

MEDINA COUNTY BAR ASSOCIATION

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Medina County Bar Association

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Upcoming MCBA Events

- May 4, 2018: Law Day, Separation of Powers.
Weymouth County Club;
- June 12, 2018: Views from the Bench CLE 8:30-4:30;
- June 22, 2018: New Lawyer Social – Corkscrew Saloon
5:00-6:30;
- August 5, 2018: MCBA Family Picnic – noon to 4:00;
- September 7, 2018: Quarterly Luncheon;
- September 21, 2018: Probate CLE;
- December 6, 2018: Holiday Party;
- December 14, 2018: Annual Meeting.

Message from our President

SPRING! Well, at least we're trying to pry Spring out of Winter here in Northeast Ohio. I wish to thank all those who contributed to the Delinquency Practice and Procedure CLE presented on April 18, 2018. Special thanks to Magistrates Lewis, Louy, and Cek, of the Juvenile Court and to Monica Russell, Brad Proudfoot and Gina Hotchkiss for their efforts to bring together this excellent program.

We are looking forward to a great spring and summer ahead. Our annual **Law Day Luncheon** was held on Friday **May 4, 2018** from 11:30 a.m. until 1:00 p.m. at Weymouth Country Club. (cont'd)



Medina County Bar Association

Our 2018 Executive Team:

President – Brian Kerns, Esq.
President-Elect - Monica Russell, Esq.
Vice President – Bradley J. Proudfoot, Esq.
Treasurer – Matthew Ameer, Esq.
Secretary – Michael Callow, Esq.
Executive Secretary – Gina Hotchkiss

Newsletter Editors – Bradley J. Proudfoot & Michael Callow

The MCBA was honored to have new Ohio Supreme Court Justice Mary DeGenaro as our guest speaker this year. We also recognized the Law Day Essay Scholarship Award Recipient with our annual \$5,000.00 Scholarship.

At our quarterly luncheon in March we welcomed Mike Callow as our newly appointed Secretary. Mike will take over the duties of Secretary and with this will take the lead on the next Newsletter (Big shout out to Brad Proudfoot, author of this and our previous MCBA Newsletter. Thank you Brad!). We are always looking for authors to submit articles to our Newsletter. Please email Mike Callow with any article ideas or articles at his email address: attorneymikecallow@gmail.com

Finally, **please mark your calendars NOW**, for the upcoming Trial and Appellate CLE on June 12, 2018. Our **Trial and Appellate Practice CLE** will be held at the University of Akron /Medina Campus. The cost for this full-day program is only \$50 member/\$100 non-member, so we hope you will take advantage of this unique opportunity to hear our local trial judges and the appellate judges speak on topics important to those who practice in these local courts.

Wishing all our members blue skies and rainbows as we make our way into spring in Medina County. We look forward to seeing you at Law Day on May 4!

A Friendly Reminder from the Medina County Bar Association Grievance Committee: Melissa Piszczek, Esq.

The Medina County Grievance Committee would like for attorneys to keep in mind what an attorney's responsibility is regarding maintaining professional liability insurance. Rule 1.4 of the Ohio Rules of Professional Conduct dictates such responsibilities. Rule 1.4 states in part:

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(2) A lawyer who is involved in the division of fees pursuant to Rule I.S(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.

(3) The notice required by division (c) of this rule shall not apply to either of the following:

(i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;

(ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.

The Comment Section regarding Professional Liability Insurance further states,

[8] Although it is in the best interest of the lawyer and the client that the lawyer maintain professional liability insurance or another form of adequate financial responsibility, it is not required in any circumstance other than when the lawyer practices as part of a legal professional association, corporation, legal clinic, limited liability company, or limited liability partnership.

Comment 9 indicates why it is important for an attorney to notify clients in the event that the attorney does not maintain certain minimum professional liability insurance.

[9] The client may not be aware that maintaining professional liability insurance is not mandatory and may well assume that the practice of law requires that some minimum financial responsibility be carried in the event of malpractice. Therefore, a lawyer who does not maintain certain minimum professional liability insurance shall promptly inform a prospective client or client.

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 June 15th to Michael Callow at attorneymikecallow@gmail.com.

The MCBA On The Web

Please take the time to check out the Medina County Bar Association at the following sites:

www.medinabar.org

www.facebook.com/MedinaCountyBarAssociation

Submissions for the 2018 Award of Professionalism

This is a reminder that the MCBA Executive Committee is still accepting nominations for the 2018 Award of Professionalism. Please send your nomination to Bar President, Brian Kerns, at bkerns@bsphlaw.com.

WHAT IS HUMAN TRAFFICKING AND HOW WILL YOU KNOW IT WHEN YOU SEE IT?

By Alanna S. Welling, Esq.

What Is Human Trafficking?

Human Trafficking occurs when a person performs a commercial sex or labor act induced by force, fraud, coercion (or) in which the person performing the act is under the age of 18. More specifically,

Sect. 103. Definitions

(B)

(8) Severe forms of trafficking in persons.--The term "severe forms of trafficking in persons" means--

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) Sex trafficking.--The term "sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Trafficking Victims Protection Reauthorization Act of 2003, Public Law 106-386 106th Congress, Page 113 stat. 1463, 1471. It's modern-day slavery. Victims are trapped or deceived by traffickers through force, fraud, trickery, or coercive threats. Even if a victim initially consents, she/he does not know that she/he will later be treated cruelly and exploited for labor and/or commercial sex.

Each year an estimated 1,078 Ohio children become victims of human traffickers and 3,016 more are at risk; of those 1,078 children, an estimated 70 are from Medina County. The average age of a trafficked victim is 13.

Unpaid labor—both female and male—is much more prevalent than sex trafficking by a ratio of 9:1. In the U.S., unpaid laborers (slaves) can be found in agricultural work, factories, sweatshops, childcare, landscaping, food service, door to door magazine sales, and many other activities.

What Are the Signs of Human Trafficking?

A person who has been trafficked and is under the control of another person will act in a certain way. There will be recognizable red flags.

The person may:

- Be submissive, afraid, and/or nervous
- Appear malnourished
- Show signs of physical or mental abuse
- Not speak for him or herself
- Avoid eye contact or conversations
- Be unpaid or paid very little
- Live where he or she works
- Be fearful of law enforcement
- Have a much older “boyfriend”/”girlfriend”
- Not be free to socialize with others
- Have expensive clothing/jewelry that does not “fit” her/his age or story
- Have an odd tattoo such as a bar code on the back of his/her neck
- Have no identification

What Should You Do If You Suspect Human Trafficking?

If you see any behavior(s) that make you suspect human trafficking, never confront the person in control. They can be very violent. Human trafficking is a very lucrative business, second only to the drug trade. Further, the risks of getting caught as a trafficker are lower and the “product” is re-usable and can be sold over and over.

Instead call the National Human Trafficking Hotline at 1.888.3737.888 or, in an emergency, call 911. All calls are anonymous. The local law enforcement and FBI Human Trafficking Task Force will investigate all calls.

For more information about human trafficking or a speaker, contact the Medina County Coalition Against Human Trafficking at 330-764-8891 ext. 214.



VIEWS FROM THE BENCH



Judge Joyce Kimbler

Medina County Court of Common Pleas

MEDIATION AND THE COURT

In 2010, the population of Medina County was 172,332. In 2016 it was 177,221. The county's growth rate over that six year period makes it the 11th fastest growing county in the state. It is estimated that the population will grow to 184,670 in 2020. Medina County is the sixteenth most populated county in Ohio.

This growth rate is reflected in the growth of the Common Pleas docket as well. In 2016 the Court of Common Pleas had 1212 civil cases filed. In 2017 there were 1268 civil cases filed. In 2016 the Common Pleas handled 800 felony cases. In 2017 the Common Pleas Court handled 1191 felony cases. This was almost a 50% increase in criminal cases handled from 2016-2017. Based upon the number of indictments filed so far this year, 2018 is on track to outpace the number of criminal felony cases filed in 2017. Each of the Common Pleas Courtrooms handled approximately 1006 cases in 2016 and 1230 in 2017.

General Division Common Pleas Court judges are required by the Ohio Supreme Court to resolve matters in a timely fashion. In general, civil litigation is to be completed in 12- 24 months and criminal cases are to be completed in 6 months. Because of speedy trial and other Constitutional requirements, criminal cases require a much larger expenditure of judicial investment. In order to be cost effective and prevent a backlog of civil cases, the Common Pleas judges of Medina County encourage litigants to make use of alternative dispute resolution options offered by the Court.

In 2017, 322 cases were referred to mediation. Of these, approximately 54% settled. Mediation often results in litigation being resolved more quickly for the parties. Types of cases that are successfully mediated include Ohio Department of Transportation appropriation cases and foreclosure cases. The mediation process helps borrowers to move quickly and get a handle on what they need to do to resolve the foreclosure. The process also helps to ensure that lenders inform borrowers of their options and work more effectively toward resolution.



VIEWS FROM THE BENCH



Judge Joyce Kimbler

Medina County Court of Common Pleas

MEDIATION AND THE COURT (continued from page 5)

Another type of civil matter that may benefit from alternative dispute resolution are requests for civil stalking protection orders. In 2017, Medina became one of only 12 courts of common pleas to participate in a mediation of civil stalking protection order cases pilot project. Traditionally, requests for Civil Stalking Protection Orders could not be mediated because they involved sexually oriented offenses, domestic violence, intimate partners or cases in which there was pending litigation between the parties. However, requests for such orders are on the rise. In Medina, there were 109 requests filed in 2015 and 120 requests filed in 2016. This is because there is an increase in non-traditional cases. There is an increase in cases involving neighbors or landlords and tenants or employers and employees. The purpose of the project is to identify situations in which mediation can be used to work out an agreed settlement between the parties rather than the imposition of a civil stalking protection order. This program will run between June 1, 2017 and December 31, 2018 to determine if mediation is a viable alternative in these situations.

Alternative dispute resolution is a cost effective method of resolving civil litigation while increasing the satisfaction of the parties with the court process. Early on in the process it should be considered as an end in and of itself not just a speedbump on the road to trial. Mediation offers an opportunity for the parties feel like they have been heard and have had an opportunity to have input into the resolution of their litigation. It can reduce the length of the litigation. Mediation can be done sooner rather than later because it can be done before the time and expense of the level of discovery necessary for trial. Mediation can reduce the cost of litigation because it can be done before a lot of motion practice and discovery. Even if not successful, mediation can help narrow the issues for trial thus reducing the time and expense required for a full trial of the issues. Mediation also allows for more creative solutions than those typically available if the matter were to proceed to trial.

Every illness does not require surgery; every dispute does not require a trial. It is the role of counsel to determine which cases are better served by alternative dispute resolution so that the cases that truly require a trial for resolution can be heard more promptly. The initial pretrial is often a good time to triage a case to determine what path will lead to the best outcome for the parties before the Court.

Walter Henry Hay, Esq.

July 13, 1928 - April 12, 2018

It is with a heavy heart that the MCBA informs you of the loss of Walter Henry Hay. Attorney Hay was a Solicitor and Prosecutor for the City of Brunswick, which began his career of community service within Medina County. Professionally, he also served as Referee of Medina County Common Pleas Court and Medina Municipal Court, and maintained a private practice in Brunswick.

Our thoughts go out to the family and friends of Mr. Hay.

<http://www.carlsonfuneralhomes.com/obituaries/Walter-Hay/#!/Obituary>

GAL Pre-Service Course

The next session for the 6 hour pre-service course that is required for Guardian Ad Litem is scheduled in Cleveland on June 27th. Click on the link below to register. The course is available free of charge, but you must register to secure a seat

<https://www.supremecourt.ohio.gov/GAL/preService.asp>

Criminal Defense Committee Report

By Matt Ameer, Esq.

The criminal defense committee, chaired by Yu Mi Kim-Reynolds, is calling on practitioners to join up, which requires nothing more than providing a name, phone number, & e-mail address to the bar association's executive secretary, Gina Hotchkiss, at ghotchkiss@medinaco.org or 330-725-9794. The existing membership is much smaller than the number of lawyers in this county who do a good deal of criminal, juvenile, & traffic defense. Chances are, if you do that work, you're probably not on the committee, but you should be.

This is part of an effort to interest bar members with similar practice foci to organize & share information. The old adage ought to apply here: two heads are better than one. When we're encouraged & conditioned to express questions, ideas, & concerns to each other; share information with each other (case law, motions, experts, strategies); & act as sounding boards for each other, that ought to polish our craft in stride together.

The criminal defense committee is seeking those who are simply interested in and/or have criminal/traffic defense as a meaningful part of their practice, not necessarily an exclusive focus. We're also seeking those who could commit to meeting at least 4 times/year (roughly once/quarter), & probably no more than once/month, for about 1 hour each meeting, as we don't want to intrude heavily on work, family, & other commitments.

Meetings are intended to be largely informal, but have the potential for greater involvement with the courts, citizens, & organizations in our county. Some of us who run in the same circles already but inconsistently meet for lunch or after work, or at general bar association events, & that's good. But, slightly more organization & consistent connection in our sub-disciplines could be a useful & rewarding thing, if not just a reliable way to unwind with those who share similar interests.

PROBATE LAW COMMITTEE REPORT

Robert Bux, Esq.

If you practice in the Medina County Probate and Juvenile Court, or want to, please take the following short quiz.

1. When preparing a proposed journal entry, what is the Probate Judge's name, including middle initial?
2. How many Magistrates does the Court employ, and what are their names?
3. What area of responsibility has the Judge assigned to each of the Magistrates?
4. What does "GAL" stand for and what are the annual CLE requirements for a GAL?
5. How does the Probate Judge determine a reasonable legal fee for probate estates?

If you do not know the answer to one or more of the questions, then the Probate Law Seminar being planned by the Medina County Bar Association is for you. Tentatively scheduled for September 21, 2018 as two three-hour sessions, the first session will provide three hours of guardianship training. The second session will present a view from the bench with presentations by Judge Kevin W. Dunn and his four Magistrates. There will be time for questions and answers from each of them, and the Probate Law Committee is now soliciting questions from the Bar to submit to the Judge. If you have a local rule you don't understand, or would like the Judge to consider for revision, or any other question about Court procedures, send your questions to the committee chair, Robert Bux, at rbux@wblawmedina.com, for forwarding to the seminar committee. You can also contact any of the members of the Probate Law Committee with questions or suggestions of topics you would like to hear about at the seminar. You can get a copy of the Committee roster and contact information from Gina Hotchkiss at the Law Library: 330-725-9794. The Committee has reached out to the Ohio State Bar Association to determine when it is planning the annual Pliskin Advanced Probate Seminar in Columbus, and our Medina County seminar date may change to avoid a conflict. We hope to see many of you at the seminar.

New Lawyer Social

The Medina County Bar Association will be hosting a social on Friday, June 22, 2018, from 5:00 p.m. until 6:30 p.m. at the Corkscrew Saloon in Medina (811 West Liberty Street). *IT'S FREE*; no admission cost, a variety of appetizers, & 2 beer and/or wine drinks per person, all on MCBA's tab. No need to RSVP; just come.

This event is for existing members of the local bench & bar, prospective members, and – as the title indicates – lawyers admitted to the practice through the July, 2017 & February, 2018 Ohio bar exams.

We have the Corkscrew's side deck reserved, but if the weather turns on us, we have the party center in the back also reserved. Both locations are wheelchair-accessible. Some of the appetizers that will be served are vegetarian.

This will be a good opportunity to welcome new members of the profession, as well as connect with our friends & colleagues over free food & drink. Nobody's giving you the boot if you show up a little late or stay later than scheduled (but the free drink well goes dry at 6:30pm).