

Advanced Appellate Advocacy Seminar
(November 22, 2024, at CWRU School of Law)

Brief Description: The Eighth District Court of Appeals, in partnership with the Case Western Reserve University School of Law, is offering an all-day CLE, featuring Eighth District Court of Appeals Judges and staff attorneys, along with esteemed practitioners and legal scholars. The seminar will focus on advanced topics in civil and criminal appeals. Six and a quarter hours of CLE (including one hour of professional conduct) have been approved. Six and a quarter speciality hours toward OSBA appellate law certification have been approved.

Event Program

Registration (8:30 – 8:55 a.m.)

Eighth District Court of Appeals Administrative Judge Kathleen Ann Keough

Opening Remarks and Introduction: Judge Mary J. Boyle, Eighth District Court of Appeals, Chair of the Education Committee

I. “Missed Persuasive Opportunities” (9:00-9:45 a.m.)

Featured Moderator:

Judge Mary J. Boyle, Eighth District Court of Appeals

Featured Speakers:

- Toni Q. Farkas, Staff Attorney, Eighth District Court of Appeals
- Dave Parchem, Staff Attorney, Eighth District Court of Appeals
- Melissa Ghrist, Adjunct Professor, Case Western Reserve Law School

Brief Description: Suggestions for making the most of your opportunities to persuade the appellate court, including a discussion of applicable appellate rules, a “behind the scenes” view of practical considerations that can influence persuasiveness, strategies for effective appellate brief writing and oral argument, and how to avoid common missteps throughout the appellate process that can undermine the effectiveness of your appellate presentation.

II. Third Time is a Charm: An Overview of the Ohio Supreme Court's 3rd Edition of its Writing Manual. (9:45-10:15 a.m.)

Featured Moderator:

Judge Eileen T. Gallagher, Eighth District Court of Appeals

Featured Panelists:

- Amy Cheatham Tye, Judicial Attorney, Eighth District Court of Appeals
- Holly Marie Wilson, Partner, Reminger Co. LPA

Brief Description: Drawing on their positions as a practitioner and a court employee, Holly and Amy will discuss how the new and improved Manual aims to make brief writing simpler and opinions easier to read.

III. (B)e Careful When Moving to Dismiss: An Analysis of Civ.R. 12. (10:15 a.m. – 11:00 a.m.)

Featured Moderator:

Judge Anita Laster Mays, Eighth District Court of Appeals

Featured Speakers:

- Marcel Duhamel, Partner, Vorys, Sater, Seymour and Pease LLP
- Matt Fazekas, Associate, Vorys, Sater, Seymour and Pease LLP

Brief Description: This presentation will provide an overview of Civ.R. 12 and case law interpreting Civ.R. 12. This presentation will also provide common pitfalls attorneys may encounter when moving to dismiss under Civ.R. 12.

BREAK: 11:00-11:15 a.m.

IV. Hot Topics (11:15 a.m. - 12:00 p.m.)

Featured Moderator:

Judge Michelle J. Sheehan, Eighth District Court of Appeals

Appellate Standards of Review

Featured Speakers:

- T. Allan Regas, Judicial Attorney, Eighth District Court of Appeals

Brief Description: In the past few years, the Ohio Supreme Court redefined how a lower court can be found to abuse its discretion and merged appellate review

of civil and criminal claims that a judgment is against the manifest weight of the evidence. We highlight these changes and review the appellate standards of review from de novo to abuse of discretion and everything in between.

A Brief History of Sealing Law and an Explanation of How the Sealing/Expungement Process Currently Works

Featured Speakers:

- Anthony Miranda, Assistant Prosecuting Attorney, Cuyahoga County Prosecutor's Office
- Tom Lampman, Attorney, Post-conviction Unit of the Cuyahoga County Public Defender's Office

Brief Description: A brief history of sealing law and an explanation of how the sealing/expungement process currently works, including eligibility criteria, filing timeframes, and the differences between sealing and expunging. Also, a discussion of practical issues that arise throughout the process as well as unresolved appellate issues.

BREAK: 12:00-12:15 p.m. (Lunch pick-up.)

V. Keynote presentation: “Landmark Supreme Court Cases From the Cleveland Area (12:15-1:15 p.m.)

Featured Moderator:

Eighth District Court of Appeals Court Administrator Erin M. O'Toole

Featured Speaker:

· Professor Jonathan L. Entin, Professor Emeritus of Law, Case Western Reserve University

Brief Description: A surprisingly large number of landmark U.S. Supreme Court cases have arisen in the Greater Cleveland area. Those cases have dealt with criminal procedure, due process, family law, the First Amendment, the Fourth Amendment, and zoning, to name a few. This session will discuss the background and significance of such cases as *City of Eastlake v. Forest City Enterprises*, *City of Lakewood v. Plain Dealer Publishing Co.*, *Cleveland Board of Education v. LaFleur*, *Cleveland Board of Education v. Loudermill*, *Jacobellis v. Ohio*, *Mapp v. Ohio*, *Lehman v. City of Shaker Heights*, *Moore v. City of East Cleveland*, *Sheppard v. Maxwell*, *Terry v. Ohio*, and *Village of Euclid v. Ambler Realty Co.*

VI. Contempt: With Great Power Comes Great Responsibility (1:15-1:45 p.m.)

Featured Moderator:

Judge Emanuella D. Groves, Eighth District Court of Appeals

Featured Speakers:

- Jacob Dicus, Deputy Court Administrator – Chief Legal Counsel, Eighth District Court of Appeals
- Robert McCaleb, Assistant Public Defender, Cuyahoga County Public Defender's Office
- Darci Del Torto, Judicial Attorney, Eighth District Court of Appeals.

Brief Description: The panel will discuss the contempt powers of judges and magistrates, how to use those powers properly, and what to do when those powers are employed against you or your client.

BREAK: 1:45-2:00 p.m.

VII. Yes, Appellate Judges (Sometimes) Conduct Fact Finding on Appeal (2:00-3:00 p.m.)

Featured Moderator:

Judge Lisa Forbes, Eighth District Court of Appeals

Featured Speaker:

- Professor Andrew Pollis, Case Western Reserve University

Brief Description: Most lawyers expect appellate courts to defer to the trial court's fact-finding and to focus appellate review on issues of law (or mixed question of law and fact). But appellate courts are routinely required to assess the record in a way that mirrors traditional fact-finding—as (for example) when assessing whether error is harmless or prejudicial. And occasionally (as, for example, when assessing mootness) an appellate court looks at material outside the trial-court record. This session will focus on the contours of “fact-finding” on appeal and will engage with strategies to navigate it.

VIII. Artificial Intelligence and Legal Ethics (3:00-4:00 p.m.)

Featured Moderator:

Judge Michael Ryan, Eighth District Court of Appeals

Featured Speaker:

· D. Allan Asbury, Ohio Board of Professional Conduct

Brief Description: Staff from the Board of Professional Conduct will review the applicable Ohio Rules of Professional Conduct to situations where lawyers seek to use available artificial intelligence tools in their legal research and writing and the relevant aspects of client representation. A survey of recent advisory opinions, disciplinary cases, and case law will be reviewed. The risks and advantages of using artificial intelligence will also be discussed.

Reception (4:00 p.m.): *Please join us for a complimentary reception following the program upstairs in Ben's Place at the law school.*