

MEDINA COUNTY BAR ASSOCIATION

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Medina County Bar Association
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Upcoming MCBA Events

February 9, 2018: New Lawyer Committee meeting 4:00 (Jo Jo's);

March 9, 2018: MCBA Luncheon, Santosuosos (Guest Speaker);

March 16, 2018: Deadline to Submit 1st Quarter Articles;

May 4, 2018: LAW DAY, Separation of Powers. Weymouth County Club;

June: (TBD) Full-day Judicial CLE (appellate and Trial Court);

Summer: (TBD) MCBA Family Picnic;

September 2018: (TBD) Probate CLE and Quarterly Luncheon;

December 6, 2018: Holiday Party;

December 14, 2018: Annual Meeting.

Message from our President

Thanks to all of you who supported the Bar Association's activities in December. The Holiday Party at The Oaks was a huge success and the bar really turned out to honor our longest serving Medina County jurists, retired Judge Dale Chase and retired Judge James Kimbler. On December 14th at our annual meeting and luncheon, we honored local attorney Robert Bux (*continued on next page*)



Medina County Bar Association

Our 2018 Executive Team:

President – Brian Kerns, Esq.

Vice President - Monica Russell, Esq.

Secretary – Bradley J. Proudfoot, Esq.

Treasurer – Matthew Ameer, Esq.

Executive Secretary – Gina Hotchkiss

Newsletter Editor – Bradley J. Proudfoot

Message from our President (continued)

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with the MCBA Professionalism Award, presented by his long-time partner, Bill Young. Bob had some great words of advice for younger practitioners who could learn a great deal from the elder statesmen and women of the bar association. We also recognized outgoing President Alanna Arnold for her outstanding service to your Bar Association and for a successful year at the helm. My personal thanks to her, for a good year under a difficult transition. In this regard, Mary Ann Lapina, longtime Executive Assistant of the MCBA for decades, was recognized for her many years of faithful service. In 2017, we also welcomed a new Executive Assistant, Gina Hotchkiss, who serves both the MCBA and the Medina County Law Library. At the annual meeting, we elected a new treasurer, Matt Ameer of Larribee and Hertrick, and other members of the Executive Committee took a step forward in the Executive Committee chairs. This year, your executive committee consists of Monica Russell, Vice President; Bradley Proudfoot, Secretary; and Matt Ameer, treasurer.

Now on to 2018! Despite the brutally frigid start to our year, we are warmly looking forward to a great year ahead! I am proud to serve as President of the Medina County Bar Association in 2018 and our team will be bringing some great programming for you this year, including our traditional quarterly luncheons (March 9-please plan to join us at Santosousso's), a comprehensive CLE program on Juvenile Law in April, Law Day on May 4 and Probate Practice and Criminal Practice CLE's are all on our radar and agenda for later in 2018. In addition, the Banker's v Barristers Blood Drive and our 2nd annual Medina Bar Family Picnic are coming up this summer, and perhaps a few other surprises before our traditional holiday dinner party in December. We will be bringing many more hours of low cost, local CLE programming than we ever have in the past!

Thank you for your continued membership and involvement with the Medina County Bar Association. If you have not renewed your membership, please do so now and be sure to indicate what committees you would like to serve.

Brian D. Kerns, Esq.

President, Medina County Bar Association 2018

Bar News

MCBA Secret Santa Helpers' Project is a BIG Success!

The Secret Santa's Helpers Project was extremely successful thanks to: the Medina Prosecutors' Office (who sponsored several foster children and donated a substantial amount of money), Dana Gardner, Pat Walker, Kurt Denkwalter, Andy Korduba, Ann Salek, Emily Hall, Mohammed Misbah, Michele Sherrin, Paula Lichty, and Lisa Barbacci. Our volunteers generously gave **two** CRV-carloads of gifts in bright gift bags to their "adopted" foster children! When Past-President Alanna and "First Husband" Jack delivered the gifts (in two trips) to JFS the staff was very impressed—and grateful that some very deserving children would be have some holiday cheer.

News from Colleen M. Swedyk, Medina County Recorder

The Medina County Recorder's Office will now be accepting credit cards for payment. The office will accept Visa, MasterCard, and Discover for payment of recording fees.

There will be a \$2.00 charge for the use of credits cards as payment. The fee is reasonable because it is not \$2.00 per document, but \$2.00 per transaction. Therefore, for example, if an attorney is filing several documents for a total of \$500.00, the total charge would be \$502.00. The number of documents being filed does not matter, the charge is only \$2.00 per payment.

As the banking world is moving more toward a society without paper bank checks, we are proud to now offer this option to our customers. If you have any questions, please feel free to contact me at 330-725-9782 or email: cswedyk@medinaco.org

The Academy on Leadership and Government

What does the Constitution Say? How is Social Media impacting the communication between citizens and politicians? The second annual Academy on Leadership and Government hosted by OSU Extension (with the support of Leadership Medina County) begins on January 4. This year, the entire class series consists of 13 individual classes held on Thursday evenings from 5:30 to 8 PM. Dinner and all materials are included in the registration fee. Each class has a different topic taught by a subject matter expert. Those interested can take individual classes at \$50 each or register for the entire series at a cost of \$395.00. For Attorneys, Six (6) CLE's are confirmed, four (4) are pending. In addition to the topics above, we will tackle everything from Conducting Effective Public Meetings & Effective Decision Making to Ethics, to Emergency Management & Homeland Security. The Constitution and Criminal Procedure class will be taught by our own Judge Joyce Kimbler. If you would like to develop professionally, personally, and cultivate a network of continuous learner colleagues and resources, you are encouraged to join the class! Here is a link to the website:

<https://medina.osu.edu/news/medina-county-local-government-leadership-academy>.

Some Appreciation for Depreciation in Civil Cases

J.R. Russell, Partner at Goldman & Rosen, LTD.

If you have prosecuted or defended property damage cases, you know that depreciation and other related costs can become a significantly contested issue when it comes to claims for property damages. This is especially true when the measure of damages is for the repair of property for which a plaintiff has owned for an extended period of time.

Courts are generally mindful that the fundamental purpose of law is to afford to the person damaged compensation for all of the loss sustained. *Martin v. Design Constr. Servs., Inc.*, 12 Ohio St.3d 66, 2009-Ohio-1, 902 N.E.2d 10, ¶ 18. Where there is no real market value or the plaintiff has personal reasons for restoring the same, damages can “be awarded based on the reasonable cost of restoration, with consideration of the condition of the property prior to the damage.” *Id.*, at ¶ 21. As such, a plaintiff “should be neither under compensated nor overcompensated.” *Columbus Fin., Inc. v. Howard*, 42 Ohio St.2d 178, 184, 327 N.E.2d 654 (1975); *Pryor v. Webber*, 23 Ohio St.2d 104, 263 N.E.2d 235 (1970). A defendant can raise the issue of a depreciation deduction by arguing that an award of restoration results in overcompensation, or fails to truly account for the condition of the property prior to the damage. In turn, a plaintiff will often counter that depreciation does not apply because the costs for repairs cannot be precisely separated, while the total costs sought do no more than to make plaintiff whole.

The Ninth District recently addressed such a dispute in *Ohio Edison Company v. Royer*, 9th Dist. Summit App. No. 28468, 2018-Ohio-75. In that case, the main issue was “whether it is appropriate for a court to reduce a damage award by applying depreciation to the cost to repair damaged property in a negligence action, and if so, what portion of those costs is depreciable?” *Id.*, 2018-Ohio-75, ¶ 9.

In an action filed in municipal court, Ohio Edison alleged that the Defendant negligently operated his automobile causing damage to one of its utility poles. *Id.*, 2018-Ohio-75, ¶ 2. Defendant argued that Ohio Edison merely lost an aging pole that only had 34 years of anticipated service life, and thus would be overcompensated for receiving additional years of service from a new pole. *Id.*, ¶ 10. In its appeal, Ohio Edison sought a uniform rule of law holding that it is improper to depreciate the repair of this equipment because of the difficulty in ascertaining the specific values without the entire electrical system. *Id.*, ¶ 13-14. It cited cases from other states that essentially held that because of the difficulty in determining “life expectancy of an individual” component, one cannot say with any reasonable certainty that full restoration did more than simply remedy the wrong. *Id.*

The Ninth District refused to issue a pure legal rule to these types of cases. The Court held that it is “impractical to attempt to apply a one-size-fits-all rule regarding the applicability of depreciation to the cost of repair for the negligent destruction of a utility pole...” *Id.*, ¶ 17. Although the Court agreed that depreciation may not be appropriate in many circumstances, it would not overturn the trial court’s use of a depreciation adjustment as a matter of law. *Id.* However, the Ninth District agreed with Ohio Edison to the extent that the trial court should have only depreciated the cost of equipment, and not from the entire direct cost of repair. *Id.*, ¶ 19.

Next, the Ninth District confirmed that “both direct and indirect costs may be awarded to a utility company when the accuracy of the costs is reasonably established and the indirect costs are calculated in accordance with the accounting principles mandated by FERC and PUCO.” *Id.*, ¶ 28. The Court reasoned

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that “utility companies may not be able to pinpoint all expenses to precise, out-of-pocket expenditures made necessary by a defendant’s negligence...” *Id.* To require an exact nexus between the negligent act and indirect expenditures could be “financially impracticable and would act to deprive plaintiffs of damages necessary to ‘make whole’ their loss.” *Id.* Nevertheless, the Ninth District did not reverse based upon the trial court’s refusal to award additional indirect costs in this particular case. *Id.*, ¶ 32. The Court held that the trial court did not err in deciding that Ohio Edison failed to prove that the indirect costs it requested were reasonably established relative to repair, although in accordance with FERC and PUCO accounting principles. *Id.*, ¶ 32.

The Ninth District’s decision is a reminder that there are several arguments available in a civil case when the measure of damages is restoration costs. When you are defending such cases relating to damage to personal or real property, remember to consider whether there is an argument that an award for restoration costs would actually overcompensate the plaintiff. If diminution in market value is not helpful to your client, there could be a sound basis for reducing a claim by an appropriate discount for depreciation. Your main argument is that a pure award of restoration costs or additional indirect costs actually enhances the value of that property from before the alleged negligent act occurred. On the other hand, if you are prosecuting such a civil case, present your argument that restoration is the only practical and reasonable methodology to allow the plaintiff to correct and be made whole. Finally, remember that the colloquialism that a defendant takes a plaintiff as he finds him - often referred to as the “thin-skull plaintiff” rule - is alive and well as applied to damages. *Boroff v. Meijer Stores LTD. Partnership*, 10th Dist. App. No. 06AP-1150, 2007-Ohio-1495, ¶ 13. You argue that restoration only takes the plaintiff as he or she is to make that plaintiff whole, no more or no less.

J.R. Russell lives in Medina. He is a partner at Goldman & Rosen, Ltd. He has prosecuted and defended numerous civil cases in state and federal courts in Ohio, and also serves as the municipal prosecutor for the Village of Lodi. He is a graduate from The Ohio State University.

Do you want to become more involved with the MCBA?

If you are interested in becoming more active with the MCBA, the easiest way to become involved is by joining one of our various committees. Please visit our Facebook page for the committee assignments under the “About” tab and then contact the committee chair to express your interest in that specific committee.

<https://www.facebook.com/MedinaCountyBarAssociation/>

Congratulations to Tim Lutz on his well-deserved retirement

By Magistrate Susana B. Lewis, Chairperson, Juvenile Law Committee



The Medina County Bar Association would like to recognize and thank Attorney Tim Lutz for his many years of loyal and dedicated service to the citizens of Medina County in his role as Public Defender. Tim began his work with the Medina County Public Defender's Office in May 2007, serving as Chief Public Defender until December 2012 when he became a staff attorney. Tim represented indigent persons in all Medina County Courts, including Wadsworth Municipal Court and Medina Municipal Court.

Most recently, he was assigned to the Medina County Juvenile Court where he zealously and compassionately represented court-involved youth in delinquency proceedings. Tim also played a key role with the Medina County Juvenile Court, Teen Court Program, assisting with training and acting as a mentor to Teen Court student volunteers from all area high schools interested in careers in law. It takes a special person to truly understand the interplay of legal services and human services needed when kids get caught up in crime, and Tim was that special person.

"Tim always put the best interests of the kids and families he represented in the forefront of every case," said Judge Kevin W. Dunn. "He was a true professional and a very kind man."

He will be missed by all who had the honor of working with him, and we wish him a lifetime of happiness as he embarks on a new chapter. Congratulations and best wishes from your friends and colleagues at the Medina Bar Association!

Do you know about NALS of Northeast Ohio?

Sarah Twyford, PP, PLS-SC Civil Litigation, President

NALS is a national association for legal professions. Our local chapter has its roots in 1977, when, while driving back from a NALS meeting, NALS member Marlene Oiler and her friend Nancy Suvak talked about forming a local chapter. Marlene had the knowledge of how to organize and accomplish starting a chapter while Nancy knew the community. They invited individuals in the Medina area working in the legal field to meet and a few months later, the Medina County Legal Secretaries Association was formed and chartered on August 13, 1977. The local chapter name was changed to NALS of Northeast Ohio in 2008.

Throughout the 80s and 90s, the local membership and Ohio membership were strong, but as life changed, so did the membership. NALS of Northeast Ohio is one of the three remaining chapters and currently the largest in Ohio.

The Medina Chapter handles all notary testing and renewals in Medina County under the direction of the Probate Judge, Kevin W. Dunn. Since that is our sole source of revenue, we are able to give back to our members by providing funds to attend seminars and for legal education.

After a vetting process, we award a yearly scholarship totaling \$5,000 to two high school or college applicants going into the legal profession. Because of the amount of our scholarship, our local bar association raised its scholarship to match our award.

We also utilize some of the notary revenue to provide charitable contributions to our local drug court, animal rescue, Hospice, and Salvation Army. Each year we take nominations from our members about local charities and try to donate to four diverse groups. When we lost long-time member, Rosie Costigan a few years ago, we were able to donate a stone in her memory at her favorite local wildlife center. Although the notary process in Ohio is changing, it is our hope that we will continue to be able to work with the notary so that we can give back to our members and the community.

The Chapter also helps the Salvation Army. For the past two years, members have rung the Red Kettle Bell at Thanksgiving and Christmas.

For more information:

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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 newsletter. Submissions should be in Word format and no more than 1,200 words. Send them by March 15th to Bradley J. Proudfoot at bproudfoot@pmhmlaw.com.

MCBA New Lawyer Committee Meeting

Friday February 9th the New Lawyer Committee will be having its first meeting of 2018. The meeting begins at 4:00 P.M. at Jo Jo's in Medina. A social will be held directly after the meeting.

A *NEW LAWYER* is defined as an attorney who is no older than 36 as of May 31st of that year of membership –OR– has been a member in good standing of the Bar in any state for no more than seven years, whichever is later. If you or someone you know is interested in joining the New Lawyer Committee, please contact Committee Chair, Kris Immel at KImmel@rlblp.com.



VIEWS FROM THE BENCH



Judge JENNIFER HENSEL

Court of Appeals of Ohio, Ninth Appellate District

This past year brought about many changes at the Court of Appeals. Both Judges Moore and Whitmore retired at the end of January and we welcomed Judges Callahan and Teodosio to the Court of Appeals.

We changed our local rules to allow for electronic filings in those counties which allow for it and we amended the rules to allow for an accelerated docket.

Many aspects of 2017 were similar to 2016. All current numbers indicate that we will end this year with almost the same number of new court filings from Medina County as we had last year. We continued to post our oral arguments on YouTube and utilized our website as a tool for attorneys and parties to gain information for filing and navigating the appeals process. We also continued to work at the state and local level to educate and understand the changing public needs relative to our roles in public service. For instance, Judge Carr served as the Chief Judge of the Ohio Courts of Appeals Judges Association during this past year. Several times throughout the year the judges of our district took on leadership, information gathering and focus group initiatives to institute better service statewide. We took part in the legislative-judicial exchanges this past summer. We worked on focus groups by special appointment of the Supreme Court and we examined issues facing the judiciary statewide through our work and participation with the Ohio Judicial College and the Ohio Appellate Judges Association.

Locally, the judges enjoy hearing oral arguments in Medina County. Judge Kimbler is a gracious host for the Court of Appeals on those days. The deputies are attentive to our security and we appreciate their vigilance. The judges as well as magistrate/court administrator and mediator maintained memberships in the county bar associations with all four counties in our district. We held oral arguments at the University of Akron and local high schools. We participated as panelists and instructors in continuing legal education classes.

We are looking forward to 2018. Judge Schafer will be the new Presiding Judge and Judge Teodosio will be the new Administrative Judge. We are slated to move our offices in Summit County. This will be the culmination of hard work by the Court and counties to maintain affordable, adequate, safe and secure facilities for the staff and public. We continue to seek opportunities to hold court in local high schools. If you know of a high school in our district that would like to take advantage of this learning opportunity, please let us know.



VIEWS FROM THE BENCH



Judge Joyce Kimbler

Medina County Court of Common Pleas

December is National Impaired Driving Prevention Month.

In Ohio it is against the law to operate a vehicle under the influence of alcohol, drug of abuse or both. R.C. 4511.19(A) (1) (a).

A review of the statistics set forth by the Ohio State Highway Patrol shows that, as of November 26, 2017, the Highway Patrol had investigated 1214 crashes in Medina County. There were 16 fatal crashes and 207 arrests for operating a vehicle under the influence of drugs or alcohol. Of the 16 fatal crashes, 3 appear to have been OVI related. Year to date fatal crashes are up by 11 over the same time period in 2016.

According to the National Highway Traffic Safety Association One in Eight Americans driving on a weekend night test positive for an illicit drug. Of the 16.3% of drivers positive for drugs, 11.3% were positive for illegal drugs, 3.9% for medications and 1.1% for both illegal drugs and medications. The most common illegal drugs were cannabis (8.6%), cocaine (3.9%) and methamphetamine (1.3%).

The effects of specific drugs differ depending on how they act in the brain. After alcohol, marijuana is the drug most often found in the blood of drivers involved in crashes. Marijuana can slow reaction time, impair judgment of time and distance and decrease coordination. Cocaine or methamphetamine can cause drivers to be aggressive and reckless. Sedatives can cause dizziness and drowsiness. Prescription drugs are also commonly linked to drugged driving crashes. A 2010 nationwide study of deadly crashes found that about 47% of drivers who tested positive for drugs had used a prescription drug. The most common prescription drugs found were pain relievers.

It's hard to measure how many crashes are caused by drugged driving. Presently, there is no good roadside test for drug levels in the body. Also, many drivers who cause crashes are found to have both drugs and alcohol or more than one drug in their system, making it hard to know which substance had the greater effect. One National Highway Traffic Safety Administration study found that in 2009, 18 percent of drivers killed in a crash tested positive for at least one drug. A 2010 study showed that 11 percent of deadly crashes involved a drugged driver.

In 2010, more than one-quarter of drugged drivers in deadly crashes were aged 50 years or older. It is reported that illicit drug use in adults aged 50 to 59 has more than doubled from 3 percent in 2002 to 7 percent in 2010. Mental decline in older adults can lead to taking a prescription drug more or less often than they should or in the wrong amount. Older adults also may not break down the drug in their system as quickly as younger people. These factors can lead to unintended intoxication while behind the wheel of a car.

For more information on commonly abused drugs and their effects on a person's ability to drive visit the National Institute on Drug Abuse website.

Impaired driving, whether from alcohol or drugs, is not just the province of the young. Everyone, regardless of age, needs to be aware that use of illicit drugs or misuse of prescription drugs can make driving a car unsafe, just like driving after drinking alcohol.

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Before getting behind the wheel as a driver this holiday season, develop strategies to ensure you will not be operating a vehicle while impaired.

Learn to say "no" in a way that is comfortable for you.

Find new ways to celebrate the holidays. Create new memories and traditions that will help you redefine the holiday season as a positive experience. Avoid isolation and spend time with people who are not substance users.

Before drinking, designate a non-drinking driver when with a group. Give the designated driver the car keys BEFORE you start drinking.

Don't let your friends drive impaired.

Take a taxi or other ride share to a party where you believe alcohol will be served.

If you have been drinking or using drugs, get a ride home or call a taxi.

If you're hosting a party where alcohol will be served, remind your guests to plan ahead and designate their sober driver; offer alcohol-free beverages, and make sure all guests leave with a sober driver.

Your best defense against an impaired driver is to buckle up every time. Seat belts reduce serious injuries and deaths from crashes by about 50%.

News You Can Use

Ohio Judicial Conference Publishes Bench Card on Cognovit Judgments

Submitted by : Monica Russell, Critchfield, Critchfield & Johnston

The Ohio Judicial Conference published a "Bench Card" in October relating to cognovit judgments. The OJC publishes bench cards for judges which are not statutes or laws but are guidelines on how to apply the law in certain circumstances. This new bench card provides the circumstances in which the court should grant a cognovit judgment. It states that a judgment should be granted when (1) the original note is produced and the Complaint has a copy of the note attached as an exhibit; (2) the Complaint includes a statement regarding the last known address of the defendant; (3) At least one of the makers of the note resides in the jurisdiction of the Court or the note was executed within the court's jurisdiction; (4) it includes the statutorily required warrant of attorney above or below the signature; (5) the note does not arise from a consumer transaction; and (6) the default consists of a nonpayment on the note. The bench card can be viewed at www.ohiojudges.org under the Resources tab.