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July/August 2020



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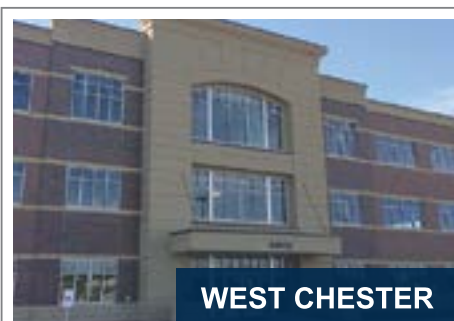
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CBA Report



Cincinnati Bar
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The CBA Report seeks to include the most promising articles that reflect the diverse thoughts, backgrounds, experiences, and expertise levels of our membership. To attain this, we know the authors of these articles will be diverse in ethnicity, race and practice areas. Their places on the political and religious spectrum will be similarly varied. Our goal is to reflect and include the voices of all members; therefore, we highly encourage members regardless of race, ethnicity, gender, age, sexual orientations and physical disabilities to submit articles to the CBA Report. Please contact Leyla Shokoohe at lshokoohe@cincybar.org.

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*Cover photography by Monica Weber and Leyla Shokoohe

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No Easy Tasks Before Us, But United We Stand

Addressing Systemic Racism and Lingering Pandemic Effects
On Our Legal System and Community



By Christopher A. Wagner

Colleagues.

In the days before I wrote this article, George Floyd, an unarmed American citizen, was taken into police custody and died by asphyxiation on a Minneapolis public street. His horrifying death was observed by countless onlookers and most disturbingly, by three police officers who failed to act. The painful images of Floyd's death have reverberated throughout our nation, throughout the world, in our community, and now into our psyche. It is clear that in a nation ruled by law, the legal system must function, regardless of the circumstances.

George Floyd's death by the hands of police was the proverbial straw that broke the camel's back. Peaceful protests ensued, as did instances of riots, across the entire country. Individuals, organizations, businesses and professional groups, including the Cincinnati Bar Association, reacted as can be imagined: with horror, with grief, and with intent to change.

Dismantling systemic racism is not an easy task in our society. When I worked with the CBA's executive committee to issue our statement, which can be found on our website at [cincybar.org](https://www.cincybar.org)/protests, I knew it was most important to work collectively and stand in support of the Black Lawyers Association of Cincinnati.

Days before this magazine went to print, I joined over 30 local legal professionals and administrators, led by the efforts of Wednesday Shipp, president of BLAC and CBA board member, on a call to examine what we can help our profession do.

Our collective goals are many. We are starting with a legal professional forum to educate ourselves and move the discus-

sion forward in our community. Knowledge is power. We want to examine and more deeply understand the complexity of police relations. We are gathering a variety of resources for our members — from reading lists to online presentations from speakers and judges across the state, including a presentation on criminal sentencing by Ohio Supreme Court Justice Michael Donnelly.

The CBA will keep you updated as the details fall into place.

In this issue, you'll find an article addressing systemic racism, written by two of our Diversity & Inclusion Communications Committee members. An article detailing the legal history of protest as a form of protected free speech is included as well. The cover of this issue itself speaks to our grief, anger but also to our hope that our community will enact meaningful reform.

Criminal justice reform cannot happen in the absence of jury trials. Juries are a core foundation to protect our civil liberties and have been since the issuance of the Magna Carta. As the health restrictions slowly lift, and our economy begins to re-open, questions arise regarding the new form of legal practice in our community. From confer-

ence call pretrials to Zoom depositions and virtual mediation (as another article in this issue covers) the practice of law continues. We are confronted with this question: how can the courts and the profession conduct a jury trial in the era of social distancing? As legal professionals, the responsibility for reopening will fall to us.

In May, I served on a task force to make recommendations to Chief Justice Maureen O'Connor on how the court should conduct jury trials in this state. The task force had only ten days to produce this report. Chaired by my counterpart from the Cleveland Metro-

politan Bar, Ian Freidman, we gathered lawyers from all practices from all parts of the state. Also serving in the endeavor were court reporters, bailiffs, sheriffs, and clerks of courts. Other local representatives included Hamilton County Public Defender Ray Faller and attorneys Samantha Silverstein, Martin Pinales, and John Holschuh, Jr.

The input we received from so many people was highly constructive. Key takeaways: persons should be masked, stand six feet or further apart, and, most discouraging, the effectiveness of these preventive measures declines after a half an hour.

With these limitations, it is going to be quite difficult to resume jury trials as we did in the past. Are our courtrooms large enough? Can everyone hear a witness or an attorney wearing a mask? How is the court reporter going to understand with voices muffled?

This is very complicated. What gives me comfort is the thought that if emergency room doctors and nurses can operate lifesaving procedures wearing masks, gloves and more, then surely lawyers can figure something out as well.

There will be no more witnesses and jurors waiting around idly. The strategic



use of a jury marching into the courtroom to spur a settlement is a thing of the past. The crowded morning rush of a busy metro courthouse also must change. In fact, jury trials may be much slower in the future.

The justice system's fair and just operation is our collective responsibility. Though this a profoundly difficult exercise, it is worth it, because enshrined in the Ohio Constitution is the right of everyone to a fair and public jury trial. "All courts shall be open, and every person, for an injury done ... shall have remedy by due course of law, and shall have justice administered without denial or delay" and "The right of trial by jury shall be inviolate¹."



We will all need to do our part to get the apex of our profession — the jury trial² — back in operation in our state. Our civil rights depend on it and our community is counting on us.

Wagner is the chief of compliance with the Hamilton County Clerk of Courts and the 2020-2021 CBA president.

- ¹ Ohio Constitution of 1851, Article I, Sections 16 & 5.
- ² You can read the whole report at <https://www.cincybar.org/Portals/43/PDFs/Updates/Ohio%20Jury%20Trial%20Advisory%20Group%20-%20Report%20%20Recommendations.pdf?ver=2020-05-12-153401-393>

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PRACTIONING PROTEST



By Leyla Shokohe

Photo by Alyssa Tippey

A Right Defined by Its Defense

The right of the people to peaceable assembly is inalienable, enshrined in the First Amendment of the Constitution of the United States. Cincinnatians have long exercised this right; protests preceded the Courthouse riots of 1884, and protests followed the death of Timothy Thomas, an unarmed black teenager, in April 2001.

The premise of protest itself is relatively simple: display signs of disagreement for attention.

“The majority of [a protest] is both physical and verbal,” said Bill Gallagher, an attorney with Arenstein & Gallagher and former public defender. “Signs of disagreement with policies and laws and behavior of our government, primarily. It can range from anything; acts of civil disobedience...[to] blocking traffic or causing a disturbance purposely to draw attention to a situation or cause that happens all the time.”

In May and June of 2020, protests took place across the nation, including in Cincinnati, spurred by the death of another black man, George Floyd, who died of asphyxiation by police officers in Minneapolis on May 25. On May 29, protests began in Cincinnati. Mayor John Cranley enacted a citywide curfew May 30, beginning at 10 p.m. According to the Cincinnati Enquirer, by June 9, more than 300 people were charged with violating the curfew — largely protesters who remained in the streets past curfew.

The United States Supreme Court has made it abundantly clear that protests are constitutionally protected forms of speech. In the 1969 case of *Shuttlesworth v. City of Birmingham*, the Court held that “picketing and parading may constitute methods of expression entitled to First Amendment protection, and use of the streets for that purpose, though subject to regulation, may not be wholly denied.”

And the court made clear that any such regulation had to be very narrowly tailored, noting that “[a] law subjecting the right of free expression in publicly owned places to the prior restraint of a license, without narrow, objective, and definite standards is

unconstitutional, and a person faced with such a law may ignore it and exercise his First Amendment rights.”

The point at which protests cross into alleged illegal behavior is contentious.

“That is very difficult to determine,” said Gallagher. “I think that is almost always going to be somewhat situational, because there are so many different factors in it. The response of the police and the authorities to those that are protesting, the counter-response from those that are protesting, and then we always have the potential people who have nothing to do with the protest interjecting themselves into that interaction between authority and protesters.”

The imposition of curfews further muddies the legal water of protest. When protesters stay out past curfew, they are often charged with violating curfew, not necessarily with any wrongdoing protest-wise. But is that constitutional? The enacting of curfews serves to curtail protest behavior, despite its inclusion in the Constitution and protection in Supreme Court decisions.

“We’ve used, successfully, a necessity defense,” said Gallagher of representing protestors. “Which is, ‘The harm I’ve caused with my action is far outweighed by the harm I was preventing. So I’ve prevented a greater harm from occurring.’ There’s an area of the law that recognizes necessity as a possible defense. That is sometimes what a lot of our clients attempt to or hope to raise.”

The right to counsel is another guaranteed by the Constitution; the recitation of the Miranda warning is a crime show staple. Oftentimes in protest cases, individuals utilize public defenders and/or attorneys who offer their services pro bono, as Gallagher does. But in Cincinnati, as recently as 1975, this was not an option.

“There wasn’t a public defender’s office in Cincinnati until the late 1970s,” said John Norwine, former executive director of the CBA. “There was the Legal Aid Society, and they had a few defense attorneys, but in 1968, Cincinnati had its worst riots ever. This was after Martin Luther King, Jr. was assassinated. The bar asso-

ciation started getting volunteer attorneys to represent the rioters who were arrested.”

On July 26, 1976, the Hamilton County Commissioners established the Public Defender Commission. The codification of defense for the public in the bicentennial year of the country’s establishment is an uncanny coincidence. The necessity of county and city entities to cooperate within the bounds of the Constitution and law is paramount.

Often waiting on the other side of protest is the word ‘riot.’ Damage to public and private property typifies riotous behavior in the context of protest. Cincinnati’s own relationship with riots specifically is charged. Those that followed in the wake of the death of Timothy Thomas in Over-the-Rhine in 2001 were called by varying media outlets the worst since the 1992 LA Riots over the police beating of Rodney King.

“I was one of the lawyers who was representing people who had been mistreated or who had their rights violated by police, civil rights cases,” said Fanon Rucker, an attorney with the Cochran Firm, former judge and current Hamilton County prosecutor candidate. “As the riots went on here, I was part of the conversation with city leaders about how to stop it.”

After the 2001 riots, the Cincinnati Community Action Now Commission was formed, a multi-faceted board of community leaders and interested parties and partners to address different areas of inequality in the system. (The Collaborative Agreement was made in 2002, to provide federal and later city oversight of Cincinnati police.) Again, curfews were wielded as a method of protest suppression.

“I led the filing of a lawsuit against the city for the unequal way they were enforcing the curfew,” said Rucker. There were very public stories about people in Hyde Park and Mount Adams walking around in the middle of the curfew, news cameras were showing them...and police were aware, shown driving past. And downtown, they were locking people up for curfew viola-

tions...to be so blatant as to simply allow a citywide curfew to only be enforced in certain neighborhoods had the appearance of injustice.”

The lawsuit was settled in favor of the defendants. For the hundreds of protest defendants arrested and confined following the most recent demonstrations against the death of George Floyd, that settlement could be a harbinger for their own potential outcomes.

Gallagher is part of the Cincinnati Mass Defense Coalition, comprising several area attorneys. On June 4, the Coalition sent a letter to Cincinnati City Council, referencing the mass arrests and confinement of protesters. Part of the letter reads as follows:

We are asking the City of Cincinnati to stand with its citizens and demand that the Police Department end all attempts to silence voices, especially through violence and mass arrests under Ohio Rev. Code 2917.13 (“Misconduct at emergency”) or any related statute. Hundreds of Cincinnati residents have been arrested without a basis for alleging any criminal act. We ask that the City of Cincinnati direct its law enforcement officers to dismiss all pending charges under R. C. 2917.13 and to stop using this statute to chill constitutionally-protected speech and assembly.

On June 10, city council members voted 7-2 to motion to urge the city solicitor to grant leniency or drop charges against those charged with violating curfew during the protests. As of press time, over 500 cases remain active. None have been dismissed in response to the motion.

For historical documents, including the 2002 Collaborative Agreement and MOA, and to view the full letter from the Cincinnati Mass Defense Coalition, please visit cincybar.org. Thanks to Jack Greiner for his assistance in the preparation of this article.

Shokohe is the director of communications at the CBA.



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he brings to OSBA.*



Congratulations!

Recognizing Systemic Racism Starts with Self-Reflection



By Jason Stuckey and Lori Anthony

I was wearing a navy suit with a red tie.

I walked into the courtroom to prepare for my hearing. In my right hand was a brown leather briefcase, filled with files needed to conduct my hearing. I moved past the seating area of the courtroom, which was relatively full for the morning docket, to the front of the courtroom where many lawyers were scattered at the counsel tables and in the jury box, waiting for their cases to be called. I received many confused looks, which was not uncommon, but this time someone decided to vocalize their thoughts. Next I heard:

“The front of the courtroom is reserved for lawyers only.”

There was no question, only an assumption that because I was black, I was not a lawyer, and therefore not a member of their exclusive club. I matriculated through law school and passed the bar, just like the lawyer who made hurtful comment. This is just one of many experiences where I felt left out and unwelcome in the legal profession because of my skin color. These experiences are not unique to me. Many of my black colleagues have shared stories of similar experiences. These experiences are so common that many black attorneys expect to hear racially insensitive comments on a regular basis.

The murders of George Floyd and Breonna Taylor have caused a racial awakening in America. Although all the issues we are now confronting have been present since the beginning of the American republic, people of all races are looking to stand up, speak out, and eradicate systemic racism in our culture.

You may be wondering what you can do to combat the same injustices that take place in the legal profession? We can all start with a little self-reflection.

Watch commercial television for one hour, especially during prime time. Take note of how many black actors you see in commercials and shows. When you do see a black actor, note the role and context of the character, specifically — how many black characters are in roles of authority or control? For example, in pharmaceutical commercials where the benefits of a particular medication are explained by someone “playing a doctor on tv,” how often is that “doctor” black?

How many car commercials do you see? Chances are a lot. In those commercials, how often is the salesperson or expert who

explains the awards or runs the comparisons with other models black? Investment firms, insurance companies, and *law firms* — how many blacks advertise these products and services? On commercials for high-end vacations, note the race of the characters being served in tropical luxury and that of those doing the serving. In airline commercials, count how many black pilots you see.

Now back to your TV show. Same analysis: If race is not relevant to the storyline, how many black actors portray characters in positions of authority, as compared to characters in need, trouble, or simply in the background?

At the conclusion of your one hour of reflection, consider the overall ratio of black characters in positions of authority or for which a professional degree is required in relation to the overall number of individuals you saw on TV in one hour. Now consider your professional world - how many black attorneys do you regularly interact with? How many judges?

Take a close look at your organization’s leadership. Who is in the C-Suite or on the executive committee? Do the faces reflect a diverse and welcoming organization? Does your organization have metrics and provide *real* incentives for the advancement of diversity initiatives?

If not, be an advocate for change. Force your organization to take a hard look in the mirror. Change in this profession is only going to occur by taking drastic steps, not by making performative public statements quoting black leaders.

Recognizing racial issues affecting the legal profession is just the beginning. I was wearing the suit and tie, but still was not welcomed in the “lawyers only” section. There is much more work to be done.

Jason Stuckey is an associate with Bricker & Eckler LLP. His practice focuses on labor and employment matters for educational institutions. Lori Anthony is Section Chief of Civil Rights in the Ohio Attorney General’s Office. She oversees AGO civil rights litigation statewide in employment, housing, public accommodations, credit, and higher education, and serves on the CBA’s UPL Committee. Stuckey and Anthony serve on the CBA’s Diversity & Inclusion Committee. The Committee serves the Cincinnati Bar Association by setting goals, implementing programs and procedures, providing oversight and responsibility, and measuring progress on diversity and inclusion initiatives. Visit cincybar.org/groups/DIV to read the CBA’s Diversity Statement and for more information.

COVID-19 Employee Temperature Screening:

Key Workplace Privacy Considerations for Employers



By David J. Oberly

As a result of the Equal Employment Opportunity Commission's ("EEOC") determination that COVID-19 satisfies the Americans With Disabilities Act's ("ADA") "direct threat" standard, employers are now permitted to conduct employee temperature checks as a COVID-19 risk mitigation measure. Likewise, the Centers for Disease Control and Prevention ("CDC") has also recommended many employers implement daily temperature screening measures. A handful of states and municipalities have also either recommended or ordered employers to conduct regular temperature checks.

While the exact timing is not known, at some point soon current stay-at-home orders will be rolled back and employees will return to their traditional physical work environments. Employers will need to balance minimizing the risk of community spread and ensuring the health of their workers with avoiding impediments that could negatively impact productivity. One of the most significant measures employers will have at their disposal is daily temperature checks.

This form of health screening raises a range of significant compliance challenges, particularly in workplace privacy. To date, no guidance has been issued to provide employers with direction regarding *how* temperature screenings must be conducted to stay compliant with the law.

Key Considerations & Best Practices

To mitigate the substantial privacy risks stemming from temperature screenings, employers should address the following key considerations and implement these best practices:

Adhere to Strict Privacy & Security Standards: Screening programs should incorporate detailed guidance designed to protect the privacy and confidentiality of employees during and after the screening process. Communications and interactions between the screener and the employee must be shielded from being viewed or heard by others when screenings are conducted.

The screening process must also ensure the identities of employees who exhibit fevers during their screenings remain confidential.

- **Documentation:** Develop a standardized documentation process that efficiently and accurately captures information and protects employee privacy and confidentiality. To facilitate this process in an organized and managed fashion, employers may consider the use of a COVID-19 Written Employee Temperature Screening Log.
- **Additional COVID-19 Risk Factor Inquiries:** Determine whether the temperature screening program will also encompass additional inquiries regarding other COVID-19 risk factors, which can serve as an additional health screening measure to further mitigate the risk of community spread. In doing so, consider the implementation of a standardized COVID-19 Employee Written Health Screening Questionnaire.
- **Employees Who Fail Temperature Screenings:** Develop a protocol for handling employees who fail their temperature screenings that safeguards their privacy and confidentiality. Advise employees of the process that has been implemented for failed temperature screenings, through a COVID-19 Employee Temperature Screening Privacy Notice given to employees who fail temperature checks.
- **Health Certification Requirements for Returning to Work:** Employers may choose to require employees who fail temperature checks to submit a self-certification stating they are no longer ill before being allowed to return to work, through the use of a COVID-19 Employee Self-Certification to Return to Work form. The EEOC has clarified that employers are also permitted under the ADA to require employees to provide a doctor's note stating they are fit for duty before returning to the workplace.

- **Privacy Policies & Notices:** Ensure privacy policies adequately address the type(s) and purpose(s) of employee information collected. If they do not, employers may choose to utilize a separate supplemental privacy policy which directly addresses employee temperature screenings. Provide written notice to employees of the COVID-19 temperature screening program *prior* to the time any screenings are conducted. These issues can be addressed through the use of a tailored COVID-19 Employee Temperature Screening Program Privacy Policy & Notice (as well as a CCPA-Compliant COVID-19 Employee Temperature Screening Program Notice at Collection for employers that fall under the scope of the California Consumer Privacy Act ("CCPA")).

- **Data Security:** Ensure reasonable data security measures are in place to safeguard employee health data from unauthorized access, disclosure, or acquisition. Periodically address current security measures and modify as necessary to address and neutralize any new or evolving threats.

- **Disclosures:** In the event an employee is determined to have a confirmed or suspected case of COVID-19, employers should inform co-workers of their potential exposure to the virus. Employers must ensure they comply with the ADA's confidentiality requirements in making any disclosures of this nature, which requires employers to refrain from directly disclosing the sick employee's identity or any *other* identifying information.

- **Recordkeeping:** Ensure compliance with ADA recordkeeping requirements when conducting temperature screenings. This requires all employee health records to be treated as confidential medical records and the maintenance of written health information in medical files independent of employees' main personnel files.

- **Monitor & Comply With Changes in Workplace Privacy Guidance:** Regularly monitor for new or updated/revised orders or guidance issued by governmental and public health authorities, as well as industry regulators.
- **Consult With Experienced Counsel:** Finally, before implementing any new employee temperature screening programs or modifying existing programs, it is critical that employers first contact experienced employment and cybersecurity/privacy counsel to ensure: (1) Any action taken complies with current workplace privacy law in the locations where your company conducts business; and (2) Its screening program has robust privacy and security measures in place to stay compliant with the law, protect employee privacy, and ensure the security of sensitive employee health information.

As employees return to work, temperature screenings will remain a critical aspect of minimizing the risk of community spread of COVID-19 in the workplace. By adhering to proper privacy practices and utilizing proper documentation, employers can conduct effective and compliant employee temperature screenings that minimize their scope of potential liability exposure.

David J. Oberly is an attorney in the Cincinnati office of Blank Rome LLP and is a member of the firm's Cybersecurity & Data Privacy and Privacy Class Action Defense groups. He is the chair of the CBA's new Cybersecurity & Data Privacy practice group, as well as chair of the appointed Membership Services & Development Committee. Oberly's practice encompasses both counseling and advising sophisticated clients on a wide range of cybersecurity, data privacy, and biometric privacy matters, as well as representing clients in the defense of privacy and biometric privacy class action litigation. He can be reached at doberly@blankrome.com.



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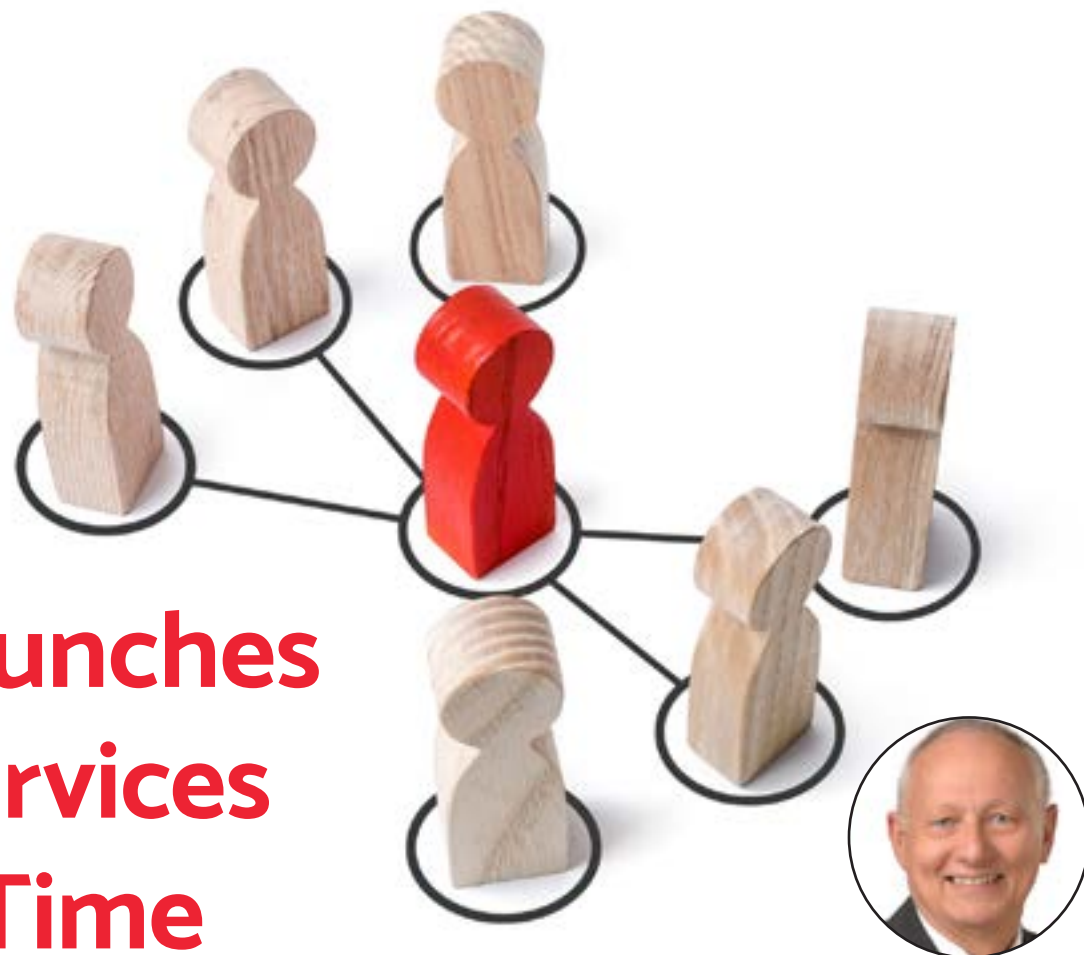
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CBA Launches ADR Services Just in Time



By Stephen Richey

In 2017, a group of Cincinnati litigators, arbitrators and mediators began discussing the growing demand for mediation and arbitration services in our community. As litigators, it frustrated us to select an arbitrator or mediator from a list of names that we did not recognize, provided by a national organization. Frequently, we receive an email from a colleague with a list of arbitrators or mediators, asking for any information regarding the candidates, and often, we do not recognize a single name.

As a solution, we developed the Cincinnati Bar Alternative Dispute Resolution Services (CBADR) as a local arbitration and mediation solution, in conjunction with the Cincinnati Bar Association. Over the past year, we have collected a roster of numerous qualified arbitrators and mediators. (You can access the list at CincyBar.org/ADR.) We have also created a robust set of procedural rules for the governance of mediations and arbitrations, available at the same location. Our goal was to make them thorough, as well as practical and efficient.

COVID-19 Snarls Courts

When we set the launch of Cincinnati Bar Association Dispute Resolution Services (CBADR) for May 1, we had no idea just how timely that date would be. The goal of CBAADR is to provide an alternative to traditionally slow-moving courts and a local alternative to the expense and red tape of national dispute resolution services. We had no way of knowing how the COVID-19 pandemic would disrupt the court system, as it has virtually all aspects of our lives. Courts were forced to close and postpone their dockets. While courts are now resourcefully searching for ways to return to normal, the backlog of litigation — particularly civil litigation — will be with us for the foreseeable future. We find ourselves in a

time when the need for CBAADR's expedited proceedings and well-known local neutrals could not be greater. To exacerbate matters further, COVID-19 continues to generate a tidal wave of employment, supply chain and personal injury claims, to recognize just a few.

COVID-19 has forced us all to embrace new ways to practice law, from video meetings and depositions to electronic notarization. Likewise, our CBAADR neutrals are conducting virtual arbitrations and mediations. While it takes a little getting used to, the technology is rapidly becoming more robust and user-friendly, providing the ability to share documents and view attorneys' and witnesses' faces, which is key to the credibility analysis.

Local Arbitrators and Mediators

CBADR provides three distinct advantages. First and foremost, it is local. All the arbitrators and mediators are members of the Cincinnati Bar Association. On the CBAADR roster are familiar names like Steve Calardo, Mike Hawkins, Carl Stich, Joe Mordino, Kelly Holden, Randy Freking, John Pinney and Bob Steinberg, to name just a few. (Some of them you may prefer, others you may not!) In any case, CBAADR offers an abundance of strong, well-vetted choices, which certainly beats selecting an unknown neutral.

Cost Effective

Second, CBAADR is cost effective. Our arbitrators and mediators charge a broad range of rates, from under \$200 per hour to several multiples. Furthermore, litigants will avoid the substantial service fees that the big national ADR providers command.

For arbitrations, the filing fee is only \$500. There is no separate filing fee for a mediation. CBAADR also offers Expedited Arbitrations, where the total arbitrator's fees are capped at \$10,000.

Efficient and Expedious

Third, CBAADR is expeditious. Parties can choose from three distinct arbitration experiences: Traditional Arbitration, Expedited Arbitration and Employment Arbitration, each with its own rules and procedures. Expedited Arbitrations are expected to be completed, with decision in 90 days or less, with arbitrator's fees capped at \$10,000. In the alternative, Expedited Arbitrations may also be submitted entirely on paper, without a hearing. Employment cases have their own expedited schedule and are expected to be argued and decided within six months. Mediations are expedited as well; they can be conducted within two weeks of submitting the application.

Choosing CBAADR When the Agreement Calls for a Different Provider

Many contracts contain dispute resolution clauses, typically calling for progressive steps, and generally terminating in mediation, followed by arbitration. Often these contracts call for mediation and arbitration conducted under the auspices of one of the large ADR providers. Even faced with an ADR provision that designates another provider, the parties can choose to amend their agreement to utilize CBAADR instead by using the CBAADR Submission Agreement for the dispute.

Finally, as you draft ADR provisions in future contracts, we hope you will consider designating CBAADR as a potential provider for dispute resolution services. You will find a variety of model ADR provisions on the CBAADR website. For complete information on participating mediators and arbitrators, fees and further details or questions, visit cincybar.org/adr.

Richey is a full-time mediator and arbitrator at Thompson Hine, the vice president of the CBA Board of Trustees and the director of the Potter Stewart Inn of Court.

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Virtual Mediations

Seeing eye-to-eye, at a social distance



By Michael W. Hawkins

In recent months, there have been training sessions, articles, and significant dialogue about virtual mediations. Indeed, many mediations are now conducted virtually and as a mediator myself, I have been involved in this process.

Working remotely and addressing issues of social and physical distancing while keeping cases moving has brought about the utilization of virtual mediation. It allows parties to resolve their disputes while addressing health concerns brought on by COVID-19. It has also demonstrated to parties that disputes can be resolved without physical presence and travel, while retaining a measure of the traditional face-to-face approach.

Will virtual mediations replace the face-to-face mediation session or settlement conference? I do not believe so. However, there is no question that more mediations will be done virtually as parties, counsel and mediators gain more experience in using both the tools available and those yet to be developed. The following are recommended best practices for virtual mediation:

- Select a mediator who is familiar with conducting virtual mediations and is prepared to assist the parties in making it successful.
- Have a planning conference call with the mediator to discuss the logistics and format to be used. Determine if it will be by phone, a secure videoconferencing platform or multiple conference lines.
- Make sure all parties involved have the necessary email addresses, cell phone numbers for texting and instructions for conference or platform instructions.
- Logistically work out what documents need to be exchanged between the parties and mediator to provide for good flow and exchange during the mediation.
- Make sure you can electronically exchange documents or exhibits that may be pertinent and assist in resolving the dispute.

- Consider a mutual exchange of mediation statements. I request this of parties, and it is more productive in a virtual setting. Also, exchange key pertinent documents.
- Have a joint session for introductions and discussion of logistics and the process.
- Exchange proposed settlement agreement language prior to the mediation session. This avoids confusion regarding the essential boilerplate terms of an agreement.
- Consider including decision-makers in discussions with the mediator where they may not attend a face-to-face mediation. This can include executives or insurance claim representatives.
- Be flexible, patient and adaptive to this new process with your client and the mediator. Consider creative and out-of-the-box ideas that will enhance the likelihood of success in the virtual mediation.

Having conducted virtual mediations and arbitrations, I can attest that they can and do work. The key to success with a virtual mediation is quality preparation and anticipating any unique aspects to this method of mediation. We will continue to have fact-to-face mediations, but with the success some are having with virtual mediation, this trend will continue.

Hawkins is a mediator at the ADR Center at Dinsmore. A neutral for the American Arbitration Association (AAA) since 1992, Hawkins has been successful in mediating and arbitrating employment-related claims, commercial disputes, litigation involving discrimination laws, contract and non-compete issues, wrongful discharge claims, construction, domestic relations and class-actions. He recently served as Chair of the Cincinnati Bar ADR Committee and is a mediator with CBADR. He is Harvard and Pepperdine-trained on mediation and negotiation. Hawkins is a past President of the Cincinnati Bar Association.

The Loss of Touch



By Bea V. Larsen

As we keep our distance from one another, what I miss most is touch, a handshake, contact with a steady arm allowing me to safely match the stride of a companion, and the pleasure of being pulled into the gentle embrace of a friend, feeling the texture of their clothing, their scent, the pressure of another body held against mine. Memories arise of longing for the lost loving touch of my husband, skin to skin. Over time the yearning receded, eased by the physical touch of others who reached out, at first to offer comfort and then simply as a sign of our deepening friendships.

Scientists inform that touch, not just sensual touch, even the casual welcomed touch of others, releases the hormone oxytocin, countering cortisol, the stress hormone. So too does social interaction. Research repeatedly proves that neural responses to threat cues are minimized when social connection and support is provided. When staying home with our door closed to others, that too is in short supply.

I know well I'm not alone in bemoaning this loss. The Pew Research Center reported earlier this year that twenty-seven percent of adults in the U.S. aged sixty and older live alone. The number rises to fifty-one percent of those seventy-five and older. In 2017, Pew reported the most startling number of all: forty-two percent of all adults in the country are living without a spouse or partner. I had assumed that the trend for cohabitation meant many more were partnered up. But apparently the increase in cohabitation has not been large enough to offset the decline in marriage. So many of those who abide by the distancing rules of the pandemic must be as starved as I am for touch.

When awake at 3:00am with troubling thoughts, I sometimes reach into my stash of letters my husband and I exchanged many years ago. Seeing his handwriting and reading his words can almost feel like a touch.

A conversation with a friend, by phone or email, that goes beyond the mundane, the sharing of an intimate story of pleasure, or fear...is almost like a touch.

The check-in call from a friend whose email has gone too long without a response...is almost like a touch.

Alone at my dining table eating a home cooked meal prepared and delivered by a friend, visualizing their preparation, the chopping, the stirring, the baking...is almost like a touch.

The compassion I feel for others whose suffering is so great and the reward of being able to make a gift to those dedicated to

feeding the hungry...is almost like a touch.

A card received in the mail or a call from a friend expressing concern about my well-being...is almost like a touch.

Exchanging a smile and a wave from a passing jogger when I'm out for a walk... is almost like a touch.

A collective effort by neighbors to express concern about another neighbor's mishap...is almost like a touch.

The responsive call from the neighbor expressing gratitude while holding back tears...is almost like a touch.

The renewed connection with a niece absent from my life for many years...is almost like a touch.

Exchanging texts with a distant child, miles away and many decades removed from childhood...is almost like a touch.

Sitting on a garden bench, basking in the warmth of the spring-time sun on my upturned face...is almost like a touch.

Even the vibrant red blossoms of my neighbor's azaleas lit by the late afternoon sun... is almost like a touch.

Giving voice to my gratitude to those who let me know how ready they are to respond to my concerns in these scary times... is almost like a touch.

No skin touches skin, but these connections that show me what community and friendship mean course right through me with pleasure.

And then there is my actual tactile reward, my pet. How grateful I am for Eleanor, my orange tabby cat, who is often by my side. She arches her neck responding to a gentle pull on her ears. I find her curled against the curve of my sleeping body as I come awake in the morning. Still half asleep, I reach to stroke her silky fur, my fingers absorbing the warmth of her breathing body, her subtle movements urging my strokes to continue. But before long she nudges me with her forehead, repeatedly, until I swing my legs to the floor. Should I rest a moment before rising she nips at my ankles, not to be denied her breakfast. Later in the day she often sits at my side when my laptop has usurped her preferred space.

And knowing I am in this together with all of my loner comrades and reaching out in thought and written words...is almost like a touch.

Larsen has retired as senior mediator at the Center for Resolution of Disputes. She received the 2007 John P. Kiely Professionalism Award, the 2014 Themis Award and the 2020 Mediator of the Year Award from the CBA, and also served as CBA president in 1986-87. Her commentary can be viewed at www.bealarsen.com.

Join the Potter Stewart Inn of Court



meets monthly from September to May (except December) to network and hold CLE programs on matters of ethics, litigation skills and professionalism. 2020 meetings will be held virtually. Inn of Court programs are designed to help lawyers become more effective advocates and counselors, with a keener ethical awareness.

Rise to higher levels of excellence, professionalism, and ethical awareness by joining 100 local attorneys and judges as a member of the Potter Stewart Inn of Court.

Inns of Court are modeled after the traditional English version of legal apprenticeship but modified to fit the particular needs of the American legal system. The Potter Stewart Inn

The Potter Stewart Inn includes five categories of members:

- **Judiciary**
- **Masters of the Bench:** attorneys with 15 or more years in practice
- **Barristers:** attorneys with 4-14 years in practice
- **Associates:** attorneys with 1-3 years in practice
- **Pupils:** third-year law students

Membership is further subdivided into "pupilage groups," each of which comprises several members from each membership category and is responsible for conducting one program for the Inn each year. Pupilage groups convene outside of the monthly Inn meetings to prepare their presentations.

For more information about joining the Potter Stewart Inn of Court, including information about dues and membership applications, email cle@cincybar.org.



Receive **45% OFF** all self-study seminars by using the discount code **SUMMER** at checkout thru July 31, 2020. All hours purchased must be used by 12/31/2020.

The CBA is now offering 45% OFF all self-study CLE seminars through July 31, 2020. Choose from a variety of programs designed for Ohio attorneys provided in partnership with Ohio Metro Bar Associations.

The Supreme Court of Ohio has waived the self-study caps for judges, magistrates, and attorneys to complete the CLE requirements for the 2019-2020 compliance period ending Dec. 31, 2020. Judges, magistrates and attorneys with the last names beginning with M-Z may complete all CLE requirements through approved self-study courses, including live interactive webinars, for the compliance period ending Dec. 31, 2020.

Brown Bag

Learn During Lunch

Join us **REMOTELY** for convenient, one-hour CLEs on your lunch break!



Pros and Cons of Mandatory Employment Arbitration

Featuring
Stephen L. Richey, Esq.,
Thompson Hine LLP

July 15 | 12 – 1 p.m.
1.0 Hour CLE & NLT Credit

Richey will explore the pros and cons of mandatory employment arbitration, including:

- The Supreme Court decisions that form the basis for the enforcement of arbitration agreements
- The benefits of mandatory arbitration for employers
- Research that reveals how mandatory arbitrations tend to disadvantage employees
- Strategies that employee representatives can use to level the arbitration playing field

Registration Fee:
\$35 CBA Member
\$50 Non-Member
\$15 New Lawyer
\$15 Young Lawyer

ZOOMing Towards the Future: Continuing Pandemic Practices

Featuring
Austin LiPuma, Esq.,
Freking Myers & Reul LLC

August 05 | 12 – 1 p.m.
1.0 Hour CLE & NLT Credit

LiPuma will discuss how remote practice changed during the pandemic and how it will shape the future of the practice of law. Topics will include:

- Prevalence or lack thereof re: Videocon usage leading up to Pandemic
- Surging of remote practicing (mostly couched in the perspective of civil work)
- Anecdotal encounters/experiences using in depositions, hearings, pretrials, and/or mediations
- Privacy considerations
- Moving forward w/ the balance of preserving the importance of some in-person encounters while recognizing the slow but necessary progression of the field

Registration Fee:
\$35 CBA Member
\$50 Non-Member
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Ohio's Laws Regarding Service Dogs and Comfort Animals

Featuring:
Lori A. Anthony, Esq.,
Ohio Attorney General's Office

August 19 | 12 – 1 p.m.
1.0 Hour CLE & NLT Credit

Anthony will review and explain Ohio's laws with respect to service dogs and comfort animals.

Registration Fee:
\$35 CBA Member
\$50 Non-CBA Member
\$15 New Lawyer
\$15 Young Lawyer

Tips to Market and Manage Your Law Practice During and After the Pandemic

Presented by the Cincinnati Bar Association
Featuring Michael Brown, Senior Client Development Consultant, FindLaw

July 21 | 12 – 1 p.m.
1.0 Hour CLE Credit

The Coronavirus has forever changed the way people interact and engage with businesses, including law firms, and how they make their hiring decisions. The pandemic's shelter in place rules have also shaped the way people will do business with you going forward. Attendees will learn what are critical pieces of information used by consumers to make their legal buying decisions while evaluating your online presence. We will also discuss ways to communicate and do business with your clients going forward.

\$35 CBA Member
\$50 Non-Member



REGISTER ONLINE AT CINCYBAR.ORG

Legal Considerations for Provider Relief Funds & COVID-19 Testing and Contact Tracing

July 23 | 12 – 1:15 p.m.
1.25 Hour CLE Credit



Presented by the Cincinnati Bar Association

Featuring:

- Sarah diFrancesca, Esq., *Dinsmore & Shohl LLP*
- Scot Ganow, Esq., *Taft Stettinius & Hollister LLP*
- David Maria, Esq., *Squire Patton Boggs*
- Rhonda Schechter, Esq., *Frost Brown Todd LLC*

\$18.75 CBA Health Care Law Practice Group Member
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This session will provide an overview of the Provider Relief Funds and COVID-19 Testing and Contact Tracing. Topics will include:

- An overview of the Provider Relief Funds and the terms and conditions associated with accepting such funds distributed by the federal government pursuant to the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act
- Predicted enforcement efforts related to receiving such funds by the federal government to ensure the funds are used in compliance with law
- The legal implications associated with testing and contact tracing individuals infected with COVID-19



Racial Justice – What Can I Do?

Presented by the BLAC-CBA Round Table

July 16 | 9:30 – 11:30 a.m.
1.5 Hours Attorney Professional Conduct Credit



Let's come together as a legal community to learn about and discuss ways we can combat racism and social injustice as individuals and attorneys.

Agenda

- Introduction by Round Table Co-Convenors: Hon. Timothy Black and Hon. Jeffery Hopkins
- What Can I Do as an Individual?
- What Can I Do as a Lawyer – How Lawyers Use Their Voice
- Guided discussion

Attendees will also receive a resource list of action items.
\$40 Attorneys
Free Non-attorneys



Volunteer Lawyers Project CLE Series

Presented by the Volunteer Lawyers Project and the Cincinnati Bar Association



Collateral Issues in Divorce: Intersection with Bankruptcy, Immigration & Tax

Tuesday, August 4 | 1:30 – 3 pm
1.5 Hours CLE Credit

Maggie Fibbe & Elizabeth Tull Laureano, Senior Attorneys, Legal Aid Society of Southwest Ohio, LLC

How is shared debt divided in divorce? How is immigration status affected? How are tax obligations impacted? Presenters will discuss the legal ripple effect created by a change in marital status. Learn how to strategically guide clients through a divorce that carries debt, immigration, and tax consequences.

Evictions Part I: Filings & Procedure, plus 2020 Changes to Ohio Rules of Civil Procedure

Tuesday, August 11 | 1:30 – 3 pm
1.5 Hours CLE Credit

Matthew Fitzsimmons & Zach Frye, Staff Attorneys, Legal Aid Society of Greater Cincinnati

Evictions can move quickly. Learn what steps a landlord must follow before initiating an eviction, how local Courts process evictions, and what options are available to tenants approaching their first court appearance. Once a tenant and their attorney decide on a strategy, they may encounter rent bond, discovery, and other pre-trial issues. This presentation is designed to walk tenant advocates through the flow and timeline of evictions. Additionally, presenters will outline the 2020 changes to the Ohio Rules of Civil Procedure.

Wage & Hour Claims

Tuesday, August 18 | 1:30 – 3 pm
1.5 Hours CLE Credit

Ryan K. Hymore, Esq., Mangano Law Offices
Stephen Clegg, CPM, Chief, Bureau of Wage and Hour Administration, Ohio Dept. of Commerce

The federal Fair Labor Standards Act and Ohio state law prescribe standards for minimum wage and overtime pay, affecting most private and public employees. Presenters will describe common wage and overtime violations. Learn about different causes of action that can be brought against an employer and hear about the State of Ohio's role in enforcing worker protections.

Evictions Part II: Defenses, Counterclaims & Common Fact Patterns

Tuesday, August 25 | 1:30 – 3 pm
1.5 Hours CLE Credit

Matthew Fitzsimmons & Alpha Taylor, Staff Attorneys, Legal Aid Society of Greater Cincinnati

Learn about common scenarios that lead to eviction, what evidence is needed to prove a tenant's defense, and when a landlord's action warrants a counterclaim. Presenters will train attorneys to conduct comprehensive client interviews and spot relevant issues.

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Member

\$52.50 per program
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Please note: This is a live interactive Zoom webinar that can be viewed by participants on their own computers remotely. Participants will receive 1.5 hour of Live CLE credit for attending each session of this webinar. After registering for the course, you will receive an email with instructions on how to access the live webinar. Cancellations received by noon the business day prior to the seminar will be refunded in full minus a \$25 processing fee.

Advanced Estate Planning Institute



Session 1: August 17

12 – 1 p.m.

Income and Transfer Tax Ramifications of Terminating, Decanting and Reforming Irrevocable Trusts

Edwin P Morrow III, Esq.,
U.S. Bank Private Wealth Management

1 p.m. – 2 p.m.

How Do I Gift to Minors: Let Me Count the Ways

Jill M. Scherff, Esq.,
Dinsmore & Shohl LLP

Session 2: August 24

12 – 1 p.m.

The SECURE Act: Fiduciary Trust Income Tax Planning Strategies

Edwin P Morrow III, Esq.,
U.S. Bank Private Wealth Management

1 p.m. – 2 p.m.

Case Law Update

Mark A. Noel,
Graydon Head & Ritchey LLP

Session 3: August 31

12 – 1 p.m.

Panel Discussion: Perspectives in Postmortem Planning – Is a Grantor's Intent Set in Stone?

Kenneth P. Coyne, Esq.,
Graf Coyne Co. LPA

Julia B. Meister, Esq.,
Taft Stettinius & Hollister LLP

Elizabeth E.W. Weinewuth, Esq.,
Vorys Sater Seymour and Pease LLP

1 p.m. – 2 p.m.

The SECURE Act: The New Distribution Rules

Debbe A. Levin, Esq.,
The Law Office of Debbe A. Levin, LLC

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\$70 per program
\$200 for series
(must register by August 17)

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The CBA Board of Trustees has approved the following for membership:

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Support Your Cincinnati Bar Association with a

SUSTAINING MEMBERSHIP

Thank you for belonging to your Cincinnati Bar Association, especially during these unprecedented times. As the practice of law evolves, the CBA continues to assist attorneys navigating the ever-changing landscape.

As you likely know, the CBA works to promote our mission to promote professional excellence, foster justice, serve our members and educate the public through services attorneys and the public, as well as access to justice initiatives, including:

Attorneys:

Over 50 distinct practice/interest groups and committees that are essential to the practice of law, hundreds of CLE programs throughout the year, and the many programs our committees plan, including the Cincinnati Academy of Leadership for Lawyers (CALL) and the Lawyer to Lawyer program.

Public:

The Lawyer Referral Service, notary services, guidance on judicial elections and a new series of virtual public information sessions that allow the public to ask general questions about topics related to COVID-19.

Access to Justice:

The Modest Means program, assisting with the clinic at Hamilton County Courts and simply being a resource for members of the public when they have questions about the legal process.

The CBA offices may remain closed for now, but we continue to bring our members together through virtual calls, meetings and webinars. Now more than ever, we are looking forward to the day that we can bring our members back together at in-person events.

Please consider becoming a CBA Sustaining Member so the CBA can continue to be part of our legal community for many years to come. Sustaining Member levels are:

Cornerstone, \$1,000+

- Cornerstone All Access Pass! Attend all CBA social, membership and CLE (including live interactive webinars) events through April 30, 2021 at no cost.
- Access to all benefactor and sustaining level benefits.

Benefactor, \$250

- Complimentary admission to the Annual Meeting, Bench-Bar Social and one Brown Bag CLE.
- Access to all supporting level benefits.

Sustaining, \$100

- Be recognized in the CBA Report, in the CBA Legal Directory and on our website.
- Receive special recognition at our Annual Meeting.

*Sustaining memberships are not deductible as charitable contributions for federal income tax purposes.

However, it may be deductible as a business expense.

**The Cornerstone All Access Pass excludes multi-day CLEs, PLI Groupcasts, Self-study CLE and the AOAIOP.

Support the CBA today by visiting www.cincybar.org.

Thank you to all those members who have purchased a sustaining membership for the 2020-2021 bar year so far.

As of June 10, 2020

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Now Accepting Nominations for the John L. Muething Lifetime Achievement in Law Award

The Cincinnati Bar Foundation is currently accepting nominations for the John L. Muething Lifetime Achievement in Law Award. This award will be presented at the Senior Counselor's Luncheon in October 2020.

The John L. Muething Lifetime Achievement in Law Award is presented for 50 years of exemplary service as a lawyer. Members 75 and older are also eligible. Through his or her distinguished career, the honoree reflects the highest principles and traditions of the legal profession.

We encourage you to nominate a colleague who is deserving of this prestigious award.

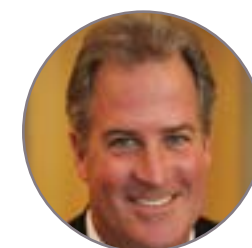
The nomination form is available at www.cincybar.org. Please submit nominations NO LATER THAN July 24, 2020.



The CBA is proud to recognize the winners of the following awards: W. Breck Weigel, Michael A. Hirschfeld, William M. Cussen, R. Joseph Parker, and Charles G. Bretz, Jr. These awards are typically given at our Annual Meeting, which was held virtually on May 7, 2020. Stay tuned for an invitation to a virtual award ceremony.

TRUSTEES AWARD

Since its inception in 1989, the Trustees Award is presented to a CBA attorney member or members for outstanding service to the Cincinnati Bar Association, the legal profession and the general community. The recipient must display a high level of commitment, dedication or courage. The award recipients are selected by the CBA Awards Committee.



community and has been a role model in both his practice and his volunteer activities.

Breck graduated from the University of Cincinnati College of Law in 1985 and worked in private practice in the area of commercial litigation for twenty-five years prior to joining General Electric in 2010 as Global Chief Litigation Counsel. He has held several positions within GE and currently serves as Deputy General Counsel and Chief Compliance Officer.

Breck's colleague at GE, Bridget McGraw, writes in her nomination letter, "I was so impressed with his energy in taking on one of the biggest roles in the Legal Operation, growing it over 50% and implementing new processes to address growing threats around cybersecurity. He manages the biggest risks to Aviation pragmatically, using sound legal judgment, and has the trust of the entire business. Breck creates credibility for the Aviation Legal Operation and the legal profession as whole every day."

More importantly, Breck cares deeply about his team and their development. He invests in mentoring, both in and out of GE. Several of his colleagues shared this sentiment and offered letters of support for his nomination.

Service to the community has always been an integral part of Breck's career. Breck is an active member of the CBA, serving on the Board of Trustees and as its President the same year that he joined GE. Breck was also a member of both the Admissions and Grievance Committees for many years, serving as an officer of the

Admissions Committee for four years. Breck has always been an advocate of bar association membership and has actively recruited many colleagues to join the CBA and serve in leadership roles.

In 2012, after being in-house for several years, Breck was the driving force in establishing the Pro Bono Partnership of Ohio. Breck realized many in-house lawyers felt limited in their ability to provide pro bono services, given the nature of in-house practice. PBPO, under Breck's leadership, connects in-house attorneys with non-profits in the community, and provides free legal services. It's been a huge success, and Breck continues to serve as PBPO's Board President. PBPO connects many in-house lawyers, who otherwise are not as connected to the Cincinnati legal community and builds connections and opportunity.

Breck does all he does without compromising his commitment to his family. His wife, Mindy, is his best friend, and nothing gives him greater joy than being with her and his kids. Breck exemplifies the balance between being great at what you do and being great at what matters most.

Colleague Phil Smith says in his nomination letter, "Beyond Breck's organizational contributions, he counts dozens of attorneys like me to whom he has been a professional mentor. With good cheer and humor, Breck has shared insights and advice on developing careers, overcoming obstacles, making a difference, and practicing with the highest ethical ideals. I can think of no one more deserving of CBA's highest recognition than Breck Weigel."

JOHN P. KIELY PROFESSIONALISM AWARD

The John P. Kiely Professionalism Award recognizes a trial lawyer for possessing outstanding trial skills and demonstrating the highest degree of professionalism, civility and ethical standards in his or her daily practice. This annual award is presented by the Professionalism Committee of the CBA in honor of attorney John P. Kiely.



WILLIAM M. CUSSEN has been a trial attorney for over 50 years. Bill has substantial experience in the areas of personal injury, negligence, insurance law, consumer law and product liability. Bill's trial skills are nationally recognized. He is a member of the American Board of Trial Advocates, the Ohio Association of Civil Trial Attorneys and the Defense Research Institute.

Bill was admitted to the Ohio Bar in 1969 after graduating from Salmon P. Chase College of Law. He was later admitted to the Kentucky Bar in 2005. Bill is a member of several bar associations, including the Ohio, Kentucky and Cincinnati Bar Associations. Bill has practiced with the law firm of Lindhorst & Dreidame before moving to the firm of McCaslin, Imbus and McCaslin in 2005.

He has served as the president of the Cincinnati chapter of the American Board of Trial Advocates, president of the Salmon P. Chase College of Law Alumni Association and as a member of the board of advisors at Salmon P. Chase College of Law. He is the current president of the Salmon P. Chase College of Law Foundation and has been honored with the Distinguished Contributions to the Profession Award by the Ohio Association of Trial Attorneys.

Bill's colleague and friend, Dale Stalf, says he has enjoyed practicing with Bill for many years. Other colleagues echoed this sentiment, stating that Bill is always great to work with. Even in contentious litigation, Bill is the epitome of professionalism. Attorney Candi Taggart says Bill is the consummate gentleman attorney. Bill exemplifies the legacy of John P. Kiely and demonstrates the highest degree of professionalism, civility and ethical standards in his daily practice.

Bill has been married to his wife, Connie, for 54 years. They have three sons Paul and his wife Peg of Chicago, Michael and his wife Jenny of Cincinnati, and Greg and his wife Candice of Portland Oregon. Bill also has two grandchildren Alex and Megan.



R. JOSEPH PARKER graduated from Boston College Law School in 1969. Clerking for Judge Paul C. Weick in the Sixth Circuit was his first position after law school and brought him to Cincinnati. Joe joined the Taft law firm in 1970 and was assigned, by request, to the litigation practice group. Ironically, a litigation

practice was not his long-term goal, but he thought it would offer great experience. Some of his early mentors were Robert Keeler, Cliff Craig, and Bob Stachler. Joe tried his first case in his first year and, in the second year, he tried his first jury trial before Judge Robert Gorman in municipal court. He found he enjoyed trying cases and remained in the litigation practice group with the Taft law firm for his entire career. Joe states there was a point in time where he may have tried a case in front of nearly every common pleas judge in Hamilton County. The case Joe considers a career case was *In re Cincinnati Radiation* before Judge Beckwith. The issues were complex and unique and included significant constitutional law issues.

Joe recalls many of these cases and the lawyers involved, saying, "Despite the significance of those cases and how hard-fought they were, I am very proud of the fact that I had excellent relationships with my opposing counsel and consider many as friends." Joe has always treated opposing counsel with civility and professionalism.

Joe is a Fellow of the American College of Trial Lawyers and listed in "Best Lawyers in America" in four litigation categories, including Professional Responsibility. Joe has been involved in the American Inns of Court for many years and served as one of the original Masters of the Bench. Joe has been active on several committees of the Cincinnati Bar Association and has spoken at several CLE programs on the topic of ethics and professionalism. He has chaired the Ethics and Conflicts Committee at Taft and has provided guidance to several law firms and outside attorneys on matters of professionalism, ethics, and legal malpractice.

Attorney Joe Shea says Joe Parker has always been great to work with, his performance is exemplary, and he is very professional. Joe exemplifies the legacy of John P. Kiely and demonstrates the highest degree of professionalism, civility and ethical standards in his daily practice.

2019 VOLUNTEER LAWYER OF THE YEAR



CHARLES G. BRETZ, JR. is a solo practitioner who specializes in Estate Administration, Estate Planning, and Probate law. He accepted his first VLP referral 27 years ago; since then, he has taken 74 cases.

Charles frequently goes the extra mile for clients. Twice recently, he accepted referrals necessitating travel to client homes, something VLP typically does not ask of its volunteers. He drafted advance planning documents for one housebound client with debilitating arthritis and worked quickly to draft a will for another client in home hospice care.

He also represents low-income families in court to preserve what is often their only asset: their homes. In one complex case with many obstacles—including a request for relief from administration, a Probate Court hearing to admit a lost will, a foreclosure case in Common Pleas Court, a mortgage assumption, and subsequent negotiation of a loan modification—Charles ensured that a woman with disabilities kept her parents' house and car.

Charles is generous with his time, accepting cases and acting as a sounding board when the VLP team has questions about a nuanced referral. Thank you, Charles for your dedication to serving clients, and for your sustained commitment to the VLP's mission.

JOHN W. WARRINGTON COMMUNITY SERVICE AWARD



MICHAEL A. HIRSCHFELD is a partner in the law firm of Graydon Head & Ritchey LLP. Mike served as a member of the firm's Executive Committee for over 23 years, including as its Chair. He concentrates his practice on business matters, with an emphasis on family and closely-held businesses, corporate govern-

ance, succession planning, mergers and acquisitions and health care systems, and has been named in each edition since 1993 of *The Best Lawyers in America* for corporate law and mergers & acquisitions (including being named the 2010 "Cincinnati Corporate Lawyer of the Year" and the 2013 "Cincinnati Mergers & Acquisitions Lawyer of the Year"), as well as in each edition since 2004 of *Chambers USA: America's Leading Lawyers for Business*. He has also been regularly named a "Leading Lawyer" by *Cincy Business* magazine and an "Ohio Super Lawyer" by *Cincinnati and Law and Politics* magazines. Mike is a Phi Beta Kappa graduate of Kenyon College, and received his M.B.A. and J.D. degrees from the University of Virginia.

Mike has been extensively involved in various civic and charitable organizations over his 43 years of practicing law. He is currently serving as a Vice-Chair of the board of Cincinnati Children's Hospital Medical Center, as Chairman and President of The Children's Hospital, as member of the Board of the Cincinnati Children's Hospital Foundation, and as a trustee of the Thomas J. Emery Memorial. In the past, Mike has served as the chairman of the boards of CET (Cincinnati Educational Television), Maple Knoll Village, Big Brothers & Big Sisters of Greater Cincinnati, the Leadership Cincinnati Alumni Association, and the Hamilton County Community Mental Health Board.

In addition serving on and chairing those boards, Mike has served as a director or trustee on the boards of the Greater Cincinnati Chamber of Commerce, Hamilton County Hospital Commission, Cincinnati Nature Center, Mental Health Works, Greater Cincinnati Venture Association, LADD (Living Arrangements for the Developmentally Disabled), and Wesley Hall. He has also participated in the Beyond Civility workshop, the Goering Center for Family and Private Businesses at the University of Cincinnati and held leadership and volunteer positions in various United Way and ArtsWave campaigns. He is a life member of the Gideons and serves as a usher at the Anderson Hills United Methodist Church.

This year Mike received the Chartered Advisor in Philanthropy certification from The American College of Financial Services. He is a member and past President of both the Queen City Optimists Club and the Commonwealth Club. Mike and Linda his wife of 47 years, live in Anderson Township. They have three daughters and three grandchildren.



If you are a Cincinnati Bar Association member and you've moved, been promoted, hired an associate, taken on a partner, received a promotion or award, or have other news to share, we'd like to hear from you. Notices are printed at no cost, must be submitted in writing (preferably by email) and are subject to editing. We also request a current, high resolution, directory-style photo. Items are printed as space is available. News of CLE presentations and political announcements are not accepted. Generally, the CBA Report will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Submit items to communications@cincybar.org. Please submit address changes to info@cincybar.org.



Swim

Congratulations to **Colleen Swim** on her promotion to Senior Attorney at Legal Aid Society of Southwest Ohio LLC! Swim joined Legal Aid in 2018 and works in the Education and

Consumer Law Practice Groups. She has expertise in training and advocacy related to issues of childhood trauma and behavioral health. As part of her education law work, Swim serves as the project manager for Legal Aid's TeamChild program to promote school success for youth involved in the juvenile justice system. In her consumer law practice, she focuses on foreclosure prevention and loan modification for clients. Swim received her J.D. from Drexel University's Thomas R. Kline School of Law and earned her B.A. from the University of Maryland. Prior to joining Legal Aid, she was an assistant defender in the Child Advocacy Unit of the Defender Association of Philadelphia. Most recently, she practiced education law as a staff attorney at the Support Center for Child Advocates, also in Philadelphia.



Browning

Finney Law Firm is extremely pleased to announce that attorney **Susan Cress Browning**, a veteran consumer Bankruptcy attorney with over 12 years of experience, has recently joined our

firm. She brings a wealth of knowledge and experience in the challenging and ever-changing field of consumer **Bankruptcy law** to our firm. In light of the COVID-19 crisis, many consumers need a trusted, experienced and compassionate attorney to assist them in navigating their financial options, which have left many unsure as to what is available to them through our legal system. Browning's invaluable experience, combined with her strong compassion and commitment to her clients, has culminated in her successful Consumer Bankruptcy Practice. She is admitted to both Ohio and Kentucky Bars. She will be in our Mt. Adams office and will meet with clients at either of our office locations. Please contact Browning at (513-797-2857) for a free consultation.



Rolfsen

Robbins, Kelly, Patterson & Tucker (RKPT) is pleased to welcome **Rachael Rolfsen** as an associate to the firm. She was previously an associate with Cornet, Meyer, Rush & Stapleton in

Springdale. Rolfsen's practice focuses on estate planning and probate and trust administration. In her estate planning practice, she enjoys meeting new people every day, hearing their stories, and offering solutions to protect what they have earned and set up their family's next generation. She also enjoys the closeness her probate practice allows her to form with clients while helping them get through the death of a loved one. Rolfsen received a B.A. from Xavier University in 2015 and a J.D. from the University of Cincinnati College of Law in 2018. She is admitted to practice in Ohio and Kentucky.



Schild

Thompson Hine LLP is pleased to announce **Todd M. Schild** has been selected as Cincinnati office partner-in-charge effective May 1, 2020. A member of the firm's Corporate

Transactions & Securities practice group in Cincinnati, Schild focuses primarily on middle-market mergers and acquisitions in the U.S. and around the world. He also advises clients in connection with a wide range of other transactional and business matters, including joint ventures, capital raising activities, commercial agreements, entity organization and governance, and everyday business counseling. Schild is an active member in the Cincinnati community. He is a member of Class 43 of Leadership Cincinnati and currently serves on the boards of the European American Chamber of Commerce, Greater Cincinnati and Rockdale Temple and as an executive committee member of the Jewish Federation of Cincinnati. He received his J.D. from the University of Louisville, Brandeis School of Law.



Knappick

Attorney **Justin Knappick** has been named partner at DBL Law. Knappick joined the firm in 2013. His law practice is focused primarily in Commercial and Collections Litigation. He is licensed

to practice law in Ohio and Kentucky. Knappick obtained his law degree from the University of Cincinnati, College of Law in 2011, graduating *cum laude*. He obtained his bachelor's degree in Finance, *magna cum laude*, from the University of Dayton. While in law school, he was awarded the UC College of Law Henry Otterman Real Property Prize, (an honor given to the first-year student who attains the highest grade in Property,) served as an extern for the Honorable Thomas M. Rose, U.S. District Court Southern District of Ohio, and was a member of the Moot Court Honor Board. Knappick has been recognized by *Super Lawyers* as a Kentucky Rising Star-Civil Litigation, from 2016 to 2020. He is a member of the Junior Achievement of Greater Cincinnati Board of Directors and is also a member of the Kentucky Bar Association and Cincinnati Bar Association. Knappick and his family reside in Oakley.



Bilott

Attorney **Rob Bilott** was selected by the Kentucky Bar Association's (KBA) Board of Governors to receive the 2020 Distinguished Attorney Award. This award is presented to any

lawyer who has distinguished himself or herself through a contribution of outstanding service to the legal profession. For over 29 years, Bilott has handled environmental issues of regulatory compliance, permitting and corporate/real estate transactions, as well as all aspects of litigation arising from such issues. In 2017, he received the international Right Livelihood Award (also known as the "Alternative Nobel Prize") for his decades of work on PFAS "forever chemicals," and was the 2020 recipient of Taft's "Legacy Award." Bilott wrote "Exposure: Poisoned Water, Corporate Greed, and One Lawyer's Twenty-Year Battle against DuPont,"

chronicling his story, which inspired the feature film "Dark Waters" and documentary "The Devil We Know." Bilott has proudly represented Taft and his community as a board member of Less Cancer, a member of the Cincinnati Academy of Leadership for Lawyers (CALL) Class V and a former chair of the Cincinnati Bar Association's Environmental Law Committee. He received his undergraduate degree from New College and earned his J.D., *cum laude*, from the Ohio State University College of Law, where he served as managing editor of the Law Journal.



McDevitt



Applegate

BakerHostetler is pleased to announce that three new attorneys have joined their Cincinnati office: **Steve McDevitt**, **Elise Elam** and **Gabe Applegate**. McDevitt joined the firm as an associate in the Business Group. McDevitt focuses his practice on corporate and transactional matters. He advises large and mid-size companies on mergers and acquisitions, strategic alliances and complex commercial transactions, as well as corporate governance matters. He also works with startups and emerging companies from formation through raising capital, hiring first employees, negotiating contracts, compliance matters and exit. McDevitt received his B.A. from the University of Notre Dame and his J.D. from Georgetown University Law Center. Elam joined the firm as an associate in the Digital Assets and Data Management Group. Bridging the gap between legal, business and information technology, she provides clients with a thorough, comprehensive view of their complex cybersecurity and privacy matters. Notably, she aids clients in preparing for and responding to data breach incidents. She also advises on data privacy risks and regulations, including the California Consumer Privacy Act (CCPA). Elam received her B.A. from the University of Cincinnati, *cum laude*, her J.D. from the University of Cincinnati College of Law and her M.S. from Virginia Polytechnic Institute of Law and Psychiatry. Applegate joined the firm as a patent

attorney in the Intellectual Property Group and focuses his practice on patent preparation and prosecution, with a focus on patents related to electrical and mechanical technologies. Drawing from his educational background in electrical engineering and professional, hands-on engineering experience, he is able to

knowledgeably advise clients on industry best practices and provide his clients with a business-oriented perspective of their initiatives. Applegate received his B.S. from the University of Louisville, *magna cum laude*, and his J.D. from the University of Cincinnati College of Law.

Edwin W. Patterson III Receives 2020 Weir Award



Edwin W. Patterson III (Terry) was named the recipient of the Ohio State Bar Association's 2020 Eugene R. Weir Award for Ethics and Professionalism. The OSBA Board of Governors established the award to honor the memory of Eugene R. Weir, a former member of the Board of Governors. During his tenure with the OSBA, Weir served as chair and longtime member of the Legal Ethics and Professional Conduct Committee.

Terry has been practicing law for over 40 years, serving as general counsel of the Cincinnati Bar Association since 1982, and as counsel to the Certified Grievance Committee and Ethics Committee. Terry has been an invaluable resource to countless attorneys, providing ethics advice and guidance. His tireless dedication to his field and zeal for serving the needs of the legal community are just two of his sterling attributes. He continues to exemplify exceptional professional responsibility among Ohio lawyers.

Terry attended law school at the University of Toledo College of Law and was admitted to the practice of law in Michigan in 1978, and in Ohio in 1979. He practiced in Columbus, Ohio as the commission counsel for the Ohio Ethics Commission before joining the CBA in 1982, brought aboard by then-executive director Martha Perrin.

His primary responsibilities as counsel to the Grievance Committee include supervising the intake and evaluation of grievances against attorneys, case management for the committee and representation of the Association at administrative hearings before the Ohio Board of Professional Conduct. The volume of grievance complaints he has handled in the subsequent years is hard to quantify.

In 1998, Terry worked with the Ethics Committee to establish the Ethics Hotline. The Hotline enlists two attorneys each month to staff the line to assist the caller interpret their obligations under the Ohio Rules of Professional Conduct. He continues to take calls on a weekly basis, and is a trusted, confidential resource for many members of the CBA, as well as other bar and disciplinary counsel throughout Ohio. He also created the Flying Solo program and the Practice Assistance Round Table, targeted for solo practitioners.

Frequently, Terry is called upon to lecture about legal ethics, including at seminars sponsored by the Cincinnati Bar Association, the University of Cincinnati College of Law, the Ohio Board of Professional Conduct and the Hamilton County Trial Lawyers Association, among others. He served on the Ohio Supreme Court's Task Force on Rules of Professional Conduct from 2003-2006, the NOBC-APRL Joint Committee on Aging Lawyers from 2005-2007 and co-chaired the NOBC-APRL Joint Committee on Competency from 2007-2010.

From all of us at the Cincinnati Bar Association, we wish Terry the warmest congratulations!



William J. Keating, Sr.
1927 – 2020

The Partners and Family of Keating Muething & Klekamp PLL mourn the loss of one of the firm’s founding Partners, William J. Keating, Sr. (Bill).

Born in Cincinnati, Bill dedicated his life to serving others. After attending St. Xavier High School, where he was an All-American swimmer, he served in the

Navy in World War II. With the help of a swimming scholarship and the GI Bill, he earned a bachelor’s degree in business and a law degree from the University of Cincinnati. The Keating Aquatic Center at the University of Cincinnati is named in his honor.

In 1954, Bill helped form the law firm that still proudly bears his name. He furthered his legal career, serving as a judge in the Hamilton County courts from 1958-1967. Bill was elected to the

City Council where he served for two terms, from 1967-1970. In 1971, he was elected to the U.S. House of Representatives where he served the First Congressional District of Ohio until 1974.

Bill returned to Cincinnati in 1974, and served at different junctures as chairman, chief executive officer and president of The Cincinnati Enquirer. During his publishing career, Bill served as chairman of the Associated Press, CEO of the Detroit Newspaper Agency, president of the Newspaper Division of Gannett Co., Inc. and executive vice president and general counsel for Gannett. He retired from the Enquirer in 1992.

Bill served as chairman of the Cincinnati USA Regional Chamber and UC Board of Trustees, and he has helped lead many other organizations. In 2009, Bill was inducted into the Greater Cincinnati and Northern Kentucky Business Hall of Fame.

All of us in the KMK family mourn Bill’s passing and extend our deepest sympathies to his many friends and family members, especially his wife, Nancy Keating.

— KMK Law



John W. McNally Jr.
1942 – 2020

John was a policeman, prosecutor, criminal defense attorney, civil trial lawyer, bar association president, and magistrate for Butler County. But he was most proud of his loving family.

In 1962 he married Sharron and they had four children, John (Kathy) McNally, III, Kelli (Stephen) Brown, Timothy

(Connie) McNally, and Candace (Don) Duke, 14 grandchildren, two great grandchildren, and many nieces and nephews. John’s love of his family, and their mutual love and admiration for his guidance, parental advice, and support was described by both his children and grandchildren at his funeral.

John graduated from Elder High School. He joined the Cincinnati Police Division as an 18 year old Police Cadet and retired after 13 years as a Sergeant. During that period, he earned a college degree from the University of Cincinnati, and a J.D. degree from Chase Law School.

He began the practice of law as an assistant prosecuting attorney for Prosecutor Simon Leis. In his career, he practiced criminal law, civil trial law, and domestic relations law for 45 years at Jacobs, Kleinman, Seibel & McNally, LPA. He also served as a Magistrate for Butler County. John contributed to his profession as Chair of the Young Lawyer’s Section, Criminal Law Committee, and ultimately as President of the Cincinnati Bar Association from 2004 to 2005.

As one who practiced law with John for his entire legal career, his ability to solve difficult, high pressure problems calmly and compassionately was a quality that was appreciated by his clients, other lawyers, and most of all, by his family.

— Ken Seibel



Charles S. Lineback
1947 – 2020

Charles S. Lineback left this world on February 6, 2020. He was born in 1947. His was an interesting and full life. A year after graduating from Western Hills High School, he enlisted in the U. S. Army ,where he first earned his sergeant’s stripes and subsequently earned a commission as a lieutenant in

the field artillery. He served a tour in Vietnam where he was a forward artillery observer in operations near the then-Demilitarized Zone between North and South Vietnam. He arrived home from the war shortly before his first child, Maggie Lineback, was born. He resumed his education at the University of Dayton where

he received an accounting degree. The next few years of Charlie’s life were busy. He added two more children his family, Chris Lineback and Andrew Lineback. He worked as a driver for McLean Trucking Company and became a Million Miler while there.

He attended Chase Law School and earned his Juris Doctorate in 1978. Charlie practiced law in Blue Ash, Ohio for more than thirty years and he taught classes at the Raymond Walters Branch of the University of Cincinnati. Upon his retirement, he decided to move to California. He packed his silver convertible and never looked back. He spent the ten years before his death exploring the coast of California and teaching himself photography. He was a kind and thoughtful man. A few days after his death his three children each received a box of citrus fruits that he had ordered for them prior to his departure from this world. He lived his life without regrets and his children miss him. It was a good life.

— Thomas L. Cuni

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OFFICE SPACE AVAILABLE: In the Cincinnati Bar Center at 225 East Sixth Street. Includes reception staff, meeting space and work space. Ideal for a small law firm, business or non-profit. Please contact Maria Palermo at 513-699-1402 or mpalermo@cincybar.org for more information.

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**Ethical
Quandary?**

The CBA is proud to offer ethical guidance to Greater Cincinnati attorneys through our Ethics Committee’s hotline.



July
Joseph W. Borchelt 455-4014
John H. Phillips 985-2500

August
George D. Jonson 768-5220
Lynne Longtin 381-5050

The members of the CBA Ethics & Professional Responsibility Committee listed above are available to help you interpret your obligations under the Ohio Rules of Professional Conduct. Questions posed should be framed hypothetically and should relate to your own prospective conduct. The committee also accepts requests for written opinions.

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