

CBA Cincinnati Bar ASSOCIATION Report

November 2017



Juvenile Right to Counsel: Fighting for a Child's "Last Best Chance"

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CBA Report



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Revisiting Diversity



By John J. Williams

I think one of the hardest things about being president is writing these articles because I have never thought of myself as a good writer. As you all know already, these articles have been a group effort from my fellow John Williamses. I don't blog, tweet or use Facebook. I use the voice to text feature on my phone, and not very well, as my family often tells me they can't decipher my texts.

Many times when I need to be inspired for the articles, I go to the history room at the CBA office which is really Aris Yowell's office, the CBA's communications director. Inside the office, there

are volumes of books from the years 1900 to now. Each book is a good looking hard cover book that feels and reads like a World Book Encyclopedia or Encyclopedia Britannica depending

on what door to door salesman your parent bought them from in the 1970's or earlier. For those of you born after the '70s, your generations may have unfortunately missed out on what I think was some excellent non-electronic entertainment. Forgive me for reminiscing, but I have to come up with something to get to the requisite number of words for the article.

I was looking through volumes containing the years 1992-1994, and to my surprise, within those articles the subject of diversity in the profession in our legal community was referenced throughout. The Black Lawyers Association of Cincinnati (BLAC) and the

Cincinnati Bar Association's Roundtable was in its early stages and the two groups were working on issues that would help the legal community become more diverse. In particular, in 1992, Lawyer to Lawyer was started and it was a new BLAC-CBA program in which several black and white attorneys were partnered with a commitment to share certain social and professional experiences over the course of one year. The Lawyer to Lawyer partners had to agree to include their families and significant others in the process and also share professional experiences. It was the goal of the program that participants be committed to changing their

behavior in a manner that would enhance race relations. The CBA presidents for the years 1993 (Michael Hawkins) and 1994 (Hon. Jack Sherman) chaired the first group of part-

ners in the program. Hawkins and Sherman were not only the chairs, but law partners as well. Their partnership was profiled on the Today Show in 1995.

In 1994, I was interviewed for a CBA article and I reported that I was participating in the Lawyer to Lawyer program and at the time I was partnered with Kenny Peller. Peller was at least 20 years older than me at the time (so it seemed). He was a native Cincinnati and father of one teenager daughter and a son who was close to being a teenager. He was married to Sara and he was Jewish. Peller and I included our families in our partner-

I have been in too many meetings where people are not comfortable saying what is really on their minds regarding diversity. Please don't do that. Share your thoughts so we can all move forward together.

ship to the extent that the first time my wife and I had dinner out after having our son Max, Peller's daughter Kelly babysat at the Peller's home. Unfortunately, dinner did not last long because my son was not the easiest kid to babysit. Over the years I must confess she never offered to babysit again.

I experienced my first bar mitzvah when the Peller's son Artie became of age. On occasion, out of deference to his age, I would let Peller win when we would play one on one basketball. He also walked me through my first and last divorce case. We each developed a friendship with one another's spouse and would go to dinner with mutual friends. Peller and I both married law school classmates and it was pretty clear that we married up.

Despite our age, race and religious differences, our partnership made me realize that once you share experiences with others, you truly understand that in the end we are all concerned about the welfare of our families, the health of our practice and how we can contribute to society. Peller and I were not afraid to discuss real issues concerning race and we

acknowledged that issues existed. Sometimes an acknowledgement is all it takes to start a real conversation about how to address issues. Although I don't see Peller as much as I used to, we are still close and can rely upon each other for any reason. In April, he attended my swearing in as president of the CBA.

Some of the other subjects in the volumes of books I reviewed that addressed a more diverse legal community are still with us today. We still have the Roundtable, the BLAC Banquet and a legal community that lacks a lot of diversity. One of the articles that struck me as an affirmation of the struggle with diversity from that timeframe was an article announcing that Calvin Buford had been made partner at Frost & Jacobs (now Frost Brown Todd). I am fairly certain that white people made partner at Frost and other firms in the city at that time, but they did not get quarter page announcements. The appointment of Buford got press because he was one of the few black partners at a majority firm at that time. The article never mentioned that was the reason for the announcement of the achievement.

We all have to be comfortable saying what needs to be said and acknowledging racial issues to keep moving forward in fostering a diverse profession. I have been in too many meetings where people are not comfortable saying what is really on their minds regarding diversity. Please don't do that. Share your thoughts so we can all move forward together.

In book volumes 1992-1994, Hawkins did a really good job of trying to grapple with race and the profession by expressing his views at the time and his future hopes on the issue of diversity. The Diversity and Inclusion Committee of the CBA is in the process of revising the Lawyer to Lawyer program and lucky for us, Hawkins has agreed to continue on his quest for a more inclusive legal profession by agreeing to co-chair the program with the Hon. Karen Litkovitz.

Please consider participating in this program and stay tuned for more details.

Williams is the 2017-2018 president of the CBA.

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Juvenile Right to Counsel: Fighting for a Child's "Last Best Chance"



By Angela Chang and Silvia Arieira

“The brain will never again be as plastic as it is during adolescence. We cannot afford to squander this second opportunity to help young people be happier, healthier, and more successful. Adolescence is our last best chance to make a difference.”

– Dr. Laurence Steinberg, *Age of Opportunity* (2014).

Fifty years ago, the United States Supreme Court in *In re Gault*, 387 U.S. 1 (1967) recognized that children, too, must be afforded Due Process protections promised by the Constitution, including the right to counsel. The principle expounded in *In re Gault*, 387 U.S. 1 (1967) is ever significant today. Over the course of the past decade, the Supreme Court has recognized scientific research that supports the common sense knowledge that children are not miniature adults.¹ The court acknowledged in its holdings that, due to the unique developmental stage of adolescents, they are less capable of sound decision making, less culpable, and possess a greater capacity for change. Accordingly, the Ohio Supreme Court has also relied upon this accepted research in its own recent holdings with respect to Ohio law.² Given this jurisprudence, it is crucial that attorneys who have specialized training in representing children are present in juvenile courtrooms.

Right to Counsel for Children in Ohio

Ohio Revised Code § 2151.352 establishes a child's right to counsel in Ohio. Ohio Juvenile Rule 3 provides guidelines to ensure that Ohio children receive meaningful access to counsel and make informed decisions regarding legal representation. Rule 3, however, is limited in scope. Under Rule 3, Ohio courts are only required to advise a child of the dangers of self-representation when the child faces potential confinement, but not to any child facing legal consequences, such as paying restitution. Further, a child is only required to consult with an attorney prior to waiver if that child is charged with a felony, but not if facing a misde-

meanor charge. With these minimal requirements, many children go through juvenile court without the benefit of legal counsel.

The current Ohio Juvenile Rule stands today as a product of efforts to strengthen the right to counsel for children by the Children's Law Center Inc., the American Civil Liberties Union (ACLU) Nationwide and ACLU of Ohio, and the Office of the Ohio Public Defender (OPD) in 2006.³ Together, these organizations submitted a proposed amendment to the Supreme Court of Ohio, which went through almost six years of debate and modifications. Under the prior rule, only children facing mandatory or discretionary transfer to adult court were prevented from waiving counsel. Pursuant to the 2012 amendments, waiver was also prohibited when the child is charged as a serious youthful offender.⁴ The amendments also provided guidelines for the juvenile court to consider when ensuring that any waiver of counsel is knowing, intelligent, and voluntary. While the amended rules created greater protections for more children, the existing rule could be further strengthened to better ensure more children have the benefit of counsel.

The Rate of Waiver in Ohio

In 2016, the Children's Law Center, with data collected from the Supreme Court of Ohio and OPD, estimated the rate of waiver of counsel in Ohio juvenile courts.⁵ Due to the lack of a uniform data collection system across Ohio juvenile courts and the varied public defense system, it was not possible to calculate the exact number of children who waived counsel.

The available numbers tell enough of a story to know that,

far too often, Ohio children forego their right to counsel. In 2015, approximately 42 percent of youth facing delinquency or unruly complaints did so without an attorney. Further, in 20 counties throughout Ohio, 60 percent or more youths lacked legal representation. When compared to the data gathered in 2004, the 2012 amendments clearly made an impact,⁶ however there is still room for improvement. As national trends continue to lead to fairer outcomes for children in the juvenile justice system, it is timely to consider an amendment to Ohio Juvenile Rule 3 to require that all children in juvenile court be required to consult with an attorney prior to waiver, and be advised of the dangers of self-representation. These changes could better ensure that children receive meaningful access to counsel and are able to make fully informed decision regarding their legal representation, thereby embodying the principles set forth in *Gault*.

Juvenile Public Defense Delivery in Ohio

In Ohio, children are presumed indigent and only the child's income is considered when determining eligibility.⁷ Thus, the majority of children in Ohio are eligible to have court-appointed counsel.⁸ Counsel is provided to indigent children in Ohio through a county-based system, which includes county public defender offices, contracts with the Office of the Ohio Defender, nonprofit corporations, and private appointed counsel.

Given the specialized knowledge required to best represent children in delinquency court, the legislature has acknowledged that it is crucial for juvenile public defenders and court-appointed counsel to be adequately trained and experienced. To address this need, the Ohio Public Defender Commission adopted standards of practice to mirror national best practice standards.⁹ While training and institutional knowledge is more readily available in larger county public defender offices and nonprofit corporations, the availability of resources, support, and training for private appointed counsel is more limited in Ohio. This can result in a wide disparity of representation and outcomes for children in delinquency cases. Effective May

1, 2017, the Ohio Administrative Code was revised to ensure that attorneys appointed to represent children in juvenile cases had sufficient experience and up-to-date training specific to juvenile practice and procedure.¹⁰

Local Efforts to Enhance Juvenile Public Defense

The Hamilton County Public Defender houses its own juvenile division, which also manages the appointments of private counsel for conflict cases. The juvenile division also provides training opportunities for its attorneys and appointed counsel each year. In 2017, the juvenile division has provided two 6-hour CLE trainings featuring the Juvenile Training Immersion Program (JTIP) curriculum. Developed by the National Juvenile Defender Center and Models for Change, along with national experts, JTIP is a highly specialized, comprehensive, trial advocacy training program for juvenile defense attorneys.¹¹ The trainings provided local private counsel easily accessible continuing legal education to meet the Public Defender Commission requirements.

The Last Word

Since *Gault*, states across the country have worked to improve access to counsel and other juvenile defense related problems. Twenty-two states have voluntarily participated in a statewide assessment of juvenile indigent defense with support from national juvenile defense experts.¹² The assessments, along with other juvenile justice reform movements, have resulted in stronger due process protections for children, including better access to counsel. However, a survey of the country indicates that there is still room for more reform. In May 2017, National Juvenile Defender Center (NJDC) released *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel*.¹³ The key findings of this report were:

- Only 11 states provide every child accused of an offense with a lawyer, regardless of financial status.
- No state guarantees lawyers for every child during interrogation, and only one state requires it under limited circumstances.

- Thirty-six states allow children to be charged fees for a “free” lawyer.
- Forty-three states allow children to waive their right to a lawyer without first consulting a lawyer.
- Only 11 states provide for meaningful access to a lawyer after sentencing, while every state keeps children under its authority during this time.¹⁴

The report highlights the serious consequences of these findings with stories of impacted children, and makes a number of recommendations for reform. The recommendations include deeming children automatically eligible for publicly funded counsel, early appointment of counsel, prohibiting waiver of counsel unless a child has consulted with qualified counsel, and establishing an explicit right to counsel for all post disposition matters.¹⁵

In Ohio, most children are presumed competent to stand trial, but research suggests that many are far from it.¹⁶ Many children who enter the juvenile justice system have cognitive delays and mental health diagnoses, compounding their ability to make responsible decisions in their cases.¹⁷ Even without those impairments, younger children demonstrate lower ability to understand and appreciate interrogation rights compared to older adolescents and adults.¹⁸ Having contact with an attorney can enhance a juvenile's capacity to understand and appreciate legal situations, such as police interrogation and legal adjudication.¹⁹ Having an attorney is key, as what children and their parents often do not realize is the long lasting impact judicial outcomes can have on their lives. Despite being ‘only’ a juvenile record, many adjudications can cause serious collateral consequences for youth later in life, impacting where they can live or work as adults.²⁰ Given the potential impact on a child's life and the cognitive limitations that children have, all children should have the opportunity to consult with competent counsel prior to making decisions in their cases. Providing qualified attorneys who can advocate for the best possible outcomes for children in delinquency courts capitalizes on the crucial window of time where appropriate interventions and treatment can have the

most impact on the trajectory of their lives for the better.

Chang serves as juvenile trial counsel for the Office of the Hamilton County Public Defender. She is the current chair of the Juvenile Law Practice Group. Arieira is a youth reentry advocate for the Children's Law Center Inc.

- 1 See e.g. *Montgomery v. Louisiana*, U.S. ___, 136 S.Ct. 718, 733-34, 193 L.Ed.2d 599 (2016); *Miller v. Alabama*, __ U.S. ___, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012); *J.D.B. v. North Carolina*, __ U.S. ___, 131 S.Ct. 2394, 2403, 180 L.Ed.2d 310 (2011); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 2026, 176 L.Ed.2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005);
- 2 See e.g. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446; *State v. Moore*, __ Ohio St.3d ___, Slip No. 2016-Ohio-8288, __ N.E.3d ___; *State v. Aalim*, __ Ohio St.3d ___, 2016-Ohio-8278, __ N.E.3d __.
- 3 Children's Law Center, Petition to the Ohio Supreme Court to Prohibit Waiver of Counsel (hereinafter CLC Petition), <http://www.childrenslawky.org/juvenile-indigent-defense/> (last visited September 29, 2017).

- 4 Children's Law Center, Implementation of Ohio Juvenile Rule 3: Meaningful Consultation and Disadvantages of Self-Representation, <http://www.childrenslawky.org/juvenile-indigent-defense/> (last visited September 29, 2017).
- 5 The rate of waiver was calculated by county, comparing the total number of delinquency and unruly cases terminated in 2015 to the total number of cases in which a public defender or private appointed counsel billed OPD for reimbursement.
- 6 See CLC Petition.
- 7 Ohio Admin. Code 120-1-03(B)(4).
- 8 Courts can also order non-indigent parents to pay for the costs of court-appointed counsel. Ohio Admin. Code 120-1-05.
- 9 Standards of Representation in Juvenile Delinquency Cases, available at <http://opd.ohio.gov/Portals/0/PDF/Juvenile/DOC052417-05242017104928.pdf>
- 10 Ohio Admin. Code 120-1-10 (K) While the training and experience requirements have increased, the Public Defender Commission recognizes that there may be exceptional circumstances that require appointment of counsel without the requirements. Ohio Admin. Code 120-1-10 (P).
- 11 To learn more about JTIP, see <http://njdc.info/our-work/jtip/>.

- 12 To learn more about the assessments, see <http://njdc.info/our-work/juvenile-indigent-defense-assessments/>
- 13 Available at: http://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf
- 14 *Id.* at 7.
- 15 *Id.* at 36.
- 16 See Jodi L. Viljoen, and Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*. Law and Human Behavior, Vol. 29, No. 6, 724.
- 17 See Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Just. Pol'y. Inst. (2011) available at: http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.
- 18 *Id.*
- 19 *Id.*
- 20 National Juvenile Defender Center, Innovation Brief: Avoiding and Mitigating the Collateral Consequences of a Juvenile Adjudication, <http://njdc.info/wp-content/uploads/2014/01/Collateral-Consequences-Inno-Brief-2013.pdf> (last visited October 2, 2017).



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What you Need to Know About

Your Clients' use of Music in Their Businesses



By Steve Gillen

Intuitively, we know it, but much research has confirmed that music can make an employee more creative or more productive, can relax a patron, can make restaurant tables turn over faster or diners spend more, or can make a repetitive task more tolerable. Your business clients know this, too, and often play music in their offices, in their retail and public spaces, at trade shows and company events, and in online ads or on the phone. What they may not know is that their use of music is generally subject to a complicated legal and business structure that has evolved over more than two centuries. Here is where, with some basic background, you can help.

The primary form of intellectual property protection for music is copyright. In the case of a musical work, there are often two, separately protected embodiments: 1) the musical composition (the arrangement of notes and rhythms together with any associated lyrics) and 2) the sound recording of a performance of that musical composition. Each of these works is the product of separate authorship,

usually with separate owners. Typically, the copyrights in a musical composition end up owned by the music publisher (sometimes in shares with the composer/lyricist); the copyrights in the sound recording typically end up owned by the recording company.

If your client is going to perform its own rendition of a musical work, it must clear rights from the publisher. If your client proposes instead to use, incorporate, or digitally distribute an existing recording of that musical work, it must clear the necessary rights from both the publisher and the recording company. If your client proposes to use music in an advertising or marketing context, it may also need to clear publicity rights from any artists closely associated with the composition or the recording.

Among the bundle of rights that comprise the copyrights in a piece of music is the public performance right – i.e., public performance of a musical work requires the permission of the copyright owner. In the U.S., these rights are administered by one of three performance rights societies: The American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music Inc. (BMI), and Society of European Stage Authors and



Share what you know!

Do you have a niche or area of concentration in your practice? Is there something about it that would be useful to other lawyers? Something that would help them help their clients spot an issue before it becomes a problem? Help them, and at the same time earn some recognition for your practice. We're looking for more insights like this for future issues of the CBA Report — 500 to 800 words — with a little background and a few takeaways. Send your submissions to Aris Yowell, CBA director of communications, at amyowell@cincybar.org.

Composers (SESAC). Each of these societies manages its own portfolio of works and, collectively, they manage virtually all of the existing body of music. If your client wants to know that it is licensed for all music that might be performed in connection with its business, it will need licenses from all three. They are heavily regulated, because of their concentrated market power, and so there is little negotiation as to price and terms for their licenses. They do, however, offer a variety of types of license for anything from blanket use of their portfolio to a one-time, special circumstances event.

The public performance right applies only to the musical composition. There is no public performance right associated with the sound recording, though there is a relatively newly created digital transmission right that applies only to sound recordings.

When is a performance public?

More often than you might think. To perform a work publicly is to perform it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered (including where the performance is broadcast or distributed to such a group in one place or in separate places at the same time or at different times). In other words, if your client is doing it someplace other than the principal's living room for her family and a few friends, it is probably a public performance. An in-house performance is a "public" performance for these purposes, as is an invitation-only company event.

Takeaways for your clients:

If they want to:

- perform music at a company location or event, they will need performance licenses. And if they have not pre-cleared the music selections, they will likely need performance licenses from all three societies. Sometimes a host venue will have procured these licenses, but as often as not they will push the responsibility to your client.
- use a music service, on-hold or on-line or in the offices, they will need performance licenses. Many service providers will have pre-cleared the rights, but your clients should ask for assurance that this is the case.
- incorporate music in a presentation, they will need a license for this – the type(s) of license(s) they will need depend upon what they are using and what they are doing with it.
- incorporate music in a video for training or internal use, they will need a synchronization license from the music publisher (if you are recording or incorporating your own performance of that musical composition). If they are using an existing recording, they will also need a master recording license from the recording company. The standard synchronization license covers only broadcast and theatrical performance. If they want to distribute the video as DVD copies or in some other tangible form, they will need a special form of sync license.
- use the music in an advertising or promotional video, then in addition to the licenses noted above, they may also need publicity releases from any artists closely associated with the works.
- make the video available for download or streaming, check with a lawyer whose practice includes music work. The licensing for this can be quite complicated.

Warn your clients to watch out for music popping up in places where they did not plan for it like user-generated content, social media pages, employee events and contests, etc. They will be responsible if the site, contest, or event is operated under their imprimatur. There are some exceptions to the monopoly rights of the copyright holders (including, notably, the fair use right), but they will rarely apply in a business context. Be skeptical of any claim that a corporate use qualifies for the "fair use" defense (or for any other statutory exception).


Gillen is a partner at Wood Herron & Evans, where he concentrates his practice in publishing, media, and copyrights. He is also chair of the Books Editorial Board of the Intellectual Property Law Section of the American Bar Association. Write or call him if you have an idea for a book at sgillen@whe-law.com or (513) 707-0470.

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A Primer on Tobacco Surcharges



By Kimberly Wilcoxon

In part to encourage employees to be healthy, and in part to reflect the additional medical expenses that tobacco users often incur, many employers require tobacco users to pay higher premiums for health coverage than their tobacco-free counterparts. However, employers and employees often do not fully understand the opportunities and restrictions that accompany tobacco surcharges. This article is designed to provide some basic information for employers who offer tobacco surcharges and the employees who may be subject to them.

Employers are allowed to discriminate against tobacco users – if they do so in the right way.

The Department of Labor views tobacco surcharges as a practice that discriminates on the basis of a health factor, so tobacco surcharges must comply with certain rules issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Although tobacco use is not recognized as a disability under the Americans with Disabilities Act (ADA), employers are limited in how they can require employees to undergo medical examinations. Therefore, employers must comply with certain ADA rules

if they will require a medical test (such as a blood or urine test) to confirm whether an employee qualifies for the non-tobacco rate.

Employers can decide what activities constitute tobacco use.

A tobacco surcharge could apply to any use of tobacco, nicotine, and/or any related products, so employers that apply these types of surcharges should identify and clearly communicate the activities that would cause the surcharge to apply. Because the use of eCigarettes and vaping has become a popular alternative to smoking, employers should be sure to specifically address these activities in their communications.

Tobacco users can qualify for lower premiums even if they continue to use tobacco.

HIPAA requires employers to offer tobacco users a reasonable alternative method for qualifying for the lower premium rate. For example, an employer may offer a smoking cessation program. If the tobacco user completes that program, the tobacco user qualifies for the lower premium for the entire year (including

retroactively) even if he or she continues to use tobacco.

Employers have discretion to decide what alternative effort is “reasonable,” and they are not required to offer the same alternative to all tobacco users. Employers can also limit the amount of time in which an employee must complete the alternative, so long as the time limit is reasonable. However, if an employer chooses to require participation in a tobacco cessation program or other educational program, the employer must either make the program available or help the employee find such a program, and the employee cannot be required to pay for the program.

If an employee’s doctor indicates that the employer’s alternative is not medically appropriate for the employee, the employer must instead offer that employee an alternative that accommodates the recommendations of the employee’s doctor.

Employers must communicate the availability of a reasonable alternative.

Any communications that describe the tobacco surcharge must also indicate that the employer offers a reasonable alternative method of qualifying for the lower premium rate. Employers should be very careful not to use statements such as “only tobacco-free employees can qualify for the lower rate” or “you qualify for the lower rate only if you and your family members do not use tobacco.”

In 2014, the HIPAA rules changed to require that reasonable alternatives be offered for tobacco users. Therefore, an employer’s communications should be updated if they indicate that the reasonable alternative is available only if it is unreasonably difficult due to a medical condition or medically inadvisable to attempt to quit tobacco use.

Tobacco-free employees can be charged more if their spouses or children use tobacco.

An employer can decide whether the tobacco surcharge applies only to the

tobacco use of the employee or whether an employee’s entire family must be tobacco free in order to qualify for the lower health care premium. If an employer requires that the entire family must be tobacco free, the employer can require all tobacco-using family members to complete the reasonable alternative before the employee qualifies for the lower premium.

The amount of the tobacco surcharge must be limited, but can be significant.

A tobacco surcharge, when combined with any other wellness incentives that are subject to the HIPAA rules, cannot exceed fifty percent of the cost of the health plan. When determining the cost of the health plan, the calculation takes into account both the employer and the employee cost for the coverage. For example, if an insurance company charges an employer \$500 for an employee’s coverage, and if the employee’s cost is \$100, the tobacco surcharge could be as large as \$250, resulting in a \$350 premium payment for tobacco users and a \$100 premium payment for non-tobacco users.

The ADA rules would further limit the amount of the incentive if the employer tests for tobacco use. In that case, the surcharge, when combined with any other wellness incentives that are subject to the ADA rules, cannot exceed 30 percent of the cost of the health plan.

Employers may be limited in how they deal with untruthful employees.

Some employees will lie on their tobacco use certifications just to qualify for the lower rate. Others might misunderstand the scope of their certification and think that their activities (e.g., an occasional celebratory cigar) are not covered by the surcharge. Still others might start using tobacco and fail to update their certification. In any case, employers should be careful about how to respond when they discover an inconsistency between tobacco use and the certification.

Employers are allowed to retroactively impose the tobacco surcharge on such employees, and they are allowed to terminate health plan coverage if their plan

documents and summary plan descriptions reflect their ability to do so. However, employers should seek legal counsel before taking any other action. Because this issue involves the health plan, HIPAA’s privacy rules might prevent the employer from taking disciplinary employment action against the employee.

Wilcoxon is a partner in Thompson Hine LLP’s Employee Benefits and Executive Compensation group and advises employers on the legal requirements applicable to group health plans.



Ethical Quandary?

November Ethics Hotline Attorneys

James D. Houston	698-5048
Carl J. Stich Jr.	241-3685

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.



Creating a Self-care Plan



By Tabitha M. Hochscheid

Stress is an inevitable consequence of our busy lives. The Balanced Living column has spent this year soliciting articles focused on stress and how different people cope with the stress of being a lawyer. One constant theme is that each person has built something into their lives that shifts the focus from stress to self-care. You cannot eliminate stress. It is inevitable. You can, however, reset your body after a stressful event so that you return to a balanced physical and mental state more quickly. The best way to do this is to practice proactive self-care.

Self-care is not selfish.

You must put yourself first before you can help others. Lawyers spend a lot of time caring for others and fixing their problems only to find that they have no time to care for themselves. Self-care is the essential element to mediating the physical and emotional effects of stress. You are not helpful to your family, friends, co-workers or clients if your brain and body are not functioning in an optimal way.

Set limits.

Setting limits on your commitments to clients, co-workers, family and friends can be difficult. Lawyers have a tendency to not be great at saying no. Because we need clients to survive, we take on more work than we should or work we don't enjoy. In addition, there are cases that snowball out of control. What starts out as a routine task morphs into something you are forced to deal with. When you overcommit yourself to too many cases, you end up doing nothing well. Knowing how to limit your commitments in and outside of the office is a huge challenge. Learning to say no

or prioritizing ourselves over work and family commitments can seem selfish but it keeps us functional.

Know the physical signs of stress.

Our bodies are designed to have the same response regardless of whether our stress is mental or physical. We all experience a dry mouth, accelerated heartbeat, and increased sweat, for example. Once you realize that stress has caused this physical reaction, you can begin to take measures to reset your body.

Change your initial response to a stressor.

Some basic tips for coping during a stressful moment include: pausing before responding, waiting to send an email response tomorrow, taking three deep breaths exhaling slightly longer than inhaling to reset your autonomic nervous system, or walk away from your desk or office. If you are lucky, you may run into a colleague who can commiserate with you. I personally find waiting to send an email response is one of the best methods for preventing a stressful situation from snowballing into a bigger conflict.

Create a go-to activity when stressed and a few backups as well.

Create a healthy place to take your stress. I personally believe the best thing you can do for your body is some physical exercise. Take a walk, hit the gym, or find a way to work the stress out of your body. Find something that provides you with an escape from the work and the pressure. I exercise immediately after work three

days a week. I have an appointment with myself to take care of myself. An accountability partner like a friend or trainer can help keep you on track.

Eat well.

When I am under stress, I want chocolate. I have always been a stress eater and my go to foods are not good for me. I stopped purchasing things that I shouldn't eat and closely watch my consumption of chocolate and other junk foods. It's a hard habit to break. Busy people can have a hard time making wise food choices because fast food is convenient. And skipping meals makes sense when you have a trial the next day or when you have a client emergency. A good diet can help you function better during a stressful period. The Health & Well-Being Committee focused two Balanced Living lectures and several articles on the importance of a good diet. Links to those can be found on our committee webpage.

Develop good sleep hygiene.

Sleep can elude all of us from time to time, but if you find yourself failing to fall asleep, waking up after only a few hours of sleep, or sleeping on an irregular sleep cycle, you may want to consider changing some of your sleep habits. Some hygiene changes may include limiting your intake of caffeine, establishing a bed time ritual, limiting use of electronic devices, using white noise, music or binaural beat recordings to aid in sleep.

Set a schedule for your downtime.

Make downtime a priority. Set aside time not to work. One way of doing this is to participate in some type of contemplative activity. A contemplative activity is not just meditation. A walk in nature, gardening, tai chi and other activities can work just as well. More information about these types of activities can be found at www.contemplativemind.org.

Maintain a work/life balance.

When you are not working, limit yourself from accessing work-related emails and try not to take calls from clients. If you must maintain contact, make sure you set limits on when and how often people can contact you. I have restrictions on who can call my cell phone and I set limits on how quickly emails will be returned. Sometimes immediate and frequent access is not a good thing. Technology can have a huge downside if you don't maintain limits on yourself and others.

Each person is different. My self-care plan works well for me but it may not work for someone else. Finding a self-care plan is a process of trial and error. It's never too late to start, however, and the Health & Well-Being Committee has many informative articles and videos which can be easily accessed through our committee's webpage.

Hochscheid is an attorney with Hochscheid & Associates LLC, chair of the CBA's Health & Well-Being Committee and a member of the CBA's Board of Trustees.

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Ten Questions For Pierre Bergeron About His Recent Supreme Court Argument



Q We hear that you argued a case in the Supreme Court this past January, and would like to ask you some questions about it. Could you describe, briefly, what the case was about?

A We represented Goodyear in *Goodyear Tire & Rubber Co. v. Haeger* (No. 15-1406), in which certain testing documents were not produced in discovery (before our involvement). The case eventually settled, but the plaintiffs later learned about the tests and sought to reopen the case to pursue sanctions. Finding that withholding the documents was bad faith, the district court judge hit both the defendant and counsel with large sanctions (nearly \$3 million) under its own inherent authority, which consisted of nearly all of the plaintiff's attorney's fees. There was a circuit split on how or whether causation standard restricted the amount of inherent authority sanctions. Before the Supreme Court, we argued that sanctions imposed under a court's inherent authority must be limited to damages that would not have occurred "but for" the sanctionable conduct.

Q How did you prepare for oral argument? How was your preparation different from a normal oral argument?

A I went through a pretty rigorous moot court regime in order to get broad exposure to myriad questions that might be asked. I then took both the questions that were asked in those moots, as well as ones that I thought of, and just practiced answering them, refining the answers, and transitioning between topics.

Q Tell us about the argument itself. Which justices were the most interested in the case?

A The justices were all fairly engaged (except Thomas, who did not ask a question), which was good because I wasn't really prepared for a cold bench. Justice Kagan probably asked the most questions, and they were the most probing, really trying to get to the heart of the matter. That was good from our perspective, because we were relying on a key opinion that she had previously authored for the standard that we were advocating.

Q Were any of the questions, or the assumptions behind the questions, especially surprising or tricky?

A The second question I received, from Justice Ginsburg, had been one that was asked in a moot the week before, and no one liked my answer during the moot. I really worked on refining that answer over the course of the week before argument, and I guess I satisfied Justice Ginsburg with my response because there was no follow up afterwards.

Q Was there a difference between how you and opposing counsel approached the argument or briefing?

A We really focused on the legal standard, whereas opposing counsel tried to argue that the standard was largely irrelevant because the lower court applied the standard we were advocating. That was probably inconsistent with the cert grant itself, and ultimately the court wasn't persuaded by it.

Q How did you feel about your chances after the argument? Was there press coverage?

A I walked out of argument feeling that we had won, just based on the Justices' reactions to my responses and those of opposing counsel. But it is obviously hazardous to predict outcomes based on oral argument, and then I made the mistake of reading some of the press coverage that deemed the Justices "skeptical" of the arguments we were advancing. That made me question whether I was really assessing the argument objectively (but happily it turned out that I was!).

Q How would you compare oral argument at the United States Supreme Court with oral argument at the Ohio Supreme Court or the Sixth Circuit?

A The process itself, and indeed the actual argument, are similar. But the key difference is that you have more time in a US Supreme Court argument (30 minutes) than the normal 15 in most other arguments. That extra 15 minutes is a long time! And the Supreme Court is

generally more focused on broader policy implications than error correction, so the argument tends to be more policy-based than case-specific.

Q Tell us about the Supreme Court's decision, and what it felt like to win.

A The Supreme Court unanimously reversed the Ninth Circuit's decision that we were appealing, and they largely adopted the legal standard that we were advocating (borrowed from Justice Kagan's prior decision). Justice Kagan, in fact, authored the opinion. It was incredibly exciting to win (needless to say), but I found out just before I left the office for a dentist appointment. It was a little hard to savor the victory from the dentist's chair.

Q You've argued before the Supreme Court before. Does it get any easier?

A Not really. I was familiar with the process, so that definitely helped,

but I found the preparation process and stress of it all fairly similar. But it is also rewarding to get the questions that you've prepared for, and your instincts largely take over once you reach the podium.

Q What advice would you give to someone facing his first argument at the Supreme Court?

A Practice, practice, practice. You'll find that Supreme Court veterans are always willing to help moot someone for argument, and they can be great resources. I had to lean on several friends and colleagues to moot me over the holidays, and I sincerely appreciated their willingness to pitch in and help.

Bergeron is a partner at Squire Patton Boggs and chair of its Appellate and Supreme Court Practice, and he serves as the president of the CBA Court of Appeals Committee.

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To learn more about legacy gift opportunities with St. Vincent de Paul - Cincinnati, contact Claire Luby, Development Manager, at (513) 562-8841 ext. 259.



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Welcome New Members

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

- James A. Anzelmo
WesBanco
- Jason W. Chastang
- Tifanie R. Owens
Bey & Associates LLC
- Jordan T. Steiner
Kohnen & Patton LLP
- Jane Lindsay Underwood
Northern Kentucky University

Member Benefit of the Month

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Welcome CBA Membership Director Ellen Newman



Background

I'm a Cincinnati native and graduated from Bowling Green State University in NW Ohio — Go Falcons! I've been back in Cincinnati for six years and have spent my entire professional career working in the nonprofit sector. I've held a few different roles over the years, including: providing crisis intervention services, group facilitation, event planning, fundraising, public speaking/training, and relationship building. While I have never worked at a bar association, I have worked with attorneys in various capacities in each professional role I have held. I'm very excited to be a part of the team at the Cincinnati Bar Association and to serve our dedicated members!

Favorite Cincinnati Hot Spot

I'm a Pleasant Ridge resident, so I love all the new restaurants that are popping up in the area, especially Casa Figueroa and Grand Central Deli. I'm also a huge fan of the Downtown Coffee Emporium.

Best Advice You've Received

It may sound cliché, but I have been given this piece of advice time and time again: "Live what you love." I try to live this mantra day in and day out, both professionally and personally. I'm always putting my best self forward when I have this piece of advice in my mind.

The work you leave behind
is part of your legacy.

A lifetime of good work deserves a good inventory attorney. Learn more about the CBA's Inventory Attorney Program today at www.cincybar.org.



Investing For Justice Campaign Challenge!

We challenge all of the attorney members of the CBA to support the Investing for Justice Campaign with a gift to the Cincinnati Bar Foundation. We all win!

The individual that gives \$100 or more receives:

- Recognition in the CBA Report
- Recognition in the program at the CBA Annual Meeting
- Tax deduction
- Gifts of \$250 or more receive a place in the Foundation's Annual Advocate Members Circle and a listing on the CBF's donor wall

The law firm that gives 100% receives:

- All of the benefits outlined above
- Recognition in the Firm Leadership Circle

See adjoining page for a list of programs that have received Foundation funding during the past year through the generosity of the legal community.



How to Donate

Help the Foundation support these important programs with a gift to the "Investing for Justice" Campaign. Donors will be recognized in various publications, the 5th floor donor way and listed in the CBA Annual Meeting program. Invest for justice!

You can make your contribution by:

- Going online at www.cincybar.org. Donations can be made by credit card.
- Mailing your contribution directly to The Cincinnati Bar Foundation, 225 East Sixth Street, 2nd Floor, Cincinnati, OH 45202. Please make checks payable to The Cincinnati Bar Foundation.
- Using the campaign envelope in the November CBA Report to mail in your donation
- Supporting our new social media "Giving Tuesday" Campaign on November 28

Become an Annual Advocate Member

This year, we ask you to consider making a commitment to ensuring the idea of "Investing for Justice and Changing Lives Through the Law" in our community by contributing at one of three levels below, with a multi-year pledge (up to five years):

- **Platinum** - \$1,000 annually (\$5,000 pledge over five years)
- **Gold** - \$500 annually (\$2,500 pledge over five years)
- **Silver** - \$250 annual (\$1,250 pledge over five years)

Pledges may be made in honor or memory of someone whose legacy you would like to recognize. As a member, your name and the name of the honoree would be added to the donor wall on permanent display in the Cincinnati Bar Center. Members will be acknowledged at several other times throughout the year and invited to periodic special receptions. Please place yourself in this highly regarded group of Foundation donors.

Join us on Giving Tuesday Nov. 28

Giving Tuesday is a global day of giving fueled by the power of social media and collaboration.

Celebrated on the Tuesday following Thanksgiving and the widely recognized shopping events Black Friday and Cyber Monday, Giving Tuesday kicks off the charitable season when many focus on their holiday and end-of-year giving. Since its inaugural year in 2012, Giving Tuesday has become a movement that celebrates and supports giving and philanthropy. Please consider a gift to the Cincinnati Bar Foundation.



MEMORIAL & HONOR GIFTS

The Cincinnati Bar Foundation gratefully acknowledges the following gifts:

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Robert L. Davis

In Honor of

L. Thomas Hiltz
the Board of Trustees of the Cincinnati Bar Foundation

Investing Your Gifts



Cincinnati Bar
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Looking for a high rate of return in your investment? Then consider making a gift to the Cincinnati Bar Foundation. October kicks off our Annual Appeal, with the **Investing for Justice 2017 Campaign**. Last year, through your gifts made during the campaign, over \$116,000 in grants were distributed that directly impacted thousands of people in our community. And with your help, we were able to fully endow the Michael H. Neumark CALL Scholarship Fund. Where else do you get that kind of bang for your buck?

Though your financial investment of \$100 or more, we are able to help a huge number of people and organizations in Greater Cincinnati. In doing so, we show how the Cincinnati Bar Foundation supports our profession and is vital to our community. Through your support, we provided grants

to support our member attorneys with

- Continuing Legal Education Seminars
- CALL Scholarships
- Balanced Living Lecture Series
- Professionalism Committee's Mentoring Workshops
- John P. Kiely Professionalism Award
- John W. Warrington Community Service Award
- John L. Muething Lifetime Achievement in Law Award

to help at risk children with

- Pro Kids – *CASA Recruitment & Launch Program*
- Youth Court

to help disadvantaged citizens with

- Legal Aid Society of Cincinnati – *Family Law Mentoring Project*
- Ohio Justice & Policy Center – *Domestic Violence Project*
- Volunteer Lawyers for the Poor – *Recruitment Campaign*

to help local veterans with

- Veteran's & Military Law Committee – *Services Survey Project*

to help promote diversity and inclusion in the legal community with

- BLAC-CBA Roundtable – *New Strategic Plan Project*

to help the courts address the opioid addiction crisis with

- Supreme Court of Ohio – *Regional Judicial Opioid Summit*

to educate youth about the law with

- Boy Scouts of America – *Law & Legal System Merit Program*
- Impact Northern Kentucky – *Regional Youth Leadership Program*
- Northern KY Children's Law Center Inc. – *Educating Youth about Their Legal Rights and How to Interact with Police*
- Ohio Mock Trial Program

to provide legal education scholarships with

- Judicial Clerkship Summer Scholarships
- William A. McClain Scholarship
- Shanda Spurlock Scholarship

to educate the public about the law with

- ProBono Partnership of Greater Cincinnati – *Non-Profit Legal Check Up*

The cause for investing in our profession and our community needs you. This is your opportunity to join in. Your financial support for the Investing for Justice 2017 Campaign allows us to pay it forward for Greater Cincinnati. Please join with the other members of the Association who have already pledged their support, and make your tax deductible contribution now. You can't beat the return on your investment!

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Investing for Justice Campaign Kick Off Party

On Thursday, Nov. 16, the "Joint will be Jumping" again as the 6th Annual Rock the Foundation takes the stage at Tin Roof at the Banks. We're gonna rock this town with the Cincinnati Bar Foundation's- Kick Off Party for the "Investing for Justice" Campaign! Join emcee Eric Combs and your fellow members of the Bar at Tin Roof at the Banks for a fun-filled evening of music provided by talented members of our Association. Your past favorites and new guest performers will be taking the stage to compete to be the "VOICE OF THE BAR". Winners will be judged on number of votes. Votes are \$1 each and online voting will be available two weeks prior to the event. This fundraiser for the Cincinnati Bar Foundation will feature a fabulous evening of musical acts, silent auction, raffles and bragging rights. Mark your calendars – and be ready to rock!



Who will be the Voice of the Bar?

Vote for your favorite act with a \$1 to support the Cincinnati Bar Foundation. The performers with the most dollars raised will be declared the Voice of the Bar!



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Dale A. Stalf, Wood & Lamping

And on drums:
Hon. D. Michael (Mickey)
Foellger, retired, Campbell
County Family Court



The Drysdales
Greg S. Shumate, Frost Brown Todd, Steve Brunner, Tom Murphy, Denny Scanlon, Ken Shumate

YLS Member Feature: Corey Asay



I was fortunate enough to sit down with Corey Asay, YLS secretary, to discuss his experience with the YLS. Asay is an attorney at Dinsmore & Shohl in the labor & employment law department. In his practice at Dinsmore, he is involved in training, counseling, and defending employers in work-related matters, including discrimination, leave, and wage/hour issues. Prior to joining Dins-

more, Asay served as a judicial clerk for United States District Judge Jack Zouhary and United States Magistrate Judge James Knepp. Prior to his clerkships, he worked as an attorney at Ziemer, Stayman, Weitzel & Shoulders in Evansville, Indiana in the litigation group.

How did you first get involved in the YLS and how has your involvement changed?

I first got involved with YLS after the current YLS chair strongly encouraged that I help with the Social Committee. I'm glad I did. As it turned out, the year I got involved, the two co-chairs of the committee were moving on to other positions on the YLS board at the end of their term, and their positions with the Social Committee were opening up. Based on a little luck and good timing, I joined the board and spent two years as one of the Social Committee co-chairs. This past year, I was fortunate enough to become the YLS Secretary.

How has the YLS added value to your career?

YLS has been great in terms of both expanding my network, developing leadership skills, and opening up other opportunities. It's rewarding to work with so many dedicated young lawyers, who also happen to be a lot of fun. Through my involvement with YLS, I've also joined the Cincinnati Bar Foundation as a trustee, where we get to help wonderful nonprofits like Pro Kids and Volunteer Lawyers for the Poor. And this year, I became the program director for the CBA's Arbitration Service, which would not have happened without my involvement with YLS.

What other organizations/things are you involved in?

In addition to the CBA, I'm actively involved with the local chapter of the Wabash College Alumni Association, a member of the Cincinnati Rotary Club, and the Professional Leadership Network, and serve on the GrowPBPO Advisory Council.



By Faith Whittaker

What advice would you give new attorneys about practicing law?

Being a lawyer means not only providing competent legal advice, but also providing good service. For most clients, that means returning their phone calls and emails in a timely manner and showing a genuine interest in their problems.

What advice would you give new attorneys about business development?

Surprise! You're actually a salesperson. I know you thought you were only a lawyer, but developing business actually involves selling. The good news is you are selling yourself rather than some cheap infomercial product. So to do that, learn your area of the law really well (to enable yourself to have something to sell), expand your network (so that you have people to sell your services to), tell and remind people about what you do (so those people know to buy your services), and, most importantly, be patient (because developing a book of business can take a long time).

Could you describe a significant milestone during your career and why it was significant?

A significant milestone in my career came when I realized that my role as a lawyer is to provide clients with choices and risk analysis, not directives. Sometimes we provide clients with supremely wise advice, which they promptly ignore. Don't lose sleep over that. Our role as lawyers, in most instances, is to provide our clients with options, possible outcomes, risk probabilities, and recommendations. But ultimately, it's their choice to make. My stress level dropped significantly when I realized not every client is going to follow my advice, no matter how good I think it is.

Whittaker is 2017-2018 chair of YLS.

Welcome to YLS

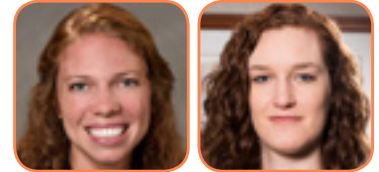
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Markers of Success

Advice to Young Lawyers about what partners look for

By Elizabeth Stegeman and Stephanie Franxman, co-chairs of the YLS PR Committee

The CBA Young Lawyers Section (YLS) asked practitioners in the Cincinnati area for advice to young lawyers on a variety of different topics. This month, the YLS asked Tracey Puthoff and Brock Denton for their take on what markers of success they look for in young attorneys. Read their perspectives below for insights and advice on what traits and habits lead to long term success for young attorneys in law firms.



Stegeman

Franxman



I start evaluating young attorneys for long term success from the beginning. This includes evaluating their quality of work, work in the community, and ability to develop business from the time the young attorney begins at Taft. Specific habits and personality traits that I have seen in young attorneys who have been successful include their work ethic, time management

skills, ability to multi-task, genuine interest in learning more about our clients and their businesses, poise when dealing with difficult situations, and a dedication to community involvement. The most important trait I've observed in young associates who make it to the partner lever is a high degree of ethics. These successful attorneys also produce high quality work, work hard, and bring in business.

— Tracey Puthoff, partner at Taft



I evaluate young attorneys from the moment we interview them. As our founder Don Klekamp says, "People do business with people they like." A young attorney must not only be able to do quality work but must also sell themselves to our clients. Young attorneys who have been successful are hardworking, organized, and able to deliver answers in a

manner that instills confidence. Young associates that excel to partnership are hard workers that deliver excellent work product and build relationships with clients and potential clients. They act as an owner and treat their employment as a career instead of a job. They always do whatever is necessary to ensure the client is satisfied and make the firm look good.

— Brock Denton, partner at KMK

Bring Cheer through Giving

Each year, the Greater Cincinnati legal community comes together to bring good cheer to children in need. For more than 20 years, the Giving Basket program has provided thousands of gifts to less fortunate children during the holiday season. Please join us to continue this great tradition of giving. Gifts benefit children served by the Boys & Girls Club, Boys Hope/Girls Hope, and ProKids.

Give a Gift

1. Visit <http://givingbasket.cincybar.org>
2. Choose a wish list gift tag (includes gender and age)
3. Purchase an age appropriate gift for \$25 - \$30
4. Place the unwrapped gift in a gift bag and attach the gift tag
5. Drop the gift off at Dinsmore & Shohl LLP, Chemed Center, 255 East Fifth Street, Ste. 1900, Cincinnati, OH 45202 between December 7-12

Questions? Contact Director of Community Engagement
LaDonna Wallace Smith at lwsmith@cincybar.org or (513) 699-1392.



Be a Part of Mock Trial

What happens when a person accused of the murder of his high school girlfriend ends up being convicted after being represented by an overworked attorney? This year's high school Mock Trial competition involves a petition for post-conviction relief based on ineffective assistance of counsel. As high school students across the greater Cincinnati area are preparing to compete in this competition, we need the help of our legal community to provide guidance, feedback, and perspective.

The Cincinnati Bar Association's Young Lawyers section is looking for more than 100 volunteer lawyers for the 2017 Mock Trial Competition. As a volunteer, local lawyers give back to the community by sharing knowledge and enthusiasm for the practice of law. Your assistance is critical to the success of this program.

For more than 30 years, this program has given students a practical introduction to the justice system, the Constitution, and the intricacies of the legal process by giving them the opportunity to participate in mock trials as either lawyers or witnesses. Students will present opening statements, cross-examine, and experience cross-examination, among other

things, in the hour-long simulated trial.

This year, the Cincinnati Bar Association will host both a district and a regional competition. For this to be successful, volunteer attorneys are needed to preside as judges over each round of competition. During the trial, judges will observe and grade the performances of the students, as well as provide feedback to each of the participants. The level of dedication and performance by the students is always impressive. The students appreciate the participation and thoughts of local attorneys, and hopefully will be inspired by the experiences. You can be a part of this.

The program is sponsored locally by the Cincinnati Bar Association's Young Lawyers Section and fully endowed by the Cincinnati Bar Foundation. More than 350 students from approximately 22 area high schools participate each year. We encourage each of you to take this opportunity to be involved and support local students as they experience a glimpse into the practice of law.

This year, the district competition will take place on Jan. 26, 2018 with the first round beginning at 1 p.m. and the second round at 4:30 p.m. The regional competition will be on Feb. 16, 2018. Times will be



By David Boyles and Jon Kelly

announced soon.

If you are interested in volunteering as a judge, please contact Jamie Shiverdecker at the Cincinnati Bar Association at (513) 699-4013 or email her at jls@cincybar.org.

For more information on the 2018 case, please visit the Ohio Center for Law Related Education's website at http://www.ocltre.org/aws/OCLRE/pt/sp/programs_mocktrial. If you have enjoyed judging in the past or wish to become even more engaged with a high school Mock Trial team, consider becoming a legal advisor. Please contact the Ohio Center for Law Related Education at (614) 485-3507 for more information.

We hope you'll join us!

Boyles is an attorney at Dinsmore & Shohl LLP and Kelly serves as a law clerk to Hon. Judge Robert P. Ruehlman. They are the 2017-2018 co-chairs for the Mock Trial competition.

Nominating Committee Solicits Recommendations for the CBA Board of Trustees

The CBA's Nominating Committee is soliciting recommendations for a general trustee position to fill an unexpired term of January 24, 2018 – April 30, 2019.

Send nominations to nominations@cincybar.org. All nominations must be received by November 30.

For questions, please contact Nominating Committee chair, Doug Dennis at ddennis@fbtlaw.com.

Give Your Career a Voice



November 1

Cincinnati Bar Association

5th Floor

8:30 – 9:30 a.m.

Register at www.cincybar.org

Join us for an important discussion on communicating expectations.



Crisis Communications & Management for Lawyers & Their Clients

Featuring Bruce Hennes, Hennes Communications

December 11, 2017

1-3 p.m.

2.0 Hours General CLE Credit

About the Program

Especially in today's world of immediate information, when reporters won't wait long for you to return that call before posting the story online and where virtually everyone is a "journalist" armed with a camera and able to reach thousands of people with one simple Facebook message, attorneys and their clients simply cannot wait until a legal decision is rendered. They must be prepared to vigorously defend their situation in a wide variety of venues, as well as media outlets. This seminar will help you prepare for the court of public opinion so that you, the organization you serve and your client are not declared "guilty" before being heard in the court of law.

About Our Featured Speaker



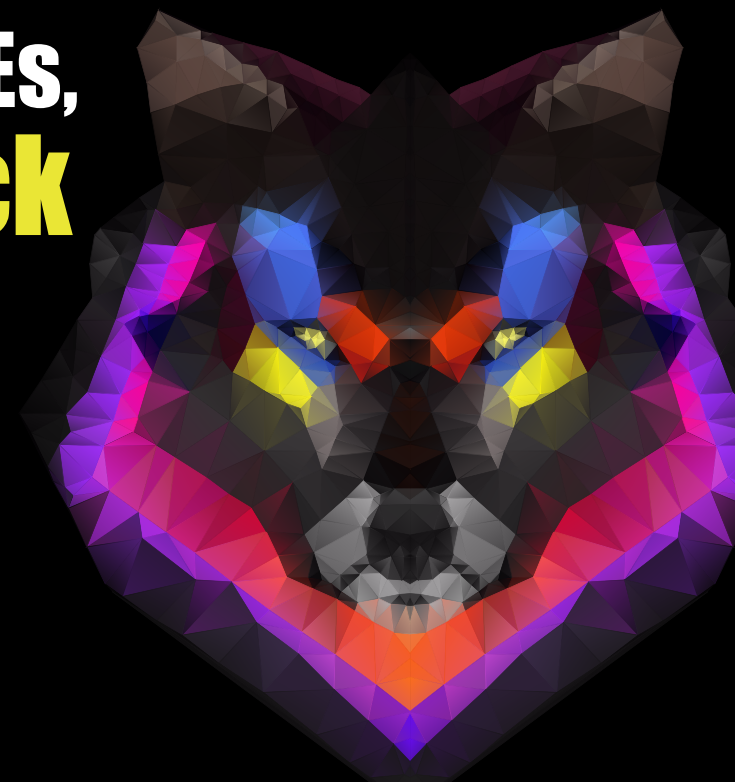
Bruce Hennes is managing partner of Hennes Communications, one of the few firms in the U.S. focused exclusively on crisis communications and crisis management. With over 30 years of experience in communications, Hennes and the firm's past and present clients include the 2016 Cleveland Host Committee for the recent Republican National Convention that was held in Cleveland, ThyssenKrupp, Avery Dennison, Lubrizol, Kent State University, Oberlin College and the National Aeronautics and Space Administration, as well as scores of municipalities and law firms across the U.S. Hennes serves on the Executive Committee of the Cleveland Metropolitan Bar Association and on the board of the Cleveland Leadership Center.

Register at www.cincybar.org or by calling (513) 699-4028.

When it comes to CLEs, we lead the pack

- Over 100 live CLE programs each year
- Downtown and suburban sites
- A generous library of self-study CLE
- Superior programming at a reasonable cost

Sign up for upcoming CLEs at www.cincybar.org.



Negotiation Skills with Marty Latz Esq.

How to Say “No” and Preserve the Relationship



December 5, 2017
9 a.m. – 4:30 p.m.
6.0 Hours CLE Credit,
including 1.0 Hour Professional Conduct

Seminar

How you say “No” to your client, partner, boss, or business colleague can make or break your career. Yet most instinctively or intuitively just blurt out a no and don’t take just a few minutes to consider it before jumping headfirst into what could be a make or break moment for you. This can be devastating.

In this program led by negotiation expert and author Martin Latz, participants will shift their mindsets and behavior from instinctive to strategic based on the experts’ proven research. Next time they face this situation, they will systematically think about which strategies to use and have a strategic framework within which to approach it. How they say no will then be based not only on their own experiences, but on the collective experiences of the best negotiators in the world and on the most up-to-date research.

Participants will learn:

- Latz’s Five Rules in How to Say “No” and Preserve the Relationship
- Ways to Avoid Saying “No” When No “No” is Necessary
- How to Explore Mutual Interests
- When to Say “No” and When to Say “Yes”
- Powerful Standards that Lessen the Negative Impact of “No”
- Ways to Frame a “No” with a Yesable Offer
- Language to Psychologically Make Them Feel Good When Hearing “No”
- When to Involve Others in the “No” Conversation
- How to Control the Setting To Improve Your Relationship

About Marty Latz



Renowned negotiation expert Marty Latz, founder of the Latz Negotiation Institute, has trained over 100,000 lawyers and business professionals around the world to more effectively negotiate,

including in Bangkok, Beijing, Brussels, Hong Kong, London, Prague, Seoul, Shanghai, and Singapore.

An adjunct professor – Negotiation at Arizona State University College of Law from 1995 to 2005, Latz has also negotiated for the White House nationally and internationally on the White House Advance Teams.

Latz - a Harvard Law cum laude graduate – is the author of *Gain the Edge! Negotiating to Get What You Want* and has appeared as a negotiation expert on CBS’ *The Early Show* and such national business shows as *Your Money* and *Fox Business*. He writes a monthly negotiation column that appeared for many years in *The Arizona Republic* and now is emailed to almost 30,000 readers per month.

Workers' Compensation Law

Presented by the CBA Worker's Compensation Practice Group

Thursday, November 30, 2017

8:30 a.m. to 3 p.m.

6.0 Hours CLE Credit, including 2.0 Hours Professional Conduct Credit
Workers Compensation Specialization Credit (Pending)

Featured Topics:

- Case Law Update
- Hearing Room Decorum and Updates to the Manual for Adjudications Before the Ohio Industrial Commission
- Imaging of Trauma and Work Related Injuries, With Emphasis on the Spine
- Issues and Developments Relating to 512 Appeals
- Professional Conduct: Courtroom Decorum
- Professional Conduct: Opioid Abuse and its Impact on Medical Practitioners
- Psychiatric Issues

Register online at www.cincybar.org or call (513) 699-4028



Health Care Law

Presented by the CBA Health Care Law Practice Group

Thursday, December 7, 2017

8 a.m. Registration

8:25 a.m. to 3:15 p.m. Program

6.0 Hours CLE Credit,
including 1.0 Hour Professional Conduct

Location: Cincinnati Bar Center

Join the CBA Health Care Practice Group for a full-day CLE including breakout sessions. The program will feature discussions on hot topics in health-care, integrative medicine, certificate of need, opioid enforcement panel and more topics to be announced.



CBA CLE FACULTY HONOR ROLL

With gratitude and thanks, we recognize the following individuals who shared their time and expertise by serving as faculty members at CBA CLE seminars between April and September 2017. Their contributions make it possible for the CBA to fulfill its mission of promoting professional excellence, fostering justice and serving members.

Robert Applebaum	William Freedman	Maxwell Kinman	Steven McDevitt	Clifford Roe
Michael Arnold	Randolph Freking	Hon. Jeffrey Kirby	Ryan McDonald	Perry Saidman
Milo Atlas	Brian Furgala	Justin Krieger	Chris Mihin	Maria Schneider
Mark Bennett	Kenneth Germain	Amy Kurlansky	Jon Miles	Miriam Sheline
Benjamin Bierce	Ralph Ginocchio	Jason Lacey	Donald Moore Jr.	Jeffrey S. Shoskin
Raymond Birkinsha	Dalma Grandjean	David Lafkas	Lauren Morrison	Hon. Jon Sieve
Jason Birkle	Jack Greiner	Joshua Langdon	James Moskowitz	Stephen Simon
Hon. Kathryn Boller-Koch	Larry Grudzien	Elizabeth Tull Laureano	Brenda Motheral	Sherri Slovin
Kasey L. Bond	Marion Haynes	Cynthia Lear	Brian Murphy	Tracey Skale
Robert Buechner	B. Scott Hicks	David Levine	Kelly Mulloy Myers	Becky Jones Smith
Ashley Burke	Dori Hines	Joseph Lewczak	Katherine Neff	Rebekah Smith
Benjamin Cramer	John Hirschbeck	Lauren Credit Mai	Scott Newsom	Sloan Spalding
James Crowley IV	Greg Hoernschemeyer	Kelly Malone	Angelo Noe	Katherine Spelman
Thomas Cuni	Nathan Holmes	Kimberly Malone	Janet Pecquet	Brian Spiess
David Davidson	Hon. Elizabeth Igoe	Michael Mann	Amy Pennekamp	Mary Stagaman
Alexander Durst	Thomas Irving	Vic Marchetti	Anna Pfaehler	Peter Stautberg
David Eberly	Andrew R. Kaake	John Marsh	David Pixley	
Rachel Elsby	David Kapor	Keri Matthews	Michelle Reid	
Ross Evans	David Kelley	Michael McCabe	Charles Rittgers	
Judith Finell	Andy King	J. Derek McCorquindale	Hon. Kathleen Rodenberg	

Upcoming In-Person CLE Seminars

Visit www.cincybar.org to view our full calendar, updates, and full program agendas, plus self-study programs

November 1 • 12 – 1 p.m.

Brown Bag Series

Domestic Relations

1.0 Hour*

\$35 CBA Member (\$50 Non-Member)

November 1 • 6:30 – 9:45 p.m.

Night at the Movies: Fracture

@ Mariemont Theatre

1.0 Hour CLE, including .5 Prof. Conduct*

\$35 CBA Member (\$50 Non-Member)

November 8 • 12 – 2 p.m.

ADR Update

2.0 Hours including 1.0 Prof. Conduct

\$70 CBA Member (\$100 Non-Member)

November 14 • 9-11:45 a.m.

Live Program

Professional Conduct

2.5 Hours

\$90 CBA Member (\$125 Non-Member)

November 14 • 1-4:15 p.m.

Basic Estate Planning & Probate Institute

3.5 Hours*

\$130 CBA Member (\$180 Non-Member)

November 15 • 8 a.m. – 4 p.m.

PLI Groupcast

The Business of Open Source Software

\$1,695

Call PLI @ (800) 260-4754 to register

November 15 • 12 – 1 p.m.

Brown Bag Series

Ohio False Speech Litigation

1.0 Hour*

\$35 CBA Member (\$50 Non-Member)

November 16 • 9 a.m. – 12:15 p.m.

Cybersleuth: Mastering Google for Investigative Research

3.0 Hours, including 1.0 Prof. Conduct

\$150 CBA Member (\$195 Non-Member)

November 16 • 1:15 – 4:30 p.m.

Cybersleuth: Investigative/ Background Research Strategies

3.0 Hours, including 1.0 Prof. Conduct

\$150 CBA Member (\$195 Non-Member)

November 16 • 9 a.m. – 12:15 p.m.

International Law

3.0 Hours

\$105 CBA Member (\$150 Non-Member)

November 29 • 12 – 1 p.m.

Brown Bag Series

DUI

1.0 Hour*

\$35 CBA Member (\$50 Non-Member)

November 30 • 8:30 a.m. – 3:15 p.m.

Workers Compensation Law

6.0 Hours, including 2.0 Prof. Conduct*

\$220 CBA Member (\$310 Non-Member)

☎ Print Handouts additional \$20

December 1 • 8:55 a.m. – 4:15 p.m.

Bankruptcy Institute

5.75 Hours, including 1.0 Hour Prof. Conduct*

\$250 CBA Member (\$345 Non-Member)

☎ Print Handouts additional \$20

December 5 • 9 a.m. – 4:30 p.m.

Negotiation Skills with Marty Latz: How to Say “No” and Preserve the Relationship

6.0 Hours, including 1.0 Hour Prof. Conduct

\$320 CBA Member (\$415 Non-Member)

December 6 • 12 – 1 p.m.

Brown Bag Series

Successfully Navigating the Ethical Minefield of Social Media in the Legal Profession

1.0 Hour Prof. Conduct*

\$35 CBA Member (\$50 Non-Member)

December 6 • 2 – 4 p.m.

Famous Political Trials: Al Capone

2.0 Hours

\$70 CBA Member (\$100 Non-Member)

December 7 • 8:25 a.m. – 3:15 p.m.

Healthcare Law

6.0 Hours, including 1.0 Prof. Conduct

\$220 CBA Member (\$310 Non-Member)

☎ Print Handouts additional \$20

December 8 • 8:25 a.m. – 4:45 p.m.

Real Property Law Institute

6.5 Hours, including 3.0 Prof. Conduct

\$250 CBA Member (\$345 Non-Member)

☎ Print Handouts additional \$20

December 11 • 1 – 3 p.m.

Crisis Management for Attorneys & Their Clients

2.0 Hours

\$70 CBA Member (\$100 Non-Member)

December 12 • 9 a.m. – 12:15 p.m.

Law & Film

3.0 Hours, including 1.0 Hour Prof. Conduct

\$105 CBA Member (\$150 Non-Member)

December 12 • 2 – 3:30 p.m.

Ohio Supreme Court Highlights

1.5 Hours

\$50 CBA Member (\$75 Non-Member)

December 13 • 12 – 1 p.m.

Brown Bag Series

Ethical Red Flags

1.0 Hour Prof. Conduct *

\$35 CBA Member (\$50 Non-Member)

December 13 • 6:30 – 10 p.m.

Night at the Movies: The Rainmaker

@ Mariemont Theatre

1.0 Hour CLE, including .5 Prof. Conduct*

\$35 CBA Member (\$50 Non-Member)

December 14 • 9 a.m. – 12:15 p.m.

Southwestern Ohio Tax Institute

3.0 Hours

\$105 CBA Member (\$150 Non-Member)

☎ Print Handouts additional \$20

December 15 • 11 a.m. – 1 p.m.

Environmental Law

2.0 Hours

\$70 CBA Member (\$100 Non-Member)

December 19 • 1:30 – 4:45 p.m.

New Lawyer Training: Professionalism, Trust Account and Law Office Management

3.0 Hours, including 2.0 Hours Prof. Conduct*

\$105 CBA Member (\$150 Non-Member)

December 21 • 2 – 4:30 p.m.

PLI Groupcast

Ethics for Corporate Lawyers

\$395

Call PLI @ (800) 260-4754 to register

December 27 • 9 a.m. – 12:15 p.m.

Video Replay

11th Hour, Session One

3.0 Hours Prof. Conduct

\$115 CBA Member (\$160 Non-Member)

☎ Print Handouts additional \$15

December 27 • 1 – 4:15 p.m.

Video Replay

11th Hour, Session Two

3. Hours

\$115 CBA Member (\$160 Non-Member)

☎ Print Handouts additional \$15

December 28 • 9 a.m. – 12:15 p.m.

Video Replay

11th Hour, Session Three

3.0 Hours, including 1.5 Prof. Conduct

\$115 CBA Member (\$160 Non-Member)

☎ Print Handouts additional \$15

SAVE THE DATE: 2. 8. 2018

Forecasting for the Legal Profession: **Substantive Predictions Beyond 2018**

Join the CBA for Thomson Reuters & Georgetown Law's national release of the 2018 State of the Legal Industry Report, and first-time release of the State of the Industry Report on corporate legal departments. This first annual CBA symposium will prepare legal professionals and firms of all sizes to strategically innovate, adapt, compete and be successful in the ever-changing, disruptive legal environment.

This event is not to be missed!



The Black Lawyers Association of Cincinnati — Cincinnati Bar Association Round Table formally invites you to attend the

2017 First-Year Minority Law Student Reception

Each year, the BLAC-CBA Round Table welcomes first-year minority law school students attending the Salmon P. Chase College of Law and the University of Cincinnati College of Law to the Greater Cincinnati legal community. All area attorneys, associates, recruiters, law clerks and Summer Work Experience in Law (SWEL) students are invited to attend this reception.

November 14, 2017 • 5 – 6:30 p.m.
Cincinnati Bar Association
225 E. Sixth Street, 2nd Floor, Cincinnati, OH 45202

Complimentary hors d'oeuvres and refreshments will be served.

RSVP by November 9 at www.cincybar.org. For more information, please contact LaDonna Wallace Smith at lwsmith@cincybar.org or (513) 699-1392.



CBA AWARD NOMINATIONS

The Cincinnati Bar Association is accepting nominations for the following awards to be presented to members at the CBA's 2018 Annual Meeting. All replies will be handled with the strictest confidence.

THEMIS AWARD

The Themis Award is the highest award given by the Cincinnati Bar Association for truly extraordinary service by an attorney to the Cincinnati Bar Association, the legal profession and/or the general community. The recipient must display a high level of commitment, dedication or courage.

TRUSTEES' AWARD

The Trustees' Award is presented for outstanding service by an attorney to the Cincinnati Bar Association, the legal profession and/or the general community, which displays a high level of commitment, dedication or courage.

JOHN P. KIELY PROFESSIONALISM AWARD

This award recognizes a trial lawyer who possesses outstanding trial skills and demonstrates the highest degree of professionalism, civility and ethical standards in his or her daily practice. Nominees must be members of the Cincinnati Bar Association.

To nominate someone for any of these awards, please contact Maria Palermo at (513) 699-1402 or mcpalermo@cincybar.org by Jan. 15, 2018.



JOHN W. WARRINGTON COMMUNITY SERVICE AWARD

Presented in memory of John W. Warrington, this award recognizes an attorney who has performed extraordinary volunteer community service. The recipient must be a CBA member and must have spent a minimum of three years as an attorney.

To nominate someone for this award, please visit the CBA Community Service Committee page at www.cincybar.org or contact LaDonna Wallace Smith at (513) 699-1392 by Dec. 11, 2017.



TSA PreCheck at the CBA

Prepare to fly through airport security!



Get TSA PreCheck approved at the Cincinnati Bar Association on **November 30 or December 1**. Travel with ease with a 5-year expedited airport security clearance for \$85. Spaces are limited. Sign up before November 15 at www.cincybar.org.

**Many major credit card companies will reimburse the TSA Precheck fee. Review your cardholder agreement.*

Self Help Clinics Expand Access to Justice in Hamilton County

The Help Center

On Monday, Sept. 25, members of the Cincinnati legal community gathered to celebrate the opening of the Help Center located in the clerk's office on the first floor of the Hamilton County Court House. The Help Center, a joint venture with the University of Cincinnati College of Law, will offer help to the public with forms, and where necessary, limited legal advice, for Small Claims Court and other small civil cases. It will have close liaison with Legal Aid, Volunteer Lawyers for the Poor, and the CBA's Lawyer Referral Service. The Help Center is staffed by attorney Rob Wall, who is employed by the University Of Cincinnati College Of Law. The CBA's 2017 CALL Class adopted the Help Center as its project for the year and helped the program take shape. More information on the help center can be found at <http://cincyhelpcenter.com/about-the-help-center/>.



Members of the 2017 CALL Class attended The Help Center's opening. Barkha Patel, Katie Neff, Maggie Nestheide, Anne Lucas, Eugene Droder III, and Curtis Scribner (left to right).

The Family Law Clinic

The Hamilton County Domestic Relations Court has seen an increasing number of people who cannot afford an attorney trying to file for divorce and post-divorce relief on their own. *Pro se* litigants often make mistakes that cause delays and frustration for both the parties and the court. The volume of these cases was straining the court's ability to handle all cases expeditiously. The court asked the Legal Aid Society, the Volunteer Lawyers Project (VLP), and the Hamilton County Law Library to create a clinic to assist these individuals. The Family Law Clinic was launched in June 2016 and is open Tuesdays and Thursdays at the Domestic Relations Court. Self-filers can speak with a volunteer lawyer to receive limited legal advice, information, and guidance to ensure they file correctly and understand what to do next. The demand for the clinic's services continues to grow. The clinic is staffed by private attorneys through the VLP.



The juvenile court clinic planning committee joins Judge John Williams.

Juvenile Court Custody and Companionship Clinic

The Hamilton County Juvenile Court has also seen an increase in the number of unrepresented parents and grandparents filing for changes of custody or seeking visitation. Judge John Williams asked the Legal Aid Society, the Volunteer Lawyers Project, and the Hamilton County Law Library to develop a clinic using the Family Law Clinic as a model. On Sept. 25, 2017, the court opened its Juvenile Court Custody and Companionship Clinic to help meet this need. Volunteer Lawyers staff the new juvenile clinic to educate and advise the self-filers on issues surrounding custody and companionship. In addition to providing a coordinator for the clinic, the Juvenile Court Clerk's office has set up a help desk to provide self-filers with *pro se* form packets. The goal is for an individual's filing to be complete and correct the first time, which will ensure that the system works efficiently for everyone. The clinic is open Mondays and Wednesdays at Juvenile Court.

If you'd like to volunteer at The Family Law Clinic or The Juvenile Court Custody and Companionship Clinic contact Anne Lucas, VLP managing attorney at alucas@lascinti.org.



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. 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.). 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 releases regarding lawyers who are not Cincinnati Bar Association members in good standing will not be printed. We publish news about our members. Submit items to communications@cincybar.org. Please submit address changes to info@cincybar.org.



Christman-Blomeke

Stacy Christman-Blomeke recently joined the Cincinnati office of Oxford Financial Group Ltd.(Oxford) as a managing director. Prior to joining Oxford, Christman-Blomeke was director of gift planning at Cincinnati Children's Hospital and a member of Frost Brown Todd LLC. She brings with her over 17 years of experience as an attorney and will provide advice and counsel to individuals and families in the area of estate and financial planning, asset protection, multi-generational wealth planning and preservation, business succession planning and development of family gifting strategies. Oxford Financial Group Ltd. is a multi-family office serving the Midwest and one of the largest Registered Investment Advisor (RIA) firms in the country.



Brumm

Keating Muething & Klekamp PLL (KMK Law) welcomes attorney **Michael B. Brumm** as an associate with the firm's Business Representation & Transactions Group. Brumm focuses his practice on mergers and acquisitions, business formation, and venture capital/private equity. Prior to joining KMK Law, Brumm was an associate for a mid-sized law firm in Cincinnati, Ohio where his practice covered all areas related to the operation of a business, including general corporate and business law, real estate, financing, commercial transactions, acquisitions, succession planning, and regulatory matters. Brumm also spent a year as a law clerk with GE Aviation on the commercial engines, services & global sales team. Brumm earned his J.D. from the University Of Cincinnati College Of Law in 2015 where he was a member of Law Review, serving as both an associate member and outreach director.



Bilott

Taft Stettinius & Hollister is proud to announce that **Robert A. Bilott** was named a laureate of the 2017 Right Livelihood Award, an award widely referred to as the "Alternative Nobel Prize." He received the honorary award for "exposing a decades-long history of chemical pollution, winning long-sought justice for the victims, and setting a precedent for effective regulation on hazardous substances." Bilott and three other laureates were recognized on Sept. 26 in Stockholm, Sweden. Bilott hopes that this honor helps spread awareness and recognition of the urgent need to take further steps to protect our drinking water, and the ability and power of local residents and communities to ensure that such steps are taken. Bilott, served as co-lead counsel for the plaintiff's altering committee handling litigation against DuPont.



Schworer

Frost Brown Todd is pleased to announce that **Philip J. Schworer** has been elected to the board of the Cincinnati Arts Association (CAA), a nonprofit organization that oversees the programming and management of the Aronoff Center and the newly-renovated Music Hall, with a mission to offer a broad range of high quality performing and visual arts programs, develop diverse audiences, foster an appreciation of the arts and understanding of their forms, and encourage the use of its venues. Schworer first became involved with the organization as a "celebrity" participant in the Dancing for the Stars competition to raise funds for the Overture Awards, a competition that he, surprisingly and proudly, won.



Linneman

Santen & Hughes is pleased to announce that **J. Robert Linneman** has been elected as chair of the Board of Directors of the Corporation for Findlay Market. The Corporation for Findlay

Market is a nonprofit organization which manages and operates Cincinnati's historic Findlay Market, Ohio's oldest public market. Linneman has been a member of the Board of Directors of the Corporation since 2009 and is a partner at the law firm of Santen & Hughes.



Richards

Stuart "Stu" L. Richards has been a permanent fixture, mentor, and professional effecting even handed, fair, and impartial representation for clients who unfortunately find themselves on the Hamilton County Municipal Court Eviction Docket. Richards has done so for over 55

years for which his clients, colleagues, co and opposing counsel, and the bench are extremely grateful. In recognition of his demeanor, constant presence and professionalism, the bench, Bar, his clients and friends have placed a permanent plaque on his chair in room 121 of the Hamilton County Courthouse where the Eviction Docket is held, thanking him for his service to the judicial system and our community.

In Remembrance

We fondly remember the following members of our legal community:

Jerry Smith

December 24, 1947 – August 31, 2017

Milton Thurman Jr.

October 23, 1936 – September 27, 2017

To submit a memorial for a decedent, please contact amyowell@cincybar.org.

Please help us track the lives of those we wish to remember in our legal community.

To report a decedent, please contact amyowell@cincybar.org.



James Joseph Ryan

1929 – 2016

James Joseph Ryan (Jim), age 87, passed away on August 20, 2016 following a short illness. Jim was preceded in death by his parents, Robert M. Ryan and Marian H. Ryan and brother, Robert J. Ryan M.D.

Jim received an enriched Jesuit education experience – graduating from St. Xavier High School (class of 1947) and Xavier University (class of 1951) – where he graduated magna cum laude. Following an exemplary collegiate career, Jim decided to further his education by attending the University of Cincinnati College of Law (class of 1954), where he once again graduated with high honors and distinction.

Following law school, Jim went on to become a teacher's associate at Northwestern Law School (1954 – 1955). He also went on to serve his country in the United States Army as captain in the Judge Advocate General's Corp where he was awarded The Commendation Ribbon and Metal Pendant for Meritorious Service. He was honorably discharged from the United States Army in 1965.

Jim started practice at Dolle, O'Donnell, Cash, Fee and Hahn in Cincinnati in 1958. He was a general lawyer with emphasis on tax law. Jim joined Taft Stettinius & Hollister as a partner in 1971 and served as head of the Taft Tax, Probate and Estate Planning Department until 1998. Jim was very much a teacher all of his professional life and served as a mentor to many lawyers in and outside of the firm. His gentlemanly and considerate professorial style was exhibited in negotiations within the firm as well as in handling tax controversies before the Internal Revenue Service. Jim was a strong and forceful advocate and there was an edge to his negotiations and advocacy. Still, he was always courteous and forthright in all his dealings.

Jim displayed wonderful character traits throughout his career. He was totally honest and ethical and gave an insightful and thoughtful presentation on legal ethics in tax controversies at a CBA seminar near the end of his career which summed up his approach to law practice. Jim was the consummate family man and husband and spent hours of valuable quality time in family gatherings and travel experiences. Around the firm he was known as a "people" person and had good relations with all levels of staff, lawyers and clients. He became a beloved member of the firm as senior counselor. He stepped down as head of the tax department in 1998 and retired from active practice at the end of 1999.

Jim was an extremely outgoing and charitable person. He was an active and generous supporter of many charitable causes and community concerns. He never turned down a request for assistance to individuals and organizations in need or displaying a good cause. Jim was active in the St. Antoninus Church, served as President of CORVA and was active as a board member on many other charitable organizations including the Resident Home, which provides holistic services to children and adults with developmental challenges. He was a member of the Cincinnati Bar Association, the Ohio Bar Association and the American Bar Association throughout his career. Jim loved to play golf with friends and family at Western Hills Country Club, even though he never became as accomplished at the game as he wished.

Jim is survived by his wife of 62 years, Mary A. "Cookie", sons Kevin, Timothy, Daniel, and daughter Nora R. Spencer and their spouses. Jim was the cherished grandfather of eight, always greeting them with a twinkle in the eye and unwavering support. Jim led a full and enriched life and left an indelible mark on the many people with whom he crossed paths. He will be sorely missed by many.

— Daniel Ryan and Bob Rich



Peter J. Randolph Sr. 1931 – 2016

Peter Jerome Randolph Sr. departed this life on Sunday morning January 10, 2016 at his home in Cincinnati, Ohio at the age of 84. Born to parents, Lewis Herman & Zella Mae Randolph on October 11, 1931 he and his eight siblings were raised in the west end of Cincinnati.

Raised as a Roman Catholic, he attended Holy Trinity grade school and DePorress High School. Peter received his Bachelor of Science Degree in History and Political Science at Xavier University and his Doctorate of Law from the University of Cincinnati.

Peter Randolph leaves behind to cherish his memory, the love of his life and devoted wife of 58 years, Mary Ann Randolph; four children: Lisa, Paula (Lonnie) Hollins, Peter Jr. (deceased) (Tracie), and Jason (Tonya); three grandchildren: Abrielle, Jasmine, and Sasha, and one, great-grandson, Zion.

Peter J. Randolph was a pioneer in many respects. He was the first African American high school student in Cincinnati to become “Mayor for A Day” in 1949 and the first Mayor for Xavier University’s Operation Youth in 1950. He was one of the first African Americans to obtain a Law Degree from the University of Cincinnati. He was the first African American Attorney to specialize and practice on the State Level in the area of Worker’s Compensation.

Although he had accomplished an exhaustive list of “firsts” he knew that “de facto” discrimination in Cincinnati’s private and public sectors could only be defeated through collective efforts. A few of these collective efforts led him to be a founding member in the following organizations: DYM (Determined Young Men) which successfully confronted the leaders of the Cincinnati business community (Kroger, Proctor & Gamble, etc.) demanding an opportunity for African Americans to compete for jobs that were in practice reserved for “whites only”, the Black Lawyers Association of Cincinnati and the Round Table that expanded opportunities for African Americans to practice law in some of the most prestigious law firms in the country (Taft Stettinius & Hollister, Dinsmore etc.), and he was also a founder of FMFC Savings & Loans institution which provided lending services to the community.

The crown jewel of his legal career involved being part of the plaintiff’s legal team in the landmark case *Mallory v. Eyrich*. The plaintiffs challenged and successfully defeated a Hamilton County election scheme for municipal court judgeships. The federal court found that this scheme was in violation of the 1964 Voting Rights Act. *Mallory v. Eyrich* provided minorities in Cincinnati an opportunity to compete for judgeships and if successful become decision makers in the pursuit of justice, job providers with budgets, and provide access to coveted clerkship positions. Peter J. Randolph was a man of action! Be inspired!

— Jason Randolph



Irving Rosen 1928 - 2016

Irving (Irv) H. Rosen died at the age of 88. He was a dear man and a hero to many. He received a B.A. from the University of Cincinnati in 1954, and his J.D. from the University of Cincinnati College of Law in 1957.

After graduating from law school, Irv began knocking on doors of every law firm in the Tri-State Building in downtown Cincinnati. He did this until he met Irwin Aronoff, who immediately hired him. He practiced in the areas of business law, family law, tax and real estate law. He was the lawyer’s lawyer. His way of practicing law in a professional, kind manner has carried forward at the firm in large part due to Irv’s presence and mentoring of younger attorneys or, as Irv would say, “I am not a mentor, but rather am a tormentor.”

Irv taught us all to “live our lives and they (clients) will come.” His love of life and family made him a better attorney. Irv was a master of practical jokes in the office. In his presence, one could never help but smile. He was always kind. He was always a gentleman.

Irv taught us how to listen to our clients as they described their problems, how to ask probing questions to elicit more facts from them, how to be calm when faced with adversity, and how to identify a path to accomplish the client’s goals. Irv did this without really providing any instruction at all. His teaching method was simply to let us observe him in practice, and to learn from his skillful handling of clients, applying the law to their problems, and working with attorneys and judges to reach a fair resolution. Irv always reminded us to put ourselves in the other person’s shoes so we could understand the issues from both sides. Irv knew more about almost everything than most of us know about anything. Yet, he never flaunted his intelligence. Irv was always steady, fair, reasonable and honest. He was a good and decent man.

Irv was an avid tennis player and continued to play until just a few years prior to his death. He was also an admirer and collector of cars. His 1932 Plymouth was a prized possession along with that fast, red hotrod that he enjoyed after his retirement.

Community service was a big part of his life. He performed volunteer legal services for Temple Shalom and for the Cincinnati Association for the Blind and Visually Impaired. During his career, Irv practiced in the States of Ohio and Kentucky, U. S. Supreme Court, U.S. Court of Appeals Sixth Circuit, U.S. District Court Southern District of Ohio, U.S. District Court Southern District of Indiana, U.S. District Court and U.S. Claims Court. He was a member of the Cincinnati, Ohio, Kentucky and American Bar Associations as well as the American Judicature Society and Lawyer’s Club.

Irv will be missed by anyone who ever had the pleasure of making his acquaintance. He built a solid foundation for Aronoff, Rosen & Hunt that we all are thankful and grateful for.

Irv is survived by his wife, Bev, his son, Steven and grandchildren Erica and Theodore.

— Tina M. Donnelly and Mark W. Reis

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