Planning for Your Future: Probate & Estate Planning

In this issue, Columbus Bar Lawyers Quarterly explores legal topics that center around probate and estate planning, including caring for elderly parents, probate for LGBTQ couples, trustee responsibility and more. Learn about volunteer opportunities for young lawyers, a visit to an immigrant detention center, a pro-con look at the Citizens United decision and more.
The word research may instantly bring thoughts of reference literature, surveys and analyzing reams of statistical data. At S-E-A, for nearly 50 years, our staff of engineers, investigators and researchers rely upon these tools as much as anyone, but for us, they are only the beginning. Because we are very rarely asked for answers that are readily apparent.

When conducting a forensic investigation to establish what really happened to cause injury or damage, S-E-A’s idea of research encompasses a wide range of engineering disciplines working together to find answers that stand up in the real world and in the courtroom.

Whatever the word research brings to mind for you, when you need real answers that aren’t readily apparent or available, visit SEAlimited.com or call 800.782.6851 for more details.
TABLE OF CONTENTS

Fall 2018

President’s Page
4 The Future of the Profession
   Sam Peppers

Bar Insider
6 Writing Better Beginnings:
   Law & Literature Series, Part 2
   Mark Kitrick and Mark Lewis
9 Lawyer Discipline Cases in the
   Supreme Court of Ohio
   Nelson E. Genshaft
14 The Versatility of a Law Degree:
   What Will You Do With It?
   Janyce C. Katz

Fall Feature
18 My Week with Immigrants in
   Detention in Dilley, Texas
   Kyle A. Knapp

Better Lawyer
22 Nonprofit Chamber of
   Commerce Champions Agencies
   Serving Vulnerable Populations
   Michael L. Corey
24 Giving Back without Giving Up: A
   Young Lawyer’s Guide to Community
   Service While Maintaining a Social
   Life in Columbus
   Shalyn C. Smith

Points of Practice
28 A Guide to Counsel, Client,
   Indexes and Annuities
   Frederic R. Kass
32 Misunderstood Citizens United
   Decision a Routine Application of
   First Amendment Principles
   Bradley A. Smith
36 A Critique of Citizens United v. F.E.C.
   Clifford O. Arnebeck, Jr.
40 What Can Your Facilitative Mediator
   Do for You?
   Veronica M. Cravener

Probate & Estate Planning
42 Caring for an Aging Parent:
   Where to Begin
   Melanie Hankinson
46 Somewhere Over the Rainbow:
   The Changing Legal Landscape for
   the LGBT Community
   Hannah L. Botkin-Doty
49 Staying Up-to-Date with Ever-
   Changing Estate Planning Laws
   Bradley R. Glover
52 Who Do You Trust?
   Rosemary Ebner Pomeroy
56 Wills, Estates and Trusts:
   How Pro Bono Clinics Help Clients
   Find Peace of Mind
   Angela Vohsing

Life Outside the Law
58 Why You Need Emotional
   Intelligence to Succeed
   Scott R. Mote
62 Portugal is One of the Newest
   Big-Time Tourist Destinations
   Hon. David E. Cain
66 Lawyers with Artistic License:
   Susan Lubow
   Heather G. Sowald

Jury Verdicts
68 Civil Jury Trials, Franklin County
   Common Pleas Court
   Monica L. Waller

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President's Page

The Future of the Profession

BY SAM PEPPERS

It has been three months since I was inducted as the President of the Board of Governors of the Columbus Bar Association. Those three months have been packed with activities that have shown me how great the local legal community is, how well respected the CBA is around the country and the gravity of my position.

From presiding over my first Board Meeting to representing the CBA at the National Conference of Bar Presidents and the Conference of Metropolitan Bar Association conventions, I have repeatedly been reminded of the importance of the CBA to its members and the respect the CBA garners on a national level. It is truly an honor to represent the CBA and all of its members.

During the last couple of months my pet project, the Wellness Taskforce, has met and has begun the important task of establishing its mission and the parameters of its programming. While nothing has been set in stone at this time, I can say that the members of the Taskforce see the importance of providing meaningful assistance to lawyers in our community to help maintain their wellbeing, and to assist those lawyers who need some help with their practices and personal lives due to mental health issues or substance abuse problems. This Taskforce is not trying to replace the Ohio Lawyers Assistance Program but is looking to assist OLAP in the provision of services while providing programming to increase the wellbeing of all lawyers. The practice of law is a noble profession but practicing law can be hard work. Some of our colleagues need some guidance and assistance with maintaining their wellbeing, and the Wellness Taskforce will be looking for ways to provide what lawyers need to be the best they can be.

As President of the CBA I have had the opportunity to meet and speak to the young lawyers who participated in the CBA’s Barrister Leadership Program as well as some of the law students who participated in the Minority Clerkship Program this summer. From the enthusiasm and intellect expressed by the participants in these programs, I can tell you that the future of the legal profession is in good hands. The individuals coming into the profession want to do well and achieve much in the support of the community in which they live. This is good to see as the legal profession experiences challenges from many fronts, including internet websites that presume to offer legal services.

"From the enthusiasm and intellect expressed by the participants in these programs, I can tell you that the future of the legal profession is in good hands."
the CBA, as well as attend the many CBA activities such as Constitutional Conversations or Committees and Cocktails, which is a fantastic networking opportunity for our members. Committees and Cocktails have replaced individual committee happy hours and takes place every third Wednesday of the month. Constitutional Conversations are programs where lawyers and members of the public can come and discuss current events and controversies. Each activity provides different ways to learn something new and to connect with other lawyers or members of the local community. The only way to get the full value of membership in the CBA is to participate in CBA-sponsored activities. The CBA has something for everyone and everyone is welcome here. I invite you all to find out what is happening at the CBA and to join us.

for every legal need at cut-rate prices. Staying current and building a better future for everyone is a meaningful challenge for our learned profession and especially for these new lawyers.

The results of the July bar exam will be published next month. We will soon have a new contingent of young lawyers to bring into our profession. The CBA is constantly looking for ways to help integrate them into the practice of law and to help them be successful. Some of those young lawyers, who make the decision to open their own law office, will have the opportunity to enter the CBA’s Inc (short for Incubator) Program. This innovative program provides the participants with office space, practice management tools and an onsite practice mentor. The program’s goal is to give the participants an opportunity to develop good management and law office skills as well a good start in building their practices. Although the program is just a few years old, we have seen graduates of the program successfully build their practices and practice law locally. This program is being replicated around the country by other bar associations, which is certainly a measure of the success of the CBA’s Inc Program.

I am continually asked by the lawyers I meet what they can do to be of assistance to the bar. I suggest that they attend the substantive law committees in their practice areas to meet and network with the lawyers who practice in the same areas of the law as they do. The CBA has about 25 substantive law committees that meet monthly at the CBA to provide educational and networking opportunities for those in attendance. Attending committee meetings is an opportune way to stay current with changes in the law. I also suggest they attend Continuing Legal Education courses offered by the CBA, as well as attend the many CBA activities such as Constitutional Conversations or Committees and Cocktails, which is a fantastic networking opportunity for our members. Committees and Cocktails have replaced individual committee happy hours and takes place every third Wednesday of the month. Constitutional Conversations are programs where lawyers and members of the public can come and discuss current events and controversies. Each activity provides different ways to learn something new and to connect with other lawyers or members of the local community. The only way to get the full value of membership in the CBA is to participate in CBA-sponsored activities. The CBA has something for everyone and everyone is welcome here. I invite you all to find out what is happening at the CBA and to join us.
Writing Better Beginnings:
Law & Literature Series, Part 2

BY MARK KITRICK AND MARK LEWIS

We see the cityscape as a window explodes atop one of the high-rise buildings. Inside the building, a clown bandit reloads his shotgun before firing the zip line through the shattered window to the adjacent roof. Cut to the city streets below, where an anonymous man slumps at the corner.

The camera zooms in on the mask dangling from his fingertips. Drawing closer to the mask, we see its hollow red-rimmed eyes and mottled nose above the painted blue scowl. Just then a car screeches to the corner as the man slips on the mask and slinks into the backseat. Tires squeal again as the car races toward the unsuspecting bank.

So starts the first scene of *The Dark Knight*, and we have just been hooked by its most unforgettable character – The Joker. The opening seconds reveal the antagonist in grave conflict with the world, as he takes actions that leave us eager to know what happens next.

You might think that this snippet of a movie scene has nothing to teach us about legal writing. But, in this installment to our Law & Literature series, we hope to show that those few seconds hold a crucial key to effective writing.

Like our last Law-Lit article in the Summer issue, we return to the three storytelling principles: character, conflict and arc. We now deploy those ingredients to help you draft the most important part of your next legal writing – the *beginning*.

At best, we have seconds to show our readers that they can both trust and follow us. This requires immediately demonstrating our credibility and intellectual honesty as writers while also engaging our reader’s intuitive grasp of storytelling principles. To do so, we must satisfy their desire for vivid characters, conflict between those characters and narrative cause-and-effect that leads to meaningful consequences.
Each of the three storytelling principles – character, conflict and arc – weave their way through the whole narrative. They form the woven strand along which the beads of storytelling are drawn.

Yet so much legal writing begins with dry chronological or procedural recitation that, at best, arouses our intellect but leaves our imagination cold. Consider, for example, this rote opening to a motion for summary judgment:

“This case arises from a vehicular accident that occurred on October 6, 2017 on W. Spring St. in Oxford, Ohio. Plaintiff filed his complaint on July 8, 2017, alleging Defendant recklessly operated a motor vehicle in such a manner as to cause a collision with Plaintiff. The complaint alleges Defendant was operating a police cruiser in the course and scope of his employment with Defendant Police Department at the time of the accident. This motion for summary judgment is directed to all claims set forth in Plaintiff’s complaint. Defendants are immune from liability in connection with Plaintiff’s claims. Consequently, there is no genuine issue of material fact and these moving Defendants are entitled to judgment in their favor on all claims as a matter of law.”

Now compare this rival introduction that maintains intellectual focus on the controlling issues without sacrificing storytelling:

“Defendant Sgt. Smith moves for summary judgment on immunity. He claims he was not reckless when he drove his police SUV into Johnny Jones, a Miami University student walking in a crosswalk on campus. At the time of the collision, Johnny carried a large pink umbrella as he and a fellow student huddled together through the rainy crosswalk. The students were more than eight feet into the roadway, nearly halfway across the street, when Sgt. Smith ran them down. Despite that he knew to expect students walking in the campus crosswalk on a Friday night, Sgt. Smith raced into the intersection at twice the posted speed limit without activating his police lights or siren, failing to warn the boys of his high-speed approach. Sgt. Smith admits he did not see the boys until the moment of impact, slamming into Johnny and throwing him more than 175 feet across the intersection.”

Like the opening scene of The Dark Knight, what separates these two legal writings is character, conflict and arc. Let’s briefly examine each in the legal examples above.
Those same conflicting goals track the narrative arc, our third ingredient of storytelling. Readers depend on cause-and-effect in storytelling to provide for satisfying, meaningful endings. Another E.M. Forster observation springs to mind: “The king died and then the queen died is a story. The king died, and then the queen died of grief is a plot.” This same principle applies to legal writing, where our readers demand that our factual accounts obey common sense and experience with human behavior. The character’s motivations help to explain their actions. Those actions, in turn, imply consequences. Adhering to this basic sense of plot in the beginning of our writing provides coherence and context. Again, comparing the two examples above, we see how the first gives no sense of cause-and-effect, let alone what happened in the story, while the second prompts the reader to ask, “What happens next?” or, better still, “Now I understand why it happened that way.”

Furthermore, their specific actions and goals drive the emerging conflict, which is the engine of all good narrative. Conflict is the factual and moral tension that motivates readers to identify with one character over another. It is the same tension that should also lead a character to change over the course of the story. It is, in a word, the story conflict. This is often different than the legal conflict. In our examples, there is an obvious legal outcome that each side desires, but their competing positions do not, in fact, drive the story conflict. Rather, their contrasting physical, emotional and value-laden goals define the story conflict. The first example fails even to hint at what those conflicting goals might be. The second example quickly conveys those opposing goals in concrete detail. We see innocent college students who expect to cross the street in safety set against the seemingly heedless police officer who silently races toward the same intersection as he responds to a possible crime elsewhere on campus. Those two aims directly conflict; one will destroy the other. Therein lies the moral or thematic fulcrum on which this particular story – and the reader’s identification with character – turns.

We encourage you to try your hand at such a sentence in your next legal writing, keeping your reader’s natural appetite for stories in mind. Let character, conflict and arc inspire your legal writing. Of course, keep candor and truth foremost in your mind. Our legal stories must always be truthful. You will find that stock-in-trade legal writing approaches often work well alongside storytelling techniques. You might also find your next legal writing project imbued with story and, yes, even fun, for both you and your readers.

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This article will highlight significant cases on lawyer discipline decided by the Ohio Supreme Court in recent months. Each of the cases noted below were presented to a panel of the Board of Professional Conduct and then reviewed by the Ohio Supreme Court.

I have focused on discipline cases that involve contested issues under the Rules of Professional Conduct and sanctions. I have not included cases that involve motions, default judgments, resignations or reinstatements after a suspension, since those cases typically do not involve contested issues under the Rules.


Kenneth Lewis of Cleveland was suspended in 2009 for one year for forging a judge’s signature on a previously time-stamped judgment entry. In 2017, he was charged with violating multiple professional conduct rules stemming from a car accident. On June 8, 2016, Lewis and another lawyer (Heather Wilsey) left a bar in Elyria about 1 a.m. Wilsey was driving when she lost control of the car and ended up on the other side of the road in the tree lawn. They left the scene, but a police officer saw them walking away and stopped them. Wilsey claimed that an unknown African-American was driving the car and fled after the accident. Lewis filed a witness statement the next day confirming the story that an unknown driver had caused the accident. However, the police had a video from the bar where Lewis had been before the accident. The video showed that Wilsey was driving when she and Lewis left the bar. Lewis was arrested for obstruction of justice, and Relator opened a disciplinary investigation. Several months later, Lewis and Wilsey were involved in another alcohol-related accident, and he was charged with operating a motor vehicle while intoxicated. Lewis did not contest the charges in Medina Municipal Court and he was found guilty. Lewis did not report the OMVI conviction to the Relator conducting the investigation of the first accident, but Relator found out about the conviction in Medina. Lewis pleaded no contest to the charges filed in Elyria Municipal Court on the first accident. He was found guilty, served a 10-day jail sentence, was placed on one-year probation and fined $750.

Lewis was charged with professional misconduct under Rule 8.4 (conduct adversely reflecting on a lawyer’s honesty and trustworthiness, conduct involving dishonesty, fraud, deceit or misrepresentations and conduct prejudicial to the administration of justice). The Court accepted the findings of the Board and reviewed aggravating and mitigating evidence. It then reviewed cases involving lawyers with prior disciplinary records for dishonest conduct. It held the appropriate sanction was a two-year suspension, with the final six months stayed, and that the suspension be subject to conditions; i.e., that Lewis continue his alcohol-related treatment
programs, complete his obligations under a contract with OLAP and refrain from further misconduct. Lewis was also required to submit to a two-year monitored probation period upon reinstatement to help ensure his continued abstinence from alcohol.


James Gay of Cleveland was suspended indefinitely from the practice of law in 1994, and was reinstated in 2002. In 2017, he was charged with four counts related to the mismanagement of funds in his IOLTA account. These included paying himself twice from IOLTA funds (causing the account to be overdrawn until he repaid the funds), failing to have clients sign disbursement sheets and closing statements, making a $300 loan to a client and paying the loan back from settlement proceeds in a case for the same client and withdrawing funds for fees and expenses before depositing settlement funds in trust. The Court found the misconduct was based on sloppy bookkeeping and mismanagement rather than any selfish or intentional motive. The Court accepted the recommendation of the Board that Gay be sanctioned with a fully-stayed one-year suspension. The Court also made the suspension conditioned on a monitored probation for two years, required Gay to take additional CLE in law office management and to avoid further misconduct.


The Cleveland Bar Association filed a complaint against Debbie Horton of Solon for various matters related to her handling of a personal injury claim and the distribution of settlement proceeds. Horton had previously been suspended for two years, with the second year stayed, for settling personal injury claims and endorsing settlement checks without client consent. She was also investigated in 2015 for overdraft violations in her trust account. The 2015 investigation did not result in a complaint. In this case, Horton was found to have failed to make required disclosures, failed to obtain her client’s consent to certain matters, failed to withdraw as counsel in a case after a disagreement with the client, failed to timely deliver settlement proceeds and failed to maintain records relating to her trust account. Relator and Horton agreed on a sanction of a one-year suspension, with the last six months stayed. After the hearing, the panel recommended a two-year suspension with the last year stayed, with reinstatement subject to additional conditions. The Board adopted the panel’s recommendation. The Court agreed with the Board, noting that Horton had failed to correct her trust account violations after the 2015 investigation. The Court imposed a two-year suspension from the practice with the last year stayed, additional CLE and a one-year monitored probation period after reinstatement.


Jon Tucker of Tallmadge was charged with misusing his client trust account. The parties stipulated to the facts and jointly recommended a sanction of a six-month fully-stayed suspension. In 2015, the Relator did an investigation of Tucker based on a client grievance. The grievance was dismissed, but Relator learned that Tucker had used his trust account to pay his malpractice insurance premium. Relator reopened its investigation and found numerous transactions in which Tucker used his trust account to pay personal and law firm expenses. However, the investigation also found that no clients were harmed because Tucker had failed to transfer funds from his trust account to his operating account as fees were earned. For example, the investigation showed that at the end of 2013 he had almost $20,000 in trust, but had only $2,000 in client funds, and at the end of 2014 he had over $26,000 in trust, but had only $14,500 in client funds. The Supreme Court accepted the parties’ recommended sanction, finding that Tucker lacked a selfish or dishonest motive, cooperated in the investigation and no clients were harmed. It ordered a six-month stayed suspension and additional CLE in law office management.
Each of the cases noted below were presented to a panel of the Board of Professional Conduct and then reviewed by the Ohio Supreme Court.


Charles Mickens of Youngstown was reprimanded in 2016 for neglecting an estate, failing to communicate with a fiduciary for the estate and failing to disclose that he did not carry malpractice insurance. In 2017, Relator filed a formal complaint relating to Mickens’ representation of a single client. That client had retained Mickens in 2003 to help him with a claim against an insurance company for fire damage to a structure. Mickens accepted an $800 retainer and received the paper work on the claim, but failed to pursue it. The client did not retain new counsel, but he saw Mickens at a courthouse in 2016 and asked about the claim. Mickens said he would look into it, but never contacted the client after that. The parties stipulated to violations by Mickens, including failure to act with reasonable diligence, failure to inform a client about the status of the matter and failure to disclose that he did not carry malpractice insurance. The parties stipulated to a recommended sanction of a six-month suspension, all stayed with certain conditions. The Court adopted the recommendation of the parties and set conditions that included no further misconduct, client restitution of the $800 retainer, CLE in law office management and one year of monitored probation.


Guy Rutherford of Cleveland had a history of disciplinary cases from 1998 to 2009, including a six-month suspension for neglecting client matters in 2006. In 2016, Disciplinary Counsel filed two separate complaints seeking Rutherford’s interim suspension based on neglect of client matters. He was suspended on an interim basis for the first complaint. Disciplinary Counsel then moved to have the cases remanded to the Board of Professional Conduct to seek Rutherford’s permanent disbarment. The cases were remanded and Rutherford failed to respond to the complaints. The matter was referred to a Special Master who opened an investigation. He recommended permanent disbarment based on Rutherford’s neglect of client matters, failure to refund unearned fees and failure to cooperate in the disciplinary investigation. The Board accepted the report of the Special Master and recommended that Rutherford be disbarred. The Supreme Court found that Rutherford collected retainers but failed to complete the work, failed to return clients’ unearned fees, lied to clients about the status of a client’s case, prejudiced the administration of justice and failed to cooperate in the disciplinary investigation. Rutherford was permanently disbarred by the Court.


Clinton Wilcoxson of Vandalia was charged with multiple ethical violations based on his conduct in one client matter. The parties reached a consent-to-discipline agreement that recommended a six-month suspension, fully stayed on the condition that Wilcoxson not engage in any further violations. The Court found that Wilcoxson agreed to file a federal employment discrimination claim for a client, but the client failed to deposit the full amount of the retainer and expenses required under the engagement agreement with Wilcoxson. Nevertheless, Wilcoxson filed the case, although it was late, and the defendant employer moved to dismiss. The case was dismissed as time-barred. The client then hired new counsel to pursue an action in state court. Wilcoxson failed to turn over the client’s files promptly to new counsel and then failed to cooperate in the investigation of a grievance filed by the client. Wilcoxson later cooperated with Relator and refunded a portion of the retainer to the client. The Court found an additional aggravating factor based on Wilcoxson’s failure to disclose to the client that he did not carry malpractice insurance. The Court adopted the parties’ agreement on discipline as consistent with sanctions imposed in other cases and suspended Wilcoxson for six months, all stayed on the condition that he not engage in further misconduct.
Brian Benbow of Zanesville was charged with ethical violations relating to sexual activity with a client in a courthouse conference room and lying about his conduct during an investigation of the incident. The parties stipulated to most of the facts and violations, and agreed on a recommended sanction of a two-year suspension, with the second year stayed. Benbow represented a client in a child visitation dispute pending in Coshocton County. After a magistrate's decision was issued, the husband of Benbow’s client filed objections to the decision. During the time these objections were pending, Benbow and the client developed a personal relationship. They appeared in Court for a hearing and were waiting for the magistrate to complete an order. While waiting in a conference room equipped with a camera that was monitored by Sheriff's deputies, Benbow and the client engaged in touching and fondling. Their activity was reported to the Sheriff, who started an investigation. The investigation was cut short by the client’s refusal to answer questions. About a month later, Benbow wrote a letter to the Columbus Bar Association in which he purported to self-report the allegations against him, but misrepresented the facts about his relationship with the client and denied that he committed any acts of misconduct. The matter went to hearing before a panel of the Board where Benbow continued to deny any misconduct. The panel found that Benbow’s testimony was evasive and argumentative, and that he committed misconduct through a sexual relationship with a client, non-cooperation in the discipline investigation, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct that adversely reflects on the lawyer’s fitness to practice. The Court reviewed aggravating factors such as Benbow's dishonest and selfish motives, lack of cooperation in the investigative process and harm to a vulnerable client who was engaged in a contentious family dispute. It also reviewed mitigating factors, including some 40 letters of good character testimony, but it rejected Benbow’s claim that he was getting treatment under an OLAP agreement, since that agreement did not begin until after the complaint against him was filed. The Court agreed with the recommended sanction by the parties and issued a two-year suspension, with the second year fully stayed.

Andrew Engel of Centerville was disciplined in 2001 and 2004 for neglecting client matters. In 2016, he was charged with neglecting a single client matter relating to a consumer debt dispute. Engel was retained by the debtor and wrote two letters to counsel for the creditor. But, he did not return calls from his client, and the client filed a grievance with the Relator. Engel then promised to contact his client and resume representation, but he failed to do so timely. By the time he contacted the client, she had already settled the dispute with the creditor. Engel then procrastinated on refunding the balance of the client's retainer, although he ultimately did make the promised refund. The parties stipulated to the facts and violations, and the case focused on the appropriate sanction for Engel's misconduct. The normal sanction for neglecting client matters, with a past disciplinary history and failure to cooperate in the discipline investigation, is indefinite suspension. The parties agreed on a two-year suspension, but differed on how much of the suspension should be stayed. The Board adopted Relator's recommendation that 18 months of the suspension be stayed. Engel wanted the entire suspension stayed. The Court reviewed the aggravating and mitigating factors, including Engel's claim that he suffered from mental health problems. It reviewed previous cases involving neglect, history of discipline and failure to cooperate, and it found no precedent for a fully-stayed suspension. The Court suspended Engel for two years, with 18 months stayed. As a further condition of reinstatement, Engel will be required to provide evidence from a qualified healthcare professional that he is capable of returning to the practice of law. In addition, Engel will also serve a two-year monitored probationary period after reinstatement.

Howard Skolnick of Cleveland was charged with one count of conduct that adversely reflects on a lawyer’s fitness to practice law. The facts were stipulated by the parties. The Board found that Skolnick had verbally harassed and abused his paralegal with perverse and demeaning language over a two-and-a-half-year period of time. It recommended that Skolnick be suspended for six months, with the entire suspension stayed. Skolnick did not object to the recommended sanction. The Court
reviewed the record of aggravating and mitigating evidence. It found that Skolnick’s conduct was obnoxious and harmful to a vulnerable employee. It also found that Skolnick was remorseful when confronted with the evidence, cooperated in the investigation and took steps to correct his behavior in the office. But, the Court did not find evidence of a personality disorder as relevant. It held that a sanction greater than a fully-stayed six-month suspension was necessary “not only to protect the public and the dignity of the legal system, but also to deter future misconduct of this nature by Skolnick and other attorneys licensed to practice law in this state.” The Court suspended Skolnick for one year, with six months of the suspension stayed.

11. **Disciplinary Counsel v. Mancino, Case No. 2018-Ohio-3017, Decided August 2, 2018.**

Paul Mancino Jr. of Cleveland was charged with eight counts of violating professional conduct rules related to an appeal he filed on behalf of a prisoner, Raymond Miller. After a hearing, a panel of the Board unanimously dismissed five of the counts based on insufficient evidence, but found that Mancino violated the remaining three counts. The panel recommended that Mancino be sanctioned for failing to consult with a client on the client’s objectives, failing to inform a client on matters that require a client’s informed consent and accepting payment from a person other than the client without the client’s consent. The Board adopted the panel’s recommendation of a public reprimand. However, the Court dismissed the case. It found that because Mancino had never met Raymond Miller before he filed the appeal, there was no attorney-client relationship, and therefore no basis for imposing sanctions on him.

The evidence showed that Mancino was contacted by the father of an inmate that Mancino had represented. The father told Mancino that Raymond Miller, another inmate, wanted to appeal his criminal conviction, and the father paid Mancino a flat fee of $1,000 for the work. Mancino filed a notice of appeal, a brief on appeal and argued the case in the Court of Appeals, all without writing to or meeting with Miller. After the Court affirmed the conviction, Mancino sent a copy of the decision to Miller. Miller testified at the panel hearing that he had not asked Mancino to appeal his conviction, and he did not know about the appeal until he received the Court’s decision from Mancino. He also testified that he was not harmed by the appeal filed by Mancino. The Court sustained Mancino’s objections and rejected the findings of the Board that Mancino had committed ethical violations based on the fact that Mancino did not have an attorney-client relationship with Miller. The Court said it did not condone Mancino’s actions of handling an appeal without establishing a relationship with a client. The Court also suggested that it was not happy with its inability to review the other charges originally filed against Mancino because they had been unanimously dismissed by the panel. However, the sanction recommended by the Board was rejected by the Court, and the case was dismissed because there was no attorney-client relationship.
The question, “What can one do with a law degree?” came to mind when starting to review “Hitler in Los Angeles: How Jews Foiled Nazi Plots Against Hollywood and America” by Steven J. Ross and “4L: What They Don’t Teach You about Law in Law School” by Brett Renzenbrink.

This question pops up frequently; more so these days with the tight legal market and the large debt many people have run up to get that credential. Weighed down by debts, too many new lawyers feel as if they have chains on them, preventing them from doing much of anything, because the debt has burdened them and limited their choices for careers within the legal profession, or even outside of it.

But, as all of us who have been through the process of becoming an attorney know, law school, at a minimum, builds an analytical mind able to tackle a variety of issues and creates the possibility of opening many different doors, both in the legal field and outside of it.

Brett Renzenbrink took the traditional approach of becoming an attorney/litigator/legal adviser. But, aware of the tight market and the limited opportunities for lawyers in law firms, he developed a strategy to pull himself out of the crowd. You can’t wait for help to achieve your goals, he writes. Like a good baseball player knows to hustle around the bases to get the run and eventually win the game, Renzenbrink suggests an attorney in 2018 must do the same to succeed.

Renzenbrink suggests that every attorney should be using a combination of marketing, strategic, intuitive and personal skills to become a successful lawyer with a booming legal business, something that will be an asset for a larger firm. Given the way the market works now, he sees a far smaller chance of a successful career for an attorney dependent upon the whims of others, work on cases and, of course, salary.

Weighed down by debts, too many new lawyers feel as if they have chains on them, preventing them from doing much of anything, because the debt has burdened them and limited their choices for careers within the legal profession, or even outside of it.
Getting your own clients and keeping the clients by nurturing them as one would a spouse in a good marriage… these are key aspects of success. His book assumes you know the legal field well and encourages that you avoid getting into things you cannot handle, instead urging that your time be spent cultivating a strong client base: the real key to professional success.

In contrast, Leon Lewis, the hero of Steven Ross’ nonfiction history of a time period in which Nazis and other fascist groups were gaining strength, used legal skills gleaned from his time at the University of Chicago Law School to run a spy ring and successfully derail murder and sabotage plots. Lewis, born in 1888 in Wisconsin, became a lawyer in 1913. Propelled into the social justice world and into the leadership of the Anti-Defamation League, formed in Chicago after the mistrial and lynching of Leo Frank, Lewis led an organization designed to fight discrimination and stereotypes. World War I interrupted his career, but gave him other skills that he used throughout his life. He resumed and expanded his leadership role in the ADL, helping it grow into an international organization, but left it in 1925 when the organization moved its headquarters to Cincinnati.

Lewis went into private practice and then moved his family to Los Angeles, where opportunities were large, the climate was better and the city was growing rapidly. Lewis continued to monitor international issues as he tried to grow his private practice. Hitler’s rise concerned him greatly, as he feared that the thuggish behavior Hitler displayed when gathering power would result in the elimination of all his opponents if he ever obtained it.

But, in the 1930s, the rise of anti-immigrant, anti-Jewish sentiment, along with the growing support of the eugenics movement that he had fought as the ADL’s executive national and then international secretary, was continuing in Los Angeles.

Steven Ross’ book reminds us of a time when our democratic system’s existence was threatened by supporters of extreme nationalism and even of the cult of Hitler. Fear of “communism” combined with support for anything and anyone who would disrupt or destroy any of the “socialist” programs that President Franklin D. Roosevelt had initiated to stem the Depression led toward a blindness to the evil emanating from the Nazis and their supporters during the 1930’s and even on the cusp of World War II.

Added to this was the concern about the stratified society that had collapsed in the Depression, the economic uncertainty, the too-widespread eugenics philosophy making some “races” superior to others and the encouragement of sterilization of those “inferiors” to keep them from producing others of “low mentality.” This bastardization of the Darwinian theory of evolution ranked people according to their head size and “race”, with a belief that no educational system, governmental program or other means could alter the mentality of people or propel the ones at the bottom of the pile upward.

Communism (the philosophy of which as opposed to the reality...
of its practice in the USSR and elsewhere) broadened the concept of “all men are created equal” to “all people are created equal, thereby deserving of a decent life, a living wage for a job well done, reasonable work hours, safe working conditions and, above all, an educational system that would give them and their children the possibility of becoming something different, of expanding skills to the fullest extent possible.”

Liberal programs designed to stem the possibility of revolution or just create humane working conditions threatened the conservative order. FDR appropriated the idea of these programs for people, becoming, as some said, a “traitor” to his class by so doing. Because so much of the Jewish religion encourages care for others, the sick, the poor or the downtrodden, many Jews were drawn to support the more liberal policies, politicians and groups.

In reality, conservative groups were not at all welcoming of Jews, immigrants or African-Americans at that time. Additionally, society changed as people migrated from one part of the world to the U.S. and as populations shifted from the south to the more abundant opportunities in the north; this caused a growth in conservatism and perhaps even a strengthening of the eugenics idea.

Lewis became concerned not only about the rise of fascism and nationalism, but also by the police, FBI and general governmental support for this philosophy of society as well as the strong anti-Jewish, anti-immigrant and anti-black sentiment that blinded many law enforcement officials to the potential harm such a philosophy posed to a democratic country. The fact that some of these people were plotting to overthrow the U.S. government and replace it with something similar to what was forming in Germany under the Hitler cult was obscured by the hatred of the other, especially the Jew.

So, Lewis put together a network of “spies” – individuals who felt that what Nazis were doing was wrong. These included non-Jews with German immigrant backgrounds, a Ku Klux Klan member who had been secretly working against the Klan for years and a few Jews with German language skills willing to put themselves in danger. Lewis’ work showed another way to use a law degree and put into practice
Ross describes how these individuals undercut the Los Angeles Nazi movement’s power by sowing discord among their ranks and by foiling some of their plots to destroy military installations and, of course, murder prominent Jews. Lewis’ team also gathered evidence against the group that held up in a court of law.

One interesting fact Ross brought out in his book was that George Gyssling, German Counsel to Los Angeles who forced movie studios to avoid anything unpleasant about Nazis in their movies and was generally seen as a strong supporter of Hitler, was really spying for the U.S. He hated Nazis and wanted Germany to return to a more democratic society.

Both books are well-written, with Ross’ history reading more like a novel than a factually accurate account of a practically unknown hero, Leon Lewis, and with Renzenbrink giving interesting tidbits on how to best thrive in today’s legal climate.

But, for purposes of truth in reviewing, I must confess that I have a personal connection to both books.

Sue Painter, the executive editor of Cincinnati Book Publishing (which published Renzenbrink’s book), and I became friends when we both were studying for our history doctorate. I knew her husband, Judge Mark Painter, before they married, and I even attended their wedding.

Then, after taking and passing the Ph.D. exam and finding myself working for WGUC Radio, I asked the friend who had leased me his apartment if I could stay a bit longer, given the new circumstances. He said “yes”, but only if I accepted a post-graduate student as a roommate in the other bedroom. The roommate was Steven, and he was to arrive about a week after I had originally been scheduled to leave. So, that’s how I met and became friends with Steven Ross.

Personal relations aside, I found both books worth reading as well as helping to answer the question “what can one do with a law degree.”

A delicious alternative career is also available to attorneys - figure out how to head an ice cream producing company. This is the role my law school classmate, Richard Graeter, plays currently at Graeter’s Ice Cream, a Cincinnati-based (now nationally sold) producer of that cool, creamy delicacy, some of which comes with huge chocolate chips. As noted in the book of the same name by Robin Davis Heigel, with a foreword by Richard Graeter, this business has been in the Graeter family for several generations. While the profession could be dangerous for someone like me who loves the product and might feel compelled to constantly eat samples to test its quality until I ballooned out of all my clothing, it also could be an interesting way to combine business skills with the analytical thinking we learn (or are supposed to learn) in law school.

As for me, the biblical command “justice, justice shall you pursue” has always influenced my legal career as well as the careers of many others who chose public sector work (attorney general, public defender, etc.) as their primary career. While this road may not lead to riches (or it may, who knows), it does provide personal satisfaction. And, although the job usually would not provide the on-edge fright/thrill of hosting a spy ring to try to save the world from an evil force, there are plenty of world-or life-improving cases to be fought and won as a public attorney. Plus, the ability to go buy delicious ice cream is always available to public as well as private sector attorneys.

In conclusion, I lift a glass of wine in honor of all who have chosen the legal profession, with its broad, varied and interesting career opportunities.
Spending a week helping women and children navigate the asylum process reminded me why I became an attorney: to help those in need with complex legal issues. Representing clients in a detention facility allowed me to take my compassion and expertise to them. They certainly had the need, and their legal issues were more than complex. I cannot imagine trying to navigate the legal system of a country where I neither spoke the language nor knew the laws. Thank goodness there are teams of lawyers, legal assistants and interpreters who take time away from their practices to help these clients.

In July, I volunteered for the second time with an immigrants’ rights organization at the euphemistically named South Texas Family Residential Center in Dilley, Texas, to help women and children with their harrowing journeys fleeing persecution and violence to seek asylum in the United States. During my week, there were approximately 1,500 women and children at various preliminary stages of the asylum process. (There also were about 1,500 when I was there in 2016.) Most of the clients were from El Salvador, Guatemala and Honduras, where transnational gangs operate with impunity to extort and murder the most vulnerable individuals. In addition to gang violence, the atrocious women-as-property mentality that some men in those countries have results in women suffering from domestic violence.

Meeting with clients and exploring their troubled present and past in excruciating detail often involved a delicate balancing act. On the one hand, there was the concern of re-traumatizing the client by digging into painful histories. On the other hand, I had to remind myself to not get so emotionally involved that I could not be an objective, effective counselor. The harsh realities of these women pushed me to the limit. One woman’s husband did not allow her to leave their home and hit her when he arrived with his drunk buddies, demanding that she cook for them rather than take the children to the village festival. One teenage boy became despondent, and his mother had

“We indeed are a nation of immigrants. We need to remember this and value the contributions of everyone coming to our shores.”
to make the difficult decision not to enroll him in school, because the route he walked to school became overrun with delinquent youth gang members who threatened to kill him and his mother if he did not use drugs and join their gang. Several gang members beat up an indigenous woman because of her “dark skin” and told her to go away. After refusing two gang members’ offer to join them, one young boy found himself surrounded by four gang members at a local soccer match. They forced him into a car, drove out of town, shot him and left him for dead.

Overlaying these horrible stories — and an entirely new vocabulary I never learned studying Spanish language and literature — is the complicity of each country’s government in the gangs’ criminal empire. Reporting an attack or threat to the police results in nothing at best and the police informing the gang at worst. The police told one woman she’d better stay out of trouble and not report any problems with the gang. The next day, the police drove by her house with the gang member who had assaulted her waving a gun at her. In one small town, gang members raped a 70-year-old woman. When the community reported the crime to the police and asked for protection for the elderly woman, the gang returned to repeat the crime two more times. There simply is no safe path forward for these women in their countries. The only life-saving choice is to leave and seek asylum elsewhere.

For background, a very short summary of the asylum process is helpful to provide context. When a foreign national arrives in the United States, if there is no other basis to allow the person to enter the country, an immigration officer asks whether she is afraid to return to her home country and therefore would like to seek asylum here. If an Asylum Officer believes she fears for her safety if required to return to her country, she will be released, so that she then may present her formal application for asylum to an immigration judge. It could be years before she finally gets to the judge, who will decide whether she can stay or must return to her home country.
By the time the women and children arrived at the Dilley facility, most of them had spent between a day and a week or longer in one of two types of holding facilities, which typically and appropriately are called “freezers” and “dog kennels.” The freezers are concrete block enclosures with no furniture, only rudimentary plumbing and no heat. The dog kennels are slabs of concrete with three walls and a chain-link fence exposed to the elements for the fourth wall. Each person gets a Mylar blanket. For anyone who has run a marathon, the flimsy piece of plastic-foil they give you at the finish line is a Mylar blanket—enough to stave off the wind for a few minutes but certainly not enough to keep you warm overnight.

Beside what I already knew would be a challenging experience was the prior week’s guidance from U.S. Citizenship and Immigration Services that severely restricts relying on gang violence or domestic violence when seeking asylum. The guidance implemented the Attorney General’s decision, Matter of A-B-, also from July 2018. The gist of the guidance is to generalize domestic violence and gang violence and put a much higher burden on the asylum applicant to show specific persecution against her and either the government’s direction of the persecution or failure to protect her. If the guidance were not insulting enough, it further suggests that many asylum applicants game the system by getting past the first hurdle in the process only to disappear while awaiting a years-long backlog in the immigration courts.

While all things immigration have been mostly bad news under the current administration, the good news is that attorneys with or without immigration experience are showing up in droves at every type of event imaginable to help vulnerable populations. With each new restriction, we circle the wagons, brainstorm and find solutions for our clients.

When I was in Dilley in 2016, we had a group of about 15 lawyers and legal assistants. My typical day involved introducing the asylum process to a group of 10-15 women and children and then providing
individual consultations to help them prepare for their asylum interviews. The asylum landscape was much broader then. It allowed me to meet with 10-15 clients per day and quickly get to the key facts supporting their asylum claims.

This year, with the government’s more restrictive view of what qualifies for asylum, I had time for only three to four clients per day. Thanks to the on-site staff, we received helpful briefings on new case strategies and attorney-to-attorney brainstorming sessions to fit our clients’ desperate situations within the changing contours of qualifying asylum grounds. The previous 30-minute consultation no longer sufficed. It now demanded at least 45 minutes, and sometimes hours, with often painful probing into troubled pasts and violent episodes, to determine the qualifying grounds for asylum.

The increased number of volunteers this year (more than 30) allowed many of us to accompany clients to their credible/reasonable fear interviews before an asylum officer. For the few interviews I attended, I was impressed with the compassion and attentive listening of the officers in seeking to make sure they understood and had the key details concerning the client’s case.

Where do we go from here? We attorneys must keep up our commitment to pro bono service. We also need to share our concerns with our elected officials to encourage them to stand up against the administration to protect the most vulnerable. The administration must end family detention, and, rather than fill the coffers of a contract corrections company, hire more immigration judges and implement other measures to eliminate the backlog of asylum applications. We indeed are a nation of immigrants. We need to remember this and value the contributions of everyone coming to our shores. And we especially need to provide safe passage and protection to those who come seeking our help.

For full version, see my blog at www.knapplawco.com.

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In 2010, dozens of CEOs and Executive Directors of area nonprofit organizations came together and launched a unique and noble alliance—the Human Service Chamber of Franklin County—to represent one voice on behalf of the direct service agencies in our community.

This effort to create a nonprofit chamber of commerce specific to local organizations serving vulnerable populations is one that I proudly joined in April 2017 as its Executive Director, and I am delighted to share our work and our mission with others.

Our work and our mission is straightforward: to serve as a single voice on behalf of, and for the betterment of, our 60-plus member agencies, and to support their work in bettering our community. Our agencies are as diverse in size as they are in scope, working in housing and homelessness, education and child care, healthcare and behavioral health, food and nutrition, reentry services, workforce development, mentorship, refugee and immigration services and much more.

We are governed by a Board of Directors comprised of a dozen of our members’ leaders—led by our esteemed Board Chair, King Stumpp, CEO of Netcare Access—and work closely with our Board and each of our members to provide quantifiable value in everything we do.

There are five primary ways in which we serve our member agencies:

1. Establishing and maintaining government relations at the local, state and federal levels;
2. Identifying and cultivating funding opportunities;
3. Convening and collaborating within our membership and with the community alike;
4. Providing trainings, offerings and programming; and
5. Communicating to and educating our membership.

These are the pillars upon which we try to build each day. But just as in my days of private practice at Bricker & Eckler, our job is to be responsive to our members’ needs. When an agency needs to tell a success story, we can help connect them to members of the media; when an agency is in search of real estate, we help them track it down; and when an agency wants to advocate for or against a public policy, we are eager to help lead the charge.

Columbus is a community with people eager to drive good change, who are willing to concede that as far as our city has come, it still has far to go.
For example, when the federal government’s nascent policy of separating children from their families became widely known earlier this summer, we worked to bring our community together by preparing a statement condemning the practice and supporting our community’s bipartisan Congressional delegation to reunite the families. This letter, co-signed by The Columbus Foundation, the United Way of Central Ohio and nearly two dozen of our member agencies, is representative of the collaborative spirit with which we are eager to fight for each resident of our community and do all we can to support our member agencies, helping our most vulnerable friends and neighbors get back on their feet.

Columbus is a community with people eager to drive good change, who are willing to concede that as far as our city has come, it still has far to go. And we aim to do this with our partners. From our friends in city, county, state and federal government, to our friends across the corporate and legal communities, to our friends in philanthropy, higher education and secondary education—we are aligning ourselves with a broad coalition which understands that we must do more than move the needle; we must move mountains, even if we must do so one pebble at a time.

The human and social service agencies that have long strived to make our great community greater serve hundreds of thousands, employ dozens of thousands and generate significant revenue in Franklin County. But the impact on the individuals and families our agencies serve—from people experiencing homelessness, to people overcoming generational poverty, to people new to our shores—is immeasurable. And it is our duty and joy to uplift their work, to bring them together through collaboration and commitment to move this city forward in ways no other city has moved before.

Please follow us on Twitter (@OneVoiceHSC) and via our weekly e-newsletter, Chamber Chatter, by emailing mcorey@humanservicechamber.org.
When I was a child, my parents emphasized the importance of community service. We took time as a family to serve those around us. It turned out that community service looked great on college applications and that in college most of the groups I was involved in were required to also complete community service regularly. The encouragement to give back did not stop when I enrolled in law school either.

But now, as a young lawyer who is new to the community and the profession, I regularly struggle with balancing work and life responsibilities. Needless to say, I have realized that when given the choice between staying late at work, going out with friends, hitting the gym, maintaining my relationship or giving back to the community, I regularly forget the philanthropy that my childhood self had enjoyed.

After practicing for about a year, I wondered if I was the only young lawyer who faced this struggle. I asked friends and colleagues, and I soon realized that I was not the only young lawyer who wished she was able to participate more. There was my friend Sam*, who worked in private practice and was recently engaged. She was worried that between billable hours and wedding planning she did not have any time to get involved. Then my friend Eric, an attorney in the public sector with a newborn baby, was so overwhelmed with the struggles that come with fatherhood he did not think volunteering was an option for him. Finally, my colleague Jessica was adjusting to Columbus and her new job. With her busy schedule of going on dates, staying fit and impressing her boss at work, she blatantly claimed, “I can’t better someone else’s life if I don’t have a life myself.”

I understood all of this. It made perfect sense, even though I was spending my free time binge-watching television and playing with my dog. As a millennial, I craved work-life balance, but I had not considered the amount of fulfillment I would receive by making time to give back to others. I also understood the feeling of being so consumed by student loan debt and other financial commitments that I could not afford to donate money to any important causes. So, I made a plan. I researched and found different ways to give back. The good news is, if you’re a young lawyer looking for ways to contribute time, I have already done the hard work and found some options for you. The great news is that many of these options only mean cutting a couple hours of binge-watching out of your schedule. The bad news is... who am I kidding? There is no bad news!

After talking to many young lawyers, participating in many programs personally and conducting research, I’ve found four great causes for young lawyers to explore:
Giving Back without Giving Up:

1. Mid-Ohio Foodbank

The Mid-Ohio Foodbank's mission is “to end hunger one nourishing meal at a time while co-creating communities where everyone thrives.” It services 20 counties in Ohio. Last year, it distributed about 70 million pounds of food; and yet, there is still a large meal gap in Franklin County. Each year, people in Franklin County alone miss about 70 million meals.

Rebecca Peacock-Creagh, manager of the Kroger Pantry at the foodbank, states that:

“On an average day we now serve 250+ families... Without dependable dedicated volunteers we have to turn hungry families away. I would hope that [young lawyers] also become advocates for the work that they do while they are here by creating awareness of the great need wherever and whenever they have the chance. [Volunteers can be] the voice of the hungry families that need food to get from one pay check to the next, or the senior citizens and veterans who have worked all of their lives and need food so they can put the money they have toward much needed medications and paying their bills.”

Volunteering at the Mid-Ohio Foodbank is the perfect volunteer opportunity for young lawyers who want to take a break from the stresses of the legal profession. Volunteering at the foodbank is simple. You can log in online and set up a profile. After doing so, you’ll see available shifts during the week or the weekend. Volunteer tasks range from loading and unloading products, assisting consumers during their visit to the foodbank or organizing the foodbank’s inventory. Shifts are as short as three hours, and you don’t need to call ahead to work. You just sign up using the online portal and show up before your shift is scheduled to start. If you need to cancel your shift, you can do that online as well. You won’t have to call in or worry about the stress of needing to change your schedule.

The foodbank also allows you to contribute in ways that don’t require large monetary donations. If you’re like me and store plastic grocery bags at home, the foodbank is always accepting donations of shopping bags. They are also often in need of women’s sanitary products, toiletries and dog and cat food. So, if you are ever at the store and can afford to buy even one extra item, the foodbank will accept your donation.

For information on the Mid-Ohio Foodbank and to volunteer, visit its website at www.midohiofoodbank.org.
2. Barrister Leadership Program

The Barrister Leadership Program is open to attorneys with five or fewer years of practice. The program develops leadership skills, provides networking opportunities with leaders in the central Ohio legal community and gives tips on how you can build a successful law practice and career. The program, which runs from January through August each year, consists of classroom sessions, interactive exercises, small group projects, community service and networking/social events.

BLP was ideal for my colleague Jessica. Since she was new to Columbus, she wasn’t excited about the stress of meeting new people, working to balance her busy life and trying to find time to volunteer. But, when Jessica joined BLP, she got to do all three! She explains:

“The Barrister Leadership Program was great for me because I met about 20 other lawyers my age, went to happy hours and events with them and even participated in community service projects. CBA organized all of these activities so I didn’t have the burden of looking for these opportunities, which would have been difficult since I am not from Columbus.”

To join the program, young lawyers must apply through the CBA. Applications are available in late August and are typically due back to the selection committee in mid-October. There is a small membership fee once you are accepted to the program, but if you are witty, you may be able to get your office to cover the cost.

3. LASC Seniors Referral Project

The Legal Aid Society of Columbus and Southeastern Ohio Legal Services is a nonprofit law firm that provides civil legal assistance for low-income individuals and seniors in Franklin, Madison, Morrow, Union, Delaware and Marion counties. Through LASC's Seniors Referral Project, low-income seniors seeking wills, powers of attorney and advanced directives are referred to private attorneys and Assistant Attorneys General for pro bono document drafting and execution.

The benefits of this program are immense for young lawyers. First, for anyone who currently isn’t involved in an estate planning practice, you get trained on how to complete complex estate plans. LASC provides free training and template forms for volunteers. Second, your LASC pro bono work qualifies you for up to six hours of CLE credit. Third, this is a volunteer activity that won’t require you to stop your busy schedule. While many clients served through this project request a home visit, attorneys can limit representation based on client location and LASC can also pair you with clients who are available to meet you at your office.

My friend Eric LOVES this program. He says that since he often has to stay home with his wife and newborn, he can at least draft his clients' documents from the comfort of his couch. He enjoys meeting the clients, taking his own cases and feeling like he is contributing even though he has a huge load of responsibility at home.

Dianna Parker Howie, Pro Bono Team Managing Attorney for the Legal Aid Society of Columbus and Southeastern Ohio Legal Services, agrees with Eric. She says that:
“[P]ro bono participation in the Seniors Referral Project helps new lawyers enhance their client interviewing and counseling skills. Many of us leave law school without much experience working directly with clients, and this project allows attorneys to hone skills and help real people in a safe environment, with comprehensive training, mentors, malpractice coverage and ongoing support room LASC.”

For new lawyers who are afraid of taking on this program Ms. Howie adds, “You’re not alone. Not only are there many other new lawyers participating, there are so many mentor lawyers—both pro bono and staff attorneys from LASC—who are there to ensure that you have the tools to provide competent and effective assistance to your pro bono client. It’s extremely gratifying to help someone at their time of need. You will enjoy it!”

Volunteering through LASC is simple. You must fill out a form that is available online and the LASC staff will periodically reach out to you with a list of clients who need representation. Find out more information by visiting their website at www.columbuslegalaid.org.

4. Meals-on-Wheels

LifeCare Alliance, which oversees Columbus’ Meals-on-Wheels program, has a simple goal: “[k]eeping people safe, independent, and living in their own homes – where they want to be!”

Meals-on-Wheels provides nourishing food and a daily visit to consumers year-round. The program serves homebound older adults and individuals living with a medical challenge or disability. Home-delivered meals from LifeCare Alliance are nutritionally balanced and provide a variety of menu types. Meal options include hot, cold, frozen, kosher, vegetarian, pureed and mechanical soft. LifeCare Alliance’s Meals-on-Wheels program delivers approximately 5,000 meals a day in Franklin, Madison, Marion, Champaign and Logan counties.

My friend Sam and her fiancé particularly enjoy volunteering for Meals-on-Wheels. They told me that they spend their free weekends volunteering there because they can plan their wedding while they deliver meals! I’m not entirely sure if it’s ideal to plan a wedding while driving around the city delivering food to families, but I think Sam caught on to something most young lawyers wish they could do—have fun with their friends while giving back.

As a volunteer for Meals-on-Wheels you will receive a route, a list of homes to visit and a few boxes of food. You’ll be trained before taking your personal vehicle on the route (don’t worry, the miles are tax deductible!). In an ideal world, you and your best friends can ride around Columbus, catch up on your weekly gossip, listen to great tunes on the radio and still give back to those in need.

Volunteering for Meals-on-Wheels is very simple. Fill out their online volunteer form and you will be contacted by phone or email by the staff at LifeCare Alliance. On your application, you’ll indicate which days you’re available, so they will only contact you to volunteer on one of your available days. This includes holidays! So, if you’re a young lawyer who doesn’t work on Labor Day, you can spend a couple of hours on your day off volunteering; then, you won’t have to worry about your conflicting work schedule. The link to volunteer for this program is: www.lifecarealliance.org/volunteer/apply.

These four opportunities are just a short list of options for young lawyers who are looking to get involved in Columbus. I hope my experience participating in each program and the feedback I have received from my friends will serve as helpful guidelines for those who are looking for ways to give back to the community.

*Names have been changed.

Shalyn C. Smith, Esq.
Counsel and client in the personal injury and probate/estate areas can benefit from an understanding regarding annuities, indexes and various benefits contained in these contracts.

This knowledge can enhance the ability of counsel to interact with qualified advisors and representatives. For example, referring a client to proper resources is critical when a client is considering selling or transferring a structured settlement annuity to companies that purchase annuities.

The attorney should be aware that depending on the age of issue and date of issue, an annuity transfer may involve charges and deductions. Further, depending upon the contract, some annuities can be used without penalty to ‘roll over’ or fund a new annuity with better terms and conditions. With the potential growth of indexes and the history of the last 20 years of index performances, counsel should be wary of clients prematurely transferring structured settlement rights without an independent examination by a qualified licensed individual who can assist to quantify potential losses. Ohio Revised Code §2323.58, et seq., addresses procedural aspects but the statute does not guarantee that the transfer is in the best interest of the client, where the client may not have the benefit of an independent review outside of the court to examine what is in their best financial interest.

Annuity contracts can also include terminal illness, critical illness and/or long-term care provisions. In reviewing these concepts, these benefits are often added, attached to or made a part of index flexible premium life insurance. Some annuity contracts contain benefits for terminal illness or severe disabilities, whether by accident or illness. Certain life contracts include, along with the index annuity feature, life insurance, indemnity critical illness and terminal illness types of benefits. Some of these provisions may include events arising out of accidental physical injury.

Knowing the existence of this myriad of contracts and combinations of benefits can be critical in personal injury representation where there is severe injury. Often, the ability of the client to sustain the capacity to navigate the legal system and continue effectively pursuing the case depends on the client’s ability to sustain their family during this
period. Counsel, by having enough familiarity with these concepts, can make effective inquiry.

The following summaries of these concepts are not exhaustive and are for illustration only. They do not constitute specific guidance for any particular case. Each individual contract and case should be reviewed by a qualified individual.

**Indexes, in general**

An index is the total capitalization value of the stock or equity of a group of companies or investments. There is no individual investment in any particular stock, bond or mutual fund. The indexes track the movement, up and down, of these total values.

For example, the S&P 500 Index tracks the capitalization value of the stock of the 500 largest companies in North America.

The total value of an index may decline or increase over a stated period, such as one or two years, or an even shorter period depending upon the contract.

**Annuity earnings: What is a no-cap?**

A no-cap provision means there is no limit as to what you will be credited. If the index earning is 30 percent, you receive the 30 percent if there is a 100 percent participation rate. No-cap policies usually have a zero interest floor, meaning that if the index change is negative, you will retain all credited value.

**Cap provision**

A cap provision means that if the cap is 15 percent, and the index movement is a 20 percent increase, the payee receives the 15 percent cap. Provisions may have a floor of 0.5, 0.75 or one percent. This means that if there is a decline in the index value, there is no decline in the principle and interest gained in previous periods, and the interest guarantee is credited.

**Cap period**

This is the period which defines the beginning value date and ending value date from which to measure the increase or decline in the index. For example, in a two-year cap-to-cap, if the value in the
beginning compared to the value at the end of the period shows a movement increase of six percent, then there is a crediting of six percent interest per annum for those two years on the contract value (with 100 percent participation rate). There are many periods and methods of averaging, depending upon the contract.

**Participation rate**

Some contracts provide a participation rate. If the participation rate is 90 percent and the index interest is 20 percent, then the contract is credited with 18 percent.

**Free withdrawal amount**

Contracts provide for a period of time after which a certain amount or percentage of the accumulation value (principle plus previously credited earnings) can be withdrawn without penalty or without surrender charge (in the event of full liquidation). The amount of withdrawal per withdrawal period is defined.

**Market value adjustment**

When withdrawals are made in excess of the free withdrawal amount, the surrender value of the contract may be decreased or increased depending upon the rise or fall of interest rates (i.e., index growth or decline).

**Terminal illness, confinement and critical illness**

Without going into detail, these are enhanced (or, advance) withdrawal provisions in the event of disabling health events. Individual contracts should be examined for the definition and scope of these benefits.

In this day and age, the axiom 'what you do not know can hurt you' may apply. We appear to have entered into a period of increased complexity and scope with regard to these contracts and their availability. Counsel may consider conferring with a qualified individual in the appropriate context during the course of client representation.
Upcoming Events

What’s Happening @ the Bar?

For a complete list of events, CLE programs and meetings, visit www.cbalaw.org

FALL 2018

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<th>Date</th>
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| October 9 | Ohio Constitutional Conversation: Issue 1  
12-1pm @ the CBA • This event is free and open to the public  
Issue 1, the Drug and Criminal Justice Policies Initiative, is on the November 6 ballot as a proposed amendment to the Ohio Constitution. Moderated by Colleen Marshall, this Ohio Constitutional Conversation will include views from the bench and bar. |
| October 17 | Committees & Cocktails • 3rd Wednesdays, 5-7pm @ the CBA  
This free monthly event gives members from all committees and practice areas a chance to meet, network and make valuable business contacts in a casual, relaxed atmosphere. The CBA provides beer, wine, soft drinks and light hors d'oeuvres. RSVP to donna@cbalaw.org. |
| October 24 | My Story: A Wellness Journey • 1.5 Prof. Conduct CLE Hours  
We know healthy lawyers make good lawyers. But we often fall short of finding answers and relief due to the oppressive stigma the words “mental illness” carry. Come hear a Columbus attorney tell his story. We guarantee his journey to find wellness will leave you inspired. |
| November 6 | Impact of the New Tax Law on Divorce • 3.0 CLE Hours  
How will the tax law passed in 2017 affect your divorce cases? Find out about key changes to the law regarding alimony, taxes and business valuation. Plus, learn to tell a story with financial statements and tax returns. |
| November 14 | 51 Imperfect Solutions • 1.5 CLE Hours  
In this program, Sixth Circuit Court of Appeals Judge Jeffrey S. Sutton will discuss his book on the significance of state constitutional law. Judge Sutton argues that much of our constitutional law is made at the state level. |
| November 14 | Committees & Cocktails • 5:00-7:00pm @ the CBA  
This free monthly event gives members from all committees and practice areas a chance to meet, network and make valuable business contacts in a casual, relaxed atmosphere. The CBA provides beer, wine, soft drinks and light hors d'oeuvres. RSVP to donna@cbalaw.org. |
Misunderstood Citizens United
Decision a Routine Application of First Amendment Principles

BY BRADLEY A. SMITH

Should the government be able to censor a documentary movie about a major political candidate in an election year, merely because the movie was produced and distributed by a corporation—like every other documentary you’ve seen in your life?

I think most Americans would agree that the answer is “no,” and that such censorship is precisely what the First Amendment aimed to prevent. If you’re in that group, then you support the Supreme Court’s holding in Citizens United v. Federal Election Commission.

Given all the controversy around the Citizens United decision, it is the sheer ordinariness of the decision that impresses the dispassionate observer. Citizens United is a straightforward application of basic free speech principles, and the most remarkable aspect of the decision may be that four justices dissented, holding that the government can ban a documentary movie about a political candidate in an election year.

Citizens United is an incorporated, non-profit advocacy group, small by Washington standards, with a total budget of about $12 million at the time of the case. As the Supreme Court noted, “[m]ost of its funds are from donations by individuals; but, in addition, it accepts a small portion of its funds from for-profit corporations.” (In contrast, the Sierra Club has a budget in excess of $100 million while the NAACP has a budget of approximately $30 million, and both accept corporate contributions.)

In 2004, in response to Michael Moore’s anti-Bush documentary Fahrenheit 9/11, Citizens United produced a documentary titled Celsius 41.1, purporting to rebut many of Moore’s charges and containing criticism of Democratic presidential nominee John Kerry. Although Moore had publicly stated that defeating Bush was his purpose in making the film, which was produced and distributed by corporations, the Federal Election Commission rejected complaints that Moore’s movie was an illegal corporate expenditure against Bush. But the Commission ruled that Citizens United could not pay theaters to run Celsius 41.1 without violating the federal ban on corporate political expenditures.

The idea that spending to promote political views should be banned simply because the spender is a corporation, or that the F.E.C. should decide which political documentaries are legitimate and which are not, is not consistent with our First Amendment.
Over the next three years, Citizens United continued to make documentary movies, some of which were shown in theaters, while others went straight to DVD. Some won film festival awards. In 2007, it produced a documentary about Hillary Clinton, titled simply, *Hillary: The Movie*. It was, noted the Supreme Court, “quite critical of her.” Citizens United planned to pay a cable company to make the documentary available for free to subscribers. It also planned to air ads for the movie, which, given the movie’s title, would also mention the name of a political candidate. When it became apparent that the F.E.C. would again act to block distribution of the film, Citizens United sued.

Contrary to what many believe, *Citizens United v. Federal Election Commission* did not turn on the concept of “corporate personhood,” a long-established legal concept that recognizes merely that Americans do not forfeit their constitutional rights simply because they choose to organize in the corporate form. All nine Supreme Court justices agreed on that issue. Nor did it have anything to do with allowing foreign money into U.S. campaigns (President Obama’s public scolding of the Supreme Court notwithstanding). Indeed, the next year, the Court summarily and unanimously affirmed an also unanimous lower court opinion (which had been written by Judge Brett Kavanaugh) upholding the federal law banning foreign contributions and expenditures. Nor did it alter disclosure laws to allow “dark money” into campaigns—in *Citizens United*, the Court upheld the challenged disclosure provisions of the law 8-1.

What *Citizens United* did do was prevent the government from prohibiting election-related independent expenditures simply because the speaker was a corporation. The Court thus assured that citizens could hear the views of corporations about candidates, often providing valuable information to voters. (Federal law still prohibits corporations from contributing directly to candidates and their campaigns, although many states choose to allow such contributions.) Corporations are subject to considerable government regulation and taxation that directly affect their shareholders, employees and employee’s families, and indirectly affect thousands or even millions more in the communities in which they operate. Surveys routinely show that Americans think corporations should speak out on issues that affect their operations. This is all for the best.
Citizens United simply followed long-standing First Amendment principles. The fact that campaign spending limits raise First Amendment concerns has been recognized by the Court since at least 1948. The Court has held that limits on independent expenditures by individuals violated the First Amendment since it first ruled on the question in 1976.

Interestingly, while Citizens United is a very important case for First Amendment doctrine (do you really think the government should be able to ban speech about political candidates based on the identity of the speaker?), the practical effect of Citizens United has been relatively small. In fact, before Citizens United, a majority of the states allowed corporate expenditures in races for state office. But even at the federal level and in the minority of states where Citizens United changed the law, its actual impact is limited. Florida State University College of Law professor Michael Morley notes that in the 2012 election, not one Fortune 500 company made independent expenditures in federal elections, and in 2016 only 10 for-profit corporations made independent expenditures, totaling less than $700,000, or less than one-hundredth of one percent of more than $7 billion spent in the 2016 election cycle.

Citizens United didn’t even lead to the creation of Super PACs. Rather, those are the result of a unanimous series of decisions by U.S. Courts of Appeals, which have protected Super PACs under the rights of association and speech. Even Super PACs are not controversial in the Courts: as the Second Circuit said, “[f]ew contested legal questions are answered so consistently by so many courts and judges.” Super PAC funds, which constitute about one-quarter of total campaign spending, continue to come overwhelmingly from individual donors.

The idea that spending to promote political views should be banned simply because the spender is a corporation, or that the F.E.C. should decide which political documentaries are legitimate and which are not, is not consistent with our First Amendment. As Justice William Douglas wrote over 60 years ago:

“Under our Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communication be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community.”

Even corporations.

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In 2008, Citizens United, a political advocacy group, filed suit to enjoin the application of the Bipartisan Campaign Reform Act’s ban upon its planned broadcast advertisements for a movie which attacked the character of Hillary Clinton within 30 days of the 2008 primary election.

After the district court ruled against Citizens United, the Supreme Court granted a writ of certiorari, and oral arguments were first heard on March 24, 2009. The court then asked the parties to file supplemental briefs on the question of whether one or both of Austin and the part of McConnell that affirmed the validity of Section 203 should be overturned. The case was reargued in a special session during the court’s summer recess on Sept. 9, 2009. The court’s majority opinion held that Section 441(b) of BCRA was unconstitutional on its face; accordingly, both Austin and the relevant part of McConnell were overruled.

This litigation, Citizens United vs. F.E.C., 558 U.S. 310 (2010), was the first phase of a three-part strategy to establish effective corporatist Republican Party control over Congress and a majority of the state legislatures in the United States of America. Its corporatist sponsors’ objective was to open the floodgates of anonymous, unlimited corporate contributions to affect candidate state elections throughout the country in the critical November 2010 elections that would determine reapportionment and redistricting processes for the U.S. Congress as well as both senate and house legislative districts for the next decade. James Comey, as senior vice president and general counsel of defense contractor Lockheed Martin as well as Chairman of the U.S. Chamber’s National Chamber Litigation Center Board of Directors, which he described as “the leading voice of business in the courts,” appears to have been the point man for this successfully executed first phase of their corporatist strategy.

Corporatist interests behind the unlimited corporate money attack upon the democratic government then utilized computer algorithms both to strip Democrat voters from the voting rolls and switch three percent of Democrat candidate votes to the opposing Republican candidate in the broadly-targeted candidate races in those elections.

With the shift of control of the U.S. Congress and a preponderance of state legislatures to corporatist Republicans, in my view a three-part populist counter-strategy is necessary—one that populist-reform Republicans, Democrats and independents can support.
In 2011, Republican-dominated state reapportionment boards for congressional districts and state legislative bodies for senatorial and house redistricting utilized computer algorithms to gerrymander to maximize Republican federal and state legislative representation for the next decade. These latter two phases appear to have been executed at the Republican computer and communications facilities at SmarTech in Chattanooga, Tennessee.

The Chamber’s first attempt to establish a constitutional right to run attack ads against a candidate for public office, using corporate treasury money contributed from undisclosed sources, was in its preemptive attack upon Ohio Supreme Court Justice Alice Robie Resnick in the November 2000 election. The Ohio Chamber’s “Citizens for a Strong Ohio” and the Chamber of Commerce of the United States spent $7.2 million in coordinated attack ads upon her, questioning whether she was a “Justice for Sale.”

In that case, on the day before the election, a probable cause panel of the Ohio Elections Commission found the Chamber’s ads illegal and defamatory. Prominent reporting of that in most of the Ohio press on Election Day created a boomerang effect of the ads upon the Chamber. Resnick won reelection. Justice Resnick received more Ohio votes in the 2000 election than Vice President Al Gore, the Democratic Party candidate for President. These dramatic events were reported in George Magazine with a picture of Justice Resnick holding a Star Wars light saber on the balcony of the Ohio Supreme Court. And, Mike Wallace of 60 Minutes conducted interviews in Columbus and prepared an investigative report about them.

Ohio litigation over the legality of the Chamber’s right to broadcast such secretly funded ads continued in Ohio federal and state forums into January 2005. In an opinion issued on October 31, 2002, Judge Deshler of the Ohio Tenth District Court of Appeals stated:

“This court has reviewed Buckley and finds nothing in that case that would extend First Amendment protection to speech that is either known to be false or that is disseminated with reckless disregard of whether it is false.”


The Chamber’s efforts were unsuccessful up to the Sixth Circuit Court of Appeals, 04-3112 Citizens for Ohio, et al v. Marsh, in an opinion by Judge Cole filed on Jan. 3, 2005, from which the Chamber did not appeal. In its unpublished opinion, the Court took judicial notice that Citizens for a Strong Ohio was a political action committee.

In 2002, in reaction to the Chamber’s attack upon judicial integrity in Ohio against Justice Resnick and similar activity in Mississippi, Congress passed and President George W. Bush signed the Bipartisan Campaign Reform Act. It received expedited Supreme Court review as to its constitutionality in McConnell v. F.E.C., 540 U.S. 93 (2003). Justices Stevens and O’Connor wrote the opinion for the bipartisan majority of the Court upholding the Constitutionality of Titles I and II dealing with disclosure of contributors and the ban on corporate candidate ads in proximity to an election.


In upholding the disclosure requirements of BCRA, Justice Kennedy stated as follows:

“With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see
whether elected officials are “in the pocket” of so-called moneyed interests.” 540 U. S., at 259 (opinion of SCALIA, J.); see MCFL, supra, at 261.

The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

Justice Kennedy obviously did not anticipate the Republican Senate's adamant refusal to pass a disclosure act, nor the U.S. Chamber's threat to President Obama to “put all options on the table” if he signed an executive order requiring federal contractors to disclose their contributions to electioneering campaign ads. Critics of Citizens United as destructive of democracy, in “Move to Amend”, have called for a constitutional amendment that would declare that money is not speech and corporations are not people. The Corporatist Republican lock on Congress and a majority of state legislatures presents a high hurdle for this movement to get over.

In his lengthy and emphatic dissent for the bipartisan minority of the Court, Justice Stevens stated as follows:

“I regret the length of what follows, but the importance and novelty of the Court's opinion require a full response. Although I concur in the

Court's decision to sustain BCRA's disclosure provisions and join Part IV of its opinion, I emphatically dissent from its principal holding.

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule Austin and part of McConnell, it is important to explain why the Court should not be deciding that question.

**Scope of the Case**

The first reason is that the question was not properly brought before us. In declaring §203 of BCRA facially unconstitutional on the ground that corporations' electoral expenditures may not be regulated any more stringently than those of individuals, the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court's invitation. This procedure is unusual and inadvisable for a court… Our colleagues' suggestion that "we are asked to reconsider Austin and, in effect, McConnell," ante, at 1, would be more accurate if rephrased to state that “we have asked ourselves" to reconsider those cases.”
In his State of the Union address, the week following the issuance of the Court's decision, President Obama, with the Justices of the Supreme Court of the United States seated beneath him:

“Last week, the Supreme Court reversed a century of law to open the floodgates for special interests -- including foreign companies -- to spend without limit in our elections. Well, I don’t think American elections should be bankrolled by America’s most powerful interests, and worse, by foreign entities. They should be decided by the American people, and that’s why I’m urging Democrats and Republicans to pass a bill that helps to right this wrong.”

President Obama was correct, and that was the effect of that decision. Corporatist Republican campaign planners could function with an unlimited budget in the 2010 November elections for the state legislatures and for the administrative offices within state government that would determine the reapportionment process for Congress and the redistricting process within the state legislatures (both Senate and House) that could create or lock in a Republican overwhelming domination for the next 10 years.

There have been a number of positive developments since the Citizens United decision aimed at improving the quality of American democracy. Could they be further built upon and expanded?

First: The continued vibrancy of the free speech of presidential candidates in debates and town hall gatherings covered as news dominated the 2016 presidential primaries and the general election. Could the extension of such debates and their coverage into state and federal primaries and general elections have a similar countervailing effect upon the undue influence of money in those important races?


Could the Randolph case be further strengthened by adding claims that the avalanche of illegally coordinated corporate money and covert cyberattacks affected the 2010 election that put the offending purely partisan gerrymanders in place?

Third: The District of Columbia Federal District in Citizens for Responsibility and Ethics in Washington, et al. v. Federal Election Commission, and Crossroads Grassroots Policy Strategies on Aug. 3 vacated an F.E.C. rule inhibiting F.E.C. enforcement of statutory contribution disclosure requirements and ordered the F.E.C. to proceed to address C.R.E.W.’s administrative complaint in accordance with the statute. On Sept. 18, the U.S. Supreme Court lifted the stay of that order by the Chief Justice the previous week.

Would a presidential executive order placing a reporting obligation directly on the contributors be a good additional safeguard against dark money? Shouldn’t this question be raised with the current President and future candidates for President and for Congress?

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1 See Cliff Arnebeck, Comment of Attorney Cliff Arnebeck before the President's Commission on Election Administration, Nov. 6, 2013.
4 David Daley, Ratf**ked: The True Story Behind the Secret Plan to Steal America's Democracy (2016).
5 See Hearings before the Senate Committee on Governmental Affairs, in a six-volume report summarizing the results of an extensive investigation into the campaign practices in the 1996 federal elections. The Committee found that: “though ostensibly independent of the candidates, the ads were often actually coordinated with, and controlled by, the campaigns. The ads thus provided a means for evading F.E.C.A.’s candidate contribution limits.”
6 In a 2010 complaint before the Ohio Elections Commission discussed at https://www.huffingtonpost.com/bob-fitrakis-and-harvey-wasserman/how-why-we-have-filed-rac_b_775839.html, we submitted correspondence from the Tobacco Litigation library from R.J. Reynolds' lobbyist to its political executive indicating that Governor Taft had designated Speaker Householder to solicit corporate contributions to the Ohio Chamber’s Citizens for a Strong Ohio.
7 See Common Cause/Ohio v. Ohio Elections Comm., 150 Ohio App. 3d 31, 38, 2002-Ohio-5965
8 Citizens United v. Federal Election Com’n, 130 S. Ct. 876, at 916

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What Can Your Facilitative Mediator Do for You?

VERONICA M. CRAVENER

Has your client’s case been referred to a court mediation program that uses the facilitative mediation style? Are you wondering how you can help your client maximize the benefits of this type of mediation? If so, this article is for you.

So, What is Facilitative Mediation Anyway?

Basically, a facilitative mediator controls the ‘mediation process’ and the parties control the mediation outcome (agreement or no agreement). Through that ‘mediation process’, the mediator helps both sides share information and negotiate settlement proposals - to the extent each side wishes to - and ultimately, it is up to the parties to decide if agreement is possible. A facilitative mediator does not give any sort of evaluation of the merits of any claim.

In a nutshell, a facilitative mediator helps parties start or continue a conversation with the purpose of resolving one or more issues. However, there’s more to it than that. By using various skills, a facilitative mediator is able to help parties make that conversation as productive as possible. The following are just a few examples of the types of skills a facilitative mediator is able to use, and how you can leverage those skills to your client’s advantage.

Mediator’s Tool: Active Listening

I know what you’re thinking. Active listening? Why do I need a mediator to actively listen? I’m peaceful, I can do that myself. Well, maybe you can. But, ask yourself the following:

Have you or your client ever been tempted to interrupt or actually interrupted the other side when they say something you disagree with?

When the other side is speaking, do you spend your time taking down notes so that you can give your rebuttal when it is your turn to speak?

In conducting hundreds of mediations, what I’ve observed is that people—particularly clients and unrepresented parties—want to feel that someone has heard what they have to say. Someone who is removed from the situation, such as a mediator, is well-positioned to listen to each side, without interrupting and without poking holes in the party’s argument. A facilitative mediator is trained to take in each side’s perspective, ask follow-up questions to ensure understanding and summarize key points so that each side is understood.

People tend to have greater success in mediation when they aren’t stressed, angry and/or aggravated. When people are in a more positive and calm state of mind, they are more creative with making and evaluating settlement proposals.
Next time you’re in a facilitative mediation, let your mediator utilize their active listening skills with each side so that everyone’s perspective is heard and understood. That way, you are able to obtain information about the other side’s position, as well as focus on other tasks, such as presenting your client’s position, making and evaluating settlement offers and so on.

**Mediator's Tool: Reframing**

Reframing is another ‘tool’ in the mediator’s toolbox. Basically, when mediators reframe, they are helping to change what a party focuses on in a situation or how a party understands a situation (or sometimes both!).

When you’ve been in a mediation, have you ever noticed that the other side always seems to remember the worst of the situation and forgets about the many positive interactions they had with your client in the past, or the positives that could be in the future?

If you’ve encountered this situation, you may have observed a cognitive bias in action: the negativity bias. Basically, the negativity bias says that we remember the bad more than the good.¹

Through the technique of reframing, the facilitative mediator is able to take all of the negativity and frustration that is expressed by a party, repackage the information and communicate the message back to the party in a way that acknowledges both the ‘good’ and the ‘bad,’ in an effort to help a party see the silver lining in a situation.

From my mediation experience, reframing is much more effective when done in caucus versus joint session. So, next time you are in a facilitative mediation and you notice that the opposing party or your client seems stuck in an endless loop of rehashing past misdeeds, consider going to a caucus so that the mediator can couple active listening with reframing, to, hopefully, help parties have a discussion about moving forward.

**Mediator's Tool: Structuring a Productive Mediation Process**

The beauty of mediation is that it is a flexible process. According to Ohio’s Uniform Mediation Act, “Mediation” means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.”² Therefore, mediation can take place in various formats: in-person, by phone or even online in some cases! Parties can be together (in joint session), separate (in caucus) or a mix of both.

So, why does this matter?

Well, what I’ve observed is this: people tend to have greater success in mediation when they aren’t stressed, angry and/or aggravated. When people are in a more positive and calm state of mind, they are more creative with making and evaluating settlement proposals. Negative experiences at the beginning—even right before mediation—can take things off track quickly.

Here’s a couple things to think about:

- Is your client going to be stressed by commuting to the mediation (taking time off work, dealing with traffic, finding parking, going through security, etc.)? If so, does the mediation program offer alternatives to in-person participation?

- Will your client be aggravated by being in the same room with the opposing party or opposing counsel? If so, will the mediation program start parties in caucus rather than joint session?

At the end of the day, mediation is what you make of it. Let’s make your next mediation your best mediation!

¹ For a brief list of cognitive biases, see https://en.wikipedia.org/wiki/List_of_cognitive_biases

² Ohio Revised Code 2710.01(A)

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Meetups with MEDIATORS

Columbus Bar Lawyers Quarterly Fall 2018
As we live longer lives, caring for an aging parent often falls to grown children and can seem overwhelming. It involves understanding and making decisions about services and options that many aren’t familiar with.

Currently, approximately 25 percent of adults are providing care for an elderly parent. It’s important to have a plan in place in order to minimize stress and anxiety over these decisions.

Developing a plan that addresses medical, environmental and financial factors will help when a crisis occurs. This plan will be a road map for the wishes of your aging parent.

Personal Planning
The first step is for all parties to sit down and have an honest and open discussion to find out what is important to both your aging parent as well as you and other family members.

• Discuss “what if” scenarios: While no one can ever know for certain what they will need, important things to consider include the parent’s existing physical and mental condition, the family’s history of medical issues and the parent’s expected lifestyle. For example, what if Dad falls at home and breaks a hip; could he continue to age in place after rehab?
• How to keep health and independence: Most seniors want to maintain as much of their health and independence as possible. Thus, part of the plan should involve helping a parent keep that freedom as much as possible through physical, mental and social activity.

Environmental Planning
A difficult decision to make is where care should be given: at home, in a care community or a combination of settings.

• Where does your aging parent want to live? If the wish of your aging parent is to stay in their home, extensive planning needs to take place to ensure that aging at home is safe and accessible. You will also need to consider the financial implications of home care assistance if it is needed. If your parent is open to a care community, what level of care is appropriate? There are different types of communities, including independent living, assisted living, memory or nursing care. Consider touring a few communities to understand the different options and the cost associated with them.

Medical Planning
End-of-life care issues are vitally important to address; contemplate some of the following to ensure that medical wishes are honored.

• Does the parent have a living will? It is imperative that an elderly parent have a living will. This document gives written instructions for the care of the parent if they are not able to make decisions for themselves (such as being in a coma).
• Has the parent appointed a health care agent? In case of situations not covered by a
living will, an elderly parent should name a health care agent who will make medical decisions for them when they are not able. The health care agent cannot override the living will, but rather is there to make decisions that are not covered by a living will.

• Does the parent want a Do Not Resuscitate (DNR) order? A DNR order is a physician’s order that is written in a person’s medical record instructing health care providers to not attempt life-saving measures such as cardiopulmonary resuscitation (CPR).

• Does the parent have any final wishes? People in general don’t like to spend time contemplating their final hours, but if a parent wishes for final ceremonies and disposition of their body, make sure these are in writing.

Financial Planning

Long-term care costs are rising each year, so it important to explore finances and come up with a plan to pay for care now, instead of waiting until it is too late.

• What kind of insurance does the parent have? Contrary to belief, Medicare does not pay for assisted living or long-term nursing care. Take the time to find out and understand what your parent’s insurance covers - chances are, unless your parent specifically purchased a private policy to cover long-term care, the existing insurance will provide little, if any, coverage.

• How will caregiving be paid for? Once you’ve answered all of the big questions and decided where you want care to be provided and by whom, it’s time to decide how it’s going to be paid for. If you plan on buying private insurance, determine whether the parent has enough money to do so. Shop around for the cost of policies that fit your needs, and then look at the parent’s sources of income, such as Social Security, pensions, investments, retirement accounts or others to determine what kind of care they can afford.

• Does the parent qualify for any government benefits? Part of determining what kind of care one can afford involves understanding benefits your parent might qualify for. www.longtermcare.acl.gov/ will help you figure out exactly what the elderly parent is eligible to receive, as it’s different for everyone.
• Has the parent named a financial agent? Just as a person should name a health care agent, it is crucial to have a financial agent who has been given the authority to make financial decisions when the parent is unable to.

• Has the parent provided a list of important documents and passwords? Keeping organized is important but knowing where important documents are located and how to access them if necessary is vital. A record organizer that contains important financial, legal and medical documents is highly recommended; it is also important to include any necessary access information, such as passwords and keys.

If this process is just too daunting, you live out of state or you are simply not sure how to start, consider professional help. An Aging Life Care Professional™, also known as a geriatric care manager, can help with a plan. To find a local professional, you can visit this website: www.aginglifecare.org and then click “find an aging life care expert”.

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IKOR of Columbus: Advocacy and Life Care Management for Adults and Seniors
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The LGBT community has made significant strides since the ruling in Lawrence v. Texas 539 U.S. 558 (2003). Not so long ago, our relationships themselves were a punishable crime. Privacy rights were non-existent and the social stigmas remained.

But slowly, through the tireless advocacy of the determined and downtrodden few, we were able to celebrate our relationships with our spouses and children with protection granted under the law. Obergefell v. Hodges 576 U.S. ___ (2015) made marriage equality the law of the land and gave an undeniable and long-awaited victory to the LGBT community. However, the path to equal protection under the law does not stop there.

The Ohio Definition of Marriage Amendment, also known as Amendment 1, was on the 2004 ballot and amended our state constitution to define the parameters of marriage. The measure mandated that only a marriage between one man and one woman may be valid in or recognized by the state. Despite the ruling a decade later in Obergefell, these words have never been stricken.

The same is true about the many gendered statutes that endure in our Ohio Revised Code. For example, one of the statutes to do with artificial insemination states that “…artificial insemination of a married woman may occur only if both she and her husband sign a written consent…” (R.C. 3111.92). This statute does not reflect a common reality of lesbian couples utilizing artificial reproductive technology to have children. There is no current initiative toward inclusive language here, either.

It is also true that sexual orientation (LGB) and gender identity (T) are not protected classes under state law, as is the case for age, race or religious affiliation. It is perfectly legal to deny someone housing and public accommodation or even to fire someone solely for identifying as LGBT. Representative Nickie Antonio introduced House Bill 160 this session, also known as the Ohio Fairness Act, to codify specific

“With all of this political upheaval and these legal changes, many in the LGBT community look to their attorneys and advocates for answers to questions about how best to preserve their rights and protect their families.”
protections for the LGBT community, and it also includes exemptions for religious institutions. The bill has not yet been called to a vote.

With all of this political upheaval and these legal changes, many in the LGBT community look to their attorneys and advocates for answers to questions about how best to preserve their rights and protect their families. There are existing legal avenues that LGBT couples and families can take to ensure peace of mind. The first is planning for emergencies and their estates. The second is solidifying family ties through adoption and second parent determination.

Estate planning has long been a tool used by non-legal relations to create inheritance rights and control their autonomy in an emergency situation. Many LGBT people do not have the support of biological family members and instead rely on friends and partners for support. It follows, then, that in a situation where a decision needs to be made by someone that they trust, many LGBT people may not wish to leave such decisions to a legal next of kin. If so, they may wish to look into a Health Care Power of Attorney and Living Will form, available online for free public access through the Ohio Secretary of State. At a minimum, these documents should be completed and distributed to primary care physicians and named agents in case of emergency. Other estate planning documents, such as a Financial Power of Attorney, Nomination of Guardian in case of incompetence or disability, are similarly important to have drafted and ensure that trusted people are nominated.

Finally, a Last Will and Testament or Trust is the bedrock of any estate plan and ensures that loved ones who survive are cared for. It is often my practice to include a no-contest clause, a testator’s intent clause and a self-affirming affidavit signed by the client and the witnesses attesting to the testator’s mental fitness and competence. This may seem like an additional unnecessary step, but in cases where immediate family members are disinherited in favor of a partner or friend, will contests are not unusual.

LGBT clients with children have additional concerns. Prior to Obergefell, LGBT parents could only grant custody to a non-biological parent, which only approximated the
legal standing given at birth to the biological mother or father. Now, there are two pathways to parenthood for married LGBT couples and their children.

The first is through a "stepparent adoption" in the probate court. Although many LGBT parents would grimace at the name, it is the existing mechanism by which a spouse of a biological parent may adopt their non-biological child. It is an expensive and time-consuming process that requires the petitioner to pay hundreds of dollars in filing and attorney's fees, submit to a home study that includes a background check, fire inspection, home visit by a social worker, submission of medical history, a physical by a doctor, provision of references and then have a final hearing in court. There are further requirements for service and notice to a known sperm donor, and additional consent from a putative father may even be needed. All in all, it is an arduous process for parents to endure to achieve legal status over children who they may have helped plan for and been raising for years. However, many parents deem the entire process worth it for the final judgement and the peace of mind that comes with it.

Franklin County has also implemented an additional pathway to parentage called "Second Parent Determination" where if the parties were married prior to the child being born, and can demonstrate that they complied with the artificial insemination statutes referenced earlier (R.C. 3111.88 et seq.) they are eligible to rely on the marital presumption. The marital presumption, of course, is the legal fiction that allows any man married to a woman at the time of the child’s birth to presume he is the father, because, as the presumption assumes, all women are faithful. The rationale in applying this presumption to same-sex couples is that under the Obergefell equal protection argument, same-sex marriages must be treated the same as heterosexual marriages under the law. Therefore, if a same-sex married couple use artificial insemination to conceive and comply with the additional terms of the statute, they are entitled to the same presumption. The couple would then file a complaint for parentage with the Juvenile Court, along with additional affidavits, and an agreed entry that can be reviewed by the court and signed by the judge without the need for a hearing. The outcome is the same as if the couple had gone through the adoptive process: legal parentage for the non-biological parent and peace of mind for the family.

All in all, the rights and protections of the LGBT community are an ever-changing area of the law. The hope is that with growing social support and the evolving ideals of each generation, diversity, tolerance and inclusion will be a reality on which we can all rely.
While there may be no such thing as a perfect estate plan, the most sound and thorough plan will employ multiple methods to insulate an individual’s estate from the risks and contingencies related to all aspects of life.

As such, an estate-planning attorney must be knowledgeable in many areas of the law (not just wills and trusts) and, further, must be constantly mindful of new and changing case law and legislation at all levels of the government – federal, state and local. In this article, we explore some of the more recent developments and also look to potential changes and new laws affecting estate planning.

Under the new federal tax scheme, the focus of estate plans for the majority of individuals will continue to evolve away from estate tax savings. Instead, they will move toward plans more centered on income tax savings, optimizing a stepped-up basis for assets passing to the next generation, using non-grantor trusts instead of grantor trusts, bundling charitable contributions and rethinking the utility of life insurance trusts. If you have somehow avoided the topic up to now, you will certainly want to familiarize yourself with the Act before the year’s end.

One of the most important aspects of estate planning is ensuring that a client’s beneficiary designations for annuities, retirement plans, employer death benefits, life insurance policies and all other payable-on-death accounts are consistent with the client’s intended distribution of assets at death.

Related to this issue, at the national level, the United States Supreme Court recently issued a ruling in Sveen v. Melin, 138 S.C. 1815 (2018) in which the Supreme Court considered the constitutionality of the retroactive application of revocation-by-divorce statutes, particularly when such a statute is invoked to defeat the beneficiary designation on a non-probate asset such as a life insurance policy.

In Sveen, a husband had failed to change the beneficiary designation from his ex-wife on a life insurance policy after their divorce. The husband’s children argued that

“...It is always of utmost importance for attorneys to be intimately familiar with the local rules of county courts before which they may appear. As many estate-planning attorneys also maintain a probate administration and trust litigation practice, familiarity with the local rules of the county probate court is critical.
the state’s revocation-by-divorce statute applied, and so the children were the rightful beneficiaries of the policy. The ex-wife argued that retroactive application of the state’s statute violated the Contracts Clause of the United States Constitution. In an 8-1 decision, the Sveen court held that the retroactive application of the statute did not violate the Contracts Clause, and so, is constitutional.

Ohio’s own revocation-by-divorce statute related to wills can be found at R.C. §2107.33, and the statutes related to trusts, powers of attorney, death benefits and personal property can be found at R.C. §§ 5815.31, 5815.32, 5815.33 and 5815.34, respectively.

At the state level, estate-planning professionals should be aware of legislation pending in the Ohio General Assembly in the form of House Bill 595. H.B. 595 was recently passed by the Ohio House of Representatives on June 27, with overwhelming bipartisan support and a vote of 91-0. According to Todd Book, the assistant executive director of policy and public affairs at the Ohio State Bar Association, it is likely that the bill will be brought to a vote in the Ohio Senate before the end of 2018, and is expected to be approved by the upper chamber as well.

This legislation is colloquially known as the probate omnibus bill and, according to Book, is being supported by the Ohio State Bar Association. Although the bill would amend or replace numerous sections of the probate and trust code, there are a number of changes affecting estate planning in particular.

One of the many responsibilities that an estate-planning attorney is tasked with is making a professional judgment as to whether a client has the requisite mental capacity to make a will or sign a trust or other legal instrument. Often times, an attorney may find themselves in a situation in which they have determined, to best of their professional judgment, that an individual does possess the requisite mental capacity to sign a given instrument. However, the client may, for a variety of reasons, express concern that a third party – often times a child from a previous marriage – will nonetheless challenge the validity of the instrument after the client’s death.

For quite some time in Ohio, R.C. §§ 2107.081 – 2107.084 have provided a procedure by which an individual could petition a probate court to make a pre-death declaration as to the validity of their will. However, to date, a similar procedure has not been available in Ohio for the pre-death declaration as to the validity of a trust. H.B. 595 would repeal and replace §§ 2107.081 – 2107.084 by adding section §5817, et. seq. to the Revised Code, by which the procedure would be set forth for the filing of a petition for the pre-death declaration of the validity of a will or trust. Under the new law, the probate court would enjoy exclusive jurisdiction to decide matters under new section §5817; however, the probate court would also have the authority to transfer such proceedings to the court of common pleas.

Other important provisions of H.B. 595 related to estate planning are
amendments and additions related to exceptions to the anti-lapse provisions for class gifts (R.C. §2107.52), provisions for the incorporation of a written trust into will (R.C. §2107.05) and permissible arbitration clauses for trust disputes (R.C. §5802.05).

However, Book also indicates that the bill could see some very important amendments before coming to a vote in the Ohio Senate. Those amendments would add provisions to the bill to address the admission to probate of electronic wills executed under the laws of states other than Ohio, and provide further clarification as to the attorney-client relationship between attorneys for trustees and trust beneficiaries.

Any attorney practicing in this area is, of course, encouraged to review the entire bill, which can be found at https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-595.

In addition, at the state and local level, the Ohio Tenth District Court of Appeals (Franklin County) recently issued its ruling in Cain v. Panitch, 2018-Ohio-1595. While the decision deals with a number of probate-related issues, the one of most interest to estate-planning attorneys would be the court’s affirmance of Ohio jurisprudence that probate courts – being courts of limited jurisdiction under Ohio law – do not have subject-matter jurisdiction to consider legal malpractice claims. Rather, such claims must be brought in the court of common pleas with the proper venue and jurisdiction to consider such claims.

Also, at the local level, it is always of utmost importance for attorneys to be intimately familiar with the local rules of county courts before which they may appear. As many estate-planning attorneys also maintain a probate administration and trust litigation practice, familiarity with the local rules of the county probate court is critical.

The Franklin County Probate Court has made a number of amendments to its local rules over the last few years. Particular attention should be given to LOC. R. 78 dealing with case management and motion practice. In addition, the local rules were also amended most recently on August 1, 2018. The current local rules can be found at https://probate.franklincountyohio.gov/PBCT-website/media/Documents/PDF/Local-Rules-Of-Court-August-2018.pdf.

For any attorney, staying ahead of ever-changing case law and new legislation, rules and regulations is a great challenge. While this article covers some of the updates and changes related to estate planning matters, there are certainly many more not covered here. All attorneys – estate planning attorneys included – are encouraged to seek the appropriate resources available to monitor new laws and changes to existing laws that may affect their practice.

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Hello, law pals and citizens who still have a library card! I have been privileged to practice law for 30 years in my favorite areas of adoption, estate administration and estate planning.

Though my heart lies with my adoptive families and birth parents, the competitive nature of adoption practice in Central Ohio required me to develop another practice expertise. The great camaraderie and skill of estate planning and probate practitioners alike led me to focus a part of my solo practice on these important legal areas.

I have always marketed my law practice to what I term “regular people.” My clients have been state workers, professionals of modest means and folks who own their own business entities. My clients in the estate-planning process tend to have portfolios in the range of $750,000 to about $2,000,000. I often claimed that folks depicted in the book “The Millionaire Next Door”, written by Thomas Stanley and William Danko, were very much like the clients who made up my base.

Clients look to traditional estate planning documents, including wills, durable powers of attorney for financial matters and advanced directives, to complete their estate plan for their spouse and children. In my initial client meeting, I cover the details of these documents as well as the pros and cons of having a trust. Clients are often not convinced that they need a trust to complete their estate plan and, even with a quoted reasonable cost, clients seem to look for a way around creating the trust document.

My clients also seem to struggle, if they choose to create a trust, with whom to appoint as trustee. They often go back and forth in their mind as to who will be the right trustee - a trusted family member, or a friend or a corporate trustee, such as a bank, trust company or financial planner.

This article will serve as a brief explanation on how to choose a trustee for one’s trust, and also delve into the responsibilities of a trustee.

Choosing the Trustee

Over the years, clients seem to choose a spouse, significant other or adult child to serve as trustee. Some clients may choose a financial advisor or a corporate trustee, such as someone from a bank or trust company.
Clients often choose individual trustees, because they are familiar with the family dynamics, as well as the financial assets that are placed in the trust. However, an individual trustee may not be able to perform all of the trustee functions and responsibilities. So, I generally suggest to individual trustees that they may need to hire an accountant, tax professional or individual(s) knowledgeable about real estate sales, financial planning and more.

I also tell clients that individual trustees are entitled to trustee fees, and the trust may incur additional fees from qualified professionals that the trustee may need to hire to accomplish the trust objectives.

As for a corporate trustee, meaning a bank or trust company, I mention to the settler or trustor that they should meet with their bank professional to understand what trust administration fees might be required by the company itself. I also suggest that clients investigate some smaller banks or trust companies, if they are in search of a less expensive trust administration fee schedule.

Finally, I indicate to clients that they can consider both an individual and a bank or trust company to serve as co-trustees. I want clients to feel comfortable with whatever option they choose.

Clients look to traditional estate planning documents, including wills, durable powers of attorney for financial matters and advanced directives, to complete their estate plan for their spouse and children.

Responsibilities of the Trustees

O.R.C. Title 58 of the Ohio Trust Code discusses trusts and, particularly, trust administration and the duties of the trustee.

O.R.C. §5808.01 states that “the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries....”

Also, under O.R.C. §5808.04, “a trustee shall administer the trust as a prudent person would and shall consider the purposes, terms distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.”

The Ohio Trust Code also bestows on the trustee the duty of impartiality. O.R.C. §5808.03 states that “if a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries’ respective interests.”

Keeping in mind these general provisions of the Trust Code, it is important to look at some of the responsibilities of the trustee in administration of the trust.

I have assisted many client-trustees in administering their family trusts. The following are what I consider the top five issues in trust administration.

1. Paying the decedent’s last expenses, including funeral expenses, taxes and debts
2. Maintaining the family home, and then participating in the sale of the home and distribution of the real estate proceeds according to the terms of the trust
3. Managing investments for the benefit of the trust beneficiaries
4. Distributing property according to the terms of the trust
5. Consulting with tax professionals, financial advisors, bank personnel and other professionals to maximize the value of the trust assets and insure proper distribution of the trust assets

With many clients, the trust often goes into effect after the death of both spouses. The trustee is required to pay the decedent’s last expenses, such as the funeral bill and grave marker. Also, the trustee must see that the decedent’s last tax return is prepared, as well as having trust income tax (or 1041) returns prepared.

The home, if it is a trust asset, must be maintained. If the house is to be distributed to the beneficiaries, and no beneficiary wishes to keep the house, the home must be sold and the proceeds distributed according to the terms of the trust. The trustee must take the time to find a trusted realtor to assist in the sale of the home. Often, the sale of the home within an estate or a trust can create real differences among the beneficiaries, so the trustee must listen to the concerns of the trustee and act with impartiality.

In managing trust assets, the trustee must adhere to the provisions of the Uniform Prudent Investor Act under O.R.C. §5809.04: “The trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and in order to comply with the requirements and standards of the Ohio Uniform Prudent Investor Act.”

In distributing property according to the terms of the trust, the trustee must do this important task fairly and with impartiality, while following the trust document terms.

A great deal of importance is placed upon the trustee to hire qualified and competent professionals for the assets of the trust to be administered fairly.

A trust is an important vehicle in estate administration, and should be considered when providing for a spouse, minor children or as a vehicle to limit the payment of federal estate tax. If estate planning and estate administration are areas you want to pursue in your practice, consult with experienced practitioners, join the CBA Probate and Estate and Gift Tax Committees and attend the many seminars available to you through the Columbus Bar Association. Estate planning and estate administration are two practice areas where you can make a difference every day by crafting well-thought-out wills and trusts.
The Columbus Bar’s new Practice Management Center is a members-only section of the CBA website filled with resources to help you build and maintain a successful, thriving legal practice. You’ll find whitepapers, checklists, recommendations, videos and other resources within these 7 topic areas:

- Opening or Closing a Law Firm
- Client Development
- Documents
- Technology
- Money
- Management
- Comparison Charts

From getting clients to getting paid and everything in between, we’ve got you covered in the Practice Management Center. Visit www.cbalaw.org/PMC and take a look around!
Being a paralegal in the area of wills and estates affords the opportunity to see how one’s work directly affects the client. The documents prepared provide peace of mind for the client. Likewise, the guidance provided by the documents gives great comfort and assistance to the client’s surviving family members, both before and after the client’s passing.

The paralegal’s role begins with intake – interviewing the potential client, obtaining signatures for engagement, gathering necessary documents and gathering contact information and dates of birth for executors and potential beneficiaries. Then, through the interview process and drafting of documents, paralegals and attorneys alike come to know the client well. Paralegals and attorneys can see how the documents provided will benefit the client, and the client’s appreciation for the work completed is apparent.

In the life of a paralegal working in the Employment Section of a defense firm, the experience is much different. Client intake often comes in the form of a referral by a Third Party Administrator or a corporate client. The outcome of the case will affect a corporate entity rather than an individual. While the client will be pleased with a positive outcome, the client will not be affected on a personal level.

Although wills, estates and trusts are not part of my daily job duties, I have had the opportunity to work in this area through participation in two pro bono programs over the past few years.

The Paralegal Association of Central Ohio/Legal Aid Society of Columbus Pro Bono Wills Clinic offers the opportunity to work with an attorney to prepare a simple will, durable power of attorney, health care power of attorney, living will and declaration for funeral arrangements for senior citizens on fixed incomes. In drafting these documents, it is the paralegal’s role to populate the document templates with the appropriate information that has been obtained in advance of the clinic while the attorney explains each document to the client. The paralegal is responsible for clarifying with the client any questions regarding names and addresses of executors and beneficiaries, and often discusses with the client whether there are any specific bequests. The paralegal then adds language to the will to denote the specific bequests.

As a paralegal who routinely serves corporate clients, I enjoy the opportunity to do something different for an evening. I enjoy the opportunity to interact with these clients on a personal level, even if only for an hour, and to see firsthand a clients’ appreciation for the services provided.
Upon completion, the documents are proofread. We always strive to provide our best, most accurate work with attention to detail, providing a professional level of service. While the documents are being proofed, we have time to talk with the clients. We service clients from many different backgrounds and, in addition to expressing their thanks for the services provided, they always have interesting stories to share.

The Wills for Heroes program held in Westerville this spring was particularly meaningful to me as the daughter of a retired firefighter. In this program, paralegals and attorneys partnered to work with first responders to prepare a simple will, durable power of attorney and health care power of attorney.

These two pro bono programs have striking differences. First, and most obvious, is the age difference between senior citizen clients and younger first responder clients. The second difference is the focus of the clients. While both groups receive the same types of documents, the senior citizen clients need documents that will allow their families to conduct banking on their behalf if they are no longer able to get out in the community. They need documents that will allow their families to make medical decisions for them as they face deteriorating minds and bodies, no longer limber and agile, that are prone to injury. They need documents to direct their families in making funeral arrangements and in the disposition of their belongings after their passing.

The first responders need documents that will allow a spouse or family member to make important decisions on their behalf in the aftermath of a line-of-duty injury or line of duty death. One situation described to the volunteers prior to meeting with clients is the need for a spouse to sell a family home and purchase or accept the donation of a new home that will be accessible for the first responder who is facing months of rehabilitation or possibly a permanent handicap following a line-of-duty injury. The first responders need documents that will make provisions for the care and financial stability of their families and young children. These men and women never know when they will face a life-threatening situation in the line of duty. Coming home to their families at the end of every shift is not guaranteed.

Even though there are great differences in the needs of these clients, there is one important commonality. Both groups leave the clinic with peace of mind. They know that when they pass, their loved ones will have the ability to manage their affairs either in the face of an illness or injury, or on their death. Both groups are so appreciative of the services provided.

As a paralegal who routinely serves corporate clients, I enjoy the opportunity to do something different for an evening. I enjoy the opportunity to interact with these clients on a personal level, even if only for an hour, and to see firsthand a clients’ appreciation for the services provided. It is very rewarding to assist these clients and see the peace of mind they take with them when the work is complete. But those of you who work in this area of law already know that!

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In the mid-1990s, researchers discovered that “people with average IQs outperformed those with the highest I.Qs 70% of the time.” This was a major difference from what many people had always assumed was the sole source of success—IQ.

Decades of research now point to emotional intelligence as the critical factor that sets star performers apart from the rest of the pack. In fact, 90 percent of top performers have high emotional intelligence.

Research has also shown that individuals with higher emotional intelligence earn about 33 percent more income over their lifetimes, have more satisfying marriages and social networks, have better health and live longer.iii

Emotional intelligence, or EQ, is the ability to manage your emotions and the emotions of others. Emotional intelligence consists of two main areas: personal competence and social competence. Personal competence deals with how you manage your emotions and behaviors. Social competence relates to how you manage the emotions of others (i.e., how you use your emotional intelligence to build relationships). Within these two areas, high emotional intelligence consists of:

- Self-awareness: being aware of your strengths, weaknesses, personal emotions and emotions toward other people
- Self-management: being aware of your emotions and handling them in a positive manner, e.g., impulse control, resilience
- Social awareness: the ability to understand others’ emotions and act on them
- Relationship management: your ability to get the best out of others, inspire them, motivate them, help them change, etc.

Why do lawyers need emotional intelligence to succeed?

As lawyers, we were never formally trained in being aware of our own or others’ emotions and feelings. We were taught to look at facts, study the law and develop conclusions. But being able to relate to others is a key trait that lawyers need in all aspects of their careers. You need to be able to understand your clients’ feelings and put yourself in
their shoes at times. You need to learn how to work with others who are angry, frustrated and stressed. Learning how to manage your emotions in times of high stress is crucial to an attorney’s success.

How do you know if you are emotionally intelligent?

People with high EQs share these common traits:

- Empathy: You are able to understand and share the feelings of another person.
- Balance: You live a balanced life. You know when it is time to unplug from work because you notice you are getting overwhelmed and stressed.
- Adaptability: You adapt to change. You realize that change is a part of life and that being afraid of change hinders your success.
- Focus: You do not let criticism or negativity hinder you. You focus on outcomes, not the opinions of others.
- Understand emotions: Not only do you understand emotions such as being happy, frustrated or stressed, but you also know how to manage your emotions.

How can you improve your emotional intelligence?

While it is true that some people are born with a high EQ, people who lack EQ can improve. Here’s how.

Get in tune with your emotions.

Being able to recognize your emotions is the first step in improving your emotional intelligence. Take some time to honestly reflect on how you deal with negative situations, such as being wrongly accused of something, getting negative feedback from a client or comforting a colleague who is upset. Once you start identifying your emotions, you can learn how to deal with them in a positive manner.

Take a minute.

Learn to think before you speak. Sometimes we mean well, but our words come out the wrong way. Learn how to think about what you want to say and how to say it. Remember that the tone of your voice is a factor in how you speak to others. There is a big difference
between saying “I need this now,” in a stern voice and “It would be great if you could get this high priority item to me in the next hour,” in a calm voice.

**Take a walk in someone else's shoes.**

An important factor in emotional intelligence is understanding why another person feels the way they do. For example, you notice that your co-worker has been quieter than usual. She has been closing her door often, taking lunches alone and just hasn’t been acting as she normally does. Think about why she may be feeling that way. You realize that just last week, she lost a client. Take a minute to let her know that you are thinking of her and that you can relate because of a similar experience you had. Being able to put yourself in someone else’s shoes helps build your relationships with others.

**Learn from criticism.**

When you’ve spent weeks on a project, working extra hours and trying your best, it can be frustrating to be criticized for your work. Your response to criticism could go two ways: you could get angry and defensive, or you could take a step back and learn from the critique. People with high emotional intelligence take the latter route.

**Ask others.**

Do you ever wonder how others perceive you? Ask them. Think of a time when you were in an emotional state, and ask your co-worker, spouse, significant other or friend how they perceived your reaction. This can help you understand your strengths and weaknesses when it comes to your emotional intelligence.

In today’s competitive market, lawyers need to be at the top of their games. Put yourself in a client’s shoes. If you needed to hire an attorney, would you hire the one who seems robotic, by the book and impersonal, or would you hire the one who understands you, can empathize with you and solve your problem?

2. Id.
Moderated by Michael Curtin, this event will provide insight into the professional lives of three remarkable (and retiring) judges: Hon. Charles Schneider, Hon. David Cain and Hon. Guy Reece II. With a combined 70 years on the bench and 124 years in practice, these thought leaders will teach us lessons in professionalism, civility, and will reflect upon the best of times and worst of times. This event will be followed by a hosted cocktail reception.

- A Review of the ORPC: The Be a Good Human Rule
- Competence and Diligence (ORPC 1.1 and 1.3)
- Advocacy and Civility (ORPC 3.1)
- Candor towards the Court (ORPC 3.3)
- Fairness and Impartiality (ORPC 3.4 and 3.5)
- The Duty of Truthfulness (ORPC 4.1)
- The Duty of Respect (ORPC 4.4)
- The Duty to of Public Service (ORPC 6.1 – 6.5)
- Maintaining the Integrity of the Profession (ORPC 8.1 – 8.5)
- How the Practice has Changed in the Last 40 Years – A Judicial Perspective
- Reflections on Leaving the Bench

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1st Floor, Haaf Hall

Pricing
- Members: $67.50 prepaid/$75 day of
- Non-Members: $95 prepaid/$107.50 day of
- Non-Attorneys: $52.50 prepaid/$60 day of
- Printed Materials: $15 (Select this option if you would like to purchase printed materials. Electronic materials will be available at no cost.)

Registration
www.cbalaw.org
(614) 221-4112
A cruise up the Douro River in northern Portugal is scenic on steroids and wine tasting nearly 24/7.

After we began to navigate eastward from the Atlantic Ocean at Porto and into the world’s oldest demarcated wine region, the non-stop vineyards looked like gigantic quilts painted on the sides of the mountains sloping from the river’s edges, upward hundreds of feet to distant skylines. Every so often, a huge rectangular sign would label the vineyards with the brand name of the wine produced from the grapes in that area.

Much of the time, our riverboat was docked at one of the many villages along the shores. Three buses trailed our boat, following the mostly invisible highways that wound from one little town to another. The buses would take us to wineries or monasteries or castles and cathedrals in other villages atop the mountains where the river valley below makes a person gasp at the first sight.

On one of the days, we visited the Mateus Palace and Gardens, named for a nearby town but still the summer residence of descendants of the 16th Century explorer, Afonso de Albuquerque. The palace is surrounded by acres of neatly manicured hedges and other topiaries. The gardens include a 100-foot-long cedar tunnel. On another day, we climbed 686 steps to the Shrine of Our Lady of Remedies, resting while admiring huge tile artwork along the way.

Bus drivers became my heroes as they maneuvered through medieval villages with streets sized for horses and carriages, then wormed up thin roads with hairpin curves – most without guardrails. When there were any rails, they were about as high as the hubcaps. Often, one could look out a window and see nearly straight down for hundreds of feet.

Many of the vineyards have lines and lines of stone walls stacked more than 100 years ago to maintain the pathways where grape pickers labor between the steeply terraced vines. You don’t see many bare spots. They’ve all been used to plant more wine.
Looking down on the red-roofed city with its colorful facades sloping up from the river as it widens toward the ocean paints an unforgettable picture.

The grapes flourish in the moist air that sweeps up the valley from the Atlantic while the hills and mountains protect them from the ravages of ocean winds and storms. Oddly enough, the rocky terraces have little soil or water. Roots reach downward through the shale as much as 100 feet deep to find water and nourishment.

The Romans began producing wine in the region a couple of centuries ago. But it was the British who created port wine in the 17th Century when they discovered that adding a little brandy to the aging wine (when the alcohol level reached about seven percent) would stop the fermentation process and preserve the wine for its shipment to England. At that point, there was still some sugar in the wine that had not been converted to alcohol. A sweet, strong beverage was the result; and, of course, the name ‘port’ comes from Portugal.

In the history books, Portugal was known for navigators (I saw the tomb of Vasco da Gama) and for the colorful ceramic tiles (mostly blues) that adorn many buildings, both inside and out, that are great for their presentation of artistic renderings but are also very useful for insulating and protecting from wind and moisture. Now, Portugal is the number one producer of olive oil and the best cork in Europe. About the size of our state of Maine, it lies along the western edge of Spain, about one-fourth the size of the neighboring country. Its capital city is Lisbon, about 100 miles north of the Iberian Peninsula’s southwest point. That’s where we began our visit to the country.

The city has a population of about 700,000 in a metro area of 2.1 million. From the air, it looks bright and new. That is because the city’s building boom is of recent vintage. Portugal suffered under a dictatorship for most of the 20th Century. In 1974, the army staged a coup and a new democratic government was established. Women had no freedoms at all before 1974, a tour guide related. They couldn’t even leave the country without permission. Nobody could get a divorce. Coca-Cola was forbidden. Some very rich people existed, but the rest were really poor, she added. In 1986, Portugal joined the European Union, after which banks opened and people could withdraw money. A massive
road building program also began in 1986 and has resulted in 15,000 kilometers of new roads now being used. The profits from foreign investments are not taxed. And nowadays most people in Portugal speak English.

Lisbon also looks spiffy because all the streets, sidewalks, courtyards and patios are made from a mixture of white and black stones about the size of two-inch squares. The white stones are limestone, salvaged from an earthquake in 1755 that destroyed almost everything except a 17-mile Roman aqueduct that still stands. The black stones are basalt. Lisbon also has a number of tourist attractions, like a bridge over the Tagus River that looks like the Golden Gate in San Francisco. They were built by the same company, the American Steel Corporation. But eating and shopping are other reasons why tourism in Portugal hit a record of 20 million people last year. Specialty foods include grilled sardines, codfish cake and a soup made of cabbage and potatoes. Shopping highlights include fine leather goods, cork products, porcelain and vintage wines.

The cork comes from cork oak trees. One must wait 25 years after planting such a tree before sections of the bark (the cork) can be detached. And the virgin cork is not good cork, so one must wait another nine years for the second growth to be ready for removal. After that, it is used for everything: from hats to handbags, belts to billfolds and shoes to ties. And, of course, its most common and heroic use is for sealing bottles of wine.

The next day we went about 15 miles northwest of Lisbon to the romantic village of Sintra (the home of Madonna) that features the Pena Palace, built in the mid-19th Century and perched on top of a mountain 1,600 feet above sea level. The colorful castle with Moorish and Gothic Revival furnishings and wild architecture inspired the Disney movie “Sleeping Beauty” and is surrounded by original gardens with exotic plants and more than 500 species of tree from all over the world. The mountain is blessed with a micro-climate of heavy moisture from the ocean and a granite base that collects the heat.

The day after our trip to Sintra, we traveled by bus and train about 200 miles north to the country’s second largest city, Porto, where our boat was docked in the Douro River near the famous Dom Luis I bridge designed by Gustave Eiffel a few years before the famous tower in Paris. The bridge has two decks and we walked across both. The upper deck is about 200 feet above the river and shares tracks for the metro trains.

Looking down on the red-roofed city with its colorful facades sloping up from the river as it widens toward the ocean paints an unforgettable picture. The lower deck also has a spectacular view and is shared by pedestrians and vehicular traffic. Porto has a train station that could double as an art museum with its fantastic scenes on blue-tiled blocks covering the walls and ceilings. The city has a total of six bridges crossing the Douro, each adding character to the cityscape. They connect Porto with the wineries and cool stone warehouses in the City of Vila Nova de Gais on the west bank. The name Portugal was formed from Porto-Gaia. We rode a cable car into that area from the west end of the Dom Luis upper deck.

After a day in Porto, our boat began its 130-mile eastward journey up the Douro. Five dams and locks make it possible to navigate that far. The second lock is the highest in Europe at 115 feet. It took only 15 minutes for the lock to fill with water, lifting the boat to the level of the river beyond. The dimensions of the riverboats on the Douro were
dictated by the size of the locks. Sometimes when we approached a lock, I felt that we would need lubricant to get through it. But we always had a few inches to spare on each side.

The Douro comes out of the mountains in northeastern Spain and flows westward for 360 miles. Then, it serves as the border between the two countries for the next 70 miles. Finally, the only navigable stretch of the river (the part we were on) cuts across Portugal to the ocean. At the Spanish border, we boarded a bus to Salamanca for a tour of that city and then to Madrid for the flight back the next day.

One of the nice things about a riverboat is that with only about 90 passengers it was easy to get acquainted with most of them. We were already friends with several couples, as we had traveled with their Chancel Choir (from St. Luke’s United Methodist Church in Indianapolis) in Spain three years ago. We accompanied my sister, also a member of the choir, on both trips.

Hon. David E. Cain
Franklin County Court of Common Pleas
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A trained opera singer and a founder of the Columbus chapter of HaZamir: The International Jewish Teen Choir, Susan Lubow has been able to fulfill her dream of taking young singers to perform at The Met, Lincoln Center and Carnegie Hall.

Susan attended Oberlin College and Conservatory as a voice major, with a second degree in law and society. While at Oberlin, Susan sang in operas and musicals and, as a senior, also taught other college students seeking voice lessons in the conservatory. During a winter break, she sang and soloed with the Nashville Symphony.

When it came time to decide whether to pursue an operatic or a legal career, her father and his lawyer friends’ exhortations prevailed, and she attended Harvard Law School.

During law school, Susan performed in several Harvard theatrical productions, including “Sweeney Todd” as the beggar woman Lucy Barker. Some of Susan’s fellow actors have become quite famous. She recalls, in particular, when undergraduate Rashida Jones, who was in H.M.S. Pinafore with Susan, asked Susan why, with her talent, she was in law school!

Upon her graduation in May of 1995, Susan took the Ohio bar exam in July, then a week later sang the National Anthem at a Cincinnati Reds game and three weeks after that returned to Nashville to record a CD of jazz songs with a band and get married. That fall, she began working at BakerHostetler, practicing in the area of employee benefits. Susan has been with that firm since then, except for an interim time with Porter Wright from 2006 to 2014.

Between college and law school, while working at the Ohio Statehouse, Susan met her future husband, Barry Lubow, in a sculpture class at the Ohio Armory. Barry is general counsel at the Columbus engineering firm DLZ Corporation. They have three children: their oldest daughter, Becca, is a junior at the University of Michigan. Their daughter Jenna, whom they
adopted from China, and son Eli are high school seniors in Pickerington. Susan, who has multiple artistic talents, created and painted beautiful illustrations for her children’s B’nai Mitzvah ceremony invitations.

Susan sings in her synagogue’s choir and annually chants a Torah portion during Yom Kippur services. Her largest time commitment is with HaZamir. In addition to arranging and sometimes leading Sunday afternoon choir rehearsals, she recruits the singers and handles the logistics for their annual concert performances in New York City.

Susan is a former President of the Columbus Light Opera Board and is currently serving on the ProMusica Chamber Orchestra Board.

Despite the time demands of her profession, Susan is always looking for new ways to continue her singing and to expand her artistic talents into new outlets, which, she says, could include painting, pottery and guitar lessons.
Jury Verdicts

Civil Jury Trials
Franklin County Common Pleas Court

BY MONICA L. WALLER

Verdict. $850,000.00. Automobile Accident.
On Christmas Eve in 2012, Plaintiff Orenthal Strother was driving east on Sullivant Street when he entered the intersection of Sullivant Street and Souder Street and struck a vehicle driven by Defendant Hannah Compton. Ms. Compton was employed by Franklin County Job & Family Services and was in the course and scope of her job responsibilities when the accident occurred. Mr. Strother claimed that Ms. Compton failed to stop at a stop sign and pulled into Mr. Strother’s path when he had the right-of-way. Ms. Compton asserted that she stopped at the stop sign before entering the intersection. Mr. Strother claimed injuries to his neck and shoulder. He was diagnosed with a herniation between the fourth and fifth vertebrae in his cervical spine, and tears of the rotator cuff and labrum in his left shoulder. He underwent multiple surgeries and received a series of nerve blocks to treat ongoing pain. He ultimately had a spinal cord stimulator implanted. In addition to his physical injuries, Mr. Strother claimed to have suffered from anxiety, depression and post-traumatic stress disorder as a result of the accident. Mr. Strother sued Ms. Compton and Franklin County Job & Family Services. At trial, Mr. Strother’s medical experts testified that his injuries were caused by the accident and that Mr. Strother was still suffering and would continue to suffer from chronic pain, anxiety and depression for the rest of his life. He was permanently disabled and no longer able to work. The defense had Mr. Strother examined by both an orthopedic surgeon and a psychologist. Both concluded that Mr. Strother’s condition was not the result of the automobile accident and was not permanent. The defense also presented the testimony of a vocational rehabilitation expert who testified that Mr. Strother could work in certain capacities and earn as much as he did before the accident. Mr. Strother claimed $350,000.00 in past medical expenses, $467,587.00 for future pain management, $49,769.00 in future mental health treatment, and $850,000.00 for future lost earnings. The jury awarded Mr. Strother $273,717.00 in past medical expenses, $467,587.00 for future pain management, $49,769.00 in future mental health treatment, and $850,000.00 for future lost earnings. The award was later reduced by statutory offsets to a net of $508,923.00.

Verdict: $100,000.00. Automobile Accident.
Plaintiff Kristine Ream, a 33-year-old paralegal, was driving northbound on Hartford Street in Worthington on Aug. 28, 2014 when her vehicle was struck by a vehicle driven by Defendant Jeffrey Cygan, Jr. The collision occurred at the intersection of Hartford Street and state Route 161. Ms. Ream claimed that Mr. Cygan failed to stop at a red traffic signal. Ms. Ream claimed injuries to her neck, back and shoulder. She

Last Settlement Demand: $900,000.00. Last Settlement Offer: $35,000.00.

was diagnosed with a cervical disc herniation, and ultimately required surgery to replace two cervical discs. Mr. Cygan died from unrelated causes prior to trial. His estate did not dispute that he was negligent and caused the accident, but disputed the nature and extent of Ms. Ream's injuries. The defense medical expert concluded that Ms. Ream did not sustain a cervical disc herniation in the accident and did not need the cervical disc replacement surgery. It was his opinion that Ms. Ream suffered a minor muscle strain that should have resolved within a few weeks. The parties stipulated that the amount accepted as payment by Ms. Ream's medical providers for the treatment that she related to the accident was $78,667.23. The parties did not present evidence of the amount billed by the providers.

Verdict: $19,508.96. Automobile Accident.

Plaintiff Travis Guseman and Dorothy Wolford were both headed westbound on I-270 on May 11, 2015 when Ms. Wolford attempted to use a turnaround. She made a left turn into Mr. Guseman's lane and collided with Mr. Guseman's vehicle. The impact was substantial and Ms. Wolford suffered fatal injuries. Mr. Guseman claimed injuries to his neck, back, hip and hand. Mr. Guseman had a pre-existing neck condition for which he had undergone surgery at the fourth and fifth vertebrae. He claimed to have sustained an aggravation of that injury as a result of the accident. He underwent radiofrequency ablation therapy and used a TENS unit to alleviate his neck pain. He also claimed to have developed carpal tunnel syndrome as a result of the accident and depression from witnessing the death of Ms. Wolford. Mr. Guseman's wife also asserted a claim for loss of consortium. The defense conceded that Ms. Wolford's actions proximately caused the accident, but disputed damages. The defense argued that Mr. Guseman sustained no new neck injury in the accident and was already scheduled to have radiofrequency ablation before the accident. At the close of Plaintiff's case, the defense also moved for a directed verdict on Plaintiff's claim for depression from witnessing Ms. Wolford's death, arguing that Ohio law does not recognize the claim because Ms. Wolford was the occupant of a separate vehicle. The Court granted the directed verdict motion and gave a curative instruction to the jury to disregard that evidence. The jury awarded Mr. Guseman $15,000 for past medical expenses, which included only the emergency room visit and one follow up visit. The jury also awarded $3,000 for past pain and suffering, and $1,008.96 in past lost wages. They awarded Mr. Guseman's wife $500 for loss of consortium. Medical Specials: $28,294.89 ($16,828.17 after write-offs). Lost Wages: $1,008.96. Last Settlement Demand: $46,500.00. Last Settlement Offer: $28,000.00. Plaintiff's Expert: Dwight Mosley, M.D. (pain management specialist).

Defense Verdict. Medical Malpractice.
On Dec. 21, 2013, Douglas Stevenson presented at Community Urgent Care in Springfield, Ohio complaining of a one- to two-day history of cough, headache, nasal congestion, fever and sore throat. He was seen by Dr. Jawadi, who diagnosed him with sinusitis and an upper respiratory infection and prescribed an antibiotic. His symptoms worsened. On Christmas Eve, Mr. Stevenson went to the Soin Medical Center ER in Beavercreek, Ohio. There he was seen by Defendant Denise Grove, M.D., who ordered a flu screen, head CT, chest X-rays and a viral flu culture. The flu screen results came back and results of the viral screen still were positive for H1N1 influenza. Mr. Stevenson to advise him of the results and tell him to return if his symptoms worsened. Dr. Williams instructed hospital staff to contact Dr. Williams and their employer. The estate claimed that both physicians breached the standard of care by failing to prescribe Tamiflu and that Mr. Stevenson would have survived if he had received Tamiflu by Dec. 25. The jury found that neither defendant breached the standard of care. Medical Specials: $583,293.51. Lost Wages: Not claimed. Last Settlement Demand: $3,000,000.00. Last Settlement Offer: $10,000.00. Plaintiff’s Expert: Jeffrey Linder, M.D. (internal medicine specialist). Defendant’s Experts: Bruce Janiak, M.D. (emergency medicine specialist) and Keith Armitage, M.D. (infectious disease specialist).


On Sept. 16, 2011, William Young was working at Cardinal Health operating a stand-up forklift manufactured by the Raymond Corporation. Mr. Young struck a pillar, causing his left leg to come out of the operator compartment and become pinned between the forklift and the pillar. Mr. Young’s femoral artery and vein were transected and Mr. Young died from his injuries. The estate claimed that safety features should have been included which would have prevented Mr. Young’s body from coming out of the operator compartment and, therefore, prevented his injuries. The Raymond Corporation denied that the design was defective and asserted that it offered the forklift with an optional safety guard door but Cardinal Health declined that option. The jury concluded that the Plaintiff did not prove that the forklift was defectively designed. Medical Specials: $17,773.80 ($2,372.41 after write-offs); Lost Future Wages: $528,978.64. Plaintiff’s Experts: David Boyd, Ph.D. (economist); Thomas A. Berry, P.E. (engineer); Ruston M. Hunt, Ph.D. (safety expert); and Jason Kerrigan, Ph.D. (biomechanics expert). Defendant’s Experts: Edward Caulfield (engineer) and Catherine Corrigan (biomechanics expert). Length of Trial: 10 days. Counsel for Plaintiff: Robert P. Miller and Michael J. Warshauer (Atlanta). Counsel for Defendant: Marc J. Kessler, Francis H. LoCoco (Milwaukee) and Anthony J. Anzelmo (Milwaukee). Judge David Young. Kimberly Young, Individually and as Administrator of the Estate of Willie C. Young, deceased v. The Raymond Corporation, Case No. 13CV009888 (2017).