

MEDINA COUNTY BAR ASSOCIATION

93 Public Square
Medina, Ohio 44256
Medina County Bar Association

www.medinabar.org



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Gary Werner; Information from NALS;
Information on Oct. 20 Guardianship CLE

Upcoming MCBA Events

Oct. 20, 2017, 12:00 p.m.: Medina County Juvenile Court
Probate and Juvenile Court Guardianship Training Luncheon

Nov. 10, 2017, 11:30a.m.-1:00 p.m.: CLE and Luncheon
(Introduction to Juvenile Court Luncheon) at Euro Bistro

Dec. 7, 2017, 6:30 p.m.; Annual Holiday Dinner at The Oaks

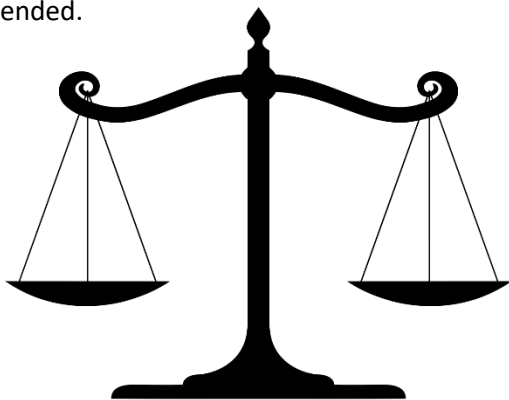
Dec. 15, 2017, 11:30 a.m.-2:00 p.m.: MCBA Annual Meeting,
Elections & CLE (Legislative Update presented by Todd Book
from the OSBA) at Williams on the Lake

Dec. 15, 2017: 4th Quarter Newsletter submissions due to
Monica Russell at russell@ccj.com

Message from our President

The first nine months of 2017 are gone. But, a lot has happened for the MCBA. We have assisted or sponsored 9.5 CLE hours (with more to come), held 4 member luncheons, led 3 community service projects, held our first law family social in many years—a family picnic, and a little lagniappe---began an article-driven quarterly newsletter. (“Lagniappe” is used in Louisiana to mean “a little something extra,” and usually means the extra is unexpected.) More CLE is forthcoming.

On Friday October 13, 2017, Gretchen Mote, with the malpractice insurer OBLIC, presented a 2.5 hour CLE entitled **“All About IOLTA: A Comprehensive Look at Establishment, Maintenance, and Rules Relating to IOLTA Accounts.”** New lawyers and seasoned lawyers needing a refresher course or an update on rules benefitted. This CLE was very well-attended.



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.

Office Secretary – Gina Hotchkiss

Newsletter Editor – Monica Russell

President's Message

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Another 1 hour CLE (approved) will be led by Chief Juvenile and Probate Magistrate Susana Lewis, as chairman of the Juvenile and Probate Committee, on November 10, 2017. This will be a luncheon CLE from 11:30 a.m.-1:00 p.m. There will be a final 1 hour general CLE (pending) at the annual meeting on Friday, December 15, 2017, presented by Todd Book from OSBA to give the members a legislative update. Lunch will be served prior to the CLE which will take place at Williams-on-the-Lake from 11:30 a.m.-2:00 p.m.

Community Projects

Members can be proud of the community projects that members directly, or indirectly through the MCBA, participate in to give back to our community. These projects are above and beyond the pro bono services many of you generously provide. I felt a written summary was in order because some members may not know the extent of the MCBA's community involvement. Some of these projects are works in progress and some are planned but not yet implemented.

Key: Blue connotes past activities. Green indicates a future or ongoing one.

- **Blood Drive** (July 14: Barristers v. Bankers—Bankers won—again ☹️). We donated \$500 to American Red Cross.
- **High School Moot Court Competitions-** Members have come forward for years to coach teams from local high schools and others to judge the competitions. MCBA pays, upon submission of invoices, for each team's State of Ohio entry fees and for a pizza and salad lunch for the participating students, their mentors, and the volunteer judges.
- **Law Day Scholarship Competition:** At the Law Day luncheon, MBA awarded high school senior Ana Sollenberger a one-time \$5,000 college scholarship.

Visitation Center (1) Ongoing fundraiser: gym set matching fundraiser: MCBA- up to \$5,000; Attorneys: Currently \$2,575. Please make YOUR non-tax deductible pledge or donation now for the children who must visit a parent in this somber place. (2) The MCBA and the Medina County Arts Council have formed a partnership to paint a mural on the wall in the visitation center early in 2018. Arts Council Board Member Pat Chaloupek is chairing the Arts Council's committee. After coming up with the idea of a painted mural, Alanna Arnold, 2017 president of the Medina County Bar Association, will act as the bar association's liaison between court personnel, bar association, and the Arts Council board. The committee will begin planning its project after the first of the year. While award-winning mural artists, Paulette Grubb and Kathy Kraus, will design and oversee the actual project, the bar association will pay for all paint and any supplies needed.

Santa's Helpers The Executive Committee is looking for a few good firms and solos to play Santa's Helpers this year to the battered, neglected, and abused children who use the services of the Medina Children's Home. We will be asking members to fulfill the Christmas wishes of these children. The logistics of how it will work will be sent to members via a Constant Contact email. Please be watching for it.

The events this year have been designed to increase membership participation and interaction. If you felt that any event had merit or you would like to see it continued in 2018, let your executive committee know.

Respectfully submitted,
Alanna Arnold, 2017 President MCBA

Guest Columnist: Gary Werner

See attached article by Gary Werner: [“MUDs, JEDDs, and JEDZs: Ohio’s Improved Joint Community Economic Development Options.”](#) **Don’t miss this informative article!**

Community Legal AID

Celebrating Pro Bono

1,201

That is the number of Community Legal Aid cases taken on by pro bono attorneys last year alone.

\$2.2 million

The total dollars saved or earned for clients in 2016.

202

The number of attorneys who gave their time pro bono to help our clients last year.

This month, the entire legal community will celebrate pro bono work. And at Legal Aid, we’re no exception. Because we know the profound difference you make in the lives of our clients, and we know these individuals and families would otherwise not have access to the legal services they needed without you.

What is pro bono service?

Our Volunteer Legal Services Program (VLSP) supports the generous time donated by local attorneys. Volunteer attorneys help support our mission by providing pro bono legal advice, services, and direct representation for divorce, bankruptcy, estate planning, custody, and many other civil legal issues our clients face every day.

Why volunteer?

Pro bono attorneys are highly valued and respected at Legal Aid. In addition to the satisfaction of helping someone in need, our volunteer attorneys are able to take advantage of a variety of benefits, including:

- Malpractice coverage for your pro bono cases
- Free CLE credit for your pro bono service
- Access to standard forms and pleadings
- Staff support for administrative duties
- Mentorship opportunities
- Professional development and networking, including our CLEs

How to get involved:

VLSP offers private attorneys the chance to do direct pro bono work, assist on our Pro Bono HelpLine, or participate in Counsel and Advice Clinics. In addition, we offer cases, clinics, and special projects in all four of our priority areas:

- Stabilizing families in transition
- Promoting economic security
- Helping secure safe housing
- Ensure equal access to justice

Want to learn more?

Visit us online at www.communitylegalaid.org/vlsp or email us at vlsp@communitylegalaid.org

Steven McGarrity, Esq.

Executive Director, Community Legal Aid



Young Lawyer's Section: Lauren Hase

Interview with Dennis Paul

When I volunteered to interview an experienced member of the bar for the quarterly newsletter, I thought it would be interesting to hear from someone that many of the new lawyers may not have had a chance to interact with. The first person that came to mind was Dennis Paul. Unless a new lawyer had a chance to interact with him while he was on the bench as a magistrate in the Medina County Juvenile and Probate Court, like I was fortunate enough to do, it occurred to me that many new lawyers may not be familiar with him.

To give everyone the Reader's Digest version, Dennis has held almost every legal position you can without running for office in his over 40 years practicing law. He pursued a journalism degree at Ohio University, then served in the military, and graduated from law school at Ohio Northern University. He started out as a Medina County juvenile prosecutor, then moved over to Medina Municipal Court as a city prosecutor, prosecuting a number of DUI cases. He transitioned into a small firm in Medina, practicing in a variety of areas but doing a lot of criminal defense work. Later, he moved to the Wadsworth firm now known as Palecek, McIlvaine, Hoffmann and Morse, focusing in personal injury cases. He became a solo practitioner after that, closing his practice to become a magistrate. He is currently working as a Medina County Assistant Prosecutor in the civil division. (I know that doesn't seem like the Reader's Digest version but there you have it.)

Dennis has had an interesting career, to say the least. Speaking to him, I wanted to get his take on advice for new (or any, for that matter) lawyers on law and life. The one thing that struck me the most is very simple advice that we learn as toddlers from our parents: "Be kind to one another." It should be simple, right? But as our conversation progressed, we talked about being patient with people as part of that. That can be more difficult, but making a conscious effort makes that easier. Being kind is all a part of being professional. I asked about advice for new lawyers, and Dennis said, "Seek out help from other lawyers. Ask questions. They won't know you need help unless you ask." He talked about avoiding burnout by taking breaks, like taking lunch out of the office, and keeping a schedule so that "if you're going on vacation, go on vacation." He also emphasized taking care of ourselves with things like exercise and regular attendance at the doctor (something that many folks avoid).

In talking about his career, he said that "I didn't think I'd become a trial lawyer but that's what happened." His advice to trial lawyers was "Know your case, inside and out. Juries care about the facts." He also mentioned for those in private practice about keeping track of how much time you spend doing things to bill clients accordingly. Dennis and I discussed that a prominent ethics issue of late has been comingling personal and client funds/mismanagement of IOLTA accounts. He checks the Supreme Court website every day for disciplinary decisions to keep informed regarding ethics rules. The final bit of advice he mentioned was going to specialized training in your area to gain perspective and get better.

I don't think I have adequately been able to convey the conversation Dennis and I had; I could write for pages and pages. His perspective is interesting, given his well-rounded background. To know more about Dennis, I suggest you ask the man himself, as he was more than gracious about answering all my questions. I can only hope to accomplish a sliver of what he has in his career.

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MCBA 2017 ANNUAL MEETING & ELECTION

The annual meeting and election of a new Treasurer will be held on Friday, December 15, 2017, at Williams-on-the-Lake. Networking will begin at 11:30 a.m. with lunch to follow at approximately noon – 1:00 p.m. We will hold our annual meeting and election during lunch. The cost of lunch will be \$20 for members and \$30 for nonmembers.

If you, or someone you know, wants to play a greater role in the Medina County Bar Association This is the time to do it.

The job of treasurer is an entry level position, requiring a six-year commitment, with yearly advancement leading to President in the sixth year. If you want more or less CLE, more or fewer social events, or more or less frequent luncheons, you can make it happen as a member of the Executive Committee.

You will get out of your volunteer experience more than the time you invest. Contact a current member of the Executive Member prior to the luncheon with the name of anyone who wishes to run for the office of Treasurer (the member must agree to be nominated).

After the election and business meeting is concluded, a Legislative Update will be presented by Todd Book, legislative counsel for OSBA, for a 1 hour general CLE credit. There will only be a \$5 extra charge (in addition to the cost of lunch) for members for the CLE and \$10 for nonmembers.

More details about the dinner will be sent out along with RSVP information in the coming weeks.

Bankruptcy Section, Lisa Barbacci, Chair

Bankruptcy News - As chairperson of the bankruptcy section, I am fortunate to know the fine members of the MCBA who practice bankruptcy law. I am happy to share the following bankruptcy news.

Retirement of Youngstown Bankruptcy Judge Kay Woods - Bankruptcy Judge Kay Woods will be retiring in early 2018 from her appointment at the Youngstown Bankruptcy Court. Her position will not be filled due to the reduced bankruptcy filings in the district. And yes, bankruptcy filings are still down by about 50% from the filing peak in 2011 and 2017 filings are about the same as 2016. See www.creditslips.org and monthly filing data from www.epiqsystems.com.

2017 Bench-Bar Retreat - Northern District of Ohio - October 20, 2017 - Please consider attending the 2017 Bankruptcy Bench Bar Retreat to be held on October 20, 2017, at the Holiday Inn, 6001 Rockside Road, Independence, Ohio. This is a one day seminar with important sessions addressing commercial and consumer bankruptcy topics. The speakers are always outstanding and all judges from the northern district of Ohio will be making presentations. The fee is only \$75 (if you register by September 22, 2017) for 6.25 CLE hours with 1.00 hour of attorney professional conduct instruction. Registration after September 22, 2017, is \$120 - still a real bargain. Here's the website to visit for more info and to register www.fba-ndohio.org. Please note that you must register and pay on-line.

Some Practical Information for 341 meetings - If you have a client who does not speak English or has limited English speaking skills please remember that interpreters are available for assistance at the 341 meeting of creditors – there is no charge for this service provided by the Office of the U.S. Trustee. Please be sure to contact the trustee before the meeting and request an interpreter for your clients.

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.

Real Property Law Section: Monica Russell

Ohio State Bar Association Issues Revised Title Standards

The Real Estate Section Council of the Ohio State Bar Association has undertaken a total review of the Title Standards it publishes on its website (see www.ohiobar.org under Legal Professionals/Member Resources/Legal Resources). The Title Standards have been around since 1952 and are widely used by title examiners, title insurance underwriters, attorneys, and other real estate professionals. The revised standards will be issued on a rolling basis, as they are approved by Council and the OSBA Council of Delegates. Recently the following revised standards were released.

2.1 Examination – Discovering Defect in Title Previously Examined by Another - This standard was revised to clarify what steps should be taken if defects in a chain of title are discovered that were not objected to previously by a title examiner or attorney. Standard A now states “...it is recommended that the attorney should communicate with the previous examiner, explain the matter objected to and an opportunity should be afforded for discussion, explanation, and correction. The attorney contacted should cooperate fully and promptly in investigating his/her records and taking whatever steps are necessary to explain and/or correct the title defect complained of. “

3.2 Conveyances-Descriptions - Standard B and Comment B were revised to clarify that an affidavit of facts relating to title can be filed to correct a previous defective legal description, in certain circumstances. Comment B now states “[e]rrors, irregularities and deficiencies in property descriptions in the chain of title do not impair marketability unless, after all circumstances of record are taken into account, a substantial uncertainty exists as to the land that was intended to be conveyed, or the description falls beneath the minimal requirement of sufficiency and definiteness which is essential to an effective conveyance. Lapse of time, subsequent conveyances, the obvious or typographical nature of errors or omissions, accepted rules of construction and other considerations should be relied upon to approve descriptions that are sufficient to place the world on notice of the precise real property that was intended to be conveyed.”

3.3 CONVEYANCES-DELIVERY - Standard A was revised to clarify that when a deed is recorded after the grantor died, satisfactory proof of delivery may be in the form of an affidavit of the notary public or other witness that delivery was made.

3.4 CONVEYANCES-SURVIVORSHIP - Standard A was revised to clarify what language is necessary to create a survivorship tenancy. Standard A now includes the following: “A conveyance is sufficient to create an estate with right of survivorship when it contains ‘to A and B for their joint lives, remainder to the survivor of them,’ or substantially similar language. To be sufficient the conveyance should contain the names of the grantees and a reference that the survivor is entitled to the remainder. Any deed or will containing language that shows a clear intent to create a survivorship tenancy shall be liberally construed to do so. Use of the word ‘or’ between the names of two or more grantees or devisees does not by itself create a survivorship tenancy, but shall be construed and interpreted as if the word ‘and’ had been used between the names. R.C. Sec. 5302.20.”

Problem D and Standard D were added to clarify that it is not necessary for the marital status of the grantees to be stated.

3.5 CONVEYANCES-PARTNERSHIP - Standard A was revised to provide an example of what evidence of authority can be used. The Standard now states: “A conveyance from a partnership holding the title is sufficient if it recites that the partners executing it are all the partners, in the absence of information to the contrary. When it does not appear that all the partners executed the conveyance, satisfactory evidence of authority, such as a resolution or a certified copy of a Statement of Partnership Authority pursuant to 1776.33(D)(2), should be required. Any such evidence of authority should be signed by all the partners in order to be considered satisfactory. Authority of the partner or partners executing the conveyance should be presumed after it has been of record for five years.”

Attorney Monica Russell works in Critchfield, Critchfield & Johnston’s Medina office and practices primarily in the areas of real estate and civil litigation. She is certified by the Ohio State Bar Association as a specialist in Residential Real Property Law, a member of the OSBA’s Real Estate Section Council, the Ohio Land Title Association, and the secretary of the Medina County Bar Association. Ms. Russell can be reached at russell@ccj.com and on Twitter @OhioPropertyLaw.



VIEWS FROM THE BENCH



Judge Kevin Dunn

Medina County Court of Common Pleas, Probate Division

MCJDC Art Show Raises More than One Thousand Dollars to Continue Art Therapy

The Medina County Juvenile Detention Center (MCJDC) hosted its first art show September 28 to showcase pieces created by youth during their detainment, raising nearly \$1,050 from the silent auction and additional donations.

“I don’t know what my expectations were going into this event, but whatever they were, they were far exceeded,” said Ron Stollar, MCJDC Superintendent.

Approximately 160 guests attended the event to view more than 100 pieces of artwork. The artwork centered around the theme “Oh, The Places They’re Going,” giving the youth a chance to express how they believe others perceive them and how they want to be seen now and in the future.

Eleven pieces were available for silent auction, all exceeding expectations for bids, Stollar said. Money raised from the event will be used to continue art therapy in the facility, which began in January of this year. Art-based programs have been shown to be effective in promoting positive youth development, addressing social skills, interpersonal communication and problem solving, as well as increasing creativity, critical thinking, and emotional management. Participation in the art show was voluntary for residents, but Stollar reports that nearly every youth wanted to create a piece.

“It was amazing to see prior residents return with their families and demonstrate pride in their work,” said Judge Kevin Dunn. “The participation level from the youth and from the community was great.”

Dan’s Dogs provided hotdogs, donating all proceeds to the facility. Donuts and cookies were donated by Donut Land Bakery and Rito’s Bakery in Brunswick. Pat Masalko of Ohio Regional Music Arts and Cultural Outreach (ORMACO) also provided live entertainment, singing and playing guitar.

Stollar said plans for next year’s art show are already underway with a volunteer agreeing to be the designated art coordinator for the MCJDC. Donations of money or supplies will be accepted all year for the art therapy program and can be dropped off or mailed to 655 Independence Drive, Medina, Ohio 44256.



Jennifer Moore, Esq. Sworn In As Medina County Probate and Juvenile Court Administrator

Jennifer Moore, Esq. was just eight years old when she firmly decided that she would have a career in law. “I was determined at a young age to be a lawyer and ‘put the bad guys behind bars,’” she said. “I actually wanted to be the first female Chief Justice of the Supreme Court. Obviously things turned out a little differently but I’m pleased with the path I have taken.”

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Moore earned her Bachelor of Arts in English Literature and Political Science from Elmira College in New York in 2001. "I knew I would be doing a lot of writing as an attorney so I thought that was a smart option to help me later in my career." One year later with experience working as a full-time legal assistant under her belt, she began law school at Cleveland-Marshall College of Law. "I graduated in 2006 and was pregnant while waiting for my bar exam results," she said. "I decided that I wanted to spend time at home with my son, so I did that for one year before returning to work."

It wasn't long before Moore was back into the swing of things working as a staff attorney for the City of Parma, her hometown. She stayed there for nearly three years before taking a position as staff attorney with Medina County Job and Family Services (MCJFS). "I was there for seven years and built a strong relationship with the staff," she said. "They are an amazing group of people, unfortunately in a very stressful job." Working as staff attorney for MCJFS, Moore handled abuse, neglect, and dependency cases filed with Medina County Juvenile Court, as well as adult protective services cases handled through the Probate Court.

On August 28, Moore's career path progressed further as she was sworn in by Judge Kevin W. Dunn as Court Administrator for the Medina County Court of Common Pleas, Probate and Juvenile Divisions. Moore said she believes her years of experience with MCJFS will create a smooth transition into her new role as Court Administrator. "I have developed a relationship with the Court staff over the years," she said. "The staff here knows my work ethic and knows that I truly care for this community. One goal I hope to achieve is the expansion of the Volunteer Guardianship Program. There is such a need for volunteers and I will do my best to help encourage community members to assist."

As Court Administrator, Moore will handle various aspects of the Court involving human resources, fiscal planning, and programming. "I think I can speak for everyone at the Court when I say that we are excited to have Jennifer Moore work alongside us," said Judge Kevin W. Dunn. "She has the experience, great leadership skills and I know she will do great work with the community."

MCBA Member News

Will Peseski recently became an associate in the Medina Office of Bonezzi Switzer Polito & Hupp. Mr. Peseski is a graduate of Case Western Reserve University School of Law and was previously an Associate of former U.S. Attorney, Patrick McLaughlin in Cleveland. Will is a new member of the Medina County Bar Association and focuses his practice on insurance defense and coverage and personal injury and commercial litigation.

Brian Kerns, a shareholder of Bonezzi Switzer Polito & Hupp in Medina currently serves as President of the Ohio Association of Civil Trial Attorneys (OACTA), the statewide voice of the insurance defense bar. Brian's term ends at the Annual Meeting of OACTA at the Cleveland Hilton Downtown on November 16, 2017. Brian becomes President of the Medina Bar Association in 2018 and welcomes your ideas and feedback for this organization in 2018. Feel free to contact him at bkerns@bspplaw.com

Monica Russell, an associate with Critchfield, Critchfield & Johnson and secretary of MCBA, was recognized at the recent Athena Awards Dinner as the 2017 Athena Outstanding Young Professional, an award sponsored by the Greater Medina Chambers of Commerce.

The MCBA Wants to Hear from You!

Have you learned of a new statute? Read an interesting case? Let us know! Our members have varied and interesting practices. Please consider sharing your knowledge with the MCBA by submitting an article for our quarterly newsletter. Submissions should be in Word format and no more than 1,200 words. Send them by December 15, 2017 to Monica Russell at russell@ccj.com.

ESTATE PLANNING SECTION: ANN SALEK

ELDER LAW – TRANSFER OF THE HOME TO A CHILD

The Ohio Department of Medicaid issued new agency rulings effective September 1, 2017 which include the documentation required to exempt a transfer of an applicant's home to a child who was caring for the applicant. Generally, a transfer of the home by a Medicaid applicant, for less than fair market value in return, is an impermissible transfer. Such a transfer would cause the applicant to incur a restricted coverage period whereby the applicant would not qualify for Medicaid.

However, there are exceptions to such rule. One of the exceptions involves a transfer of the home to a child who was living with the applicant for at least two years prior to the applicant being admitted to a long term care facility. Furthermore, that child provided care to the applicant that permitted the applicant to reside in the home for the previous two years rather than in a long term care facility. The newly implemented Ohio Administrative Code section 5160:1-6-06 addresses the documentation required to have the transfer of the home fall under this exception to the transfer rules.

The child must (1) submit a written statement of the date that he or she moved into the applicant's home; (2) a level of care assessment showing that the applicant would have become institutionalized earlier without care provided by the child; (3) a written statement from the applicant's attending physician stating the kind and duration of care that was required to delay the individual's institutionalization; and (4) documentation of the care that delayed the applicant's institutionalization and the role the child played in that care. The documentation for this fourth item may include (but is not limited to) one or more of the following: "(a) A written statement of the number of hours per day during which the child provided personal care, specifying the extent and type of care provided; (b) A written statement of any part-time or full-time jobs performed by the child, and any schools or other similar institutions attended by the child while providing care; or

(c) Written documentation from a service agency which provided care to the individual, the dates on which care was provided, and the extent and type of care provided." Specific guidance is always welcome to determine what is needed to comply with a specific statute. However, questions still remain regarding what each county's Department of Job and Family Service caseworker will require since the regulations delineate items that the applicant's child "may" provide. In addition, the designated items that "may" be provided are not limited to only those items. Therefore, the question remains regarding whether the county agencies will require additional documentation, and if so, what that documentation is.

Furthermore, there is concern about the practicality of whether the required statements can be obtained from the applicant's physician. In the past, the county agencies have required the level of care assessment to be signed by a physician stating the applicant's level of care that was needed two years prior to the application date. Physicians have been reluctant to make such statements based on the applicant's care from two years prior.

The new regulations further require the physician to state the kind and duration of care that was required to delay the individual's institutionalization. This may cause more reluctance on the part of the physician to be involved in such a process.

While guidance is always welcome, it appears there are still many questions about what is required to meet this exception to the transfer of the home to a child.

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.

