from the Great Plains as some protesters joined the conversation, signs at their sides. Donald Trump, prone to understatement, remarked, “This was probably one of the most peaceful, one of the most beautiful, one of the most love-filled conventions in the history of conventions.”

We at the Bar are working to maintain that peace. By signing on to the “Divided Community Project” devised by the Moritz College of Law at The Ohio State University, we hope to convene key stakeholders and lead productive dialogue to prevent and proactively plan for incendiary incidents that could divide us.

Further on the subject of law enforcement, we at the Bar have been asked to play a leadership role in undertaking a review of the bail and bond system in Cuyahoga County, which attempts to preserve the “innocent until proven guilty” axiom, while at the same time protecting the public and ensuring appearance in court. Is our system the best it can be? What might we learn from other jurisdictions, as well as the germane initiative of the Cleveland Municipal Court? What can we afford to implement? What can we not afford not to implement?

We are honored that John J. Russo, Administrative and Presiding Judge of the Cuyahoga County Common Pleas Court, has given us — along with the deans of our area law schools — the opportunity to help lead this important effort. And we thank the following individuals for stepping up to be the co-chairs of the four key committees: Michael J. Benza, Lewis R. Katz, and Carmen Naso, Case Western Reserve University School of Law; Nailah Byrd, Cuyahoga County Clerk of Courts; Peggy Foley Jones, Giffen & Kaminski, LLC; Jay Milano, Milano Attorneys at Law; Mary Jane Trapp, Thrasher Dinsmore & Dolan LPA; and Jonathan Witmer-Rich, Cleveland-Marshall College of Law.

Our army of legal professionals, 6000 strong, is uniquely situated to attack these important issues of how we seek justice, preserve rightful liberty, and live together in community under the rule of law.

Rick Manoloff, a partner in the Public & Infrastructure Finance Practice Group at Squire Patton Boggs (US) LLP, is the President of the CMBA, is a past President of the CMBF, and served on the Board of Trustees of the Ohio State Legal Services Association. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com.
Answering the Call to Public Service

Our society loves giving awards to people in the public eye. Too often it seems that accolades go to the same people again and again. (Remember Meryl Streep accepting her third best actress Oscar: “When they called my name, I had this feeling I could hear half of America going, ‘Oh no. Come on, why? Her? Again?’”) With absolute bias on my side, I can report that on Friday, September 9, the Cleveland Metropolitan Bar Foundation hosted the absolute best award show of the year to a group people you may not know.

During the 70th Annual Franklin A. Polk Public Servants Merit Awards Luncheon, a few hundred bosses, co-workers, family members and friends gathered to celebrate the accomplishments of 10 individuals who have dedicated their professional lives to serving the public. Over the course of an hour masterfully hosted by Jacob Kronenberg, we applauded, belly-laughed, teared-up and cheered as our newest class of public servants accepted well-earned recognitions. For those who missed the celebration, I offer a few highlights about our honorees.

Erika D. Bush, nominated by Judge John J. Russo, joined the Cuyahoga County Court of Common Pleas more than 25 years ago as a receptionist in the Central Scheduling Office. She currently serves as the Office Manager in the Court Systems Department. When accepting her award, Ericka shared: “I am thankful every day to be a public servant.”

Mary J. Davidson, nominated by Judge Kristin Sweeney, has held a variety of positions with the Cuyahoga County Juvenile Court, including Liaison for the Victims of Juvenile Crime, Volunteer Coordinator, Community Education Coordinator and her current position as Media Specialist. Mary shared that when dealing with the press, she always keeps a nuclear option in her back pocket — “CYKT, which means Cover Yours and Kick Theirs.” Fortunately, because Mary’s parents taught her to live by the Golden Rule, she has yet to deploy that option.

Lucy DeLeon, nominated by Judge Rosemary Grdina Gold, is the Bailiff for Judge Cheryl S. Karner at the Cuyahoga County Domestic Relations Court. Lucy joined the Court in 1991. She became Judge Karner’s scheduler in 1996, and was then promoted to her Bailiff in 2001. When accepting her award, Lucy shared that inside the Court: “It takes a village. We all work together.”

Theresa (Terri) Lee, nominated by Duane J. Deskins, joined the Cuyahoga County Prosecutor’s Office after graduating from high school in 1985. She has spent 30 of her 31 years in the Juvenile Unit, where she currently serves as the Support Staff Coordinator. Terri sees her success as a result of having open relationships with both her staff and the public, in addition to never saying “That’s not my job.”

Susan E. Little, nominated by Judge Ronald B. Adrine, has been a valued employee of Cleveland Municipal Court for 33 years. She began her career as a Probation Officer and has been promoted several times leading to her current role as the Deputy Chief Probation Officer. During the awards luncheon, Susan said: “I am so pleased and thankful to be given the privilege to work for one of the best municipal courts in the country.”

Gregory Nunn, nominated by Judge Pat E. Morgenstern-Clarren, is the Courtroom Deputy for the U.S. Bankruptcy Court, Northern District of Ohio. He joined the Court in 1992 as a Case Administrator/ Electronic Court Recorder Operator. Following Judge Morgenstern-Clarren’s introduction of him, Greg proclaimed: “Based upon all the nice things she said about me, I am grossly underpaid.” (Oh yes he did!)

David Sierleja, nominated by Carole S. Rendon, joined the US Attorney’s Office in August 1990 as an Assistant United States Attorney in the General Crimes Unit of the Criminal Division. During the past 25 years, David received a variety of promotions prior to becoming the First Assistant U.S. Attorney in February 2016. When accepting his award, David remarked: “I am humbled to be receiving an award for doing what I love to do.”

Tina Simeone, nominated by Earle B. Turner, serves as the Chief Deputy Clerk. Since joining the Court in 1983, Tina’s responsibilities have taken her through just about every department within the Civil Division. While accepting her award, Tina movingly thanked the late Jimmy Kilbane, former personnel director for the Court, for taking a chance on hiring her. “He had a heart that was bigger than life.”

Alethia Dale Wordlaw, nominated by Nailah Byrd, is the Senior Administrative Secretary for the Cuyahoga County Clerk of Courts. Alethia has served in a variety of roles within the Clerk’s Office in both the Civil and Criminal Divisions. During the luncheon, Alethia expressed her gratitude to her current boss, and shared: “It has been a pleasure these 27 years of service.”

Colleen Corrigan Zitello, nominated by Judge Anthony J. Russo, serves as a clerk for Cuyahoga County Probate Court in the Imaging Department. She first joined the Probate Court in 1994 as a Deputy Clerk in the Cashier Department. During her 22 year career, the Court has gone from electric typewriters to digitally imaging all documents so they are viewable in an online directory. As she accepted her award, Colleen told Judge Russo, “Thank you for keeping me!”

And with that, I offer my own thanks to our Public Servants Committee Chair and Foundation Board Member, Lynn Lazzaro, as well as to his committee members Mary Catherine Barrett, Judge Diane Karpinski, Pat Krebs, Drew Parobek, and Kelly Zacharias for helping to deliver such a memorable event!

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmc mahon@clemetrobar.org.
THE SCOOP
CMBA Member Q&A

Amanda Barreto
Company: Orr & Associates Co., LPA
Title: Associate Attorney
College: Miami University
Law School: Salmon P. Chase College of Law

TELL US ABOUT YOUR PETS.
My husband, Steve, and I have three pets (all rescued). Coco Chanel is a 10-year-old miniature pinscher whose name fits her perfectly. This little diva has been with me since right before I started law school. Eddie George is a 7-year-old black cat who was rescued by my husband, an OSU grad/super fan. Archie Griffin (guess who named him) is a 1-year-old, very playful, lab/shepherd mix.

HOW DID YOUR HUSBAND PROPOSE?
My husband proposed to me by placing the ring on my dog Coco’s collar. I did not notice anything at first, so Steve had to do some coaxing to get Coco’s attention so I would notice!

WHAT DO YOU DO FOR FUN?
I love to travel! My husband’s family is from South America, so last year we traveled to Paraguay, Argentina, and Brazil. I also love Las Vegas so we try to go once a year. Visiting family and friends in Miami, New York, and Nashville is always a good time.

WHAT CITY DO YOU LIVE, AND WHAT DO YOU LIKE ABOUT IT?
I am a proud Lakewood resident! We bought a house there a few years ago, and I absolutely love the easy access to the Metroparks, the amazing restaurants and entertainment, and the walkability. Lakewood is really special to us and we try to get involved and support the city in any way we can.

BEST PART ABOUT BEING A LAWYER?
The best part about being a lawyer is helping clients figure out a problem. It is very rewarding to help a client see a situation in a new way. The second best part about being a lawyer is getting to argue in court. I still get so excited whenever I enter a courtroom.

Melanie Farrell
Company: CMBA
Title: Manager of Facility Planning & Board Relations
College: Miami University

IF YOU WERE NOT IN YOUR CURRENT PROFESSION, WHAT WOULD YOUR PROFESSION BE?
My ideal job, if they would have me, would be a movie critic. Being paid to watch films and have people care what I thought, I can’t think of anything better.

WHAT DO YOU LOVE ABOUT YOUR JOB?
My CMBA family (coworkers), we have a very unique and fantastic relationship. I love interacting with members every day. And I LOVE working with people when they rent space in our Conference Center. I have met so many great folks, and we are really starting to get on Cleveland’s radar now. I am having a blast watching successful events happen here every day and know I contributed.

TELL US ABOUT YOUR PET(S) IF YOU HAVE ANY.
That would be Arthur. As most cats go, he is spoiled, ornery, and self-indulgent, but we love him. He is one of the best parts of my day. I am not ashamed to say I am a crazy cat lady.

WHAT DO YOU LOVE ABOUT YOUR JOB?
Helping people as an advocate, as a trusted advisor, and as an educator.

WHERE HAVE YOU SEEN THE CMBA MISSION AT WORK?
Its sections. I belong to WiL and Solo/Small Firm Sections. I have found other members friendly as well as supportive.

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
I love 70s and 80s music, especially disco and 80s dance music.

Theresa Morelli
Company: Theresa Morelli Law LLC
Title: Owner
College: University of Akron
Law School: University of Akron

A RECENT MILESTONE FOR YOU:
I launched a solo virtual law practice in Akron. This is the “4th act” in my career.

WHAT DO YOU LOVE ABOUT YOUR JOB?
Helping people as an advocate, as a trusted advisor, and as an educator.

INTERESTED IN BEING FEATURED OR KNOW SOMEONE WHO MIGHT?
E-mail Jackie Baroona at: jbaroona@clemetrobar.org.
Swimming in Different Ponds
Navigating the Criminal and Civil Aspects of Campus Sexual Misconduct Proceedings

BY KRISTINA SUPLER & SUSAN STONE

ews headlines regularly contain reports about colleges and universities and their responses to allegations of student sexual violence. Most Americans have some level of familiarity with Duke University lacrosse team matter or the more recent reports surrounding the swim team member at Stanford University who was prosecuted for sexual assault. Despite the media reports about campus sexual assault, Title IX of the Education Amendments of 1972 (Title IX) and its impact on campus sexual misconduct proceedings remains widely misunderstood. This article analyzes the intersection of principles of civil law and criminal defense in the context of campus sexual misconduct proceedings and highlights the complex considerations faced by lawyers who represent students in academic disciplinary proceedings.

One short sentence has created a legal quagmire: “No person in the United States shall, on the basis of sex, be excluded from participation in, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681(a) (emphasis added). Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. Despite the existence of the law, some schools have struggled to respond to and prevent student sexual violence. At times marginalized and unprotected, female students have worked to raise awareness about academic institutions’ deficient handling of complaints of sexual violence. Furthering this objective, some female students also initiated lawsuits against academic institutions for exhibiting deliberate indifference to their claims of sexual harassment and violence.

In an effort to increase protections for all students — albeit more so female students — in 2011, the Office of Civil Rights (OCR) issued the “Dear Colleague Letter,” which permanently altered campus sexual misconduct proceedings across the country. Most significantly, the letter established that allegations of campus sexual misconduct must be evaluated under the lenient preponderance of the evidence standard. Russlynn Ali, Dear Colleague Letter, U.S. Dept. of Education, at 10 (April 4, 2011). The letter also made clear that schools must process all complaints of sexual violence, regardless of whether the conduct occurred off campus or at an event unrelated to school activities. Id. at 4. When allegations of sexual misconduct trigger a criminal investigation, the Dear Colleague Letter expressly instructs schools not to wait for the conclusion of a criminal investigation. Id. at 10. Indeed, “a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime.” Id. As a result, accused students may be forced to navigate parallel school and police investigations and caused to decide between the availing parallel school and police investigations, the day-to-day application of the guidance from the Dear Colleague Letter has caused the pendulum to swing too far in one direction. Perhaps to avoid scrutiny from OCR, most schools have established harsh and inflexible zero tolerance policies that rapidly ostracize students based upon mere allegations. In the recent case of Doe v. Brown University, 2016 U.S. Dist. LEXIS 21021, 2016 WL 715794, (D.R.I. Feb. 22, 2016), the United States District Court of Rhode Island noted that the pressure on universities from OCR has caused backlash few procedural mechanisms to which he can avail himself when defending against the allegations. The student receives a school-issued no contact order that remains in effect while an investigation is pending. On occasion, a student may even find himself banned from campus while the Title IX investigation is pending. With respect to the actual investigation, many schools take issue with an accused student attempting to gather witness statements or pertinent evidence for the reason that the Title IX investigator is the person supposedly best-suited to identify relevant evidence. Moreover, although the civil preponderance standard is employed, a student is not afforded an opportunity to conduct discovery. Once the investigative report is complete, most schools prohibit the accused student from having a copy of the report. The student and his advisor are limited to reviewing the report on the school campus and taking handwritten notes. At the subsequent disciplinary hearing, while a lawyer can generally attend as “student advisor,” the student is required to advocate on his own behalf while questioning witnesses and responding to questions. Lawyers are not permitted to speak, thus necessitating meticulous preparation and strategic guidance for the accused student.

While Title IX and the Dear Colleague Letter establish laudable goals designed to end sex-based discrimination and to protect students from sexual harassment and violence in education programs, the day-to-day application of the guidance from the Dear Colleague Letter has caused the pendulum to swing too far in one direction. Perhaps to avoid scrutiny from OCR, most schools have established harsh and inflexible zero tolerance policies that rapidly ostracize students based upon mere allegations. In the recent case of Doe v. Brown University, 2016 U.S. Dist. LEXIS 21021, 2016 WL 715794, (D.R.I. Feb. 22, 2016), the United States District Court of Rhode Island noted that the pressure on universities from OCR has caused backlash few procedural mechanisms to which he can avail himself when defending against the allegations. The student receives a school-issued no contact order that remains in effect while an investigation is pending. On occasion, a student may even find himself banned from campus while the Title IX investigation is pending. With respect to the actual investigation, many schools take issue with an accused student attempting to gather witness statements or pertinent evidence for the reason that the Title IX investigator is the person supposedly best-suited to identify relevant evidence. Moreover, although the civil preponderance standard is employed, a student is not afforded an opportunity to conduct discovery. Once the investigative report is complete, most schools prohibit the accused student from having a copy of the report. The student and his advisor are limited to reviewing the report on the school campus and taking handwritten notes. At the subsequent disciplinary hearing, while a lawyer can generally attend as “student advisor,” the student is required to advocate on his own behalf while questioning witnesses and responding to questions. Lawyers are not permitted to speak, thus necessitating meticulous preparation and strategic guidance for the accused student.

While Title IX and the Dear Colleague Letter establish laudable goals designed to end sex-based discrimination and to protect students from sexual harassment and violence in education programs, the day-to-day application of the guidance from the Dear Colleague Letter has caused the pendulum to swing too far in one direction. Perhaps to avoid scrutiny from OCR, most schools have established harsh and inflexible zero tolerance policies that rapidly ostracize students based upon mere allegations. In the recent case of Doe v. Brown University, 2016 U.S. Dist. LEXIS 21021, 2016 WL 715794, (D.R.I. Feb. 22, 2016), the United States District Court of Rhode Island noted that the pressure on universities from OCR has caused backlash
against male students. Not surprisingly, male students responded by suing schools with claims of gender bias in violation of Title IX and deprivation of due process. Such litigation is incredibly challenging and historically has proven difficult for male plaintiffs to survive motions to dismiss.

Two recent opinions have brought hope to male students seeking to litigate biased and fundamentally flawed campus disciplinary proceedings. On July 29, 2016, in Doe v. Columbia University, — F.3d —, 2016 WL 4056034 (2nd Circuit 2016), the Second Circuit issued an opinion reversing the trial court’s dismissal of John Doe’s Title IX claims against Columbia University for sex discrimination. This opinion is the first appellate decision reversing the dismissal of a complaint by a male student alleging gender bias. Reviewing the trial court’s dismissal of John Doe’s complaint, the Second Circuit explained that “a complaint under Title IX, alleging that the plaintiff was subjected to discrimination on account of sex in the imposition of university discipline, is sufficient with respect to the element of discriminatory intent, like a complaint under Title VII, if it pleads specific facts that support a minimal plausible inference of such discrimination.”

Id. at *7 (emphasis added). This opinion will serve as a much-needed legal shield for male plaintiffs’ complaints.

The second opinion that provides hope and guidance to male students is Doe v. Brandeis University, 2016 US. Dist LEXIS 43499 (D. Mass., March 31, 2016), which involves a due process cause of action. In Brandeis, the court analyzed the procedures used by Brandeis University in its disciplinary proceeding against John Doe for alleged sexual misconduct. John Doe was subject to a disciplinary proceeding based upon a two-sentence complaint stating the following:

Starting in the month of September, 2011, the Alleged violator of Policy [John] had numerous inappropriate, nonconsensual sexual interactions with me. These interactions continued to occur until around May 2013.

Following the complaint of nonconsensual sexual activity, John Doe endured a secret disciplinary process denying him the right to know details of the charge, the right to counsel, the right to see evidence, the right to cross-examine witnesses and the right to appeal the decision. As a result of the perfunctory process, John Doe received a Disciplinary Warning causing a permanent mark on his education record that stated that he committed “serious sexual transgressions.”

Id. at *11. Undoubtedly, such a notation in a
student's education record will limit future education and employment opportunities.

When reviewing John Doe's due process claim, the Brandeis court recognized procedural deficiencies and expanded the due process owed to students. According to the court, in John Doe's disciplinary proceedings, "Brandeis failed to provide a variety of procedural protections to John, many of which, in the criminal context, are the most basic and fundamental components of due process of law." Id. The court then identified ten procedural violations ranging from lack of specific notice of the charges to a failure to separate the investigatory, prosecution and adjudication functions. Id. at *106. The court recognized that "[w] it is well-established . . . that a private university is not required to adhere to the standards of due process guaranteed to criminal defendants or to abide by rules of evidence adopted by courts. However, courts may refer to those rules in evaluating the fairness of a particular disciplinary hearing." Id. at * 95 (internal citations omitted)(emphasis added).

This opinion was groundbreaking by suggesting that the due process protections enjoyed by criminal defendants may influence academic disciplinary proceedings. The Brandeis opinion now serves as a road map for due process protections in campus disciplinary proceedings.

While developments in this rapidly evolving area of law provide some clarity for schools and attorneys alike, the challenges continue to abound for students subject to campus sexual misconduct proceedings. Without question, allegations of sexual harassment and violence must be taken seriously and promptly responded to by schools. Nonetheless, with growing frequency, the Title IX complaints lodged by students in the academic setting contain uncertain allegations of sexual harassment that pale in comparison to conventional notions of sexual misconduct. As long as college students drink alcohol and engage in sexual activity, Title IX sexual misconduct complaints will be filed. Regardless of the substance of the allegation, a finding of responsibility in a campus sexual misconduct proceeding can lead to suspension and even expulsion, in addition to a possible permanent mark on a student's academic record — all of which can cause significant collateral consequences for the student.

In order to effectively navigate the academic landscape, attorneys representing students must be well-versed in both civil and criminal law. When allegations of sexual violence rising to the level of a criminal offense are raised, an attorney's foremost goal must be to protect the student from criminal prosecution. However, even when criminal prosecution is not a threat, an attorney must still identify creative ways to defend the student with minimal due process rights in order to avoid potentially unwarranted academic sanctions.

Kristina Supler is a principal within the Criminal, Cyber & White Collar practice group at McCarthy Lebit. Her criminal defense experience lends itself to work within the firm's education practice. She represents students involved in academic disciplinary matters and Title IX proceedings. She has been a CMBA member since 2006. She can be reached at (216) 696-1422 and kws@mccarthylebit.com.

Susan Stone is the head of the Education practice group at McCarthy Lebit. Her higher education practice includes Title IX actions addressing intimate partner violence and other forms of misconduct on campus as well as charges of academic dishonesty. She also works in the field of special education law. She has been a CMBA member since 2006. She can be be reached at (216) 696-1422 and scs@mccarthylebit.com.
Criminal Liability Arising from Drone Operations

BY DARRELL A. CLAY & JESSICA TRIVISONNO

Ashley wants to be the very best at Pokémon GO, so she attaches her phone to her 30 pound drone that she controls using her iPad. She catches Forest Pokémon in the Cuyahoga Valley National Park. She then flies her drone, knowing it is low on battery, through Public Square in Cleveland after hearing about a mob of people gathered there to catch a rare Charmeleon Pokémon.

Ashley’s seemingly innocuous, wholly-personal use of her drone could land her in more trouble than she ever imagined. Among her infractions are:

• Flying in a National Park, which the Federal Aviation Administration has declared a “No Drone Zone.”
• Flying within 5 miles of Burke Lakefront Airport without prior notification and authorization.
• Recklessly operating her low-battery drone above a crowd of people.

She could very well end up in jail for any or all of these offenses.

As recreational and commercial use of unmanned aerial vehicles (UAVs) grows in popularity, health, privacy, and safety concerns remain at the forefront of regulators’ concern. A UAV (or “drone”) is an aircraft operated from the ground without an on-board pilot, often by handheld radio or tablet computer. Many UAVs come equipped with a camera or other data-gathering device.

In Ohio, UAVs are projected to contribute 2,700 new jobs and more than $2 billion in economic gains in the next ten years. Recent reports cite real estate, agriculture, and insurance as some of the biggest potential commercial users of UAVs. But a UAV photographing a for-sale home can also violate the homeowner’s privacy rights by capturing images of intimate activities inside the home or by recording someone entering the home alarm security code. And a UAV capable of delivering Chinese take-out or your latest Amazon Prime order can also ferry drugs, weapons, or other contraband into a prison yard.

The FAA has promulgated regulations designed to ensure the safe operation of UAVs. Meanwhile, Congress, state legislatures, and many local communities have passed, or attempted to pass, laws designed to punish criminal misuse of UAVs. This patchwork series of laws and regulations creates the potential for UAV operators to commit a crime even with the exercise of due diligence.

Federal Criminal Liability Associated with UAVs

In 2012, Congress passed the FAA Modernization and Reform Act (FMRA), which required the FAA to integrate UAVs into the national airspace system (NAS). See H.R. 658, 112th Cong., 2d Sess. (2012). Although FMRA does not establish criminal penalties for violations of UAV regulations, other existing laws may. For example, anyone who knowingly or willfully violates an FAA regulation may be fined, imprisoned for up to one year, or both. See 49 U.S.C. § 46307.

FMRA requires the registration of all drones with the FAA. Failure to register can result in civil penalties of up to $27,500, and criminal penalties of up to $250,000.00 and three years’ imprisonment.
Pursuant to FMRAs mandate, the FAA finalized regulations regarding commercial operation of small UAVs on June 21, 2016, with an effective date of August 29, 2016. A commercial operator of a small UAV must acquire a remote pilot certificate, limit flights to daytime hours, and only fly as far as the operator’s line of sight. Violations of those regulations could be deemed criminal conduct in violation of § 46307.

Commercial and recreational UAV users may face criminal penalties for violating FAA-issued temporary flight restrictions. For example, the FAA declared the entire city of Cleveland a “No Drone Zone” during the 2016 Republican National Convention. It warned in a pre-convention press release that “[a]nyone flying a drone within the designated restricted areas may be subject to civil and criminal charges.”

Although the federal government maintains the authority to prosecute drone misuse, it has not actively pursued many notable instances of such. For example, no charges were brought against an individual who in January 2015 drunkenly crashed his quadcopter onto the White House lawn in violation the FAA’s strict ban on flying UAVs in Washington, DC.

The lack of prosecutions may be due in part to inherent difficulty in identifying who is operating a renegade drone. In 2013, San Bernardino County offered a $75,000 reward to operators who misuse UAVs remains unclear. For example, Ohio’s criminal trespass law (RC 2909.06(A)(2)) does so knowingly. As “drones” are not listed in the statute, reckless endangering would not seem to apply to UAV activity.

The State could charge an individual for sexual gratification, see RC 2907.08. Additionally, in an effort to aid prosecution of drone misuse, the Cleveland City Council passed legislation on April 26, 2016 that purports to grant local police the authority to enforce federal UAV regulations. The efficacy and legality of this legislation remains to be seen.

**UAV Criminal Legal Landscape Constantly Evolving and Likely to Change**

Legislatures and municipal governments are likely to respond as crimes accomplished by UAVs increase, and as innocent drone use leads to injuries to third persons. As the UAV industry grows and matures, criminal laws must evolve to address health, privacy, and safety concerns spurred by their operation. And drone operators must remain especially vigilant to operate their UAVs in a safe and lawful manner at all times.

**Federal Law Likely Preempts Many State UAV Laws**

In a December 2015 memorandum, the FAA explicitly discouraged state and local governments from attempting to restrict UAV operations in the NAS, including attempts to ban UAV operation outright. The memo explained that the FAA maintains exclusive authority "to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities and aircraft noise." As a result, the FAA asserts that its rules preempt any state or local UAV regulations. However, the memo also explained that state and local governments can restrict UAV operators by relying on the “police power” to regulate land use, zoning, privacy, trespass, and law enforcement operations.

Some state and local governments have thus criminalized certain types of UAV operations. For example, Michigan holds individuals criminally liable for using a UAV to hunt or interfere with hunting. Tennessee prohibits the use of a UAV to intentionally capture images of firework displays, as well as the use of UAVs over a correctional facility and attaching a weapon to a UAV. Drone harassment is a specific crime in Wisconsin, for which individuals may face penalties if they operate a UAV with the intent to intimidate, harass, annoy, or alarm another person without a legitimate purpose. Tennessee, Nevada, and Oregon have amended their criminal and civil trespass statutes to address specifically the concept of “trespass by UAV.” Additionally, despite the FAA’s suggestion otherwise, multiple cities, including Chicago and Los Angeles, have enacted laws restricting where operators may fly UAVs.

Notably, the FAA has stated that shooting down a UAV is a federal crime. In 2015, a Kentucky judge dismissed charges of criminal mischief and wanton endangerment against William Meredith, a self-proclaimed “drone hunter” who shot down a UAV he claimed was hovering above his property while his young daughters were outside playing. Despite the general public’s apparent approval of UAV hunting, in April 2016, the FAA confirmed that gurning down a UAV is aircraft sabotage in violation of 18 U.S.C. § 32, subjecting the offender to substantial fines and up to 20 years in prison.

**Ohio Laws Regarding UAV Operation**

As yet, the Ohio General Assembly has not enacted any UAV-specific legislation. On May 13, 2015, Representative Robert Cupp introduced House Bill 228, which remains pending before the Judiciary Committee. If enacted, HB 228 would prohibit using a UAV to engage in a list of crimes, such as trespassing and voyeurism, and would establish a strict-liability offense for using a UAV as an instrumentality to commit a crime. Additionally, HB 228 subjects individuals who commit a crime with a UAV to mandatory fines and criminal forfeiture of the UAV to the State.

The application of existing Ohio law to operators who misuse UAV’s remains unclear. For example, Ohio’s criminal trespass law (RC 2911.21) applies when a person enters the property of another without permission. Thus, this law is unlikely to protect a property owner who is troubled by a drone hovering overhead.

Similarly, the State could charge an operator with criminally endangering the property of another with a UAV, but only if the operator does so knowingly. See RC 2909.06(A)(1). Reckless endangerment only applies to damage by means specifically enumerated in the statute, such as fire or other “inherently dangerous agency or substance.” See RC 2909.06(A)(2). As “drones” are not listed in the statute, reckless endangering would not seem to apply to UAV activity.

**REFERENCES**

1. **RC 2907.08.**
2. **RC 2921.36.**
3. **RC 2925.03.**
4. **RC 2909.06(A)(2).**

**Darrell A. Clay is the President-Elect of the CBMA and a former Chair of the Criminal Law Section. He is a partner in the Litigation Section of Walter | Haverfield LLP, where he practices in the areas of white collar criminal defense, complex civil litigation, and aviation law. He has been a CBMA member since 1997. He can be reached at dclay@walterhav.com.**

**Jessica Trivisonno is a third-year law student at Case Western Reserve University School of Law. She is a law clerk at Walter | Haverfield. She can be reached at jtrivisonno@walterhav.com.**
A great deal of attention has focused on the memorandum issued last fall from Deputy Attorney General Sally Quillian Yates announcing a Department of Justice policy to increasingly target individuals involved in corporate crimes. Whether the “Yates Memo” will significantly change Department of Justice charging practices remains to be seen. Nevertheless, it has certainly sent a message to the public and those who occupy the “C-suite.”

In an era marked by increasingly aggressive legal theories of criminal prosecution, especially in thorny regulated industries, an organization’s executives often look to and rely upon the advice of lawyers, both within and outside the organization, before embarking on a course of conduct. The decisions made by these executives could expose them to allegations of individual criminal liability. The advice-of-counsel may be a defense demonstrating that there was no wrongful intent underlying an executive’s actions. However, courts have not taken a consistent approach to whether and to what extent an individual asserting an advice-of-counsel defense may introduce privileged communications against the wishes of the holder of the privilege — the organization.

The Defendant’s Need to Disclose Privileged Communications

If an executive is charged with committing a crime in the course of his employment with an organization, the communications he may have had with the organization’s legal counsel concerning the charged conduct become relevant. The advice-of-counsel defense allows a defendant to demonstrate there was no wrongful intent underlying the alleged wrongful conduct. The advice-of-counsel defense under such circumstances is not so much an affirmative defense as it is a means of negating an element of the charged conduct. The defendant will seek to demonstrate that he lacked the specific state of mind required to commit the offense or, conversely, acted in good faith. More importantly, the communications the executive had with counsel for the organization may be the very evidence necessary to secure an acquittal.

The elements of the advice-of-counsel defense are generally outlined as follows: “(1) full disclosure of all pertinent facts and (2) good faith reliance on the advice of counsel.” United States v. Geiger, 303 Fed.Appx. 327, 330 (6th Cir. 2008) (citing United States v. Lindo, 18 F.3d 353, 356 (6th Cir. 1994)). Less clear is the issue of whether the individual invoking the defense must have initially sought the advice in good faith. See e.g., United States v. DeFries, 129 F.3d 1293, 1308 n.7 (D.C. Cir. 1997)(“[s]o long as the defendant relies on his counsel’s advice in good faith, it is irrelevant whether or not he initially sought the advice in good faith.”). As criminal practitioners know, raising the advice-of-counsel defense is not without risk. The individual asserting the defense generally waives the attorney-client privilege protecting communications between the client and counsel. For executives, the issue of waiver is made difficult because the lawyers they
are communicating with and relying upon usually represent the organization, not the executives individually.

Courts have not taken a consistent approach to the extent an individual asserting an advice-of-counsel defense may introduce privileged communications against the wishes of the organization holding the privilege. In United States v. W.R. Grace, 439 F.Supp.2d 1125 (D. Mont. 2006), the district court framed the issue thusly: “whether and under what circumstances the attorney-client privilege must give way to a criminal defendant’s Sixth Amendment right to present a defense * * *.”

The Sixth Amendment Meets the Attorney-Client Privilege
The Sixth Amendment states:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

“Though not expressly stated in the text of the Sixth Amendment, a defendant’s right to present evidence in his defense is protected by the federal Constitution.” W.R. Grace, 439 F.Supp.2d at 1137 (citing Rock v. Arkansas, 483 U.S. 44, 51 (1987)). “[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” Id. (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)).

W.R. Grace thoughtfully analyzed the competing interests that exist where the holder of the attorney-client privilege will not waive it, yet refusal to do so would prevent a criminal defendant from putting on a defense. A clash between the sacrosanct protection of the attorney-client privilege versus a criminal defendant’s constitutional right to present a complete defense. W.R. Grace involved an organization and its current and former employees charged with conspiracy to violate the federal Clean Air Act, to defraud the United States, and other federal crimes. Some of the individual defendants, including the organization’s former general counsel, desired to introduce at trial confidential legal advice provided to the organization. The individual defendants claimed they relied on this advice and that the advice would show their absence of criminal intent. However, the organization asserted the attorney-client privilege and was unwilling to waive privilege as to this evidence.

Because no Ninth Circuit or U.S. Supreme Court case directly addressed whether, and under what circumstances, the right to present
a defense can trump the attorney-client privilege, W.R. Grace started with a review of cases arising in the Sixth Amendment context in order to determine whether analogous principles existed. Id. at 1138-1139. This review concluded that U.S. Supreme Court cases “use the mechanism of a balancing test in which the evidence or testimony sought to be introduced by the defendant is weighed against the policy behind the rule requiring that the evidence be excluded.” Id. at 1139-1140. This concept of a balancing test provided the framework for the W.R. Grace decision, where the district court concluded “[t]he nature and content of the privileged evidence must be weighed against the purposes served by the attorney-client privilege to determine whether any of the documents are of such value as to require Grace's rights under the attorney-client privilege to yield to the individual Defendants' Sixth Amendment right to present evidence.” Id. at 1142.

Since W.R. Grace was decided, other district courts have relied on it in deciding the specific circumstances under which the attorney-client privilege must yield to a criminal defendant's need to present evidence. See, United States v. Benzer, Case No. 2:13-cr-00018, 2014 WL 6884042 (D. Nev. Dec. 8, 2014)(a balancing test should be used to determine if exculpatory privileged evidence should be admitted despite the protections afforded to attorney-client communications); United States v. Renzi, Case No. CR 08-212, 2010 WL 582100, at *11 (D. Ariz. Feb. 18, 2010)(accepted W.R. Grace's holding that “admissibility depends on weighing the competing interests, with the exculpatory value of the lost evidence to the accused weighing most heavily on the scale of a fair trial.”); United States v. Mix, Case No. 12-171, 2012 WL 2420016 (E.D. La. June 26, 2012) (relied on W.R. Grace which it described as a “meticulous and detailed opinion” to explain that the competing interests would need to be balanced to determine if the evidence should be admitted); United States v. Weisberg, Case No. 08-CR-347, 2011 WL 1327689 (E.D.N.Y. April 5, 2011)(held that in order to determine whether a particular item is privileged and, nevertheless, so important that disclosure is constitutionally required, each item must be reviewed in camera).

Accordingly, an executive's Sixth Amendment right to put on an advice-of-counsel defense to allegations of criminal conduct may trump an organization's assertion of the attorney-client privilege to prevent the disclosure of privileged communications.

Sixth Circuit Case Law
In 2005, before W.R. Grace was decided the Sixth Circuit in Ross v. City of Memphis, 423 F.3d 596 (6th Cir. 2005) held that a party's assertion of the advice-of-counsel defense as part of his defense strategy to a civil cause of action did not require an organization to relinquish its attorney-client privilege. Ross relied on the U.S. Supreme Court's decision in Swidler & Berlin v. United States, 524 U.S. 399 (1998) which rejected an exception to the attorney-client privilege where the holder of the privilege was deceased and the information would have “substantial importance to a particular criminal case.” Ross, 423 F.3d at 603 (quoting Swidler & Berlin, 524 U.S. at 408). Ross specifically rejected a balancing test between the importance of the communications to the party's defense and the entities interest in the privilege. Id.

However, Swidler & Berlin did state “that exceptional circumstances implicating a criminal defendant's constitutional rights might warrant breaching the privilege[,]” and explained it “need not reach this issue, since such exceptional circumstances clearly are not presented here.” Swidler & Berlin, 524 U.S. at 408 n. 3. Accordingly, Ross should have no precedential value in determining if a claim of attorney-client privilege should be abrogated in a criminal case where Sixth Amendment rights are clearly implicated.

Conclusion
The need for an organization's executives and its in-house counsel to seek legal advice before and during government investigations is apparent in the over criminalization of corporate conduct. Whether the advice-of-counsel defense may be appropriately raised by an executive accused of wrongdoing can only be determined on a case-by-case basis. Importantly, detailed and thorough recordkeeping, along with appropriate business practices can ensure that executives and in-house counsel can avail themselves of the defense if needed.
<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>SATURDAY, OCTOBER 1</td>
<td>10:00 AM – 11:30 AM</td>
<td>Brief Advice and Referral Clinic</td>
<td>West Side Catholic Center, 3135 Lorain Avenue, Cleveland 44113</td>
</tr>
<tr>
<td>SATURDAY, OCTOBER 15</td>
<td>9:30 AM – 11:00 AM</td>
<td>Brief Advice and Referral Clinic</td>
<td>Cleveland Public Library - Fulton Branch, 3545 Fulton Road, Cleveland 44109</td>
</tr>
<tr>
<td>THURSDAY, OCTOBER 20</td>
<td>2:00 PM – 4:00 PM</td>
<td>Community Outreach Clinic</td>
<td>Oberlin Community Services, 285 South Professor Street, Oberlin</td>
</tr>
<tr>
<td>WEDNESDAY, OCTOBER 5</td>
<td>2:30 PM – 4:00 PM</td>
<td>Special Clinic for U.S. Veterans</td>
<td>First come, first served, Staffed by volunteer attorneys from McDonald Hopkins LLC</td>
</tr>
<tr>
<td>WEDNESDAY, OCTOBER 12</td>
<td>2:00 PM – 4:00 PM</td>
<td>Community Outreach Clinic</td>
<td>Catholic Charities Ashtabula, 4200 Park Avenue, Third Floor</td>
</tr>
<tr>
<td>TUESDAY, OCTOBER 18</td>
<td>4:30 PM – 6:00 PM</td>
<td>Brief Advice and Referral Clinic</td>
<td>West Side Catholic Center, 3135 Lorain Avenue, Cleveland 44113</td>
</tr>
<tr>
<td>MONDAY, OCTOBER 24</td>
<td>5:00 PM – 7:00 PM</td>
<td>Evening Law Firm Clinic</td>
<td>Legal Aid Society of Cleveland, 1223 W. 6th Street, Cleveland 44113</td>
</tr>
</tbody>
</table>

REGISTRATION FOR EVENTS IS NOW OPEN!
Visit www.lasclev.org/2016probonoweek or www.lasclev.org/registration to sign-up!
Check website for calendar updates and other events.
TUESDAY, OCTOBER 25
5:30 PM – 7:30 PM
Brief Advice and Referral Clinic
Intake Hours: 5:00 – 7:00 pm
Sponsored by Legal Aid
Location TBD
See www.lasclev.org/events for more information
First come, first served
Staffed by volunteers from Volunteer Lawyers for the Arts
Sponsored by Legal Aid and the CMBA

FRIDAY, OCTOBER 28
8:30 AM – 4:00 PM
CLE: Judicial Forum and Practice Update
Intake Hours: 12:00 PM – 1:00 PM
CLE: Domestic Relations Law 101
Sponsored by Judges of Ashtabula, Lake and Geauga Counties, the Ashtabula, Lake and Geauga County Bar Associations and Legal Aid

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

WEDNESDAY, OCTOBER 26
Pro Se Divorce Clinic – Lake County
By appointment only, clients call (888) 817-3777
Staffed by volunteers from the Lake County Bar Association’s Family Law Section
Sponsored by Legal Aid and the Lake County Bar Association

THURSDAY, OCTOBER 27
Intake Hours: 2:30 PM – 4:00 PM
Brief Advice and Referral Clinic
Intake Hours: 2:00 PM – 4:00 PM
Pro Se Divorce Clinic – Cuyahoga County
By appointment only, clients call (888) 817-3777
Staffed by volunteers from the Cleveland Metropolitan Bar Association
Sponsored by the CMBA and the Federal Bar, Northern District of Ohio Chapter

FRIDAY, OCTOBER 28
12:00 PM – 1:00 PM
CLE: Domestic Relations Law 101
CMBA
1375 East 9th Street, Floor 2, Cleveland 44114
Free with lunch provided for Pro Se Divorce Clinic volunteers
Register at www.clemetrobar.org
Sponsored by the CMBA and Cavitch, Familo & Durkin Co., L.P.A.

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

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

REGISTRATION FOR EVENTS IS NOW OPEN!
Visit www.lasclev.org/2016probonoweek or www.lasclev.org/registration to sign-up!
Check website for calendar updates and other events.
Do Limits Exist for Wire Fraud after the Nabisco Decision?

BY COLIN R. JENNINGS, THOMAS E. ZENO, JAMES M. HAFNER, JR. & BRIAN T. KARALUNAS

The U.S. Department of Justice (DOJ) breathed a nearly audible sigh of relief when the Supreme Court issued its long-awaited decision in RIR Nabisco, Inc. v. European Community, 2016 U.S. LEXIS 3925 (June 20, 2016). DOJ’s anxiety stemmed from the expansionist program it has undertaken in recent years to prosecute foreigners for corruption and fraud even though the conduct occurred outside the U.S. This use of criminal statutes to exert extraterritorial jurisdiction over foreign conduct has gained DOJ a reputation as the world’s police officer. DOJ was not really concerned about Nabisco’s holding that the civil, private right of action created in the Racketeer Influenced and Corrupt Organizations Act (RICO) does not apply extraterritorially. Rather, DOJ studied the opinion for its impact on DOJ’s ability to bring criminal prosecutions extraterritorially.

To DOJ’s satisfaction, Nabisco affirmed the extraterritorially of many parts of the criminal RICO statute. The decision also confirmed that other criminal statutes may be used to prosecute foreign activity if that activity falls within the domestic application of a statute. Many commentators believe that Nabisco will have little, if any, restraining effect on the federal government’s program of prosecuting foreign activity. This article will test the accuracy of that interpretation by examining two hypotheticals involving one of the main weapons in a federal prosecutor’s arsenal: the wire fraud statute.

Scenario One – Statute is Not Extraterritorial; No Domestic Focus

The United States suspects John of financing terrorism and learns that John defrauded Sarah out of one million DEM (Deutsche Marks) by selling her a fake antiquity. Both John and Sarah are German citizens, the fraud occurred in Germany, and Sarah sent a wire transfer from her German bank to John’s German bank. Can John be charged with wire fraud in the United States?

After Nabisco, the answer clearly seems no. Nabisco relied upon the analysis blazed by Morrison v. National Australia Bank, 561 U.S. 247 (2010), which strictly applied the rule of statutory construction that a statute is presumed not to apply extraterritorially. Prior to Morrison a patchwork of “effects tests” had been used to try to divine congressional intent about the reach of a statute. Nabisco emphasized that only a textual analysis can be used to determine congressional intent to overcome the presumption against extraterritoriality. The statute must contain a clear, affirmative indication that it applies extraterritorially. If the presumption is not rebutted, the statute is not extraterritorial. Applied to the first scenario, the wire fraud statute, 18 U.S.C. § 1343, does not overcome the presumption against extraterritoriality. Although the statute explicitly references “foreign commerce,” a “general reference to foreign commerce … does not defeat the presumption against extraterritoriality.” Morrison, 561 U.S. at 263.

However, Nabisco recognized that foreign activity still can be included in a criminal prosecution if the prosecution involves a domestic application of the statute. In order to determine whether a prosecution involves the domestic application of a statute, one looks to the statute’s “focus.” If the conduct relevant to the statute’s focus occurred in the United States, then the case involves a permissible domestic application even if significant other conduct occurred abroad. On the other hand, if the conduct relevant to the statute’s focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory. When applied to the first scenario, Nabisco does not seem to permit the United States to charge John with wire fraud because the focus of John’s criminal activity is not domestic. In fact, nothing in the scenario is domestic. Both John and Sarah are German citizens, the fraud occurred in Germany, and Sarah transferred German currency.

Scenario Two – Are the Domestic Contacts Sufficient?

In this scenario, John defrauds Sarah in Germany; but this time the deal is in U.S. dollars instead of DEM. In order for the cash to move from Sarah’s bank in Germany to John’s bank in Germany, the US banking system has to clear the transaction through a bank in New York City. Such electronic transactions occur constantly in a world economy that places a premium on the stability of the U.S. dollar. Does the change in currency — and resulting electronic transaction in New York — allow John to be charged with wire fraud in the United States despite the foreign locus of the fraud? By extension, and seen in a broader context, can it be true that a USD wire transaction that clears through New York provides the foundation for a prosecution in the United States even when the fraudulent activity is entirely foreign?

Although the wire fraud statute cannot be applied extraterritorially because the statute does not overcome the presumption against it, it could be argued that this scenario satisfies Nabisco’s domestic focus requirement. The wire fraud statute seems to focus on the prohibition against using a wire in the United States to perpetrate fraud, and that is what occurred in the scenario. As one federal circuit concluded about the statute, “what is proscribed is use of the telecommunication systems of the United States in furtherance of a scheme whereby one intends to defraud another of property. Nothing more is required.” United States v. Trapilo, 130 F.3d 547, 552 (2d. Cir. 1997).

Such an aggressive position may be taken by DOJ and possibly some courts, but a strong current of concern exists about this excessive reach. Nabisco itself seems to require more from the domestic focus test before John may be prosecuted for defrauding Sarah in Germany. Admittedly, it is true that Nabisco rejected any kind of “domestic enterprise requirement” (the notion that an enterprise must be domestic) in evaluating whether RICO applied extraterritorially. However, Nabisco still required a sufficient connection to United States commerce. The Court stated “a RICO enterprise must engage in, or affect in some significant way, commerce directly involving the United States — e.g., commerce between the United States and a foreign coun-
try. Enterprises whose activities lack that anchor to U.S. commerce cannot sustain a RICO violation.” Nabisco, 2016 LEXIS 3925, at *33.

Particularly appropriate to our second scenario, Nabisco addressed the need for wire fraud to have sufficient contacts. Based on the facts of the case, the parties had stipulated that a predicate offense of wire fraud had been committed in the United States. The Court assumed that to be true — thus satisfying the domestic focus — but it added: “The alleged enterprise also has a sufficient tie to U.S. commerce, as its members include U.S. companies, and its activities depend on sales of RJR’s cigarettes conducted through ‘the U.S. mails and wires,’ among other things.” Nabisco, 2016 LEXIS 3925, at *34-35. This language imposes a sufficiency analysis to the domestic focus test. Otherwise, why add the sentence?

Precedent indicates concern that a simple clearing transaction in New York is not sufficient to justify a criminal prosecution of foreign activity. For instance, in United States v. Chao Fan Xu, 706 F.3d 965 (9th Cir. 2013), the Ninth Circuit upheld RICO’s application to conduct occurring within the U.S. However, the court also said that RICO could not be used to prosecute that part of the extensive fraud scheme committed in China against the Bank of China. Although the decision was prior to Nabisco, the court found insufficient domestic contact even if the bank fraud resulted in some of the money reaching the United States. See Cedeno [v. Intech Group, Inc., 733 F. Supp.2d 471, 472 (S.D.N.Y. 2010)] (‘the scheme’s contacts with the United States ... were limited to the movement of funds into and out of U.S.-based bank accounts’); Norex [Petroleum Ltd. v. Access Indus., 631 F.3d 29, 33 (2d. Cir. 2010)] (“The slim contacts with the United States ... are insufficient to support extraterritorial application of the RICO statute”). Chao Fan Xu at 978.

In our scenario, Sarah’s money does not even end up in the United States. Her money merely pauses in this country for a moment before being forwarded to John’s bank account in Germany. This situation is readily distinguishable from the network of domestic contacts that were upheld as sufficient for the domestic focus in Nabisco. The government’s ability to use the wire fraud statute to reach foreign conduct cannot depend on something as minor as a bank clearing transaction. Accordingly, the U.S. should not be able to prosecute John for wire fraud just because the fraud involved U.S. dollars.

Conclusion
A careful reading of the decision indicates that Nabisco places limits on the reach of statutes like wire fraud that are designed to regulate domestic fraud, not foreign conduct. It seems clear that incidental conduct with the U.S. is not sufficient to bring foreign fraud within the domestic focus of a statute. Although it is too soon to assess the precise contours of the Nabisco decision, subsequent decisions will establish a limit to the government’s ability to prosecute foreign activity for lack of sufficient contact with the U.S.
The words “not guilty” are what a criminal defendant longs to hear, but in federal court where a defendant is tried on multiple charges just one “guilty” can render every “not guilty” meaningless. One guilty conviction, even on the least serious charge, can result in a defendant being sentenced to the same amount of time faced as though convicted of every count. How can someone acquitted of certain charges by a jury be sentenced as though the jury found him guilty of those charges? Under the United States Sentencing Guidelines (USSG) judges are to consider a wide range of “relevant conduct” at sentencing, including uncharged and acquitted conduct.

The USSG were enacted to create a fair sentencing scheme that applied uniformly throughout the country. The USSG are similar to a math formula that calculates appropriate prison terms based upon several factors: (1) seriousness of the crime; (2) aggravating and mitigating factors; and (3) a defendant’s criminal history. These factors are laid out in a grid system — a defendant’s prior criminal record is cross referenced with various sentencing levels, which reflect the seriousness of the offense. The sentencing level is determined by a base level assigned to the crime and the addition or subtraction of levels based on the defendant’s conduct and the specific attributes of the crime. For example, in drug offenses the quantity of drugs involved will increase the sentencing level, while in fraud cases the amount of money lost will increase the sentencing level. However, the quantity of drugs involved and amount of money lost is not determined on just the offense or offenses of conviction. All “relevant conduct” involved in the offense of conviction, including conduct that formed the basis of charges for which the defendant was acquitted, is considered.

Acquitted conduct refers to actions for which a defendant was charged but found not guilty by a jury. However, the Supreme Court in United States v. Watts, 519 U.S. 148 (1997)(per curium) held that a judge when sentencing a defendant under the USSG may consider conduct of which the defendant has been acquitted, so long as that conduct has been proved by a preponderance of evidence. However, starting in 2000 the Supreme Court began to craft new Sixth Amendment jurisprudence relating to a criminal defendant’s right to a jury that places the Watts decision into question. Apprendi v. New Jersey, 530 U.S. 466 (2000) held that a defendant’s right to a jury trial prohibited judges from enhancing criminal sentences beyond a statutory maximum based on facts other than those decided by the jury beyond a reasonable doubt. Four years later in Blakely v. Washington, 542 U.S. 296 (2004) the Supreme Court held the State of Washington’s determinate guideline system, modeled after the USSG, violated a defendant’s right to a jury trial. Blakely held that mandatory state sentencing guidelines are the statutory maximum because
the “statutory maximum” is the greatest sentence the judge can impose based solely on the jury’s fact finding.

The following year, United States v. Booker, 543 U.S. 220 (2005), found the USSG unconstitutional, but instead of abolishing the USSG, a remedial opinion was included that preserved the USSG’s existence and use. Essentially Booker rendered the USSG advisory instead of mandatory. By doing so, the statutory maximum would no longer be the sentence determined under the USSG, but rather the statutory maximum found in the criminal statute. Despite Booker, the new “advisory” system looks a lot like the old “mandatory” system. This is in part true because in 2007 the Supreme Court in United States v. Rita, 551 U.S. 338 (2007) upheld a presumption that within-Guidelines sentences are reasonable.

The Supreme Court has not yet re-evaluated Watts, and the circuit courts of appeals have authorized the continued consideration of acquitted conduct to increase sentencing levels under the USSG. A judge can consider acquitted conduct in order to enhance the sentence imposed. This anomaly should be re-examined by the Supreme Court in light of its more recent decisions.

In 2014, the Supreme Court was presented an opportunity to decide the role acquitted conduct should continue to play at sentencing, and whether it was constitutional for a judge to use acquitted conduct to increase a sentence under the USSG. However, the Supreme Court denied certiorari over the dissent of Justices Scalia, Thomas and Ginsburg. Jones v. United States, — U.S. —, 135 S. Ct. 8 (2014). Justice Scalia in his dissent made his opinion clear — that the Supreme Court needs “to put an end to the unbroken string of cases disregarding the Sixth Amendment — or to eliminate the Sixth Amendment difficulty by acknowledging that all sentences below the statutory maximum are substantively reasonable.” Id. at 9 (Scalia, J., joined by Thomas & Ginsburg, J.), dissenting from denial of certiorari.

Justice Scalia provided substantial evidence supporting his assertion that the use of acquitted conduct to enhance a sentence is unconstitutional. Jones concerned three individuals acquitted of conspiracy to distribute crack cocaine, yet convicted of distributing minor amounts of crack cocaine. Id. at 8. However, the sentencing judge determined that they had engaged in the charged conspiracy, despite the acquittal, and sentenced according to that finding. Id. The sentences imposed were over nine years greater than the sentence for solely the convicted conduct. Justice Scalia explained, but for the judge’s judicial findings of fact, the sentences imposed would have been illegal. Id. Justice Scalia believed the practice was unconstitutional because: “any fact necessary to prevent a sentence from being substantively unreasonable — thereby exposing the defendant to the longer sentence — is an element that must be either admitted by the defendant or found by the jury. It may not be found by a judge.” Id. at 8 (emphasis original). Now after Justice Scalia’s death, a new petition has been filed once again raising the scenario of a criminal defendant being sentenced to additional years of imprisonment based on acquitted conduct.

Gregory Bell was convicted of three crack cocaine distribution charges that

The use of acquitted conduct to increase sentences is a practice that ignores the decision of a jury, potentially rendering the jury’s decision meaningless. As Judge Millet explained:

“The foundational role of the jury is to stand as a neutral arbiter between the defendant and a government bent on depriving him of his liberty. But when the central justification the government offers for such an extraordinary increase in the length of imprisonment is the very conduct for which the jury acquitted the defendant, that liberty-protecting bulwark becomes little more than a speed bump at sentencing.” Bell, 808 F.3d at 929 (Millet, J. concurring).

The Supreme Court needs to decide if the use of acquitted conduct to enhance criminal

One guilty conviction, even on the least serious charge, can result in a defendant being sentenced to the same amount of time faced as though convicted of every count.

Adrienne Kirshner is an associate at Tucker Ellis LLP. Her practice focuses on white-collar criminal defense and business litigation. She has been a CMBA member since 2003. She can be reached at adrienne.kirshner@tuckereLLis.com.
Life’s too short to wear orange

Our strongest endorsements come from clients whose names you will never hear. We vigorously pursue all avenues to avoid prosecution and protect our client’s reputation.

At trial, our results are second to none. Our team brings a combined 60+ years of experience protecting individuals and corporations. We have won more than 100 trials in federal and state courts throughout Ohio. We represent individuals charged with financial crimes, healthcare fraud, securities fraud, public corruption and cyber crimes.

We have the resources and proven track record to handle simple and complex criminal matters.

Synenberg, Coletta & Moran, LLC
55 Public Square, Suite 1331
Cleveland Ohio 44113
216 622-2727 | www.Synenberg.com

(L-R) Roger Synenberg, Nadoen Hayden, Clare Moran, Dominic Coletta
Let the CMBA Conference Center host your next event.

The Center of it All

Located in One Cleveland Center

E. 9th Street
St. Clair
Parking
Rockwell

The Conference Center at the Cleveland Metropolitan Bar Association offers excellent options to meet your needs and save you money for groups of three to 300+

CleMetroBar.org/ConferenceCenter

(216) 539-3711

A One-of-a-Kind Multi-Purpose Venue

Come visit us in the heart of downtown for a personal tour, and learn about our stress-free, all-inclusive approach.

15,000+ Square Feet
AV Included
300+ Seat Auditorium
Reception Areas
Rooms of Varying Sizes

Classrooms
Attached Parking
Video Conferencing
Free Wi-Fi
Catering Available

15,000+ Square Feet
AV Included
300+ Seat Auditorium
Reception Areas
Rooms of Varying Sizes

Classrooms
Attached Parking
Video Conferencing
Free Wi-Fi
Catering Available
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

WE WANT YOU BACK. FINAL RENEWAL REMINDER

Each and every CMBA member helps keep the association strong so we can continue to serve the Greater Cleveland legal community and the community at large. If you already renewed, thank you! If you still need to renew for this year — which is shaping up to be another great one — your membership will lapse after this month. We hope you’ll continue to stay plugged in.

Log into your account online to renew or contact the CMBA at (216) 696-3525 to renew today so we can process your membership promptly. Don’t forget, you can take advantage of our new AutoPay features for new, flexible renewal payment options.

LEGAL DIRECTORY

The newly redesigned 2016–2017 Legal Directory will arrive next month! Available in print and electronic format, if you have not yet placed an order, you can do so online or by phone. Get all the details at CleMetroBar.org/Directory. Members save at least $20.

MORE THAN A PRETTY MAGAZINE

Did you know our Bar Journal offers you great opportunities to showcase your expertise? We recently redesigned our editorial calendar to show the details and deadlines of each issue. We work closely with our sections and committees to bring you great content too, so check out what’s coming up and watch your section emails for your chance to be an author and more.

The Bar Journal is also a great platform to share your message, expertise and more to our amazing legal community and beyond. Check out our editorial calendar and advertising deadlines at CleMetroBar.org/BarJournal. Plus, you can find past issues there as well.
SAVE WITH CMBA BENEFITS

Put your membership to work to benefit the bottom line. Your CMBA membership provides you access to and discounts with benefits partners like Oswald for all your insurance needs, All Covered for computer networking services, Toshiba for print management solutions, T1 for improved internet access, SoundCom for A/V, Fastcase for free legal research and the list goes on. Plus, we’ve partnered with more than 50 companies to bring you more savings on office services and supplies, retail, travel, entertainment, dining, cars and so much more.

If you have already renewed, then show your new membership card at various places around town to get a discount. If you don’t have a card, please contact the CMBA.

UPCOMING EVENTS

- **September 26 – 30** – Greener Way to Work Week
- **October 28** – Annual Estate Planning Institute
- **October 29** – 15th Annual Halloween Run for Justice (Burke Lakefront Airport)
- **November 10 – 11** – 38th Annual Real Estate Law Institute
- **November 30 – December 1** – 59th Annual Cleveland Tax Institute

CMBA SPOTLIGHT

Throughout this journal are a number of CMBA events, updates and info worthy of your attention. For your convenience, here is a quick reference list:

- Bar Journal Advertising........................................53
- CLE in the Sunshine State.................................37
- CMBA Conference Center..................................27
- Golf Outing Wrap-Up........................................40
- Halloween Run....................................................34
- Legal Directory.................................................47
- Online CLE......................................................48
- Pro Bono Week.................................................20
- Volunteer Menu...............................................49
As law firms become more and more globalized, legal employers are juggling the entry of international business associates to the United States and the outbound travel of U.S. employees to various international destinations. Visa delays and long wait times here and abroad are a constant business concern. What can law firms do to address these travel headaches? In this article, we’ll discuss the newest trusted traveler initiatives around the globe, designed to streamline the customs and immigration process, viable alternatives to these programs, as well as options for cutting down on visa delays.

Global Entry
The United States has four trusted traveler programs: NEXUS, SENTRI, Global Entry and FAST. The most popular program is the Global Entry Program, boasting three million enrollees. Global Entry is designed to streamline an individual’s path through U.S. Borders and Customs Protection (CBP) after international travel. Enrollees use specially-designed kiosks to process through CBP in approximately 60 seconds. In order to receive this benefit, though, applicants must be heavily vetted.

Enrollment in Global Entry requires a written application, a stringent background check, as well as an in-person interview and fingerprinting at a Global Entry Enrollment Center. If approved, Global Entry status is valid for a period of five years. To date, Global Entry kiosks are available at nearly 50 airports and in more than 13 pre-clearance locations around the world. CBP is expected to increase the number of pre-clearance checkpoints by at least ten in the coming years. Pre-clearance locations are CBP locations in international airports open to all in-bound passengers. This allows travelers to clear U.S. CBP before boarding a flight to the United States.
With the decrease of nonstop flights, and the ever-increasing reality of connecting flight delays, the opportunity to pre-clear U.S. CBP is attractive as a means of minimizing delay. Membership in Global Entry allows travelers to cut down on travel delays even further, by ensuring them the use of dedicated Global Entry kiosks to bypass the lines at pre-clearance. Global Entry enrollment is still limited to individuals from eight countries; however, it is experiencing massive growth and is expected to continue expanding rapidly to other countries.

It's worth noting that non-U.S. applicants are required to comply with the same regulations as individuals applying from within the United States, including the completion of an in-person interview. Law firms may wish to look into options abroad though, as the Department of State has established several short-term, “pop-up” Global Entry Enrollment Centers at sites abroad including recent locations in Germany and London to alleviate this issue.

**Alternative Trusted Traveler Programs**

The question remains, though, what can law firms do to ease the customs and immigration experience for international clients or associates if they are not eligible for the Global Entry program? Firstly, consider any of the three other trusted traveler programs that may be available. For law firms, likely only NEXUS or SENTRI would be helpful. NEXUS is designed to assist individuals traveling frequently between the U.S. and Canada. SENTRI is used by trusted travelers frequently crossing between the U.S. and Mexico. The remaining program, FAST, is designed strictly for commercial vehicles.

**Country-Specific Visa Policies**

Additionally, be on alert for country-specific exceptions that may exist such as the visa waiver program, or favorable visa reciprocity policies. The visa waiver program allows individuals from select countries, that are deemed low-risk to enter the United States for business visits of 90 days or less, without first obtaining a visa. While international business visitors from these countries will still experience a wait at customs, they will not be delayed by the long visa wait times at U.S. Embassies and Consulates abroad.

Frequent travelers who are ineligible for the Visa Waiver Program should investigate country-specific visa reciprocity policies. For example, in 2014 the US and China agreed to increase the validity period each country extends to the others’ nationals on business visit visas. Chinese nationals are now eligible for ten-year business visit visas, thereby reducing visa wait times and travel delays. This policy assists companies in arranging meetings and visits in line with pace of global business.

**Automation Efforts**

If the trusted traveler programs and country-specific visa policies are not helpful, focus on additional automation efforts by U.S. CBP. Just a few years ago, CBP was issuing paper Form I-94s, noting each international arrival’s entry to the United States. Now, nearly every international arrival receives an electronic I-94, that is later retrieved by the entrant from the website. This one automation effort alone has drastically cut down the overall wait times at U.S. Ports-of-Entry.

**An American in Paris ... or London ... or Perth**

What options are available to law firms engaged in global business that have a need to send U.S. associates abroad to international business meetings? Are any programs in place to ease international travel for these individuals? While the programs vary widely from country to country, many of the U.S.’s international trade partners have recognized this heightened need and taken action. While each program is unique, there are three main formats or patterns.

**UK’s Registered Traveller Program**

The UK has a Registered Traveller Program for individuals from selected countries that meet a certain travel frequency to the United Kingdom. In order to apply for the program an applicant from one of these countries must have traveled to the United Kingdom four or more times in the past twenty-four months. Individuals must apply in advance for this program. The limited eligibility and frequent travel component combined with a pre-approval component is a common model for trusted traveler programs available to U.S. citizens.

**SmartGate in Australia**

Other models focus on machine-readable passports, and an automated, self-service admission process such as Australia’s SmartGate program. Using the SmartGate system, Australia permits eligible U.S. passport holders to self-process entry into Australia, in an effort to reduce wait times, and get busy travelers on their way. Individuals must have a machine-readable passport in order to participate and must have biometrics captured before entry is approved. In this system individuals are not required to seek pre-approval for the program.

**Germany’s EasyPass-RTP Program**

A third model is a combination of a pre-screening with automated processing at entry. U.S. nationals with electronic passports are eligible to register for Germany’s EasyPass-RTP program. While this program requires pre-registration with the German Federal Police, beneficiaries of this program are able to self-process through Border Control. This involves a process similar to Global Entry and SmartGate, where an individual scans his or her passport, has biometrics captured and then is able to proceed through an automated gate.

In the meantime, make efforts to be prepared to seize the opportunity. As most of the international trusted traveler programs require machine-readable passports, ensure your traveling employees have microchip passports.
Welcome
New Members
Get Involved at CleMetroBar.org.

Noor Abdelfattah
Capital University Law School student

Kathryn Gaughan Andrachik
Cafarelli, Halter & Griswold LLP

Darlene R. Balint
Reminger Co., LPA

Ryan Benjamin

Megan E. Bennett
Frantz Ward LLP

Steven B. Beranek
Corsaro & Associates Co., LPA

Carianne Betts
Corsaro & Associates Co., LPA

Caroline Bhat

Shalini Bhatia

Scott Bobbitt

Kristina Bodnar

Benjamin D. Burge

Christine Marie Camarillo

Marc Chenowith

Timothy James Chippy

Richard Colella
Seeley, Savidge, Ebert & Gourash Co., LPA

Elizabeth M. Connors

Frank Consolo
Consolo Law Firm Ltd

Corine R. Corpora
Tucker Ellis LLP

Meghan Leigh Cozens
Ott & Associates Co., LPA

Erin Higgins Creahan
The J.M. Smucker Company

Stan Cwalinski
Cwaninski & Paris, Co., LPA

Randi Depp
Tucker Ellis LLP

Sundeep S. DiGiammarino
Buckley King LPA

Hugh Philip Dowell
Case Western Reserve Univ. School of Law

Adam M. Downing

Donna M. Dubs
Cuy. County Court of Common Pleas

Beth Eaton
Race Ahead CLE

Daniel Michael Finer
Tucker Ellis LLP

Alison Margaret Finn
Case Western Reserve Univ. School of Law

Victor T. Geraci
Tucker Ellis LLP

James Gianfagna
Schneider Smolka Sposito, Bell LLP

Jenita Gillespie

Joseph Guenther
Frantz Ward LLP

Stephanie Hauk
Tucker Ellis LLP

Hunter S. Havens
Seeley, Savidge, Ebert & Gourash Co., LPA

David Hearty
The Gundy Law Firm

Lisa Hedin
Tucker Ellis LLP

Sabrina Helton

Andrew T. Illig

Sally L. Kapcar
Buckingham, Doolittle & Burroughs, LLP

Michael Steven Klamo

Alanna Klein

Ross Kowalski
Tucker Ellis LLP

Matthew Alexander Kurz

Brian Joseph Laliberte
Tucker Ellis LLP

Eric Luckage
Northeast Ohio Regional Sewer District

Charles R. Manak
Courtland Partners, Ltd.

Lori Jeanne Martin
The J.M. Smucker Company

Daniel A. McGowan
The Law Offices of Daniel McGowan

James E. Moss
Cuyahoga County Prosecutor’s Office

Peter Thang Nguyen
The Sherwin-Williams Company

Samuel Hurst Ottinger
Case Western Reserve Univ. School of Law

Lauren M. Paige

Joseph K. Palazzo

Anesha Parker

Evan Perry
Tucker Ellis LLP

Wildy Perryman
The J.M. Smucker Company

Barbara L. Petkovic, DPM

Deborah Powers
Tucker Ellis LLP

Todd Preputnik
Tucker Ellis LLP

Scott Prince
The Sherwin-Williams Company

Tami Rettig
Tucker Ellis LLP

Christopher Antonio Rivero

Justin P. Rudin
Rutter and Ruskin, LLC

Carolyn Ashley Saferight
Cleveland-Marshall College of Law

Todd Schrader
Seeley, Savidge, Ebert & Gourash Co., LPA

Michael T. Schroth
Schroth Law, LLC

Christopher J. Shellito

Bradley Shipp

Samuel Ryan Skubak
The Sherwin-Williams Company

Paul Skyrm
Tucker Ellis LLP

Amanda Skyrm
Tucker Ellis LLP

Christopher L. Smith
The J.M. Smucker Company

Rachelle M. Smith
Case Western Reserve University School of Law

Andrea Lee Sokol

Bethany Renee Stewart

Bethany Studenic

Talia Sukol

Jennifer Marie Tharp
U.S. APEC Business Traveler Card

The U.S. APEC Business Traveler Card is an example of the final and most rigid model of trusted traveler programs available to U.S. nationals. The stringent program requires active membership in a U.S. trusted traveler program and compliance with specific criteria on business activities in the region. Enrolled U.S. APEC Business travelers receive an identification card that allows for expedited customs processing within nearly 21 countries in the APEC region. Please note though, this is merely a method of expediting wait times at Customs and does not negate the need for any applicable business visas a U.S. national may need to enter these countries and conduct business meetings. This program may be a good option for law firms focusing on business in the Asia-Pacific region.

In the event that a trusted traveler program is unavailable for U.S. professionals traveling internationally, what other options might be available to cut down on the wait time of obtaining a visa and/or the wait time at international borders? Again, as discussed above be sure to look into visa reciprocity policies that may allow U.S. individuals applying for a business visa to get a visa for a longer duration, in preparation for future visits and focus on automation efforts available to U.S. nationals.

Plan for the Future

Finally, be proactive. While a program might not exist today, that’s not to say a program won’t exist in the near future. Be sure to update your immigration counsel whenever you add a new country to your business portfolio, so that they can keep you updated on any initiatives or programs you may be able to take advantage of in the future. In the meantime, make efforts to be prepared to seize the opportunity. As most of the international trusted traveler programs require machine-readable passports, ensure your traveling employees have microchip passports. Additionally, enrollment in Global Entry is occasionally a pre-requisite for these programs, consider funding membership in this program for employees. Finally and most importantly, safe travels!

Jaclyn Celebrezze is an attorney at Celebrezze Law, LLC in Westlake, Ohio. Ms. Celebrezze focuses her practice on employment-based immigration. She received her undergraduate degree from Vanderbilt University and her law degree from The Ohio State University’s Michael E. Moritz College of Law. Ms. Celebrezze is admitted to the Ohio Bar. She has been a CMBA member since 2013. She can be reached at (440) 669-5914 or jc@celebrezzelaw.com.
Open to the public, this event benefits the Cleveland Metropolitan Bar Foundation which funds charitable community outreach programs, including The 3Rs, helping students in the Cleveland and East Cleveland City Schools.

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

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

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

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

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

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

HermesCleveland.com

---

**ENTRY FORM**

Name: ________________________________________
Address: ________________________________________
City/State/Zip: __________________________________ 
Phone: (_____) ______________________ E-mail: ______________________

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

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

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

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

Team Name and Category ______________________________________

Event:  □ 5-Mile Run  □ 5K Run  □ 5K Walk  □ 1-Mile Walk/Run Run
Shirt size: □ youth small  □ youth medium  □ youth large  □ adult small
          □ adult medium  □ adult large  □ adult XL  □ adult XXL
Legal Category (if applicable) □ Lawyer  □ Judge  □ Law Student  □ Paralegal/Legal Assistant

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

Signature of participant  ____________________  Date: __________
Signature of parent or guardian if participant is under 18 years  ____________________  Date: __________

---

Runners and Walkers Welcome

Mail form and entry fee to: Halloween Run for Justice
Hermes Sports & Events
2425 West 11th Street, Suite 2
Cleveland, OH 44113

Make checks payable to:
Hermes Sports and Events

One entry form per participant. Mail-in forms must be received by Wednesday, October 26. Family and Team entries must be received by October 18 and must be in the same envelope. Online registration will close Friday, October 28 at 9 a.m.

In consideration of your accepting this entry, I hereby for me, my heirs, executors and administrators, waive and release any and all rights and claims for damages I may have against the Cleveland Metropolitan Bar Association, Cleveland Metropolitan Bar Foundation, Hermes Sports and Events, all event chairs, sponsors and co-sponsors, partners, their representatives, successors and assigns for any and all injuries suffered by me in said event or in transit to and from said event. I further attest that I am physically fit and have sufficiently prepared for this event. I will additionally permit the use of my name and/or pictures in Cleveland Metropolitan Bar Association and/or Foundation publications.
My dad practiced law for over fifty years in Lorain, Ohio. During that long and successful career, he was a solo practitioner, a partner in a small firm, a councilman and council president, a longtime city prosecutor, and an enthusiastic ambassador for his hometown. Though always busy, he was, first and foremost, a great dad and mentor and friend. He still is. My dad was the reason I became a lawyer. As I embark upon an exciting year as CMBF president, I’d like to share some lessons I’ve learned from my dad about being a lawyer and giving back.

Roll Up Your Sleeves and Get to Work Each Day.
To help pay for law school, my dad assisted me in landing a job on the assembly line at Ford Motor Company. After struggling to keep up during the entirety of my first twelve-hour night shift, I decided I had had enough. Upon returning home, I announced to my parents that I was going to quit. “No, you’re not,” my dad calmly replied. “You roll up your sleeves and go to work.” That lesson has stuck with me for over thirty years. My dad lost his father at a very young age, but that didn’t deter him. He and my grandmother worked multiple jobs to pay for college and law school. Upon admission to the bar, my dad really went to work. He wasn’t at the office 24/7, but he was always available for his clients at any hour of the day or night. He knew that his clients relied on him to handle their problems, no matter how large or small. He did so with hard work, preparation, skill and caring. As a result, many of his clients became his friends (and vice-versa). It has been said that “genius is one percent inspiration and ninety-nine percent perspiration.” My dad was a genius in that way. So, here’s the lesson: no matter how difficult, stressful or distasteful the matter, roll up your sleeves and go to work; don’t procrastinate; tackle the problem head-on with preparation and passion and care.

Stretch Yourself.
The following quote has always reminded me of my dad: “It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes up short again and again ... and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.”

My dad practiced law in an era when an attorney could prepare tax returns, sell a piece of property or a business, draft a will, and successfully defend a person accused of murder. He did all of those things, served as Lorain City Prosecutor for many years, and navigated the rough and tumble, blue collar, union waters of local politics. My dad didn’t win every case or every election, but he never backed down from a challenge on a matter of principle that was important to him. He stretched himself in order to do the right thing. We should stretch ourselves, too, within our spheres of expertise and competency. It
helps us grow and accomplish things that are important to us, our clients, our communities, and our Bar Foundation.

Be a Mentor.

Every one of us owes a meaningful portion of our success to the guidance and training of good mentors. From a legal perspective, my dad’s mentorship probably began with sound advice he gave me regarding a thorny question in my first year tax class. Soon thereafter, however, I failed to heed his counsel and became a bankruptcy lawyer (“Back in my day, if you couldn’t be a real lawyer, you practiced bankruptcy law”). Since then, I believe I have convinced him that our Cleveland bankruptcy bar – one of the nation’s finest – is comprised of real lawyers. I have been blessed with great mentors, in and out of the firm and the profession. In turn, I hope I’ve been a good mentor to my younger colleagues. They’re terrific lawyers who make me look good. I couldn’t do this job without them, and I’m grateful for all they do. It all started with Dad.

Do the Right Thing.

When confronted with a moral or ethical dilemma or a confounding problem, my dad would advise without exception to do the right thing. When in doubt, this foolproof adage will yield the correct result every time: “Don’t do anything that would embarrass your mom.” Of course, we’re often confronted with situations that aren’t that simple in today’s complex legal environment, but honoring mom is a good starting point for finding the right answer.

Take Care of Your Family, Your Friends, and Yourself.

Last month, my mom and dad celebrated their 60th wedding anniversary. It was a joyous occasion attended by kids, grandkids, a great-grandchild, and many lifelong friends. Although I didn’t need any reminders, the event caused me to reminisce on how my dad always put family and friends first. Sure, there were times when client needs took priority, but the strong family foundation my parents built helped my dad better serve his clients and handle the stresses of the job. Keep family first, nurture meaningful friendships, and take care of yourself — occasionally turn off your i-Phone, schedule a vacation, maintain outside interests, and exercise early and often. These activities are not only good for both body and soul, they are essential.
Have fun.
For the Parobek clan, this topic is closely related to family and friendship. To this day, my dad is one of the world’s foremost experts on having fun. Back in a time when everything wasn’t planned to the very last second, cookouts would break out with virtually no notice. They were attended by my parents’ friends — always known as “uncle” and “aunt” to us — and by their kids, our “cousins.” (I was a young man when it dawned on me that I didn’t really have 30 aunts and uncles and hundreds of cousins.) I’d be remiss if I failed to mention the 25-year tradition of The Parobek Cup. The Cup was the golf trip my brothers and Dad took each year. I was very proud when Sports Illustrated’s Faces in the Crowd reported that, “Lorain attorney, James Parobek, made a hole-in-one on a par 4, while shooting a round of 100 at Maggie Valley Country Club in North Carolina.” I digress, you may think? Not entirely; the lesson learned from Dad is that lawyers work hard and should play hard (or at least have fun). Even bad golf can be fun for lawyers and our clients!

Give Back, Give Forward.
My dad has lived in Lorain his entire life. I still pass by his old office on the corner of 8th and Broadway each time I visit my folks, and I’m reminded that the hard work done in that office put five kids through college, with thirteen grandkids well on their way. My dad loves his hometown and always felt an obligation to give back. He was not only a member, he was an engaged and active leader of numerous service clubs, community organizations, the church, local government, and the Bar Association. To this day, he feels that lawyers have a duty to give back — and pay forward — to the communities in which they live and work. You don’t do this for the accolades or the recognition; you do it because this is a deeply-embedded tenet of our profession.

Lawyers Giving Back to their families, friends, clients, fellow lawyers, communities, and children and adults who need their advice, assistance and support. Sounds a lot like the Cleveland Metropolitan Bar Foundation. Sounds a lot like Dad.

Drew T. Parobek is a partner at Vorys, Sater, Seymour and Pease LLP. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1993. Drew can be reached at (216) 479-6162 or dtparobek@vorys.com.
Prosecutors Taking a Second Look at Closed Cases

BY JOSÉ A. TORRES

During his 2012 campaign for Cuyahoga County Prosecutor, Timothy McGinty spoke of the many cases he tried as a prosecutor between 1982 and 1992. One of those cases was the 1988 rape conviction of Michael Green. This conviction was based on victim’s eyewitness testimony and serological testing of a washcloth. But in 2001, DNA testing exonerated Mr. Green.

Timothy McGinty never forgot this case and spoke about that experience. He was committed to developing office practices for preventing wrongful convictions and for reviewing post-conviction innocence claims. In early 2014, Cuyahoga County Prosecutor McGinty established the Conviction Integrity Unit (CIU).

As prosecutors, we serve the public and justice. Prosecutors I work with want to convict only the guilty — none of us wants to convict an innocent person. We keep in mind that a prosecutor is “in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.” See Berger v. United States, 295 U.S. 78, 88 (1935).

In developing the CIU, we examined similar units throughout the country and found a great deal of variety in structure, procedures, standards, transparency and the type of cases they would accept for review. We developed a CIU comprised of a Coordinator, a Conviction Integrity Committee and a Policy Advisory Panel. The Coordinator organizes the work and leads all re-investigations of the cases that present a meaningful claim of actual innocence. The Committee is comprised of nine senior prosecutors and is responsible of reviewing the cases and advising the County Prosecutor on whether he should act to vacate a conviction. The Panel advises the office on best practices. With transparency in mind, the unit policy and application forms were published in our website.

All the applications submitted to the CIU are reviewed. Once an application is submitted, the coordinator reviews it to make sure that it complies with the following prerequisites:

- It is credible or supported by evidence;
- Relates to a local county conviction
- It is not frivolous;
- Does not involve trial procedural errors, court rulings or ineffective assistance of counsel — issues that could be addressed by the courts.

Each applicant is required to waive procedural privileges and to agree to cooperate with the review. This waiver has been a valuable tool as it allows us to speak to original defense counsel and to gain access to their files.

The CIU maintains a level of flexibility and is open to reviewing some conviction that resulted from significant procedural error. That is the case when we might not be able to establish actual innocence, but the conviction is so legally flawed that we cannot be confident of the integrity of the case.

Offenders who pled guilty have a higher standard to meet, but we cannot disregard the possibility of an innocent person pleading guilty where, perhaps the defendant does not see a viable strategy to contest the charges (ex. defendant with a criminal record) or is seeking to avoid a long sentence.

If the Coordinator determines that the prerequisites were not met, the applicant will be notified that no further action will be taken. As of July 2016, 80 applications failed to meet these prerequisites. Five were rejected as they related to cases from Warren, Seneca, Holmes and Stark counties. Many applications did not present an actual claim of innocence. For example, some claimed that the conviction should be vacated because the record did not have a signed, filed and journalized jury verdict. Many of the applications were rejected for failing to present a credible innocence claim. For example:

- Applicant submits affidavit where the victim allegedly recanted the sexual abuse. We were able to find the victim, now an adult, and talked to him. The victim denied ever signing the affidavit and argued that it was a fraudulent.
- Applicant claims that he did not have sex with the victim who accused him of rape. He also argues that pled guilty because he was under duress, faced language barrier and had ineffective counsel. Applicant’s claim was rejected after an evaluation of the record and our file, which included a DNA match of 1 in 1,145,000,000,000,000.
- Applicant claims that there was no physical evidence and the only witness recanted in an affidavit. However, that witness testified at the post-conviction hearing. She was asked about the affidavit and said that it was not accurate, that the first two pages were not her words, and that it was taken by a person who lost her notary license. The witness went on to testify consistent with her trial testimony.
- Applicant claims that he did not rape the victim because the spermatozoa test were negative, and because the victim recanted. The application was rejected. The record and our file show that when officers arrived to the victim’s residence, they heard her screaming and asking for help. The officers found her all bruised up, and cut and her clothing tared up. Officers also observed the applicant fleeing from the scene by jumping head first naked through a window. The officers found the applicant’s clothing (with his ID) at the house. And the terrorized victim gave consistent statements to officers and family members.
- Applicant claims that we failed to turn over Brady material. The application was rejected because the alleged Brady material consisted of the letters the applicant himself wrote to the victim while a no contact order was in place. The record also shows that the prosecutor went on the record to address the issue of the letters the defendant was sending to the victim.
If the pre-requisites are met, an experienced prosecutor is assigned to review the case and prepare a memorandum outlining the merits of the claim. The Committee reviews the memorandum and determines if there is strong evidence that the applicant is actually innocent. If the Committee find that the claim lacks merits, the Coordinator would notifies the applicant.

This was the case in *State v. Epps*, CR 332915. In January 4, 1996, the applicant was arrested in Illinois and endured a 26-hour interrogation. During the interview, Mr. Epps confessed to committing a 1994 local murder and a 1974 Cleveland murder. Years later, DNA demonstrated that the applicant did not commit the 1994 Illinois murder, and we were asked to review the Cleveland conviction. Our review revealed that the 1996 interrogation was conducted by two separate teams of detectives. The initial team questioned him about a local robbery. When asked if there was anything else he wanted to confess, Mr. Epps volunteered information about a 20-year-old Cleveland murder he said he committed. The interrogation then continued well into the following day, when he confessed to the 1994 Illinois murder.

In his initial confession, Epps vividly recalled facts only the perpetrator could have known about this 1974 Cleveland murder. Cleveland Police records show that the first call they ever received from the Illinois detectives was made a week after the interrogation took place. Testing shows that Mr. Epps’ fingerprint matches fingerprint was found the scene. The court docket shows that the trial counsel had access to a fingerprint expert. However, the expert report was not shared with the prosecution. Moreover, county records show that the applicant resided in Cleveland in 1974, blocks away from where the victim’s body was found.

If the Committee determines that a valid claim of innocence is present, the final report, vote and recommendation is presented to the County Prosecutor, who retains the sole discretion on whether to vacate a conviction. Since the creation of the CIU, three East Cleveland cases have been found to warrant action. The vast majority of the men and women of the East Cleveland Police Department honor the badge they wear and the oath they took to serve and protect the community. However, for a time, some members of their Street Crimes Unit committed serious acts misconduct that undermined the integrity in the cases they handled. Sgt. Torris Moore was in charge of the unit. In October, 2015, Sgt. Moore and two of her detectives were charged in the United States District Court with conspiracy, theft, and making false statements in connection the convictions of Kenneth Blackshaw, Hosea Lock and John Wallace. These officers pled guilty and are currently serving their sentence. In their plea agreement, the officers admitted to:

- Targeting (without Probable Cause) suspected drug dealers with the purpose of robbing them;
- Filing false police reports detailing criminal conduct that Blackshaw, Lock and Wallace never engaged in;
- Preparing and signing false affidavits in support of search warrants that detailed controlled buys that never occurred; and
- Lying to the Cuyahoga County Prosecutors Office to conceal their illegal conduct.

The CIU reviewed Blackshaw, Lock and Wallace’s cases and recommended that the convictions be vacated. Although each of them had pled guilty, the CIU found that these convictions were legally flawed, and we could not be confident of the integrity of the cases or the police work behind it. The CIU concluded that the officers’ misconduct undermined the constitutional rules that safeguard the innocent and the guilty alike. On February 24, 2015, Kenneth Blackshaw was brought back from the institution and was set free. The convictions of Lock and Wallace were vacated soon after. Justice demanded nothing less.
On June 27, the CMBA hosted our Annual Golf Outing at Westwood Country Club in Rocky River. We were thrilled to have yet another SOLD-OUT outing at this beautiful course, for the second year in a row. 133 golfers braved the heat and took time out of their day to join us for this event. Congratulations to all overall winners of the outing.

Michael Stavnicky hit a hole-in-one on the putting contest. Bill Mooney and Nancy Valentine had the longest drives of the competition. Ed Crooks and Sandy Koenig were the winners of the closest to the pin proximity hole.

Well done to all 2016 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 2017!

1st
Deb Wilcox, Judge Nancy Vecchiarelli, Shannon McCue, and Ed Crooks

2nd
Drew Pappert, Bill Mooney, Mike Drain and Tim Moore

3rd
Matt Matkovich, Matthew Lalio, Ernie Lalio, and Timothy Moore
THANK YOU, SPONSORS!

Aligned Chiropractic and Physical Rehabilitation
$1,800 Platinum Hole Sponsor

All Covered
$1,800 Platinum Hole Sponsor

Docufree Corporation
$1,800 Platinum Hole Sponsor

Fay Sharpe LLP
$1,800 Platinum Hole Sponsor

First Merit Private Bank
$1,800 Platinum Hole Sponsor

Veritext Legal Solutions:
$1,800 Platinum Hole Sponsor

Central Cadillac
Hole-in-One Sponsor

ACE Business Solutions
$1,450 Gold Hole Sponsor

Ingleswood Associates LLC
$1,450 Gold Hole Sponsor

BakerHostetler
$1,000 Reception Sponsor

Maloney & Novotny LLC
$1,000 Reception Sponsor

Toshiba Business Solutions
$1,000 Reception Sponsor

McGregor
$750 Proximity Hole Sponsor

Avalon Document Services
In-Kind Printing Donation

Acce lis Technology Group
$550 On-Course Beverage Sponsor

Carlisle, McNellie, Rini, Kramer & Ulrich Co., LPA
$275 Lunch Sponsor

E-Typist, Inc.
$275 Lunch Sponsor

Oswald Companies
$275 Lunch Sponsor

Raffle & Give-away Sponsors
• Café Sausalito
• Colossal Cupcakes
• Cleveland Indians
• Cleveland Playhouse
• Thomson Reuters
ALL PROGRAMS WILL BE HELD AT THE CMBA CONFERENCE CENTER

1375 E. 9th St., Floor 2, Cleveland, Ohio 44114
– Unless otherwise noted
Below are CLE programs that offer 3.0 credit hours or more. The CMBA also offers a vast number of 1.0 hour CLE options.
Visit CleMetroBar.org/CLE for a full schedule.

OCTOBER
20 TMA/Bankruptcy Section
25 Fundamental of Federal Court Video Training
26 Sex, Drugs & Rock ‘n’ Roll – Professional Conduct
28 43rd Annual Estate Planning Institute

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

DECEMBER
1 59th Annual Cleveland Tax Institute
2 Advanced Medical-Legal Workers’ Compensation Seminar
3 Legal Eagles Year End Update (St. Edward High School)
6 – 8 New Lawyer Bootcamp
6 Becoming a Rock Star Researcher
9 White Collar Crime Institute
10 Municipal Court Update (Independence Civic Center)
15 Pitfalls and Pointers for Litigators
16 Health Care Law Institute Video
17 Disorder in the Court: Professional Conduct
20 Fundamental of Federal Court Video Training
20 Managing the Media: Lawyers and the Press
21 – 22 38th Annual Real Estate Law Institute Video
22 Professional Conduct Video Presentation
27 43rd Annual Estate Planning Video
27 Professional Conduct Video
28 – 29 O’Neill Bankruptcy Institute Video
29 Disorder in the Court
30 Professional Conduct Video
30 – 31 Labor & Employment Conference Video

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

43rd Annual Estate Planning Institute 2016

Friday, October 28

CREDITS Submitted for 6.50 CLE Hours
REGISTRATION 8:00 a.m.
PROGRAM 8:30 a.m. – 4:30 p.m.

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

Ohio Law Update
Maryann Fremion Thomas, Schneider, Smeltz, Ranney & LaFond PLL

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

Break Sponsored by the Jewish Federation of Cleveland

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

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

Lunch Sponsored by Glenmede (included with registration)

Federal Law Update
Scott E. Swartz, Wellspring Financial Advisors

ESOPs as an Estate Planning Tool: An Introduction to Employee Stock Ownership Plans
Erica E. McGregor, Tucker Ellis LLP
Ann M. Caresani, Tucker Ellis LLP
Leslie A. Lauer, UBS Wealth Management

Break Sponsored by BNY Mellon

Planning with the Ohio ABLE Act
Amanda M. Buzo, Community Fund Management Foundation

Planning for College? What You Need to Know about the FAFSA and CSS Profile
Robert Durham, Director of Scholarship Services and Financial Aid, College Now Greater Cleveland
Kittie Warshawsky, Chief External Affairs Officer, College Now Greater Cleveland

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

7th Annual Bankruptcy and Turnaround Update

Thursday, October 20

CREDITS 3.50 CLE & CPE requested
REGISTRATION 11:30 a.m.
LUNCH 12:00 p.m.
PROGRAM 12:15 – 4:15 p.m. Reception to follow.
A Brush with the Law

Thursday, November 3

CREDITS Credits 3.00 CLE Hours

PROGRAM 9:00 a.m. – 12:15 p.m.

LOCATION Museum of Contemporary Art Cleveland,
11400 Euclid Avenue

ABOUT A BRUSH WITH THE LAW
Does the visual world of art have something to teach the verbal world of law? Join lawyer and painter Bruce Petrie and discover the common ground between the paint brush and the briefcase. Explore how principles in the visual arts apply to law—principles of design, inspiration, composition, focal point, balance, craftsmanship. The course will look at a legal masterpiece, the U.S. Constitution, through the lens of art masterpieces that illuminate constitutional principles. You don’t have to have an art background; just bring your curiosity. We’ll see that painters and lawyers are engaged in problem-solving—working to craft something purposeful and whole that may not piece together without a bit of craftsmanship.

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

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

THE SIX PRINCIPLES OF ART & LAW
Design, Inspiration, Composition/Unity, Focal Points, Balance, Craftsmanship
Lunch & Presentation of the Rosewater Award

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

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

Break

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

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

Program Concludes Cocktail Hour Begins

Friday, November 11

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

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

Fight Blight – Ohio City Infill Program
Rose Marie L. Fiore, Morris, Laing, Evans, Brock & Kennedy, Chtd., Moderator
Gillian E. Hall, Knez Homes
Chris Garland, Assistant Planning Director, City of Cleveland
Ben Trimble, Senior Director of Real Estate and Planning, Ohio City Incorporated

Break

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

Lunch

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

Break

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

Should the Deal Be a Steal? What Does Professionalism Mean in a Real Estate Transaction
Michael D. Goler, Miller Goler Faeges Lapine, Moderator
Frank R. DeSantis, Thompson Hine LLP
Hon. Michael P. Donnelly, Court of Common Pleas
Hon. Dan Aaron Polster, U.S. District Court, Northern District of Ohio
Linda A. Striefsky, Thompson Hine LLP
Mark I. Wachtler, Wachtler Kurant LLC

Program Concludes

Register at CleMetroBar.org/CLE!

For questions or to register over the phone, call (216) 696-2404.
“Earned-on-Receipt” Fees Require Great Caution

Opinion 2016-1 of the Supreme Court’s Board of Conduct provided some important clarification regarding flat fees, but gave incomplete guidance on the handling of one type of flat fee — the so-called “nonrefundable” or “earned-on-receipt” fee. Such fees are disfavored except in narrow circumstances. They require lawyers to take particular care in documenting their fee agreement and handling the funds.

A Bar Journal article this past May summarized Opinion 2016-1. Perhaps the most significant aspect of Opinion 2016-1 was its guidance that flat fees must be deposited in a lawyer’s trust account until earned. This holding reversed earlier guidance in the Board’s Opinion 96-4, and squared the Board’s opinions with recent disciplinary cases such as Cincinnati Bar Ass’n v. Britt, 133 Ohio St. 3d 217 (2012).

In the same Opinion, the Board stated an exception to this “deposit to trust account” guidance for flat fees that are “deemed earned upon payment regardless of the amount of future work performed” or denominated “earned upon receipt.” Such fees, the Board stated, are considered to be an attorney’s property. Therefore, according to the Board, such fees cannot be placed into an IOLTA account, and should instead be deposited into an attorney’s operating account.

It is a glaring omission that Opinion 2016-1 says nothing about when a lawyer may properly characterize a fee as “earned upon receipt.” The Supreme Court itself has clearly stated that a flat fee is not earned on receipt and repeatedly criticized “nonrefundable” or “earned-upon-receipt” fees. E.g. Britt; Cuyahoga County Bar Ass’n v. Cook, 121 Ohio St. 3d 9 (2009). In Cook, the Court suggested that except in narrow circumstances, such as a true “general” retainer agreement, a nonrefundable fee is improper. A “true,” “general” or “classic” retainer is “a fee paid in advance solely to ensure the lawyer’s availability to represent the client and precludes the lawyer from taking adverse representation.” Comment [6A] to Rule 1.5 of the Rules of Professional Conduct. Any other retainer must be refunded upon withdrawal to the extent unearned. For this reason, the term “nonrefundable” or “earned-upon-receipt” can mislead both lawyer and client.

The obligation to refund all or part of a flat fee or retainer, no matter how described, arises whenever a lawyer has not earned the fee. A client may choose to end the relationship, as in Disciplinary Counsel v. Squire, 130 Ohio St. 3d 368 (2011), where a client who had paid a retainer on a Friday changed his mind over the weekend. It may also arise if the lawyer withdraws, or does not complete the work promised. See Rule 1.16(c) ("A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned, except when withdrawal is pursuant to [the sale of the lawyer’s law practice].") One can expect that disciplinary counsel would always argue that a lawyer’s retention of the entire fee for work that is incomplete results in an “unreasonable” or “clearly excessive” fee under Rule 1.5(a). Conceivably, such an argument might even be made with respect to a “general” or “availability” retainer if the circumstances show that the lawyer suffered no opportunity cost from undertaking the engagement. See Columbus Bar Ass’n v. Halliburton-Cohen, 106 Ohio St. 3d 98 (2005).

Practically, in order to be ready to give such a refund if necessary, a lawyer who accepts “earned on receipt” fees should maintain an operating account balance that covers the sum of such fees received for work not yet completed, as well as issued checks and debits not yet processed by the bank. Otherwise, a lawyer could find himself, like the respondent in Squire, unable to provide the necessary refund when the representation ends early. Note also that if the client demands a greater refund than the lawyer has provided, the lawyer must transfer the disputed sum to her trust account until the dispute is resolved. Ohio R. Prof. Cond. 1.15(c).

Ohio’s ethics rules also require lawyers who take “earned-on-receipt” fees “simultaneously” to advise the client in writing that the lawyer will refund the fee if not fully earned. Rule 1.5(d)(3). Having fee agreements in writing is always a good idea, but for “nonrefundable” fees, as for contingent fees, it is mandatory. The fee agreement should not simply quote the rule, but should also describe the scope of the representation. Describing expected “milestones” in the representation and noting how much of the fee will have been earned at each point is helpful, particularly if the lawyer reasonably anticipates incurring substantial fees and expenses early in the engagement. This approach may avoid or
narrow a later dispute about the reasonable value of the work actually performed, and provide a rationale for the lawyer to treat actually earned portions of the fee as available cash. See In the Matter of Gilbert, 343 P. 3d 939 (Colo. 2015). In addition, lawyers should keep contemporaneous time records of their work on flat fee matters. See Comment [6A] to Rule 1.5.

Ohio practitioners should be wary of characterizing a fee as “nonrefundable” or “earned-on-receipt” given the Court’s dim view of this concept. It is best practice to use such term only for a true availability retainer, taken when no matter is pending, to assure the lawyer’s availability for specified time and work. A lawyer who describes any other flat fee using such a term must bear in mind that:

- Legal fees must be reasonable;
- There is no such thing as a nonrefundable flat fee. If any portion of a fee is not earned, it must be returned to the client;
- A “nonrefundable” flat fee must be deposited into the lawyer’s operating account, but should not be treated as available cash because of the potential refund obligation;
- For any fee denominated as “nonrefundable” or “earned-upon-receipt” or by similar terms, the lawyer must advise the client in writing when or before the fee is accepted that the client may be entitled to a refund of any unearned portion of the fee if the representation is not completed for any reason;
- To support a claim that a portion of a “nonrefundable” flat fee has been earned, document the scope of the representation and the expected milestones in the fee agreement, and maintain contemporaneous time records.

Deborah Coleman of Coleman Law LLC helps parties in conflict resolve complex business disputes through mediation or arbitration. She also provides professional ethics counsel and represents respondents in grievances. She chaired the ABA Standing Committee on Ethics and Professional Responsibility, and the CMBA’s Ethics Committee. She has been a CMBA member since 1977. She can be reached at dac@dacolemanlaw.com or (216) 991-4510. For more information, go to www.dacolemanlaw.com.
It’s Not Too Late to Order Your

2016–2017 LEGAL DIRECTORY!

Redesigned & Fully Updated! Electronic format includes tabbed sections, clickable links, and search function.

Available in print & electronic formats!

Order Form

CMBA Members

☐ Print Format for Pick-up

\_
\_\_\_ # of books @ $34.95 ea = ________

☐ Print Format with Shipping

\_
\_\_\_ # of books @ $43.45 ea = ________

Non-Members

☐ Print Format for Pick-up

\_
\_\_\_ # of books @ $54.95 ea = ________

☐ Print Format with Shipping

\_
\_\_\_ # of books @ $63.45 ea = ________

All prices include appropriate Ohio sales tax.

Grand Total = ________ Notice will be sent when books are available.

Name (Please Print) __________________________ Firm or Office __________________________

Address __________________________________ City ______________ State __________ Zip ______________

Phone __________________________________ E-Mail ________________________________________

☐ Please Bill Me ☐ Check Enclosed (made payable to CMBA) ☐ Visa ☐ Mastercard ☐ Discover ☐ American Express

Credit Card No. __________________________________ Exp.Date __________________________

Signature (if paying by credit card) ____________________________________________________________

Complete this form and mail to: Cleveland Metropolitan Bar Association, 2016 Legal Directory, P.O. Box 931852, Cleveland, Ohio 44193 Or fax to: (216) 696-2413
Earn CLE anytime, anywhere.

Take up to 12 hours of self-study credit.

A great variety of programs to choose from.

Convenience | Selection | Affordability

Earn up to 12 hours of Ohio CLE credit online at Cleveland.FastCLE.com

The Cleveland Metropolitan Bar Association offers high-quality online CLE, a convenient way for you to earn up to 12 hours of Ohio CLE credit per reporting period.

Our online CLE programming allows you to take CLE courses on a wide variety of topics, any time of the day, any day of the week. And, at only $45 per hour for members and $60 per hour for non-members, our online CLE is also cost-effective.

For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
Volunteering á la Carte

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

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

THE 3RS – RIGHTS • RESPONSIBILITIES • REALITIES

Volunteers provide law-related education in the high school classroom.

Each volunteer serves on a team that visits an assigned classroom in a Cleveland or East Cleveland public high school to present six lessons on the U.S. Constitution and career counseling. Curriculum and volunteer orientation are provided.

Volunteer Schedule: Sept. 2016 – April 2017 (typically one classroom visit per month)
CleMetroBar.org/3Rs

3RS+

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

Volunteer Schedule: During school year, Sept. 2016 – May 2017
CleMetroBar.org/3Rs

CLEVELAND HOMELESS LEGAL ASSISTANCE PROGRAM (CHLAP)

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

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

CLEVELAND MOCK TRIAL COMPETITION & MIDDLE SCHOOL MOCK TRIAL

Volunteer attorneys and law students serve as team legal advisors to Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.

Volunteer Schedule: Coaching Feb. – May 2017; Competition in May
CleMetroBar.org/ClevelandMockTrial

OHIO MOCK TRIAL COMPETITIONS

Volunteers serve as judicial panelists for teams of high school students from public, private, and home schools across the region. Volunteers can also serve as team legal advisors.

Volunteer Schedule: Cuyahoga District Competition January 2017; Cuyahoga Regional Competition February 2017
CleMetroBar.org/OhioMockTrial

PRO SE DIVORCE CLINICS

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

Volunteer Schedule: 3rd Friday monthly unless otherwise noted

REACH OUT: LEGAL ASSISTANCE FOR NONPROFITS

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

Volunteer Schedule: October 27, 2016; 2017 seminar dates TBD
CleMetroBar.org/ReachOut

SPEAKERS BUREAU

Volunteers address groups from throughout the community on a wide variety of legal topics.

Volunteer Schedule: As needed throughout the year

VOLUNTEER LAWYERS FOR THE ARTS (VLA)

Volunteers provide pro bono assistance and advice for legal issues faced by artists, and a series of free law-related education events held in Cleveland’s many unique arts venues.

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

Coming Soon!

October 21, 2016
3Rs Lesson 1: Intro to The 3Rs

October 21, 2016
VLA Presentation for the Public & CLE for Volunteer Attorneys: “Handling Artworks and Collections in Estate Planning and Charitable Giving”

October 25, 2016
VLA-led Brief Advice Clinic with Legal Aid at SPACES Gallery

October 27, 2016
Reach Out for Nonprofits educational seminar: “Contract Review Basics for Volunteer Attorneys and Nonprofits”

October 28, 2016
Pro Se and Pro Se “Plus” Divorce Clinics, with Meet & Greet with DR Judges and CLE Presentation: “Domestic Relations 101”
Tailored Risk Management and Insurance Solutions

THE CMBA INSURANCE PROGRAM

In partnership with Oswald, CMBA is proud to offer its members an insurance package customized specifically to the unique needs of law firms. We’ve combined our expertise to bring you access to:

- Exclusive premium discounts for CMBA members
- Broad coverage forms
- Risk management tools & resources

INSURANCE COVERAGEs
- Lawyers Professional Liability
- Group / Individual Medical Plans
- Bonding & Surety
- Life Insurance
- Disability Insurance
- Long-Term Care
- Business Owners Coverage
- Management Liability Coverage

The law firm practice at Oswald partners with hundreds of firms to provide comprehensive insurance and risk management solutions. Our experienced team offers services in the areas of coverage placement, analysis and program recommendations, claims analysis and coverage counseling, risk management and exclusive specialty programs including Intellectual Property Risk Preferred (IPRP) and Collection Lawyers’ Insurance Program (CLIP).

Get to know more about this distinctive program and the features that make it the right fit for your law firm.

Contact us today!
Visit us online at www.clemetrobar.org/insurance or contact Oswald at 216.658.5202
<table>
<thead>
<tr>
<th>MONDAY</th>
<th>TUESDAY</th>
<th>WEDNESDAY</th>
<th>THURSDAY</th>
<th>FRIDAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMBF Executive Committee – 8:15 a.m.</td>
<td>CLE Seminar – 8:30 a.m.</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>PLI – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>International Law Section Lunch &amp; CLE</td>
<td>WIL Section Meeting</td>
<td>Spotlight on Programs – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Diversity &amp; Inclusion Committee Meeting – 3:30 p.m.</td>
<td>YLS Council Meeting</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Litigation Section CLE</td>
<td>Cleveland Playhouse Event – 6 p.m.</td>
<td></td>
</tr>
<tr>
<td>September 3</td>
<td>4</td>
<td>CMBF Executive Committee – 8:15 a.m.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>CLE Seminar – 8:30 a.m.</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>PLI Simulcast – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grievance Committee Meeting</td>
<td>International Law Section Lunch &amp; CLE</td>
<td>WIL Section Meeting</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td>YLS Council Meeting</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>CMBF Executive Committee Meeting</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>Spotlight on Programs – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CLE Seminar – 8:30 a.m.</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grievance Committee Meeting</td>
<td>Grievance Committee Meeting</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>7</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>PLI – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>September 5</td>
<td>International Law Section Lunch &amp; CLE</td>
<td>WIL Section Meeting</td>
<td>Spotlight on Programs – 8:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>September 6</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td>YLS Council Meeting</td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 3</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>Cleveland Playhouse Event – 6 p.m.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 4</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 5</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 6</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 7</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 8</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 9</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 10</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 11</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 12</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 13</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 14</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 15</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 16</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 17</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 18</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 19</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 20</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 21</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 22</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 23</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 24</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 25</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 26</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 27</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 28</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 29</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 30</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>October 31</td>
<td>International Law Section Lunch &amp; CLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>November 1</td>
<td>Diversity &amp; Inclusion Committee Meeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September 10</td>
<td>11</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 12</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>September 12</td>
<td>ADR Section Meeting</td>
<td>November 13</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>September 13</td>
<td>Insurance Law Section Meeting</td>
<td>September 14</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>September 14</td>
<td>JFA Committee Meeting</td>
<td>September 15</td>
<td>16</td>
</tr>
<tr>
<td>September 17</td>
<td>18</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 16</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>September 18</td>
<td>ADR Section Meeting</td>
<td>September 17</td>
<td>18</td>
</tr>
<tr>
<td>September 19</td>
<td>19</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 18</td>
<td>19</td>
</tr>
<tr>
<td>September 20</td>
<td>20</td>
<td>ADR Section Meeting</td>
<td>September 19</td>
<td>20</td>
</tr>
<tr>
<td>September 21</td>
<td>21</td>
<td>ADR Section Meeting</td>
<td>September 20</td>
<td>21</td>
</tr>
<tr>
<td>September 22</td>
<td>22</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 21</td>
<td>22</td>
</tr>
<tr>
<td>September 23</td>
<td>23</td>
<td>ADR Section Meeting</td>
<td>September 22</td>
<td>23</td>
</tr>
<tr>
<td>September 24</td>
<td>24</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 23</td>
<td>24</td>
</tr>
<tr>
<td>September 25</td>
<td>25</td>
<td>ADR Section Meeting</td>
<td>September 24</td>
<td>25</td>
</tr>
<tr>
<td>September 26</td>
<td>26</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 25</td>
<td>26</td>
</tr>
<tr>
<td>September 27</td>
<td>27</td>
<td>ADR Section Meeting</td>
<td>September 26</td>
<td>27</td>
</tr>
<tr>
<td>September 28</td>
<td>28</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 27</td>
<td>28</td>
</tr>
<tr>
<td>September 29</td>
<td>29</td>
<td>ADR Section Meeting</td>
<td>September 28</td>
<td>29</td>
</tr>
<tr>
<td>September 30</td>
<td>30</td>
<td>CMBF Board of Trustees Meeting</td>
<td>September 29</td>
<td>30</td>
</tr>
<tr>
<td>October 1</td>
<td>31</td>
<td>ADR Section Meeting</td>
<td>October 1</td>
<td>31</td>
</tr>
<tr>
<td>Saturday, October 29th</td>
<td>29</td>
<td>CMBF Board of Trustees Meeting</td>
<td>Sunday, October 30th</td>
<td>30</td>
</tr>
<tr>
<td>Saturday, October 29th</td>
<td>30</td>
<td>ADR Section Meeting</td>
<td>Sunday, October 31st</td>
<td>31</td>
</tr>
</tbody>
</table>

Saturday, October 29th – Halloween Run for Justice (Burke Lakefront Airport)

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
Employment

Established small southwest Cleveland law firm seeks established attorney with 4+ years of experience in elder law, business/transactional law, and/or general litigation with a client base and interested in expanding in these practice areas. Email resume, references, writing sample, and cover letter with salary requirements to dmille@pmlawyers.com which will be held in strict confidence.

Law Practices Wanted/For Sale

We are a high-rated, medium-sized downtown firm seeking excellent lawyers with portable clients to complement our existing practices in the areas of business and real estate transactions, commercial and defense litigation, municipal law, employment, and estate planning/probate, plus other niche practices. Our transparent, formula-based compensation system eliminates year-end angst. We practice together because we like it here. See if you’re a fit — tell us about yourself at nicola@nicola.com. Inquiries will be dealt with in the strictest of confidence.

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

Office Space/Sharing

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

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

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


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

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

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


Beachwood – LaPlace Mall, corner of Cedar and Richmond near Beachwood

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

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

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

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

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

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kirner at (440) 884-4300.
Detroit Road. Many included amenities. Contact Doug; (440) 937-1551.

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

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

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


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

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

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

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

Premise Security Expert Witness and Consultant – 35 years experience – 6 years providing expert services to attorneys – Thomas J. Lekan; (440) 223-5730 or tlekan@gmail.com – www.thomas-J-Lekan-Security-Consulting.com

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

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

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

**New Associations & Promotions**

Walter J. Haverfield LLP is pleased to welcome Kevin R. McKinnis to the Northeast Ohio law firm.

Reminger Co., LPA is pleased to announce the appointment of Andrew J. Dorman and James O’Connor as Co-Chairs of our firm’s Legal Professional Liability Practice Group.

Stephanie York has joined crisis management firm Hennes Communications as vice president. Formerly the assistant law director and later the director of communications for the City of Akron, as well as former director of communications for communications and public relations for Cleveland Clinic Akron General, Stephanie now runs the new Akron office for Hennes.

The Cuyahoga County Domestic Relations Court has promoted two employees to be the Court’s Administrators, replacing James L. Viviani who retired at the end of May. James S. Zak will be the Administrator for Court Operations. Magistrate Serpil Ergun will serve as Administrator of Judicial Operations and Chief Magistrate.

Wilson Lawyers LLC, formerly known as James D. Wilson LLC, is pleased to announce that B. Nicole Bush has joined the Pepper Pike-based firm as an Associate.

Mazanec, Raskin & Ryder Co., LPA (MRR) is proud to announce the promotion of attorney Elaine Tso to partner. Elaine is based in the firm’s Cleveland office.

Sandra Kelly in addition to her duties as managing member of Ray, Robinson, Carle & Davies, LPA has just been hired as Executive Director of Camp Quality, Ohio.

Thacker Robinson Zinz LPA deepened its bench in August by welcoming business litigator Lynn Rowe Larsen as a Shareholder in the Cleveland office. Lynn has over 25 years of experience representing both closely held companies and global corporations in commercial litigation, corporate, and bankruptcy disputes.

Reminger Co., LPA is proud to announce that they were selected as one of the Plain Dealer Top Workplaces for the sixth year in a row. In addition, Reminger was named the #1 top workplace in Northeast Ohio among mid-sized companies for the second year in a row.

Hahn Loeser & Parks LLP has been ranked in the 2016 Edition of Chambers HNW (High Net Worth guide) under its Ohio Private Wealth Law section.

Ulmer & Berne’s Frances Floriano Goins Named to Benchmark’s Top 250 Women in Litigation. For the third consecutive year, Ulmer & Berne partner Frances Floriano Goins was named to the 2016 edition of the Benchmark Top 250 Women in Litigation.

Ulmer & Berne is pleased to share that partner Jennifer Lawry Adams has been named to the Leadership Cleveland Class of 2017.

Thrasher, Dinsmore and Dolan LPA is pleased to announce that firm principal, Mary Jane Trapp, is a 2016 Inspire Award winner. Given by the McGregor Foundation during its annual “Celebrating Women: Health, Wealth and Wellness Conference,” the award recognizes women leaders in business, health, non-profit, education, and religious communities for their ability to inspire other women.

Reminger Co., LPA is pleased to announce that they were ranked in the “Top 10 Best Midsize Law Firms to Work For” list for the second consecutive year by Vault, a career information website that provides rankings and reviews based on feedback from employer surveys. They were also named again to Vault’s second annual “Top 150 Under 150” list, which highlights the “best-known and most sought after law firms with fewer than 150 attorneys.”

Schwartz Downey & Co, LPA is proud to announce that Best Lawyers in America has named Niki Z Schwartz as a Best Lawyer in an unprecedented six different categories: Mediation, Commercial Litigation, Criminal Defense: White Collar, Criminal Defense: General Practice, Litigation – Labor and Employment, and Bet-the-Company Litigation.

Tucker Ellis LLP is proud to announce that Best Lawyers® has selected three of the firm’s partners as 2017 “Lawyers of the Year.” in the Cleveland market: Irene Keyse-Walker – Appellate Practice; John McCaffrey – Criminal Defense: General Practice; and Susan Racey – Litigation – Trusts and Estates.

Spangenberg Shibley & Liber LLP is pleased to announce that Peter H. Weinberger has been named as the Medical Malpractice – Plaintiffs, Cleveland Lawyer of the Year by The Best Lawyers in America®. In addition, the following attorneys have been selected for The Best Lawyers in America 2017®: Dennis R. Lansdowne (Medical Malpractice-Plaintiffs, Personal Injury Litigation-Defendants, Personal Injury Litigation-Plaintiffs), Peter J. Brodhead (Personal Injury Litigation-Plaintiffs), William Hawal (Medical Malpractice-Plaintiffs), Peter H. Weinberger (Medical Malpractice-Plaintiffs, Personal Injury Litigation-Plaintiffs), and Nicholas A. DiCello (Civil Rights Law).

Managing Member Steven S. Kaufman of national trial and litigation law firm Kaufman & Company, PLLC, was selected by his peers for inclusion in The Best Lawyers in America® 2017. Kaufman has been listed for 12 consecutive years for his work in commercial litigation, intellectual property litigation and real estate litigation.

Wickens, Herzer, Panza, Cook & Batista Co. is pleased to announce that the following attorneys have been selected for inclusion in The Best Lawyers in America® 2017:
Richard D. Panza for Commercial Litigation; Matthew W. Nakon for Commercial Litigation; and Thomas Pillari for Trust and Estates.

Thacker Robinson Zinz LPA is pleased to announce Mark I. Wallach has been named to the 2017 Edition of Best Lawyers®, making this the 22nd consecutive year for this honor. A Chambers-listed attorney, Mark is Counsel at TRZ where he focuses his practice on Commercial, Municipal and Real Estate Litigation, Corporate Governance, and Arbitration/Mediation.

Howard Mishkind of Mishkind Kulwicki Law has again been chosen to be recognized in the 23rd Edition (2017) of The Best Lawyers in America in the areas of Medical Malpractice Law-Plaintiffs, Personal Injury Litigation-Plaintiffs and Professional Malpractice Law-Plaintiffs. His firm has also received a Tier 1 ranking in the 2017 Edition of “Best Law Firms” by U.S. News & World Report and Best Lawyers®.


Tucker Ellis LLP is proud to announce that 37 of the firm’s Cleveland attorneys have been selected by their peers for inclusion in The Best Lawyers in America® for 2017. The attorneys and the practice areas in which they are recognized are: Henry Billingsley, Ann Caresani, Jonathan Cooper, Harry Cornett, Corine Corpora, Richard Dean, Stephen Ellis, Robert Hanna, Jeffrey Healy, Laura Hong, Irene Keyse-Walker, Eugene Killeen, Joseph Koncecil, Rita Maimbourg, John McCaffrey, Mark McCarthy, Erica McGregor, Joseph Morford, Glenn Morrical, Brian O’Neill, Thomas Ostrowski, Anthony Petruzzi, Thomas Simmons, Ronald Stansbury, Robert Tucker, Victoria Vance, S. Peter Voudouri, Jeffry Weiler, and Kevin Young.

Frantz Ward LLP is pleased to announce that Christopher C. Koehler, partner in the firm’s Litigation Practice Group, has been named to the Leadership Cleveland Class of 2017.

Buzz Rosenfeld is pleased to announce his appointment as a panel arbitrator for the Financial Industry Regulatory Authority (FINRA) in the Dallas, Texas office.

Reminger Co., LPA is pleased to announce that Allison McMeechan has been named to the Breckenridge Village Board of Directors.

Reminger Co., LPA is pleased to announce the recent naming of Adam M. Fried as the President of the William K. Thomas American Inn of Court. Reminger Co., LPA is pleased to announce the recent naming of Julian T. Emerson as the Assistant Secretary of the William K. Thomas American Inn of Court.

Ulmer & Berne LLP has announced it will have new leadership beginning October 1. The 108-year-old Midwest regional law firm today announced the election of Scott P. Kadosh (based in Cincinnati) as its fourth-ever managing partner; and the appointment of Patricia A. Shlonsky as partner-in-charge of its Cleveland office. Kadish and Shlonsky will succeed Harold “Kip” Reader as managing partner and Cleveland partner-in-charge, respectively.

David O. Simon of D. O. Simon Company, LPA is pleased to announce the relocation of his office to 55 Public Square, Suite 2100, Cleveland, OH 44113-1902. His phone number remains (216) 621-6201 and his fax number has been changed to (888) 467-4181.

Lauren A. Helbling of Lauren A. Helbling Co., LPA is pleased to announce the relocation of her office to 55 Public Square, Suite 2100, Cleveland, OH 44113-1902. Her phone number remains (216) 781-1164 and her fax number has been changed to (888) 966-0338.

Fisher Phillips, in partnership with Inspired eLearning, has launched a new series of human resources risk and compliance training modules. Available via web and mobile platforms, this training program covers a variety of labor and employment issues.

The NEW Akron Bar Association Examiner blog replaces the Examiner magazine of old. Much of the content is the same, but it is being delivered in a different format and will now be available to all visitors to the “News and Events” tab at www.akronbar.org.

Cleveland Mediator Jerry Weiss was a featured panelist at the 2016 Fall meeting of the International Academy of Mediators (IAM) held in Vancouver, B.C. The topic was “Communication and Conversation in a Digital World.” Jerry is a Distinguished Fellow and a member of the Board of Governors of the IAM.

On September 1, 2016, Robert K. Wallace and Amy M. Wallace, were enjoined from all activities that constitute the unauthorized practice of law in the state of Ohio. See the Supreme Court’s entry in Cleveland Metro. Bar Assn. v. Wallace, 2016-ohio-5603 for additional information.

Something To Share?
Send brief member news and notices for the Briefcase to Jackie Barona at jbarona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
The Halloween Run is Landing in a New Location

15th Annual Halloween Run for Justice
Saturday, October 29