

# ON THE MERITS

Winter 2023  
Volume 9 Issue 1



*Tiffany Schwartz  
President Dayton Chapter,  
Federal Bar Association*

## **FIRST CHAIR: PRESIDENT'S MESSAGE**

BY: TIFFANY SCHWARTZ, FBA DAYTON CHAPTER PRESIDENT

THE VIEWS EXPRESSED IN THIS COLUMN ARE HER OWN AND DO NOT REPRESENT THE OFFICIAL POSITION OF ANY AFFILIATED ENTITY

It is my honor to serve as this year's President of the Dayton Chapter of the Federal Bar Association. I am incredibly excited about this opportunity! To start the year off, the Dayton Chapter, like most Chapters of the FBA, began transitioning back to in-person events since the global pandemic. This commenced with the Chapter hosting its first in-person Annual Meeting since 2019. Additionally, the Dayton Chapter was honored to sponsor the investitures of three federal judges, District Judge Michael Newman, Magistrate Judge Peter Silvain, and Magistrate Judge Caroline Gentry. To say I have missed these kinds of events over the past few years would be an understatement!

This year the Chapter also made significant efforts to reinvigorate its partnership with the University of Dayton School of Law (UDSL). First, the Dayton Chapter's Young Lawyer and Mentorship Chair, Ms. Liz Rogers, successfully resumed our Mentorship Program by matching over 40 students with attorney mentors and putting together some incredible programming for the year! Additionally, the FBA recently announced that FBA Student Memberships will be free. Therefore, the Chapter is aiming to enroll as many students as possible in the UDSL Chapter.

Last, and certainly not least, the Chapter has been working on some great upcoming programming! This Spring, the Dayton Chapter and Cincinnati Chapters will be partnering to host a CLE on the Bureau of Prisons. Additionally, in April, we will be hosting a State of the Court Program, where we will hear court updates from several members of the bench, including Chief Judge Algenon L Marbley. This event will be followed by a networking luncheon. A special thanks to Dayton Chapter's President-Elect, Mr. Michael Mayer, for taking on the organization of these events!

I am incredibly honored to have the opportunity to lead this Chapter over the next year and I am even more blessed to have an amazing Board and Committee to help accomplish our Chapter's goals! Without their help and support, many of the aforementioned events would not have been possible! If you have any recommendations or suggestions on how the Dayton Chapter can better serve you, please don't hesitate to reach out.

Cheers to 2023!

-Tiffany

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**BACK TOGETHER AGAIN: FBA DAYTON CHAPTER 2022 ANNUAL MEETING IN PERSON!**

BY: BROOKE A. SCHLEBEN, FBA DAYTON CHAPTER PUBLICITY & PUBLIC RELATIONS CHAIR

As we are navigating the new normal from the effects of the COVID-19 crisis, we were ecstatic to announce the Chapter’s 2022 Annual Meeting was in person! The meeting was held at The University of Dayton School of Law, with a large attendance considering all factors. Held on October 25, 2022, the meeting featured remarks from our very own Dayton Past Chapter President, Glen R. McMurry, who now serves as the Treasurer of the Federal Bar Association Nationally. Also speaking at the event was Dayton local, Merle F. Wilberding, an attorney at Coolidge Wall with more than fifty years of experience, and a former Dayton Bar Association President. The meeting consisted of swearing in the new Chapter Officers and the presentation of awards to: Judge Peter B.Silvan (Mona Guerrier Public Service Award) and Judge Michael R. Merz (Dayton FBA Federal Service Award). Important to note from Glen R. McMurry is that law students can join the FBA’s law student division for free and their first year of professional membership will be free if they joined in law school.



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**U.S. DISTRICT COURT OF OHIO CRIMINAL JUSTICE ACT PANELS**

BY: BROOKE A. SCHLEBEN, FBA DAYTON CHAPTER PUBLICITY & PUBLIC RELATIONS CHAIR

The United States District Court for the Southern District Court of Ohio has finished collecting applications for its membership on the Criminal Justice Act (CJA) Panel and CJA Training Panel. The CJA Panel is the Court’s Appointed Counsel list for indigent criminal defendants. These individuals are unable to be represented by the Federal Public Defender’s Office.

The Training Panel is only offered every two to three years and members are selected by their trial experience and understanding of federal sentencing guidelines. Each member of the CJA panel will have a mentor and will serve approximately three years.

We would like to thank all the attorneys who have submitted an application and all the attorneys who have dedicated their time to be mentors. Our legal system would not operate without individuals like you.

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**FBA PROVIDES SUPPORT TO MEMBERS OF THE LEGAL COMMUNITY IN NEED THROUGH SOLACE PROGRAM**

BY: SABRA L. TOMB, FBA DAYTON CHAPTER VICE PRESIDENT

In light of the COVID-19 global pandemic and its associated effect on our individual communities, the Dayton Chapter would like to remind our members of the FBA’s SOLACE program. SOLACE stands for “Support of Lawyers/Legal Personnel—All Concern Encouraged.” SOLACE provides a way for the FBA legal community to reach out in small, but meaningful and compassionate ways, to FBA members and those related to them in the legal community who experience a death, or some catastrophic event, illness, sickness, injury, or other personal crisis. If you or your family need assistance, please don't hesitate to reach out to Mr. Steve Justice, Dayton Chapter SOLACE Committee Chairperson, [justice@dunganattorney.com](mailto:justice@dunganattorney.com), or submit a request at <https://www.fedbar.org/about-us/outreach/solace/solace-submission-form/> .

No request is too big or too small.

## **WESTCO INS. CO. - LAWYERS LEFT HOLDING THE BILL FOR AN ATTORNEY'S FEE AWARD**

BY: MICHAEL S. MAYER, FBA DAYTON CHAPTER PRESIDENT-ELECT

THE VIEWS EXPRESSED IN THIS COLUMN ARE HIS OWN AND DO NOT REPRESENT THE OFFICIAL POSITION OF ANY AFFILIATED ENTITY

In *Westco Ins. Co. v. Roderick Linton Belfance, LLP*, 39 F.4th 326 (6th Cir. 2022), an insurance company that had issued a professional-liability policy successfully argued that the policy excluded coverage for a fees award entered against the policy-holding attorneys in underlying litigation.

In the underlying litigation, the attorneys had brought claims on behalf of parents against a school district pursuant to the Individuals with Disabilities Education Act (IDEA). That act contains a fee-shifting provision that permits defendant-schools to obtain their attorney's fees if the plaintiff-parents' attorneys litigated a suit that was

"frivolous, unreasonable, or without foundation" or "presented for any improper purpose." 20 U.S.C. § 1415(i)(3)(B)(i)(II)-(III). After significant administrative litigation, a hearing officer found in favor of the school district. The parents' attorneys then pursued the claim in federal district court, the court ruled in favor of the school district, and the Sixth Circuit Court of Appeals affirmed that ruling.

However, the school district wanted more than just winning the underlying lawsuit. "Frustrated with having to defend against what they viewed to be frivolous litigation," the school district sued the parents' attorneys under the IDEA's fee-shifting provision. *Westco Ins.*, 39 F.4th at 330. The school district pointed to (at least) two examples to support its claim that the underlying litigation was frivolous. First, the original administrative complaint "misstated the most basic of facts, including the student's address, school, and mother's name—errors that profoundly disturbed the hearing officer." *Id.* Second, the attorneys had "claimed that their parent client had requested an IDEA evaluation of her child when he was in the eighth grade—a false allegation that forced the [school] district to waste resources interviewing the child's eighth-grade teachers." *Id.*

The attorneys asked their insurance company (Westco), which had previously issued them a professional-liability policy, to provide a defense against the school district's suit and to indemnify them from any liability. In response, the insurance company sought a declaratory judgment that its policy did not apply. "Under the policy, Westco agreed to defend [the attorneys] against certain 'claim[s]' for 'damages' arising from their legal services and to indemnify them for any awarded 'damages.'" *Westco Ins.*, 39 F.4th at 330. However, "the policy defined 'damages' to exclude an award of 'sanctions' under 'federal' law." *Id.* (emphasis added). Therefore, the question became: does the school district's request for an attorney's fees award under the IDEA qualify as "sanctions" under the policy's exclusion. If so, then the insurance company had no duty to defend or indemnify the attorneys.

The Sixth Circuit affirmed the district court's ruling that, because the IDEA makes attorney misconduct a prerequisite to a fees award against a party's lawyer, the policy's exclusion applied. The Sixth Circuit first looked to the insurance policy's language. However, it did not define the key word: "sanctions." Therefore, the court needed to "read the term to have the meaning that the average policyholder would give it." *Westco Ins.*, 39 F.4th at 336. The parties did not dispute that the word "sanctions" has one clear meaning in the context of a malpractice policy: "a penalty or coercive measure that results from failure to comply with a law, rule, or order." *Id.* (quoting *Black's Law Dictionary* 1608 (11th ed. 2019)). So, the question then became: "Would the attorney's fees award qualify as a 'coercive measure' for failing to comply with a 'law'?" *Id.*

To answer that question, the Sixth Circuit referenced the "so-called 'American Rule,'" as well as the two general "buckets" of exceptions to the rule: (1) sources—such as various civil rights statutes—that permit parties to obtain their attorney's fees at the end of a lawsuit merely for success in the litigation; and (2) sources—such as Federal Rule of Civil Procedure 11—that permit a party to obtain attorney's fees if the other party (or that party's attorney) has engaged in litigation misconduct. *Westco Ins.*, 39 F.4th at 336-37. The court held that "a fees award in the second bucket (tied to litigation misconduct) fits the definition of 'sanction' to a tee." *Id.* at 337. "The award is a 'coercive measure' in the sense that a court compels a party or attorney to pay it," and "the court takes this measure because of the attorney's or litigant's 'failure to comply' with a law or court rule against abusive litigation tactics." *Id.* (quoting *Black's Law Dictionary* 1608 (11th ed. 2019)).



Michael S. Mayer,  
Judicial Law Clerk at United States  
District Court for the Southern District of  
Ohio

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**HONORING UNITED STATES MAGISTRATE JUDGE SHARON L. OVINGTON**

BY: MICHAEL MCSHEA AND ZOE CURRY, JUDICIAL LAW CLERKS, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

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On October 21, 2021, the United States District Court for the Southern District of Ohio in Dayton held a special session to celebrate U.S. Magistrate Judge Sharon L. Ovington’s retirement after more than nineteen years of dedicated and exceptional service. Although the happy occasion occurred online due to the ongoing COVID-19 pandemic, this did not dampen the enthusiastic respect extended to Judge Ovington by her judicial colleagues, law clerks, family, and friends.

Judge Ovington was born in Cincinnati and was one of six children raised by her parents Robert and Marilyn Ovington. She graduated from Ursuline Academy and entered the University of Cincinnati with one eye on following her father, a corporate attorney, into a legal career and her other eye on following her mother, a registered nurse, into the medical profession. With the latter in mind, she worked throughout her undergraduate years at the University of Cincinnati Children’s Hospital where the sometimes sanguinary and traumatic events she witnessed confirmed her greater enthusiasm in pursuing a legal career. In addition, a trip with her father to Washington, D.C.—which included a visit to the Supreme Court—greatly increased her interest in the law. She graduated Cum Laude from the University of Cincinnati in 1978 with a Bachelor of Arts in political science.

Judge Ovington earned her Juris Doctor at the University of Dayton School of Law in 1981 and soon began working as an Assistant Prosecuting Attorney at the office of Montgomery County Prosecutor Lee C. Falke. During her time as an Assistant Prosecuting Attorney, Judge Ovington progressed through many positions, working in the Juvenile, Child Support, Grand Jury Divisions, prosecuting felony cases before Common Pleas Court Judge W. Erwin Kilpatrick, defending civil cases, and litigating cases in the Ohio Court of Appeals for the Second District.

From 1988 to 1992, Judge Ovington served as a Referee in the Montgomery County Common Pleas Court. Her work involved a total of more than 400 civil cases addressing a wide variety of issues under Ohio law, and arbitration of medical malpractice cases. She graduated from the Harvard Negotiation Project in 1991 and thereafter contributed to the Montgomery County Common Pleas Court’s Alternative Dispute Resolution Program—a Program that lives on in the present day.

Judge Ovington entered private practice in 1992 as an Associate Attorney with Bieser, Greer & Landis (now, Bieser Greer) where she travelled extensively, practicing in the area of general commercial litigation until 1994. In 1995, Judge Ovington became Partner at the firm of Greger & Ovington where her practice focused on general civil litigation, misdemeanor and felony defense litigation, and death penalty and habeas corpus litigation.

Among her many accomplishments, Judge Ovington received an Outstanding Lawyer Award for her support to the Greater Dayton Volunteer Lawyers Project in 1992. She served on the Montgomery County Public Defender Board from 1996 to 2000. In 1988 she became the Chairman of the Alternative Dispute Committee of the Dayton, Ohio Bar Association, and in 1999, she became the Chairman of the Civil Trial Practice Committee of the Dayton Bar Association.

On October 28, 2002, Judge Ovington was sworn in as United States Magistrate Judge for the Southern District of Ohio, Western Division at Dayton. She served as Chief United States Magistrate Judge from January 1, 2013, to December 31, 2016. During her time on the bench, Judge Ovington presided over a wide variety of civil and criminal matters and successfully mediated more than 100 cases. She was devoted to treating all litigants and attorneys with dignity and respect.

Over the years, Judge Ovington shared her mediation expertise with many students at the University of Dayton School of Law. She taught courses on mediation and alternative dispute resolution. Through those courses, she met many of her former externs and law clerks.

***(CONTINUED ON PAGE 6)***

**MEET YOUR LOCAL CHAPTER'S ELECTED OFFICERS**

President –Tiffany Schwartz, U.S. Air Force

Tiffany is an attorney for the Air Force Research Laboratory, advising AFWERX, an innovation arm of the Air Force, and the Dept. of the Air Force’s Small Business Innovation Research Program. Prior to that, she was a supervisory attorney and Acquisition Fraud Counsel in the Procurement Fraud Division of the Air Force Materiel Command Law Office. Tiffany has been with the Air Force since 2012. Tiffany graduated from Ohio Northern University in 2010 with a Bachelor of Arts in Criminal Justice, Psychology and Sociology. After undergrad, she immediately pursued her law degree through the two-year, accelerated Juris Doctorate program at University of Dayton School of Law. Tiffany is also an elected City Councilwoman for the City of Beavercreek.



President-Elect –Michael S. Mayer, Judicial Law Clerk at the United States District Court for the Southern District of Ohio

Michael has served as a federal judicial law clerk since 2019. Prior to joining the Court, he was a civil litigation attorney with the law firms Freeborn & Peters L.L.P. in Chicago (2006-2012) and Faruki P.L.L. in Dayton (2012-2019). During his time as a litigator, Michael’s practice focused on complex business disputes in state and federal courts. In 2018, the Dayton Business Journal named him a “Forty Under 40” award winner. In addition to serving as President-Elect, Michael is the Program Chair for the Federal Court Practice Seminar in Dayton and has served on committees for the Ohio State Bar Association and Dayton Bar Association. Michael earned his Juris Doctor degree from DePaul University College of Law and his Bachelor of Business Administration degree from the University of Michigan.

Vice President – Sabra Tomb, U.S. Air Force

Sabra is an attorney-advisor for Headquarters Air Force Research Laboratory (AFRL), located at Wright-Patterson Air Force Base, Ohio. As an attorney for AFRL, Tomb provides legal support to AFRL’s \$6 billion science, technology, research and development enterprise, including the laboratory’s nine component technology directorates and the 711th Human Performance Wing. Tomb also partners with AFRL’s Functional Directorates to accelerate the Research & Development process, and provides legal support to the AFRL leadership.

Prior to her current position, Tomb was a Technology Transfer Specialist in the AFRL’s 711th Human Performance Wing’s Office of Research and Technology Applications and in the Wing’s Institutional Review and Biosurety Office. Ms. Tomb has a Juris Doctor degree from the University of Dayton School of Law, and a Bachelor of Science in Biology from Wittenberg University.



Treasurer –Michael J. Scarpelli, Dungan & LeFevre Co., LPA



Mike is an attorney at Dungan & LeFevre in Troy. He works primarily in the firm’s Domestic Relations and Family Law Department. In this role, Mike routinely handles divorces, dissolutions, custody disputes, child support matters, domestic violence and civil protective orders, and parental rights. Mike also has experience assisting individuals and businesses in navigating the civil litigation process, including disputes related to contracts, employment issues, construction, probate and trust issues, and personal injury. In addition, Mike assists individuals charged with criminal offenses in both state and federal courts. Mike previously served as an Assistant Prosecuting Attorney at the Montgomery County Prosecutor’s Office in Dayton. He also worked as a law clerk for a federal judge.

Secretary –  
Morgan K. Napier, Faruki PLL

Morgan is an attorney at Faruki PLL in Dayton. Her practice focuses on complex commercial litigation issues. She served a clerkship at the Montgomery County Court of Common Pleas and participated on the Law Review at the University of Dayton School of Law.



***SIXTH CIRCUIT UPDATE: WESTCO INS. CO. - LAWYERS LEFT HOLDING THE BILL FOR AN ATTORNEY'S FEE AWARD (CONTINUED FROM PAGE 3)***

Looking back to the IDEA's specific provisions, that statute permits the school district to obtain its attorney's fees only if the parent or the parent's attorney "litigated a suit that was 'frivolous, unreasonable, or without foundation' or 'presented for any improper purpose.'" *Id.* at 338 (quoting 20 U.S.C. § 1415(i)(3)(B)(i)(II)-(III)). This misconduct element made clear that any awarded fees would constitute a "sanction" under the ordinary meaning of that term and, therefore, under the insurance policy at issue in the case. *Id.* Thus, the school district's suit fell within the 'sanctions' exception in Westco's policy. *Id.* at 339.

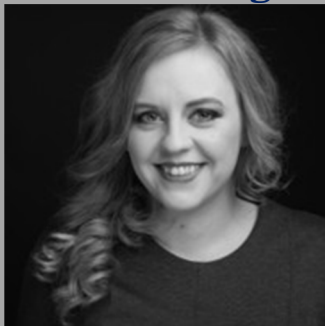
At least a couple of lessons can be gleaned from this case. One, check your malpractice insurance policy to see what is covered and what is excluded. Two, do not engage in the type of litigation misconduct that has you facing an attorney's fees award for frivolous or improper litigation. Obviously, any practicing attorney should not need to be told that second lesson, but this type of case reminds us that not all are heeding that lesson.

***HONORING UNITED STATES MAGISTRATE JUDGE SHARON L. OVINGTON (CONTINUED FROM PAGE 4)***

Judge Ovington recognizes that it has been a true honor to serve the Southern District of Ohio alongside her distinguished judicial colleagues—all of whom significantly contributed to her development as a judge. She steps toward her much-deserved retirement with great confidence in her successor, U.S. Magistrate Judge Caroline H. Gentry. Judge Gentry has already proven to be an outstanding addition to the Court.

As this notable chapter of her career comes to a close, Judge Ovington offers the Dayton legal community some brief advice. First, the importance of active listening skills cannot be overstated. Active listening is important in all areas of life. And second, learning to represent clients in mediation should be a priority for nearly all practitioners. Take time to develop and refine those skills. Your practice will be better for it.

In retirement, Judge Ovington will continue to serve the Court in a limited capacity on recall, focusing on mediation of civil cases. She looks forward to traveling, reading novels, and spending more time with her mother, children, and grandchildren.

**DAYTON FBA  
COMMITTEE MEMBER SPOTLIGHT**  
*Elizabeth Rogers*

Elizabeth Rogers is a current term law clerk to the Honorable Guy R. Humphrey on the United States Bankruptcy Court for the Southern District of Ohio. After graduating from Georgetown University Law Center in 2019, she served as a public interest legal fellow at Start Small Think Big, Inc. in New York City, providing free legal services to small business owners during the COVID-19 pandemic. During her tenure, Elizabeth piloted the organization's first legal seminar series with live Spanish interpretation, making critical information available to a broad audience. Before attending law school, she completed her undergraduate studies at Howard Payne University's Guy D. Newman Honors College in Texas and her graduate studies at University College London in the United Kingdom. Elizabeth joined the Federal Bar Association in 2021 and currently serves as the Dayton Chapter's Younger Lawyers Committee Chair. In her free time, Elizabeth enjoys skiing, volleyball, reading, and spending time with her two rescue cats, Marzipan and Pistachio.

**CHARTING A NEW COURSE: THE DAYTON CHAPTER'S FEDERAL LAWYER DEVELOPMENT PROGRAM**

BY: ELIZABETH ROGERS, FBA DAYTON CHAPTER YOUNGER LAWYERS COMMITTEE CHAIR



*Elizabeth Rogers,  
Judicial Law Clerk at United  
States District Court for the  
Southern District of Ohio*

The Federal Lawyer Development Program (“FLDP”) is a 2022-23 pilot program sponsored by the Dayton Chapter’s Younger Lawyers Committee. The program provides career development support to local law students who plan to pursue careers in FBA practice areas. FLDP is comprised of two key components – mentoring and professional development. By combining these approaches, we equip students to find success in federal practice areas.

The mentoring component pairs students with attorney mentors from the FBA membership and local bar community. Mentor matches were made based on the student’s practice area and setting of interest and attorney volunteer expertise. Currently, thirty-five volunteer attorneys are serving as mentors. Mentors meet with students on a monthly basis from November 2022 to May 2023.

While we provide monthly topic suggestions to guide meaningful conversations, mentors and mentees are free to discuss any relevant topic of their choice. Mentors are encouraged to invite mentees to participate in career development activities, including shadowing opportunities, court hearings, and networking events.

The professional development component offers monthly career building sessions on relevant topics. In October, two FBA members discussed best practices for designing a professional resume. At the November program, an FBA member coached students on resources and strategies for finding summer internship opportunities over the winter break. During the spring semester, student participants will meet with U.S. Attorney Ken Parker, master effective networking skills, hone writing techniques, participate in mock interviews, and engage in other career development events.

FLDP promotes the development of a diverse and inclusive federal bar community by eliminating knowledge barriers and connecting students to the resources they need both to secure internships and entry-level attorney positions and to succeed in these roles. Forty-one students are enrolled in the program this year. Over 75% of enrolled students identify as female. In addition, many of our students identify as members of an under-represented group. Our program includes students of color, LGBTQ+ students, single parents, and nontraditional students. We hope to level the playing field for participants by providing insider advice and practical guidance.

By investing in students at this stage, we also hope to develop lifelong FBA members and energize students to join and participate in the federal legal community. Our program offers students opportunities to explore federal practice areas and provides accurate and relevant information about pathways to federal practice careers.

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Would you like to be involved? The Younger Lawyers Committee is looking for law firms and attorneys to serve as mock interviewers for FLDP’s spring mock interview program. Please email Elizabeth Rogers at [elizabeth.rogers@ohsb.uscourts.gov](mailto:elizabeth.rogers@ohsb.uscourts.gov) to volunteer.

*The Dayton Chapter of the Federal Bar Association has its own website and communities page where Chapter events, news and opportunities are posted. You can access the Chapter website here:*  
<http://www.fedbar.org/Chapters/Dayton-Chapter.aspx>.

*Please save this website to your favorites, as it has information on the Chapter’s upcoming events, as well as, current and past copies of the On The Merits newsletter!*



Michael S. Mayer,  
Judicial Law Clerk at United States  
District Court for the Southern District  
of Ohio

### ***SIXTH CIRCUIT UPDATE: SCHULER - CAN YOU IMMEDIATELY APPEAL A STATE COURT'S PRELIMINARY INJUNCTION IN A REMOVED CASE?***

BY: MICHAEL S. MAYER, FBA DAYTON CHAPTER PRESIDENT-ELECT  
THE VIEWS EXPRESSED IN THIS COLUMN ARE HIS OWN AND DO NOT REPRESENT THE  
OFFICIAL POSITION OF ANY AFFILIATED ENTITY

The Sixth Circuit Court of Appeals recently addressed an issue of first impression in the circuit that, at least, qualifies as “good to know” for anyone who practices in both state and federal court. In *Schuler v. Adams*, 27 F.4th 1203 (6th Cir. 2022), the Sixth Circuit succinctly framed the issue:

It is black-letter law that federal courts of appeals generally have jurisdiction only over ‘final decisions’ of federal district courts. 28 U.S.C. § 1291. It is also black-letter law that, as one exception to this rule, parties may immediately appeal a district court’s nonfinal order granting a preliminary injunction. *Id.* § 1292(a)(1). But what happens if a state court grants the preliminary injunction, and a defendant then removes the case to federal court? Does the right to an early appeal of an injunction order cover the state court’s order too?

The answer, in short, is no. The relevant facts in *Schuler* are relatively simple. One couple (the Adamses) wanted to build a home on their property. Their next-door neighbors (the Schulers) thought doing so would violate a restrictive covenant that ran with the land. So, the Schulers sued in state court, asking for an injunction to stop the construction, and the state court granted the requested preliminary injunction. The Adamses then filed a third-party complaint against the U.S. Army Corps of Engineers, which promptly removed the case to federal court under the federal-officer removal statute (28 U.S.C. § 1442(a)(1)). Once in federal court, the Adamses filed a notice of appeal of the state court’s injunction order, thus landing the case in the Sixth Circuit before the federal district court had taken any action.

The Sixth Circuit dismissed the appeal for lack of appellate jurisdiction. The court looked to the text of 28 U.S.C. § 1292(a)(1). “It indicates that ‘the courts of appeals shall have jurisdiction of appeals from’ ‘interlocutory orders of the district courts of the United States, ... or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.’” *Schuler*, 27 F.4th at 1208 (quoting 28 U.S.C. § 1292(a)(1)). The court explained that the phrase “order of the district court” naturally signals that the order must proceed from the federal district court or that the federal district court is the origin or source of the order. Therefore, it lacked jurisdiction over the Adamses’ appeal.

The Sixth Circuit also explained how a party can essentially manufacture a valid interlocutory appeal over a state-court injunction. “If a party subject to a state-court injunction wants to take an interlocutory appeal, it need only ask the district court to modify or dissolve the injunction. If the district court declines to do so, its ‘refusing’ of that request likely would become an appealable order.” *Schuler*, 27 F.4th at 1209. Finally, the court noted that “[j]ust because parties cannot immediately appeal state-court orders under § 1292(a)(1) does not mean that state-court orders are completely unreviewable. If, for example, a district court issues a final judgment under § 1291, that final judgment incorporates all interlocutory rulings entered along the way—whether by a federal court or a state court.” *Id.* at 1210.

***NEW YEAR, NEW OPPORTUNITIES TO VOLUNTEER***

**BY BROOKE SCHLEBEN, FBA DAYTON CHAPTER PUBLICITY & PUBLIC RELATIONS CHAIR**

***GREATER DAYTON VOLUNTEER LAWYERS PROJECT***

Right in our own backyard is the Greater Dayton Volunteer Lawyers Project (GDVLP). This program was started in 1988 and serves the Miami Valley of Ohio. The GDVLP is run by Summer Hawks, a Dayton attorney who strives to better the Dayton community through GDVLP's legal services. The GDVLP provides innovative opportunities for attorneys to perform pro bono civil legal services to benefit persons with limited financial resources.

GDVLP's board is staffed by members of the Dayton legal community who all have the same goal to help OUR community, OUR people. Therefore, this is a great organization for attorneys in the Dayton area who want to give back locally.

GDVLP's primary areas of focus are: family law, consumer rights, housing, employment law, probate law, and contractual and other disputes in litigation. "In 2013, we closed over 1600 cases that accounted for over 3,200 hour of attorney time. That's over \$500,000 worth of volunteered legal services. We have assisted more than 2000 members of our community, almost half of them children" (GDVLP.org).

To volunteer please contact GDVLP at (937) 461-3857 or at [gdvlp@gdvlp.org](mailto:gdvlp@gdvlp.org).

***PRO BONO PARTNERSHIP OF OHIO***

Another great volunteer opportunity is the Pro Bono Partnership of Ohio (PBPO), which focuses on nonprofit clients in Cincinnati and Dayton. The program was started in 2014 with the mission of, "strengthen our community by engaging attorney volunteers to provide nonprofits with free legal services tailored to their business needs" ([pbpohio.org](http://pbpohio.org)). Local attorney, Suzanne Beck, is Dayton Counsel for Pro Bono Partnership of Ohio.

Pro Bono Partnership of Ohio's board has multiple board members from the Dayton legal community and focus their energy on making a positive impact in the community by helping its nonprofit clients. Since the launch of PBPO there have been over 800 attorneys volunteer, and in 2021/2022 they had 370 volunteer attorneys. This is another great organization for local attorneys to give back.

PBPO's primary areas of focus are: corporate law and governance, contracts and leases, intellectual property, real estate, general employment, harassment policies, and independent contractor and non-exempt issues. Along with all these practice areas, PBPO also offers nonprofit education through workshops, webinars, and publications on current issues affecting non-profits. If you would like more information about PBPO or to volunteer please call (513) 977-0304 or email [info@pbpohio.org](mailto:info@pbpohio.org).

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*Please save this website to your favorites, as it has information on the Chapter's upcoming events, as well as, current and past copies of the On The Merits newsletter!*

**ABOUT THE DAYTON CHAPTER**

*The mission of the Dayton Chapter of the FBA is to advance the profession and science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession.*

**EXECUTIVE COMMITTEE**

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Tiffany Schwartz, U.S. Air Force

President-Elect –

Michael S. Mayer, Judicial Law Clerk at United States District Court for the Southern District of Ohio

Vice President –

Sabra Tomb, U.S. Air Force

Treasurer –

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Secretary –

Morgan K. Napier, Faruki PLL

Sergeant-at-Arms –

Judge Thomas M. Rose, U.S. Dist. Ct., S.D. Ohio

Immediate Past President –

Christopher C. Hollon, Senior Counsel at the AES Corporation

**COMMITTEES - CHAIRS\***

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Jennifer Rulon, Frost Brown Todd

Publicity & Public Relations –

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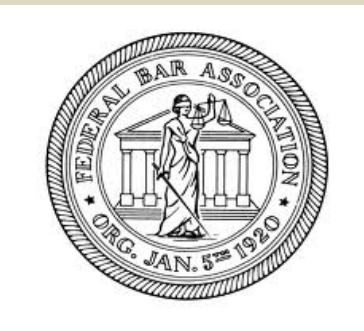
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