In this issue, Columbus Bar Lawyers Quarterly takes a deep dive into immigration law. How can human trafficking in Ohio be reduced? What are some different visa options? We’ll look at these and other topics, including some legal real estate updates, a paralegal course on ethics, small/solo firm tips and more. Plus, check out our new Law Student feature, with perspectives from current law students about their journey to the profession.
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Celebrating 50 years of finding the truth. The truth is, being an industry leader is never easy. In our 50 years, S-E-A has pretty much done it all. Forensic engineering and investigation. Vehicle testing and safety. Consumer product testing and health sciences. Just to name a few. And we do it all with the best talent and technology in the business. So, yeah. We’ll blow out some candles. And we’ll eat some cake. Then we’ll get back to working on the next 50 years.

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Moving Forward

I need to do between now and next week, let alone the end of the year. Apprehension encroaches, however, when I think of what must be done. Working, modernizing the method for which the public has access to representation and to justice, staff have been hard at work for the advancement of the profession? What do they do and find value in their membership at CBA?

Congratulations! I look forward to meeting you and promoting what we can become lost or overlook the larger picture. The cumulative pressure we all feel from time to time as a result of the onslaught of emails and the constant quest to acquire more knowledge.

The cumulative pressure we all feel from time to time as a result of our desire to provide meaningful counsel can build anxiety, fear, depression, anger and more psychological toll. Knowing that, at the CBA we try to offer awareness and support for the well-being of our lawyers.

The new year has begun, and as I began to chronicle the extensive history. The cumulative pressure we all feel from time to time as a result of the onslaught of emails and the constant quest to acquire more knowledge with the public can seek out counsel equipped to advise on their needs.

Amy Koorn, Esq.
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President's Page

The Columbus Bar Association is Moving Forward

The new year has begun, and as I began to write my reflections for this page, both excitement and apprehension pulse through my pen (or keyboard, as it were.)

I am excited for the new lawyers who took their oath in early November. How will they put their knowledge to work for the advancement of the profession? What issues will they tackle, and whose interests will they promote? My hope for them is that they find fulfillment through my pen (or keyboard, as it were.)

I am also excited to see how the restructuring of the Lawyer Referral Service may bring new potential clients and our members.

In line with our mission of promoting public access to representation and to justice, staff have been hard at work for the advancement of the profession? What do they do and find value in their membership at CBA?

Apprehension encroaches, however, when I think of what I need to do between now and next week, let alone the end of my presidential year. Thoughts like, “How will I get all of this done?” creep into my mind when I am scurrying out of my office, heading to a CBA meet-and-greet while scanning Apple Maps for the quickest route home by way of Kroger in order to have dinner with my family. Or, “What is a realistic expectation” for an attorney whose client comes at the 11th hour with a complicated legal inquiry and brings no relevant documentation that would begin to chronicle the extensive history. The cumulative pressure we all feel from time to time as a result of our desire to provide meaningful counsel can build anxiety, fear, depression, anger and more psychological toll.

Knowing that, at the CBA we try to offer awareness and support for the well-being of our lawyers. So, I hope you all, anytime you step away from your offices for a weekend, for a vacation or for a holiday, cherish the reprieve and remember: the email will be waiting in your inbox until you return. And, even lawyers deserve a day off!

The Columbus Bar Association is Moving Forward
How does CBA membership help others? The answer is obvious. It is inherent in the nature of community that we help each other. With the Cornerstone Membership Program, the help is far more tangible. I have come to learn that large firms provide a huge foundation upon which the CBA grows.

It is hard to believe that I have been a lawyer for 30 years. It’s true what our parents and grandparents have told us: time flies. It is a powerful perception that gets stronger with age. I mention this not to advocate living only for today, but as a reminder that we all should live and be present in the moment. Do it for your family, friends, colleagues and community. And do it for yourself. Time flies.

When CBA Executive Director Jill Snitcher told me about her idea for the Cornerstone Membership Program, I was immediately intrigued. For decades, our local bar association has been one of the best in the United States, and our approach has been emulated throughout the country. The CBA is widely known for its professionalism, collegiality, and forward thinking.

The Cornerstone Membership Program is a group membership plan encouraging large firms to commit to 100% membership in the CBA, signifying a commitment to invest in the professional development of all the firm’s attorneys and to enrich the future of the profession. It is designed to make the CBA even stronger by more fully engaging our largest local law firms to lead by example in enhancing the profession. With the complete support of all Dinsmore lawyers, our firm is embracing Jill’s idea.

While the program is targeted at large law firms, it is with recognition that the CBA is the sum of its parts. It is not that large law firms are any more significant than smaller firms or solo practitioners; nothing could be farther from the truth. As I look back, these now-large firms were once smaller firms. They’ve grown and merged over time to become the firms they are today. We all start small, but we rely on others to help us grow. So many of central Ohio’s most talented lawyers are solo practitioners or in small firms.

The success of our profession (and our bar association) depends on a broad representation of viewpoints - whether it’s by firm size, practice area, gender or racial diversity, the only way to enhance the legal profession is to inspire lawyers of all facets to become a part of the local bar association.

After hearing of Jill’s idea, I reflected on my own history with the CBA and what I have observed. Candidly, I did not join based on my own knowledge or experience - heck, I was a new lawyer and I knew what every new lawyer knows - NOTHING! I joined because the law partners in my firm told me to join. They guided me as a parent or mentor would, directing me and setting me on the path. My mentors knew that CBA membership would have a positive impact on my career. Looking back, I am grateful the partners told me what to do.

The CBA is a nationally renowned organization, with professional, collegial, and forward thinking members. But, if the CBA is going to get better and stronger, the involvement and leadership of all lawyers is critical. We have an easy, but important, opportunity to do more.

The Columbus Bar Association is proud to announce Dinsmore & Shohl LLP as our first Cornerstone Membership firm. Cornerstone Membership signifies a commitment to uphold the ideals of the profession, invest in your current and developing leaders, and enrich the future of your firm.

For information about Cornerstone Membership for your firm, contact Jill Snitcher at (614) 340-2060 or jill@cbalaw.org.

Over time, I have met hundreds of lawyers through the CBA. My great friend and Dinsmore colleague, Tom Bonasera, told me early in my career that being part of the local bar association was essential to a lawyer’s career because, aside from the daily practice of law, it was the best way to meet lawyers in the community. His view has always been that lawyers are leaders, and we all benefit from befriending other lawyers. Another mentor and Dinsmore colleague, Don Leach, shares this view. Don has always said that lawyers are called upon to lead – family, friends, colleagues, clients, community all look for us to lead in some way.

Through the CBA and its members, I, met, observed, and learned from the likes of Carl Smallwood, Jerry Draper, Steve Buchenroth, Kathleen and Buzz Trafford, Jack Chester, Kurt Tunnell, Alex Shumate, and Ben Zox. This short, shamefully incomplete list barely scratches the surface of those who have impacted my career, but spending time with senior lawyers from other law firms had an enormous impact on me. Interestingly, for as much griping as I have heard.
All of us, young and old, need to push back from the computer screen and go out and meet other lawyers. Have candid, passionate, and mature discussions about our profession, our community, and our world. Some folks will become lifelong friends, some will be social acquaintances, and all will become professional colleagues in the best city in America to practice law.

The current holy grail for lawyers and law firms is ROI. Before anyone commits funds to participate in anything, someone needs to explain the return on investment. In the words of comic strip character Charlie Brown, “Good Grief!” Don’t get me wrong, an ROI analysis is a legitimate and necessary tool in every business, including law firms. But, when that type of analysis is employed to the exclusion of bar association membership, we all need to take a step back and take a breath.

Gaining and maintaining clients is and always will be about relationships. Not just the attorney/client relationships – but relationships with family, friends, and with colleagues. All relationships potentially lead to clients. I cannot mathematically tie an individual CBA membership payment to a specific client of mine, but there is undeniable connectivity. I am certain that my historical CBA membership, as well as the CBA membership of my Dinsmore colleagues, has helped me become a well-rounded, experienced and connected lawyer in the community; a person whose judgment and advice is valued and trusted. It is the type of common sense ROI analysis that drives the bean counters crazy. It is real, yet incalculable.

The CBA is a nationally renowned organization, with professional, collegial, and forward thinking members. But, if the CBA is going to get better and stronger, the involvement and leadership of all lawyers is critical. We have an easy, but important, opportunity to do more. With 100% CBA membership from the largest firms, we can have a stronger CBA. A stronger legal community will make our city, state and country a better place. Columbus always leads. We may do so quietly, but it is what we do.

Today’s magazine includes a list of all of the past CBA Presidents, and the current CBA officers. I have had the privilege to know many of them. To a person, they...
The success of our profession (and our bar association) depends on a broad representation of viewpoints—whether it’s by firm size, practice area, gender or racial diversity. The only way to enhance the legal profession is to inspire lawyers of all facets to become a part of the local bar association.

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Legal writing often privileges ideas over people. It presents clients as mere plaintiffs and defendants cast in an abstract world of legal definitions and concepts. In this way, legal writing tends to focus more on summarizing legal research than portraying the people whose lives and interests are at stake. While analytical rigor is necessary to legal writing, it tends to dry out our prose, making it abstract, bloated and even boring.

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Can we enliven our legal writing without sacrificing our intellectual precision and professional obligation to truth? Can we envision our writing not merely as conceptual or legal problem solving, but also as rich character drama in which people struggle to overcome real life obstacles? In answering these questions, we look first to what stories and legal problems commonly share—people in trouble. Someone has been arrested, someone hurt or someone cheated. Even when none of these harms have befallen the participants, the underlying facts in most legal and story contexts involve people trying to overcome obstacles on the way to their goals, needs or ambitions. The law wraps these human needs and troubles in its conceptual blanket, a cloth of definitional abstraction and social control. This conceptual fabric is necessary, to be sure. It is partly how the law operates. But it need not also delimit the legal writer’s craft in weaving those same human troubles into the stuff of story with richly drawn characters who drive our emotional interest.

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Storytellers have developed time-tested methods to create interesting people in their writing. Those methods can help legal writers engage their readers’ moral imagination and emotional connection. Drawing on four such techniques, we have created the following law-lit principles for us legal writers.

**First, soliloquy brings intimacy: let your client speak for themselves.**

**Second, vulnerability invites rescue: show your client’s unique vulnerability.**

**Third, skill evokes admiration: reveal your clients’ special talent.**

**Fourth, moral cause makes right: signify your client’s virtue.**

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mindful that we all relate to vulnerability if we also feel its grip in our own lives. The most emotionally reverberating vulnerability comes in the form of communal and individual threats to wellbeing. You will draw your reader’s empathy more convincingly if you point toward common vulnerabilities, ones that bring to mind health, family or personal wellbeing.

3. Reveal your client’s special talent

We like people who are good at what they do. Skillful doctors, caring mothers and tuneful musicians all garner our admiration. We naturally admire the skilled and consummate practitioner of their respective art. This admiration stems in part from the aesthetic joy we feel in the presence of virtuosity. But it also derives from our attribution of praise-worthy and sometimes moral qualities to skillful people. Those qualities are not always deserved, but this usually doesn’t stop us from elevating the person’s perceived character as a result of their special talent or skill. Psychologists often call this the “halo effect.”

In your next legal writing, think about adorning your client or witness with a similar skillful “halo” by mentioning their professional expertise, personal talent or adroit interest. Even a simple, short mention of skill or talent can enhance your reader’s moral engagement by creating the virtuous image in their mind’s eye. This same engagement leads us to our last character-building technique: that characters with unstated moral causes evoke the most empathy.

4. Signify your client’s virtue

Heraclitus famously said, “Character is fate.” This notion that our personal values and worldview likely determine how we fare in this life still resonates thousands of years later. It resonates because we all tend to want good things to happen to good people. Nevertheless, when expressing a person’s moral virtue in writing, we often serve our readers best by suggestion, implication or understatement. None of us likes to be told how to think or feel about other people’s virtue or the righteousness of their cause, at least not without ample context from which to judge. This is why we propose that you “signify” your client’s moral cause as opposed to announcing or trumpeting it.

How might you signify moral cause? We suggest that you set forth the ways others will be harmed if your client’s case fails. In other words, tie the unwanted outcome in the case to societal or universal moral harm, such that your reader will want the result that requires acting properly toward others in society. This method requires that you show, not tell, your reader how the bad outcome will manifest itself. You might accomplish this by drawing a line in the sand between the opposing outcomes.

We hope these law-lit principles help you enliven the characters in your legal writing, leading to greater emotional connection for your readers.

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Navigating the Legal World as a First-Generation Lawyer

BY ALEXIS V. PRESKAR

Growing up, my dad was a mail carrier and my mom worked in the school cafeteria. Just writing that sentence makes me feel like I should run for office and tout my blue-collar roots. I am the first person in my extended family to graduate from college, making me a “first-generation” lawyer.

First-gen lawyers and law students face unique challenges, from fitting in at work to navigating life at home. Fortunately, first-gen lawyers are a rapidly growing contingent of the legal population, and there are more opportunities than ever to connect and learn from each other.

Fitting in at Work

As every attorney in town inevitably will tell you, Columbus is a small legal community. But it can still seem large, strange and sometimes unkind to the uninitiated. Understanding networking norms and navigating office politics is one of the biggest disadvantages of being a first-gen. First-generation lawyers are often taught from a young age that they must work hard, get excellent grades and their efforts will be rewarded. What is not taught is the softer, but vital, networking skills that often push application materials into the right hands or allow people to be in the rooms where decisions are made.

Questions about family and who you might be connected to are a common part of social interactions, and there’s nothing wrong with that. There is an issue when a person’s family ties are the only thing being considered. I remember interviewing at a large firm and the attorney asked me what my parents did. Before I even finished my answer, he cut me off and said “Oh, okay, so kind of jack of all trades, got it,” and quickly moved on. I could sense my answer was disappointing to him. This is one reason some people downplay or try to hide their first-gen status.

Additionally, first-generation lawyers are more likely to be women and people of color, which can add to feelings of “otherness” and not fitting in to the typical lawyer mold.

Dealing with Stress at Home

Not only is there a sense of isolation within the legal community, but first-generation lawyers can also face backlash at home. It's hard to relate when your family doesn't have a good sense of what you do all day. I've gotten questions from “is it like Law & Order?” (No, to everyone’s visible disappointment) to “Why aren’t you getting paid time and a half for overtime?” and families can also see the lawyer in the family as a cash cow or great resource for every legal question that pops up. If I had a dollar for every time a random acquaintance from home asks me how to get out of a speeding ticket or a “hypothetical” criminal question… well, I might be able to pay off all their speeding tickets. Feeling like you don’t belong at home or in your chosen profession can be quickly isolating.

There can also be income differences for first-gens. Whether through having family to help pay for college, or assistance navigating scholarship opportunities and loan applications, second-generation lawyers often have a leg up financially. Even past law school, first-gens may experience lower pay because negotiating pay is often a foreign concept in lower-wage jobs, and we are often taught to just be grateful for our job.

Tips for Handling the Transition

If you’re a first-generation lawyer, I encourage you to own your experiences and frame them in a positive light. First-gen lawyers are often resourceful and can learn quickly due to their experiences having to navigate the educational and professional world on their own. Many have an incredible work ethic – holding down jobs and caring for their family while putting themselves through school.

Finding inclusive communities is also key. I have found the Young Lawyers committee to be particularly helpful since everyone is a new lawyer, so we’re all on more equal footing. Women Lawyers of Franklin County is similarly open and welcoming to people from all backgrounds and experiences. I am so proud to be involved in both of these groups as we’ve worked to present diverse and inclusive programming. For instance, last year, the Young Lawyers’ committee had a wonderful panel of first-generation attorneys who talked about their experiences from work to family expectations. I so appreciated hearing the guidance and insights of my accomplished peers who talked about struggling with the same issues I think about regularly. Even if you’re not first-gen, you may not realize that your colleagues are. Be thoughtful in what you say and how you act, and be a friendly face in the legal community. After all, we were all new here once.
FLAT-FEE BILLING:
The Good, the Bad, and the Ethical

BY KEVIN C. ROUCH

Lawyers have always included flat fees in their billing processes, but in recent years the flat fee has been the focus of increased discussion. There are those who think they are a panacea for all of the ills of hourly billing, while others believe they create more complication in a complicated world. This article will examine the pros and cons of using flat fee billing in your practice. But first, let’s examine the ethics of flat fees.

Ethical Considerations

Rule 1.5 of the Ohio Rules of Professional Conduct governs fee agreements in Ohio. Specifically, Prof. Cond.R. 1.5(a) states that a “lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee.” This rule goes on to list eight factors to consider in determining whether a fee is reasonable:

1. the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitation imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation and ability of the lawyer or lawyers performing the services;
8. whether the fee is fixed or contingent.

These factors are not exclusive.\[1\]

In the Ohio Board of Professional Conduct’s Advisory Opinion 2016-1, the Board dealt with a flat fee agreement in a criminal case. The agreement required that the client pay the flat fee in advance of the representation. The Board found that it was proper for a lawyer to enter into such an agreement provided that the agreement comported with the Ohio Rules of Professional Conduct. It noted that the flat fee must not be excessive,\[4\] that the lawyer shall not provide financial assistance to a client,\[8\] aside from advances in court costs and litigation expenses, and that the flat fee must not interfere with an attorney’s duties to provide competent and diligent representation to each client.\[10\]

The need to avoid an excessive fee can create situations where lawyers consistently undercharge for their work, creating revenue at unacceptable levels. In these situations, the effective rate achieved will be far less than billing hourly.

Also in Advisory Opinion 2016-1, the Board dealt with how a lawyer should handle the flat fee received in advance of the work done:

*Under Prof. Cond.R. 1.15(c), a lawyer is required to deposit flat fees and expenses paid in advance for representation into an IOLTA account, unless designated as ‘earned upon receipt’ or similarly, and may withdraw the fee only as it...
is earned or the expense as it is incurred. If a lawyer designates a fee “earned upon receipt,” “nonrefundable,” or similarly, the client must be advised in writing that the client may be entitled to a refund under Prof.Cond.R. 1.16(e) for any part of an unearned flat fee paid in advance of representation.”

So, the attorney implementing a flat fee agreement must decide at the onset whether the fee is “earned upon receipt” or not and state as much in the agreement. If it is, the funds belong to the lawyer and they cannot be deposited into an IOLTA account, as that would constitute commingling. If it is not designated as “earned upon receipt” or similarly in the flat fee agreement, the fee must be deposited into an IOLTA account and treated as any retainer.

The Pros of Flat Fees

Before listing the positives of using flat fees, it is appropriate first to deal with the elephant in the office. That is, how do you determine the amount of the flat fee? As detailed above, we know that it cannot be excessive, but what is the calculus for arriving at a fee that fits within the range of what would be considered non-excessive? There are basically two approaches that lawyers use in this endeavor, both of which are anything but precise.

The first way is to reverse engineer the process by estimating the number of hours required to do the work and then multiply that number by one’s hourly rate. Anecdotally, this appears to be the route most lawyers take. Typically, these are lawyers who are used to keeping track of their hours and continue to record their hours even when charging flat fees.

The second way is to use “value billing,” a method as equally amorphous as the general concept of flat fees. The lawyers using this approach look at the value of the work from the client’s perspective, which means that the same work for differently situated clients could be different in amount. Before arriving at this amount, and in order to assess the value to the client, a great deal of investigation is needed in all but the most routine matters.

So, with either method, no bright line exists to determine the amount of the flat fee. We are simply guided by the restriction that it cannot be excessive per Prof.Cond.R. 1.5(a).

What are the positives of flat fee billing? The primary advantage is the predictability for the client. The only give-and-take between the lawyer and the client, provided the work is performed, is at the beginning of the process. There is no dissection of the hourly invoice, i.e. “why did it take 2.3 hours to ...?” Arguably then, the attorney-client relationship will sail more smoothly, and the chances of a fee dispute are minimized.

For the attorney in most cases, the use of flat fees alleviates the need to record their time. While some (or most) will still keep track of the time spent on any given project, the flat fee purists, usually the same folks that use the value-billing method of determining the fee, will save themselves from the pressures of the constant tick-tock of tenths of an hour.

The Cons of Flat Fees

The need to avoid an excessive fee can create situations where lawyers consistently undercharge for their work, creating revenue at unacceptable levels. In these situations, the effective rate achieved will be far less than billing hourly.

In complicated cases, an appropriate flat fee can cause sticker shock for the client. In those cases, clients may prefer to be billed hourly, even with an evergreen retainer, so that they can pay the fees as they go. For lawyers who insist on flat fees even in sophisticated matters involving litigation, it is possible to reduce the complication by breaking the matter into phases and setting a flat fee for each phase. That would, however, seem to negate the advantage of predictability.

And there are some situations where flat fees are the improper standard, e.g., where attorneys’ fees may be awarded and those fees must be calculated hourly as required by statute, the specific court or the practice area.

Conclusion

So, what does all of this mean? For now, it means that where lawyers are comfortable with the calculation and use of flat fees, such fees will find an increasing role in practices throughout Ohio. In my own practice, it means an ever-shifting landscape of when these fees are best for my clients and my operational sanity.

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Kevin C. Rouch, Esq.
The Business Strategy Behind a Creative Appeal

BY MICHAEL ROBERTSON

It happens more often than entrepreneurs and investors may think—they find a partner for what seems like a great venture, but the partnership ends sour when there is conflict over key business decisions.

Claims and counterclaims are filed, proceed to judgment, and the defendant asks you to represent them after having lost millions of dollars in fees and punitive damages. As an attorney, what rules can you apply to change the court’s understanding of the case and reverse the decision to help your client?

Taft’s Appellate Litigation team was faced with this very challenge in Hutchinson v. Parent. The case involved two former commercial real estate partners who, after being unable to resolve company disputes, turned to litigation. Parent, who had initially been represented by separate counsel at trial, retained Taft after an unfavorable jury verdict and initial post-trial briefing. The Taft team knew they needed a legal strategy that could effectively appeal an adverse $2 million judgment.

While this outcome may seem unlikely, the defense formed a creative legal strategy by first using Federal Rule of Civil Procedure 62.1 to reduce the client’s exposure to punitive damages, and then turning to Ohio Civil Rule 13(A) and Ohio Civil Rule 41(A)(1)(a) in the underlying appeal. At issue was the tension between a plaintiff’s ability to dismiss claims prior to judgment under Rule 41(A)(1)(a), and the barring of those claims—on res judicata grounds—in subsequent litigation under Rule 13(A) when related counterclaims had been brought.

Business disputes can lead to a variety of claims and counterclaims: breach of contract, breach of fiduciary duty, fraud, misappropriation, etc. For any commercial litigator, understanding the legal implications of Ohio Rules of Civil Procedure 13(A) and 41(A)(1)(a) and how they operate can be instrumental in a court decision, and can lead to the loss or gain of millions of dollars for a client.

Defining the Relationship (or Lack Thereof) Between Ohio Rule 13(A) and Rule 41(A)(1)(a)

At its core, Ohio Rule 13(A) requires a party to bring forward any cause of action that arises out of the same transaction or occurrence as the opposing party’s claim or counterclaim. In determining whether a claim and an opposing counterclaim arise out of the same transaction or occurrence, Ohio courts ask whether they are logically related—that is, whether they involve many of the same factual and legal issues that are part of the same general controversy. When a claim that is faced with a compulsory counterclaim is dismissed, and the compulsory counterclaim then proceeds to judgment, Ohio’s doctrine of res judicata prohibits subsequent re-litigation of the claim.

At first glance, the framework of Ohio Rule 13(A) appears to be at odds with the grant of authority found in Rule 41(A)(1)(a). Under Rule 41(A)(1)(a), a plaintiff may dismiss his or her claims once without prejudice before the trial begins, unless the defendant has served a counterclaim that “cannot remain pending for independent adjudication.”

As the U.S. Court of Appeals for the Sixth Circuit recently made clear, whether a claim is logically related to a counterclaim under Rule 13(A) is a separate and distinct inquiry from whether a counterclaim can be adjudicated independent of an opposing claim under Rule 41(A)(1)(a). Incapable of being independently adjudicated can be a
high standard to satisfy, and courts are often reluctant to require a plaintiff to litigate a claim. Demonstrating, however, that a claim and counterclaim are logically related—particularly in the business context—is a much more obtainable objective for litigators to achieve.

Litigators should think of these two rules as operating independently. A plaintiff faced with a logically related counterclaim that can be independently adjudicated is free to dismiss his or her claim under Rule 41(A)(1)(a). The decision to dismiss the claim, however, will be subject to the parallel consequences of Rule 13(A) and its preclusive effect.

When navigating business disputes that encompass related and unrelated transactions, both parties should exercise caution before seeking a voluntary dismissal. While it may be difficult for a defendant to demonstrate that two opposing claims are incapable of independent adjudication, it will be much easier for that same defendant to bar the plaintiff’s logically related claim in a subsequent lawsuit.

In the case of Hutchinson v. Parent, the defense team’s ability to creatively demonstrate the application of Rule 41(A)(1)(a) and Rule 13(A) in its appeal resulted in the U.S. Court of Appeals for the Sixth Circuit vacating the adverse judgment and reversing a contrary decision by the federal district court. Not only did this ruling clarify important legal implications of filing claims and counterclaims for business owners, real estate investors and entrepreneurs, it also shed light on critical guidance for attorneys with clients who may find themselves faced with similar business obstacles in the future.

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When entering into a real estate transaction, pay careful attention to restrictive covenants. To ensure a covenant runs with the land, best practice is to explicitly and clearly state the parties’ intention.

Will the Covenant Run with the Land?
Ensuring the Enforceability of Contracts Restricting Property Use

BY ADAM R. TODD

Property owners and developers enter into a variety of contracts to restrict the use of real property. For instance, a developer may wish to maintain the architectural integrity of a neighborhood or prevent a property use that might disturb the community’s character. A seller of property may want to require future buyers of the property to honor certain promises. Creating such a restriction requires attention.

Requirements

Generally, contractual obligations only bind the parties signing the agreement. To bind subsequent property purchasers or successors-in-title, the contracting parties must create a restrictive covenant that “runs with the land.” Ohio courts examine the parties’ agreement to determine if the agreement runs with the land using three criteria:

1. There must be a clear intent of the original contracting parties for the covenant to bind successors;
2. The restrictive covenant must touch and concern the land; and
3. There must be privity of contract.

The intent of the parties is an important element. The parties should clearly express their intent for the agreement to bind subsequent purchasers and “run with the land” in a written agreement that is recorded with the county recorder to ensure enforceability.

To “touch and concern” the land, the agreement must burden or benefit the property. A covenant that is personal in nature does not run with the land.

The final element requires that the original contracting parties be in “privity of contract.” This common law principle provides that a contract cannot confer rights or impose obligations upon a person who is not a party to the contract. Said another way, only parties to contracts (and their direct successors) should be able to sue to enforce their rights.

Example Cases

To better understand restrictive covenants, it is helpful to review cases where Ohio courts examined them. One such case involves a historic theatre. A property development company, Capital City Community Urban Redevelopment Corporation, bought the Lincoln Theatre on the near east side of Columbus in 1991. Capital City’s president, Charles Adrian, had a personal history with the theatre. Adrian grew up in a neighborhood near the theatre and, as a child, watched Saturday double-feature movies there. When Capital City sold the theatre, at Adrian’s direction, it included two specific provisions in the real estate purchase contract to restrict the theatre’s use. One provision required the buyer and subsequent owners of the theatre to provide double-feature movies each Saturday for $1 or less to benefit the neighborhood children. A second provision required the buyer to install and maintain a bronze plaque on the front of the building to honor Adrian. The deed did not include the specific restrictions. It did, however, reference the parties’ purchase contract, saying the deed was “subject to” the restrictive covenants in the purchase contract.

Eventually, the City of Columbus took title to the Lincoln Theatre. When city officials removed the bronze plaque, Adrian had another plaque affixed to the theatre, which the city also removed. The city did not use the theatre to show movies. Instead, the city announced plans to use the theatre for jazz music lessons for children. Adrian and his company, Capital City, sued to enforce the restrictive covenant referenced in the deed. Although they were unsuccessful at the trial level, the Court of Appeals for the Tenth District ultimately found that the agreement was a restrictive covenant. Despite the fact that the agreement seemed personal in nature to Adrian, the appellate court found that the covenant indeed, “ran with the land.” The city was required to maintain the bronze plaque and show Saturday movies for as long as feasible as soon as the theatre became operational.

In another case, a seller of commercial property sought to restrict selling groceries or alcoholic beverages. Presumably, the seller sought to protect its own business that would be conducted at an adjacent property. The buyer agreed to the restriction, which was plainly written in the parties’ contract and included in the deed.
After purchasing the property, the buyer leased it to Dollar General. Dollar General intended to sell groceries, among other items. The property’s seller sued both the buyer and Dollar General to enforce the restrictive covenant and prevent Dollar General from selling groceries.

The Court found the words used by the parties to be important. It recognized, “The covenant contains the phrase ‘successors and assigns.’ The use of these words plainly indicates an intent that the covenant run with the land.” The Court also found important the fact that the seller made the restrictive covenant a matter of public record by including it in the recorded deed. A lengthy and conspicuous paragraph in the deed plainly described the restrictive covenant. The Court therefore held that the covenant “ran with the land” and prevented Dollar General from selling groceries.

The Court of Appeals for the Fifth District refused to enforce a written memorandum which purportedly evidenced an agreement between family members, indicating that the brother owned the front 1.5 acres and his sister owned the 3.52 back acres of a property. The court found that the family failed to create a covenant running with the land. The parties did not adequately describe their agreement in the written memorandum and expressed no intention to bind subsequent property owners. The court found, “[W]e note that no mention of assigns, heirs, successors or other similar language is utilized.” The successors of the brother and sister were therefore unable to enforce the memorandum.

Recommendations
When entering into a real estate transaction, pay careful attention to restrictive covenants. To ensure a covenant runs with the land, best practice is to explicitly and clearly state the parties’ intention. Use language to make clear that the covenant binds “successors and assigns.” Consider including unequivocal language such as, “the parties intend for this covenant to run with the land.” Include the restrictive covenant as a material term in a written purchase agreement in a conspicuous place. Also include the restrictive covenant on the deed or other instrument transferring the property and record that instrument with the county recorder. Ensuring subsequent purchasers have notice of the restriction is key to enforcement. With careful attention, parties can effectively restrict future owners’ use of property.

1 See LuMac Dev. Corp. v. Buck Point Ltd. Partnership, 61 Ohio App. 3d 558, 582, 573 N.E.2d 681 (1988); Capital City Community Urban Redevelopment Corp. v. City of Columbus, 10th Dist. Franklin No. 08AP-766, 2009-Ohio-6825, ¶ 13.
2 Lone Star Steakhouse & Saloon of Ohio, Inc. v. Quaranta, 7th Dist. Mahoning No. 08 CA 60, 2009-Ohio-6825, ¶ 17.
3 Capital City Community Urban Redevelopment Corp. v. City of Columbus, 10th Dist. Franklin No. 08AP-766, 2009-Ohio-6825.
4 Id., ¶ 4.
5 Id., ¶ 19, 23.
7 Id., ¶ 5-6.
8 Id., ¶ 14.
9 Id., ¶ 40.
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Proceeds from this annual event benefit The Center for Family Safety and Healing at Nationwide Children’s Hospital. Each team is asked to raise a minimum of $500. Teams can request a judge or magistrate to bowl with their team. Details @ cbalaw.org.

Richard Cordray Launches Watchdog • 7pm @ Gramercy Books
Location: Gramercy Books Bexley (2424 E. Main St., Bexley, OH 43209)
After serving as Ohio’s Attorney General and Ohio Treasurer, Richard Cordray served for six years as the first Director of the Consumer Financial Protection Bureau, created by Congress in the aftermath of the epic economic crash of 2008. Join Cordray for the launch of his book, WATCHDOG, focused on protecting consumers. This event is free.

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The Intersection of Human Trafficking and Immigration

BY EMILY DUNLAP AND GRACE TELLEZ

How We Make Marginalized People Vulnerable to Victimization

The intersection between human trafficking and immigration has been a topic of discussion in various arenas, commonly emphasizing how traffickers break laws or exploit loopholes found therein. While correct, these discussions miss a critical understanding in setting policies aimed at preventing human trafficking.

At the forefront of anti-trafficking education must be a discussion about vulnerability. We must examine the ways our society makes people vulnerable and how traffickers exploit those vulnerabilities for financial gain. When our culture reinforces discriminatory ideologies and practices, even codifying these beliefs into law, vulnerabilities are created, fostered and sustained. By limiting access to resources, devaluing groups of people and not equally extending the power and protections of law, we create vulnerabilities - upon which traffickers routinely capitalize.

A prosecution in Ohio recently highlighted the intersection between human trafficking and immigration. In this case, young people from Guatemala were recruited and transported to work at Trillium Farms. Their traffickers lured them to the United States with promises of a safe and prosperous future. However, upon arrival they were forced into debt bondage and kept isolated in dilapidated trailers missing many basic amenities for months. The traffickers seized the workers’ paychecks and maintained their control through physical force and threats to harm family members back home.

Investigating this intersection must go deeper than identifying systemic loopholes. Media and legislative reports highlighted one way our immigration system was used against these children. The traffickers did not arrange legal immigration paperwork for their victims. When the recruited children were detained after crossing the border, the Office of Refugee Resettlement was charged with their temporary care. The children were held until sponsors could be located within the United States. While many children processed through this system nationally were safely reunited with family members, these children were placed with their traffickers, prompting national concern. Then, these conversations stopped short, failing to recognize other ways these children were made vulnerable and trapped for so long by their traffickers.

Another example highlights that it is not only undocumented immigrants who are victimized. The legal systems that bring workers to the United States can be exploited. The H2B visa program brings workers into the United States when demand exceeds the available labor force. Our laws provide some basic protections for H2B workers. Employers are to cover the costs of obtaining the visa and must either provide housing or reimburse the cost of housing, meals, and transportation. Workers must receive the terms of their employment in writing and be paid at least minimum wage biweekly.

The reality for H2B workers can be quite different. Following Hurricanes Katrina and Rita, Signal International recruited metal workers from India attempting to navigate the immigration legal system is often long, complicated, and expensive. Research estimates that over 10 million people are living in the United States without status. For many people, a pathway to citizenship or even legal residency simply is not possible. Workers later reported paying at least $10,000 to obtain the visas, meaning that many took out loans or mortgages to manage the cost. Upon arrival, employers forced the workers to live in crowded, isolated housing for which they were charged $1,050 per month.ii The workers were monitored by guards, each called by a number instead of their name, and were otherwise discriminated against because of their race and nationality. When workers tried to complain about the conditions, the company raided the work camp, detained, and attempted to deport several workers.iii

...to assist in reconstruction efforts. Workers later reported paying at least $10,000 to obtain the visas, meaning that many took out loans or mortgages to manage the cost. Upon arrival, employers forced the workers to live in crowded, isolated housing for which they were charged $1,050 per month. The workers were monitored by guards, each called by a number instead of their name, and were otherwise discriminated against because of their race and nationality. When workers tried to complain about the conditions, the company raided the work camp, detained, and attempted to deport several workers.
These workers were made vulnerable by a program that tied their legal status and ability to work to one employer, who then leveraged that power to violate their rights and dignity. The workers could not assert the existing legal protections in a situation where they knew their employer could fire them or have them deported in retaliation at any moment.

Attempting to navigate the immigration legal system is often long, complicated, and expensive. Research estimates that over 10 million people are living in the United States without status. For many people, a pathway to citizenship or even legal residency is simply not possible. Similarly, legal means to come to the United States are strictly limited and controlled. Without legal status, you cannot work. You are at the mercy of the employers who hire you. You cannot obtain a driver’s license or receive public benefits. You are less likely to access resources like healthcare or call for help if you are harmed for fear of what that kind of visibility could mean for you or your family. The looming possibility of deportation influences nearly every aspect of your life. Notwithstanding these barriers, our undocumented friends, neighbors, and family are important and valued members of our communities.

The last several years have seen significant changes to immigration laws and policies. Legal pathways to come to the United States are shrinking. Asylum laws have been reinterpreted, making it more difficult to obtain further complicating things, the process to apply for asylum keeps changing and the United States accepts fewer refugees each year. Similarly, applying for status within the United States has become more dangerous, as USCIS can now deny applications without first providing an opportunity for the applicant to correct any deficiencies. USCIS may then issue the applicant a Notice To Appear for removal proceedings in Immigration Court. Zero tolerance and family separation horror stories are changing how people cross borders, encouraging them to take greater risks.

Traffickers know that vulnerable and marginalized people have fewer options for employment, restricted access to supportive services, and are less likely to call the police. A culture of fear, stoked by reports of increased ICE raids, detention and family separation only serves to keep vulnerable people isolated, making them easier for traffickers to exploit. As anti-immigrant sentiments become louder, people are less likely to come forward and ask for help for fear of the prejudice and resulting consequences they may encounter.

Despite these increasing challenges, assistance is available for survivors of human trafficking. Specialized social services and legal services organizations are becoming more commonplace. Trauma counseling, access to safe housing and other supports are increasingly available, though wide gaps in these basic services remain. Victims may be eligible for a T-Visa, allowing them to remain and work in the United States with a pathway to permanent residency.

While supportive services are crucial for those already victimized, they cannot exist on their own. We must work harder to stop human trafficking before it starts. Reducing or eliminating the factors that make people vulnerable to human trafficking is an effective and sound strategy from nearly every policy priority standpoint. Just as better access to housing, employment, substance use treatment and supportive communities are crucial to fighting human trafficking, so is dismantling the ways that our laws and social structures perpetuate marginalization. Human trafficking will persist as long as traffickers can leverage fear of law enforcement and deportation, lure people with false promises of documents or high-paying employment, take advantage of the social isolation commonly found in trafficking fact-patterns and abuse the legal processes we have created. We can do better in the fight against human trafficking.

2 Kathy Finn, Federal Judge Rules NLRB Must Pay $1.4 Million in U.S. Labor Trafficking Case, Thomson Reuters, February 18, 2015.
A surprising and growing number of employees in the U.S. healthcare industry are foreign nationals who have immigrated to the United States. Foreign nationals comprise over 15 percent of all healthcare practitioners and technical occupations and almost 20 percent of healthcare support occupations. Nearly one-quarter of all physicians in the United States are foreign-born International Medical Graduates. H-1B visas can be elusive for physicians and other professional workers because only 85,000 new H-1Bs are available each year. When more than 85,000 H-1B petitions are filed during the annual application window in April, USCIS conducts a lottery for the H-1Bs.

This sizeable portion of the healthcare workforce requires employment authorization from U.S. Citizenship and Immigration Services. Physicians and other healthcare workers have particularly unique immigration considerations and must satisfy heightened regulatory requirements designed to protect public health and safety.

**Physicians**

International Medical Graduates (IMGs) often come to the U.S. in J-1 visa status for graduate medical training. J-1 classification is typically available for up to seven years, which can cover an IMG’s residency training and fellowships, as needed.

Upon completion of the residency or fellowship, a J-1 physician must return home for two years to apply their training or, if eligible, seek another work visa status with a U.S. employer. Foreign physicians with impressive credentials in clinical practice or research may qualify for O-1 “extraordinary ability” visas. To qualify, physicians must be among the very top of the field and have sustained national or international acclaim. For physicians who qualify, the transition from J-1 to O-1 can be a convenient option.

A J-1 physician who does not qualify for O-1, or who desires to remain in the U.S. long term to practice medicine, must secure a waiver of the two-year home residency requirement. The most common waiver for physicians is the Conrad 30 Waiver. Every state health agency throughout the United States may recommend up to 30 physicians per year to serve in health professional shortage areas (HPSAs) or medically underserved areas (MUAs). If selected for the waiver, the J-1 physician receives an H-1B visa and must work full-time in the HPSA/MUA for three years. J-1 visa waivers are also available for medical researchers who perform an essential role in research in an area of priority or significant interest.

Many foreign physicians eventually work under the H-1B visa classification. H-1B classification is for “specialty occupations” that require a bachelor’s degree or higher in a specific field of study. H-1B visa regulations require employers to pay at least the prevailing wage for the occupation according to specialty and geographic area. The H-1B visa provides up to six years of work authorization. H-1B visas can be elusive for physicians and other professional workers because only 85,000 new H-1Bs are available each year. When more than 85,000 H-1B petitions are filed during the annual application window in April, USCIS conducts a lottery for the H-1Bs.
Health Care Specialists and Non-Clinical Occupations

H-1B is a common option for other health care “specialty occupations” that require a bachelor’s degree or higher in a specific specialty. This includes specialists like physical therapists, occupational therapists, speech language pathologists, physician assistants, medical scientists, and non-clinical professions like accountants, IT personnel, and management engineers. These occupations must navigate the H-1B cap or secure employment with a cap-exempt employer.

USCIS has become increasingly stringent on H-1B petitions for jobs that it believes may not require a bachelor’s degree in a specific field of study. Denials rates for new H-1Bs have quadrupled since 2015, rising from 6 percent to 24 percent in 2019. From 2010 to 2015, the denial rate never exceeded 8 percent.*

As part of this trend, USCIS frequently challenges and denies H-1B visas for positions that accept degrees in more than one unrelated field, or even degrees in a “general” field such as business administration. Jobs where experience may be accepted in lieu of a degree are also problematic, such as some information technology positions.

Nursing and Health Care Support Occupations

General registered nurse positions and other health care support occupations present different challenges for employment authorization. H-1B visas are unavailable because these occupations do not require bachelor’s degrees. Advanced nursing positions that do require a bachelor’s degree or higher, on the other hand, such as Advanced Practice Registered Nurses, Licensed Nurse Practitioners, Certified Registered Nurse-Anesthetists, and Certified Nurse-Midwives should qualify for H-1Bs.

International nursing students in F-1 student visa status may use up to one year of Optional Practical Training to work in the field following their graduation. Nurses may also qualify for TN classification, which is available to citizens of Canada or Mexico for a specific list of occupations (physical therapists, occupational therapists, medical technologists, and others; but not clinical physicians). There is no cap on the number of TNs issued each year and no limit for renewals.

Because of limited work visa options, many foreign-born registered nurses and physical therapists will apply directly for permanent resident status through special “Schedule A” rules that save significant time and expense in the application process.

Otherwise, the green card process for health care workers is like other occupations. Most applicants fit into the third preference (EB-3) category for professionals or skilled workers or the EB-2 category for advanced degree professionals. These categories require the employer and employee to complete the labor certification process to establish the lack of qualified and available U.S. workers.

The Prescription

As foreign national physicians and specialists have become an irreplaceable part of the healthcare industry, the best medicine for such professionals and the companies that employ them is to understand the variety of work visa and green card options that are available and how to position themselves for success in this tumultuous immigration climate. Trust us, we’re Juris Doctors.

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Book Review:


The founding documents of the United States herald a country recognizing that “all men are created equal” (with the word “men” including women as well as men). The reality, especially in the time period after the Civil War, did not match the idealized version of America as set forth in its founding documents, in part because the pseudoscience of eugenics determined one race superior to all others.

As an example of the difference, compare the fundraising poem for a large copper-green statute holding up a torch on an island just off of New York with a poem that Senator Henry Cabot Lodge read on the Senate floor on March 15, 1896. Where one poem has the country welcoming the immigrant, the other begs for doors to be shut before immigration ruins the country.

On Oct. 28, 1886, President Grover Cleveland dedicated French sculptor Frederic-Auguste Bartholdi’s colossus called “Liberty Enlightening the World”, better known as Lady Liberty. To help with the fundraising for the massive 15-year-long construction of Lady Liberty, Emily Lazarus wrote a poem “The Colossus.” These first phrases of the poem describing the Statue of Liberty, “[g]ive us your tired, your poor, your huddled masses yearning to be free,” picture a new type of country, one that was a light unto other nations, shining its freedom and opportunities and democratic system of government to the world. The elegant statute, lamp lifted high to light the way into the country, had her face turned toward friendly France. She stood on a Robert Hunt-designed pedestal, into which Lazarus’ poem was placed in 1903.

Around the time Lady Liberty was erected with its welcoming call to the world, Senator Henry Cabot Lodge was trying to stop the flow of immigrants into the United States. He and others had become concerned that immigrants from countries other than those in northern Europe would dilute the culture and strength of the country, as well as the purity of its white stock. To dramatize what he saw as a major problem, Senator Lodge stood on the floor of the US Senate on March 15, 1896, with a poem written by Thomas Bailey Aldrich, a member of Boston’s elite and an editor of the Atlantic Monthly. The pertinent part of what he read follows:

Widely open and unguarded stand our gates, And though they press a wild motley throng... Flying the Old World’s poverty and scorn... Accents of menace alien to our air... O Liberty, white Goddess! Is it well To leave the gates unguarded?

In the 1880’s, anti-immigration sentiment and xenophobia were not new to the country. Every new wave of immigration from the time of the first settlements onward created concern about displacement and about the strange “other” arriving on America’s soil. To give just a few examples, America’s first naturalization law in 1790, limited the privilege of US citizenship to “free white persons.” About 50 years later, the Know Nothing/American Party opposed the arrival of white settlers from Germany and Ireland. Catholic immigrants were a target. By 1855, the American Party had 43 representatives in the U.S. Congress. This group split into pro and anti-slavery groups and vanished into other organizations just before the Civil War. Their opposition to immigrants continued, even though they expressed this feeling from groups on different sides of the war.

Unfortunately, the mistreatment of the “other” has been and continues to be a part of almost every society. Even the United States, with its call for “liberty and justice for all,” has had this problem.
The post-Civil War reconstruction period saw the freed slaves receiving freedom, citizenship, voting rights, education and protection under the Thirteenth, Fourteenth and Fifteenth Amendments, while their former owners lost stature. In the 1860s, Chinese men immigrated to help build the railroads, bringing a totally new culture and a willingness to work for less money to the western part of the U.S.

Perhaps the post-Civil War instability arose because of the many changes that brought new lifestyles to the middle class, great riches to some people and loss of status to others. Mass production by mechanized means replaced highly skilled craftspeople with workers repeating the same task. This had reduced the cost of products, but also reduced the wages and increased the hours for workers. The manufacturing plants needed cheap, expendable labor to work long hours for low wages. So too did those in the bracket to have household servants. So, industry owners encouraged the flow of immigration into the U.S. But, because immigrants were used by the industry to break strikes, those trying to establish minimum wages and maximum hours resented them.

A considerable profit was being made by operating railroads to bring people to ports and by packing those heading toward the U.S. in the steerage of ocean-going ships that brought the immigrants to the U.S. These groups lobbied against any restrictions on immigration and also encouraged those residents in Eastern Europe who faced pogroms and those in Italy wanting a better life to head toward America.

The leaders of the eugenics movement, many of them also Progressives, mixed the evil of race hatred and reliance on fake facts with positive accomplishments.

These changes to U.S. culture and society created strong concerns among those who felt their status was eroding. Without a question, even with the “all men are created equal” language of the Declaration of Independence, there had always been a structured society. Those on top had always attempted to preserve a certain social hierarchy. But labor agitation and also the arrival of thousands of people whose language, culture, customs and dress were different made some people feel as if these new arrivals were undermining every positive aspect of the U.S.

Okrent focuses his book on two movements that emerged to counter the instability of the post-Civil War era and the increasing number of Eastern European and Italian immigrants. He traces the development of the strong xenophobia against this third wave of immigrants and of a eugenics movement dividing the world into races, some of which should not be permitted to breed or even enter the U.S. The eugenics movement emerged out of a mutation of evolution based upon fake scientific research mixed with a desire to ensure a certain group of people remained at the top of the social and power hierarchy. As to the xenophobia, it has, unfortunately, always been around.

He also describes how various publications and their editors and writers helped these two toxic movements merge and become accepted by main street. The eugenics movement/immigration had grown so strong that by May 1921, The Saturday Evening Post was telling its readers that the grave immigration problem could threatened racial degeneration in the United States, with the U.S. forfeiting “our high estate and join the lowly ranks of the mongrel races.” This influential magazine’s editor, George Horace Lorimer, used editorials based upon false science to argue that “race character is as fixed a fact as race color,” and also the arrival of thousands of people whose language, culture, customs and dress were different made some people feel as if these new arrivals were undermining every positive aspect of the U.S.
For example, Madison Grant is described as the man who linked eugenics and xenophobia, resulting in scientific racism as a political creed. Grant, a Yale graduate who received his law degree from Columbia Law School and who was close friends with Theodore Roosevelt and Herbert Hoover, was described as a tall, handsome, charming man interested in naturalism. He helped found the Bronx Zoo, build the Bronx River Parkway, save the American bison as an organizer of Glacier National Park and Denali National Park. He also put a Congolese man from the Mbuti people (a tribe of “pygmies” killed by Belgian colonists) on display alongside apes at the Bronx Zoo.

Grant’s other major focus was to save the country from alien hordes who might intermarry and dilute the pure stock of the Nordic race. Grant’s book, “The Passing of the Great Race,” became Adolf Hitler’s bible. In his book, Grant called for the separation, quarantine and eventual collapse of “desirable” traits and “worthless race types” from the human gene pool along with the promotion, spread, and eventual restoration of desirable traits and “worthwhile race types” conducive to Nordic society. He argued society would improve if, over a 100-year time period, society created a program of rigid selection and elimination of individuals who are weak, unfit, mentally ill and those who were in prison by sterilizing them so that they don’t reproduce, and ensuring only the best people breed with each other.

As a result of the concern raised by mainstreaming the fake scientific facts of eugenics and dangers of immigrants from different cultures, those who hated the immigrants were able to severely limit the number of immigrants from all but the Northwestern European immigrants who linked eugenics and xenophobia, resulting in scientific racism as a political creed. Grant, a Yale graduate who received his law degree from Columbia Law School and who was close friends with Theodore Roosevelt and Herbert Hoover, was described as a tall, handsome, charming man interested in naturalism. He helped found the Bronx Zoo, build the Bronx River Parkway, save the American bison as an organizer of Glacier National Park and Denali National Park. He also put a Congolese man from the Mbuti people (a tribe of “pygmies” killed by Belgian colonists) on display alongside apes at the Bronx Zoo.

Okrent’s major focus was to save the country from alien hordes who might intermarry and dilute the pure stock of the Nordic race. Grant’s book, “The Passing of the Great Race,” became Adolf Hitler’s bible. In his book, Grant called for the separation, quarantine and eventual collapse of “desirable” traits and “worthless race types” from the human gene pool along with the promotion, spread, and eventual restoration of desirable traits and “worthwhile race types” conducive to Nordic society. He argued society would improve if, over a 100-year time period, society created a program of rigid selection and elimination of individuals who are weak, unfit, mentally ill and those who were in prison by sterilizing them so that they don’t reproduce, and ensuring only the best people breed with each other.

As a result of the concern raised by mainstreaming the fake scientific facts of eugenics and dangers of immigrants from different cultures, those who hated the immigrants were able to severely limit the number of immigrants from all but the Northwestern European countries and the British Isles from 1924 until 1965.

Okrent points out that the faulty science that underlay the eugenics movement resulted in the sterilization of more than 60,000 people and encouraged Hitler and the Nazis to take even more extreme measures to “purify” their country’s population. In addition, because the borders to the United States were closed to those living in Eastern Europe, especially those classified as “Hebrews” from any part of Europe, these people had fewer possibilities escape the eradication of the Jewish people unleashed by Hitler in the period from the late 1930’s through the end of World War II.

Okrent’s book is a well-written and researched history that should be also read as a cautionary warning for the future. To better understand immigration law and policy up to 1965, read Okrent’s well-written book

“Ix See for complete document along with the introduction from each of its proclamings. See Adam Cohen, White Trash: The 400-Year Untold History of Class in America (Penguin Books, NY, NY 2016) iii 30. The book describes a permanent underclass of people designated as disposable, but useful for labor, if they worked. She described them as the “new poor,” who wereurdy, but then add by laws that two classes that had even less change of mobility.

For example, the May 4, 1892 rally at Haymarket Square, the same year Lilly was dedicated, showed the clash between immigrants and citizens working long hours for low wages, the newly rich industrial class and the older, more established Pilgrim hierarchy as being very rigid, but then adding by law two classes that had even less change of mobility.

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Ohio’s Trafficking in Persons statute became law nearly nine years ago, and the public understanding of the issue has come so far since. Before that time, victim advocates struggled to convince law enforcement and politicians that people here in Ohio are coerced into sex work and forced labor. There was a false assumption embedded in federal policy that human trafficking only happens in other countries, and if it happens here, it happens rarely. Nowadays, human trafficking investigations fill Ohio news and numerous bills on human trafficking are pending in the Ohio legislature.

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Today, victim advocates face new challenges stemming from how law enforcement and politicians now lead the fight against human trafficking. Ohio’s current approach is largely focused on arresting our way out of the problem, instead of addressing the root cause of human trafficking—a lack of legal protections for immigrant laborers and sex workers. We need more lawyers fighting for the legal rights of those at-risk for human trafficking and of those who have survived it.

Ohio law enforcement advocates for harsher criminal penalties for prostitution-related crimes to help them ensnare the sex traffickers forcing women, children and occasionally men into sex work. Unfortunately, victims can themselves suffer under these harsher penalties, as the vast majority of prostitution-related criminal charges in Ohio are still filed against sex trafficking victims. Anti-human trafficking policies focused on increasing fines and prison terms receive bipartisan support; meanwhile, policy recommendations from both victim advocates and human trafficking survivors themselves to pass laws legally protecting victims from being arrested for their victimization in the first place fall on deaf ears. While some survivors are linked to victim services after their prostitution arrest, they are then left to deal with the trauma of incarceration and the collateral consequences of a criminal record until they are eligible for sealing or expungement. This can lead to difficulty renting an apartment or getting a job, which makes them vulnerable to homelessness, relapses, mental health crises, and being trafficked again. Some argue that arresting victims is the best way to force them to connect to victim services and to coerce them into testifying against their abusers. This is not how we approach domestic violence or sexual assault survivors however, and it is not a just or fair way to approach human trafficking survivors either. Traffickers are convicted at higher rates when the victims who testify against them are instead empowered and provided with safety. Best practices are to connect victims to safe housing, healthcare, therapy and employment without arresting them.

The 2014 Marion egg farm case highlights parallel issues in Ohio’s approach to combating labor trafficking. A labor trafficking scheme that forced Guatemalan adults and children to live in unsanitary, crowded trailers and work 12-hour days at an egg farm for little or no pay went largely undetected for years. Most of the victims were recruited from the same small village in Guatemala where the traffickers have a strong presence, being promised with jobs and schooling in the U.S. Once victims reached Ohio and these promises were broken, they knew that if they called the police for...
help, they could be detained in jail and deported. Once deported back to Guatemala, they and their families would face retaliation from the traffickers. When a call to the National Human Trafficking Hotline (888-3737-888) tipped off law enforcement, they raided the operation and took the victims into custody. While some victims were connected to local victim advocates and attorneys who helped them apply for T-Visas and establish long-term safety and stability here in Ohio, others were deported by ICE back to Guatemala.

Years ago, victim advocates struggled to convince law enforcement to investigate human trafficking operations at all; now, we struggle to protect the safety and economic rights of survivors as law enforcement takes them into custody and sometimes arrests or deports them.

Survivors have told me that, while they appreciate seeing more and more traffickers facing criminal consequences, our highest priorities should be housing, services and employment for those who are at-risk to be trafficked or have already been trafficked. Their lived experiences as survivors of this heinous crime give them wisdom and a birds-eye perspective. No matter how many traffickers we put in jail, human trafficking will still occur if there are thousands of people in Ohio vulnerable to exploitation.

It is no coincidence that human trafficking most commonly occurs in sectors with the fewest legal protections for workers. In Ohio, restaurant workers can legally be paid half of minimum wage. Immigrants suffering sexual and physical abuse from their bosses, even when here on H2A and H2B visas, cannot report their crimes to local law enforcement without fear of losing their status and being deported. Smaller agricultural operations can employ children and pay less than minimum wage. It is legal and commonplace to house agricultural workers in the same field where they work, effectively segregating them from attorneys and advocates in the community. Domestic workers like maids and nannies are exempt from overtime and minimum wage laws and often live where they work, in isolation from community support. Sex workers risk incarceration if they call the police for help.

Lawyers have a key role in getting Ohio’s anti-human trafficking movement on track. Together, we need to fight for the legal rights of human trafficking survivors, laborers, immigrants and sex workers in courtrooms and the Ohio legislature. Human trafficking affronts our most basic notions of dignity and human rights. If we hope to eradicate human trafficking, we must start by protecting the dignity and human rights of all.

“Nothing about us without us” is a slogan closely connected to powerful democratic ideas like “nihil novi” and “no taxation without representation.” The voices of human trafficking survivors should do more than just inform Ohio anti-human trafficking policy; they should be who lead and guide the movement. As a lawyer, I often view my role as a megaphone for my client’s voice in the courtroom and the legislature. My purpose is to translate their perspectives into legalese, amplify their voice and fight fiercely for their legal rights. Now more than ever, Ohio human trafficking survivors need megaphones.

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Protecting Your Professional Character with Ethical Behavior

BY ANGIE BLEVINS

It had been a wonderful three-day weekend at the beach, but an associate attorney in a high profile defense firm was getting ready to walk into the trial of their career. The attorney had needed this long weekend, and thanks to some extra hours worked by their experienced paralegal, the attorney was able to take it. This particular attorney was keenly aware that their hard work on the case had been noticed by the firm’s partners. A jury delivering a defense verdict would have been noticed by the firm’s partners. The attorney had needed this long weekend, and thanks to some extra hours worked by their experienced paralegal, the attorney was able to take it. This particular attorney was keenly aware that their hard work on the case had been noticed by the firm’s partners. A jury delivering a defense verdict would have been noticed by the firm’s partners.

When arriving at work after the long weekend, the attorney waved at their assistant and walked confidently to their office. The attorney was focused and ready for the flurry of last minute work that always occurs the week before a trial begins. After all, the attorney knew this week would be full of long days and evenings. They would be under more pressure than they had ever experienced in their career over these next few weeks, but they were ready.

While the attorney was settling in to organize for the day, they noticed a letter on the desk which had apparently arrived the previous Friday. It was from the local bar association. The attorney was being notified that a grievance had been filed against them alleging an ethics violation. As the attorney’s eyes started to read the letter, their mind immediately went numb for a few seconds, and then it started to race wondering who, what, where, when and how? When the attorney began to compose and refocus, they noticed that this grievance appeared to be related to an inappropriate action carried out by their paralegal. As the attorney sat stunned in their chair, they began to wonder if all the hard work invested to get to this point in their career would be overshadowed because of an alleged paralegal ethics complaint. While the attorney wanted to go talk to the firm’s managing partner to seek some guidance, they had to focus elsewhere. The attorney’s assistant had just appeared in the doorway to let them know the first of four witnesses had arrived for trial preparation.

Ethical considerations are prominent in each course contained within a paralegal curriculum. Because ethics is so important to what we do daily, the paralegal curriculum also typically has one entire legal course dedicated to the subject. I would almost bet that any paralegal stopped on a street corner would be able to recite verbatim the main ethical guidelines: 1) a paralegal cannot provide a client with legal advice. 2) a paralegal cannot negotiate fees with a client; 3) a paralegal cannot enter into an attorney-client relationship; 4) a paralegal cannot negotiate fees with a client; and 4) a paralegal cannot provide a client with legal advice. Ethical considerations are prominent in each course contained within a paralegal curriculum. Because ethics is so important to what we do daily, the paralegal curriculum also typically has one entire legal course dedicated to the subject. I would almost bet that any paralegal stopped on a street corner would be able to recite verbatim the main ethical guidelines: 1) a paralegal cannot provide a client with legal advice. 2) a paralegal cannot negotiate fees with a client; 3) a paralegal cannot enter into an attorney-client relationship; 4) a paralegal cannot negotiate fees with a client; and 4) a paralegal cannot provide a client with legal advice.

Imagine being the paralegal who caused the ethics grievance for the rising associate attorney in the story at the beginning of this article. As paralegals, we must remember that we are bound by the same rules of professional conduct as an attorney. The American Bar Association’s Model Rules of Conduct Rule 5.3 (C)(2) clearly states that a lawyer is responsible for the conduct of a non-lawyer when they have direct supervision and authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. While this rule does not specifically mention paralegals, paralegals are a non-lawyer, so the rule applies to us.

As I sit down to write about ethics, I know there are some readers probably rolling their eyes at me because they are tired of articles about this particular subject. I understand rolling of the eyes when the topic of ethics is raised, because I’ve been known to do it myself. At times, I’ve actually verbalized aloud “oh no, not another article about ethics!” Even though I’ve been an eye roller at times, I chose to write about this topic because ethics is one of the most important aspects of being a paralegal, if not the most important aspect.

Because of ethics education, most paralegals all have that little voice in their head that says “this is not a good idea.” That little voice may be trying to tell you that you are close to breaching an ethical boundary. Breaching that ethical boundary will not only get you in trouble but will also create potential issues for your supervising attorney as well. When that little voice is talking to you, it is time to ask yourself what type of paralegal do you want to be: ethical and well-respected, or unethical and unemployed. When it comes right down to it, you control the type of paralegal that you want to be every minute of your career.

When a paralegal’s little voice has any doubt that a practice action might be unethical, the paralegal must seek guidance. Let’s face it: paralegals encounter legal issues every day which are ambiguous and present ethical dilemmas.
Discipline for an attorney in Ohio is decided by the Ohio Supreme Court and can take many forms. The court can impose four types of discipline: 1) public reprimand; 2) suspension from practice for a limited period of time usually ranging from six months to two years; 3) suspension from practice for an indefinite period, usually two years or longer; or 4) permanent disbarment. Permanent disbarment means the attorney will never be able to seek re-admittance to the bar. Some attorneys choose to surrender their license to practice law, but resigning is pretty much the same as disbarment.

If your supervising attorney faces discipline because you violated an ethical rule, don’t think you will not also suffer consequences. The consequences leveled on your supervising attorney are going to fall on you like a ton of bricks. If the paralegal is lucky enough not to be terminated for the ethics violation, I imagine any attorney’s trust and confidence in the paralegal would be irreparably damaged and the working relationship very strained, if they chose to work with you at all.

Paralegals who commit an ethics violation resulting in some type of action against their supervising attorney would probably be terminated from employment. Even in large cities, the legal community is very small. It would not take long for word to reach other firms that you made an unethical decision which caused a severe consequence for your supervising attorney. Your chances of other paralegal employment are probably going to be significantly limited or completely prohibited. If the paralegal who committed the ethics violation is state and/or nationally certified the certifications will be revoked. If the ethics violation rises to the level where a civil suit or criminal proceedings are initiated the paralegal may be sitting beside the attorney in court. The consequences leveled on you violated an ethical rule, don’t think you will not also suffer consequences. The consequences leveled on your supervising attorney are going to fall on you like a ton of bricks. If the paralegal is lucky enough not to be terminated for the ethics violation, I imagine any attorney’s trust and confidence in the paralegal would be irreparably damaged and the working relationship very strained, if they chose to work with you at all.

As paralegals, we typically have close working relationships with our supervising attorneys. Approaching your supervising attorney to discuss potential ethical issues is a great place to start. There may be other attorneys available within your firm who can provide you with guidance. If you need additional information above what is provided by the attorney, you should consider accessing the many online resources that are available to us. The American Bar Association’s Model Rules of Conduct and Ohio Supreme Court Rules of Professional Conduct are two great resources. Local bar associations also provide information and opinions on ethical rules and conduct.

There are two well-respected professional paralegal/legal assistant organizations which publish ethical guidelines. The National Association of Legal Assistants’ Code of Ethics and Professional Responsibilities can be found on its website at www.nala.org. Also publishing ethical guidelines is the National Federation of Paralegal Associations (NFPA). The Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement can be located on the NFPA website at www.paralegals.org. The National Federation of Paralegal Associations also has an Ethics Board available for NFPA members to provide guidance and advice on specific ethics situations. While these two organizations publish ethical rules, they have no legal effect on the paralegals. These organizations have ethical rules in place in cases where they need to sanction paralegals/legal assistants who hold voluntary certifications through their organizations.

Paralegal education and training teaches us what we have the right to do under the law. A competent and wise paralegal must listen to that little voice when it is speaking to them, and seek guidance when the issue presents an ethical dilemma, so they always respond by doing what is right to do. Paralegals must remember that good ethical practice speaks to your character and contributes to how your colleagues and clients view you professionally.
When I decided to go to law school, I thought I had finally picked my career: law. I had no idea that behind the door to law school stood thousands of other doors opening up to different career paths. I could be a professor. I could draft contracts. I could deliver oral arguments. I could mediate disputes. I could clerk for a judge. I could do, well, almost anything.

But with the endless possibilities came one constant question: Which path should I take?

Fortunately, I had already faced a similar problem during my undergraduate years. I walked onto my college campus with no idea as to what I wanted to do with my life. My first major was “Journalism: Undecided.” I eventually earned degrees in Broadcast Journalism and Public Relations from Marshall University. But that was not the end of the educational road for me.

I knew I wanted to further my education beyond my undergraduate degrees. Law school had always been an option lingering in the back of my mind, so I decided to take the LSAT and go from there. As is evidenced by my offering advice as a law student, I ended up in law school. I made my way into The Ohio State University Moritz College of Law without a clue as to all that was waiting for me behind its doors.

In fact, I am still trying to figure out what I want to do beyond law school. I do have my choices narrowed down much more than I did when I first entered. But if I had to declare a major in my first year of law school, it would have been “Legal Profession: Undecided.”

Just as I did in college, I got myself out of my “undecided” state based on a simple story my mom told me back when I was still in high school. She did not know it then, but hidden in her story was one of the best pieces of advice I have received about narrowing down my career interests while staying open to possibilities.

My mom wanted to get her hair cut. She thought about what sort of styles she was interested in on her way to a mall. Then, she walked around the mall and looked at the stylists who were cutting hair in each of the salons. Once she found a stylist who had a haircut she liked, she asked that stylist to cut her hair. The result was exactly what my mom wanted.

The method my mom used for finding the haircut she wanted is the same method I have used during college and law school for finding the career I want. That method can be summed up in three steps: stop, walk and talk.

Stop.

Just like my mom first stopped and thought about what hairstyles interested her, I had to stop and think about what interests me. Ever since elementary school, I have loved performing, whether in school musicals or dance concerts. At the same time, I have also especially enjoyed spending time alone to think and write. After
sharing these interests with some classmates and professors, I found that litigation seemed to match my interests the most because of its balance of intense writing and research with moments of high performance in meetings, depositions, trials and more.

Walk.
Just like my mom walked through the mall to find a stylist who inspired her, I had to walk into many different career presentations and networking events to observe attorneys who inspired me. I have attended more events organized by my law school than I can count. At each event, I paid attention to the attorneys on the panel or in the room, and I identified certain attorneys who inspired me or were working in areas that interested me.

Talk.
Just like my mom talked to the stylist who could give her the haircut she wanted, I had to talk to numerous attorneys who could help me choose the career I wanted. After I identified attorneys who inspired me, I would go up and introduce myself to them, set up times to get lunch with each of them and talk to them about their jobs at those lunches. I gained many mentors and colleagues from those lunches, as well as a new perspective on my own career path.

With the help of this three-step method I took away from my mom’s haircut story, I was able to land a job during the second semester of my first year of law school with a law firm in downtown Columbus. I stopped and figured out that litigation seemed to interest me. I walked into as many presentations and events as I could to meet attorneys who inspired me. I talked with an attorney I had met at one of those events, who referred me to another attorney whom I would eventually interview with for my job.

I reached out to that attorney, researched his work and met him for lunch. By the end of the meal, we realized we had come from the same hometown and our families actually already knew each other very well. He encouraged me to apply to his firm during on-campus interviews, to which I enthusiastically agreed. In fact, I later attended a networking event where I met some of his coworkers who had already heard about me from him.

An application and two interviews later, I was offered a summer associate position with the firm. The attorneys in the firm became like family to me that summer, and I realized I had found a great path to take on my journey through the legal profession. I have since accepted an offer to return and work there this summer, as well.

Have I answered the question, “Which path should I take?” for myself yet? Not quite. And there is nothing wrong with that.

As my esteemed criminal law instructor, Professor Joshua Dressler, told my classmates on our last day of class, “Live your life for the joy of the journey.” Law students are already on a well-earned career path. All that matters is that we continue to take steps forward on that path to become the lawyers we were meant to be.

For me, I continue to focus on three steps—stop, walk, and talk—to find a practice in the legal profession that works best for me.

Maybe one day, my major will be “Legal Profession: Decided.”
A J.D. in Imperfection

BY CARSON TUCKER

Law students are faced with the onerous duty of presenting themselves in a favorable manner. They must be perceived as perfect, or nearly so, because lawyers are part of the upper echelon of society.

The perceived societal pressure, however, truly comes from within. As a law student myself, I can personally attest to holding myself to nearly impossible standards of perfection. The pressure is only increased by daily consumption of social media. Celebrities and influencers are living seemingly perfect, glamorous lives, while we are drowning in law school debt and studying for hours in a dark, musty library.

Many students end up chasing the perfect career, the perfect semester, the perfect car and the perfect partner.

Frequently, we fall into that trap because of societal norms and the pressure that mounts from outside expectations, as well as those that come from within. However, rather than chasing perfection and maybe never reaching those unattainable expectations, we can embrace our imperfections and live our best law school lives. Here are four ways you can try to be okay with imperfection.

1. Be kind to yourself.

My entire world was “shooketh” when a wise mentor told me that I need to start treating myself like I treat other people. We tend to be much nicer, kinder people to perfect strangers than we are to ourselves. There must be balance in the world.

Chasing after dreams and goals is admirable, but don’t be too hard on yourself when you encounter bumps along the road. Notice I said ‘when’, not ‘if’. Part of the problem specifically with law school is that we are all accustomed to being top students. High achievers. Well above average performers; but, when you put that many people of excellence in one room, there will still be a top, middle and bottom.

The bottom line is that while you should be setting specific, measurable, attainable, realistic, time-oriented goals, when you don’t meet one of those goals, it is not the end of the world. Allow yourself to make mistakes and fail. If you aren’t occasionally making mistakes and failing, you aren’t pushing yourself hard enough. When you make those mistakes, partake in self-care as a necessary and healthy way of life and try again.

2. Celebrate failure.

The Disney movie Meet the Robinsons has a really amazing message about celebrating failure. The family takes time during dinner to proudly announce something they tried and failed at that day. Each member shares and celebrates the stories of everyone. The family motto is “Keep Moving Forward.”

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As cheesy as Disney advice may be, it’s a healthy perspective for those of us experiencing regular failure in law school. Celebrating your failures is just a matter of changing your perspective. You can think of it like this:

A. Bob plays soccer. Bob shoots the ball at the goal 15 times. Bob misses all 15 times. Bob is sad.

OR

B. Bob plays soccer. Bob shoots the ball at the goal 15 times. Bob misses all 15 times. Bob is celebrating the game’s positives, including: most shots on goal in one game, almost scoring 15 times and getting in 15 “practice” shots for the next game!

In example A, Bob is choosing to dwell on the negative and focus on the failure. In example B, Bob is choosing to pull the positives from the same failure. Be like Bob. Change your perspective and celebrate failure for all the greatness and opportunity it brings you!

The difference is between focusing on the experience and focusing on the outcome. The outcome is technically the same in both cases. However, the experience was completely different. Focus on the experience you are gaining. Celebrate failure. Keep. Moving. Forward.

3. Communicate openly and honestly.

Communication is key to every aspect of life. The imperfections we used to not be okay with may stem from assumptions about others around us. For example, say you get a Torts midterm back and you fail. Not like failing in high school, where you got a 59 percent, but fail law-school style where you earned two points on a 75-point exam.

Sharing your feelings and your “burden” with someone will help you let go of the failure and move on. It’s important to be able to quickly process things like that in law school, especially because there isn’t time to fall into a funk and worry about every life decision you have ever made for a week. If you have someone you can talk to like that in school, that is great.

What you will find out is that everyone failed the midterm and it’s not a big deal at all. Alternatively, turn to someone outside of law school and share with them. You don’t have to go through this alone.

This is a slippery slope, however, because you don’t want to fall into the trap of comparing yourself to others. Being okay with imperfection is about taking the focus off other people and focusing on you. By putting yourself first, it affirms your self-worth and therefore lets your brain know that you are valuable, imperfections and all.

4. Use affirmations.

If you’re still not convinced that you will ever be okay with imperfection, use affirmations until your brain decides you will be. Saying something every morning like “I’m not perfect and that’s okay” or “I choose to celebrate my failures because I am trying, learning and persevering,” or even “I am okay with who I am, what I look like and what I do,” can help you reorganize your thought process.

Psychologically speaking, our brains tend to focus on the negatives and hold onto those for much longer, so letting your brain know that something is not a negative can help you immensely in your journey to be okay with imperfection.

Using one or all of these methods can help bring you to a healthier mindset where you accept yourself and others for the inherent imperfections we as human beings hold. By being okay with imperfections and allowing ourselves to fail, we are building a stronger sense of self which, in turn, builds a stronger society.

I challenge you to try something new and allow yourself to fail gloriously at it. Whether you share that with others or keep it as a reminder that you are imperfectly perfect is up to you.

Carson Tucker
Law Student
Capital University Law School
Courtney J. Miller, whose career now revolves around the deadlines of his patent law practice, used to have a life which revolved around his band and its schedule.

Courtney, although born in Columbus, was adopted by a family in Dover, Ohio. He began taking piano lessons while still in elementary school, played the cello in the school orchestra and later studied classical guitar.

While attending the College of Wooster as a biology major/pre-med student, he played in several cover bands. Right after graduation in 1989 as he began working at Battelle, he and several others began their own cover band, “Room Nineteen.” Courtney was the lead singer, and variously played guitar, keyboard and drum machine in their performances. He describes their music as having a Celtic/folk sound.

Writing, practicing, releasing albums and performing their 80’s alternative music was thrilling and all-encompassing. Courtney also handled the photography, artistic direction and layouts of their music CDs. The band stayed together for 17 years as a professional music act, often performing four to five nights per week in Columbus and other Ohio cities.

One of the downsides to all the years of playing with the band and lugging the equipment to and from each venue for so many years was that Courtney ended up having a complete reconstruction of his right shoulder. On the plus side, he learned confidence, he says, from performing for new audiences each time. His years with the band were intense and all-encompassing, along with the feeling of being a part of a self-created family, and like any family, there were good times and there were bad times.

Writing, practicing, releasing albums and performing their 80’s alternative music was thrilling and all-encompassing. Courtney also handled the photography, artistic direction and layouts of their music CDs. The band was even in talks with music labels, he said, but suddenly the new “in” music was by grunge bands. Around that same time, real life responsibilities of the various band members also interfered, and the band dissolved around 10 years ago.

Courtney's original plan to become a doctor was put on hold after college. He was hired by Battelle in 1989 as a researcher in their Biotech Group. After several years there, he changed his career focus and began evening law school at Capital University (J.D. 1999; Business Law LL.M., 2002). Since then he has been a staff attorney at Battelle, an associate with Calfee, Halter + Griswold, a partner with McNees Wallace & Nureck, and is now a member with Frost Brown Todd LLC.

He is a big supporter of environmentalists. Courtney serves on the Board of Directors of the Friends of the Lower Olentangy Watershed, and he has sponsored and participated for many years in the Battelle Rivers and Streams Beautification Team planting tree seedlings around central Ohio.

Courtney's patent law practice, he admits, is very demanding of his time and attention. As a result, he no longer plays any music, which to him also would require the same amount of time and dedication as his practice. However, to achieve some bit of life balance, Courtney does indulge in collecting art and Vespas, although he is currently down to just one black Vespa, and taking and editing photographs of nature and wildlife.

Courtney doesn't know what his future holds, but he does hope to achieve more balance in it one day, and, if possible, work his enjoyment of photography into his professional life.

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PHOTOGRAPHS BY COURTNEY J. MILLER
Misty seascapes from cliffside overlooks. One of the world’s finest parks in one of the world’s most isolated cities. Kangaroos eating out of my hand. The world’s largest coin, solid gold and literally weighing a ton. Wombats, koala bears, exotic birds, uncaged sitting on perches posing for pictures. Needle-like pinnacles rising up to 12 feet above a sandy red surface to look like the face of the moon or an alien cemetery.

A train ride of nearly 3,000 miles from coast to coast — Indian to Pacific oceans — through mostly desert terrain but with great gems along the way. A world-famous opera house, symbol of a continent. Riding a cable car over a 3,000-foot canyon in the Blue Mountains where the horizon is colored by eucalyptus trees. A guinea hen, thinking it found lunch, pecking a lizard three times its size while chasing it over a slope in the Outback.

A Polynesian bus driver who loved to lead his passengers in American country music songs. Bumping foreheads with Maori tribesmen. Sheep and cattle thick as flies on the greenest hills and valleys one can imagine. Floating on flat bottom boats in a cave, spellbound by thousands of glow worms lighting the rock surface above our heads. Early spring in the land of the Hobbits.

Airline trips that were foretastes of hell (nothing against our particular carrier, just the nature of the beast).

These are some of the images I will never forget from our recent trip to Australia and New Zealand. We did not see a few of the most common tourist sites. But we saw things that many visitors miss. My wife, Mary Ann, and I traveled with a group of about 20 people led by Bob Zehr, who operates an Indianapolis company aptly named ‘Travel to Remember’. We have also taken several other trips with Bob.

A 16-hour flight from Houston to Auckland, New Zealand, passed through seven times zones and the International Date Line. We lost a Wednesday altogether. Then, we had another 7-hour flight over southern Australia to Perth on the coast of the Indian Ocean. That brought four more time zones, including a half-hour zone (the only other one is in India), all the while gaining hours back. So, getting on a new sleep cycle — or even knowing the day of the week — took some time.

Perth is a squeaky clean and sunny city with a population of more than two million, which is about 90 percent of all the people who live in Western Australia, a state that makes up about a third of Australia’s mainland and offers some 8,000 miles of coastline. Our hotel overlooked the wide and picturesque Swan River that cuts through the center of the city before joining the Fremantle Harbor and the Indian Ocean. Although a vibrant commercial hub and tourist attraction, Perth is thousands of miles from any other metropolitan areas.

The city’s most popular tourist destination is Kings Park and Botanic Gardens (with 10 million visitors a year) with 1,000 acres sloping up from the Swan River and offering a brilliant view of the downtown skyline. But the biggest attraction is wildflowers. Western Australia has 12,000 varieties of wildflowers (the most in the world) and Kings Park has the premier display of them. Studies have been conducted to see how the park stays so clean, a guide pointed out. Residents treat it like their own backyard, according to the studies. Therefore, cities (everywhere) need to foster a sense of ownership in their amenities, she concluded.
The British established the state of Western Australia in 1829. The Queen of England is still the titular head of state. Its economy took off in 1890 when a flash flood exposed gold on a riverbank. Gold and other precious metals, e.g., silver and platinum, are still the economic base, and the Perth Mint (one of the world’s oldest) is still operating at its original location in East Perth, handling 95 percent of all Australian-mined gold. Perth Mint made the bronze medals for the 2000 Olympics by melting down one and two-cent coins as they were being taken out of circulation. That gave all residents a hand in creation of Olympic prizes.

An eye-popper at the Mint is the world’s largest gold coin: a diameter of 31.5 inches with a bust of Queen Elizabeth on one side and an Australian kangaroo on the other. The gold is worth $80 million at today’s prices. The collector’s value is beyond determination. The coin weighs a ton and sits on a circular panel that opens at the Mint’s closing time while the coin is mechanically lowered into the safe below it.

A 320-foot-high mostly glass Bell Tower overlooking the river and ocean is another big attraction with its Twelve Royal Bells that had hung in London’s famous St. Martin-in-the-Field church where they had tolled for every English coronation since the 1300s. They also rang when England discovered Australia in 1770. Their relocation thusly became an Australian millennium project when they were slated to be melted down and recast in 1975. Visitors can watch them ring through windows partway up the tower. Our group had the added privilege of going into a room used by professional bell ringers, who come from all over the world to compete with each other. Several of us tried our hands – turned out it took our whole body weight – at pulling the ropes and creating the famous gongs.

We ended our first day in Perth with a visit to Fremantle, a working fishing harbor and shipping port since 1829 but now also a visitors’ delight with restaurants and pubs, concerts, festivals, markets and art exhibitions. Primary attractions are the Fremantle Markets, built in 1897 and now offering stalls of artists and designers as well as its wares and produce in a Bohemian atmosphere, and the Fremantle Prison, built by convicts in the 1850s and used for maximum security incarceration until 1991. Western Australia was an English penal colony between 1850 and 1868, and the convicts were involved in building a great deal of the infrastructure, including the Government House and the Perth Town Hall.

The next day, we traveled north to the Caversham Wildlife Park where we photographed native birds, owls, koalas, wombats and other animals, fed kangaroos by hand and watched a dog herd sheep and a cowboy sheer one.
the train and fit it into your tiny cabin. But it will have can use it for aircraft “carry ons,” you can take it on
A simple rule covered packing for the train ride: if you
visit. We didn’t do any sand boarding or sky diving, either.
white sand beaches that we didn’t have time to
zoo, a new 60,000 seat stadium and 19

The Indian Pacific, named for the coasts it joins,
has the longest stretch of straight railway
in the world. Construction began in the
1890s, but it was not until 1970 that
the Indian Pacific completed its
first unbroken trip from Sydney
to Perth.

Our train was almost a
half mile long and traveled
at an average speed of 60
miles per hour. At first, we
passed through rolling hills and
pastures. By the second day, the
terrain was totally flat with nothing
but scrubby bushes and desert sand.

Once in a while, a spread of white sand looked
like snow. Late on the first night, we stopped at an oasis
named Kalgoorlie, a gold rush town that is now the site
of Australia’s largest gold mine, the Super Pit. About 2.5
miles wide and a half mile deep, the Super Pit is an open-
cut mine that has operated around the clock since 1989.
The huge equipment reminded me of the last stages of
strip mining for coal in Eastern Ohio in the late 1960s.
Glowing lights from the super pit were impressive, but
I couldn’t get the full impact as we were visiting the
Overlook at midnight to fit the train’s schedule.

Sometimes, soothing, repeating clic-ka-dy clacks made
sleeping on the moving train quite easy. Other times,
the abrupt back and forth shakes, the bumps and the
unpleasant banging made slumber very difficult. And,
of course, you remember more of what kept you awake
than of what put you to sleep. And we were out at 6
a.m. for our first breakfast of the new day, a picnic-style
feast in a little town called Rawlinna that borders on the
largest sheep farm in the southern hemisphere, with up
to 80,000 sheep on some 2.5 million acres.

Time on the train passed rather quickly, with most of it
being spent in the lounge (where Mary Ann and I won
a euchre tournament!) or the dining car. After another
breakfast and a lunch, the train stopped at the desert
ghost town of Cook. Once, it was inhabited by railroad
workers and boasted of a hospital, schools and shops and
golf course. A dusty, long and wide landing strip still
exists as a reminder of the Med Flights that had come
from far reaches into the Outback. After the railroad
came under private ownership in 1997, the population
wavered from about 200 to its current level of four
(including the caretaker), but it is still a refueling station
for the railroad. And, thanks to an old water line that
comes all the way from Perth, a place for rail stewards
to drop off dirty laundry in exchange for clean stuff.

That gave us some time to enjoy roaming among the
abandoned houses and buildings.

By the following morning, the desert had turned to
wheat fields with an occasional farmhouse and huge
herds of beef cattle and sheep, peacefully co-existing in
the green pastures. A couple of times, someone yelled,
“kangaroos,” and we all gazed out the windows to catch
a glimpse.

By mid-morning, the train rolled into Adelaide, a city of 1.3
million and the capital of South Australia, even though it
is in the southeast corner of the state along the coast.
The city was “re-designed” in 1936. The result is easily
traveled straight and wide streets and coordinated land
uses, e.g., a medical precinct, a section for government
buildings and a museum and art gallery district. We had
lunch in an impressive new stadium built for cricket and
football. (In Australia, they play football without any
helmets or pads or any protective equipment at all. A
guide said the highest paid star is 29 years old and has
had 17 surgeries.)

Adelaide is surrounded by great wine regions and is
renowned for its markets and fine cuisines, along with
old European-style architecture. But our schedule
permitted very little sight-seeing, and soon we were on
the rails again for our last night aboard as we headed
down the final stretch toward the Blue Mountains and
Sydney.

(Part 2 will appear in the next edition of
Lawyers Quarterly)
The Importance of GRATITUDE

“Cultivate the habit of being grateful for every good thing that comes to you, and to give thanks continuously. And because all things have contributed to your advancement, you should include all things in your gratitude.”

— Ralph Waldo Emerson

When we think about our lives and are reminded of all of the joys and stressful times, it is helpful for our mental health to show gratitude. Instead of focusing on the things we don’t have or the challenges in our lives, it is important to make gratitude a part of our regular health routine. Many studies have shown that displaying gratitude helps us become healthier, happier and more successful.

What is gratitude?

It’s simple. Gratitude means being thankful. It means showing appreciation for and returning kindness. It’s a personality trait, a mood and an emotion. When we are grateful, we are more likely to feel good about ourselves. It’s a way to remind ourselves of the things that make us happy.

Psychologists Dr. Robert A. Emmons and Dr. Michael E. McCullough did a study on gratitude in which they asked participants in three groups to write a few sentences each week, focusing on particular topics. The first group wrote about things they were grateful for; the second group wrote about things that irritated them; the third wrote about events that had affected them, either in a positive or a negative way. The group that wrote about gratitude was more optimistic, exercised more and visited their doctor less than those who focused on sources of aggravation.

Gratitude means being thankful. It means showing appreciation for and returning kindness. It’s a personality trait, a mood and an emotion. When we are grateful, we are more likely to feel good about ourselves. It’s a way to remind ourselves of the things that make us happy.

So, how do we practice gratitude?

1. Write a thank you note
   Some people might think that a simple hand-written thank-you note might not be that effective, but a study published in Psychological Science reveals otherwise. One hundred participants wrote letters of gratitude to someone for whom they were thankful, such as a friend or loved one. The letters took less than five minutes to write, and participants were then asked to rate how surprised, happy and awkward they predicted the participant would feel.

   The participants who wrote the notes overestimated how awkward recipients would feel and how insincere the notes would seem, and they greatly underestimated the positive effects they would have, typically guessing the notes would evoke a three out of five.

   The recipients were asked to assess how the letter actually made them feel. After receiving the notes, many rated their happiness at four out of five.

2. Say thank you
   When you say thank you, you instantly feel better about yourself because you are showing good manners and respect, something your parents probably taught you when you were a toddler. When you feel good about yourself, you are more positive, and the person you thanked feels higher levels of self-worth and is more likely to help others in the future. It’s a win-win!

   Research shows that managers who thank their employees find that those employees feel motivated to work harder. One study randomly divided university fundraisers into two groups, where one group made phone calls to raise money in the same way they always had. The second group received a talk from...
the supervisor, who told them she was grateful for their efforts. The employees who heard the supervisor’s message of gratitude made 50 percent more fundraising calls than those who did not.

Don’t forget to thank your partner. Couples who express gratitude toward one another are more intimate and trustworthy and are more likely to feel as if their needs are being met.

Saying a mental thank you works as well. Maybe a person did something nice for you, but you don’t know their name. A person who let you over in a traffic jam, a person who let you skip ahead in line, a person who helped you soothe your crying child at the grocery store, a person who noticed you dropped a $20 bill and gave it back to you. Thinking and being grateful for the kind gestures that strangers have done for you can make you feel happier.

3. Write it down
Keep a gratitude journal. This helps you focus on what you already have, not what you lack. Make a goal to write in your journal daily, weekly or whatever works for you. Think about your day, your past, your future and what you are thankful for and write it down. It doesn’t have to be grandiose. It can be as simple as “I am thankful that I have a job that I love,” or “I’m thankful that I have a roof over my head.” When you are feeling stressed or upset, take a look at your journal and remember all of the amazing things in your life.

4. Thank yourself
Having trouble thinking of something to be grateful for? We tend to focus on the negative aspects in the world but try to start thinking of the positive. One way is to be thankful for yourself. Think about your job as a lawyer. Your job is to solve other people’s problems. You help people get their homes back, you help them resolve disputes, get child support and find justice, among many other things. That in itself is something to be thankful for.

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BY MONICA L. WALLER

Verdict: $72,000.00. Premises Liability.

On May 8, 2016, Plaintiff Joseph Lumbaca was shopping at Sam’s Club on Morse Road. There was a display in the store set up by Defendant Alpha Events, Inc. that advertised car wax. The display included a wax-covered car hood with a catch basin below it. A salesperson would pour water over the car hood to demonstrate how effectively the wax repelled water. While walking past the display, Lumbaca stepped on the side of the basin and fell. Lumbaca sustained injury to his arm. Lumbaca sued Wal-Mart and Alpha Events. Defendants argued that the basin that Lumbaca stepped on was open and obvious. The defense argued that the collision caused injury to his neck, back and left shoulder. He was found to have an L5 disc bulge with impingement of the L5-S1 nerve root. He was also diagnosed with tendon and labral tears in his left shoulder. Plaintiff demanded the policy limits of $250,000. Shortly before trial, the demand was reduced to $52,000. At trial, Plaintiff asked the jury to award $450,000. The defense argued that the total award should be in the range of $15,900 to $19,900. The jury awarded Plaintiff $23,579 in past medical expenses and $27,000 in past non-economic damages, but did not award anything for past or future lost wages or future medical expenses or non-economic damages. Medical Specials: $36,360.60 in past medical specials ($23,579.93 after write-offs) and projected $40,000.00 in future medical specials. Lost Wages: $123,603.50-$136,466.00 in combined past and future wages. Last Settlement Demand: $52,000. Last Settlement Offer: $28,000.00. Length of Trial: Four days. Plaintiff's Expert: Robert Perkins, M.D. (physical medicine and rehabilitation). Defendant's Expert: Gerald Steinman, M.D. (neurology). Plaintiff's Counsel: Matthew T. Wolf and Curtis M. Fifner. Defendant's Counsel: Mitchell M. Tallan and Curtis M. Fifner. Defendant's Counsel: Marshall W. Guerin. Magistrate Ed Skeens. Case Caption: Joseph Lumbaca v. Wal-Mart Store #6307, et al. Case No. 17CV9889 (2019).

Verdict: $50,579.00. Automobile Accident.

Plaintiff Douglas Wilson was driving westbound on Ackerman Road on Nov. 16, 2015, and stopped at a traffic light. The vehicle behind him, driven by Defendant Dorothy Barnes, did not stop and struck the rear of Wilson’s vehicle, pushing Wilson's vehicle into the vehicle ahead of him. Wilson claimed that the collision caused injury to his neck, back and left shoulder. He was found to have an L5 disc bulge with impingement of the L5-S1 nerve root. He was also diagnosed with tendon and labral tears in his left shoulder. Plaintiff demanded the policy limits of $250,000. Shortly before trial, the demand was reduced to $52,000. At trial, Plaintiff asked the jury to award $450,000. The defense argued that the total award should be in the range of $15,900 to $19,900. The jury awarded Plaintiff $23,579 in past medical expenses and $27,000 in past non-economic damages, but did not award anything for past or future lost wages or future medical expenses or non-economic damages. Medical Specials: $36,360.60 in past medical specials ($23,579.93 after write-offs) and projected $40,000.00 in future medical specials. Lost Wages: $123,603.50-$136,466.00 in combined past and future wages. Last Settlement Demand: $52,000. Last Settlement Offer: $28,000.00. Length of Trial: Four days. Plaintiff's Expert: Robert Perkins, M.D. (physical medicine and rehabilitation). Defendant's Expert: Gerald Steinman, M.D. (neurology). Plaintiff's Counsel: Matthew T. Wolf and Curtis M. Fifner. Defendant's Counsel: Mitchell M. Tallan and Robert Kidd. Judge Kim Brown. Case Caption: Douglas Wilson v. Dorothy Barnes, et al., Case No. 17CV9896 (2019).

Verdict: $46,178.46 Insurance Coverage.

Plaintiff Tad Hay owns three commercial buildings in Galloway, Ohio. He operates under the business name, OPM Companies. Hay rents out most of the commercial space in these buildings, but also operates a crawl out of one of the buildings. In January 2016, a thief broke into one of Hay’s buildings and stole some tools. Hay made a claim for the loss of those tools under a builder’s risk insurance policy issued by Auto-Owners. Hay claimed that the tools were worth over $37,000. He also claimed that he was entitled to theft rewards under the policy totaling $7,500. Auto-Owners conducted an investigation and denied the claim on the basis that the builder’s risk policy did not contain business personal property or personal property coverage. Auto-Owners also discovered in its investigation that there had been many other break-ins at these buildings and suspected that the tools reported stolen in January 2016 may have been stolen in one or more of these prior incidents. Hay also could not produce any receipts for the stolen tools. After Auto-Owners denied his claim, Hay sued Auto-Owners claiming breach of contract and bad faith. The court bifurcated the breach of contract and bad faith claims. Both sides moved for summary judgment on the breach of contract claim. Hay argued that Auto-Owners improperly denied his claim because he was seeking coverage under the building provision of the policy, which expressly provided coverage for theft of “personal property” or “equipment” used to repair, service or maintain the building. Hay also disputed that the basis for Auto-Owners’ denial was Hay’s claims history or his inability to produce receipts. The Court denied both motions for summary judgment and the case proceeded to trial. The jury concluded that Hay had performed all of his obligations under the policy and that the Auto-Owners’ policy provided coverage for the loss. The jury concluded that Auto-Owners breached its contract with Hay by failing to honor the claim and failing to meet deadlines imposed by the policy. The jury awarded $38,628.46 for the loss of the tools, $7,500 in theft rewards and nominal damages of $50 for missed deadlines. No information about settlement negotiations was available. Length of Trial: Three days.

Verdict: $6,872.34 Automobile Accident.

Defendant Timothy Depue was driving westbound on Refugee Road and made a left turn headed south on State Route 104 South in front of Plaintiff Kyle Carr. Depue had a dog with him in the car and, as he was turning, was attempting to pull the dog from the window. Carr saw Depue begin his turn, but was unable to avoid the collision. Both vehicles sustained heavy damage and had to be towed from the scene. Both Carr and Depue sought emergency medical care. Carr was diagnosed in the ER with a cervical sprain and leg contusion. He claimed that he also suffered injury to his left shoulder, back and left knee. He finished treatment...
Makenzie's cerebral palsy was caused by hypoxic ischemic encephalopathy that occurred at the time of delivery because of compression of the umbilical cord. Plaintiffs argued that the encephalopathy and cerebral palsy could have been avoided if Cherie Richey and the hospital staff had recognized signs of cord compression that were apparent from the tracings produced by the fetal heart rate monitor. They argued that, if Makenzie had been delivered 15 minutes earlier, she would have suffered no injury. Defendants disputed Plaintiffs' interpretation of the tracings and Plaintiffs' theory of the cause of Makenzie's cerebral palsy. Defendants argued that the tracings did not demonstrate that Makenzie was suffering cord compression that required an earlier delivery. Defendants also argued that, while there were multiple possible causes of Makenzie's cerebral palsy, the medical record did not support the conclusion that Makenzie's cerebral palsy was the result of an acute profound hypoxic ischemic event. Plaintiffs dismissed Mount Carmel East Hospital prior to trial and proceeded to trial against Dr. Richey, M.D. and her practice, Columbus Women's Care, Inc. The jury found that Dr. Richey did not breach the standard of care. Damages: Future lost wages: $1,794M. Future medical care: $398.40-$5.0M. Last Settlement Demand: 10% of medical specials. Last Settlement Offer: None. Length of Trial: 11 days. Plaintiffs' Experts: James Balducci, M.D. (maternal fetal medicine), M.D. (obstetrics and gynecology), Hermann M., M.D. (neurology), Avrum Pollock, M.D. (pediatric neuro-radiology), Daniel Adler, M.D. (pediatric neurology), Theoria Boyd, M.D. (placental pathology), John Pullman, M.Ed. (vocational expert), Cam Parker, RN, BSN, CLCQ (life care planner), David Boyd, M.D. (forensic economist).


Defence Verdict.

Medical Malpractice.

Plaintiff Ketrina Gutzke gave birth to a daughter, Makenzie Coates, at Mount Carmel East Hospital. Defendant Cherie Richey, M.D. of Columbus Women's Care, Inc. delivered Makenzie. At delivery, Makenzie required resuscitation. She was later diagnosed with cerebral palsy. Gutzke, Makenzie and Makenzie's father, Dezjuan Coates, sued Dr. Richey, Columbus Women's Care and Mount Carmel East Hospital asserting that within four months of the accident, Carr sued Depeo to recover his medical expenses and for pain and suffering. He also argued that he had not been fully compensated for the damage to his vehicle. Plaintiff moved for summary judgment on the issue of liability, which was granted. The case proceeded to trial on damages only. The jury awarded Carr $2,488.34 in past medical expenses, $2,500.00 in past non-economic expenses, and $1,884.00 for damage to Carr's vehicle which had not already been paid. The jury awarded Carr nothing for loss of use of his vehicle while awaiting a rental car. Medical Specials: $2,209 (reduced to $1,770.59 after write-offs.) Last Settlement Demand: $15,000. Last Settlement Offer: $4,500. Experts: None. Length of Trial: Two days. Counsel for Plaintiff: Charles H. Bendig, Counsel for Defendant: Todd J. McKenna., Magistrate Hunt. Case Caption: Kyle Carr v. Timothy Depeo. Case No. 18CV2703 (2019).

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