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(L-R) Roger Synenberg, Nadeen Hayden, Clare Moran, Dominic Coletta
NOVEMBER 2015

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Fisher & Phillips LLP
Is Honored To Announce
Sarah J. Moore
Has joined the Firm as Partner in our Cleveland office

Sarah has extensive experience crafting practical solutions to legal challenges faced by public and private employers, with a primary focus on labor relations, negotiations, employment practices and day-to-day operations. In addition, Sarah works closely with businesses of all sizes to integrate emerging technologies into their employment practices to prepare them for future innovations that affect their relationships with employees.

Save the Date!

2016 Golf Outing

June 27th

Westwood Country Club
Christopher Dearth
Firm/Company: Lexis Nexis
Title: Account Executive
CMBA Join Date: 2015
College: Wright State University

WHY DID YOU JOIN THE CMBA?
To connect with legal professionals in Northern Ohio. Sharing best practices, networking, discover volunteer opportunities, and to work as a community to help support The Rule of Law in Ohio and beyond. To breakdown the belief that LexisNexis only provides case law research, and create awareness of our Corporate Legal solutions.

TELL US ABOUT YOUR FIRST EVER JOB?
I worked at a sub shop when I turned 16. This was a requirement from my Dad in order to have access to a car. The highlight of my job featured the use of a robust “Mayonnaise gun”!

TELL US ABOUT YOUR FAMILY.
I married my best friend, and former division 1 volleyball player, Carrie. We have two crazy boys that are ten years apart, the older of which is a master of all things Minecraft. Our younger son runs us to the edge of sanity every day, but I wouldn’t change it for anything. I’m blessed to be surrounded by love and support.

WHAT’S ON YOUR BUCKET LIST?
The ultimate motorcycle adventure ride, from Ohio to Argentina and back! Visit Kent, England where the Dearth family got started generations ago. Tour the Dogfishhead Brewery in Milton, Delaware.

Arun Kotthaa
Firm/Company: Tucker Ellis LLP
CMBA Join Date: 2008
Undergrad: Case Western Reserve University
Law School: The Ohio State University College of Law

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
A national park ranger.

WHEN HAVE YOU SEEN THE CMBA MISSION AT WORK?
The lawyer referral program. People from across the county to across the street have access to first-rate Cleveland practitioners who are pre-qualified by CMBA. A fantastic program – I just joined!

WHAT CITY/NEIGHBORHOOD DO YOU LIVE & WHAT DO YOU LOVE ABOUT IT?
Shaker Heights. I love the intense (sometimes too-intense) pride in our community and the commitment to public service.

WHAT DO YOU LOVE TO DO OUTSIDE OF WORK/ON THE WEEKENDS?
Spend time with my wife and kids (ages three and one). We spend every minute outdoors — even in rain, sleet or snow.

WHO HAS INFLUENCED YOU MOST IN LIFE?
Charles Dickens — the greatest storyteller of all time. Something we also do as lawyers!

WHY DID YOU BECOME A LAWYER?
Mahatma Gandhi said “see the good in people and help them” — that’s why.
February 13, 2016

Music Box Supper Club

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 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.

Call (216) 696-3525 to sponsor.
A Nation’s Gratitude

In the United States, we have a uniquely American holiday, and not just because it is celebrated on a Thursday, so that most of us get Friday off, too.

In proclaiming Thanksgiving Day, then-President Abraham Lincoln created a day for Americans to look about them and notice the bounty and beauty of their country, and thank their creator for their good lives. What is almost perverse about the Proclamation is that it was issued October 3, 1863 — smack in the middle of the Civil War, when presumably bounty, beauty and thanks were in short supply in these not-so-United States.

But President Lincoln sought to present the ongoing war in a different context. He acknowledged the ongoing civil strife, but then noted that, away from the battlefields, American harvests were rich and American industry was strong. He encouraged Americans to place the conflict in its (to him) proper perspective: a necessary, difficult but not forever consuming element of our free society. Notwithstanding the war, he emphasized, we were fortunate to be Americans.

Today, much of President Lincoln’s message still resonates. We have not yet overcome the challenges that were fresh 150 years ago. Even so, we Americans have much to appreciate. Let us remember this not only later this month, but always.

The following are words of gratitude from staff about their CMBA experience:

Kari Burns, Assistant Bar Counsel
I left the CMBA after clerking throughout law school, only to return as a lawyer four years later. It was as if I never left. I am thankful for the camaraderie in helping make the CMBA the best it can be. I am thankful for the many volunteers that have already taught me so much about the profession and practice of law. I am thankful for the broad range of opportunities and interests our Bar Association provides.

Melanie Farrell, Manager of Facility Planning & Board Relations
I am grateful for the opportunities the CMBA has provided to me over the past five years. Not only do I work among an amazing staff of people I hold dearly, but my career has done a complete 180 since I started. I would have never dreamed of the day I would say, why yes, I sell conference center space! But I love every minute of it and especially the way it connects us further to Cleveland. Thank you, CMBA!

Mary Groth, Director of Development & Community Programs
I am grateful for CMBA members who give so much back to the community through their volunteer service. One example is Dennis Matejka, a 3Rs volunteer since the program’s start in 2006. Dennis not only volunteers at Max Hayes High School, but he also joins another team each year at a different school to help the program reach more students. In four more years, Dennis will have volunteered at every Cleveland high school through The 3Rs. He is The 3Rs Superman. Thank you, Dennis!

Lucy Jackson, Receptionist & Catering Coordinator
I am thankful for the gift of work; I am thankful for the ability to provide for myself and my family; I am thankful for the new opportunities ever present in my life; I am thankful for my professional relationships of friends and co-workers; I am thankful for my many mentors I have had in my career; I am thankful for the ability to learn new things in new ways; I am thankful for the chance to use my skills in productive ways; I am thankful for my ability to help others in their careers; and I am thankful for all of the many chances I have to grow, learn, and become who I am really meant to be in my career. So, whether it is being thankful for business casual becoming the new “norm,” or being thankful that the CMBA feels like home, we all have something in our jobs to be thankful for. We are thankful in so many ways; many things we take for granted but we should stop and be thankful each and every day.

Samantha Pringle, Director of CLE & Sections
I am thankful to work with so many wonderful and supportive seminar chairs and Section leaders here at the CMBA. I consider it a success when volunteers come back to chair another program or move on to another leadership role in the CMBA — that means I haven’t run them off with my many phone calls and emails. I am thankful that so many of the volunteers I work with have become personal friends — and not just on Facebook.

Jim Smolinski, Lawyer Referral Service Manager
I am thankful for CMBA connections — my own, and those we make for others through the CMBA Lawyer Referral Service (LRS). Individuals coming through LRS frequently express heartfelt appreciation for giving them hope and direction where they had none. Likewise, LRS attorneys relay excitement whenever we refer a quality matter to them. I am thankful to work with so many wonderful volunteers I work with have become personal friends — and not just on Facebook.

As for my own CMBA connections, I am thankful for my co-workers and the many LRS attorneys I happily call “friends.” Above all else, I am thankful for my wife Halle, whom I met through the CMBA!

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.
Section & Committee Spotlight

THE 3RS COMMITTEE
Chair
James W. Satola
jsatola@roadrunner.com

Staff Liaisons
Mary Groth
mgroth@clemetrobar.org
Jessica Paine
jpaine@clemetrobar.org

Regular Meeting Time
Meets monthly, typically the last Wednesday of each month at noon

What is your goal?
To provide oversight and support for the CMBA’s 3Rs – Rights, Responsibilities, Realities Program and the annual Cleveland Mock Trial Competition that benefit over 3,000 high school students in the Cleveland and East Cleveland public schools.

What can members expect?
The Committee includes lawyers, judges, law students and teachers and administrators from our partner school districts – Cleveland and East Cleveland. Members enjoy the opportunity to work together to build the strongest possible programs for our students and volunteers.

Upcoming events/activities?
3Rs volunteers have been matched with classes and are starting their classroom visits. Because of changes in graduation testing requirements made by the state, 3Rs is now in the 11th grade American Government classrooms and a new curriculum has been introduced this year.

Recent event?
To kick off the school year, we celebrated the 10th anniversary of The 3Rs with a fun and well-attended birthday party for volunteers, teachers and student-alumni at the Vault on September 24. See Wrap-Up on page 23.

Section and Committee membership is a great way to get plugged in at your local Bar!
For information on how to join a section or committee, contact Samantha Pringle, Director of CLE & Sections at (216) 696-3525 x 2008 or springle@clemetrobar.org.

LITIGATION SECTION
Amanda T. Quan, Chair
Ogletree, Deakins, Nash, Smoak & Stewart, P.C., amanda.quan@ogletreedeakins.com

Next Meeting:
Friday, November 20th at 12 p.m. at Ogletree Deakins (127 Public Square, 4100 Key Tower)

What can members expect?
Access to outstanding (yet affordable) CLEs, opportunities to network with a diverse group of litigators, and a great way to get more involved with the Bar Association.

Recent event?
Every year, the Section organizes a Litigation Institute seminar focusing on key topics and developments in litigation. On June 4th, the Section hosted another successful Litigation Institute, “90 Days to Trial – Preparation During the Last Three Months.” The half-day seminar (and cocktail reception) allowed members to connect and to discuss strategy and preparation tactics for the months leading up to trial. The CLE sessions provided insights from the plaintiff’s perspective, a defense perspective, and a Judge’s perspective. In addition, attendees learned how jurors respond, and the general psychology of jurors, from an experienced jury consultant.

INTELLECTUAL PROPERTY LAW SECTION
Robert A. Jefferis, Co-Chair
Driggs Hogg Daugherty & DelZoppo Co., LPA
rjefferis@dnllaw.com

Edwin A. Sisson, Co-Chair
Edwin A. Sisson, Attorney at Law, LLC
Ed@sissoniplaw.com

Regular Meeting Time:
The section meets three to four times per year, typically for lunch or other special event as time requires

What is your goal?
Provide a forum of which intellectual property law practitioners can meet and discuss intellectual property issues, such as patents, trademarks, copyrights, trade secrets according to case law and/or industry practice.

What can members expect?
Members can expect dialog with other practitioners and topics of interest selected by the members.

Recent events to highlight?
On October 21, the Chief Economist from the Small Business Association provided a luncheon presentation of “Why IP matters to small business.” On August 1, members of the section participated in a bike ride and fundraiser for the Multiple Sclerosis (MS) Buckeye Breakaway as a team in partnership with the Cleveland Intellectual Property Law Association (CIPLA). On May 20, the section held a luncheon roundtable discussing a Federal Circuit case from February 10, 2015, Helferich Patent Licensing LLC v. NY Times et al. regarding patent exhaustion and authorized acquirers.

Section and Committee membership is a great way to get plugged in at your local Bar!
For information on how to join a section or committee, contact Samantha Pringle, Director of CLE & Sections at (216) 696-3525 x 2008 or springle@clemetrobar.org.
Solo But Not Alone

One of the hot buzzwords in the legal profession right now is "incubator." The concept of legal incubators began to develop when the financial crisis landed and law school graduates started facing tremendous obstacles landing "real lawyer" jobs. Across the country, the academic community, bar associations and even some law firms have been experimenting with incubator and residency programs as ways to provide law students and recent graduates with access to both small-business entrepreneurship and substantive legal work. The ultimate goal, of course, is to get new lawyers to work — and then keep them working.

Incubators are essentially training programs for newer attorneys who are interested in starting their own firms. Most programs last one to two years. Participants typically receive access to technology and office space, as well as experienced attorneys who can provide mentoring on topics ranging from developing marketing and client development strategies to how to build a practice in a particular area of law. Many incubators also incorporate a focus on serving low-income and/or modest means individuals given the staggering volume of unmet legal need in those arenas.

Bottom line, incubators represent a win-win arrangement benefiting new attorneys, the law schools and organizations that sponsor the programs, and the surrounding community.

As early as 2008, Cleveland-Marshall College of Law began designing an incubator. As the legal labor market constricted dramatically, the law school decided to form an Advisory Council that could help assess the impact of the crisis on greater Cleveland. Comprised of prominent C|M Law Alumni and other important Cleveland stakeholders with expertise in small law firm management, the Advisory Council quickly landed upon the realization that new educational opportunities would be necessary in order to provide immediate aid to students suffering through what everyone hoped would be a temporary downturn in the market. In addition, they contemplated longer-term benefits those new opportunities could provide in terms of transitioning legal education toward a more practice-oriented education, contributing to innovations in the delivery of legal services, and creating a laboratory for study of living law firms in action.

From those early seeds of inspiration grew the Cleveland-Marshall College of Law Solo Incubator.

Fast forward to today. Under the leadership of Dean Craig Boise, Professor and Faculty Director Christopher Sagers, and practicing attorney and Program Coordinator Ashley Jones, the C|M Law Solo Incubator is well into its second year of operation. It is housed in a newly constructed physical office space at the law school which can accommodate as many as ten separate lawyers or "tenants." Tenants pay a modest monthly rent in exchange for 24/7 secure access to private offices, conference room space, file/copy room and other amenities. In addition, tenants receive a suite of free or discounted products and services — including membership in the CMBA — that are designed to help accelerate their start-up so they can focus on landing clients and accepting new matters. And perhaps best of all, the Incubator brings together similarly motivated newer attorneys who will not have to go-it-alone while building their solo practices.

The C|M Law Incubator is currently home to three tenants. One of them, Matt Williams, is a 2013 C|M Law graduate who has been building a successful criminal defense practice in the year since he joined the incubator. Another, and the newest tenant, is Amanda Hawkins. After earning her undergraduate degree from Cleveland State University and her JD from Regent University, Amanda initially focused on building a practice in domestic relations, including becoming a certified Guardian ad Litem with the Cuyahoga County Juvenile Court. Recognizing how challenging the domestic relations arena can be, Amanda is also working to add experience in trust and estate planning work as well.

While still a fairly new program, some of the early tenants have moved on to pursue practices on their own. Jeremy Adell, a 2013 C|M Law graduate, recently completed a year in the incubator. Since the incubator was still being built when he graduated, Jeremy began his legal career with the City of Cleveland handling matters related to public, grant-funded real estate development projects. While the work was good, he wanted different, and so he applied to the Incubator. During the year he spent inside the program, Jeremy took advantage of all the offerings, from the private office and conference room, to opportunities for introductions, mentors and social networking. When describing his experiences, Jeremy commented: "While in the incubator, there were some days in the winter when the phone wasn't ringing, when I had more time than work to do, and I thought 'What have I gotten myself into? How am I going to pay back my loans?' And then there were days when the phone rang. What impressed me the most was the way alums and other lawyers in the community were willing to send work my way and put me in touch with other attorneys. I have found that lawyers in Cleveland are happy to be mentors and to offer templates, advice on ethical issues and generally be available resources. While I figured out there was so much I had to learn, I also knew I had the support of the school, so I was confident I could figure it out."

The incubator is currently accepting applications for new tenants. Please see www.law.csuohio.edu/careerplanning/solopracticeincubator for more information about the Incubator, its tenants and how to become a member of the program.

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.
A Procedural Dilemma
A Barrier to Appealing a Support Arrearage Award

BY DOUGLAS P. WHIPPLE

One would expect that an unsuccessful defendant in a civil action, as a matter of course, is entitled to pursue an appeal to the Court of Appeals. But due to an obscure incongruity in the law there is a class of litigants who may encounter an insurmountable obstacle to obtaining appellate review.

A defendant in domestic relations court who is ordered to pay an arrearage of spousal or child support and who has a good faith argument for appeal theoretically would benefit from the provisions of Civil Rule 62(B) to obtain a stay of execution while the appeal is pending. Civil Rule 62(B) permits an appellant to obtain a stay of execution of a judgment as long as an adequate supersedeas bond is posted.

But Civil Rule 75(H) expressly states that Civil Rule 62(B) does not apply to spousal or child support orders. Civil Rule 75(H) provides that if an appellant files a motion to modify a decree for spousal or child support, pending appeal, “[t]he trial court may grant relief upon terms as to bond or otherwise as it considers proper ***. [Emphasis added.]” That is, the trial court has discretion as to whether or not to “modify” a support order pending appeal. The Rule precludes the entitlement to a stay of execution that is available to appellants in the types of cases to which Civil Rule 62(B) applies.

The Eighth District Court of Appeals, construing Civil Rule 75(H) when it was designated as Rule 75(G) (before an amendment in 1998), acknowledged that the Rule “eliminates an appellant’s absolute right to a stay for orders involving custody, support or alimony, even if the appellant proffers security.” Davis v. Davis, 55 Ohio App.3d 196, 201, 563 N.E.2d 320, 326 (8th Dist. 1988) (emphasis added). For such orders the court has broad discretion to deny a stay.

This discretion creates a procedural dilemma. If a defendant’s motion for a stay of execution of judgment is denied he must pay the support arrearage as ordered. If he fails to do so, he is at risk of being held in contempt of court or subjected to proceedings in aid of execution. If, on the other hand, he pays the support arrearage as ordered, the plaintiff can then move for the defendant’s appeal to be dismissed as moot. The defendant is thus “between a rock and a hard place.”

In Blodgett v. Blodgett, 49 Ohio St.3d 243, 551 N.E.2d 1249 (1990), the husband moved to dismiss the wife’s appeal the day after she paid $2.8 million from escrow if she signed the satisfaction involuntarily and, therefore, her appeal should continue. The Ohio Supreme Court ordered the appeal to be dismissed, concluding that if the party satisfies a judgment merely because she cannot afford to wait for the outcome of an appeal, the party’s conduct is not “involuntary.”

The question arises as to whether a defendant’s conduct is voluntary or not when he pays a support arrearage because his motion for stay pending appeal has been rejected. In the matter of Janosek v. Janosek, 2007-Ohio-68 (8th Dist.), the husband appealed an order awarding attorney fees of $320,000 to the wife. The Court of Appeals examined whether the husband’s appeal was moot because he had paid the attorney fees, and considered the impact of the precedent of Blodgett. Id., ¶ 134. In recognition of the fact that the husband had attempted, without success, to obtain a stay of the attorney fee award pending appeal, the Court determined that he “had little choice but to pay the award pending appeal or risk being held in contempt and incarcerated by the trial court.” Id., ¶ 135. Having thus distinguished Blodgett, the Court of Appeals proceeded to consider the merits of the husband’s appeal and, in fact, vacated the award. Although the husband’s motion for stay had been denied, his ability to pursue the appeal was not thwarted.

In Buckles v. Buckles, 46 Ohio App.3d 118, 546 N.E.2d 965 (10th Dist. 1988), the Court of Appeals affirmed the granting of a stay of a substantial lump sum alimony award (secured by a supersedeas bond) while the case was pending on appeal. The Court observed that the provisions of then-Civil Rule 75(G) meant that the automatic-stay provision of Civil Rule 62(B) does not apply, and that a party must apply to the court not only for a determination as to the amount of a bond but also whether or not a stay should be granted at all. Id., 46 Ohio App.3d at 120, 546 N.E.2d at 969. The purpose of Civil Rule 75(G), the Court stated: “is not to prevent a stay of execution but, instead, is to provide a different procedural device, during the pendency of the appeal which may be utilized in lieu of a stay, namely, modification.” Id., 46 Ohio App.3d at 122, 546 N.E.2d at 969.

The Buckles Court affirmed the granting of a stay in order to protect the interests of both parties, stating:
“Maintaining the status quo during the pendency of the appeal is an appropriate consideration where the other party is adequately protected.” *Id.*, 46 Ohio App. 3d at 123, 546 N.E. 2d at 969-70, n.4.

The Court warned that if the husband had paid the alimony as ordered, the wife could utilize that circumstance as an offensive tactic, stating:

“...in fact, it is arguable that had the defendant voluntarily paid and plaintiff voluntarily accepted the lump-sum alimony payment, any question concerning that issue would have been moot and not subject to consideration upon appeal.” *Id.*, 46 Ohio App. 3d at 122-23, 546 N.E.2d at 969, n.4 (emphasis added).

The *Buckles* case, although affirming the granting of a stay of execution, illustrated the very existence of the dilemma, to wit, that the denial of a stay in these circumstances is discretionary and that a defendant simply might not be able to obtain a stay.

The Ohio Supreme Court has addressed a case in which the procedural dilemma was prominent, but the light that the Court shed on the issue is hardly more than the flicker of a matchstick. The case arose from post-decree motions filed by both of the ex-spouses. The husband challenged the wife’s demand for spousal support on the grounds that she allegedly had misappropriated large sums of money from his business. The domestic relations magistrate pondered the cross-motions for 16 months. Due to this delay, the magistrate’s eventual ruling in favor of the wife instantly created a substantial arrearage. The husband appealed not only the arrearage determination but also the decision that the wife was entitled to any support whatsoever. *Chiro v. Foley*, 2013-Ohio-4808 (8th Dist.).

The husband’s attempts to obtain a stay of execution were rejected by the trial court and again by the court of appeals. The wife promptly filed a motion to show cause against the husband for failure to pay the arrearage.

When the husband appealed to the Ohio Supreme Court he filed a concurrent motion for stay, which was denied. Ohio Supreme Court Case No. 2013-1768. Having exhausted his appellate remedies, the husband had no choice but to pay the arrearage. As soon as he did the wife moved to dismiss the Supreme Court appeal, relying on *Blodgett* for legal authority.

The Supreme Court declined to accept jurisdiction of the appeal, but in the same entry denied the wife’s motion to dismiss the appeal. It is intriguing that the Court did not deny the motion “as moot” but, rather, “upon consideration.” Might one infer that the Supreme Court, by not specifying mootness, is thereby favoring the notion that an appellant is still entitled to pursue an appeal even if his motion for stay is denied and he dutifully pays the arrearage. Or does such a conclusion read too much into the Supreme Court’s cursory ruling?

Regardless, the ruling was too little too late. The Trial and Appellate Courts had exercised their discretion, pursuant to Civil Rule 75(H), to deny a stay of execution pending appeal. The husband, knowing that payment of the support arrearage would render his appeal moot, refused to abandon his argument that the spousal support award was erroneous. Having the temerity to not undermine his own appeal, the husband was adjudged in contempt of court.

The current situation, which gives the courts discretion to summarily deny a stay of execution of judgment, thereby forcing the defendant to obey an arrearage determination at the risk of forfeiting his right to appeal, is injudicious. A support arrearage order that constitutes legal error or an abuse of discretion should be corrected.

No appeal of a support arrearage order should be dismissed as moot where the arrearage is paid after a motion for stay has been denied. No litigant should risk being held in contempt for refusing to render his appeal moot by complying with a support arrearage order. The logic of the *Janosek* decision should, as a matter of law, protect the right to appeal where a stay of execution has been refused on the authority of Civil Rule 75(H).

A rectification of the procedural dilemma should be feasible by statute, procedural rule or judicial interpretation. In any event, the process of appellate review of civil judgments, including support arrearage orders, is too important to permit this procedural flaw to persist.
Suprema, Inc. v. ITC
Deference Given to ITC Decision to Exclude Articles Based on Induced Infringement

BY NATALY MUALEM

The Federal Circuit Court issued its en banc opinion in *Suprema, Inc. v. ITC*, holding that the International Trade Commission (ITC) has the authority to block imports of goods that induce infringement of patent method claims.

**Background**
The principal case in this appeal was the investigation before the U.S. International Trade Commission amidst accusations by Cross Match Technologies, Inc. that Mentalix, an importer of fingerprint scanners, infringed on four patents related to its technology. Mentalix purchased the scanners from Suprema, Inc., a Korean company specializing in fingerprint scanner hardware. In order to function, the scanners must be connected to a computer equipped with custom-developed software. Suprema is not involved in the sale of the software, but includes a software development kit that is used for the development of custom programs that control the scanner function. After the purchase, Mentalix created custom software called FedSubmit, and sold the software along with the scanners as a bundle throughout the United States. The Commission found that Mentalix directly infringed on the patents upon its integration of FedSubmit software with the Suprema scanner and the software development kits in violation of 19 U.S.C.S. § 1337. Section 337 of the Tariff Act of 1930, which was later codified at 19 U.S.C.S. § 1337, declares importation of articles that infringe a valid and enforceable United States patent as unlawful. The Final Initial Determination of the indirect infringement claim found that Suprema willfully blinded itself to the infringing nature of Mentalix’s activities, and actively encouraged the infringement.

**Prior History**
Mentalix and Suprema appealed the decision to the Federal Circuit, which found that a violation of §1337 cannot be based on induced infringement that occurs after importation. The majority of the panel read the language of §1337, which prohibits importation of “articles that infringe,” as a temporal requirement that the infringement occurs at the time of importation. The holding precluded the ITC from finding induced infringement in most method claim cases. The decision led to an outcry from software and high-tech industries, who believed the holding afforded potential infringers the opportunity to evade findings of infringement by taking simple steps after importation to imitate the patented invention. Cross Match, Inc. and the International Trade Commission petitioned for rehearing en banc.

**Decision**
The issue was whether the International Trade Commission may find that imported goods used by the importer to directly infringe after importation as violations of §337 of the Tariff Act of 1930, 19 U.S.C.S. §1337.

The Court made its determination in accordance with the *Chevron* Doctrine, which provides a two-step test for determining whether deference should be given to an agency’s interpretation of a law it administers. Under step one, the court asks whether Congress has spoken on the issue directly. In situations where Congress has directly addressed an issue, the analysis ends, and the intent of the legislature is respected. Here, the Federal Circuit Court did not find the phrase “articles that infringe” to narrow the scope of what constitutes infringement. It does not specifically exclude post-importation infringement nor inducement. Instead, the Court found the text to be uncertain. Since Congress did not provide a clear resolution to the issue the Court moved to the second prong of the test.

In step two of the doctrine, the court determines whether the agency’s answer is based on a permissible construction of the statute. If the interpretation does not conflict with the statute, then deference is given to the agency. The Court found that the interpretation of §337 is consistent with the text and further found that the text contemplates the possibility that infringement may occur after importation. When analyzing consistency the Court also investigated legislative history and contended that §337 was meant to be “broad enough to prevent every type and form of unfair practice.” Thus, the Court gave high deference to the determination of the International Trade Commission.

**Implications**
As a result of the decision, the International Trade Commission has jurisdiction over induced infringement of method claims. Furthermore, the Court rejected the technical interpretation imposed by the panel decision because it weakens the ability of the Commission to prevent unfair trade. The Court vacated all limitations that curtailed the power of the ITC based on technical definitions and instead chose to allow gap-filling authority in order to achieve the broad goals of the agency.

Nataly Mualem is a Law Student at Ohio Northern University Claude W. Pettit School of Law, with the goal of practicing in Cleveland after graduation. Nataly holds a Bachelor’s of Science in Chemistry from Baldwin Wallace University, and is pursuing a Master’s of Biology from Cleveland State University. She joined the CMBA in 2014. She can be reached at n-mualem@onu.edu or (216) 312-4700.
Are Conflict-of-Interest Rules Changing for IP Lawyers?

thought IP lawyers and the rest of us mere mortals played by the same legal ethics rules. Now I’m not so sure. Two recent IP conflict-of-interest cases suggest stricter conflict rules may apply when multiple clients are potentially involved. Let me explain.

The rules seem simple enough. Absent client consent, a lawyer cannot be “directly adverse” to another current client (ORPC 1.7 (a)(1)). Nor can he or she accept a matter if it creates a “substantial” risk that the representation will be “materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by the lawyer’s own personal interest.” (ORPC 1.7(a)(2)). Comment [11] to Rule 1.7 explains that “direct adversity” in the context of litigation exists “...when one of the lawyer’s clients is asserting a claim against another client of the lawyer.” Further, absent consent, lawyers “cannot act as an advocate in one proceeding against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.”

Celgard
A recent Federal Circuit ruling disqualified a law firm where neither “direct adversity” nor advocacy against another client was necessarily involved. Battery manufacturer Celgard obtained a preliminary injunction in federal district court against a competitor, LG Chem. Appellant LG Chem did not seek to disqualify Celgard’s appellate counsel. Rather, an LG Chem customer, Apple (some of you may have heard of Apple), intervened and moved to disqualify Jones Day (some of you may have heard of Jones Day) on the ground that Jones Day’s representation of Apple in unrelated matters potentially involving multiple clients with respect to “similar matters” was necessary. Let me explain.

The circuit first concluded that under [Rule 1.7(a)] Jones Day’s representation of Celgard was “directly adverse” to the interests and legal obligations of Apple, and not merely in an “economic sense.” The court concluded that there was “a clear and direct conflict of interest” because “[a]dvocacy by counsel for [plaintiff in support of]… the injunction will adversely affect [customer’s] interest in being free of the bar of the injunction,” (citation omitted). The court rejected Jones Day’s argument that it was permitted to represent Celgard because such representation reflected only “the sort of unrelated representation of competing enterprises allowed under Rule 1.7(a).” In that regard, the circuit court observed that Apple faced the possibility of having to find a new supplier, as well as Celgard having the leverage of the injunction in negotiating a possible business relationship with Apple. …

If knowledge of a “potential for conflict” due to Client A’s commercial relationship with non-party Client B somehow converts an indirectly adverse representation into “direct adversity,” sorting through potential conflicts just became highly problematic.

Brian Toohey

An IP case involving “subject matter conflicts” could also send shivers down IP lawyers’ spines. Maling v. Finnegan Henderson Garret & Dunner, No. SJC-11800, in the Supreme Judicial Court of Massachusetts was argued on September 8th and awaits decision as of this writing. Plaintiff Maling, a disgruntled former client of the Finnegan firm, sued for malpractice, seeking damages based on his inability to obtain financing, all supposedly due to Finnegan’s failure to disclose its representation of a competitor with respect to roughly similar inventions. Inventions one commentator described as “screwless, tool-less and snap-on parts eyewear technology,” whatever that is. The court below dismissed Maling’s case.

Finnegan
Eleven law firms with large patent law practices, as well as the Boston Patent Law Association, filed amicus briefs supporting Finnegan.

Maling argues that patent firms should be permitted to represent only one client in any given field of manufacture. Finnegan, and its amici chorus, claim existing conflict-of-interest rules work just fine. They also urge that prohibiting representation of multiple clients with respect to “similar inventions” will be next to impossible to implement, and will restrict access to patent lawyers by individual inventors and smaller companies.

Imposition of an ethical obligation to disclose the identity and nature of legal work for other clients in similar industries certainly strikes this lawyer as something our profession ought strenuously to resist. Whether The Supreme Judicial Court of Massachusetts will agree remains to be seen.

Eventually, the dust will settle on both Celgard and Finnegan. In the meantime, IP lawyers with matters potentially involving multiple clients should heed the admonition of Sgt. Esterhaus on Hill Street Blues, “Let’s be careful out there.”

Brian Toohey retired from Jones Day in 2013 and is now in solo practice, advising law firms and their professional liability insurers on risk management issues and representing lawyers in disciplinary matters. He has been a CMBA member since 1980. He can be reached at btoohey@gmail.com.
Why All Values Are Not Created Equal

By Sean R. Saari

It is not uncommon for litigation to stem from disagreements over the value of privately-held companies and ownership interests in those entities. In those situations, many different values are often discussed as the parties attempt to reach a resolution. It is important to make sure that the parties are speaking the same language as far as the type of value being considered — equity value, enterprise value or invested capital value. While these three types of value are related, there are significant differences between them and understanding those differences is important in reaching a fair resolution. With this in mind, we will walk through the differences in equity, enterprise and invested capital value to give attorneys additional tools to effectively navigate valuation-related disputes and negotiations.

Setting the Stage
Let's assume we have a dispute in which Party A believes that a company's value is $7 million while Party B believes it is $4 million. Are the parties really $3 million apart? We cannot tell based on the numbers alone because they do not tell the entire story — the type of value needs to be defined to give the numbers context. Therefore, before comparing the different values, we must have an understanding of the different types of value that can be determined for a company's capital structure.

Levels of Capital Structure Value
The three types of capital structure value that are most commonly referenced are equity value, enterprise value and invested capital value, each of which are discussed in greater detail below:

1. **Equity Value** — Equity value is the value of a company allocable to its equity investors. Equity value is the most commonly-determined value as it represents the value of an investor's ownership interest in a company.

2. **Enterprise Value** — Enterprise value reflects the following:  
   \[ \text{Enterprise Value} = \text{Equity Value} + \text{Debt} - \text{Cash} \]

   Enterprise value represents the value of a company's total capital structure (its debt and equity) on a cash-free basis, regardless of the relative percentages of debt and equity. It is also sometimes called a company's "cash-free, debt-free" value. A company's enterprise value can easily be converted into an equity value by taking the enterprise value and (1) subtracting its debt; and (2) adding its cash. Investment bankers often speak in terms of enterprise value because they typically focus on the overall value of the company's operations (not necessarily its equity value). From their perspective, it is up to potential buyers to determine how much of the purchase price will be funded with debt vs. equity.

   Enterprise value is also typically used when determining EBITDA and revenue-based multiples because it removes the impact of how much cash and debt a company is carrying (which are simply financing decisions) in determining the value of the company's operations.

3. **Invested Capital Value** — Invested capital value reflects the following:  
   \[ \text{Invested Capital Value} = \text{Equity Value} + \text{Debt} \]

   Invested capital value represents the combined value of a company's interest-bearing debt and equity. It is similar to enterprise value in that interest-bearing debt is added to the company's equity value, but the company's cash balance is included in calculating its invested capital value. Therefore, a company's invested capital value reflects the full value of both its equity and debt.

Reconciling Values
It is critical to understand that while these values measure different components of a company's capital structure, they are interrelated. This is particularly important if a value is determined at one level and needs to be reconciled or adjusted to another level.

Misunderstandings result because people often talk about values in terms of multiples — "A company in my industry sold for 5x EBITDA (earnings before interest, taxes, depreciation and amortization)." However, when a revenue or EBITDA multiple is applied to determine a company's value, it typically produces an enterprise value (because EBITDA and revenue are before interest expense, so they do not take into account the impact of debt service). Therefore, it is necessary to adjust
the enterprise value for the interest-bearing debt and cash balances of the company being valued to arrive at its equity value. Confusing enterprise value with equity value may result in an investor significantly overestimating the value of his or her ownership interest (particularly for companies with meaningful debt balances).

Illustration A shows the relationship between equity value, enterprise value and invested capital value.

The relationship between a company's various types of value is similar to the financing for your home. For example, a company's enterprise value is just like the value of your home, which is likely financed through some combination of debt and equity, as shown in Illustration B.

If you were to sell your home, you would not receive the full sale price. Instead, you would receive the net amount remaining after the debt balance was satisfied, which represents your equity in the home (just like the equity value of a company).

Finally, in this example, the value of your home furnishings is just like the company's cash balance (which generally would not be sold with the home and would instead be retained by the seller). Those furnishings still have value, but that value is not reflected in the selling price of the home itself. You would likely take your furnishings with you in the event of a sale because the new owner would supply their own (just like a company's cash balance). This makes a company's invested capital value similar to the value of your home plus all of the furnishings.

### C. Reconciliation of Values

<table>
<thead>
<tr>
<th></th>
<th>Party A</th>
<th>Party B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Value</td>
<td>$7,000,000</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Less: Debt</td>
<td>(3,000,000)</td>
<td>(3,000,000)</td>
</tr>
<tr>
<td>Plus: Cash</td>
<td>1,000,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Equity Value</td>
<td>$5,000,000</td>
<td>$4,000,000</td>
</tr>
</tbody>
</table>

### Is There Really a Difference in Value?

Let's go back to our dispute scenario and consider some additional facts:

1. Party A's $7 million value is an enterprise value based on previous discussions with an investment banker.
2. Party B's $4 million value is an equity value based on an appraisal prepared by a valuation expert.

### 3. The company has $3 million in debt and $1 million in cash.

Based on these additional (and critical) facts, Party A is really indicating that it believes the company's equity value is $5 million (only $1 million higher than Party B's position). Alternatively, Party B is indicating that it believes the company's enterprise value is $6 million (again, only a $1 million difference from Party A). This reconciliation is shown in Illustration C.

With the additional context around the values being discussed, the parties only have a $1 million difference in their perceived value of the company and its equity, not $3 million. What may have at first appeared to be an unbridgeable gap in value is actually much closer than the numbers would have suggested without a deeper understanding of just what they meant.

### Applicability in M&A Contexts

As discussed earlier, investment bankers often speak in terms of enterprise value rather than equity value. In addition, valuation multiples often provide an indication of a company's enterprise value, not its equity value. As a result,
it is extremely important that both the buyer and seller in a potential business sale understand the transaction prices being discussed. This is particularly important for sellers — it is easy for them to get caught up in the larger enterprise values being discussed and fail to consider the impact of debt in determining the company’s implied equity value (which represents their share of the total transaction proceeds).

Using the figures in the example above, let’s assume that Party A’s investment banker told him that his company is worth $7 million. If Party A doesn’t understand that this is an enterprise value, he may be expecting to personally receive $7 million from the sale, not the $5 million that would be netted if the company were to sell at a $7 million enterprise value. Party A may then begin evaluating the potential deal based on an amount of expected proceeds ($7 million) that is much higher than what he would actually receive ($5 million). This misunderstanding can create a significant expectation gap for Party A that may be difficult to correct later in the sale process once a particular number is already in his head.

**Conclusion**

All values are not created equal — as shown above, a company’s “equity value” can be vastly different from its “enterprise value,” which may differ from its “invested capital value.” Therefore, whenever reviewing or discussing a company’s value, it is important to establish what type of value is being determined. This will greatly reduce the likelihood of miscommunication, making it far more likely that 1) disputes will be resolved as effectively as possible; and 2) the parties involved in M&A transactions will have appropriately managed expectations regarding value and net proceeds from the outset.

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1 It should be noted that A/P, accrued expenses and other non-debt liabilities are typically not considered part of “interest-bearing debt” for the adjustment from equity value to enterprise value (and vice versa) because these liabilities are part of a company’s net working capital, not its equity/debt capital structure.

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Sean Saari is a partner at Skoda Minotti and manages the firm’s Valuation & Litigation Advisory Services group. He assists a diverse client base in litigated matters, domestic disputes, shareholder disputes, estate and gift tax filing, and financial reporting for valuation issues. In addition to being a CPA, Sean is Accredited in Business Valuation (ABV) and is a Certified Valuation Analyst (CVA). He became a CMBA member this year. He can be reached at (440) 449-6800 or ssaari@skodaminotti.com.
Numerous lawyers in the Greater Cleveland area are members of The Lawyers Guild of The Catholic Diocese of Cleveland. Participants join the Guild to gain spiritual growth and fellowship within the local legal community, and to address legal and societal issues that affect morality, justice and faith.

Several committed members of the Lawyers Guild have quietly and steadfastly served the most vulnerable of Greater Cleveland since 2011. Their service encompasses staffing legal intake sessions once a month at Catholic Charities of the Diocese of Cleveland’s Bishop William Cosgrove Center. The intake sessions provide homeless men and women with opportunities to discuss their legal needs with attorneys to whom they otherwise would not have access.

The Lawyers Guild has always been engaged in community outreach; however, it incorporated the intake sessions at Cosgrove as a permanent program as a result of witnessing the varied needs of homeless individuals served by the Diocese of Cleveland, and the corresponding need to identify attorneys available to provide pro bono assistance to them. Accordingly, the Executive Committee approved the intake sessions as an ongoing program of the Lawyers Guild to minister to homeless men and women served by the Bishop Cosgrove Center, which has continued since 2011.

A notable fact concerning this pro bono ministry is that it was developed in conjunction with community based organizations; specifically, the Cosgrove intake sessions are overseen by the Cleveland Metropolitan Bar Association’s “CHLAP” initiative (Cleveland Homeless Legal Assistance Program), which is a sub-committee of the CMBA Justice For All Committee. CHLAP is supported by the Cleveland Metropolitan Bar Foundation, and is operated in cooperation with the Legal Aid Society of Cleveland. Cases that require extended involvement by pro bono counsel, for which the Lawyers Guild lawyers may not be able to provide ongoing representation, are referred to volunteer attorneys identified by the CMBA or the Legal Aid Society.

CHLAP at Cosgrove thus provides Lawyers Guild members with an opportunity to fulfill their own faith requirements of serving individuals in need, while serving the legal community’s efforts to add attorneys to the ranks of pro bono counsel.

Although they prefer not to be recognized, there have been several Lawyers Guild members dedicated to CHLAP at Cosgrove, including Leo Spellacy, Brian Heskamp, Oliver Dunford, Dan Thiel; Doug Maser and Martin Galvin, both past-presidents of the Lawyers Guild, and the Hon. Kenneth Callahan, its current president.

Lisa Gasbarre Black, Esq. is General Counsel at Catholic Charities Diocese of Cleveland, and current Chair of the CMBA Justice for All Committee. She has been a member of the CMBA since 1999. Lisa can be reached at lgblack@ccdocle.org or (216) 334-2904.
company assets are bought, sold and merged on a daily basis. Nearly 14,000 mergers, acquisitions or alliances occurred in North America in 2014 with an estimated value of $2.25 trillion dollars. Institute of Mergers, Acquisitions and Alliances, Statistics, last visited September 25, 2015 http://www.imaa-institute.org/statistics-mergers-acquisitions.html#MergersAcquisitions_NorthAmerica. Companies acquiring assets must rely on the previous company’s records for day-to-day business activities. In other instances, company functions are outsourced to third-party vendors. Because of this economic landscape, companies must oftentimes rely on a predecessor’s or third party’s business records during litigation. Relying on another entity’s records is commonly referred to as the Adoptive Business Records Doctrine. This doctrine “permits exhibits to be admitted as business records of an entity even when the entity was not the maker of the records, so long as the other requirements of [Evid.R. 803(6)] are met and circumstances indicate the records are trustworthy.” Green Tree Servicing, L.L.C. v. Roberts, 2013-Ohio-5362, ¶s 30-31 (12th Dist).

Under Ohio’s business records exception to hearsay, business records are admitted so “thoroughly reliable and trustworthy evidence will escape the hangman’s noose labeled hearsay.” State v. Mitchell, 18 Ohio App.2d 1, 8 (10th Dist. 1969). Records are admissible so long as the following criteria are met: 1) the record was made at or near the time of the event; 2) by a person with knowledge; 3) the record is kept in the course of a regularly conducted business activity; 4) it is the regular practice of the business to make the record; 5) the record is introduced via witness testimony; and 6) the record does not indicate a lack of trustworthiness. Evid.R. 803(6). The federal rule governing this exception, Fed.R.Evid. 803(6), is similar.

Courts admit business records if they meet the above criteria because the business records exception “is based on the assumption that the records, made in the regular course of business by those who have a competent knowledge of the facts recorded and a self-interest to be served through the accuracy of the entries made and kept with knowledge that they will be relied upon in a systematic conduct of such business, are accurate and trustworthy.” Weis v. Weis, 147 Ohio St. 416, 425-26 (1947).

When a company merges or acquires the accounts of another, the company relying on an acquired record may not have firsthand knowledge of how the record was created. This presents an obvious hurdle to admitting the prior company’s records under the business records exception as it may be impossible to attest to all of the exception’s requirements. The Ohio Supreme Court has not weighed in on the Adoptive Business Records Doctrine, and appellate districts that have considered it have not adopted a uniform approach to its application. Because it is increasingly necessary to rely on another entity’s business records, practitioners must have an understanding of the adoptive business records doctrine when attempting to admit adopted business records as evidence. If a case hinges on the admissibility of adopted business records, exclusion of the records may decimate a party’s ability to prove its case.

The Ohio courts that have analyzed this scenario oftentimes look to federal case law and its application of the federal counterpart to Ohio’s business records exception. Generally speaking, federal courts admit adopted business records when there is no indication of untrustworthiness. See United States v. Powers, 578 Fed.Appx. 763, 779 (10th Cir. 2014) (noting widespread acceptance of the adoptive business record doctrine; Brawner v. Allstate Indem. Co., 591 F.3d 984, (8th Cir. 2010) (admitting another’s business records as long as the records are integrated into the company’s business records and relied on by the witness); United States v. Adeghentiti, 510 F.3d 319 (D.C.Cir. 2007); Air Land Forwarders, Inc. v. United States, 172 F.3d 1338, 1343 (Fed. Cir. 1999). Notably, however, in a recent amendment the federal rule placed the burden on the opponent to show the records indicate a lack of trustworthiness whereas the Ohio rule is silent on the issue. Compare Fed.R.Evid. 803(6)(E) advisory committee’s note (2014); Ohio Evid.R. 803(6).

The First District of Ohio evaluated whether or not another entity’s business records fell under the hearsay exception in Great Seneca Financial v. Felty, 2006-Ohio-6618. In Felty, Great Seneca sued on an account it acquired from another. When it moved for summary judgment, the borrower challenged the records’ reliability and the amount due and owing, alleging Great Seneca could not testify to its predecessor’s documentation. Interpreting federal case law, the Felty Court declined to reverse the trial court’s consideration of the evidence, noting that “[a] number of circuit courts have held that exhibits can be admitted as business records of an entity, even when that entity was not the maker of those records, provided that the other requirements of Fed.R.Evid. 803(6) are met and the circumstances indicate that the records are trustworthy.” Id. at ¶14.

In contrast, the Second District prohibited admitting another entity’s business records. See Royse v. Dayton, ¶ 26, 2011-Ohio-3509. In Royse, the court had to determine whether test results performed by an independent medical lab were part of the city’s records. Id. at ¶24-25. The city allowed the lab to use its own methods. The Second District decided that case essentially by a single quote without analysis from the Eighth District: “[t]he
information in reports that a business receives from outside sources is not party of its business records for the purposes of Evid.R. 803(6).” Id. at ¶26, quoting Babb v. Ford Motor Co., 41 Ohio App.3d 174, 177 (8th Dist. 1987).

The Second District again denied using another’s business records in Ohio Receivables, L.L.C. v. Williams, 2013-Ohio-960. In Williams, Ohio Receivables attempted to introduce records acquired from Chase to prove Williams was delinquent on his account. The court denied the evidence because Ohio Receivables did not authenticate the documents, and there was no evidence that Chase made the documents at the time the account was opened by a person with knowledge of the account. Id. at ¶18.

The Tenth District analyzed the adoptive business records doctrine and distinguished Babb and Royse, allowing a predecessor’s business records. State Farm Mut. Auto. Ins. Co. v. Anders, 2012-Ohio-824. The Anders Court allowed State Farm to admit a repair estimate from a repair facility it used but did not own because of the continuing business relationship between the repair shop and State Farm, and the repair shop’s obligation to abide by State Farm requirements. The Anders Court found Babb did not allow letters from consumers to Ford describing a brake pedal malfunction because the authors were under no duty to accurately report information, and that Royse’s reliance on it was broad. Id. at ¶26. The Anders court then stated that since Babb, the Eighth District admitted another entity’s business records under this doctrine in RBS Citizens, N.A. v. Zigdon, 2010-Ohio-3511. In Zigdon, the court admitted records created by Charter One after merger with RBS because they “were under the possession and control of RBS, qualified as RBS’ business records and were proper summary judgment material when incorporated by reference into the affidavit of RBS’ legal specialist.” Dallariva at ¶24. The Eighth District focused on record possession and control in its analysis. The Twelfth District has also recognized the adoptive business records doctrine while acknowledging a conflict with the Second District. Green Tree Servicing, L.L.C. v. Roberts, 2013-Ohio-5362, FN 3 (12th Dist.) (reversing trial court’s exclusion of adopted business records).

The dichotomy between admitting another’s records in each district results in a different level of specificity needed to lay a foundation in each district. In federal court and most Ohio districts, it may be easier for a company to introduce another company’s business records than its own. Realizing this contrast, the Second District has raised questions as to whether a company adopting business records “should be held to a lesser standard” as to those records than its own. Williams, supra at ¶20. On the other hand, it may be difficult if not impossible to meet the requirements of the business records exception for a prior entity’s records, particularly if that entity is no longer in business, which oftentimes is the case. And, excluding such records when there is no indication of untrustworthiness would not comport with the spirit of the hearsay exception.

If a business is unable to meet the elements required under the business records exception to hearsay through direct testimony of the prior entity’s records custodian or other qualified witness, the most practical way to ensure another entity’s business records are admitted is to integrate the former company’s records into the new business’s records, and state specifically how the records were obtained and integrated. The representative should lay a foundation that the acquiring company relied on these records outside of litigation to indicate trustworthiness.

Using another entity’s business records is commonplace due to mergers and outsourcing certain duties, whether it be the amount due on an account, or the amount of damage caused in a car accident. Until Ohio adopts a uniform approach, each case will be a litmus test regarding admissibility. A party seeking to admit evidence should be as specific as possible when laying a foundation as to why the records are reliable and trustworthy in order to cross the admissibility threshold.

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Current as of publication date.
An Eloquent Testimonial to What We Are All About

Na’Tasha Webb-Prather is a testament to how important and impactful the programs of the CMBA are, and why your support of the CMBF matters. Na’Tasha is a graduate of Shaw High, where she was mentored by legendary teacher and force of nature, Lori Urogdy-Eiler, and The 3Rs team from Calfee, Halter & Griswold LLP. Na’Tasha went on to get her B.A. from Syracuse University and is now in her third year at the University of Georgia Law School. Her remarks at The 3Rs 10th Birthday Party on Thursday, September 24th are compelling, eloquent and speak to why you can be proud of your support:

“I am honored and humbled to be able to share my immense gratitude to the CMBA and all the volunteers that have dedicated their time and energy to making The 3Rs Program such a success for the past 10 years. This organization is truly made up of amazing individuals who have made a decision to make a collective change in their community.

I am an example of the impact that you all are making in the lives of students in Cleveland and East Cleveland. I was born and raised in East Cleveland, and all of my education was through the East Cleveland Public School System. I was frequently reminded that the odds were stacked against me. I wasn’t supposed to excel or thrive in an environment like Shaw High School. I wasn’t supposed to survive and make it out a community like East Cleveland. But I not only survived, I’ve thrived. But “To whom do I owe the symbols of my survival?” — A question once raised by Audre Lourde, challenging us all to think about those who have helped us along the way. My answer, the CMBA and volunteers just like you. So I say thank you!

Thank you for creating the Summer Legal Academy.
I was a part of the inaugural class, and those two weeks at Case Western Reserve were life changing. For the first time, I saw people who looked like me doing the things I dreamed of doing. It brought the idea of going to law school to life, and for the first time I could actually envision myself in law school. Now fast forward some years, Summer Legal Academy didn’t prepare me for the first time my contracts professor cold called on me. I couldn't tell this woman my name let alone whether there was offer and acceptance. But it’s okay, Summer Legal Academy was still a great program.

Thank you for coming to my high school and coaching our Mock Trial Team.
My senior year, we had a tough act to follow reinstating Mrs. Urogdy’s nationally renowned Shaw High Mock Trial Team. But with the help of Mr. Lawniczak and Ms. Proia, we successfully made it to the state competition. I’ll never forget when Ms. Proia realized I didn’t have a suit for the competition, and it wasn't really in my family's budget to get one, she didn't hesitate to go into her own closet and pass down a few things. It may have been a small thing to her but it meant the world to me, and is something I’ll never forget. The coaching you all provide helps students not only find their voices, but believe in them. Your coaching and support lay the foundation on which we stand to realize that we belong in any room with anyone. Which then allows us to have no fear when we outwit Supreme Court justices and rub their shoulders for good luck.

Thank you for allowing students to get internship experience in your various organizations. I had a chance to work for Calfee, Halter & Griswold LLP the summer before I began college and then Squire Patton Boggs (then Squire Sanders) the summer after my freshman year. Even though my work products were probably far from useful, thank you for making students, like myself, feel like we are a part of the team. The feeling of empowerment you get riding up the elevator of a high-rise building downtown is truly like no other.

Last but certainly not least, thank you for your dedication to The 3Rs Program.
As a former teacher, I know how just how challenging it can be to teach a group of teenagers. But as one of the first 3Rs students I want you all to rest assured knowing that you’ve made a difference. You’ve successfully helped students surpass the hurdle of the OGT and brought to life this ancient document called the Constitution and made it alive and real in the eyes of so many students. When I joined The 3Rs classes, I had already passed the OGT, but because the volunteers were so engaging and the material was so interesting, there was no way I wasn’t participating.
So when asked "to whom do I owe the symbols of my survival? my response will always include the CMBA and every one of you that has volunteered your time to better the lives of students like myself. Through The 3Rs Program and other outreach initiatives, you all have educated, motivated, inspired, and mentored students, leaving lasting impressions on our hearts and minds. I urge you all to continue forging on, doing the great work you are doing, because it is making a tremendous impact in the community, and it is so necessary, especially during our current times. Students in Cleveland and East Cleveland will never be the same because of the impact you've made and continue to make in our lives.

Thank you for going above and beyond the call of duty.
Thank you for sacrificing billable hours, dinners at home, or even the enjoyment of a lazy Saturday.
Thank you for reaching into your pockets and even your own closets.
Thank you for seeing something in all of us and working to pull it out.
Thank you for giving us a voice that no one can silence.

Thank you for allowing us to stand on your shoulders to attain the goals we didn't even know were possible. Thank you."

And thank you, Na’Tasha, for reminding us all of the importance of the CMBF mission and why support of the CMBA programs matters.

CMBF President Hugh McKay grew up in East Cleveland, attended Brown University and the University of Pennsylvania. He is the former President of the CMBA, creator 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.
Happy 10th Birthday, 3Rs Program!

We celebrated a milestone anniversary at the Vault at the Metropolitan at the 9 on September 24, with a special party hosted by the Cleveland Metropolitan Bar Foundation recognizing our award-winning 3Rs Program, now in its 10th year. The 3Rs — Rights, Responsibilities, Realities is the largest volunteer community outreach program in the Bar Association’s history.

The birthday party was a smash — with lively conversation, birthday cake and memories shared by a great crowd of 3Rs volunteers, teachers, and administrators from partner school districts (Cleveland and East Cleveland City Schools) and 3Rs student alumni.

Tributes and testimonials were given by Hugh McKay, Cleveland Metropolitan Bar Foundation President and the founder of The 3Rs; Eric Gordon, CEO of the Cleveland Metropolitan School District; and Na’Tasha Webb-Prather, Shaw High School graduate and current 3L at the University of Georgia School of Law, who credits The 3Rs for inspiring her educational and career path.

THE 3RS: THE FIRST NINE YEARS

25,000 students were served through the efforts of ...

1,900 individual volunteers from the Cleveland legal community who have provided ...

67,800 total volunteer hours ...

With an estimated value of: $10,170,000

Helped passing rates on the Ohio Graduation Test Social Studies Section increase by 30 percentage points

Inspired more students to participate in high school mock trial programs and the CMBA’s pipeline diversity programs, including the Louis Stokes Scholars Program

Received national, state and local attention and awards as a model law-related education and diversity pipeline community partnership program
Why Your Preliminary Statement Is the Most Important Part of Your Brief

As a law professor for 12 years, I have emphasized to my students that the Preliminary Statement (or Summary of Argument) is the most important part of the briefs they will submit to the court and to opposing counsel. Students and new lawyers tend to resist this advice, as most of them view Preliminary Statements as “windup” material that merely introduces the salient information contained in the Law and Argument section of the brief. Not so. In fact, many legal-writing commentators and judges suggest that, if you have not convinced the judge that your side should win by the end of your Preliminary Statement, you have already lost. Further, a well-written Preliminary Statement lays the groundwork for the rest of the brief by showing the reader your key arguments, organization, writing style, and overall strength as a legal writer.

As most studies of legal writing demonstrate (and I have found in my years of teaching), most brief writing suffers from a failure to develop: (1) focus; (2) theme; and (3) persuasiveness. All of these deficiencies would be ameliorated if the writer took the time to draft a cohesive and forceful Preliminary Statement. This is true for two reasons. First, many judges are persuaded to adopt or reject your client’s position by the time they complete reading your Preliminary Statement. Indeed, one judge suggested, “a clear and plausible argument summary” gives the judge the desire to affirm or reverse that rises to the level of a “psychologically rebuttable presumption.” Robertson, From the Bench: Reality on Appeal, 17 Litig. 3, 5 (Fall 1990). Even if every judge does not accord Preliminary Statements that much weight, this is still your first chance to make a good impression on the judge. Don’t squander this opportunity by presenting a boring, unpersuasive, unorganized introduction.

Second, aside from the persuasive effect that well-written Preliminary Statements have on judges, they also have an immeasurable effect on the brief that follows. In other words, if you force yourself to focus on your best arguments and develop your theme that you will weave between your facts and law in a convincing manner, your overall brief will greatly benefit.

I suggest the following five steps for drafting a winning Preliminary Statement:

1. Reduce your case to its bare essentials.
   This step is perhaps the most difficult. When you have thousands of facts and hundreds of arguments about a case swirling around your head, it is very difficult to distill these and focus on the few paramount points you need to make. But this step is crucial. You need to determine what your theme or theory of the case is before you begin drafting anything. I have a couple of suggestions on how to accomplish this. First, follow the “dinner-party rule.” If a stranger at a dinner party asks about your case, how would you describe the essence of your case in two minutes? Second, adhere to the “movie-trailer rule.” Like marketers who extract choice “sound bites” from a movie to entice the viewer, you too should draft a “trailer” — in the form of a Preliminary Statement — that conveys the key content of your brief, grabs the reader’s attention, and makes the reader want to read on.

2. State your arguments in a straightforward manner.
   State each of your key arguments in a clear manner and arrange them in the order that you plan to discuss them in your brief. So, if you are moving for summary judgment on three separate grounds, discuss your three arguments in order. Don’t hide the ball from the reader and then surprise him or her later. This is confusing for the reader and makes your brief look unfocused and unorganized.

3. Point to the key facts and law that support your arguments.
   Give the reader a taste of why (both factually and legally) your arguments should win. Remember that your brief is in direct competition with another product — your opponent’s brief. If you demonstrate at the outset that you have clear and strong bases for your arguments, the reader tends to see your brief as well-researched, impactful, and credible.

4. Use catchy language to grab the reader’s attention.
   Avoid drafting Preliminary Statements that bore the reader. This is your chance to grab the reader’s attention and to make a great first impression. Don’t waste it. Catchy language is a way to draw the reader in. If you have trouble coming up with some on your own, try turning to case law. Even a brief on an uninteresting topic can be more exciting if you open your Preliminary Statement with a memorable quote from a case that is on point.

5. Follow the “90-second rule” in persuading the reader.
   Finally, remember that legal readers are probably the most impatient readers of writing. That said, your goal should be to convince them within the first page or two of your brief. In his book, The Winning Brief, Bryan Garner calls this the “90-second rule” and states that “every brief should make its primary point within 90 seconds. But probably only 1% of American briefs actually succeed on this score. The ones that do are spectacular to read.” Make your briefs fall in that top 1%.

Maureen Sheridan Kenny is a Professor of Law and is the founder and Director of the Legal Writing Academy at Case Western Reserve University. She has taught Legal Writing, Advanced Legal Writing, and other courses for twelve years, after practicing for six years at Squire Patton Boggs. She can be reached at (440) 684-9197 or Maureen.Kenny@case.edu.
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Sindell and Sindell, LLP

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Earl Williams
Shaker Heights City Council

Lorysa Wojnicz

Jana K. Yeno
Ohio Bureau of Workers Comp.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

VISIT FROM LEGALZOOM GC

On Friday, October 9, members of the Unauthorized Practice of Law, Ethics and Professionalism, and Certified Grievance Committees welcomed Chas Rampenthal, general counsel for LegalZoom to the CMBA.

Chas led a provocative discussion on access to justice and LegalZoom’s role in making legal products available to people who cannot afford traditional legal services. Chas was in Cleveland as the guest lecturer for the University of Akron’s Miller-Becker Center for Professional Responsibility. Jack Sahl, director of the Miller Becker Center, arranged Chas’ special engagement at the CMBA.

CONGRATULATIONS!

We congratulate all the new Ohio Lawyers who passed the July Bar exam and will be sworn in on November 16. The CMBA will host its annual Celebration for New Lawyers on December 10 to welcome these new attorneys to the profession. This evening reception coincides with our New Lawyer Bootcamp (December 9–11) and we look forward to welcoming all the new lawyers, and to assisting them at Bootcamp. For more information, please contact Carmen Dortch at (216) 696-3525 or cdortch@clemetrobar.org.

CONFERENCE CENTER ROAD SHOW

On Tuesday, October 6, the CMBA Conference Center was one of 60 exhibitors to showcase at the 2015 Event Expo, co-presented by Crain’s & Team Promotions. The expo took place at Shooter’s, the Improv, and the Music Box Supper Club. It was a fantastic way to gain exposure for the Conference Center, and many marketing materials and business cards were distributed. It was also great to meet and get to know the other Cleveland vendors. We anticipate some great new clients from the venture and plan to return next year! Learn more at CleMetroBar.org/ConferenceCenter.
PILLARS PROGRAM SERIES

The CMBA membership committee is pleased to announce the first in a series of Pillars Program events for 2015–2016. Pillars provides support for unemployed/under-employed attorneys and legal professionals through a series of programs to serve as a catalyst to invigorate your current position. Whether you are an unemployed lawyer, in a career transition, or just beginning the job search process, the structure and support provided by the Pillars Program will be invaluable.

November 17  Dealing with the Realities of Un/Underemployment and Career Transition
December 15 Résumé Basics and Formats
February 16 Effective Job Hunting
April 19 Choose To Be Excellent
June 22 Speaking with Confidence to the “Big Dogs”

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

THEATER BENEFITS FOR MEMBERS

We are excited to share that your CMBA has reserved a block of tickets to 10 more performances at PlayhouseSquare. Various show dates and prices are available and order deadlines are posted for each in the details. We hope you can join us. Visit our online calendar for all the details on ordering.

We also secured group pricing to shows at Cleveland Play House. The purchase deadlines are typically a week before the performance but details are on the Cleveland Play House site. You can purchase tickets directly at https://clevelandplayhouse.groupmatics.events with the access code: cphgroup.

November 28 & 29 A Christmas Story
December 3 & 5 A Christmas Story
January 10 Little Shop of Horrors
February 28 Luna Gale
Cleveland Croissant is Too Flaky
And Other Trademark Descriptiveness Dilemmas

BY SUZANN MOSKOWITZ

It's a common story: client (we'll call her Chrissi Crandall) has a dream, a plan, and a brand. She proudly informs me that she's already found a great location for her bakery-café and "locked up" the trademark. I ask how and am told that she Googled it and registered the domain name clevelandcroissant.com. A good start, no doubt, if a little flaky.

This isn't a tale about the benefits of federal trademark registration at the United States Patent & Trademark Office (USPTO) or avoiding infringement (both critical stories for another day), but instead about the perils of descriptive branding.

Though I have no intention of crumbling her dreams, Chrissi is crestfallen when I tell her it’s a “weak” mark. I'm not being cruel or imposing my personal taste here — “weak” is a term of art used by courts and the USPTO to describe non-distinctive marks. See TMEP 1207.01(b)(ix). The policy rationale is clear: trademarks are intended to distinguish a unique brand, not to merely describe goods/services or where they come from.

While there's no prohibition on using a descriptive mark, I reason to Chrissi that by doing so, she will be unable to avail her business of the full benefits and exclusivity of protection on USPTO's Principal Register, even if she could claim a spot on the USPTO’s “B-List”: The Supplemental Register. Descriptive marks are entitled to a position on this lower-tier register until they develop secondary meaning. Secondary meaning is the idea that over time, even a weak mark eventually starts to make an impression on people (think Best Buy). Cleveland Croissant might eventually be approved for full registration on the Principal Register, but it generally takes five years of sales (or a rapid rise to fame).

Until then, the Supplemental Register still provides a certificate suitable for framing, the right to use the ® symbol, appearance in search results, and the ability to bring suit. But the biggest downside is the inherent admission that the entire mark is weak, which makes it much harder to claim any exclusive rights versus other parties. Which means that if CLE Croissants opened up down the street, Chrissi could hang her fists, waive her certificate and assert her rights but might have a tough time getting a satisfactory remedy.

“But what makes Cleveland Croissant descriptive?” she asks. I give her the lay of the land.

The process is the same for all USPTO trademark applicants: Examiners conduct a search of third party filings to identify any likelihood of consumer confusion, and at the same time, they screen out applications that simply don't make the cut as distinctive source identifiers, using a rubric along the following lines, where red is unregistrable, orange is limited protection and green is registrable (see TMEP 1209.01):

<table>
<thead>
<tr>
<th>GENERIC</th>
<th>DESCRIPTIVE</th>
<th>SUGGESTIVE</th>
<th>ARBITRARY</th>
<th>COINED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croissants! Crescent Rolls Bakeree</td>
<td>Cleveland Croissant Flaky Croissants Best Croissants Croissant.com</td>
<td>Vienn-ahh Croissant Oui! Ou! Bakery Croissant The Flakery</td>
<td>Beret The Little Duck Le Plum</td>
<td>Kroodell Vittoray Klk</td>
</tr>
</tbody>
</table>

1. **Generic Marks**: Generic terms are words that reasonable consumers understand primarily as the common or dictionary name for the goods or services. Generic words don't function as trademarks and thus are not entitled to any protection, and that seems only fair. After all, Chrissi wouldn't like it if a prior registrant had been granted a monopoly on the word “Croissant.” Generic words are usually nouns, and neither punctuation (Croissants!) nor intentional misspellings (The Bakeree) are typically afforded protection.

2. **Descriptive Marks**: This category captures marks that describe a characteristic, function, ingredient, feature, quality, purpose, or use of the relevant goods or services. Besides literal descriptors like “flaky” or “buttery,” cities, surnames, laudatory terms, and translations run the risk of refusal on the Principal Register, as described more fully below.

3. **Suggestive**: This category includes marks that, when applied to the relevant goods or services, require imagination, perception or thought to reach a determination as to the nature of those goods or services. In addition to comprising the most creative branding, such marks are highly registrable (excepting other bases of refusal, like confusion with another mark). Unlike descriptive marks, brands like the following require a bit more imagination in order to identify the connection to the underlying goods and services: Vienn-ahh Croissant, Oui! Ou! Bakery or The Flakery.

4. **Arbitrary**: When common words are used in incongruous ways, it is considered arbitrary and falls into a safe green zone on the continuum. (Think Apple for computers). Chrissi could consider Beret or The Little Duck for her shop. Note that “Croissant” can fall into this category too — for things like children's apparel (Reg # 1590972).

5. **Fanciful**: Such marks are nonsense words along the lines (along the lines of Pepsi or Kodak), invented to function as a trademark. Chrissi could make up any exotic sounding word (try Kroodell or Vittoray) and have a good shot at registration, although I remind her that — like all proposed brands — we will still need to assess risk by searching.
online databases, including foreign sources and even urbandictionary.com (before the USPTO Examiners beat her to it.)

Chrissi sighs and asks, “What’s wrong with Cleveland?” Despite my civic pride, I explain that there is in fact something wrong with “Cleveland” — if it’s a brand that comes from Cleveland. It would be refused as Primarily Geographically Descriptive — descriptive of source. It would be demoted to the Supplemental Register just as quickly as “Buttery Croissants” ... unless of course the croissants are made of lard, in which case the name is not merely Merely Descriptive, but Deceptively Misdescriptive ... which is nearly as pernicious as Geographically Deceptively Misdescriptive — the refusal that would likely issue if she went with “Paris Croissants” (while operating out of Parma, Ohio).

I also have to talk her out of Crandall Croissants because any word that would likely be perceived as a surname is back in the yellow zone. Best Croissants is also off the list because common “laudatory” (praising) words are considered descriptive of quality. Ditto for Cornetti — the Italian word for croissant. Even ChoCroissant (Serial No: 85100396) received a final refusal due to the alleged likelihood that a consumer would view it as a telescoped version of “chocolate” plus “croissant.”¹ Croissant.com and #Croissant would be relegated to the same fate.

Chrissi asks, “What happens when you combine a strong word with something weak, like OuiOui Bakery?” In most cases, the USPTO will require a “disclaimer” of the weak word, which is an explicit acknowledgment that no rights are being asserted in the disclaimed word standing alone, but only the composite. With a registration for OuiOui Bakery, Chrissi would only be protected against uses confusingly similar to “OuiOui” — not “Bakery.” But being granted a slot on the Principal Register beats the alternatives.²

Supplemental Register shouldn’t be Chrissi’s aim, but it is often difficult to predict how the USPTO will handle a mark that’s on the border between Descriptive and Suggestive. Because there are no formulas and Examiners are human beings, the result is inconsistent and it’s impossible to predict the disposition of a case.

Earlier this year, the USPTO examined the mark CRUMBLE & WHISK for bakery products (Serial No: 86348506). Even an expert in both baked goods and trademarks couldn’t guess how this one would go, but in March the owner received a registration certificate on the Principal Register with “crumble” but not “whisk” disclaimed as descriptive — a good result for that California bakery. Nonetheless, practitioners report an uptick in initial refusals based on overall descriptiveness and one wonders if CRUMBLE & FLAKE would have been handled differently.

The USPTO emphasizes and courts have ruled that a mark doesn’t have to describe all of the features or attributes of the applicable goods or services to be refused as merely descriptive. In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). It is sufficient if a mark describes only one significant function, attribute, or property, which means there are countless reasons to refuse an application. See TMEP §1209.01(b).

An important distinction between Descriptive and Suggestive is how directly the feature is conveyed in the words. To be descriptive, it “immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” In re Carlson, 91 U.S.P.Q.2d 1198 (T.T.A.B. 2009). However, if it requires “imagination, thought and perception” to determine the nature of the goods, it is more likely to be deemed suggestive. Stix Products, Inc. v. United Merchants & Mfrs., Inc., 295 F. Supp. 479, 488, 160 U.S.P.Q. 777 (S.D. N.Y. 1968).

For Chrissi’s bakery, it’s clear that “buttery” or “flaky” is descriptive, but it takes another leap or two of imagination to get to Oui/Oui or Flakery and I’m hopeful that she’ll come around.

Not surprisingly, it can be a challenge to convince marketing departments (who want brands to communicate a message about the product, i.e., to describe it) of the benefits of choosing marks in the green zone. It can be more effective to focus on cost savings, e.g., the time and effort involved in responding to refusals (that is to say, preparing written arguments about how many leaps of imagination a name requires and digging up analogous case precedent) as well as missing out on benefits of the Principal Register.

Likewise, moving forward with a descriptive mark means that many other companies can co-exist with similar names, which makes it harder to develop strong brand identity and search engine optimization (contrast a strong mark like Nike, which is afforded a broad swath of protection, even beyond its core goods). Of course, if a client is not in the market for a federal registration (e.g. running a short-lived ad campaign, or not engaging in any interstate commerce), descriptiveness is far less problematic.

Eying a stack of neatly embroidered “Cleveland Croissant” aprons, Chrissi asks if there’s any way we can protect the name on the Principal Register, besides waiting five years to prove acquired distinctiveness, I suggest adding a non-descriptive word like “Crazy,” which is likely to lead to success on the Principal Register, notwithstanding a disclaimer of “Cleveland Croissant.” I also mention that a well-designed logo (with unique imagery and not merely stylized fonts and line art) is likely to save her from the Supplemental Register, if she is willing to live with the same disclaimers.

Chrissi considers her options and decides that a suggestive mark (Flakery) paired with the generic (Bakery) is her best bet to make a
strong brand impression and get on the Principal Register right away. She’s willing to accept a disclaimer in order to satisfy her marketing team that people will know it’s a bakery (and not, e.g., a cereal factory). Assuming we can rule out third party confusion issues (because we quickly recognize she wouldn’t be the first to use the mark), the Flakery Bakery can be off to a strong start.

1 A reasonable attorney/connoisseur would ask: what of the infamous cronut? Its arguably less obvious telescoping of croissant + donut was approved by the USPTO this year. The burden is now on the owner to ensure that the mark is properly policed so it does not fall victim to genericide, and it still may face third party challenges despite the USPTO’s approval.

2 However, if the word subject to a disclaimer is central to a company’s branding, it may be worth fighting against the disclaimer requirement and/or refiling after the mark has acquired distinctiveness, so as not to formally acknowledge the weakness of the words.

Suzann Moskowitz is the owner of The Moskowitz Firm, LLC. Her boutique practice, celebrating its fifth anniversary this year, focuses on trademark, copyright, privacy, technology transactions and other intellectual property matters. She has been a CMBA member since 2004. She can be reached at (216) 339-1111 or suzann@themoskowitzfirm.com.
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.

Visit CleMetroBar.org/CLE for a full schedule.

NOVEMBER
14 Municipal Court Update @ the Independence Civic Center (3.00 CLE)
16 Professional Conduct (2.50 CLE)
17 9th Annual Special Education Law Forum (5.50 CLE)
19 What’s Trending in Insurance Coverage: #CyberRisk #DataSecurity (3.50 CLE)

DECEMBER
2–3 58th Annual Cleveland Tax Institute (Two full days of CLE)
4 Advanced Medical/Legal Workers’ Compensation Seminar (6.00 CLE)
4 Managing the Media: Lawyers and the Press (4.00 CLE)
5 Legal Eagles Update (3.00 CLE)
8 Lead Law Simulcast (5.50 CLE)
9–11 New Lawyer Bootcamp (12.00 CLE and New Lawyer Training 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: Professional Conduct Video (3.00 CLE)
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: Professional Conduct Video (3.00 CLE)
22–23 Real Estate Law Institute Video (12.00 CLE)
29 Resilience: Professional Conduct Video (3.00 CLE)
30–31 Northern Ohio Labor & Employment Law Conference (9.75 CLE)
31 Resilience: Professional Conduct Video (3.00 CLE)

Contact the CLE Department at 216-696-2404 or visit CleMetroBar.org to receive updates or registration forms

New Perspectives on OVI Cases
Saturday, November 14, 2015 – 3.00 CLE Hours – Independence Civic Center, 6363 Selig Blvd., Independence, Ohio 44131
Registration: 8:15 a.m. Seminar: 8:45 a.m. – 12:00 p.m.
8:45 a.m. Case Law Update
Hector G. Martinez, Jr., Hector G. Martinez, Jr. Co., LPA
Leslie Johns, Hector G. Martinez, Jr. Co., LPA
9:45 a.m. Break
10:00 a.m. A Prosecutor’s Perspective on FSTs and Substantial Compliance
Michael E. Cicero, Nicola Gudbranson & Cooper, LLC
11:00 a.m. Implied Consent: Is it Unconstitutional?
Terrence R. Rudes, Rudes Law Office
12:00 p.m. Adjourn

The CMBA’s Ethics and Professionalism Committee presents:
Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice
Monday, November 16, 2015 – Approved for 3.00 Attorney Conduct CLE Hours – CMBA Conference Center
Registration: 12:30 p.m. Seminar: 1:00 – 4:15 p.m.
12:55 p.m. Welcome & Introductions
1:00 p.m. Overview of the Disciplinary Process / Places to Seek Assistance with Ethical Questions
Kimberly Vanover Riley, Montgomery Rennie & Jonson
2:00 p.m. What If Preparedness; Using the CMBA’s WIP Program to Engage in Practice Succession Planning
Deborah A. Coleman, Coleman Law LLC
2:30 p.m. Magical Thinking for Lawyers: What To Do When Your Workplace Changes in an Instant
Mary K. Whitmer, Kohrman Jackson & Krantz LLP
3:00 p.m. Break
3:15 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
4:15 p.m. Adjourn

The CMBA’s Insurance Law Section presents:
What’s Trending in Insurance Coverage: #CyberRisk #DataSecurity
Thursday, November 19, 2015 – 3.50 CLE & Specialty Certification Hours – CMBA Conference Center
Registration & Breakfast: 8:00 a.m. Seminar: 8:30 a.m. – 12:15 p.m.
8:00 a.m. Registration and Breakfast
8:25 a.m. Welcome and Introductions
K. James Sullivan, Caffe, Halter & Griswold LLP, Chair, Insurance Law Section
8:30 a.m.  Transition Point: Coverage for Cyber Risks
Lucas M. Blower, Brouse McDowell

9:30 a.m.  Changes to ISO’s CGL Forms in Light of Cyber Claims
Brian E. Roof, Sutter O’Connell Co.

10:00 a.m.  Break

10:15 a.m.  Identifying, Calculating, and Mitigating Covered Loss under New Cyber Liability Policies
Paul L. Janowicz, Tucker Ellis LLP

11:15 a.m.  Cyber and Crime Coverage: Client Exposures and Insurance Solutions
Kimberly K. Ferenchak, Practice Leader, Executive Risk, Commercial Insurance Group, The Oswald Companies
Darlyn A. McDermott, CLF, MAOL, AINS, CWCA, CLPSII, Senior Client Executive, Oswald Companies
Nick Economidis, Professional Liability Underwriter, Beazley USA

12:15 p.m.  Adjourn

Special Education Law and Advocacy Yearly Update for Parents and Practitioners
Tuesday, November 17, 2015 – Submitted for 5.50 CLE Hours – CMBA Conference Center

8:55 a.m.  Welcome

9:00 a.m.  Basics of Special Education
Linda M. Gorczynski, Hickman & Lowder Co., LPA, Seminar Chair
Topics: Understanding the process including requesting evaluations, 504 vs. IEP, the IEE process, and a walk through of ETRs and IEPs.

10:00 a.m.  Behaviors and Discipline
Michelle DePolo, PsyD, BCBA-D, KidsLink Neurobehavioral Center
Franklin J. Hickman, Hickman & Lowder Co. LPA
Topics: Discipline procedures including functional behavior assessments and behavior intervention plans.

11:00 a.m.  Break

11:15 a.m.  Dispute Resolution Options and Remedies Available
Aimee Gilman, Agins & Gilman, LLC
Topics: Facilitated IEPs, mediation, due process, unilateral placement in parent-chosen private schools, and available remedies.

12:15 p.m.  Break and Distribution of Lunch

12:45 p.m.  Mock IEP Meeting
Kerry Agins, Agins & Gilman, LLC
Topics: Understanding difference between medical diagnosis vs. disability category, district’s consideration of independent reports and parent provided information, when you have a right to accept some services and deny others, reasonable number of minutes to request for services, requesting consult time, making sure goals correlate to ETR needs, when to sign and how to note disagreements.

3:30 p.m.  Adjourn

58th Annual Cleveland Tax Institute 2015
Wednesday, December 2, 2015 & Thursday, December 3, 2015 – 13.00 CLE Hours – CMBA Conference Center
Registration: 8:15 a.m.  Institute: 9:00 a.m. – 5:15 p.m.

WEDNESDAY, DECEMBER 2, 2015

8:45 a.m.  Opening Remarks
Peter A. Igel, Tucker Ellis LLP, Chair

9:00 a.m.  Current Developments
Mitchell S. Thompson, Squire Patton Boggs (US) LLP, Panel Chair

10:30 a.m.  Break

10:45 a.m.  Washington Update
Jeffrey H. Paravano, BakerHostetler LLP, Panel Chair

12:15 p.m. Lunch (Included with program)

1:15 p.m.  U.S. Tax Court “A View from the Bench”
Hon. Ronald L. Buch, U.S. Tax Court

1:45 p.m.  Break

2:00 p.m.  Taxation of Partnerships and Pass-Throughs
Thomas I. Hausman, The Law Office of Thomas I. Hausman, LLC, Panel Chair

3:30 p.m.  Break

3:45 p.m.  Breakout Sessions:
Ohio and Multistate State and Local Tax Developments
Christopher J. Swift, BakerHostetler LLP, Panel Chair
International Tax
Melinda L. Reynolds, A. Schulman, Inc., Panel Chair

5:15 p.m.  Adjourn

THURSDAY, DECEMBER 3, 2015

8:45 a.m.  Opening Remarks
Peter A. Igel, Tucker Ellis LLP, Chair

9:00 a.m.  Tax Controversy Update for Federal Research Credit, Captive Insurance Programs and other Miscellaneous Areas
Jeffry J. Erney, BakerHostetler LLP, Panel Chair

10:30 a.m.  Break

10:45 a.m.  Tax Issues in Bankruptcy, Insolvency and Workouts
Candace Ridgway, Jones Day, Panel Chair

12:15 p.m. Lunch

1:15 p.m.  “Preparing for the 2016 GOP Convention”
Chris McNulty, Director of Community and Political Affairs for the 2016 Republican National Convention

1:45 p.m.  Break

2:00 p.m. Breakout Sessions:
Corporate Tax Developments and Select Topics
Michael Gall, Calfee, Halter & Griswold LLP, Panel Chair

Closely Held Businesses: Back Through the Future: a Multi-Area Review of the Past (and Continuing) Evolution of Tax Practice
Matthew F. Kadish, Kadish, Hinkel & Weibel, Panel Chair

3:30 p.m. Break

3:45 p.m. Breakout Sessions:

Tax Credits and Incentives
Nathan Ware, BakerHostetler LLP, Panel Chair

Executive Compensation & Employee Benefits
Michael G. Meissner, Squire Patton Boggs (US) LLP, Panel Chair

5:15 p.m. Adjourn

The CMBA’s Workers’ Compensation Section presents:

Advanced Workers’ Compensation Medical-Legal Seminar
Friday, December 4, 2015 – 6:00 CLE Hours – CMBA Conference Center
Registration & Breakfast: 8:00 a.m.  Program: 8:30 a.m. – 4:15 p.m.

8:30 a.m. Back and Neck: Rehabilitation and Pain Management Issues
Eric Kano Mayer, MD, Staff Physician, Spine and Sports Specialist, Center for Spine Health/Neurological Institute, Cleveland Clinic
Kush K. Goyal, MD, Associate Staff Physician, Center for Spine Health/Neurological Institute, Cleveland Clinic

10:30 a.m. Break

10:45 a.m. Workers’ Compensation Appeals to the Supreme Court of Ohio
Justice William M. O’Neill, Supreme Court of Ohio

11:45 a.m. Luncheon (Included)

1:00 p.m. BWC Court Settlements – 2015 Update
Michael Wise, Settlement Attorney, Ohio Bureau of Workers’ Compensation, Legal Division

1:45 p.m. Settlements and Medicare and Medicaid Set-Asides
Candace M. Pollock, Hahn & Pollock LLC

2:45 p.m. Break

3:00 p.m. Burden of Proof Issues in the Hearing Room
• Sufficiency of Causation • Maximum Medical Improvement
• Substantial Aggravation • Therapeutic vs. Diagnostic Treatment
Robin A. Nash, Staff Hearing Officer, Cleveland Industrial Commission
Rhonda Patsouras, Staff Hearing Officer, Cleveland Industrial Commission
William J. Heine, District Hearing Officer, Cleveland Industrial Commission
F. Michael Arcangelini, District Hearing Officer, Akron Industrial Commission

4:15 p.m. Adjourn to Section’s Networking Happy Hour

Managing the Media: Lawyers and The Press
Friday, December 4, 2015 – 3.50 CLE Credits Including 2.50 hour of Professional Conduct – CMBA Conference Center

Registration: 8:30 a.m.  Seminar: 9:00 a.m. – 1:00 p.m.

As almost any general counsel of a large, publicly traded, consumer-oriented company will tell you, legal controversies today are tried in the Court of Public Opinion — at least as much as in any Court of Law. Every organization, especially large, publicly-traded corporations, has much to gain (or lose) by the way a legal controversy is positioned in the media. Because the value of a company’s reputation is immeasurable — and perhaps its largest uninsured asset — a corporation loses when the brand image is tarnished, even if the corporation technically wins at trial. Furthermore, since most legal controversies are settled prior to trial, the Court of Public Opinion has arguably become the most important battleground affecting not only good will and market share, but legal bargaining power and settlement negotiations. Managing this battleground, therefore, has become integral to many corporations’ legal strategies. Georgetown Journal of Legal Ethics, Vol. 22, 2009

In these days of 24/7 instant news, attorneys and their clients simply cannot wait until a legal decision is rendered. They must be prepared to vigorously defend their situation in a wide variety of venues, as well as media outlets. In the first portion of this seminar, attorneys will hear about the canons and case law surrounding the relationship between PR activities, PR counsel and the management of the media, often a critical component of case strategy in litigation practice. The remainder of the seminar includes: establishing and maintaining “control of the message;” when a reporter calls — making your points and not just answering questions; what reporters expect; what newsmakers should expect; defining and creating key messages; reporter’s agenda vs. the attorney’s agenda; the fundamental differences between print, television and radio interviews and how each require different skill sets; dealing with the press proactively and reactively; “off the record, not for attribution” and other advanced techniques; and alternatives to “no comment.”

8:30 a.m. Registration
8:55 a.m. Introductions
9:00 a.m. The Civil Perspective – Professionalism
Deborah A. Coleman, Coleman Law LLC

9:45 a.m. The Criminal Perspective – Professionalism
Roger M. Synenberg, Synenberg, Coletta & Moran, LLC

10:15 a.m. Break

10:30 a.m. Managing the Media: Practical Applications & Case Studies
Bruce M. Hennes, Managing Partner, Hennes Communications

11:45 a.m. Break

12:00 p.m. Continuation Of Case Studies

1:00 p.m. Adjourn
Legal Eagles Year End Update
Saturday, December 5, 2015 – 3.0 CLE Hours – St. Edward High School, 13500 Detroit Road, Lakewood

8:55 a.m. Welcome & Introductions
John A. Greco ’03, Legal Eagles CLE Chair, Darling / Duffy Legal Services
Jay T. Ansberry III ’67, Associate Vice President of Institutional Advancement
Director of Alumni Relations and Major Gifts, St. Edward High School

9:00 a.m. Understanding the Integrated Mortgage Disclosure Rule
Don Folino ’03, Cleveland Home Title
Greg Grospitch, Cleveland Home Title

9:15 a.m. Real Estate Law Update
John J. Duffy ’61, Darling / Duffy Legal Services

9:30 a.m. Hope to Bring – Maintaining Professionalism Through Pro Bono Work
Patrick F. Haggerty ’73, Partner, Frantz Ward LLP

9:45 a.m. Domestic Violence – Civil and Criminal Aspects of Ohio Law
John J. Wargo, Jr ’65, Wargo and Wargo, Co., LPA
Tom Wilson, Wargo and Wargo, Co., LPA

10:15 a.m. Break

10:30 a.m. Avoiding Ethical Problems
Justice Terrence O’Donnell ’64, Supreme Court of Ohio

10:45 a.m. Understanding the Fair Debt Collection Practices Act (FDCPA)
Michael R. Vaccaro ’97, Rathbone Group, LLC

11:00 a.m. Domestic Relations Update
Michael R. Gareau, Jr. ’89, The Gareau Law Firm Co., LPA; Director of Law – City of North Olmsted

11:15 a.m. Writs of Prohibition and How to Obtain This Extraordinary Remedy
Robert E. Cahill ’93, Sutter O’Connell Co.

11:30 a.m. Rethink Cleveland: Strategies for Redevelopment of Vacant Properties and Development Update
David Ebersole, Assistant Director of Economic Development, City of Cleveland

12:00 p.m. Update from the United States Marshal
Peter J. Elliott ’80, United States Marshal, Northern District of Ohio

Are you tired of stories about Atticus Finch? Do you cringe at the notion of yet another hour and a half or two hour lecture on lawyer best practices? Do you bring your reading glasses to professionalism CLE presentations so that you can read the newspaper over the shoulder of the person sitting in front of you? Are you interested in a professionalism CLE that is entertaining, engaging, thought-provoking and instructive? Then we have a program for you!

After viewing clips from movies and staged and real video clips of thorny ethical issues that frequently arise in transactions, the panel and the audience will answer questions electronically as a group, discuss the results of that voting, and explore ethical and professional issues that lawyers may encounter in these transactions.

Panelists:
Hon. Dan Aaron Polster, U.S. District Court, Northern District of Ohio
Hon. John P. O’Donnell, Cuyahoga County Court of Common Pleas
Mark I. Wachter, Wachter Kurant LLC

3:45 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 Please, 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 Civility & Professionalism Task Force Presents:

Sealing the Deal: Professionalism in the Transactional Practice
Friday, December 11, 2015 – 2.50 Professional Conduct CLE Hours requested – CMBA Conference Center
Registration: 12:30 p.m. Seminar: 1:00 – 3:45 p.m.

12:55 p.m. Welcome & Introductions
Frank R. DeSantis, Thompson Hine LLP
Jack Kluznik, Weston Hud LLP, Seminar Co-Chairs

1:00 p.m. Professionalism in the Transactional Practice
(With one 15-minute break)
Register Early and Save! Registrations the day of seminar will include an additional $15 fee

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

Name ___________________________ Atty. Reg. No. ______________________
Firm __________________________________________ Address _______________________
City __________________ State __________ Zip __________________
Phone __________________ Fax __________________
E-mail ____________________________________________________________________________

☐ I have submitted a membership application within the last 30 days  ☐ This is a new address
☐ Check Enclosed made payable to the CMB&A  ☐ Visa  ☐ MasterCard  ☐ Discover  ☐ American Express  ☐ CLE Passport
Credit Card No. ______________________ Exp. Date ______________________

Signature ____________________________________________________________________________

Mail to P.O. Box 931891, Cleveland, Ohio 44193, or fax Reservation Form to (216) 696-2129 (all fax reservations must include a credit card number, expiration date, and signature). Call the CMB&A at (216) 696-2404 for further information. For electronic materials, registrants will receive a link to download or print materials in advance, or view online using a mobile device. CANCELLATIONS must be received in the CLE Department in writing three business days prior to the program. Refunds will be charged a $15 administrative fee. Substitutions or one-time transfers to other programs are permitted with 24 hour written notice. Transfers are to a single program and may be made only once. No refunds are issued on transfers. Persons needing special arrangements to attend this program are asked to contact the CLE Dept. at (216) 696-2404, (fax 696-2129) at least one week prior to the program. Complete tickets may not be split between attendees. CLE credit will not be granted to more than one attendee per ticket.

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<th>NEW PERSPECTIVES ON OVI CASES</th>
<th>11/14/15 – 3.00 CLE hours</th>
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<td>☐ $60 Criminal Law Section Members, Government, Non-Profit and New Attorneys (&lt;1 year)</td>
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<th>RESILIENCE: HOW LAWYERS CAN PREPARE FOR AND COPE WITH THE UNEXPECTED IN PRACTICE</th>
<th>11/16/15 – 3.00 CLE hours</th>
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<th>SPECIAL EDUCATION LAW AND ADVOCACY YEARLY UPDATE FOR PARENTS AND PRACTITIONERS</th>
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<td>Pricing for Print Materials (Register by 11/25/15): ☐ $390 Members ☐ $440 Non-Members ☐ $330 Gov’t ☐ $270 Affiliate</td>
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<td>Check here if you will attend lunch ☐ Wednesday 12/2 only ☐ Thursday 12/3 only ☐ $25 Lunch</td>
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<th>12/4/15 – 6.00 CLE hours</th>
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<td>☐ $115 Government, Non-Profit or New Lawyers (&lt;1 year)</td>
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**THE CMBA’S GREEN INITIATIVE COMMITTEE** hosted its Greener Way to Work Week September 28 – October 2. The week encourages the Cleveland community to spend one or more days choosing greener ways to commute to work. The highlight of the week, the annual luncheon, welcomed special guest Colby Sattler, from the Western Reserve Land Conservancy.

The Green Initiative Committee also announced two changes to help enhance its sustainability outreach. The changes come to the Green Award and the Green+ level of certification.

Formerly known as the Green Innovation Award, the new Green Sustainability Award:

- Will honor an individual, not a firm
- Recipient can be a lawyer or non-lawyer
- There may be more than one recipient if candidates are deemed worthy of the honor
- Recipients will be CMBA members or employees of a CMBA Green Certified firms/offices

The award will remain an annual honor and will be announced at the David Webster Greener Way to Work luncheon. The Green+ Certification, added two criterion options to the energy reduction focus.
THANK YOU, SPONSORS!
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Looking Ahead

Significant Changes to the Federal Rules of Civil Procedure

BY ERIC B. LEVASSEUR & BETH K. KAVOURAS

Following years of debate and multiple revisions, on December 1, 2015 new amendments to the Federal Rules of Civil Procedure will take effect absent contrary Congressional action in the interim. These amendments usher in significant changes to federal case management and discovery procedures, and are aimed at streamlining the litigation process through improved early case management; redefining the scope of discovery, with an increased emphasis on proportionality; and providing more consistent standards for the preservation and loss of electronically stored information.

Here is a summary of what federal practitioners can expect from the more noteworthy amendments to the Federal Rules.

Reducing Delays Through Early Case Management

A few of the revisions to the Rules target the speed (or lack thereof) of the early case management process.

First, Rule 4(m) is amended to shorten the time for service of process from 120 to 90 days.

Second, Rule 16(b) — governing scheduling orders — has undergone two key revisions. Rule 16(b)(1)(B), which previously provided that the court could issue a scheduling order “after consulting with the parties’ attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means” has been amended to remove the option of consulting ‘by telephone, mail or other means’ that could lead to inherent back-and-forth delays. The Advisory Committee Notes clarify that the rule requires ‘direct simultaneous communication,’ which could include telephone communication, but would exclude mail communication. See Final Federal Rules Amendment Package Transmitted to Congress 4/29/2015 at p. 52, www.uscourts.gov/rules-policies/pending-rules-amendments (follow “The entire package of materials transmitted to Congress is available here” hyperlink).

Further reducing delays are the revisions to Rule 16(b)(2), governing the time limit for the court to issue its scheduling order. Rule 16(b)(2) — which currently requires that the scheduling order be issued no later than either 120 days after service or 90 days after any defendant has appeared — will be adjusted to 90 days and 60 days, respectively. The amended Rule 16(b)(2), however, also provides the court the option to extend these deadlines if it “finds good cause for delay,” which allows for some leeway even with the shortened scheduling order window. The Advisory Committee Notes specifically contemplate that cases involving complex litigation, multiple parties, or large organizations are likely to need the extra time. Id. at 53.

Third, Rule 16(b)(3)(B)(v) — governing the contents of scheduling orders — is amended to provide that a scheduling order may “direct that before moving for an order relating to discovery, the movant must request a conference with the court.” An attempt to efficiently resolve discovery disputes without the delays of formal motion practice, this amendment should serve as a welcome complement to Rule 37(a)(1) and many local rule meet-and-confer requirements.

Finally, amended Rule 26(d)(2) will permit Rule 34 requests for production to be issued more than 21 days after service of process, even if this date occurs before the parties’ Rule 26(f) scheduling conference. While delivery of Rule 34 requests prior to the Rule 26(f) conference does not constitute service for the purpose of Rule 5 — rather, the requests are considered served on the date of the Rule 26(f) conference for purposes of triggering the 30-day response deadline — this change will allow parties to consider the requests and therefore have a more focused, efficient Rule 26(f) conference. Id. at 70. While the aim of this amendment is to reduce delays, the Advisory Committee Notes provide that even if the requests are delivered prior to a Rule 26(f) conference, that fact “should not affect a decision whether to allow additional time to respond” to the requests. Id.

Redefining the Scope of Discovery

Perhaps the most significant amendments to the Rules concern the Advisory Committee’s efforts to redefine the scope of discovery. The new Rules signify a shift away from the traditional notion that anything “reasonably calculated to lead to the discovery of admissible evidence” is fair game, and towards an increased emphasis on proportionality.

Rule 26(b)(1) will be amended to emphasize that the scope of discovery is limited to that which is both relevant and “proportional to the needs of the case.” Proportionality will be determined by considering six factors: (1) the importance of the issues at stake; (2) the amount in controversy; (3) the parties’ relative access to relevant information; (4) the parties’ resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. The Advisory Committee Notes emphasize that the proportionality analysis will sometimes necessitate continuing judicial management of discovery. Id. at 66.

Consistent with this amendment, Rule 26(b)(1)’s prior reference to information “reasonably calculated to lead to the
discovery of admissible evidence” has been deleted because, according to the Advisory Committee Notes, some parties erroneously looked to that language as defining the scope of discovery. Id. at 69. To combat this tendency, revised Rule 26(b)(1) clarifies that “[i]nformation within this scope of discovery” — i.e., both relevant and proportional — “need not be admissible in evidence to be discoverable.”

In addition to the Rule 26(b) scope amendments, Rule 34 is also being amended to require a party to “state with specificity the grounds for objecting to” a request for production, as well as to identify “whether any responsive materials are being withheld on the basis of that objection.” The latter revision is designed to curb the inherent confusion that arises when a party objects to a particular request but still produces responsive documents. However, the Advisory Committee Notes counsel that “[t]he producing party does not need to provide a detailed description or log of all documents withheld, but does need to alert other parties to the fact that documents have been withheld and thereby facilitate an informed discussion of the objection.” Id. at 79.

Therefore, while amended Rule 34 alleviates some confusion for the propounding party, it also avoids placing a substantial burden on the responding party.

Encouraging Preservation of and Consistent Standards for Electronically Stored Information

The third principal set of amendments are aimed at providing more consistent standards for electronically stored information, or “ESI.” This includes a wholesale revision of Rule 37(e)’s “safe harbor” provision.

First, Rule 16(b)(3)(B)(iii) is amended to provide that a court’s scheduling order may include provisions not only for the disclosure and discovery of ESI, but also for the preservation of ESI as well. Another step designed to foster early communication and cooperation, the amendment should further enable the parties to control ESI costs early in the litigation.

The revision of Rule 37(e) is further designed to eliminate the uncertainty that has arisen from the varying and sometimes conflicting court decisions concerning the imposition of sanctions or curative measures when a party fails to preserve ESI. Id. at 83.

Amended Rule 37(e) eliminates prior language providing that “[a]bsent exceptional circumstances,” a court may not impose sanctions on a party for failing to provide ESI if it was “lost as a result of the routine, good faith operation of an electronic information system.”

Instead, amended Rule 37(e) includes more specific instructions on how a court should address the loss of ESI, and distinguishes between intentional and non-intentional conduct. If ESI “that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced” the court may — if it finds that a party “acted with the intent to deprive another party of the information’s use in the litigation” — (1) “presume that the lost information was unfavorable to the party”; (2) “instruct the jury that it may or must presume” the same; or (3) “dismiss the action or enter a default judgment.”

A court may also order other measures “no greater than necessary to cure the prejudice” to a party from the loss of the ESI if the party who lost the information did not do so intentionally with the purpose of depriving another party of the information.

The Advisory Committee Notes provide further guidance. When applying Rule 37(e), the Advisory Committee suggests that courts should consider relevant factors such as: (1) “the extent to which a party was on notice that litigation was likely and that the information would be relevant;” (2) whether the party “promptly [sought] judicial guidance about the extent of reasonable preservation” in the face of a dispute; (3) the “routine, good-faith operation of an electronic information system;” (4) “the party’s sophistication with regard to litigation in evaluating preservation efforts;” (5) whether the information is within the party’s control, or whether preserved information was destroyed “by events outside the party’s control;” and (5) the proportionality of the apparent importance of the ESI to the litigation when compared with the party’s resources. Id. at 84-87.

While the new Rule 37(e) gives courts clear guidelines to discipline parties who intentionally destroy ESI, it also cautions not to assume that parties deliberately caused the loss. As stated by the Advisory Committee, “perfection in preserving all relevant electronically stored information is often impossible.” Id. at 86.

The December, 2015 amendments to the Federal Rules represent some of the most comprehensive and significant amendments to the Federal Rules since the Advisory Committee grappled with the rise of electronic discovery in the 2006 amendments. To what extent the amendments will alter day-to-day federal practice remains to be seen, but the scope of the amendments no doubt provides fertile ground for future debate.
Hashtags have become commonplace in social media, but their status as intellectual property — particularly as trademarks — is still developing. The proliferation of social media continues to stretch the boundaries of the law and its definitions, prompting us to apply traditional legal concepts to new technological and social phenomena.

Hashtags are word or character strings preceded by the “#” symbol that organize and link content containing the same or related hashtag on social media. In addition to providing the search-related functionality for which hashtags were first developed, hashtags have evolved to provide businesses new ways to launch marketing campaigns and engage customers.

In 2013, responding to the popularity of hashtags and its utility, the United States Patent and Trademark Office (“USPTO”) amended its Trademark Manual of Examining Procedure ("TMEP") to specify that the inclusion of a hash symbol (#) at the front of a mark could serve as a source-indicator, and therefore, could be registered as a trademark. Not surprisingly, the increased utilization of hashtags has led to a rapid increase in applications for hashtag marks in the USPTO—particularly for services.

The TMEP defines a hashtag as “a form of metadata comprised of a word or phrase prefixed with the symbol ‘#.’” Trademark Manual of Examining Procedure, ¶ 1202.18 (Wolters Kluwer eds., 2014), 2014 WL 5799282. It further states that a hashtag mark may be registerable, but only if it functions as an identifier of the source of the applicant’s goods or services. In other words, the inclusion of a hash symbol (#) at the front of a mark does not render the mark more distinctive than it would be without. The USPTO examines applications for hashtag marks in the same manner as a traditional mark — to ensure that they are distinctive, non-deceptive, single-source indicators used in interstate commerce in connection with the applied for goods or services. Therefore, a hashtag preceding an otherwise unregistrable mark will not be sufficient to overcome a refusal to register based on genericness, descriptiveness, or likelihood of confusion. For example:

1. The hashtag cannot be generic (for example, a bike shop cannot register a trademark for “#bike”);
2. A hashtag cannot include a mark that is already in use (for example, if anyone but Coca-Cola tried to register #cokecanpics the trademark application would be rejected);
3. The class of goods or services affiliated with the hashtag must be specified in the application; and
4. The trademark application must include acceptable specimens of use (instances of the hashtags featured on packaging, labels, or in stores, catalogues or webpages where the product is sold).

In addition to basic registration issues, one of the biggest bars to registration of hashtag marks is the difficulty in providing examples to the USPTO of the mark as a source indicator. The party seeking to register the mark must overcome the presumption...
that the “hash” symbol is only a tag to facilitate searching, and therefore, the ideal example would not be the hashtag mark shown in a string of text or in font of a text or tweet. Instead, where the party can show use of the mark in close proximity to the goods on labels, displays, advertising, and websites, the party will be successful in overcoming the presumption that the symbol is a tag. 

As one might expect, the widespread use of hashtags has resulted in trademark disputes from time to time. Most recently, in September 2015, the United States District Court in California adjudicated the first case on whether and when hashtags can be trademarks. In *Eksouzian v. Albanese*, the parties were partners who made and sold portable vaporizer pens, but eventually their partnership vaporized. As part of the dissolution of their partnership, the parties reached a settlement agreement which restricted both parties’ use of the term “cloud” in connection with the sale of their products. In particular, the Settlement Agreement provided that, in order to avoid consumer confusion, the Plaintiffs could not use “cloud” next to a specified set of words including “pen” and “penz,” while the Defendants could only use the term “cloud” as part of a unitary mark (a mark where multiple words paired together result in a single trademark). Two months after reaching the agreement, the Plaintiffs filed a Motion to Enforce the Settlement Agreement alleging the Defendants violated several provisions of the agreement. The Defendants made several counterarguments including that they were excused from performance because of the Plaintiffs’ failure to meet their obligations. In particular, the Defendants claimed that certain hashtags — #cloudpenz and #cloudpen — employed by Plaintiffs to promote their products on social media, including tagging images on Instagram violated the terms of the settlement.

The Court held that the Plaintiffs did not violate the settlement because “hashtags are merely descriptive devices, not trademarks.” In arriving at its decision, the court reasoned that hashtags are functional, and that the purpose of the Plaintiffs’ use of the hashtag was to route consumers to the Plaintiffs’ promotion and not to serve as a trademark.

*Eksouzian* reached a reasonable decision to not grant #cloudpen any special protection, but the same cannot be said for #cloudpenz. If “cloud” and “pen” are both descriptive and/or generic terms for the parties’ vaporizer pens, then it reasonably follows that the use of the hashtag #cloudpen constitutes a statutory fair use of the phrase, rather than a trademark use. But, while many concede “pen” meets that description, the court failed to establish the same is true for “cloud.” More importantly, the opinion omits analysis of Plaintiffs’ use of #cloudpenz, even though Defendants own a federal registration for the word mark CLOUD PENZ for vaporizers. So, from a broader perspective, *Eksouzian* fails to recognize how companies utilize hashtags for promotional purposes (even beyond potential fair use arguments).

Hashtag-related claims are also becoming more prevalent in trademark infringement complaints. In March 2015, clothing maker Fraternity Collection brought a trademark infringement claims in federal district court in Mississippi against a former designer based on use of the tags #fratcollection and #fraternitycollection on social media after the designer and the plaintiff ended their partnership. The court accepted at the pleading stage “the notion that hashtagging a competitor’s name or product in social media posts could, in certain circumstances, deceive consumers.” Fraternity Collection LLC v. Fargnoli, 2015 WL 1486375, No. 3:13–CV–664 (S.D. Miss. Mar. 31, 2015). This was the first time that a court found that use of a competitor’s mark in a hashtag, rather than on the product itself, could result in consumer deception.

Like *Eksouzian*, the Fraternity Collection case involved a clearly competitive use of the hashtags. What remains unclear, however, is how trademark law will treat hashtags used for non-competitive goods and services. The traditional test for infringement is the likelihood of consumer confusion. Thus, courts have generally found consumer confusion to be unlikely when similar or identical marks are used for unrelated goods or services that tend to be advertised in different channels. The use of identical hashtags, however, creates a single feed of all posts under the same hashtag, regardless of how different the advertised goods or services may be — in essence, advertising with a hashtag creates a single “channel of trade.” This functional aspect of hashtags remains to be weighed by the courts in the consumer confusion analysis.

Given the way hashtags are used by businesses, they are akin to tag lines or slogans. But, unlike traditional tag lines, which are meant to be used primarily by the mark owner, hashtags are typically used by social media users. When that happens, a consumer is likely to perceive hashtags as a device that organizes content or directs them to social media to follow or participate in an online conversation or campaign, rather than as a source-indicator. This functional nature of hashtags led to initial uncertainty on the question of whether hashtags can serve as a source indicator, which the USPTO settled in 2013 when it added a new section to the TMEP on registration of hashtag marks. But the question remains, is it worth registering a hashtag?

Public opinion when it comes to enforcing a hashtag trademark is a factor also worth considering. In 2010, the Taco John’s Mexican Restaurant chain used its federal registration for TACO TUESDAY in sending a cease desist letter to Iguana Grill for its use of #tacotuesday in promoting Iguana Grill’s business. While the cease and desist was effective in stopping Iguana Grill from using the mark, Taco John’s active enforcement of their mark generated considerable and detrimental public criticism of their company while providing free media and marketing buzz for Iguana Grill.

So can you register a #trademark? Yes. Should you register a # trademark? It depends. Factor such as the viability of the hashtag, the branding benefits, and ability to enforce the mark should all be considered before registering a #trademark. Ultimately, whether it is a good idea to register a #trademark will depend on what role it plays in a business’s marketing future. If the business expects the hashtag to have an important and relatively long term role, and the business is willing to protect it, if necessary, then applying for federal trademark protection may be the right move. Certainly, if the hashtag has already become an effective marketing tool, it may be time to consider registering it as a trademark. In any event, given the inconsistencies by the court as to whether a hashtags can be a trademark or not, it seems prudent to research potential conflicts, which may include trademark clearance searches to identify conflicting uses, before adopting hashtags for social media campaigns.

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An Overview of Chinese Immigration

BY ZONGTAO HU

America is an immigration country. During the past 200+ years, immigrants from all over the world have come to build up the United States of America. Along with all immigrant communities, Chinese immigrants have experienced a tortuous immigration history as well as made a great contribution to this country. This article will provide an overview of Chinese immigration.

The term “Chinese American” means the Chinese-blood immigrants who came from China or whose parents came from China. According to the 2010 census, the Chinese American population numbered approximately 3.8 million. From the statistic of the Department of Homeland Security (DHS), the numbers of Chinese immigrants is still increasing steadily, adding up to around 4 million at present. It is said there are around 120,000 undocumented Chinese immigrants, accounting to about 1% of total undocumented immigrants all over the U.S. This percentage is much lower than Mexico’s which accounts to 64%, and also lower than other Asian immigrant communities such as Philippines, India and even South Korea. Among all the Chinese green card holders, almost half of them have applied to be naturalized, becoming citizens.

During the past 200+ years, immigrants from all over the world have come to build up the United States of America. Among all the immigrant communities, Chinese immigrants have experienced a tortuous immigration history as well as made a great contribution to this country.

CHINESE IMMIGRATION HISTORY

The history of Chinese immigration to America is divided in two waves: the first wave is from the 1850s to 1880s and the second wave is from the late 1970s to now.

Because of the political problems and the economic pressures in China from the 1850s, thousands of Chinese moved to the western part of America to earn a living. Many of them took low-skilled requirement jobs; they worked as manual laborers in manufacturing, mining and construction industries. The reports showed that around 300,000 Chinese immigrants came to America between 1850 and 1889, though as many as half ultimately returned to China. This wave of Chinese migration was terminated by the Congress upon the passing of the Chinese Exclusion Act in 1882. The law prohibited Chinese labor migration to the U.S. and barred Chinese residents from obtaining U.S. citizenship. Though the law was repealed in 1943, infrequent Chinese immigration was permitted until the Immigration and Nationality Act of 1965 reformed the America immigration system.

The second wave of Chinese immigration began in the late 1970s after the relationship between America and China became normal and China opened its doors to the world. According to the data from DHS, the number of Chinese immigrants was almost 10 times higher during 1980-1990 than 1970-1980. In the following decades, the numbers kept increasing and the increasing number reached a stable level of around 70,000 per year recently.

WAYS CHINESE PEOPLE IMMIGRATE TO AMERICA

In general According to American immigration law, there are various ways to immigrate to the USA. In general, they are classified as family-based immigration, employment-based immigration, refugee or asylum immigration.

For Chinese, family-based immigration is the most common way to immigrate. It mainly includes the spouse of an American citizen and the other family members of an American citizen, or the spouse and the other family members of American permanent residents.

Employment-based immigration is an increasing popular way for Chinese to immigrate these years. Legally, it includes EB-1, EB-2, EB-3, EB-4 and EB-5 categories. Chinese commonly immigrate through the EB-1, EB-2 and EB-5 categories.

The third category of immigration is for refugees or asylees. The percentage of Chinese immigration in this way is large in the last century but in recent years, it is decreasing with China’s economic and political situation getting better.

Family-based immigration

According to the statistics from DHS, family-based immigration accounts for the most significant percentage of immigrants, adding up to around 50%. The percentages of family-based immigration in 2011, 2012, and 2013 are respectively 48.5%, 53.1% and 51.8%. The percentages are similar to immigrants from other districts and countries. However, inside the percentages, there is a hidden interesting phenomenon: for Chinese immigrants, non-immediate family members of American citizens amount to a large percent, adding up to 40% of the total family-based immigrants, while this percent is much smaller.
in immigrants from Africa (around 15%) and Europe (around 10%). This indicates that Chinese have the concept of a big family; that is, they put much value not only on their immediate relatives but also on other family members. Immediate relatives have special immigration priority and do not have to wait for an available visa number to immigrate because there are unlimited visas for this category. It includes the U.S. citizen’s spouse, unmarried child under the age of 21, and parent (if the U.S. citizen is over the age of 21).

For family members who are not the immediate relatives of the U.S. citizen, they have to wait for years to get an available visa number to immigrate. Eligible family members include: unmarried sons or daughters over the age of 21 and married child(ren) of any age and siblings (if the U.S. citizen petitioner is over the age of 21).

Immigration laws also allow green card holders to petition for eligible relatives to live permanently in the U.S. A permanent resident may petition for the spouse and unmarried child(ren) of any age to immigrate to the U.S. Congress has limited the number of relatives who may immigrate under these categories, so there is commonly a waiting period before an immigrant visa becomes available.

**Employment-Based Immigration**

As mentioned above, for Chinese, employment-based immigration mainly falls under the EB-1, EB-2, and EB-5 categories. In the last few years, the percentage of employment-based Chinese has increased from 20.1% in 2011 to 28.2% in 2013, showing that more and more Chinese are educated and trained to be qualified for jobs or start their business in the U.S.

1. **EB-1 (L-1 visa)**

In EB-1, Chinese mainly immigrate as multinational managers or executives through L-1 working visas. L-1 visa includes L-1A and L-1B classifications. L-1A visa enables U.S. employers to transfer their executives or managers from their affiliated foreign offices to one of their offices in the U.S. L-1B visa enables U.S. employers to transfer professional employees with specialized knowledge relating to the organization’s interests from one of their affiliated foreign offices to offices in the U.S. The L-1 visa also enables foreign companies that don’t have an affiliated U.S. office to send executives or managers to America with the purpose of establishing a new one. Generally, to be qualified for L-1 visa, employers must have a qualifying relationship with a foreign company and be currently doing business in America while the employees must have been working for a qualifying organization abroad for one continuous year within the three
years immediately preceding their admission to the U.S.

After maintaining for a period and satisfying certain requirements, employers could file green card petitions for their employees. Because these kinds of visas and green cards have no quotas and are expense-saving, more and more Chinese are immigrating in this way in recent years.

2. **EB-2 (H-1B Visa)**

In EB-2 category, people have alternatives to immigrate as one with an advanced degree, an exceptional ability or a national interest waiver. The key step is that they should get H-1B working visas from U.S. employers by whom they have to be sponsored to apply for green cards.

The H-1B visa is a non-immigrant visa that allows U.S. employers to temporarily employ foreign workers in specialty occupations. The term “specialty occupation” means highly specialized knowledge in a field of human endeavor which usually requires a bachelor degree or its equivalent at minimum. After obtaining the working visa, employers can apply for green cards for their employees.

3. **EB-5 Visa**

The EB-5 visa is very popular among Chinese investors in recent years; most of America’s EB-5 investment quotas are obtained by Chinese investors, adding up to around 80%. Recently, the U.S. Citizenship and Immigration Service is limiting quotas issued to Chinese investors, announcing that there should be a balance between countries.

The EB-5 visa provides a way to obtain green cards for foreign nationals who invest money in America. In order to obtain the visa, individuals must invest $1 million (or at least $500,000 in a Targeted Employment Area: high unemployment or rural area), creating or preserving at least ten jobs for American workers, excluding the investor and his or her immediate family. Investment could be managed by investors themselves or by 3rd parties such as “Regional Center.”

**Refugee or Asylee Immigration**

Refugees and asylees are generally people outside of their country who are unable or unwilling to return home because they fear serious harm. They are required to apply for green cards one year after being admitted as a refugee or asylee in America.

During the past decades, many Chinese immigrated as refugees or asylees. According to the statistics published by DHS, there are around 20% Chinese immigrating in this way. This percentage is decreasing in recent years as China’s political and economic situation improves.

**CONCLUSION**

In conclusion, family-based immigration is still the most frequent method for Chinese to immigrate. It accounts for a stable percentage of approximately 50% of all Chinese immigrants. This statistic will likely remain stable, because reforms can hardly change people’s marriage rights and family uniting policy. Employment-based immigration is growing and will keep increasing in the following years considering China’s rising economy and America’s attractive investment policy. Immigration for refugees and asylees will continue to decline because China is becoming more open and domestic while Chinese people are becoming wealthier and more educated.

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Highland Heights – Fantastic offices available. Includes receptionist, waiting area, conference room, kitchen, phone, printer/copier/fax, Internet. Space available for paralegal/secretary. Contact Annette at (440) 720-0379 or asamber@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 Cabarine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Cabarine at (440) 974-9911.

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kimer 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) 621-6138.

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

Westlake – 1230 sq ft. office space available in Westlake, Ohio, $1800/mo. offices plus conference room with kitchen. Contact Stephen or Matt at (440) 782-8722.

Unigue 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.

**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

**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


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

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

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

**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.
### November

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<tr>
<td>PLI: Patent Litigation – 8:30 a.m.</td>
<td>Special Education Seminar – 8 a.m.</td>
<td>CMBA Board of Trustees Mtg.</td>
<td>Insurance Law CLE – 8 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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<td>Ethics Seminar – 1 p.m.</td>
<td>Estate Planning Section Mtg. &amp; CLE</td>
<td>Government Attorneys Section Lunch &amp; CLE</td>
<td>Family Law Section Mtg. &amp; CLE</td>
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<td>Grievance Committee Mtg.</td>
<td>Health Care Law Section CLE and Happy Hour – 4:30 p.m.</td>
<td>Membership Committee Mtg.</td>
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<td>WIL Wine &amp; Chocolate Event – 5 p.m. (Heinen’s)</td>
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<td>YLS Christmas Ale Social</td>
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<td>Small &amp; Solo Practitioner Lunch Mtg. (Independence)</td>
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### December

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<td>Tax Institute – 8:30 a.m.</td>
<td>PLI: Immigration &amp; Naturalization Institute – 8:30 a.m.</td>
<td>Advanced Workers’ Comp Seminar – 8 a.m.</td>
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<td>WIL Section Mtg.</td>
<td>Tax Institute – 8:30 a.m.</td>
<td>PLI: Immigration &amp; Naturalization Institute – 8:30 a.m.</td>
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<td>YLS Council Mtg.</td>
<td>Managing the Media: Lawyers and the Press – 9 a.m.</td>
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<td>CLE Program: Lead Law Simulcast – 9 a.m.</td>
<td>CMBF Executive Committee Mtg. – 8:15 a.m.</td>
<td>Joint Government &amp; Environmental Section Mtg. – 11:30 a.m.</td>
<td>PLI: New Developments in Securitization – 8:30 a.m.</td>
<td>PLI: Building Better Construction Contracts – 8:30 a.m.</td>
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<td>PLI: Disclosure Documents – 8:30 a.m.</td>
<td>CMBA Executive Committee Mtg.</td>
<td>Ethics Committee Mtg.</td>
<td>Sealing the Deal: Professionalism in the Transactional Practice – 1 p.m.</td>
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<td>Governance &amp; Nominating Committee Mtg. – 9:30 a.m.</td>
<td>UPOL Committee Mtg.</td>
<td>YLA Committee Mtg.</td>
<td>New Lawyer Bootcamp – 1 p.m. (Court of Common Pleas)</td>
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<td>ADR Section</td>
<td>Bankruptcy &amp; Commercial Law Section Council Mtg.</td>
<td>New Lawyer Bootcamp – 1 p.m.</td>
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<td>Insurance Law Section</td>
<td>New Lawyer Bootcamp – 1 p.m.</td>
<td>Celebration for New Lawyers – 5 p.m.</td>
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<tr>
<td>Certified Grievance CLE – 1 p.m.</td>
<td>Pillars Program – 10 a.m.</td>
<td>PLI: Banking Law Institute – 8:30 a.m.</td>
<td>PLI: Understanding Securities Law – 8:30 a.m.</td>
<td>PLI: Understanding Securities Law – 8:30 a.m.</td>
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<td>CMBF Board of Trustees Mtg.</td>
<td>Estate Planning Section Mtg. &amp; CLE</td>
<td>Pitfalls &amp; Pointers CLE – 1 p.m.</td>
<td>Membership Committee Mtg.</td>
<td>Estate Planning Institute Video</td>
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<td>Grievance Committee Mtg.</td>
<td>CMBA Board of Trustees Mtg.</td>
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<td>Professional Conflict Video – 12:30 p.m.</td>
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<td>Real Estate Law Institute Video</td>
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<td>Professional Conflict Video – 12:30 p.m.</td>
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<tr>
<td>William J. O’Neill Bankruptcy Institute Video – 8:30 a.m.</td>
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<td>Labor &amp; Employment Law Conference Video – 8:30 a.m.</td>
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<td>Professional Conduct Video – 1 p.m.</td>
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Saturday, December 5 – Legal Eagles Year End Update (St. Edward’s High School)
Saturday, December 12 – Municipal Court Update (Independence Civic Center)
Saturday, December 19 – Professional Conduct Live Program: Disorder in the Court

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
The Best Lawyers in America® has recognized Singerman, Mills, Desberg & Kauntz Co., L.P.A, with a Tier 1 ranking in Ohio for Real Estate Law in the 2016 Edition U.S. News – Best Lawyers “Best Law Firms.” In addition, six Singerman Mills attorneys, Paul Singerman, Gary Desberg, Troy Brown, Ron Teplitzky, Gary Melsher, and Sam Pearlman have been specifically recognized in their individual specialties.

FisherBroyles, LLP is pleased to announce Suzanne Kleinsmith Saganich has been named to the 2016 Edition of Best Lawyers in the areas of Banking and Finance Law, Financial Services Regulation Law and Real Estate Law. She was also voted Lawyer of the Year in the area of Financial Services Regulation Law.

Isroff Mediation Services, LLC is proud to announce that Ronald H. Isroff, has been recognized by Best Lawyers in America as a Lawyer of the Year for Mediation.


Reminger Co., LPA is pleased to announce shareholder William A. Meadows has been honored as “Best Lawyers 2016 Lawyer of the Year” for Medical Malpractice Law – Defendants.

Power management company Eaton honored Thacker Martinsek LPA for their strong commitment to inclusion and diversity as part of the Eaton Law Department’s supplier recognition program. The firm was chosen for the Supplier Inclusion and Diversity Excellence Award from a select group of nominated firms.

Reminger Co., LPA is pleased to announce that they were ranked in the “Top 10 Best Midsize Law Firms to Work For” list by Vault, a career information website that provides rankings and reviews based on feedback from employer surveys.


Michael N. Ungar has been recognized as a 2016 “Lawyer of the Year” by Best Lawyers in America in Bet-the-Company Litigation.
Brent M. Buckley, an attorney and Managing Partner of the law firm of Buckley King, has been selected to Chair the United Way of Lake County’s 2015 Annual Campaign, “Change Starts Here.”

Ohio State Bar Association (OSBA) President John D. Holschuh Jr. has appointed six Greater Cleveland-area lawyers to be OSBA committee and section chairpersons for 2015–2016.

Kenneth A. Bossin (Traffic Law Committee), Rob James (Environmental Law Committee), Roy A. Krall (Estate Planning, Trust and Probate Section), Theodore Mann Jr. (Solo, Small Firm & General Practice Section), Kathryn I. Perrico (Education Law Committee), and Karen E. Rubin (Professionalism Committee).

Reminger Co., LPA announced firm partners elected to a newly-constituted Board of Directors including: Lewis W. Adkins, Jr., Partner; Practice Group Manager; Public Law, Regulatory and Finance; and Douglas E. Spiker, Partner; Practice Group Manager; Employment Services. The new board members officially take office on January 1, 2016.

Reminger Co., LPA is pleased to announce that attorney Allison M. McMeelchan has been elected to the Board of Directors for Milestones Autism Resources. She has also been elected to the Board of Directors of the Cleveland-Akron Chapter of the Society of Financial Service Professionals.

Joseph T. Burke of Polito Rodstrom & Burke LLP was appointed a part-time Magistrate in the Rocky River Municipal Court by Judge Brian F. Hagan responsible for Judge Hagan’s traffic/criminal docket.

Remington, Raskin & Ryder Co., L.P.A. announced a major expansion of the firm’s geographic footprint, by opening a new office in Lexington, Kentucky.

Roetzel & Andress LPA announced firm partners elected to a newly-constituted Board of Directors including: Lewis W. Adkins, Jr., Partner; Practice Group Manager; Public Law, Regulatory and Finance; and Douglas E. Spiker, Partner; Practice Group Manager; Employment Services. The new board members officially take office on January 1, 2016.

Carter Strang, a partner with Tucker Ellis LLP and past CMBA president, was published in Law360. His article was Property Pooling Pits Ohio Municipalities Against State. He is a member of the Tucker Ellis Oil & Gas and Mass Tort & Products Liability Practice Groups.

The Cleveland office of national law firm Roetzel & Andress recently rolled out its new office space at One Cleveland Center, featuring an innovative, redesigned space that provides attorneys and staff with room to work both collaboratively and independently, while leaving plenty of room for growth.

The Legal Services Corporation announced today that The Legal Aid Society of Cleveland will receive a 24-month $214,566 Pro Bono Innovation Fund grant to create pro bono opportunities to engage late-career and retired attorneys to serve more low-income clients.

Reminger Co., LPA hosted its second Vanguard Gala on Thursday, September 17th at the Shoreby Club. More than 140 people attended the client event in which we honored three individuals from Cleveland’s education community.

Hammond Law Group, headquartered in Cincinnati, Ohio, is pleased to announce the acquisition of Philip Eichorn Co., LPA, a law firm based in Cleveland since 2008. The firm will remain at the Caxton Building located at 812 Huron Road, Suite 290, Cleveland, OH 44115.

Adam Fried, with Reminger Co., LPA, was invited to lecture at the National Conference for the American Academy of Forensic Psychiatry and the Law on October 23, 2015 in Fort Lauderdale, Florida.

Retired U.S. Army Reserve Lt. Colonel and Youngstown Police Department Det. Sgt. Donald Patrick Scott has graduated from The Ohio State Bar Association Leadership Academy.

Something To Share?
Send brief member news and notices for inclusion in the Briefcase to Jackie Barona at jbaraona@clemetrobar.org.
Rock 11

Love The Foundation

Save the Date
February 13, 2016

Food, drinks, live music, dancing, and more!