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Your Judge Will Likely Read Your Legal Brief on an iPad and Why You Should Care

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Charitable Giving Begins in the Attorney’s Life
By Diana Jancura

Achieving a Better Life Experience (ABLE) Act of 2014
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Section & Committee Spotlight

ESTATE PLANNING, PROBATE & TRUST LAW SECTION

Chair
Cristin R. Snodgrass
KeyBank National Association
cristin_r_snodgrass@keybank.com

Regular Meeting
Luncheon and CLE meetings on the third Tuesday of each month, running from September to June at noon at the CMBA Conference Center.

What is your goal?
To engage and inform the Cleveland Estate Planning Community through thoughtful and informative meetings and events.

What can members expect?
Monthly meetings include one hour CLE. Periodic joint meetings with other Cleveland Estate/Tax groups offer opportunity to network with financial service peers.

Upcoming Event
Annual “Hot Topics for Estate Planners” seminar on the date of the June Meeting, Tuesday, June 21, 2016.

Recent Events
Estate Planning Institute on Friday, October 23, 2015

Save the Date!
2016 Golf Outing
June 27th
Westwood Country Club
If We Are As Old As We Feel, Then I May Be In Trouble
What Does Age Mean To You?

Anne Owings Ford

At the end of September, I broke my hip. These two months have been interesting. First, of course, I hurt. A lot. And then a surgeon affixed a metal plate and screw to hold my femur together. That also hurt. As I write this in mid-November, I am not yet allowed to drive. I use a walker to traverse my house and a cane to scale the stairs. When I attended Senior Night at Sarah’s school football stadium, she and her father took turns pushing my wheelchair.

Forty years ago, my grandmother broke her hip. She was in her late seventies and living with my family in Ann Arbor, Michigan. Apparently, Grandmother’s hip failed due to osteoporosis, and THEN she fell. She underwent hip-replacement surgery, and went on to walk briskly for several years. I like to remember that I have her genes.

My break was different, arising from a high-energy impact with an unyielding object, rather than osteoporosis, but the resulting recovery and rehab probably look the same from the outside. Happily for me, the surgery, the walker, the cane, the physical therapy and the hard work are temporary. They will get me back to my usual activities. Nonetheless, I won’t be the same. Here is why:

I have white hair, although I’m only (?) 52. I didn’t get organized enough in my mid-20s, when my strawberry blonde hair was overtaken by white, to commit to dyeing my hair. Further, in the early days of my career, looking older wasn’t such a bad thing. Now, though, if you put my injury and my appearance together (wheelchair or walker, white hair, helper pushing the chair, driving and opening doors), I seem to project an image very different than my usual presentation. At the very least, I am seeing responses from people (acquaintances as well as strangers) that are different than the way I am accustomed to interacting with people.

People have either ignored me as I am wheeled past, or they make a special effort to stare me in the eyes and give me a fixed, happy grin. Unnervingly, when I in my wheelchair engage in conversation with standing people, they seem to gravitate to a point behind my right or left shoulder, such that I can’t see them. I have no idea why these things happen. Whether the issue is perceived disability or perceived age (or something else entirely), the perception seems to be coloring people’s actions. From where I sit, I am being perceived as significantly older than I am. This has given me a unique, short-term opportunity to “be old,” and report to you how it feels.

It doesn’t feel great.

For instance: I was discharged to a rehabilitation facility from the hospital. During the five days I spent in rehab, I noticed several things. First, the vast majority of patients were substantially older than I: most were in their seventies or eighties. Second, the reasons for their presence in rehab seemed to be conditions often associated with age: strokes; heart attacks; osteoporotic breaks of hips, legs or arms. Third, for many of the older patients I encountered, their hearing was not acute, so oral communication was at high volume.

At first, I was “one of the crowd,” to the staff. Deeply kind, efficient and careful, from the nurses through the therapists to the housekeeping staff, every single employee was cheerful, courteous and considerate.

The facility was beautiful, and my condition improved every day. I found, though, that I was exerting effort in talking to staff to get them to SEE me — as a person, not just a patient. When I made jokes or said something sarcastic or alluded to my high-school age daughter, it startled the staff person I was addressing. I pushed, and in pushing I saw the assumptions about me being revised, some more quickly than others. Ultimately, these kindly people all came to interact with me as me — as a person.

The starting point for interactions with white-haired orthopedic rehab patients seems to assume cognitive deficits, or at least hearing loss, and so to speak loudly and simply, as to a young or inattentive child. Patients become people to the staff when they exert special efforts to show their personalities, or when their family members show the staff the patient in his or her own context.

Do we get dumber as we age? Of course not. Do we become only our bodies, needing verbal and intellectual interaction only to keep our bodies functional for as long as possible? Of course not. No question: the
physical, mental and emotional challenges of aging are real. The problem is that we have used these challenges almost as a series of bricks to create a wall between working adults (as well as our children), and those older adults formerly in our lives. That wall has hardened over the past 50 years. When older and younger adults don’t interact, we all lose. We isolate the elderly; we immure ourselves from pain, death and late-life issues; and we leave our children bewildered and frightened of old age, old people and the end of life, because they never see and participate in these experiences. Like the Berlin Wall, the age wall hurts everybody.

Sadly, this is not only a social problem, but a legal one. The different — and poorer — treatment of elderly persons over the years has given rise to the Elder Law legal specialty. The need for this specialty will not go away any time soon. We see elders as somehow qualitatively different, so it feels okay to treat them differently than younger people. Elder Law practitioners fight against this, and work to ensure the basic rights of life in these United States to our elders. I am convinced that if any other age group (say, 30- to 50-year-olds) were treated as American elders are, there would be a massive outcry. Because it is the old, though, most are quiet.

Every elder you encounter has lived a lot of years, has had a kaleidoscope of experiences, and probably could give you advice germane to your situation. Just because his or her body has begun to look different and function differently, just because his or her hair is (like mine) white or gone, the elder is no different than you where it counts: in the capacity to think, feel, reason and be productive.

Spending a couple of months as an honorary elder has been good for me. I always have been drawn to the elderly, perhaps because of the riches I reaped from my grandmother’s love and stories, but largely, I think, because our elders have so much to teach, and I have so much to learn. Today, I am doubly sensitive to the dangers of making assumptions about a person’s capacity from his or her apparent age. Let us not waste our most precious natural resource: our people, no matter their age.

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

CMBA Member Q&A

Joel Messe
Firm/Company: CMBA
Title: Senior Accountant
Start Date: 1989
College: Cleveland State

DESCRIBE AN IDEAL SUNDAY.
Morning walk in the park with friends enjoying sights and sounds of nature with small talk and some laughs.

WHAT’S YOUR FAVORITE BOOK?
Caddy for Life by John Feinstein
Between You and Me by Mike Wallace

IF YOU COULD HAVE DINNER WITH A FAMOUS PERSON, LIVING OR DEAD, WHO WOULD IT BE?
Millions of people have been on this earth over the course of its existence, to pick one is impossible. Twelve is a suitable dinner party so here they are: Ben Franklin, Martin Luther King Jr, Jackie Robinson, Neil Armstrong, Mark Twain, Abraham Lincoln, Albert Einstein, Frank Sinatra, Robin Williams, John F. Kennedy, Mozart, and Winston Churchill. I would have Mike Wallace moderate the best questions. To make sure guests leave with a smile, I would add Steve Martin and George Carlin. The Thanksgiving dinner would be served by Madonna, Marilyn Monroe, Jay Z, and Whitney Houston. They also could entertain between courses. Leonardo Da Vinci would do a portrait of the dinner party. Finally, Joan Rivers would attend and comment on everyone’s attire.

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
I was the shortest kid in class all through grade school. I listen to Christmas music three months of the year, November – January.

WHAT’S ON YOUR BUCKET LIST?
If you laugh, cry, and learn each day, you have had a full day. That combined with good health and good friends. That is a greater value than any materialistic thing I could afford to attain on a bucket list.

Amanda T. Quan
CMBA Join Date: 2013
Undergrad: McGill University
Law School: The University of Akron School of Law

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
This sounds really cheesy, but in grade 8, I decided I wanted to be a lawyer, and I haven’t looked back!

WOULD YOU CONSIDER VOLUNTEERING FOR A ONE-WAY MISSION TO MARS?
I don’t think so — it would be too hard for me to leave the amazing food options available on Earth. And family and friends.

WHY DID YOU JOIN THE CMBA?
To connect with local lawyers and judges, and to get involved with some of the great initiatives.

ONE FUN FACT ABOUT YOU?
I’m Canadian!

TELL US ABOUT YOUR FIRST EVER JOB.
The summer after I graduated from high school, I worked at the Queen Alexandra Centre for Children’s Health in my hometown, Victoria, B.C. It was one of the most heartwarming experiences — despite their personal circumstances, those children have the most positive outlook on life!

WHAT DO YOU DO FOR FUN?
Travel to fun and new places, eat (a lot of) food, and spend time with family.

Valerie J. Gamertsfelder
Firm/Company: Ott & Associates Co., LPA
Title: Paralegal
CMBA Join Date: 2013
College: University of Toledo and Tri-C

WHAT DO YOU LOVE ABOUT YOUR JOB?
Learning something new every day. There is so much to learn and things are always changing in the legal world. It makes being in this profession exiting and challenging.

WHY DID YOU JOIN THE CMBA?
I joined the CMBA as a joint member with CAP (Cleveland Association of Paralegals) and NFPA (National Federation of Paralegal Associations). Being a member of a local and national paralegal association and a local bar association helps me stay informed and active in the legal field and provides fantastic networking opportunities.

TELL US ABOUT YOUR FAMILY.
My awesome mom Paula, dad Dennis, and brother Jay are my biggest supporters. They are the best! My extended family of grandparents, aunts, uncles, and cousins is pretty awesome, too!

WHAT CITY/NEIGHBORHOOD DO YOU LIVE? WHAT DO YOU LOVE ABOUT IT?
I live in Parma. I am actually very close to downtown, which I love, and I live on a nice, quiet street, which is also great.

WHO HAS INFLUENCED YOU THE MOST?
My mom has probably influenced me most in my life. She was the first of her siblings to finish college; she was very successful in her career (she is retired now); she is a very loving and supportive mother. I am very grateful for her influence.
Planning Considerations for Professional Corporations

BY ERIC A. SARMIENTO

In Ohio, three regulatory sources must be considered in advising a professional corporation. Professional corporations are generally subject to the General Corporation Law (R.C. Chapter 1701), the Professional Associations law (R.C. Chapter 1785), and the rules or regulations governing the practice of a given profession. The applicability of Chapter 1701 to professional corporations organized under Chapter 1785 is specifically addressed in R.C. 1785.07. The third source of regulations may be in the form of a statute governing the practice of a specific profession, rules issued by the licensing authority of that profession, or both. R.C. 1785.01(A) specifies the types of professional services that may be rendered by professional associations. These services “may be performed only pursuant to a license, certificate, or other legal authorization” issued to certain professionals including accountants, architects, attorneys, dentists, pharmacists, physicians, professional engineers, and veterinarians.

Due in part to advantageous tax treatment for a corporation’s employees, professional corporations became prevalent throughout the 1970s and early 1980s. But developments in the taxation of self-employed individuals who do not incorporate, have neutralized the incentive for a corporation’s employees, professional engineers, and veterinarians.

As used in R.C. 1785.03, “employee” does not include clerks, bookkeepers, technicians, or other individuals who are not usually and ordinarily considered to be rendering a professional service requiring licensure, or any person who performs all of his or her employment under the “direct supervision or control of an officer, agent, or employee” who renders a professional service on behalf of the professional corporation.

Third, professional corporations organized under Chapter 1785 are required to submit a statement to the Ohio Secretary of State within 30 days after the 30th day of June in each even-numbered year. R.C. 1785.06. This biennial statement must include the names and addresses of all of the professional corporation’s shareholders and certify that each is duly licensed, certificated, or otherwise legally authorized to render the professional service for which the corporation was formed. If the professional corporation fails to submit the statement, the Secretary of State will give notice of such failure to...
the professional corporation’s last known address. If the statement is not submitted within 30 days after the notice is mailed, the Secretary of State will cancel the professional corporation’s articles of incorporation (which may be reinstated).

Fourth, a professional corporation organized under Chapter 1785 may issue its capital stock only to persons who are duly licensed or otherwise legally authorized to render the same professional services for which the professional corporation was formed. R.C. 1785.05. Similarly, professional corporation shareholders may sell or transfer their shares “only to another individual who is duly licensed, certificated, or otherwise legally authorized to render” the same professional service for which the professional corporation was formed. R.C. 1785.07. These limitations prompt additional planning considerations in terms of a professional corporation’s shareholder disposing of his or her ownership interest. For example, an owner may desire to pass the business on to a child who is still in medical school. Alternatively, the owner may have to find a buyer with the appropriate credentials to take over the business. But even when an acceptable transferee has been identified, the unexpected death of a professional corporation’s shareholder may cause additional complications.

Transferring Shares in a Professional Corporation

If a shareholder in a professional corporation dies before any appropriate sale or transfer arrangements have been made, the shares become assets of the deceased shareholder’s estate by operation of law. In Lehtinen v. Drs. Lehtinen, Mervart & West, Inc., 99 Ohio St.3d 69, 2003-Ohio-2574, 76 N.E.2d 1079, ¶ 43, the Ohio Supreme Court held that R.C. 1785.07 does not preclude the transfer of the stock in a professional corporation to a personal representative who is not a member of the profession pending the estate’s administration. The Lehtinen Court clarified that its holding did “not encompass the distinct issue of whether R.C. 1785.07 prohibits any further transfers by the personal representative to nonprofessional heirs or legatees or to others not professionally qualified.” Id. at ¶ 44.

The Ohio Attorney General has also identified situations in which a trust may hold stock in a professional corporation:

• Shares of a professional corporation organized under Chapter 1785 for the sole purpose of rendering dental services may be transferred into a trust for the benefit of unlicensed individuals as long as the trustee in whose name legal title to the shares is held is duly licensed to render such dental services. 1990 Ohio Atty.Gen.Ops. No. 90-072.
Chapter 1785 does not prohibit stock in a professional corporation from being held in trust for the benefit of those who are not licensed by an individual who is licensed, and this arrangement does not provide a basis for the Secretary of State to cancel the corporation's articles of incorporation. 1985 Ohio Atty.Gen.Ops. No. 85-065.

But just because the Attorney General may not take action against a professional corporation with its shares held in trust, does not mean the profession's licensing authority will allow this type of arrangement. Before the Ohio Code of Professional Responsibility was superseded by the Rules of Professional Conduct, the Board of Commissioners on Grievances and Discipline issued Opinion 2002-12 which indicated that it was improper under Disciplinary Rules 5-108(C)(1) and 3-102(A) and Supreme Court Rule for the Government of the Bar III § 3(b) for an attorney to transfer shares in a legal professional association to an irrevocable trust for the benefit of non-lawyers even if the trustee was a duly licensed attorney.

Given the statutory restrictions on ownership in a professional corporation, it is vital to consider how the initial shareholders will transfer or dispose of their shares. This planning should start at the outset by including a provision in the professional corporation's code of regulations or a shareholder/buy-sell agreement that requires the corporation or the surviving shareholders to buy the stock from the deceased shareholder's estate. It may also be advisable to include a purchase provision addressing the loss of a shareholder's professional license. Now that favorable tax treatment of retirement plans is available to other entities, professional corporations do not offer a significant advantage over other types of entities. And despite the limitations on transfers of ownership, professional corporations are not necessarily a substandard choice of entity. As long as the professional (who may already be familiar with the corporate form) understands the ownership restrictions and additional filing requirements, a professional corporation formed under Chapter 1785 may still be an acceptable option.

Eric A. Sarmiento is an attorney at Cavitch, Familo & Durkin Co., L.P.A., and his practice focuses on business and succession planning. Eric also has significant experience counseling companies in general corporate matters and in M&A transactions. He joined Cavitch and became a CMBA member in 2013. You can reach Eric at (216) 621-7860 or esarmiento@cavitch.com.
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Leave your legacy. Remember University Hospitals in your estate plans.

University Hospitals
Charitable Giving Begins in the Attorney’s Life

BY DIANA JANCURA

As the holidays quickly approach, and the flurry of activity that accompanies the end of the year, many of us, and especially my fellow estate planning-tax attorneys, will be counseling our clients on charitable giving and the benefits allowed under the IRS Code, not to mention the host of philanthropic benefits gained from giving to worthy causes.

In light of this giving spirit, it seems a natural extension to draw attention to the benefits gained by giving of ourselves to others in need. While just about anyone with $20 can purchase a one-time gift, it takes a special person, with a commitment for living a life of giving, to make giving an on-going attitude and not merely a seasonal feeling.

As attorneys, we possess unique opportunities to have meaningful effects on the lives of people around us — most typically our clients. But beyond legal representation, being an attorney commands that we have thorough knowledge and understanding of the law and various legal processes, including exceptions, exemptions and other loopholes that are available for those who qualify, and, most importantly, for those who know how to take advantage of them. Unfortunately, far too often the individuals who can most benefit from these exceptions to the law are not aware of their existence, don’t know how to qualify, and don’t know where to get help.

My years in the legal field, from secretary through partner, have taught me that regardless of what position I play in the legal field, I always accumulate specific legal knowledge and experiences that can be applied to reach far beyond our profession. This knowledge and experience allow us to affect real and long-term change in our communities, our nation, and even our world.

True, my previous statement may seem a lofty idea that can be mistaken for someone running for a political office. This is far from my intent. Rather, I am encouraging, and for you competitive types, challenging, all of you to actively look for and even seek out ways in which you can use your “legal toolbox” to serve others on a regular and long-term basis.

Here are a few practice-area based suggestions of how you can use your legal skills in ways you may not have thought about before:

• **Estate planning attorneys** – Offer your services on a regular and on-going basis to prepare basic documents such as Powers of Attorney and beneficiary designation documents to police, firefighters, EMS, and other first responders who put their lives in harm’s way with every call to which they respond. Perhaps schedule a regular day/time (the third Saturday of the month) to set up shop at the firehouse. There is often quite a bit of downtime waiting for the next 9-1-1 call.

• **Guardianship/probate attorneys** – Partner with your local guardianship programs, such as Adult Guardianship Services in Cuyahoga County and Volunteer Guardianship Program of Lorain County, to serve as guardian for legally-technical cases to which you can use your well-honed skills to make the legal process easier and more efficient for the ward.

• **Real estate attorneys** – Serve on local planning and zoning boards where your technical skills in real estate matters and ability to make impartial decisions based on legal factors can allow those in your community to build and operate businesses within the allowed parameters of the local ordinances and make your city a better place.

• **Corporate attorneys** – Partner with your local chamber of commerce or other networking groups to meet with small business owners, food truck owners, even the cupcake lady, to discuss legal issues they may regularly encounter. Perhaps sign on for a half-day workshop to discuss problems unique to new and small business owners such as entity formation, tax planning, lease negotiation, dealing with vendors, and e-commerce.

• **Litigation attorneys** – Partner with mediation agencies, such as the Cleveland Mediation Center, who work to resolve conflicts without the use of the costly and time-intensive court system that, unfortunately, does not guarantee a satisfactory result.

• **Divorce attorneys** – Partner with agencies such as churches or other family-oriented counseling groups that help struggling couples who are considering divorce. You could discuss and specifically lay out the often harsh details of life during and after divorce. I wonder how many couples would have tried to make their marriage work if they knew the reality of shared parenting, child support and how the legal process and emotional strain of divorce will effect their family on a long-term and permanent basis. How many couples, armed with this information, would make informed decisions versus emotional responses when contemplating ending their marriage and changing their family dynamics forever?

• **Patent attorneys** – Work with young inventors, perhaps those in high school and college, to encourage their creativity. You can also work with clubs such as physics, chemistry, robotics, and engineering where your technical knowledge of science and “all things techy” can inspire our next generation of scientists and patent attorneys.

• **In-house counsel** – Your unique perspective of working exclusively for companies often gives you direct access to owners and management who, because of your role as counsel, weigh your recommendations more heavily than other company employees. As counsel, you can encourage and perhaps even develop socially-inspired corporate programs that will give back to the local and global community. Your efforts can encourage the company to develop and implement a corporate concept beyond making profits.

• **Judges and Magistrates** – As an impartial decision-maker in pursuit of justice, your role has exposed you to numerous situations where the justice system did not operate as it is intended. Without a doubt, your court experience has exposed you to the tragic consequences of individuals and families living in poverty and without proper role models. More importantly, your title of “Your Honor” follows you
long after you have retired your gavel and commands respect from society. Focusing your efforts on recurring injustices and on-going problems with our legal system, and offering practical ways on how they can be fixed, can be the groundwork upon which you build your life of giving and can provide the sense of satisfaction that the impartiality of judgeship does not permit.

• Retired attorneys – More so than those of us who are still “on the clock,” retired attorneys have the freedom and flexibility to choose their cause of choice. Whether you choose a cause that is personal in nature or one that interests you because it is so far removed from the field of law you practiced — the world is your oyster! Retirement need not be sitting in the recliner watching CSI and Judge Judy, pointing out and criticizing the unrealistic ways the legal system is depicted in today’s media. Being active, in both mind and body, is the best way to make the most of your retirement, and the rest of your life!

Realizing that we all have 24 hours in a day, my intent is not to pile on yet another requirement or guilt-induced activity. I know far too well that being an attorney involves commitment and long hours at the office, in addition to our roles as spouses, parents, and friends. Rather, my intent is to encourage you to view your role in the legal field as more than just a job that we leave at the end of the day. It has been my experience that the more I give of myself, the more I am able to receive from others, especially when my help made a seemingly impossible task a reality for someone else. The appreciation of helping someone who is hopeless acts like a B 12 shot that invigorates and excites to push harder and find new ways to be a blessing. It’s a continuous cycle of giving and receiving.

After all, when the billing day is done, don’t we all just want to be happy and know that we somehow made a difference?

Diana Jancura is the founding owner of Jancura & Associates, LLC in Sheffield Lake. Diana’s practice includes estate planning, trust and estate administration, post-mortem planning, guardianships, and residential real estate. She also works with Volunteer Guardianship Program of Lorain County as a volunteer guardian, legal counsel, and member of the Advisory Board and as Chair of the Sheffield Lake Board of Zoning Appeals and where she has served for the past 13 years. She joined the CMBA this year. She can be reached at (440) 949-1750 and dianajancura@gmail.com.
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 jpaire@clemetrobar.org.

THE 3RS – RIGHTS • RESPONSIBILITIES • REALITIES

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

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

3RS+

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

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

CLEVELAND HOMELESS LEGAL ASSISTANCE PROGRAM (CHLAP)

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

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

CLEVELAND MOCK TRIAL COMPETITION & MIDDLE SCHOOL MOCK TRIAL

Volunteer attorneys and law students coach Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.

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

OHIO MOCK TRIAL COMPETITIONS

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

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

PRO SE DIVORCE CLINICS

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

Volunteer Schedule: 3rd Friday monthly unless otherwise noted

REACH OUT: LEGAL ASSISTANCE FOR NONPROFITS

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

Volunteer Schedule: 2016 seminar dates TBD
CleMetroBar.org/ReachOut

SPEAKERS BUREAU

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

Volunteer Schedule: As needed throughout the year

VOLUNTEER LAWYERS FOR THE ARTS (VLA)

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

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

Coming Soon!

January 15, 2016
Pro Se & Pro Se “Plus” Divorce Clinics

January 29, 2016
Ohio Mock Trial Cuyahoga District Competition

February 5, 2016
3Rs+ field trip for Whitney Young HS to C|M Law

February 19, 2016
Ohio Mock Trial Cuyahoga Regional Competition

February 26, 2016
Pro Se Divorce Clinic

March 10–12, 2016
Ohio Mock Trial State Tournament (Columbus)

March 18, 2016
Pro Se & Pro Se “Plus” Divorce Clinics
Achieving a Better Life Experience (ABLE) Act of 2014

Another Tool in Our Planning Toolbox for Individuals with Disabilities and Their Families

BY ALLISON MCMEECHAN

December 19, 2014, President Obama signed H.R. 647, otherwise known as the “Achieving a Better Life Experience Act of 2014,” (the ABLE Act) into federal law. Section 101 of the ABLE Act states that the purpose is “[t]o encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.” The goal of the ABLE Act is to ease the financial burden faced by disabled individuals by allowing a tax-free savings account that would supplement, but not supplant, public assistance benefits such as Medicaid and Supplemental Security Income (SSI). As discussed below, the funds held in a qualified ABLE account will not be counted as an available resource for Medicaid and SSI and therefore will not jeopardize a disabled individual’s eligibility for these essential programs.

The ABLE Act permits individuals with disabilities to have tax-advantaged plans for disability-related expenses, much like a 529 plan allows individuals to save for college education. Primarily, the ABLE Act expanded Subchapter F of Chapter 1 of the Internal Revenue Code of 1986 to add a new section at 29 USC § 529A. Section 529A(a) states that a qualified ABLE program shall be exempt from taxation provided it meets the requirements further set forth in the remaining section. Section 529A(b) generally provides that a “qualified ABLE program” will be a program established and maintained by a State, or agency, to which the following apply:

A. Any person may make contributions for the benefit of a disabled individual (the “designated beneficiary”) to an ABLE account which is established for the purpose of paying “qualified disability expenses” for the designated beneficiary;
B. The designated beneficiary may only have one (1) ABLE account;
C. The designated beneficiary must establish the ABLE account in his or her state of residence; and,
D. Meets the other requirements of the section.

Section 529A(c) generally discusses tax treatment of a distribution from a qualified ABLE program and sets forth that the distribution will not be included in the designated beneficiary’s gross income if the distribution is used to pay for qualified disability expenses for the designated beneficiary. Distributions for a purpose other than a qualified disability expense will be included in the designated beneficiary’s gross income and subject to a 10% penalty. ABLE accounts may be rolled over to another ABLE account established for the designated beneficiary or to a family member of the designated beneficiary no more than once per year. A qualifying rollover will not be treated as a taxable distribution and a contribution to a qualified ABLE program is considered a completed gift which is not a future interest in property.

In order to qualify as a designated beneficiary, section 529A(e) states that the individual must be entitled to benefits based on blindness or disability under title II (SSDI) or XVI (SSI) of the Social Security Act and the disability must have occurred before the individual attained the age of 26. If the designated beneficiary is not receiving SSDI or SSI benefits, the individual or the parent or guardian must submit a disability certification setting forth the following:

The individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and such blindness or disability occurred before the date on which the individual attained age 26.

The disability certification must be accompanied by a letter of diagnosis from the individual’s treating physician. Finally, in order to remain tax exempt, the distributions must be made solely for “qualified disability expenses.” Section 529A(e)(5) defines qualified disability expenses as “any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.”

One of the most significant benefits of the ABLE Act is that the funds held in the ABLE account will not be counted as an available resource for SSI and Medicaid purposes and therefore an individual with an ABLE account can still maintain his or her public assistance benefits. As long as a designated beneficiary has less than $100,000 in his or her ABLE account, eligibility for SSI will not be affected. There is no limit on the ABLE account for Medicaid and other benefit programs.

Under the ABLE Act, each State is responsible for establishing and operating a qualified ABLE program through which individuals with disabilities can create an ABLE account. For purposes of advising your clients, some of the key details related to ABLE accounts are as follows:

1. Anyone may make contributions to the ABLE account for the benefit of the designated beneficiary, including the designated beneficiary, his or her parents, family members, and friends;
2. Contributions to the ABLE account are not tax-deductible but the income earned is not included in the designated beneficiary’s gross income;

3. The aggregate contributions by all individuals to any one ABLE account may not exceed the annual gift tax exclusion amount ($14,000.00 in 2015);

4. Contributions generally must be made in cash unless the funds are rolled over to another ABLE account for the same designated beneficiary or an eligible individual who is a family member of the designated beneficiary; and,

5. The maximum contribution limit to an ABLE account is subject to the overall limit matching the State limit for 529 plans.

It is important to note that the ABLE account should be used in conjunction with other planning opportunities available to disabled individuals and their families. Like ABLE accounts, assets held in an individual or pooled special needs trust are exempt from Medicaid and SSI. However, the primary benefit to the ABLE account is the tax-exempt status. Even though taxable, special needs trusts will still be essential for many families. ABLE accounts may primarily be used by a lower-income demographic whose assets may not justify the cost of establishing a special needs trust or higher net-worth individuals seeking to reduce their taxable estate by making annual exclusion gifts. The most significant disadvantage to an ABLE account over a third-party funded special needs trust is the payback provision. Upon the death of the designated beneficiary, any funds remaining in the ABLE account must be repaid to the State for any Medicaid assistance provided to the disabled individual after the ABLE account is established. Conversely, a properly drafted third-party funded special needs trust can pass assets to remainder beneficiaries such as family members or charity upon the death of the designated beneficiary.

Furthermore, special needs trust assets may be used for nonmedical or “supplemental” expenses while ABLE accounts must be used for disability-related expenses. Two other drawbacks to the ABLE account are the age restriction and the contribution cap. There is currently no age restriction on establishing a third party trust for the benefit of a disabled individual and the individual or pooled trusts can be unlimited in size.

On April 15, 2015, Ohio State Representatives Jonathan Dever (District 28) and Margaret Conditt (District 52) introduced House Bill 155 entitled “Disability Expense Savings Accounts.” House Bill 155 passed the House of Representatives on May 20, 2015, and the Senate on June 24, 2015. The Bill was signed into law by Governor Kasich on July 16, 2015, and is anticipated to be effective October 15, 2015. A full copy of the Legislation Text as enrolled can be found at: www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-155.

As far as other states, The Arc has reported that as of August 25, 2015, 41 states have either pending or signed ABLE legislation with 31 of those states having signed ABLE Legislation.

While the ABLE Act may have its shortcomings, it is certainly a step in the right direction in terms of recognizing the importance of allowing disabled individuals the right to save money for the future without jeopardizing their public assistance benefits.

For the last 10 years, Allison McMeechan has focused her practice on elder and special needs law, including estate and long term care planning, estate and trust administration, probate and guardianships. She joined Reminger Co., LPA in 2015. She joined the CMBA in 2003. Allison can be reached at (216) 430-2105 or amcmeechan@reminger.com.
Hugh E. McKay

Rock 11 — Join the Celebration!

Get ready to Rock the Foundation and celebrate two greats of our community. On February 13, Rock the Foundation 11 will be a truly memorable celebration as we honor an extraordinary corporate citizen, with an award in the name of a titan of our Bar. At Rock 11 we will be presenting the first ever Richard W. Pogue Award for Excellence in Community Leadership and Engagement to Christopher M. Connor, the Chairman and CEO of The Sherwin-Williams Company. Few legal and corporate communities in the nation can boast of leaders with the vision and community impact of Dick Pogue and Chris Connor. We can be proud they have agreed to be honored by the CMBF, as they embody the spirit of “Giving Back” that the CMBF is all about. Together, they will make for a remarkable celebration that will truly Rock the Foundation.

The great programs funded by the CMBF depend in large part on our legal community for sweat equity and financial support. But these programs transcend the legal community, and have a profound impact on our larger community. Few people anywhere have done more to advance the greater good of the larger community, from their respective legal and corporate bases, than Dick Pogue and Chris Connor.

We can be proud, too, that the CMBF is the first institution to give an award in the name of Dick Pogue. It surely won’t be the last, as he embodies the highest standard of civic leadership and engagement. Dick Pogue has set the standard for being the Citizen Lawyer, as he has been a leader of philanthropic and community causes in this community for more than half a century. Dick “retired” from the active practice of law 20 years ago, yet his current positions still include work as a trustee for numerous local institutions, including (apologies for leaving anyone out, we have space limitations): the Kulas Foundation, the University of Akron, the Cleveland Council on World Affairs Foundation, the Cleveland Institute of Music, Business Volunteers Unlimited, Philanthropy Ohio, University Hospitals Health System, the Northeast Ohio Council on Higher Education, the Great Lakes Science Center, the Greater Cleveland Chapter of the American Red Cross, United Way Services (Cleveland area), and Case Western Reserve University. He was a founding trustee of the Ohio Legal Assistance Foundation, which distributes funds to Legal Aid Societies.

Suffice to say, Dick Pogue embodies excellence in community leadership and engagement. And there is no more worthy recipient of the first Pogue Award than Chris Connor.

Under the leadership of Chris Connor, Sherwin-Williams and its people have been the ideal corporate citizens and have been leaders in every corner of our community. The in-house lawyers at Sherwin-Williams were on the ground floor of The 3Rs program ten years ago and remain leaders in the CMBF, CMBA and throughout the community. Beyond fostering a spirit of giving back, Chris Connor has personally led by example. His many civic and community board engagements include the Rock and Roll Hall of Fame and Museum, The Playhouse Square Foundation, University Hospitals Health System, Fisher College of Business at The Ohio State University, the National Association of Manufacturers, The American Coatings Association and the Greater Cleveland Partnership.

He has been consistently and deeply involved in advancing virtually every major civic institution in Cleveland. Chris Connor truly embodies the spirit of exemplary community leadership and engagement that the Pogue Award stands for.

Of note, Fortune Magazine has recognized Sherwin-Williams as one of our nation’s top 100 companies to work for on three separate occasions. Also Harvard Business Review has recognized Mr. Connor as one of “The Best-Performing CEOs in the World” for the last three years. In addition to The Sherwin-Williams Company Board of Directors, Mr. Connor serves on the board of the Eaton Corporation and is Chairman of the Board of the Federal Reserve Bank of Cleveland.

We can all take pride in the quality of our Bar and the commitment of our lawyers to the programs funded by the CMBF. But we should also be very gratified by the great positive impact we are having on the larger community. The awarding of the Pogue Award to Chris Connor reflects the greater essence of “Giving Back” that makes our community so special.

Rock On!

CMBF President Hugh McKay grew up in East Cleveland, attended Brown University (BA ‘78) and the University of Pennsylvania (JD ‘81). He is the former President of the CMBA, founder of The 3Rs program, and is Partner-in-Charge of the Cleveland office of Porter Wright where he practices complex commercial litigation. He has been a CMBA member since 1982. He can be reached at (216) 443-2580 or hmckay@porterwright.com.
February 13, 2016
Music Box Supper Club

Great food, drinks, live music, dancing, and more!

We will be presenting our first Richard W. Pogue Award for Excellence in Community Leadership & Engagement to CHRISTOPHER M. CONNOR, Chairman & CEO of The Sherwin Williams Company.

This year, we celebrate the 10th Anniversary of The 3Rs and our impactful partnership with the Cleveland and East Cleveland City Schools that is transforming lives.

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*Experience and Professional Liability Insurance requirements apply.

To inquire, contact James M. Smolinski at (216) 696-3525 x5002 or jsmolinski@clemetrobar.org.

CleMetroBar.org/LRS
The Value of Membership

During the past several months, we have spent quite a bit of time talking about membership at the CMBA. Our new year kicked off, as it always does, on July 1. Much to our delight, nearly 90% of our membership elected to renew for the coming year. And we added more than 150 new members, including practicing attorneys, affiliates and law students.

Thank you!! We appreciate your confidence in our association and will do our best in the coming year to prove our value to you again and again.

When recruiting new members who wonder whether the price of membership is “worth it,” we have what I think is a pretty strong elevator speech that goes something like this: “Membership in the CMBA opens gateways to professional and social development within greater Cleveland’s legal community and beyond. Whether you are looking for opportunities to hone your legal skills, enhance your leadership profile, expand your network for business and client development, or give back to our community, the CMBA is ready to meet you where you need us, and go where you want us.”

We also offer our members a robust Member Value Proposition, our MVP, which provides access to a variety of tangible benefits that can sometimes be overlooked by even our longest-term members. Thanks to the engagement and input of our Membership Committee, led by our VP of Membership Scott Heasley, we have identified more than 50 merchants and service providers that can provide substantial discounts for much-needed offerings.

Perhaps best known to our membership are our two Preferred Elite providers: All Covered, a division of Konica Minolta (providing discounts on computer network consulting, and on Application and Internet Service Provider agreements) and Toshiba (special pricing on print management needs); and our three Elite Providers: Oswald Companies (insurance program benefits), SoundCom Systems (discounts on audio visual solutions) and The T1 Company (discounts on internet services and products). All of these companies are available to work with our members to reduce expenses and improve office efficiency.

Beyond our Preferred and Elite partners, we have engaged a host of other organizations that have the potential to deliver both necessary and quality services at value pricing. A few representative examples include:

**E-Typist, Inc.** - Located in Northeast Ohio, E-Typist provides a reliable, secure and quality transcription service with consistent on-time (next-day) turnaround at affordable prices (starting at just 1¢ per word) for law firms and businesses of any size. All services are performed in the U.S. by typists with law office experience, qualified in legal transcription. There are no set-up fees or minimums. Plus, E-Typist offers CMBA members 10% off their monthly bills when paying by check.

**Chorus Call** – Offering a complete suite of conference call services designed specifically to meet the needs of the legal profession, Chorus Call offers CMBA members deeply discounted rates for conferencing services, including reservationless conference calling. Additional services eligible to receive a 25% discount include operator-assisted conference calls, web conferencing and video conferencing.

**Ruby Receptionists** – You may not always be able to answer your own calls, and the value of a missed call can be enormous. A great solution for solo and small firms, Ruby Receptionists’ virtual receptionist team can screen, announce and transfer calls, in addition to taking messages, placing outgoing calls and more. Plus, CMBA members can enjoy free a 14-day trial, free setup, and a 5% discount off the base price of all monthly plans.

**HKM Direct Market Communications** – Overlooking the Shoreway just west of downtown Cleveland, HKM stands ready to serve as a full-service commercial printer, offering digital and offset printing, database management, direct mailing and fulfillment, as well as web to print technology. CMBA members qualify for a 30% discount (excluding postage and freight) simply by showing their CMBA membership card.

**PartnerShip** – A shipping discount program, managed by PartnerShip, offers comprehensive inbound and outbound shipping services that combine simplicity, savings, and value for all CMBA members. PartnerShip works with nationally known carriers including FedEx, UPS Freight, and YRC Freight to provide unparalleled customer service and significant savings on every shipment. In addition, the CMBA offers a UPS Shipping program that can save CMBA members up to 34% on domestic air, ground, and international services.

**National Purchasing Partners** – NPP is one of the nation’s largest group purchasing organizations, leveraging the purchasing power of its combined membership to offer superior discounts from world class vendors. These discounts are not available to the general public, and the pricing provided is among the best in the nation. A couple of examples of these discount contracts CMBA members can access through NPP are: Verizon, Sherwin-Williams, Expedia and Best Buy for Business. To start saving today, members can enroll with NPP on the CMBA website.

**And coming soon:** PracBuilder – A client development software created for solo and small law firms, PracBuilder can help you strengthen client relationships and grow your practice without spending hours on business development and marketing.

For a full listing of all of the CMBA’s discount partners, go to: CleMetroBar.org/Membership/Benefits/Discounts. We welcome your feedback with respect to any of our existing partners. In addition, if you know of other merchants or service providers who might be of interest to other CMBA members, please let us know as we are always looking to add to our offerings. We are here to serve you!

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Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Your Judge Will Likely Read Your Legal Brief on an iPad and Why You Should Care

The days of judges reading through stacks of paper briefs are long gone. Instead, many jurists now use computers and tablet devices, like iPads and Surfaces, to review court documents, a practice made easier through widespread electronic filing. As a result, some documents, a practice made easier through tactile reinforcement, like the turning of pages or feeling how much of a brief remains to be viewed. Non-scientific commentators claim that screen readers are much more easily distracted, whether by constant stream of e-mails, electronic alerts, or simply the allure of surfing the web or perusing one’s own Twitter feed. As Houston lawyer Robert Dubose observed, “[s]creen readers have a lot of information available to them ..., and not enough time to read it all.” The portability of electronic briefs also means your judge is more likely to read your cherished arguments while using a treadmill or riding the Rapid Transit Line. Electronic media may also foster impatience; screen readers expect you to get to the point in the nanosecond it takes for a Google search, or in 140 characters or less — the maximum length of a Tweet. Florida lawyer Ellie Neiberger assumes her reader “is a busy person, must read quickly, and cannot afford to read twice.”

So what is a conscientious practitioner to do? Among the more common recommendations:

**Strive for brevity and clarity.**
This advice has been around forever and applies regardless of the medium, but it is even more important in an electronic setting. A screen reader is more likely to notice headings, opening paragraphs, topic sentences, and summaries. Ensure yours are terse and persuasive. Avoid long paragraphs and needless repetition. Attorney Dubose encourages lawyers to “enable skimming” by making “key information and arguments so plain the reader cannot miss them.” Included in Dubose’s imaginary audience is the judge “who allots 15 minutes before oral argument to skim your brief.”

**Don’t use footnotes or too many acronyms.**
Many courts have long discouraged the use of footnotes. That guidance is now all the more important. Not only do footnotes require a screen reader to scroll to the bottom of a page and then back up again, they are often in a smaller font, which appears even tinier on an electronic display. Those factors increase the risk of your footnotes being ignored. Also, excessive acronyms may force your reader to jump back and forth in your brief, an especially difficult task on an iPad.

**Print to PDF.**
If you print your brief on paper and then scan it, the resulting PDF will probably not allow electronic word searching, which your judge might want to do. Also, the image itself will look grainy. Those problems are solved by creating your PDF document, which will be electronically filed, directly from your word processing program.

**Smartly number your headings.**
In a typical legal brief, headings proceed along these lines: Part I, Section A, Subsection 1, etc. But to a screen reader, a Section A heading is ambiguous because it could fall under any Part. If you use a scientific hierarchy (in which Part 1 is followed by Section 1.1 and Subsection 1.1.1), the reader always knows her relative position in your brief.

**Pick an appropriate font.**
Author Matthew Butterick, in his book Typography for Lawyers, explains that various fonts are optimized for screen legibility. Those include Century Schoolbook (required for briefs to the U.S. Supreme Court), Garamond, and Palatino.

In case you are wondering, I researched this article by printing the most relevant sources I could find and highlighting them. I do that when I need to fully understand something I read. I suspect I am not alone in that regard — which is why the judicial trend toward e-reading worries me.

Derek E. Diaz

Derek Diaz is a partner in the Cleveland office of Hahn, Loeser & Parks, LLP, where he focuses his practice on class actions, appeals, and complex litigation. He has been a CMBA member since 2004. He can be reached at (216) 274-2395 or ddiaz@hahnlaw.com.
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Our online CLE programming allows you to take CLE courses on a wide variety of topics, any time of the day, any day of the week. And, at only $45 per hour for members and $60 per hour for non-members, our online CLE is also cost-effective.

For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

STUDENT ESSAY CONTEST

Law students are invited to submit an essay for the 2016 Ethics and Professionalism Essay Competition, presented by AmericanLawRadio.com and the Law Office of David B. Malik. First prize is $1,000. Second prize is $500. The first-place essay may be published in a future Bar Journal issue. Submission Deadline is February 12, 2016. The competition is open to full- and part-time law students. Competition rules and the submission form are online.

2016 TOPIC: How should a new attorney respond if a supervisor instructs the new attorney to engage in non-criminal conduct that the new attorney believes would violate the Ohio Rules of Professional Conduct?

SUPREME COURT MENTORING EVENT

The CMBA and Legal Aid Society of Cleveland hosted the first-ever Lawyer to Lawyer Give Back to Justice Project open house at the CMBA on October 8. The event provided an early kickoff to our Celebrate Pro Bono Week activities. It was sponsored by the Ohio Supreme Court Commission on Professionalism and its Mentor Program. Mentors and mentees from our area were invited by the Court to the reception and networking event to learn about pro bono volunteer opportunities in Northeast Ohio.

Mentors are being encouraged to participate in pro bono programs with their mentees. The CMBA’s Justice For All programs and Guardian ad Litem Program were featured, along with Legal Aid’s Volunteer Lawyers Program. The event was well attended by mentors, mentees and area judges.
CMBA LEADERSHIP SERIES

The second session of our four-part Leadership Series will be held at the CMBA on January 28. This session is catering to leadership development and training of newer and rising attorneys. More details will soon be available online.

The Leadership Series will continue into March and May of 2016, focusing on leadership training and education for women attorneys and in-house counsel.

CLE

Do you have your needed CLE hours? The clock is ticking away on this reporting period, but we still have dozens of programs to help you with your remaining hours. Consider leveraging the year-end schedule to get a jump on next year’s reporting period. Check out the full list of programs online.

PREPARING FOR THE “WHAT IF’S”

Are you prepared for the “what if’s” of business life? To help solo practitioners do just that, the CMBA Ethics & Professionalism Committee developed the What If Preparedness (WIP) program. Don’t wait for that New Year’s resolution, take action today to protect your clients and aid your family members who may not know where to begin. And if none of the scary “what ifs” come to pass, the information that you compile and update will help you prepare to bring in a new associate or partner; sell your practice, or wind it down yourself.

CMBA LEGAL DIRECTORY

Print and electronic Legal Directories are in stock and available for purchase. The Legal Directory includes court contact information, law firm mailing addresses, attorney phone numbers and email addresses. Additionally, we supplement the Directory with local, state and federal agency contacts, professional responsibility materials and attorney resources. Order your indispensable practice resource today. CleMetroBar.org/Directory
2015 CLE Calendar of Events

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 2.50 credit hours or more. The CMBA also offers a vast number of 1.0 hour CLE options.
Contact the CLE Department at (216) 696-2404 or visit CleMetroBar.org to receive updates or registration forms.

DECEMBER
9–11  New Lawyer Bootcamp (12.00 CLE and NLT Hours)
11  Sealing the Deal – Professionalism In Transactional Practice (2.50 CLE)
12  Municipal Court Update @ the Independence Civic Center (3.00 CLE)
15  Resilience: How Lawyers Can Prepare for and Cope with the Unexpected Video (3.00 hours Professional Conduct)
16  Pitfalls and Pointers for Young Litigators (3.50 CLE)
18  Estate Planning Institute Video (6.75 CLE)
19  Professional Conduct Live Program: Disorder in the Court (2.50 CLE)
22  Resilience: How Lawyers Can Prepare for and Cope with the Unexpected Video (3.00 Hours Professional Conduct)
22–23  Real Estate Law Institute Video (12.00 CLE)
29  Resilience: How Lawyers Can Prepare for and Cope with the Unexpected Video (3.00 Hours Professional Conduct)
30–31  Northern Ohio Labor & Employment Law Conference (9.75 CLE)
31  Resilience: How Lawyers Can Prepare for and Cope with the Unexpected Video (3.00 Hours Professional Conduct)

Visit CleMetroBar.org/CLE for a full schedule.

Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice Video (Morning)
Tuesday, December 15, 2015 and Thursday, December 31, 2015:
Submitted for 3.00 Attorney Conduct CLE Hours – CMBA Conference Center
Registration: 8:30 a.m. Seminar: 9:00a.m. – 12:15 p.m.
9:00 a.m.  Overview of the Disciplinary Process / Places to Seek Assistance with Ethical Questions
Kimberly Vanover Riley, Montgomery Rennie & Janson
10:00 a.m.  What If Preparedness; Using the CMBA’s WIP Program to Engage in Practice Succession Planning
Deborah A. Coleman, Coleman Law LLC
10:30 a.m.  The Worse Case Scenario: Succession Planning for Law Firms
Mary K. Whitmer, Kohnan Jackson & Krantz LLP
11:00 a.m.  Break
11:15 a.m.  Laughing Lawyers: How the Science of Happiness Can Spark Your Career and Spice Up Your Life
Kurt Jensen, Psy.D., WorkSmart Consultants, LLC
12:15 p.m.  Adjourn

The CMBA’s Young Lawyer’s Section Presents:
Pitfalls and Pointers for Young Litigators: A Perspective from the Bench
Wednesday, December 16, 2015 – Submitted for 3.5 CLE Including 1.0 Professionalism – CMBA Conference Center
Registration: 12:20 p.m. Seminar: 12:55 p.m. – 4:45 p.m.
Whether you’ve tried 50 cases or you are preparing for your first trial, this seminar gives you valuable insight from the people in the best position to critique courtroom advocacy — judges.
Once more, the Young Lawyers Section is bringing you some of the most highly regarded judges in the area to share their courtroom experience with you. Learn how to be an effective advocate and how to avoid costly mistakes that other lawyers have made. From opening statements to appellate oral arguments, this half-day seminar will arm you with valuable skills.
12:55 p.m.  Opening Remarks
Bob Terbrack, Kelley & Ferraro, LLP
Lisa Sanniti, Special Assistant U.S. Attorney, Seminar Co-Chairs
Clare Gravens, Court of Common Pleas, Co-Chair
1:00 p.m.  Professionalism: In and Out of the Courtroom (1.00 hour Professionalism)
Hon. Michael P. Donnelly, Cuyahoga County Court of Common Pleas
2:00 p.m.  Ohio Civil Rule 12 Motions
Hon. Janet R. Burnside, Cuyahoga County Court of Common Pleas
2:35 p.m.  Break
2:50 p.m.  Fifteen Minutes of Fame or Fifteen Minutes of Shame? How to Make the Most of Your Oral Argument in the Court of Appeals
Hon. Patricia Ann Blackmon, Eighth District Court of Appeals
3:30 p.m.  Trial Tactics
4:10 p.m.  Voir Dire
Hon. Peter J. Corrigan, Cuyahoga County Court of Common Pleas
4:45 p.m.  Adjourn
The CMBA’s Estate Planning, Probate & Trust Law Section presents

42nd Annual Estate Planning Institute
Video Presentation

Friday, December 18, 2015 – CMBA Conference Center
Registration & Breakfast: 8:00 a.m. Program: 8:30 a.m. – 4:15 p.m.

8:25 a.m. Welcome & Introductions
Erica E. McGregor, Tucker Ellis LLP, Institute Chair

8:30 a.m. Ohio Update
Timothy J. Pillari, Wickens Herzer Panza Cook & Batista Co.

9:00 a.m. Ohio Trust Company Legislation
Robert R. Galloway, BakerHostetler LLP

9:30 a.m. Come Back to Ohio!
Robert M. Brucken, Retired Partner, BakerHostetler LLP

10:00 a.m. Break

10:15 a.m. Estate Planning Issues Facing LGBT Clients
Joan M. Burda, Attorney at Law

10:45 a.m. Federal Update
Scott E. Swartz, Wellspring Financial Advisors, LLC

11:30 a.m. Administering Third Party Wholly Discretionary Trusts
David S. Banas, Hickman & Lowder Co., LPA.

12:00 p.m. Lunch on Your Own

12:30 p.m. Use of Beneficiary Designations, PODs and TODs in Estate Planning
Jaclyn M. Vary, Schneider, Smeltz, Ranney & LaFond PLLC

1:00 p.m. Financial Effects of Basis Step Up and Estate Tax Inclusion
Thomas J. Pauloski, J.D., National Managing Director for Wealth Planning and Analysis, Bernstein Global Wealth Management Private Client Group

1:45 p.m. Planning for Basis Step Up with Existing B Trusts
Edwin P. Morrow III, Vice President, Wealth Management, Key Private Bank

2:15 p.m. Break

2:30 p.m. Location, Location, Location: Advising Clients Who Own (Or Who Want to Own) Foreign Real Estate
James Spallino, Jr., Thompson Hine LLP

3:00 p.m. The Intersection of Estate Planning and Governing Agreements for Business Entities
Christina D. Evans, Hahn Loeser & Parks LLP

3:45 p.m. Charitable Giving with Business Interests and Unique Assets
Roger L. Shumaker, McDonald Hopkins LLC
Ginger F. Mlakar, The Cleveland Foundation

4:15 p.m. Adjourn

Disorder in the Court: Professional Conduct Live

Saturday, December 19, 2015 – Submitted for 2.50 Attorney Conduct CLE Hours – CMBA Conference Center
Registration: 8:30 a.m. Seminar: 9:00 – 11:45 a.m.

9:00 a.m. Disorder in the Court: An Attorney’s Guide to Judicial Misconduct
In this interactive presentation attorneys will gain a working knowledge of the Rules of Judicial Conduct and we will review recent ethical decisions where judges were disciplined for ethical misconduct. Attendees have described this presentation as “educational, engaging, interactive, entertaining, lively, informative, humorous, useful and really well done.”

10:30 a.m. Break

10:45 a.m. Seven Names You Never Use When Referring to Opposing Counsel
Fairness, civility, respect and candor are supposed to be the trademarks of our profession. Numerous states including Ohio have set forth standards of courtesy and civility for attorneys. We will review ethical rules involving ex parte communications, speaking with persons represented by counsel and improper conduct by attorneys. Most importantly, in this entertaining and humorous presentation, you will learn the seven names you never use when referring to opposing counsel.

11:45 a.m. Adjourn
Presenter: Philip Bogdanoff
Philip Bogdanoff was a career prosecutor in the Summit County Prosecutor’s Office and argued 20 cases before the Ohio Supreme Court including six death penalty cases. After 30 years of public service, in 2008 he retired from that office as a senior assistant prosecutor. He maintains a website, philipbogdanoff.com, with more information.

Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice Video (Afternoon)

Tuesday, December 22, 2015 and Tuesday, December 29, 2015
Submitted for 3.0 Attorney Conduct CLE Hours – CMBA Conference Center
Registration: 12 p.m. Seminar: 12:30 – 3:45 p.m.

12:30 p.m. Overview of the Disciplinary Process / Places to Seek Assistance with Ethical Questions
Kimberly Vanover Riley, Montgomery Renne & Janson

1:30 p.m. What If Preparedness; Using the CMBA’s WIP Program to Engage in Practice Succession Planning
Deborah A. Coleman, Coleman Law LLC

2:00 p.m. The Worse Case Scenario: Succession Planning for Law Firms
Mary K. Whitmer, Kohrman Jackson & Krantz LLP

2:30 p.m. Break

2:45 p.m. Laughing Lawyers: How the Science of Happiness Can Spark Your Career and Spice Up Your Life
Kurt Jensen, Psy.D., WorkSmart Consultants, LLC

3:45 p.m. Adjourn
The CMBA's Real Estate Law Section presents

37th Annual Real Estate Law Institute Video

Tuesday, December 22 and Wednesday, December 23, 2015

- 12.00 CLE Hours – CMBA Conference Center

TUESDAY, DECEMBER 22, 2015 – 6.00 CLE

8:00 a.m.  Registration & Breakfast
8:30 a.m.  Current Developments
Lori Pittman Haas, Ulmer & Berne LLP
Irene M. MacDougall, Tucker Ellis LLP
John W. Waldeck, Jr., Walter Haverfield, LLP

10:00 a.m.  Break

10:15 a.m.  New Receivership Statute
M. Colette Gibbons, Ice Miller LLP
Tyson A. Crist, Ice Miller LLP
Linda M. Green, Chicago Title Insurance Company, Moderator

11:00 a.m.  Commercial Evictions: It's Your (De)Fault
Michael A. Poklar, Law Office of Michael A. Poklar
Michael R. Stavnicky, Singerman, Mills, Desberg & Kauntz Co., LPA

12:00 p.m.  Lunch on Your Own

12:30 p.m.  Commercial Leasing Issues – 2015
Steven H. Coven, Stark Enterprises
Leigh A. Hellner, Toft Stettinius & Hollister LLP
Robert A. Fuerst, Meyers, Roman, Friedberg & Lewis LPA

1:30 p.m.  Debt and Equity Financing
Anthony D. Delfre, Brown Gibbons & Lang Company Real Estate Advisors
Robert Katitus, Vice President, Civista Bank
Brian J. Lenahan, Brown Gibbons & Lang Company Real Estate Partners, Moderator
Terence L. Thomas, Thomas Legal Counsel Limited, Moderator

2:15 p.m.  Break

2:30 p.m.  CMBS: Then and Now
Jim Doyle, Jr., Sr.Vice President, Bellwether Enterprise
Thomas W. Coffey, Tucker Ellis LLP
Keith H. Raker, Tucker Ellis LLP, Moderator
John C. (Chaz) Weber, Jones Day

3:30 p.m.  Program Concludes

WEDNESDAY, DECEMBER 23, 2015

8:00 a.m.  Registration & Breakfast
8:30 a.m.  Minding Your (Title Coverage) Gaps: Endorsements and Other Tools to Get the Most Out of Your Title Insurance Policy
Leann Davis, First American Title Insurance Company
Michael J. Sikora III, Sikora Law LLC/Omni Title LLC
Mary Robenalt Porter, NorthStar Title Services
Deborah D. Zielinski, Chicago Title Insurance Company, Moderator

10:00 a.m.  Break

10:15 a.m.  Purchase Agreements: Legal Pitfalls and How to Avoid Them

William J. O’Neill Great Lakes Regional Bankruptcy Institute 2015 Video

The New Age of Bankruptcy: How Technological, Economic and Legal Developments are Changing the Bankruptcy Practice

Monday & Tuesday, December 28 – 29, 2015 – CMBA Conference Center – Up to 12.50 CLE – Including 1.5 hours of Professional Conduct – 16 CPE hours

MONDAY, DECEMBER 28 – 5.75 CLE HOURS

9:00 a.m.  The New Age of Bankruptcy
G. Christopher Meyer, Squire Patton Boggs (US) LLP, Moderator
Hon. Pat E. Morgenstern-Clarren, Chief Judge, U.S. Bankruptcy Court, Northern District of Ohio
Edward C. Boltz, President of NACBA, The Law Office of John C. Orcutt, Durham, NC
Richard G. Hardy, Ulmer & Berne LLP

10:00 a.m.  Bankruptcy in the U.S. Supreme Court
Hon. Mary Ann Whipple, U.S. Bankruptcy Court, Northern District of Ohio
David M. Neff, Perkins Coie LLP

11:00 a.m.  Bankruptcy in the U.S. Supreme Court
Hon. Mary Ann Whipple, U.S. Bankruptcy Court, Northern District of Ohio
David M. Neff, Perkins Coie LLP
John A.E. Pottow, Professor, University of Michigan Law School

11:15 a.m.  Break

11:15 a.m.  Being a Successful “T-Lawyer”: How to Expand Into a Modern Bankruptcy Practice
Harry W. Greenfield, Buckley King, Moderator
Richard A. Baumgart, Dettelbach, Sicherman & Baumgart
Marc B. Merklin, Brouse McDowell, LPA

12:15 p.m.  Lunch on Your Own

12:45 p.m.  Oil, Gas, and Mineral Rights and the Restructuring Practice
Sherri L. Dahl, Dahl Law LLC, Moderator
Martin T. Booher, BakerHostetler LLP
Donald P. Fischbach, Coffin, Halter & Griswold LLP
Terry L. Humphrey, Centrus Group, Inc.

1:45 p.m. Receiverships: Everything You Need to Know About Ohio’s New Receivership Law
M. Colette Gibbons, Ice Miller LLP
Scott N. Opincar, McDonald Hopkins LLC
Drew T. Parobek, Vorys, Sater, Seymour and Pease LLP
Jeffrey C. Toole, Buckley King

2:45 p.m. Break

3:00 p.m. Intellectual Property in Modern Insolvency/Restructuring Practice
Heather M. Barnes, Brouse McDowell, LPA
Dov Frankel, Taft Stettinius & Hollister LLP
Rachel L. Steinlage, Meyers, Raman, Friedberg & Lewis
Christopher B. Wick, Hahn Loeser & Parks LLP

4:00 p.m. Adjourn

Tuesday, December 29 – 6.75 CLE Hours

9:00 a.m. The Consumer Financial Protection Bureau (CFPB): Key Regulations, Compliance Issues, and the Impact on Insolvency Practice
Beth Ann Schenz, Huntington National Bank, Moderator
Richard A. Freshwater, Thompson Hine LLP
Kelly Lipinski, McGlinchey Stafford PLLC

10:30 a.m. 200 Years of Bankruptcy History in 30 Minutes
M. Susan Murnane, Author, Bankruptcy in an Industrial Society: A History of the Bankruptcy Court of the Northern District of Ohio

11:15 a.m. Lessons from Recent Chapter 9 Cases
Hon. Steven W. Rhodes, U.S. Bankruptcy Court, Eastern District of Michigan

12:30 p.m. Lunch on Your Own

1:00 p.m. Recent Developments in Chapter 13: Cases, Issues and Trends
Hon. Keith M. Lundin, Judge, U.S. Bankruptcy Court, Middle District of Tennessee
Henry E. Hildebrand, III, Chapter 13 Trustee, Nashville, Tennessee

3:00 p.m. Break

3:15 p.m. Bankruptcy Crimes I: The Ethics of Defending White Collar and Bankruptcy Crimes, and a Bankruptcy Trustee’s Perspective (.75 Professional Conduct CLE)
Brian A. Bash, BakerHostetler LLP
John R. Mitchell, Thompson Hine LLP

4:00 p.m. Bankruptcy Crimes II: The Prosecution of White Collar and Financial Crimes (.75 Professional Conduct CLE)
Steven M. Dettelbach, United States Attorney, Northern District of Ohio
Daniel M. McDermott, The United States Trustee, Region 9

4:45 p.m. Adjourn

The CMBA’s Labor and Employment Law Section presents

The 15th Annual Northern Ohio Labor & Employment Law Conference Video

Wednesday & Thursday, December 30 – 31, 2015 – 9.75 CLE including 1.00 Professional Conduct – CMBA Conference Center
Registration: 8:30 a.m. Conference: 9:00 a.m. – 3:15 p.m.

Wednesday, December 30 – 5.25 CLE

9:00 a.m. Employment Law and Emerging Technologies
Jonathan T. Hyman, Meyers, Raman, Friedberg & Lewis

10:00 a.m. Break

10:15 a.m. Mediation Practice Pointers
Ann-Marie Ahern, McCarthy, Lebit, Crystal & Liffman Co., LPA
Jack E. Moran, McCarthy, Lebit, Crystal & Liffman Co., LPA

11:15 a.m. Pregnancy Leave Rights
Robert A. Zimmerman, Benesch Friedlander Coplan & Aronoff LLP

12:00 p.m. Lunch on Your Own

12:30 p.m. Development of Half the Loaf, Avoiding Protracted Litigation of Statutory Attorney Fee Awards
Bruce B. Elfin, Elfin, Besser, Roer & Torch, LLC

1:15 p.m. Break

1:30 p.m. Background Checks in 2014: How to Strike the Right Balance Between Not Hiring an Axe Murderer, Not Becoming Big Brother, and Not Running Afoul of the EEOC

2:30 p.m. The Claims You’re Missing
Matthew D. Besser, Bolek Besser Glesius LLC

3:15 p.m. Adjourn

Thursday, December 31 – 4.50 CLE

9:00 a.m. Ethical Implications in the Representation of Entities: Lessons from the Penn State Scandal
Karen E. Rubin, Thompson Hine LLP

10:00 a.m. Birds of a Feather: Recognition of Associational Discrimination Claims Under O.R.C. § 4112
Kami Davis Brauer, The Law Firm of Kami D. Brauer, LLC

10:45 a.m. Break

11:00 a.m. Effectively Communicating with In-House Counsel
Stacy C. Hinners, The Sherwin-Williams Company
Lisa N. Khoury-Leszynski, KeyBank N.A.
Shannon K. Patton, Littler Mendelson P.C.
Christina M. Royer, Elfin, Besser, Roer & Torch, LLC

12:00 p.m. Lunch on Your Own

12:30 p.m. NLRB Update
Kelly Summers Lawrence, Frantz Ward LLP

1:15 p.m. LGBT Issues in the Workplace
Christopher J. Lalak, Benesch Friedlander Coplan & Aronoff LLP

2:15 p.m. Adjourn
## RESILIENCE: HOW LAWYERS CAN PREPARE FOR AND COPE WITH THE UNEXPECTED IN PRACTICE
3:00 Attorney Conduct CLE hours
- December 15
- December 22
- December 29
- December 31
- $80 Members
- $110 Non-Mem.
- $60 Gov’t
- $0 CLE Passport

## PITFALLS AND POINTERS FOR YOUNG LITIGATORS: A PERSPECTIVE FROM THE BENCH
12/16/15 – 3:50 CLE hours
- $85 Members
- $115 Non-Members
- $65 Gov’t and New Attys. (< 1 year)
- $55 Affiliate Member (No CLE)
- $0 CLE Passport

## 42ND ANNUAL ESTATE PLANNING INSTITUTE VIDEO
12/18/15 – 2:50 CLE hours
- $195 Members
- $245 Non-Members
- $165 Gov’t
- $150 Affiliate
- Registration for print materials: (Register before 12/11/15 to guarantee.)
- $225 Members
- $275 Non-Members
- $185 Gov’t
- $175 Affiliate

## DISORDER IN THE COURT: PROFESSIONAL CONDUCT LIVE
12/19/15 – 2:50 Attorney Conduct CLE hours
- $80 Members
- $110 Non-Mem.
- $60 Gov’t
- $0 CLE Passport

## 37TH ANNUAL REAL ESTATE LAW INSTITUTE VIDEO
12/22/15 & 12/23/15 – 12:00 CLE hours
- $350 Members
- $400 Non-Mem.
- $275 Gov’t Attys
- $225 Affiliate
- Complete Program registration fee for electronic materials:
- $300 Members
- $350 Non-Mem.
- $225 Gov’t
- $200 Affiliate
- Complete Program (includes lunch) registration fee for printed materials:
- $325 Members
- $375 Non-Mem.
- $250 Gov’t
- $225 Affiliate
- (Register before 12/15/15 to guarantee.)
- $375 Members
- $425 Non-Mem.
- $300 Gov’t Attys
- $250 Affiliate

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

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

### Complete Program registration fee for electronic materials:
- 12/22/15 & 12/23/15 – 12.00 CLE hours
  - $225 Members
  - $250 Non-Mem.
  - $175 Gov’t Attys.
  - $175 Affiliate

### Complete Program (includes lunch) registration fee for printed materials:
- 12/30/15 & 12/31/15 – 13.00 CLE hours
  - $250 Members
  - $225 Non-Mem.
  - $175 Gov’t Attys.
  - $175 Affiliate

### Individual Session registrations:
- Electronic materials:
  - $200 Members
  - $225 Non-Mem.
  - $150 Gov’t Attys.
  - $150 Affiliate
- Print Materials Fee Per Session:
  - $225 Members
  - $250 Non-Mem.
  - $175 Gov’t Attys.
  - $175 Affiliate

### CANCELLATIONS
- • Check here to receive title insurance credit.
  - Attendees requiring title insurance credit must pay non-member price

### WILLIAM J. O’NEILL BANKRUPTCY INSTITUTE VIDEO
- 12/28/15 & 12/29/15 – 1:50 CLE hours
- Complete Program registration fee for electronic materials:
  - $350 Members
  - $400 Non-Mem.
  - $275 Gov’t Attys.
  - $225 Affiliate
- Complete Program registration fee for print materials:
  - (Register before 12/21/15 to guarantee print materials)
  - $375 Members
  - $425 Non-Mem.
  - $300 Gov’t Attys.
  - $250 Affiliate
- Individual Session Registrations:
  - $200 Members
  - $225 Non-Members
  - $200 Affiliate
  - Print Materials: $225 Members
  - $250 Non-Members

### LABOR & EMPLOYMENT LAW CONFERENCE VIDEO
- 12/30/15 & 12/31/15 – 13:00 CLE hours
- Complete Program (includes lunch) registration fee for electronic materials:
  - $300 Members
  - $350 Non-Mem.
  - $225 Gov’t
  - $200 Affiliate
- Complete Program (includes lunch) registration fee for printed materials:
  - (Register before 12/22/15 to guarantee print materials):
  - $325 Members
  - $375 Non-Mem.
  - $250 Gov’t
  - $225 Affiliate
- Individual Session Registrations:
  - $180 Members
  - $205 Non-Mem.
  - $150 Gov’t
  - $135 Affiliate
Ethics in Negotiations

As the practice of law has evolved, negotiations have become a primary source of resolution of matters for both transactional and litigation attorneys. An attorney may never step into a courtroom or log into a research database, but every attorney will be involved in negotiations at some point in his or her career. An attorney’s negotiation skills and the tactics employed during negotiations are fundamental aspects of an attorney’s professional reputation. An attorney cannot be 99% ethical in negotiations without harming his or her reputation. It is an “all or nothing” proposition. Although a reputation for ethical conduct requires a solid commitment at all times during negotiations, there are some areas where ethical rules can vary based on the circumstances.

The Ohio Rules of Professional Conduct are premised on the underlying responsibility an attorney has for the quality of justice as an officer of the court. The preamble to the Rules of Professional Conduct acknowledges the balancing of interests during negotiations, but expressly requires honesty when conducting negotiations.

Although obtaining a favorable result for a client is a fundamental responsibility for every attorney, an attorney must maintain honest communications in dealings with others. The question that arises is to what extent, if any, an attorney can exaggerate or remain silent during negotiations to further the client’s interests. Regardless of whether negotiations are conducted directly or with the assistance of a neutral third-party, a certain level of “puffing” and embellishment is anticipated. Due to the very nature of negotiations, an attorney must walk the fine-line in his or her role as advisor and advocate for the client. As an attorney moves between these roles, there are some clear-cut ethical guidelines for handling unfavorable aspects of the case.

During the negotiation process, the level of candor required will be dictated by the party with whom the attorney is communicating. When communicating with a client, absolute candor is required. Withholding any information regarding the opposing party’s settlement position or information impacting an evaluation of the merits of a position is not permitted. Although managing client expectations is important to a successful attorney-client relationship, downplaying or embellishing a position with a client during the course of negotiations is impermissible. Before informed consent to settlement can occur, a client must understand all relevant information about the matter.

While not ideal, there are times when the negotiation process will be conducted by a judge. Rule 3.3 of the Ohio Rules of Professional Conduct requires candor to the tribunal, including candor to the judge during the negotiation process. Attorneys have an affirmative duty to disclose adverse legal authority to a client. There is no such duty, however, to disclose bad facts if they are not discovered or shared by opposing counsel. Although withholding bad facts from the court during negotiations is permitted, any affirmative or passive misrepresentation, regardless of the purpose, is precluded.

Although there is an express duty of disclosure to the court, there is no corresponding duty to disclose adverse legal authority to opposing counsel or third parties. The ethical obligation of candor is not absolute when interacting with opposing counsel during the negotiation process.

Because attorneys have a duty of reasonable preparedness, an attorney entering the negotiation process is anticipated to have familiarity with the material facts of his or her case and corresponding legal authority. In representing clients, an attorney uses such facts and the weaknesses of the opposing side to negotiate the most favorable settlement for the client. Attorneys are not required to educate opposing counsel on the applicable law and facts during the negotiations.

As long as discovery was promptly and ethically conducted, and the obligations under Civ. R. 26 of timely supplemental disclosure have been met, there is no legal obligation to bring bad facts or legal authority to light during the course of negotiations. Material misrepresentations made to opposing counsel or the mediator, however, are precluded. “Puffery” and exaggerations for purposes of negotiation does not include an attorney misrepresenting the facts or law. Not only do such tactics risk tarnishing an attorney’s professional reputation, it can render a settlement open to attack under claims of negligent or intentional misrepresentation and fraud.

Although factual in nature, the settlement position of an attorney’s client does not need to be disclosed as long as it is not affirmatively misrepresented. As one court noted “[t]o conceal one’s true position, to mislead an opponent about one’s true settling position is the essence of negotiations.” It is not uncommon for absolute settlement positions to change over the course of a transaction or proceeding. Even during the course of negotiations, each side should evaluate and reassess their respective positions. Keeping the client’s settlement position confidential is arguably required under the privilege of attorney-client relationship. Disclosing that position without the client’s express, informed consent and without the client’s best interest at the forefront, is a violation of duty to his or her client.

There are some instances where exaggeration or withholding certain information is defensible in negotiations. However, honesty and dealing with others in good faith is mandated and requires an understanding of the ethical limits in various negotiation settings.

Carol K. Metz is an attorney at Buckley King, where she is the Partner-in-Charge of the Cleveland office. She provides counsel on employment, risk management, and insurance matters. She is a member of the CMBA Ethics and Professionalism Committee, and has been a CMBA member since 2000. Carol can be reached at (216) 363-1400 or metz@buckleyking.com.
A Mindful Practice

BY LORI WALD

No one would consider Antwon powerful, but he is. He is the class bully in the fifth grade at a Cleveland public school where nearly 30 percent of the kids are homeless. As usual, he is in ISE (in school suspension), and as usual, his suspension is the other kid’s fault. He’s permitted to attend the weekly book club I lead and he walks in unable to control his outrage and his anger, but imagine what the world would be like if he could.

Imagine a world where the most powerful and influential people are also the most mindful.

So, I ask him, “On a scale of one to ten, how angry are you?”

He is startled and belligerent. He says he doesn’t know.

“You’re the only one who does know. One to ten, how angry?”

“Nine,” he admits.

I tell him I am going to teach him to use a square breathing where we inhale for five seconds, hold (the top of the square), exhale for five seconds, hold, then repeat.

Twenty minutes later, Antwon is a five. We do another round of square breathing. By the end of the class period he is a one.

The next week Antwon informs me he had gone swimming, and when a boy bothered him in the pool, he did the breath exercise instead of grabbing the kid’s legs and drowning him.

With power and influence comes responsibility and challenge. Antwon found a way to be nonreactive in a moment of conflict. Decisions made with more equanimity and less anger tend to be clearer and better decisions. This as as true for a high-powered attorney as it is for an angry fifth-grader.

Breathing techniques are a part of mindfulness training. Mindfulness, the subject of much attention in the media and the health sciences, is a method of training yourself to attend to the present moment. It is often looked to as a tool to reduce stress and increase focus. It is a powerful tool for powerful people to face challenges in more constructive ways.

The practice of law is rife with challenges. There are deadlines, cranky clients and sneaky opposing attorneys. There is the brutality of timesheets. There are judges. It is a profession renowned for unintelligible legal garble and wordiness. Lawyers are known for being prickly, tricky, and subversive.

There is a growing body of research that asserts a mindfulness practice has a beneficial role in reducing stress, anxiety, depression, and substance abuse. The laundry list of afflictions a mindfulness/meditation practice seems to help alleviate include high blood pressure, anxiety, depression and insomnia.

Although mindfulness is probably best known for being a tool to reduce stress, it can also improve listening skills. To listen deeply and openly is more difficult than it seems. Anyone who has ever sat in a meeting with a client or a senior partner knows this. The mind wanders. Grievances from the past intrude. Worries about the future loom. Mindfulness assists with focus and helps to free the listener from preconceived notions, prejudices and other agendas.

Lawyers are driven by time. Every fraction of an hour is measured in dollars. There is not a magic way to manufacture more time, but a mindfulness practice makes it easier not to get caught up in unhelpful thoughts. Priorities become clearer and it is easier to let go of nonproductive activities.

Spend less time fretting about what cannot be accomplished and there is more time to focus on the important tasks at hand.

More powerful than an executive stress ball, a mindfulness practice can help with the difficult problem of adapting to change. The reason I went to law school was because I had a desire to be an agent of change. That happened to be true for most of the people I met there. But now, some decades later, lucky enough to have enjoyed some privileges and some miracles, I’ve also had some brushes with death, cancer and the IRS. My relationship with the idea of change has deteriorated. The same is often true for clients: stasis seems peaceful while the unexpected is often uncomfortable. The job of an attorney is often to advise a client to take the least bad option.

The simple act of sitting in stillness allows me to embrace surprises.

It helps me find a way to accept and adapt to change. What may once have seemed hopeless and absurd (teaching lawyers to meditate for example) is now something I might consider. I allow myself to pursue possibilities in the face of almost certain failure.

Mindful meditation is the deliberate act of channeling your thoughts down to a trickle. Your thoughts will not stop. When I meditate, I sit in stillness for 20 minutes. Here’s my process:

Sit in a comfortable place. I like to sit on a straight-backed chair with my feet flat on the floor.

I take five or six diaphragmatic breaths. That means when I inhale, my belly goes
out. I imagine a waterwheel in my body (the square breathing would also work). Inhale and exhale smoothly. Inhale, the breath travels up to my head; exhale, the breath spills down. Try to stay rhythmic and not to work too hard.

Next, I imagine a bright light shining out from my eyes, my ears, my nose, my mouth. It’s important to relax your jaw. All sensations that I have experienced so far in the day are gone. I will them away. I send the light down my neck, both shoulders and arms and all fingers. I send the light down my spine to my legs, including my toes. The light ends in my chest cavity where I try to imagine a colorless, empty space.

If you get an itch, feel free to scratch. This is meditation, not a trance.

I focus on my “third eye” (the light between my eyes that I am able to see with my eyes closed). I repeat a mantra. Something simple like at ease or peace or the ambitious Who am I? I use the mantra to remind myself to let go of my thoughts. As a thought passes into my mind (and thoughts constantly pass through my mind), I encourage myself to draw the thought down to my heart. It helps to imagine a magnetic force from my heart that draws the thought downward.

When the next thought pops in, I encourage myself again. Treat yourself kindly, like you would a small child. Say: It’s okay, “you’ll get it next time,” or “try again.”

The whole process takes me 20 minutes although I do not set a timer. My body seems to know when the twenty minutes is up. I try to find the stillness, but it is rare to succeed for more than a moment or two. The only way to fail at mindful meditation is to never try.

There are lots of great reasons lawyers should meditate. There are lots of great reasons everyone should meditate. Even the bully of the fifth grade managed to bully a bit less when he stopped merely to breathe. Imagine a world of calm and compassionate lawyers. If more lawyers found their way to a mindful meditation practice, it would not only be good for those lawyers, it would be good for the world lawyers inhabit.

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

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A Caveat for Fiduciaries

BY JAMES CORCORAN

This article addresses the standard of care required of Fiduciaries in the administration of personal property in Trusts and Estates whether by gift, by sale, or division of property. The standard of duty and care required of a Fiduciary is a standard of selflessness, trust, and total obligation to the interests of the beneficiary. This standard is higher than the reasonable man standard in the law.

What is the Fiduciary's duty in the disposition of the client's personal property? How can a Fiduciary avoid the substantial embarrassment (and potential legal liability) for selecting a venue where the client's property is sold for a price vastly below what that property was actually worth? What sort of due diligence is required to limit embarrassment and potential liability?

Selecting sale venues (generally auction houses and house liquidation sales) and disposition of client personal property is generally the purview of the Fiduciary. Due diligence requires Fiduciaries and wealth managers to exercise a high level of care in selecting auction venues and household liquidators. In fact, this obligation is not often taken seriously. Wealth managers may not be bound as Fiduciaries in their relationship with their clients; however, they too may face similar scenarios involving the disposition of client personal property and potential legal liability.

Black's Law Dictionary defines “Fiduciary” as follows: The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Thus, a person is a Fiduciary who is invested with rights and powers to be exercised for the benefit of another person. (See also ORC 2109.01 et al and cases thereunder).

Does this have any relevance to your performance as a Fiduciary (or a money manager) in dealing with client personal property? It does indeed — as we shall see in two cases noted below in which Fiduciaries dealing with client personal property negligently consigned the property to an auction house or liquidator for both appraisal and sale.

In the cases discussed below, auction houses, liquidators and appraisers failed to accurately identify and/or to assess the inherent value of one or more objects and thus sold the objects in inappropriate venues at a fraction of actual worth and value.

Auction Sales

Recently a Midwestern auction house offered an item for sale, described as “an antique singed gold damascene steel and ivory jewel box, Qajar Dynasty, Persia, ca. mid 19th century.” Sale estimate: $700 – $900. Sale price: $471,528.75.

Before you pop a champagne cork to celebrate, you may want to learn the rest of the story. The same box was subsequently offered at auction by Sotheby’s London, described as “an Ottoman Ivory and Turquoise-Inlaid Box Set with Rubies, Turkey, Early 16th Century.” Sale estimate: £500,000–£700,000 GBP ($1,000,000 – $1,350,000. USD). Note the discrepancy between the two auction house descriptions and the two sale price estimates. The sale price was £2,393,250 GBP ($3.9 million USD). That’s the rest of the story.

House Liquidation Sales

Similar consequences can result from house liquidation sales as well. An appraiser-liquidator sold two paintings from an Estate for $60. The buyers then resold the works for $1.07 million at a major auction house. Estate representatives were unaware at the time of sale that the works were paintings by Martin Johnson Heade, a major 19th century American artist. While the Estate had hired an appraiser in preparation for the Estate sale, the appraiser admitted that she was not a fine art specialist and failed to notify the Estate that there was fine art contained in the Estate, despite her promises to do so.

In this instance, the appraiser may have had no liability because of the caveat that she did not appraise fine art. However, her statement that she would alert the Estate to the presence of any fine art might render her liable.

Lesson Learned

Engaging an appraiser or a liquidator to perform an appraisal (free or otherwise) of personal property and then to subsequently sell the same property is not with out peril. As indicated in the cases above, using the “Free Appraisal” hook to obtain consignments of property for sale at auction or house sales guarantees that the auction house or liquidator will not value the property at the price at which they can sell it, without regard to accurate fair market value.

There is the additional risk that the auction house or appraiser will misidentify the property because they lack the necessary professional skill and expertise to correctly identify and value the item.

The Certified Appraisers Ethical Dilemmas

The national appraisal organizations discourage
their certified members from taking property that they have appraised for resale in their own auction or house sale. The Codes of Ethics and the Uniform Standards of Professional Appraisal Practice (USPAP) also preclude valuing property for which the appraiser does not have sufficient education and expertise to properly identify and correctly value the item. Sadly, Fiduciaries are unaware of these rules regarding valuation and sale of personal property.

Why This Matters to You
In matters such as those described above, irate beneficiaries are likely to seek recourse. From whom are they most likely to collect? There are four options: the auction house, the liquidator, the appraiser, if any, and the Fiduciary.

The beneficiaries are not likely to collect from auction houses. Generally, their consignment contracts absolve the auction house of liability in these situations.

The beneficiaries are also not likely to collect from appraisers. Appraisers are generally judgment proof by virtue of lack of insurance or other assets. Less than 20 percent of “Personal Property Appraisers” in the country are actually certified members of a national appraisal organization. Further, less than one quarter of certified appraisers actually have
significant errors and omissions policies in effect (certification is a prerequisite to obtaining error and omissions insurance from a reputable carrier). Ask your appraiser if he or she is a certified member of AAA, ASA, ISA, RICS. Ask if they carry errors and omissions insurance.

The most obvious target to carry claims of loss is the Fiduciary who designated or selected the appraiser and/or sales venue. Not only do Fiduciaries bear the greater legal responsibility, they also presumably have deep pockets or substantial insurance coverage for errors and omissions.

While it may be convenient for a Fiduciary to rely on a local auction house or liquidator to do an appraisal and sale, this may expose the Fiduciary to serious consequences. Because it is the Fiduciary’s obligation to see that each item is sold in the best and most active market for that specific property, a Fiduciary who selects an inappropriate auction house, liquidator, or appraiser may incur liability for loss of value if items sell for drastically less than their fair market value.

Further, the Fiduciary could incur liabilities for IRS taxes, penalties, and interest relating to grossly underestimated estate valuations. Due to the inherent conflict of interest between their roles as appraiser and as seller, auction houses and liquidators are motivated to value items at prices which they are confident they can sell the property, not at their true fair market value. This, however, may lead to an undervaluation of the property, underpayment of taxes to the IRS, and subsequent taxes, penalties, and interest for underpayment.

Conclusion
Mishandling the disposition of personal property to the financial detriment of the Estate or Trust (and the beneficiaries) is a serious matter. For the Fiduciary, due diligence requires the engagement of an independent and certified appraiser with sufficient expertise in valuing the property being appraised. Thereafter, an auction house (or more than one auction house) and/or a home liquidator can be engaged. Caveat Fideicommissus!

James Corcoran JD, LLM is admitted to practice in New York, Ohio, Massachusetts, and California. He is President and Senior Appraiser at Corcoran Appraisal Group International. James is a long standing Certified Appraiser with 39 years of personal property appraisal experience at Corcoran Appraisal Group International. He has been a CMBA member since 2000. He can be reached at (216) 767-0770 or James@Corcoranagi.com.
Financing health care services for aging veterans is a prevalent problem, which my family has experienced firsthand. My grandfather is a veteran. He served in the Army during the Korean Conflict. In recent years the health of both my grandfather and grandmother has declined. They require assistance in performing day-to-day activities in order to continue residing in their home. Living at home is very important to my grandparents, and my family has worked hard to support them in reaching this goal. But finding financial resources to provide the necessary level of care has been a struggle. My family was fortunate to discover a financial resource for veterans to help cover the cost of the care my grandparents require.

The Non-Service Connected Pension with Aid and Attendance Benefits (A&A Benefits), also erroneously known as the Service Pension, is a needs-based pension provided to eligible veterans, and their spouses or widows, to offset the cost of necessary health care. The A&A Benefits are offered by the Veteran's Administration (VA) for wartime veterans who are over the age of 65 or unemployable and the spouses or widows of such veterans. Despite the great number of veterans, these benefits are an underutilized financial resource. This appears to be due to a general lack of awareness of their availability and the prevalent misinformation regarding the eligibility requirements for the A&A Benefits. For example, the far more stringent eligibility requirements for the Housebound Veterans benefits are often confused with the requirements for A&A Benefits.

Knowing the facts about the A&A Benefits will allow the elder law and estate planning attorney to better serve their veteran clients. Though it is not legal to charge for assisting a veteran in applying for any type of VA benefit, it is legal and permissible for attorneys to charge for providing estate-planning services incorporating such benefits or counseling clients as to what benefits may be available.

**THE BENEFITS**

The A&A Benefits can be substantial. An eligible veteran may receive monthly payments up to $1,788 ($21,466 annually) if single, $2,120 ($25,448 annually) if married to a non-veteran, and $2,837 per month ($34,050 annually) for the household, if married to another qualified veteran. Additionally, a surviving spouse of a qualified veteran may receive up to $1,149 per month ($13,794 annually). The eligible veteran or surviving spouse chooses how and where to spend the A&A Benefits, which are paid directly to the veteran from the U.S. Department of Treasury. The A&A Benefits do not count as taxable income, and the veteran is not required to ever pay the money back. The maximum amount of annual A&A Benefits a particular veteran may be entitled to can be calculated using the Veterans Pension Rate Table at the U.S. Department of Veterans Affairs website: (benefits.va.gov/pension/current_rates_veteran_pen).

**ELIGIBILITY**

In order to be eligible to receive the A&A Benefits veterans must meet requirements regarding the duration, time period and termination of their military service; have a physical disability; require assistance performing daily tasks; and have limited assets and income.

**Service**

To qualify for the A&A Benefits, a veteran must have served at least 90 consecutive days of active duty, with one day having been during a period of war, or served for an aggregate of 90 days of active service during two or more periods of war. The periods of war, as defined in 38 C.F.R. §3.2, are as follows: Mexican Border Period (May 9, 1916 to April 5, 1917); World War I (April 6, 1917 to November 11, 1918 or through April 1, 1920 for veterans who served in Russia); World War II (December 7, 1941 to December 31, 1946); Korean Conflict (June 27, 1950 to January 31, 1955); Vietnam Era (August 5, 1964 to May 7, 1975 and, for veterans who served “in country” before 1964, the start date is February 28, 1961); and, Gulf War (August 2, 1990 through a date to be set by law or Presidential Proclamation). Veterans may be eligible for A&A Benefits without having served 90 days of active duty if they served during a period of war and were discharged or released due to a service-connected disability. A dishonorably discharged veteran is not eligible for A&A Benefits.

**Disability**

To be eligible for A&A Benefits, veterans must have total and permanent disability at the time they apply. According to 38 C.F.R. §3.340, a disability is total when there is an impairment of mind or body which would render it impossible for an average person to have substantially gainful employment. The
CFR defines permanent as reasonably certain to continue throughout the life of the disabled individual. Furthermore, the disability must not have been caused by the willful misconduct of the applying veteran. There is an important qualifier: all veterans over the age of 65 are classified as having a total and permanent disability for the purposes of being eligible for A&A Benefits (though individuals over 65 may resent this designation).

In addition to having a permanent and total disability, a veteran must require assistance performing daily tasks, such as eating, dressing, undressing, "taking care of the needs of nature," etc. For example, being blind or in a nursing home for mental or physical incapacity, or residing in an assisted living facility, will allow an applicant to qualify.

Income Limitations
Veterans may not be eligible for A&A Benefits if they have annual incomes over an amount designated and periodically modified by the VA. The specific maximum level of income for a veteran depends on the marital status and whether the veteran has any dependents. A dependent is a parent, spouse or child who is: unmarried; biological, legally adopted or a step child; under the age of 18 or between the age of 18 and 23 if attending school; or disabled before the age of 18. For example, as of December 1, 2014, an otherwise qualified veteran who has one non-veteran dependent (e.g. a veteran is married or has a child for which he or she is responsible) will be eligible for A&A Benefits if his or her income is under $25,448 per year. If the same veteran had no dependents, he or she would be eligible if his or her income is less than $21,466 annually.

Net Worth Limitations
A veteran with excessive net worth may not be eligible for A&A Benefits. The VA has not set a specific dollar amount to determine what constitutes excessive net worth, but it does take a veteran's wealth into consideration when determining eligibility. In making the eligibility determination in regards to net worth, the VA may factor in a veteran's medical expenses, life expectancy, liquidity of the veteran's assets, and the number and needs of the dependents of the veteran. Certain assets, such as the veteran's primary residence, vehicles and normal household objects are not considered, and will not count against a veteran when determining eligibility.

Application Process
Applying for the A&A Benefits requires veteran applicants to provide the VA with documentation regarding their military service, health, wealth, income and medical expenses. The primary application form is the VA Form 21-527EZ, which can be found at the VA's website (www.benefits.va.gov/vaforms). Along with the Form 21-527EZ, an applying veteran must provide a copy of their Military Service Record (Form DD-214) or separation papers; a Medical Evaluation form (VDA Form 10) completed by a physician; additional documentation regarding current medical issues; documents showing the applicant's net worth and annual income; and an account of the veteran's out-of-pocket medical expenses.

The VA's application-review process takes roughly 8–10 months after the completed application is submitted, according to veteranaid.org. But the VA offers an expedited application process, known as the FDC (Fully Developed Claims) Program (Optional Expedited Process), which has more stringent standards in regards to how and when the application documents must be submitted. According to usseniorvets.com, the turnaround time for the FDC Program is roughly 90 days. If the application documents do not meet the FDC Program standards, the application is moved to the standard application process. The A&A Benefits are generally retroactive back to the first month after the VA receives the application for the A&A Benefits.

My family’s situation in caring for my grandparents, who are in declining health, is far from unique. As veterans and their respective spouses age and their health declines, the need for assistance in meeting the increasing prices of medical care will only grow. The A&A Benefits have greatly benefited my grandparents and have provided much of the funding for the healthcare my grandparents require to continue living at home. Having a basic knowledge of the A&A Benefits will allow the elder law or estate planning attorney to best serve the needs of their veteran clients.

Bryan C. Palmer is an associate attorney at Moore Yourkitch & Dibo. His practice consists of estate planning and probate matters, general corporate and real estate matters for individuals, nonprofits, and privately held businesses. He has been a CMBA member since 2013. He can be reached at (216) 367-1330 or bpalmer@gomylaw.com.
On August 18, 2015, Louis Stokes died at the age of 90, just two months after a diagnosis of brain and lung cancer. He was the grandson of a slave and son of a father who died when he was three years old. His mother worked as a maid and did her best to provide for Louis and his brother Carl as they struggled to make ends meet while living in a public housing project in central Cleveland. Despite his humble beginnings, Louis Stokes became Ohio’s first African-American congressman, who over the course of 30 years in the House, became one of its most powerful members, and used that power to focus federal attention on the nation’s poor. He also made his mark as an attorney, participating in three cases before the United State Supreme Court, including the landmark Terry v. Ohio case. Meanwhile, his brother Carl became the mayor of Cleveland — making him the first African-American to be elected as the mayor of a major United States city.

I am privileged to have known Louis Stokes. We first met when I was a Shaker Heights teacher and he was a distinguished member of Congress. Regardless of his busy schedule, he would frequently visit my classroom to speak with my students.

Fast forward to 2008 when we met again: I, now a partner with Tucker Ellis and President-Elect of the Federal Bar Association Northern District of Ohio Chapter, and Louis Stokes, retired from Congress and an attorney with what was then Squire Sanders. I had nominated him for the chapter’s newly created “Pillar of Justice Award,” and had the pleasure of both informing him he had won and later presenting it to him. Although he had received hundreds of awards during his celebrated career, he was truly touched by this particular award because it honored him for his contributions as an attorney, which were often overlooked due to his long and distinguished political career.

In 2009 — now as chair of the Cleveland Metropolitan Bar Association 3Rs Committee — I interviewed Louis Stokes as part of a video on the Equal Protection Clause and the Civil Rights Movement for use in the Cleveland and East Cleveland Municipal Schools. He had just returned from President Obama’s inauguration. My first question to him was whether he had thought he would see the day an African-American was sworn in as our President. He paused, and for a moment I thought he was going to lose his composure — something Louis Stokes seldom did. He shared that he had never thought it would happen in his lifetime, and how extremely proud he was of our nation in light of the long, hard Civil Rights struggles that paved the way for it.

As I planned for my term as Cleveland Metropolitan Bar President — set to begin in June 2012 — I was aware that while the CMBA had a number of good pipeline diversity programs, there were no opportunities for college students. I set out to remedy that by creating a program consisting of paid summer legal internships and mentoring at law firms, courts, and legal non-profits for Cleveland schools. I had no doubt who it should be named after: Louis Stokes — not only an attorney and “Civil Rights Icon,” but also a graduate of the Cleveland public schools.

We launched the Louis Stokes Scholars Program at my inauguration, where Louis Stokes spoke about how proud he was to have his name associated with it. He told the audience that when he graduated from law school, no such programs existed, and that he and other African-American attorneys were barred from consideration for any jobs with Cleveland’s prestigious law firms. When he met with the first class of Louis Stokes Scholars, he urged them to take advantage of this wonderful new opportunity.

Afterward, he sent me a handwritten note which said:

Words are truly inadequate for me to express my personal appreciation for the tributes you have given me, both in the Federal Bar Association and now the Cleveland Metropolitan Bar. I am truly honored to have my name associated with the Bar’s Internship/Mentorship program … I treasure our friendship. Sincerely, Lou.

Louis Stokes kept in touch with me and the Louis Stokes Scholars Program thereafter, and he participated in the Stokes Scholars graduations held at the end of the summer internships. He was particularly impressed with a graduation presentation in 2012 by two Stokes Scholars who spoke about the Terry v. Ohio case that Louis Stokes had handled, using actual recordings from oral argument and simulating a “Terry Search.” One of those Stokes Scholars is now a 2L in law school and the other will be attending upon graduating from college.

This summer, the CMBA held its fourth Louis Stokes Scholars Program graduation. Unfortunately, because of his health issues, Louis Stokes was unable to attend. However, his grandson Brett Hammond — an Assistant Cuyahoga County Prosecuting Attorney — attended in his grandfather’s absence and as a mentor to a graduating Louis Stokes Scholar who interned with the Cuyahoga County Prosecutor’s Office. It is certainly gratifying to know that another generation of Stokes family members is actively involved in the program.

A great measure of our lives is the impact we have had on those that remain after our passing. By that measure — and any other — Louis Stokes’ legacy will live on as an inspiration to others. I am grateful to have known him, to have honored him during his life, and to have played a role in keeping his memory and legacy alive through the Louis Stokes Scholars Program.
Knowing the Ins and Outs of Donating Tangible Personal Property

BY LISA K. LOWY

As the year comes to an end many people are thinking about last minute charitable donations. When it comes to giving there are many possibilities, not only whom to give but what and how to give. There is of course the obvious gift of money, however another type of gift, which of tangible personal property, can be beneficial to all. Knowing the ins and outs of donating tangible personal property can be the difference between receiving a full tax deduction versus a partial deduction.

First, what is tangible personal property? Wikipedia defines this term as any type of property that can generally be moved (i.e., it is not attached to real property or land), touched or felt. These generally include items such as furniture, jewelry, art, or household goods. I will be referring to tangible personal property, which has appreciated or gone up in value, such as art, jewelry, antiques and collectibles. Donating tangible personal property that goes down in value, or depreciates, has a completely different set of rules. We all tend to think our personal belongings are very special and therefore it is common to overvalue your charitable donation. This is referred to as placing a sentimental value on your items. Unfortunately, the true value of our depreciating belongings is typically much different (and much lower) than the sentimental value we place on them. The government has strict tax regulations in place to assure common household goods are not overvalued. A donor should always consult a tax professional and look at the IRS Publication 561, Determining the Value of Donated Property. If there were ever a question of value, it would be wise to consult a qualified appraiser. This can provide the donor with piece of mind and could prevent wasted time and unwarranted stress.

What should an attorney look for and expect from a qualified appraiser?

According to The Appraisal Foundation (TAF), which Congress created as the Source of Appraisal Standards and Appraiser Qualifications “Attorneys who engage fine or decorative art appraisers should expect to receive a defensible and credible appraisal report. The report prepared should meet the requirements of USPAP and those of any government entity that may be involved in the assignment. Attorneys, as well as all clients, should seek an appraiser with verifiable education and experience in valuing the type of property being appraised.”

When is a charitable donation appraisal needed?

An appraisal is required when the property being donated exceeds $5000. The IRS requires that the donor have a qualified appraisal written by a qualified appraiser and to submit Form 8283 with the tax return on which the deduction is being claimed. If artwork is valued over $20,000, the donor must also include a copy of the qualified appraisal with the tax return. In cases where property is not art and is valued over $500,000, the donor must attach the qualified appraisal to the tax return. The IRS requires that Fair Market Value (FMV) be used when appraising value for donation. The IRS defines Fair Market Value (FMV) as “the price that property would sell for on the open market. It is the price that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.”

Since donating tangible personal property can be very beneficial to both the donor and the organization, here are several questions the donor needs ask in order to optimize tax deduction results.

Does the charitable organization have tax-exempt status?

• A Donor can check if an organization is eligible to receive the tax-deductible contribution by visiting www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organizations-Select-Check-Description-of-Pub.-78-Database
• If the organization does not appear on this list the donor should request their status and a copy of the Internal Revenue Service determination letter from the organization.

The kind of property

• If the appreciating property donated by a collector (owned for at least one year) the donor can typically expect to receive full Fair Market Value.
• What if the gift was self-created? In cases where an artist or author would like to donate their own work to a qualifying nonprofit organization the IRS will only allow the cost of goods to be deducted, regardless of the Fair Market Value of the work.

Does the donation meet Related Use Rule?

• In order to receive a full Fair Market Value deduction the intention of use by the organization must be related to its charitable purposes or functions. The donor may not be allowed to claim Fair Market Value for the donated property if the contributed personal property is put to an unrelated use by the charity, or has a claimed value of more than $5,000, and is sold, traded, or otherwise disposed of by the qualified organization during the year of the donation, and the organization has not made the required certification of exempt use as outlined on Form 8282, Part IV.

For example: Mr. and Mrs. Jones donate artwork to a school and the school intends on placing the artwork in their library to use for educational purposes. This donation would be considered a Related Use and therefore would be able to benefit by deducting full Fair Market Value.

However, let’s say this same work of art is donated to a school but the school intends to sell the artwork, within a year, to raise money for much needed supplies. This donation would be considered an Unrelated Use and therefore deduction would be considerably less than Fair Market Value.

Knowing if the donation will be used in an appropriate and related manner by the organization makes a tremendous difference in the final deducted amount. A written statement from the organization stating use and for what length of time would be highly recommended to keep in your records.
Does the donor have a qualified appraisal?

The TAF states: “A credible appraisal report clearly identifies the objects appraised, the scope of work performed by the appraiser, the client and other intended users, and the intended use of the report. The appraisal report must also include the definition of value (e.g., fair market), the effective date, and the subject objects relevant characteristics. The data and analysis required to support the opinion of value must be effectively communicated.”

• Ample information must be included so the reader completely understands the conclusions and those conclusions are reasonable.
• The report must be prepared in compliance with USPAP (Uniform Standards of Professional Appraisal Practice) and as required by the IRS, these elements need to be contained in a qualified appraisal:
  1. Name and address of client
  2. Name, contact information and qualifications of the appraiser
  3. Signed Certification, including:
     • Appraiser does not have any bias
     • Does not have a present or prospective interest in the property
  4. Scope of work
  5. Purpose of the appraisal
     • Donation
  6. Approach to value used and defined
  7. Type of valuation used and defined
  8. Marketplace in which valuation is applied
  9. Relevant dates
     • Date inspected
     • Date to be gifted
     • Date of report
  10. Detailed description of appraised property
  11. Disclaimers, extraordinary assumptions, assumptions and limitations
  12. For Appraisals relating to IRS Donation:
     • Statement that appraiser has not been disqualified by the IRS
     • Statement that the appraiser acknowledges that the appraisal will be used in connection with a tax return or claim for a tax refund and that a substantial or gross valuation or misstatement resulting from the appraisal may subject the appraiser to a civil penalty
     • Appraiser’s Tax ID#
     • Statement of the appraiser’s qualifications specific to the item(s) appraised
     • Statement of how the objects were acquired and prices paid (if known) Completion of IRS form 8283
     • Related Use
     • Donee
  13. Support for valuation conclusions
     • State market analysis
     • Markets used
14. Support for valuation conclusions (if applicable)
   • Comparables
   • Artist/Craftsperson biography
   • Any additional related analysis

Within the report, the donor should expect to see photographs of donated items as this will help aid and support findings. Appraisal needs to be dated within 60 days of making donation.

A donation of tangible personal property to charities or planned giving organizations is a wonderful act, and also very beneficial to both parties. Donors should always be advised to consult a professional to assure full benefits will be achieved.

Lisa K. Lowy ISA AM is the co-owner of L&L Estate Liquidation & Appraisal Services, LLC. Lisa is an Accredited Member of the International Society of Appraisers (ISA) and has earned a dual professional designation in both Fine Art Appraising and Antiques and Residential Contents. L&L is a full service company offering estate liquidations, personal property appraisals and auction management coordination. She joined the CMBA this year. She can be reached at (440) 773-4664 or lisa@llestateliquidation.com.
### December

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<td>14</td>
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<td>CMBF Board of Trustees Meeting</td>
<td>Certified Grievance CLE – 1 p.m.</td>
<td>Domestic Relations Pro Bono Training &amp; CLE</td>
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<td>Professional Conduct Video – 9 a.m.</td>
<td>Pillars Program – 10 a.m.</td>
<td>CAP meeting – 11:30 a.m.</td>
<td>Estate Planning Section Meeting &amp; CLE</td>
<td>Grievance Committee Meeting</td>
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<td>PLI: Banking Law Institute – 8:30 a.m.</td>
<td>Labor &amp; Employment Section &amp; CLE</td>
<td>CMBA Board of Trustees Meeting</td>
<td>Pitfalls &amp; Pointers for Young Litigators – 1 p.m.</td>
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<td>PLI: Understanding Securities Law – 8:30 a.m.</td>
<td>Membership Committee Meeting</td>
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#### Saturday, December 19 – Disorder in the Court – 9 a.m.

### January

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<td>CMBF Executive Committee Meeting – 8:15 a.m.</td>
<td>Women in Law Section Meeting</td>
<td>YLS Council Meeting</td>
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<td>Grievance Committee Meeting</td>
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<td>CMBF Board of Trustees Meeting</td>
<td>ADR Section Meeting</td>
<td>Insolvency Law Section Meeting (Brouse McDowell)</td>
<td>JFA Committee Meeting</td>
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<td></td>
<td>PLI – 8:30 a.m.</td>
<td>JCRC Interviews – 8:30 a.m.</td>
<td>CMBA Executive Committee Meeting</td>
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<td>UPOL Committee Meeting</td>
<td>Workers’ Compensation Section &amp; CLE (State Office Building)</td>
<td>Bankruptcy &amp; Commercial Law Section EC Meeting</td>
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<td>JCRC Interviews – 8:30 a.m.</td>
<td>Ethics Committee</td>
<td>Real Estate Law Section Lunch</td>
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<td>PLI – 9 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
<td>Pro Se “Plus” Divorce Clinic – 1 p.m.</td>
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<td>Estate Planning Section &amp; CLE</td>
<td>Grievance Committee Meeting</td>
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<td>CAP Meeting – 11:30 a.m.</td>
<td>CMBA Board of Trustees Meeting</td>
<td>Membership Committee Meeting</td>
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<td>Family Law Section &amp; CLE</td>
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<td>PLI – 8:30 a.m.</td>
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<td>PLI – 8:30 a.m.</td>
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<td>3Rs Committee Meeting</td>
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All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
Law Practices Wanted/For Sale

Law Firm Seeking Acquisitions – West-side firm with over 35+ years of experience can help you retire. The firm is seeking to merge or acquire practices with a corporate, civil litigation, and/or estate planning focus. The firm is motivated to help you retain your clients and provide years-long annuity in retirement. The firm has a high-touch relationship-based practice. All information will be held in strict confidence. dds2015@gmail.com

Office Space/Sharing

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

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


Beachwood – Five-star space. Needs joyful personalities. Some work sharing. Federal experience, a plus. Rent: too little to print. Garage available. (216) 244-3423

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

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

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

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

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


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.

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

Chagrin Falls – Office space available in Chagrin Falls law firm for complementary practice or of counsel relationship. Available space contains receptionist, conference room, new computer equipment, furnishing. Looking for experienced attorneys with own clients only. Call Alex at (440) 571-7775.

Downtown Cleveland – 1,368 sf suite on the 17th floor of North Point Tower, a Class A building, 5-person suite within an established 13,635 sf law office. Includes large Lake-view executive office, 2 additional offices, and two large workstations. Access to high-tech conference rooms, a copy room, and file cabinets. Newly and fully furnished with Herman Miller and other top-grade furniture. Building amenities include conference space, fitness center, and parking garage, $20/sf. Call Barbara @ (216) 357-2091 for more information.

Downtown Cleveland – 13,635 sf law office. Includes receptionist, waiting area, conference room, kitchen, phone, printer/copier/fax, Internet. Space available for paralegal/secretary. Contact Annette at (440) 720-0379 or asamber@hendersonschmidlin.com.

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.

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

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.

Mayfield Heights – Beautiful office space in Mayfield Heights available with conference room, receptionist, all necessary law firm amenities. complimentary 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.

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


Superior Building – Offices available in professionally decorated suite. Congenial environment with possible referrals. Will also consider barter arrangement for younger attorney seeking to establish own practice. Jack Abel or Lori Zocolo at (216) 621-6338.

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.
**Welcome**

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**Westlake** – 1230 sq ft. office space available in Westlake, Ohio, $1800/mo. offices plus conference room with kitchen. Contact Stephen or Matt at (440) 782-7822

**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.

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**For Sale**

- Nice Office Furniture – desk, credenza, chair, bookcases, filing cabinet, storage for case files, leather couch, computer desk, modern marble work table (216) 856-5600
- Sligh Mahogany Leather – Top Desk and Matching 4-Drawer Credenza – Tower East Office in Shaker Heights. Madelon Sprague at (216) 310-2512 or MadiSprague@gmail.com

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**Services**

- Experienced Attorney willing to co-counsel cases in Cleveland and all municipal courts – Contact Joe at (216) 363-6050.
- Experienced Process Server – Super competitive prices – flat rate $50/address within Cuyahoga County. First attempt within 24 hours. Pente Legal Solutions (216) 548-7608 or lisa.vaccariello@pentellc.com
- JD / Banking / CRE – Brown Gibbons Lang Real Estate Partners – Highly-experienced dealmakers in Healthcare, Hospitality, Industrial, Multifamily. Brian Lenahan (216) 920-6656 or blenahan@bglco.com
- Looking to slow down or starting to think about retirement? Attorney with established probate/estate planning/small business practice looking to expand current practice; (216) 245-8861
- MarcoAuction.com – Court: Estate and Probate, Divorce, Power of Attorney; Real Estate: Residential and Commercial; Appraisals: Insurance, Jewelry and Antiques; and Chattel Items: Farming equipment – Marco Marinucci, Auctioneer – (440) 487-1878 or RealEstateAuctions39@yahoo.com
- 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.lekanconsulting.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

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

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**Rebecca Advent**
**Dana R. Beveridge**
**Melissa M. Bilancini**
**Donnalee Cotone**
**Kimberly Michele Cunningham**

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**Michael Deemer**
Downtown Cleveland Alliance

**Brittany Rae Fitzgibbon**
Javitch Block LLC

**Douglas Michael Gault**
Wealth Health, LLC

**Suzanne M. Godenswager**
The Law Offices of Manbir Sandhu, LLC

**Nicole Marie Gratzer**
Avery Dennison Corp.

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**Wendy S. Hawbaker**
Ashtabula County Common Pleas Court

**John E. Jackson**
Cuyahoga County Court of Common Pleas

**Diana D. Jancura**
Jancura & Associates, LLC

**Nathan S. Kott**

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**Ronald J. Lemieux**
**Thomas E. Ruck**
**Andrew Tomko**
**Torrin Kurt Treu**
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New Associations & Promotions

Heather E. Kimmel is now the General Counsel of the United Church of Christ.

Meyers, Roman, Friedberg & Lewis is pleased to announce that Hunter W. Benson has joined the firm as an Associate. His focus will be on real estate and corporate transaction work.

Tucker Ellis LLP is pleased to announce that Carlos Garritano has joined the firm as a partner in its growing Intellectual Property and Brand Protection Group, further expanding its capabilities in that area.

Monica L. Frantz joins Weston Hurd LLP as an Associate. Monica focuses her practice on litigation with an emphasis on insurance coverage and defense.

Honors

McCarthy, Lebit, Crystal & Liffman Co., LPA is proud to announce the following attorneys selected by their peers for inclusion in The Best Lawyers in America® 2016. The following are the McCarthy Lebit attorneys named to Best Lawyers® 2016: Larry Crystal, Robert T. Glickman, Kimon P. Karas, Robert R. Kracht, Kenneth B. Liffman, Christian R. Patno, Charles P. Royer, and David A. Schaefer.

Ulmer & Berne announces that James A. Goldsmith, partner and Chair of the firm’s Trusts & Estates Group, has been named one of Northeast Ohio’s 100 Most Connected in Cleveland for 2015 by Crain’s Cleveland Business.

Rolf Goffman Martin Lang LLP is pleased to announce the following attorneys listed in The Best Lawyers in America® 2016: Carol Rolf (Health Care Law); Aric Martin (Health Care Law); Paul Lang (Health Care Law); Ira Goffman (Health Care Law); Rick Pivonka (Banking & Finance Law); and Rob Pivonka (Labor Law – Management).

BakerHostetler is proud to announce that Partner David Proano was named in Crain’s Cleveland Business 2015 “Forty Under 40 Awards.” He was selected for his professional achievements and civic contributions in Northeast Ohio.

Ulmer & Berne is ranked in 39 categories in the 2016 U.S. News – Best Lawyers® “Best Law Firms” rankings. Among these, the firm earns U.S. News – Best Lawyers highest rankings in 21 categories. The firm also ranks nationally in 16 categories.

Ulmer & Berne achieved a “Metropolitan Tier 1” ranking in the 2016 “Best Law Firms” in the following categories: Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law; Commercial Litigation; Construction Law; Employee Benefits (ERISA) Law; Employment Law – Management; Insurance Law; Labor Law – Union; Litigation – Antitrust; Litigation – Banking & Finance; Litigation – Bankruptcy; Litigation – ERISA; Litigation – Labor & Employment; Litigation – Real Estate; Litigation – Regulatory Enforcement (SEC, Telecom, Energy); Litigation – Securities; Litigation – Trusts & Estates; Mass Tort Litigation/Class Actions – Defendants; Product Liability Litigation – Defendants; Real Estate Law; Tax Law; and Trusts & Estates Law.

Cavitch, Familo and Durkin Co., LPA, is pleased to announce the following attorneys listed in the Best Lawyers in America® 2016: Shareholder James S. Aussem (Corporate Law; Trusts and Estates), Managing Shareholder Michael C. Cohan (Commercial Litigation), Shareholder Timothy D. Johnson (Insurance Law; Professional Malpractice Law – Defendants), and Shareholder Roy A. Krall (Litigation – Trusts and Estates; Trusts and Estates).

Roetzel & Andress LPA has been ranked in the 2016 “Best Law Firms” list by U.S. News & World Report and Best Lawyers® nationally in 5 practice areas and regionally in 33 practice areas. National rankings were awarded in Commercial Litigation, Financial Services Regulation Law, Litigation – Construction, Real Estate Law and Transportation Law.

Roetzel’s Cleveland office earned a Metropolitan Tier 1 ranking in Medical Malpractice Law – Defendants and additional tiered rankings in: Banking and Finance Law; Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law; Commercial Litigation; Corporate Law; Financial Services Regulation Law; Litigation – Antitrust; Litigation – Securities; and Workers’ Compensation Law – Employers.

Elections & Appointments

Hugh Berkon, a partner with Hermann Cahn & Schneider LLP, has begun a one-year term as President of the Public Investors Arbitration Bar Association.

Announcements

Matt Fitzsimmons, a partner at Nicola, Gudbranson & Cooper, just concluded a five-year term as Chairman of the Board of Trustees of NorthEast Ohio Neighborhood Health Services, Inc., fla the Hough-Norwood Clinics. Matt will remain as a Board Member. He has served on the Board for 21 years.

Mazanc, Raskin & Ryder Co., LPA is pleased to announce its inclusion in the Best Law Firms list for 2016, published by U.S. News & World Report in conjunction with Best Lawyers. The firm received a Metropolitan Tier 1 ranking in Cleveland, Civil Rights Law.

Ohio Supreme Court Chief Justice Maureen O’Connor visited the Cuyahoga County Common Pleas Court on October 22 and toured the building after an informal meeting with judges and magistrates in the court’s domestic relations division. Chief Justice O’Connor emphasized the importance of data collection, and she praised the court’s judges and magistrates for excellent case management statistics. Chief Justice O’Connor also acknowledged the judges’ and magistrates’ teamwork in successfully moving the docket, and she addressed issues of judicial leadership and its importance to moving courts forward.

Something To Share?
Send brief member news and notices for inclusion in the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org.
February 13, 2016

Music Box Supper Club

Great food, drinks, live music, dancing, and more!