

# MEDINA COUNTY BAR ASSOCIATION

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## Upcoming MCBA Events

- October 19, 2018: Deadline to submit nominations for  
MCBA Professionalism Award
- December 5, 2018: Criminal Law CLE
- December 6, 2018: Holiday Party;
- December 14, 2018: Annual Meeting.

## Message from our President

The “dog days” of summer flew by and now we find ourselves in what I like to call the ‘halcyon days of fall’-- the rich, pleasant stretch between too hot summer and too cold winter. We also at MCBA find ourselves in the middle of some halcyon days, fresh off the very well attended and presented full day CLE program, “ A Review of The Law On Guardianships and Administration.” Special thanks to Probate Judge Dunn and Magistrates Alicia Hathcock, Lisa Louy, Derek Chek and Susan Funk for your extra effort in making this the most successful CLE we’ve had in several years. Also, special thanks to Vice President Brad Proudfoot for his work in organizing this great program.  
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## 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 –Michael Callow & Bradley J. Proudfoot

## **Social Media Post Leads to Criminal Liability**

The Ninth District Court of Appeals recently affirmed a trial court's determination that a Facebook® post of a homemade music video could support a conviction for aggravated menacing. *State v. Gilbert*, 9<sup>th</sup> Dist. Lorain No. 17CA011209, 2018-Ohio-1883. In writing the opinion for the majority, Judge Teodosio stressed at the outset that "our decision is based solely on the specific arguments presently before us and does not stand for a blanket proposition that a song containing threatening lyrics, which is posted on the Internet and eventually seen by the intended victim of the threats, always constitutes aggravated menacing under Ohio law." *Gilbert, Id.*, 2018-Ohio-1883, ¶ 5.

Mr. Gilbert wrote and performed a music video with his brother "O.G." *Id.*, ¶ 2. O.G. then posted the song, performed by Mr. Gilbert with O.G. playing a ukulele, on his own Facebook page. *Id.* Mr. Gilbert's lyrics referenced going to his "baby momma's house" and causing serious physical harm to her, her paramour, and their "little kids." *Id.*, at ¶ 2 and 10. Mr. Gilbert repeated "I'm gonna kill you" three times in the last line of the song. *Id.*, ¶ 10. Mr. Gilbert and the mother of his only children "R.C." were involved in a custody dispute at the time the video was posted by O.G. *Id.*, at ¶ 2. R.C.'s cousin saw the video on O.G.'s page, and showed it to her. *Id.* She then reported the video to the police. *Id.*

Mr. Gilbert appealed his conviction arguing mainly that the State did not present sufficient evidence for a rational trier of fact to conclude that Mr. Gilbert knowingly caused his co-parent to believe that he will cause serious physical harm to her or her immediate family. *Id.*, ¶ 7. He argued there was insufficient evidence because the statements were not made directly to her, or to people he knew would communicate them to her. *Id.*, ¶ 8. O.G. posted the video to his page; Mr. Gilbert did not. Mr. Gilbert also argued that he is an artist and a performer who did not write the song about anyone in particular – never directly invoking R.C.'s name in the song – but instead used it as a metaphor. *Id.*, ¶ 11.

The Court stated that "R.C. 2903.21 is clear and unambiguous on its face and does not impose a requirement that the threat of harm must be uttered directly to the intended victim." *Id.*, ¶ 8, quoting *State v. Knoble*, 9<sup>th</sup> Dist. Lorain No. 08CA009359, 2008-Ohio-5004, ¶ 13. The statute states: "No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family..." R.C. 2903.21(A). Although the Seventh and the Eleventh District Courts of Appeal have held that a threat to cause harm must be made directly to the victim, the plurality of districts now hold that the threats need not be directly made, so long as a threat is made to a third-party to whom the defendant knew or reasonably should have known would convey the threat to the intended victim. *State v. McWilliams*, 5<sup>th</sup> Dist. Stark No. 2011-CA-00051, 2012-Ohio-663, ¶ 27, *overruling its prior ruling to adopt the reasoning in Knoble*.

The Ninth District held that in reviewing the evidence in a light most favorable to the prosecution, the State presented sufficient evidence to support a conviction, while it could not conclude that the trial court clearly lost its way. *Gilbert, supra.*, 2018-Ohio-1883, ¶ 13-16. To be sure, Mr. Gilbert blocked R.C. from his own page. *Id.*, ¶ 11. He testified that he did not know O.G. was going to post this particular video. *Id.* But, he admitted he commonly posts his videos and intended to post this one when it was finished. *Id.*, ¶ 11. Further, Mr. Gilbert states at the beginning of the video that he "wants people to like and share his videos." *Id.*, ¶ 14. R.C. testified that she felt the song was referring to her. *Id.*, ¶ 9. She testified that she was frightened for her life. *Id.*, ¶ 9. An officer testified that R.C. was upset and concerned when she came to the police. *Id.* She testified that she has family and friends who have access to Mr. Gilbert's and O.G.'s pages. *Id.* She would expect to be shown anything on Mr. Gilbert's and O.G.'s pages. *Id.*

The Ninth District affirmed the continuing trend in the courts of appeal that a direct threat to a victim is not a prerequisite to a conviction under the menacing statutes. The Court emphasized that these particular cases are fact intensive and will be decided on a case by case basis. Thus, the Court did not establish and probably cannot establish a bright-line rule for determining when one knew or should have known that they would cause another to believe that the offender will cause harm to the victim, making evidence of direct threats to the victim unnecessary. As we continue to become increasingly connected via social media platforms, courts will surely continue to weigh the impact of ill-advised posts in criminal and civil cases.

*J.R. Russell lives in Medina. He was recently appointed as a Trial Magistrate for the Medina County Domestic Relations Court, by the Honorable Judge Mary Kovack. He was previously in private practice, prosecuting and defending numerous civil cases in state and federal courts in Ohio. He also served as a part-time municipal prosecutor. He is a graduate from The Ohio State University.*

## 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 October 30th to Mike Callow at [attorneymikecallow@gmail.com](mailto: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](http://www.medinabar.org)

[www.facebook.com/MedinaCountyBar Association](http://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](mailto:bkerns@bsphlaw.com) or Gina Hotchkiss at [ghotchkiss@medinaco.org](mailto:ghotchkiss@medinaco.org).

## Medina County jail is now open for business for prison sentences.

Convicted felons are now serving prison sentences in the Medina County local jail. Effective 9/29/17, state law requires certain “targeted counties” to detain in local jails the persons with felony convictions sentenced to prison terms for less than one (1) year. The targeted counties include Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Lorain, and Mahoning.

Medina County is a “voluntary county” in the program which means that the administrative judge of the common pleas court and the county commissioners have voluntarily entered into an agreement to house these convicted felons in the local jail. The requirements of the agreement require Medina County to house convicted felons who are sentenced to prison for a term less than twelve (12) months in the local jail. The effective date is July 1, 2018.

There are exceptions to these requirements however. There are exceptions for persons convicted of certain offenses of violence, sex offenses, and offenses which require mandatory prison terms. There are exceptions for persons previously convicted of certain felony offenses of violence, sex offenses, or persons with multiple sentences to serve. See O.R.C. 2929.34.

*Mike Callow lives in Wadsworth, Ohio. He is in private practice and spends considerable time in criminal defense. He is a graduate from the University of Akron School of Law.*

## New Limits on Sentencing Probation Violators

House Bill 49, Ohio's Budget Bill, was signed into law by Governor Kasich on June 30, 2017 and includes further limitations on sentencing convicted felons to prison.

In fifth degree felony cases, a court is now limited to sentencing an offender to ninety (90) days for a violation of community control conditions if the violation is either a "technical violation" or a new misdemeanor conviction. The law does not define "technical violation".

In fourth degree felony cases, a court is now limited to sentencing an offender to one hundred and eighty (180) days for a violation of community control conditions if the violation is either a "technical violation" or a new misdemeanor conviction. Again, the law does not define "technical violation".

It is unclear if the new sentencing limitations will be effected by previous sentencing orders relative to "reserve prison sentences" or if there is any retroactive application for persons sentenced prior to the bill's effective dates.

*Mike Callow lives in Wadsworth, Ohio. He is in private practice and spends considerable time in criminal defense. He is a graduate from the University of Akron School of Law.*

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### [New Address for main office of the Ninth District Court of Appeals](#)

Last December, the Ninth District Court of Appeals announced plans to move its headquarters to a new location. That move has now taken place, and, effective September 17, 2018, the Court's address is:

Ninth District Court of Appeals  
Main Place  
121 S. Main Street, Suite 200  
Akron, Ohio 44308

Although the address of the Court's headquarters has changed, nothing else will. The Court's telephone numbers will remain the same. Filings must still be made with the clerk of the court of appeals in the county where the case originated, and none of those addresses have changed.

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### Save The Date

The Medina County Bar Association will be sponsoring a Criminal Practice CLE on December 5, 2018. Application for 6.0 CLE hours is pending. Speakers will include Judges, Prosecutors, and Criminal Defense attorneys.

Look for more information in the upcoming month. Should you have any questions please contact either Mike Callow at [attorneymikecallow@gmail.com](mailto:attorneymikecallow@gmail.com) or Brad Proudfoot at [bproudfoot@rpsohiolaw.com](mailto:bproudfoot@rpsohiolaw.com).



## VIEWS FROM THE BENCH



### Judge Mary Kovack

Medina County Domestic Relations Court

### Ohio Adopts “Dating Violence” Civil Protection Orders into Law

Recently, the Ohio General Assembly approved a bill to expand the types of persons who are able to seek a protection order from a Domestic Relations Court. Effective July 6, 2018, Ohio law now provides protections for those who suffered from violence or are in danger of violence from someone with whom they are in a *dating relationship*.

Previously, the Medina County Domestic Relations Court had the ability to grant protection orders only for a petitioner who “is residing with or has resided with the respondent.” *R.C. 3113.31(A)(3)(a)*. Likewise, a petitioner could not obtain a civil protection order from the Medina County Domestic Relations Court, unless the other person was a “family or household member” such as: a spouse, a parent, a child, a sibling, or a cohabitant in a relationship similar to a marriage. *R.C. 3113.31(A)(3)-(4)*.

As with domestic violence civil protection orders, the new law is designed to provide protection for those who have suffered actual bodily injury at the hands of the respondent, who are the subject of threats of imminent serious physical harm directed at the petitioner by the respondent, or who have been the victim of a sexually oriented offense perpetrated by respondent. *R.C. 3113.31(A)(1)(a)(i)-(iv)*. The new law provides that a person may seek a protection order against someone with whom he or she is or was in a dating relationship. *R.C. 3113.31(C)(1)*. The new law defines *dating relationship* as “a relationship between individuals who have, or have had, a relationship of a romantic or intimate nature.” *R.C. 3113.31(A)(8)*. The relationship must be more than a mere “casual acquaintanceship or ordinary fraternization in a business or social context.” *Id.* Similarly, the parties must be adults who are currently in a dating relationship, or who were in a dating relationship “within the twelve months preceding the conduct in question.” *R.C. 3113.31(A)(8)*. The petitioner in these situations must provide the court with sufficient facts upon which the court may conclude that a dating relationship existed between the parties. *R.C. 3113.31(C)(3)*.

The basic due process requirements for these types of orders are the same as with domestic violence civil protection orders, civil stalking protection orders, and juvenile civil protection orders. The Domestic Relations Court has a range of orders for the protection of a person seeking to prevent violence from a respondent with whom she or he is or was in a dating relationship. *R.C. 3113.31(E)(1)(a)-(k)*. Some of the options available for the Domestic Relations Court are orders akin to those in domestic violence (*cont’d*)



## VIEWS FROM THE BENCH



### Judge Mary Kovack

Medina County Domestic Relations Court

### Ohio Adopts “Dating Violence” Civil Protection Orders into Law (continued from page 5)

civil protection orders, such as: directing the respondent to refrain from abusing or coming within 500 feet of the petitioner; requiring the respondent to seek counseling; requiring the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner; prohibiting respondent from removing, hiding, or harming any companion animal; and/or, directing a wireless service transfer. *R.C. 3113.31(E)(1)(a),(f),(g),(i) and (k)*. A respondent who violates a dating violence protection order may be charged with contempt of court; or, a respondent who “recklessly” violates a dating violence protection order may be charged with a first degree misdemeanor. *R.C. 3113.31(L)(1)(b); R.C. 2919.27*.

“Any law enforcement agency that investigates a domestic dispute shall provide information to the...persons in the dating relationship who are involved...regarding the relief available under this section...” *R.C. 3113.31(I)*. As in cases involving domestic violence civil protection orders, the petitioner in a dating violence case may be accompanied by a victim advocate in all stages of such a proceeding. *R.C. 3113.31(M)*. A petitioner who obtains such a protection order may register it with law enforcement agencies of different counties, and register similar orders from different states. *R.C. 3113.31(N)(1)-(2)*.

The Ohio Supreme Court has proposed several new forms to address dating violence civil protection orders—proposed forms 10.01-P through 10.01-T. Those proposed forms, along with proposed revisions to the existing forms can be found on the Ohio Supreme Court’s website under Ohio Rules of Court > Proposed Rule Amendments > Rules of Superintendence for the Courts of Ohio (Sup.R. 10 through 10.05 and related forms – Protection Order Forms). The comment period for the proposed amendments and forms ends October 12, 2018.

*Judge Mary Kovack has been the Administrative Judge of the Medina County Domestic Relations Court since 2001.*



## New Forms Available

Judge Kevin W. Dunn

### Medina County Probate/Juvenile Div.

#### PROBATE COURT LAND SALE FORMS AND FLOW CHART NOW AVAILABLE ON COURT WEBSITE

New forms available for use in probate matters involving land sales filed in the Medina County Probate Court. The following Guardianship and Estate Land Sale Forms are now available for your use. The Court has also developed an easy to follow Land Sale Procedural Flow Chart providing you with a step-by-step process to aid you in these matters.

Forms are available at court or online for download on the Court's website at [www.MedinaProbate.org](http://www.MedinaProbate.org).

## Guardianship/Probate CLE

The Medina County Probate Law Seminar held on Friday September 21<sup>st</sup> was a resounding success. Special thanks to Judge Dunn, Magistrate Hathcock, Magistrate Louy, Magistrate Cek, attorney Susan Funk, and Laura Toth for donating your time and expertise.

Thank you to everyone that made this the most attended CLE sponsored by the MCBA since 2003!

### President's message (continued from page 1):

So far in 2018, we've produced more low-cost CLE programs than at any time in recent memory. The programming has included a Delinquency Practice and Procedure CLE (spring); a Trial Courts CLE seminar (Spring/summer) presented with programming from the Medina Municipal Court, the General Division of Medina County Court of Common Pleas and the Ninth District Court of Appeals. We've also had our annual Law Day presided over by the Ohio Supreme Court's newest member, Justice Mary DeGenaro, as well as fun social events like the New Lawyers cocktail party (Summer) and the Summer Bar Picnic.

The Quarterly Luncheon on September 14, 2018 at Sérénité Restaurant at 538 West Liberty, Medina (the former Medina Steak House) was a nice way to meet while supporting the remarkable response to addiction problems that brought Sérénité into being. Our guest speaker there was Magistrate J.R. Russell who spoke to us regarding Civil Protective Orders. Thank you to all those who took the time to attend and participate.

The final programming for MCBA includes the upcoming year-end events. Please add these to your calendar now—save the date:

- December 5, 2018 Criminal Practice CLE (Location TBD)
- December 6, 2018 Annual MCBA Holiday Party (evening)
- December 14, 2018 Ethics CLE and Annual Meeting/Luncheon (Santosuossos)

Thank you to all of our members who have stepped up this year to participate and/or to make recommendations and offer feedback as we transition into the sweet cool days of Autumn, and be sure to join us for the **quarterly luncheon coming up on Friday, December 14 at Santosuossos in Medina**. In the meantime, have a great fall season!

Best regards,

*Brian Kerns*

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MCBA President

## MESSAGE FROM THE PROSECUTOR'S OFFICE

Medina County Prosecutor - S. Forrest Thompson, Esq.

July 2018 marks the one and one half year point of my service as the County Prosecutor. During that time, we initiated numerous changes in the office in order to modernize, stream-line and better serve the citizens of Medina County. Chief among these internal changes is the introduction of the Matrix Prosecutor File Management System. As many of you already know, when fully integrated, this system will permit you 24 hours per day access to your client's case files and will allow electronic delivery of discovery among the many benefits available. We will continue to update the members of the bar on our progress and hope to be fully operational by fall 2018.

Of course one of the most obvious changes made outside of the office walls is the newly adopted policy to aggressively pursue felony level, non-support cases. In 2017 147 cases of felony non-support were prosecuted in Medina County. While this is a dramatic increase from any past year, it represents only a small portion of such cases that warrant felony prosecution.

At the same time, I was also aware that prosecution alone would not fix the problem. Therefore, I also created the "BACK-ON-TRACK" Program. The Medina County "Back on Track Program" is designed to help people who are behind in their child support obligation and are not currently making payments. Parents who are invited to participate in the program are given an opportunity to work with Child Support personnel, Ohio Means Jobs, and the Prosecutor's Office to come up with a plan that will get their current child support payments started and the arrears paid off. Their participation will assist in avoiding felony prosecution.

The first Back on Track event was held in December of 2017. Fifty-nine people were invited to participate. Of those fifty-nine, twenty-eight parents are now regularly paying their obligation and helping to support their children. The second Back on Track event was held in March of 2018. Thirty-four parents were invited. Of those thirty-four, thirteen parents are now regularly paying their obligation and helping to support their children. The next "Back on Track" event is scheduled for August of 2018. We are all looking forward to the continued success of those parents that choose to participate in this program.

All "Back on Track" events are held at the Medina Public Library. The participants are sent a letter of invitation to attend the back on track program well in advance of charges being filed. This program is NOT available if an indictment has already been filed.

Make no mistake. The Medina County Prosecutor's Office will continue to prosecute these cases aggressively, however, we want such prosecutions to be a last resort. I hope publishing this information will assist you in advising your clients. I invite any member of the bar to contact me directly if you have any questions or suggestions.

*Forrest Thompson was elected as the Medina County Prosecutor in January of 2017. He has been an attorney in Medina County for over 22 years and has extensive trial and litigation experience in criminal, domestic, civil, and probate law. While enlisted in the military, he received numerous awards, medals, and commendations during his seven years of service as a Law Enforcement Officer. He worked in anti-terrorism security and response, performed K9 training for explosive detection and extraction, and was a diplomat escort both foreign and domestic.*