

MEDINA COUNTY BAR ASSOCIATION

93 Public Square
Medina, Ohio 44256
Medina County Bar Association

www.medinabar.org



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Upcoming MCBA Events

July 17 from 2:00 p.m. to 4:00 p.m. Robby's House Grand Opening

July 24 from 4:00 p.m. to 6:00 p.m. "You, Drugs, the Law: How Medina County handles drug offenses" at Wadsworth Public Library

July 28 from 1:00 to 4:10 p.m.: Cybersecurity CLE at Santosoussos.

August 12 from 12:00 to 4:00 p.m.: MCBA Family picnic at Fred Greenwood Park.

August 19 at 2:00 p.m.: Thomas E. Palecek Memorial Golf Outing, hosted by Wadsworth Drug Free Community Coalition Gold Outing, at Deer Pass Golf Course

Sept. 8: MCBA 3rd Quarter Luncheon

Sept. 15: Articles for 3rd Quarter newsletter due to Monica Russell at russell@ccj.com.

Message from our President: Alanna Arnold

The first half of 2017 has been very active for MCBA. The Executive Committee is pleased with the interest shown by and participation level of our members.

The first quarterly meeting in March, held at Thyme2, was well-attended and filled with laughter as well as much useful information, thanks to Judge Joyce Kimbler. And, of course, the food was outstanding.



Medina County Bar Association

Our 2017 Executive Team:

President - Alanna Arnold, Esq.

President-Elect - Brian Kerns, Esq.

Vice President - Michael Ash, Esq.

Secretary - Monica Russell, Esq.

Treasurer - Bradley Proudfoot, Esq.

Executive Secretary - Gina Hotchkiss

Newsletter Editor - Monica Russell

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The executive committee opened a new Facebook page in April. New posts are regularly made to notify members of upcoming CLEs (especially FREE and low-cost CLEs), events, and deadlines. Many members attended the free criminal drug court CLE for mental health intervention presented by Judge Collier and Judge Kimbler in April. The Domestic Relations Court's free Guardianship CLE in May was also advertised on our FB page. Unusual or interesting cases are also shared. Events and deadlines are also listed on home page of the MCBA website for quick reference.

Several more CLEs are being scheduled. On the afternoon of July 28th (1-4:10 p.m.), local author and cybersecurity expert with Vestige Digital Investigations Greg Kelly, EnCE, DFCP, will present a 3.0 hour (credit pending) CLE on Cybersecurity at Santasuosso's. An optional pre-CLE lunch is also offered. (See attached form.) Watch for an IOLTA seminar to be presented by Gretchen Mote, JD, Director of Loss Prevention for OBLIC to satisfy your 2.5 hour professionalism CLE in the near future. See attached RSVP Form.

Each committee is being asked to organize and schedule an annual CLE, starting in the second half of 2017. Please advise the MCBA president when you have scheduled one so a master calendar may be kept on FB and the website. It could be a 1.0 hour lunch-time CLE.

Mark your calendar for the **first annual family picnic** to be held **August 12th at Fred Greenwood Park**. Committee members Kelly Dempsey and Matt Ameer are planning an action-packed afternoon with lots of fun and food. Paralegals, secretaries, and their families are invited too. The Association has decided to foot the bill for the day. Dan's Dogs will have its Weenie Wagon at the park to provide freshly made hot dogs, French fries or deep fried baby potato cakes, and drinks for a reduced price for the Association's event. Mark your calendars now to save the date—rain or shine, the picnic will go forth! (Make your reservation by Aug. 8th by calling Gina at 330-725-9794.) In August, the Association will formally welcome all new Medina County lawyers admitted to the bar in 2016 and 2017 at a cocktail social which will be arranged by the Young Lawyers Division. Watch FB and our website for the date, time, and place.

In November, we will ask attorneys/firms to be a Secret Santa for a child and/or family chosen from The Children's Center list, kept by JFS, of eligible children and/families. Secret Santa's (i.e. law firms) may "adopt" a child or the child's entire family to buy some or all of the items on "wish" list(s) and wrap them for Christmas. The children who use the Center have been sexually, physically, or emotionally abused and without a Secret Santa won't otherwise have Christmas. If anyone needs to believe in Santa, these children do. You have the unique opportunity to be an abused child's (and his/her family's) healing Secret Santa. Letters will go out in early November.

If you are interested in joining the executive committee in 2018, please let someone know that you would like to be nominated for the position of Treasurer.

Thank you.

Alanna Arnold

President Arnold practices general civil law as a sole practitioner in Medina and offers services as a legal research and writing consultant. She was a partner with Milling Benson LLC in New Orleans, LA and served as a legal intern for Judge M. Livaudais (deceased), U.S. District Court, E.D. LA (New Orleans). She has contributed annual case summary updates for §365 in Norton's Bankruptcy Year in Review since 2013. Ms. Arnold can be reached at aswarnold@gmail.com.



VIEWS FROM THE BENCH



Judge Joyce Kimbler

Medina County Court of Common Pleas

To complete the continuum of care for those in recovery in our community, Medina County is excited to announce the opening of Robby's. Robby's joins a group of only approximately 12 centers statewide dedicated to providing support to people in recovery.

The mission of Robby's recovery center and cafe is to strengthen communities by supporting people in recovery. Robby's is a one stop shop connecting people in need of recovery support services in the community. Our walk-in resource center accepts drop-in visitors from the entire community and will deliver a positive impact to people and their families throughout greater Medina that have, either directly or indirectly, been affected by addiction.

Robby's believes in taking the holistic approach to recovery and will therefore also be offering opportunities for hospitality vocational training. This program will train participants on all aspects of hospitality, while working at Robby's, once it opens as a restaurant in the near future. Robby's will help those individuals rebuilding their lives become more employable and will offer a financial stipend to students enrolled in the program. Further job readiness assistance will be provided by helping with completing job and housing applications, tutoring, and general problem solving. There will also be skill building activities such as resume building and basic financial fundamentals like check book balancing.

Because Robby's believes in providing holistic support and believes that a work life balance is important, we will also offer a full schedule of prosocial activities and programming ranging from board games, sporting event gatherings, journaling, a sober running groups, speaker presentations, and peer support groups.

Since we trust that maintaining physical and emotional health is key in recovery we believe that combining the recovery center with restaurant services will help to reduce the social stigma that people in recovery often feel, helping to heal both the recovery population and the community.

Hope to see you there!

Judge Joyce V. Kimbler

YOU ARE INVITED

July 17, 2017
2pm-4pm

Grand Opening
Medina, Ohio

Join us as we open the recovery center doors and begin to serve Medina County! Event will feature speakers, ribbon cutting and dessert will be served. Please RSVP to Veronica Perry or Stefanie Robinson: robby'srecoverycenter@gmail.com.

538 W. Liberty St || Medina, Ohio 44256

The invitation card features a large, bold, red "YOU ARE INVITED" text on the left. To the right, it provides the event details: "July 17, 2017 2pm-4pm" and "Grand Opening Medina, Ohio". Below this, it describes the event and provides contact information for RSVPs. At the bottom left, the address "538 W. Liberty St || Medina, Ohio 44256" is listed. At the bottom right, there is a logo for "MEDINA ROBBY'S OHIO" with "2017" below it.



1st Annual MCBA Family Picnic

Join your colleagues at the MCBA's 1st Annual Family Picnic on Saturday **August 12, 2017** from 12:00 p.m. to 4:00 p.m. at Fred Greenwood Park in Medina. Dan's Dogs will provide hot dogs and drinks. Feel free to bring a dish to share. There is a splash pad available.



Guest Columnist, Gretchen Koehler Mote

Addressing Ransomware Attacks

Recent reports about global ransomware attacks have created cyber insecurity. Here are some steps you can take:

1. Install updates: The latest ransomware, WannaCry, also called WCRY, WannaCrypt0r, Wanna Decryptor or WannaCrypt, attacks all systems continuing to use Windows XP and all versions of Microsoft, except Windows 10 and Windows Server 2016, not yet patched by the update Microsoft issued on March 14, 2017, [MS17-010](#). If you are using affected Microsoft software, you should install the patch immediately. Also see [Microsoft Customer Guidance](#) for additional assistance.

Microsoft no longer provides regular updates to Windows XP. If you still use Windows XP, you should consider replacing it. If you use Windows 10 or Windows Server 2016, you are protected from THIS attack. However, you should ALWAYS install the latest updates to your system as soon as you receive legitimate messages from your operating system. For additional information, see [Microsoft Updates](#).

2. Back up: For computer systems that have adequate back up, the threat from ransomware or other cyberattacks isn't an irrevocable problem. Be sure all your systems use an automatic back up for all your data. You will want to store duplicates of

the back up in several locations, so that a physical attack on one location cannot destroy the only back up. As another option, follow the procedures for using secured cloud storage for your data.

3. Use antivirus software: Keep current antivirus software installed on your systems. Antivirus programs are constantly being updated to try to catch new ransomware, worms and viruses. Keeping your antivirus up to date is a good first line of defense against cyberattacks.

4. Never open any email from an entity you do not know! If you are not sure, DON'T open it! If you do open a phishing scam email or a ransomware message appears on your computer, contact OBLIC for assistance under the cyber coverage provided under your OBLIC policy. Now is also a good time to consider whether you need to add additional cyber coverage at a reasonable cost available through the [OSBA Insurance Agency](#).

For additional information on cybersecurity on visit the [OBLIC Cyber "Toolbox"](#).

If you have any questions on this or any other loss prevention topic, please contact:

Gretchen Koehler Mote, J.D.,

Director of Loss Prevention
Ohio Bar Liability Insurance Company
Direct Phone Line: [614.572.0620](tel:614.572.0620)

www.oblic.com

From Community Legal Aid

Reflecting on freedom this Independence Day

Everyone loves the 4th of July. And what's not to love? Cookouts, parades, time with family and friends, and the pride that swells in our hearts as Americans for love of our nation.

But each year, I can't help but reflect on another aspect of the holiday - that is, the deeper meaning of independence in our country. What does it mean to be truly free? Sure, there's freedom of religion and speech, freedom to make our own decisions for our lives. But what about financial independence? What about freedom from violent abusers, stalkers, or harassing collectors?

In 2015, 43.1 million people were living in poverty in the United States, according to the [U.S. Census Bureau](#). While many of these individuals were children or non-working adults, 8.6 million were considered to be the "working poor," according to the [Bureau of Labor and Statistics](#). Over the last decade, the rate of the working poor has oscillated between 5 and 7 percent of the total labor force in our country. These are individuals who are either working or actively looking for work, but are still living below the poverty line.

And these are the individuals we see every day at Legal Aid. Many of us can't imagine what it is like to struggle to make ends meet. We've never experienced the tragedy of having to choose between buying groceries and seeking medical attention for a health problem. We don't know what it's like to fear answering our phones, dreading the voice of a debt collector on the other end. And we certainly have never had to wonder how to tell our children that they're losing their home.

But these stories are true, and they happen every day right here in our community. They could be your neighbor, or the women in front of you at the grocery store check-out line, or the child sitting next to yours in class. And this Independence Day, while they're celebrating with loved ones, they're contemplating a very different concept of freedom.

Our country has laws and regulations designed to protect people from the scenarios I described above. The real tragedy comes when they aren't aware of or can't access these protections. This is why Legal Aid exists. We offer a lifeline to people who have nowhere else to turn. Our dedicated staff, passionate volunteers, and faithful donors provide so much more than legal assistance to these individuals - they provide hope. Thank you to those of you who are a part of this work!

How you can help

Volunteer: Our Power of 1 Campaign shows just how easy it is to make a difference. It only takes one... One case, one client, one story. Visit www.communitylegalaid.org/vlsp to learn more or sign up.

Donate: Make a difference in someone's life today by giving to our Spring Appeal. Give online today at www.communitylegalaid.org/springappeal.

Get involved: If you feel passionately about helping the working poor, we want to hear from you! We're always looking for people to join committees or our board. Learn more at www.communitylegalaid.org/volunteer.

Spread the word: Help us educate others about the needs of the poor. Follow us on Facebook or Twitter @CommLegalAid and share our posts with your social networks.

Steven McGarrity, Esq.
Executive Director, Community Legal Aid

MCBA AWARDS \$5,000 SCHOLARSHIP AT LAW DAY LUNCHEON

On Friday, May 5, 2017, Highland High School senior Anna C Sollenberger received the one-time \$5,000 scholarship awarded annually by the Medina County Bar Association to the senior high school student, living in Medina County, who submits the best Law Day essay. This year, there were forty-one outstanding essays on the theme: "The 14th Amendment: Transforming American Democracy" submitted. Anna's essay is attached to this newsletter.

Ms. Sollenberger, along with her parents Mark and Angla Sollenberger and approximately forty-nine attorneys, judges, and other legal professionals, attended the Bar Association's annual Law Day luncheon where she was honored as the essay winner. She has a cumulative GPA of 3.9 and received awards twice for the Ohio High School Speech League as a State Finalist and once each for Freshman Pride Award for Policy Debate and 4-H Medina County State Fair Project Finalist. She is a member of 4-H Medina County and some of its divisions, Ohio High School Speech League, National Honor Society, Highland High School Sinfonia Orchestra, a Lector with Holy Martyrs Life Teen, and a Rider with the Interscholastic Equestrian Association.

She will attend Miami University in the fall of 2017 where she will be majoring in Business Marketing.

Young Lawyers Section: Lee Potts

An Interview with Dean Holman

When I was tasked with contributing an interview of a more experienced member of the bar by Attorney Proudfoot, I chose a different path than him. I interviewed someone that I both respected as a mentor and whose career in public service I admired—Dean Holman.

Dean first moved to Medina County when he was in grade school, but graduated from Rhoads High School in Cleveland, Ohio. Dean returned to Medina County when he attended The University of Akron for undergrad and later for law school in the evenings while he worked at various Worker's Compensation and Personal Injury firms in Cleveland and Akron.

In 1979, Dean began his career in public service when he clerked for the Honorable Philip A. Baird in the Medina County Common Pleas Court. The next year, he took an assistant prosecutor position under Greg Happ and his love for the work prosecutor's office grew. In 1988, Dean Holman successfully campaigned for the prosecutor's office and served seven terms. Although he is very humble about his accomplishments, Dean points to several new programs that he brought to the prosecutor's office—including the Victim's Assistance Program and the Delinquent Property Foreclosure Program. But overall, Dean is most proud of the way his office sought justice in an impartial manner through following the evidence wherever it led.

When I asked Dean what advice he would give to young lawyers he said "I would tell them to work as diligently as they get as much experience as they can." Dean also stated that young lawyers should not be afraid to ask older attorneys for help and guidance. Dean also said above all, young lawyers should maintain their integrity and character as they continue through their career.

Lee Potts graduated from The University of Akron School of Law in 2014. While in law school he worked for the Wayne County Prosecutor's Office and later worked for the Medina County Prosecutor's Office after graduating from Akron. In January of 2017, Lee started his own practice in Wadsworth where he is currently running for Ward 3 City Council.

Probate/Estate Planning: Ann Salek

WHAT IS ELDER LAW?

I am often asked by clients, family, friends, and even the other attorneys with whom I work, “What is Elder Law?” We are all familiar with estate planning, trusts and probate law. However, “Elder Law” is a relatively new area in the legal field that seems to be growing. Traditionally, as people aged, their legal concerns were generally limited to planning for their estate when they die. In other words, who should get what and figure out the easiest way to get them what you want them to have. The practice of Elder Law certainly still involves estate planning, trust and probate. However, as people are living longer, their legal concerns are no longer limited to “what happens when I die?” More issues have arisen by the question of “what happens if I don’t die?” Of course the one surety in life is that you will die. However, according to data compiled by the Social Security Administration:

A man reaching age 65 today can expect to live, on average, until age 84.3.

A woman turning age 65 today can expect to live, on average, until age 86.6.

And those are just averages. About one out of every four 65-year-olds today will live past age 90, and one out of 10 will live past age 95. With living longer, comes additional legal issues.

Elder law attorneys need to advise clients regarding long term care planning. This includes financial issues pertaining to how to pay for long term care and whether lifetime savings can be protected from having to be depleted to pay for long term care. Planning discussions include long term care insurance, privately self-insuring to pay for long term care, obtaining Medicaid benefits, or obtaining Veterans Aid and Attendance benefits to pay for long term care.

Along with the financial aspects of living longer, elder law attorneys need to advise clients regarding the mental capacity aspect of living longer. What if the client no longer has mental capacity to make decisions, handle their finances, or administer their health care? These areas involve powers of attorney and potentially guardianships.

The Elder Law attorney also needs to be well-versed in dealing with the children or other family members of the elderly. Oftentimes, the elderly client may not even realize they need legal advice. The elderly client’s children are often quite involved in this planning process to assist their parents. However, this can cause considerable issues surrounding who is the client and who is the attorney representing? This is all part of the practice of Elder Law.

Elder Law attorneys also get involved in Medicare and other government benefits; abuse, neglect, and exploitation issues. Another topic that has become important in many Elder Law practices is special needs planning. This type of planning does not necessarily involve the elderly but rather children and adults with disabilities. The Elder Law attorney often works with special needs planning because many of the common legal problems of the elderly are shared by younger clients who may be disabled.

It is important to note that traditional estate planning, trust and probate attorneys are not necessarily well versed in many issues particular to what has become the practice of Elder Law. Long term care planning can be very cumbersome and complicated so clients should really search for the attorney with experience in the practice of Elder Law.

Ann Salek is an attorney with Critchfield, Critchfield & Johnston in the Medina office. She practices primarily in estate planning, trust, probate, elder law, and special needs planning. She is a certified specialist by the Ohio Bar Association in estate planning, trust and probate law and can be reached at salek@ccj.com.

Bankruptcy: Lisa Barbacci

Bankruptcy News

As chairperson of the bankruptcy section, I am fortunate to know the fine members of the Medina Bar Association who practice bankruptcy law. I am happy to share the following bankruptcy news.

New Chapter 13 Trustee in Cleveland

Lauren A. Helbling has been appointed the new Chapter 13 Trustee at the Cleveland Court. Craig Shopneck will be retiring as the Chapter 13 Trustee after serving for over 10 years. Lauren formerly was a Chapter 7 Trustee in Cleveland. Best wishes to Lauren on her new appointment and best wishes to Craig on his retirement.

Student Loan Debt Can be Discharged in Bankruptcy

Contrary to popular belief, student loan debt can be discharged in bankruptcy under section 523(a)(8) when repaying the student loan debt would be an “undue hardship” on the debtor. While the standard may be hard to meet, there are cases in the Northern District of Ohio where the debt has been discharged. See, *In re Lamento*, 520 B.R. 667(Bankr. N.D. Ohio 2014) or *Lamento v. U.S. Dept. of Education*, Adv Proc. No. 14-1054 (*In re Lamento*, Chapter 7 Case No. 13-18398, N.D. Ohio – Cleveland, Judge Morgenstern-Clarren).

The *Lamento* decision provides a very good analysis of the facts and circumstances of why the student loan debt of \$72,000 was discharged. It certainly is worth reading for a better understanding of the evidence needed to present to discharge the debt. Attorney Lee Kravitz of Cleveland represented Ms. Lamento in this adversary and did a fine job.

Outstanding student loan debt totals over one trillion dollars and many debtors filing bankruptcy are burdened with student loan debt. Please be sure to review the circumstances for your client to consider if a determination as to the dischargeability of student loan debt should be part of their bankruptcy case. You will need to file a separate adversary proceeding to do so, and the deadline to file such an action is provided on the Notice of Bankruptcy Filing when your case is initially filed.

Thanks for this opportunity to share some bankruptcy information. Please remember to contact me with any bankruptcy questions you may have – my office phone is 330-722-4488.

Lisa M. Barbacci

Chairperson, Bankruptcy Section

Lisa M. Barbacci practices in Medina and is a Chapter 7 bankruptcy trustee appointed in the Canton Bankruptcy Court. She also served as law clerk to the Honorable Harold F. White, U.S. Bankruptcy Judge in Akron, Ohio (deceased) and the Honorable Arthur I. Harris, U.S. Bankruptcy Judge in Cleveland, Ohio.

Employment

Opportunity

Community Legal Aid is hiring!

Positions available:

- Paralegal;
- Managing Attorney;
- Staff Attorney;
- Internship: Fundraising, Grantwriting, Development;
- Internship: Communications, Marketing, PR; and
- Justice For All Fellowship.

For Details, see:

<http://www.communitylegalaid.org/careers>



Do you have an opening in your firm that you'd like to advertise? Contact Monica Russell at russell@ccj.com.

Real Estate: Guest Columnist J.R. Russell

Who Kept the Dogs Out?

One of the most difficult issues for prospective residents or housing providers to navigate is the applicable law as it relates to service or assistance animals for their residents. Some of the most common questions raised are: whether owners can always enforce a “no-pets” policy for any animal, and whether owners can charge a pet deposit for service animals requested as an accommodation. In answering these questions, practitioners should be cognizant of the applicable federal law and regulations, not just Ohio statutory and common law. In most cases, the housing provider cannot do either of the above.

Under the Fair Housing Act, it is unlawful to discriminate in the sale or rental of a dwelling to a buyer or renter because of a “handicap.” 42 U.S.C. § 3604(f). Discrimination can include the “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B). This can include the buyer or renter, or “a person residing or intending to reside in that dwelling after it is so sold, rented or made available” or a person associated with that person 42 U.S.C. §3604(f)(1)(A)-(C). See also *Olsen v. Stark Homes, Inc.*, 759 F.3d 140, 152 (2nd Cir. 2014).

As counsel advising either a prospective resident or a housing provider, one should be mindful that what could be deemed a necessary accommodation for a resident can be broader than what is necessary for a public accommodation. For regulations applicable to the Americans with Disabilities Act, a “service animal” can be “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.” 28 C.F.R. §36.104. However, courts have held that “accommodations under the FHA regarding animals are not limited to service animals.” *Overlook Mut. Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 859 (S.D. Ohio 2009).

In *Overlook*, a housing corporation had rules and regulations which prohibited residents from having pets. *Id.*, 666 F.Supp.2d at 851. The residents in that case requested permission to keep a therapy dog to facilitate the psychological treatment of their child. *Id.*, at 852. The Court noted that the Sixth Circuit requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled resident’s quality of life by ameliorating the effects of the disability. *Id.*, at 856. Nevertheless, the Court denied the housing corporation’s motion for summary judgment, in part, because HUD and the DOJ declined to limit their regulations on keeping animals to those that have been individually trained, unlike the regulations contained for general public accommodations in the ADA. *Id.* According to the Court, this rationale should be applicable to all types of housing subject to the FHA, to include emotional support animals that need not be individually trained. *Id.*, at 860.

Subsequently, federal regulations and opinion letters from HUD made clear that multifamily housing providers generally must waive a “no-pets” policy for “animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities.” 24 C.F.R. §5.303. Moreover, in other opinion letters, HUD made clear that its position is that most types of housing providers cannot charge a pet fee or pet deposit as a condition for allowing a disabled person to keep a service or assistive animal as a reasonable accommodation, even if others must pay pet deposits. See *Notice FHEO 2013-1* (April 25, 2013). The reasoning is because an “assistance animal is not a pet.” *Id.* Housing providers must also cautiously follow federal law and regulations in determining the extent to which they may inquire of the disability, and what is necessary to demonstrate disability-related assistance.

J.R. Russell is a trial attorney and partner at Goldman & Rosen, Ltd., and the municipal prosecutor for the Village of Lodi. He devotes much of his practice to representing landlords and tenants. He has lectured several times on topics relating to drafting leases, prosecuting and defending lease disputes in municipal courts, and housing compliance with federal disability and discrimination laws. He is a graduate of The Ohio University and The Ohio State University, Moritz College of Law.

Criminal Defense: Matt Ameer

Firearm Rights, Weapons Disability, & Concealed Carry Permits

Introduction: Buying, owning, transporting, & using firearms is a serious matter, both practically & legally. If you want to have & use firearms, you better make sure that the law allows you to. If you want a conceal carry license, you better make sure that the law allows you to. If you get lazy or take risks in either situation, you can face felony charges & all the pain that comes with that, even if you're acquitted of the charge. If you have any doubt about your eligibility to buy, own, use, or transport a gun, talk to a lawyer to make sure that you're doing things the right way. It's just not worth the risk.

Basics: A client can be eligible to own a firearm but ineligible to get a concealed carry license. That's because the eligibility standards for owning guns & owning a concealed carry license for those guns do not entirely correspond. Under federal & Ohio law, ownership of firearms is presumed lawful unless the person is disabled from owning/possessing a firearm. See R.C. § 9.68 under the "General Provisions" title. The Ohio Supreme Court has held that "a pistol must be operable or readily rendered operable at the time of the offense in order to be a "firearm"." *In re J.T.*, 143 Ohio St.3d 516, 2015-Ohio-3654, 39 N.E.3d 1240, ¶ 7. Private property owners (i.e. businesses) cannot ban firearms from their parking lots by posting "no gun" signs. This is strictly a civil trespass issue. See R.C. § 2923.126(C)(3)(a). Landlords cannot enforce "no gun" provisions in residential leases via eviction. See R.C. § 2923.126(C)(3)(b).

Determining Whether You're Disabled From Owning or Possessing a Firearm: Based on my experience, I think it probable that your client does not recall or understand his/her own criminal record. If they care about legitimacy & avoiding trouble with law enforcement, they should invest a little time & money in obtaining a state & federal criminal background check (i.e. "BCI webcheck").

Have the results delivered to you, the lawyer. Then, cast out public records requests (under either Ohio's sunshine law or superintendence rules) to courts in which your client has a record. Make the following request, verbatim or similarly: "Non-certified copies of all certifications of conviction, sentencing entries, & discharge documents in all traffic & criminal cases." After reviewing this batch, request certified copies of the documents most pertinent to your client's problem.

The following are the *federal* disabilities that are most likely to apply.

1. A person convicted of a crime punishable by imprisonment exceeding one year. This excludes most 5th degree felonies, which are punishable by up to 1 year. But, some argue that this includes 5th degree felonies, considering the possibility that additional time be imposed upon a parole violation.
2. A person who has been adjudicated as a mental defective or who has been admitted to a mental institution.
3. A person who has been dishonorably discharged from the military.
4. A person who is the respondent in a protection order, when the order includes a finding that the person is a credible threat to an "intimate partner or partner's child", or which prohibits the use of force against the partner/child, or attempt/threat thereof. This excludes protection orders against people other than intimate partners & their children.
5. A person who has been convicted of a misdemeanor crime of domestic violence. Based on Ohio's prohibition on sealing domestic violence convictions, combined with federal statutory language & case law, this is

practically the death sentence for gun ownership. Even simple assaults & plea reductions from domestic violence to disorderly conduct often have the effect of barring purchase & ownership of a firearm under federal law. But, there are ways to come back from a conviction that falls under the definition of “misdemeanor crime of domestic violence” under 18 U.S.C. § 921(a)(33).

a. First, if you’re dealing with an active domestic violence charge, you need to either plead your client to a charge that has no element of force or violence, or get the charge dismissed and re-filed as a new case so the victim relationship cannot be imputed and the NCIC record will show “dismissed” as the disposition to the domestic violence case instead of “plead to lesser included offense.”

b. Another alternative is to set aside the conviction under Crim. R. 32.1, for manifest injustice (i.e. ineffective assistance because client not advised about implications on firearm rights, or client pled without any representation, even if declined, or some other constitutional violation). Before filing the motion, you should speak with the prosecutor & explain your intentions. The prosecutor may stipulate to set aside the conviction under Crim. R. 32.1, then refile the case as an alternative, non-disabling charge, or stipulate to a nunc pro tunc judgment entry.

The following are the Ohio disabilities that are most likely to apply.

1. The person is under indictment for, has been convicted of, or has been adjudicated delinquent for any felony offense of violence.
2. The person is under indictment for, has been convicted of, or has been adjudicated delinquent for any felony offense involving the illegal possession, use, sale, or trafficking in any drug of abuse.
3. The person is under adjudication of mental incompetence, has been committed to a mental institution, or has been found by a court to be a mentally ill person subject to court order (i.e. pink-slipped pursuant to R.C. § 5122.10 & .01).
4. The only time there will be an Ohio disability without a corresponding federal disability already existing is for an Ohio 5th-degree felony offense of violence or an Ohio 5th-degree felony drug offense.

How to Restore Gun Possession Rights (not for obtaining CCW/CHL license)

Almost every disability a client will face is federal. Thus, what federal law will accept as rehabilitation is practically the controlling factor. Federal law accepts (1) Governor pardons; (2) complete expungements/sealings of the case; or (3) complete restoration of firearm rights. Regardless of which method you choose, having a lawyer gather the right court documents/information, perform the legal analysis, & write/speak on your behalf will reduce the chances of wasting time & fees (if you’re ineligible & you don’t know it), will increase the chances of succeeding on the first try, & will help you try alternative methods of succeeding if the first method fails.

1. Apply to seal the conviction. Ohio’s sealing of a record has never been “complete.” Even a sealed record can still be inspected by 12 enumerated entities. Since these entities can inspect a sealed record, Ohio clients cannot get federal disability relief on the grounds that a record has been completely sealed. However, Ohio law provides that the legal effect of the sealing of a court record is also that the sealing of the record separately restores all civil rights not otherwise restored. Thus, Ohio’s sealing of a record does not help a client because the record is sealed; rather, the sealing order helps because it separately operates as a complete restoration of rights.

2. Apply for relief from disability. This is a civil action instituted in the county the client resides in, or the county in which your client was convicted of the disabling offense. Relief from disability under Ohio law “restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen”. Federal law accepts these Ohio orders for relief from disability.

To earn this relief, the applicant must show all of the following:

- a. If the disability is based upon an indictment, the applicant has been released on bail or recognizance.
- b. If the disability is based on a conviction or adjudication, the applicant has been fully discharged from imprisonment, community control, and parole.
- c. If the disability is based upon a factor other than an indictment, a conviction, or an adjudication, that factor no longer is applicable to the applicant.
- d. The applicant has led a law-abiding life since discharge or release.
- e. The applicant is not otherwise prohibited by law from acquiring or using firearms.

3. File an appeal with the U.S. Department of Justice (“DOJ”): Your client attempts to purchase a gun. The shop clerk tells him he must wait 3 days. Your client returns & the shop clerk now tells him that he can’t sell your client any guns. You, the lawyer, writes to the DOJ, requesting an explanation for denying your client a gun. After pulling your client’s state & federal BCI background check & court records, you disagree with DOJ’s analysis & conclusion forbidding your client from purchasing or even possessing guns. Appeal the DOJ’s decision.

- a. You can find the appeal application on the DOJ’s website. Use this only when you believe that your client is not truly disabled under federal law, & the government is incorrectly/illegally categorizing your client as disabled to own firearms. Along with the appeal application, attach a legal memorandum, BCI check results, & certified court records to show why you believe the government is improperly denying your client firearms. This can take up to 1.5 years to be processed & receive an answer from the DOJ. The DOJ & its subordinate bureaus have systems that use fallible people, technologies, & systems. “They” get things wrong sometimes, so see if “they” should be corrected to your client’s benefit.

Obtaining a Concealed Carry License (CCW permit/CHL)

Determine whether your client is eligible before taking the instructional/training course, & before applying with the sheriff. Why? First, there’s time & expense involved with taking the instructional course, then filling out the application, & then paying for & waiting for a determination from the sheriff. Second, if your client “forgets” to write down a conviction or other historical information on the application, or doesn’t know what (s)he needs & need not disclose on the application, that could be viewed as misrepresentation in applying, which is a 4th degree felony (6–18 months prison possible). Having your client get his/her own federal & state background check before applying is a safe & efficient way to determine eligibility before applying.

Pass an instruction course from an approved instructor (must be approved under Ohio law).

Apply for a license with the sheriff in either (a) the county that the client resides in, or (b) the county adjacent to the county that the client resides in. This includes being fingerprinted for a background check, & then waiting for results of the background check.

If the background check is accurate & shows that the client is ineligible, try sealing the record that makes the client ineligible, or if you can’t seal the record, seek relief from disability.

If you believe that the background check is either inaccurate or the sheriff misinterpreted the effect of your client’s record to the relevant law, appeal that decision administratively (in-house). If that appeal fails, you can appeal the sheriff’s decision to the common pleas court under R.C. §§ 2923.125(D)(2)(b) & 119.12(A)(1).

When eligibility is close, & it depends on interpreting the more confusing areas of law, or the client's record involves convictions under a municipal code, a lawyer can help by writing a letter to accompany the application. First, this can help convince the sheriff (or the county civil prosecutor) that your client is eligible & you should receive the license. Second, this protects the client from felony charges for an application that seems to be missing information that arguably should've been disclosed. I've done this, & it has worked.

Matt Ameer is an associate with Larabee & Hertrick, LLP, in Medina, Ohio. His practice covers mostly criminal/traffic/delinquency defense, general civil litigation, domestic relations & juvenile custody (including guardian ad litem), & adoptions. He lives in Wadsworth, Ohio. He likes ice cream & frozen-then-slightly-thawed oranges.

BAR NEWS

This year saw the passing of long-time bar association members **Nevada Johnson** and **Jack Kinney**. Their loss will be felt by many who knew them but their memories will live in minds and hearts in the association. We mourn their passing and send our respect and sympathies to their families. The executive committee ordered appropriate memorial offerings, on behalf of the members, for both Mr. Johnson and Mr. Kinney.

If you've visited the law library in the past few months, you know that the heart and soul of the library is missing. **Maryann Lapina** has been out of the office on an extended leave. In the wake of Maryann's absence, the executive committee was left to fill in the gap, but **Gina Hotchkiss**, a new face in the library, has been a tremendous help since she "came aboard." Stop at the library to say "hi" or to introduce yourself to Gina. Make her feel at home. She will be a full-time employee even when Maryann returns.

The Executive Committee is interested in reviving a tradition in prior years to present a Professionalism Award to a deserving member of the MCBA at the Annual Meeting in December. Please submit your nominations by November 1, 2017 to Alanna Arnold at aswarnold@gmail.com.



VIEWS FROM THE BENCH



Judge Kevin Dunn

Medina County Probate & Juvenile Court

GOOD DEEDS

Medina County Recorder **COLLEEN SWEDYK** and Medina County Probate/Juvenile Court **JUDGE KEVIN W. DUNN**, will be premiering a deed review program at the Medina County Fair from July 31 to August 6, 2017. The program known as **"GOOD DEEDS"** is a collaborative effort to assist Medina County Residents to better understand the consequences of the deed that they may possess for real property (real estate) and to better understand the issues in transferring such property through the Probate Court.

This effort is to assist Medina County Residents to (1) identify whether the form of their current deed will require transfer through the Medina County Probate Court upon death; and (2) to allow property owners to consider less expensive and time consuming alternatives versus a probate transfer with referrals being made to the Medina County Bar Association.

The purpose of the program is to encourage couple's in particular to consider if their deed matches their estate planning goals. "Survivorship" language is required in a deed in order for property to avoid the probate process. Such language would include "for their joint lives, remainder to the survivor of them" or very similar language in order to avoid Probate, according to Judge Dunn. Information on Transfer on Death Designation Affidavits (TODs) will also be provided.

A referral to the bar association for assistance will be offered. In this fashion an individual or couple may ascertain what steps may be completed to insure their estate planning needs and goals are met. Many people do not know what type of a deed they may possess for their real property, or what the effect of the terminology of "warranty deed," "quit claim", etc. mean.

Judge Dunn indicated that interested community members will be provided information regarding the Bar Lawyer referral service. "It is hoped that deed review, preparation and a review of all the legal planning for Medina county residents can be accomplished at a reasonable cost and that more proactive front loaded legal planning can occur versus post mortem reaction."