Columbus Bar Lawyers Quarterly

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Contents

Better Lawyer

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And the Future Brings...

By David S. Bloomfield Jr.,
Porter Wright Morris & Arthur

Author's Note: As President of the Columbus Bar Association, the CBA grants me the privilege of writing a column four times during my Presidential year. I am allowed to use the column as a forum to express my opinion in whatever manner I choose.

Going into my Presidential year, I knew that I wanted to write about my family's history in the law and my experience traveling in Eastern Europe, which greatly affected me. Though initially I had no idea what my last two columns would be about, after my second column, I saw a neat theme – I wrote about my family's history and looked to the future in my first column; I wrote about my past in my second column. So, naturally, I wrote about the present in my third column; and now, I'm writing about the future.

As my year comes quickly to a close and I turn the reigns of the presidency over to another second-generation President, Brad Wrightsel, people have asked me how I will occupy my free time. Although I don't have a good answer to that question, I have thought about the future. Rather than spend time waxing poetic on my future, I'd rather focus on what the future of the legal profession in Columbus will hold (in my opinion at least).

So, how does the Columbus legal market look in ten years? In my mind, looking ten years out, some things will remain constant and consistent with the market today. There will be turnover and likely consolidation among the larger law firms in town; the government (and consequently government attorneys) will still be a major force in the community; and small-firm and solo practitioners should make up the majority of the bar's membership in the community.

Unfortunately, I see more struggles for newer attorneys trying to find their place in the market. In the present, it is a scary time for many attorneys, especially younger ones struggling to start a practice or find employment, and I'm not sure that the next five to ten years will change that uneasy feeling. I've heard many of our younger members wonder aloud what role they will play in the market – or even whether they will be practicing or will have to take a non-legal job. Most younger attorneys are saddled with student debt and understandably worried about retiring their debt. I don't foresee that concern changing in the next ten years.

I've also heard our more senior attorneys wondering how much longer they want – or need to – practice and whether they can stay involved in the profession even if they are not practicing full time. With so many baby boomers retiring in the next ten years, the graying of the profession will mean that there will be a significant loss in the profession's ranks.

This past December, Franklin County Common Pleas Judge Charles Schneider mentioned one area in which our legal community will look very different in the next six years: the composition of the judiciary. Because of Ohio's age restrictions on judges (and because of the announced intentions of at least one of the state court judiciary), nearly half the Common Pleas (General Division) bench will turn over by 2018. The Court of Appeals, Domestic Relations bench and Municipal courts also will experience forced turnover for this same reason. Thus, in less than ten years, the bench – but especially the General Division – will experience a "brain drain," not to mention a loss of institutional knowledge.

Thanks to Judge Schneider's observation, the Columbus Bar is looking at whether this issue is as much of a concern for the public as the CBA perceives that is for the bar – and whether there is a role for the bar in raising awareness of the issue. Currently, we're contemplating holding a public forum regarding the issue to see whether the various stakeholders – including the bench, the bar, the political parties, organized labor organizations, and business groups like the chambers of commerce – agree that the issue is a problem. Further, the bar is interested in whether it should play a role in shaping the future of the bench in Franklin County.

To me, this issue dovetails with the CBA's current examination of the areas in which the bar interacts with the judicial election process – through our judicial campaign advertising committee, our screening committee, our preference poll and our performance poll of the bench. In my opinion, the bar should be asking questions about the future composition of the bar and taking steps to ensure that the judiciary is the best it can be. But, I'm interested in what the membership of the bar thinks.

As an aside, this turnover in the bench means that lawyers will need to adapt their practices to the new judges. One tool we have to assist our membership with the transition is to highlight the CBA's judicial "wiki," which replaced the CBA's bound Guide to the Courts. The wiki, which is located on our website and available only to members, serves as a clearinghouse of information about the judiciary. On the site, we've posted information from the judges about their preferences, and we update the site with materials distributed during various committee meetings. Though the judges have been reluctant to allow comments by members (and we have not allowed members thus far to publish comments), I would like to see the wiki as a forum for members to offer tips on the judge's practices and procedures. Such a use of a wiki would be of tremendous benefit to newer attorneys – and would be particularly helpful to all practitioners when newer judges join the bench. And, the wiki is one more example of how technology is changing the practice of law, allowing members to share their experiences so that others can have the benefit of their wisdom.

Obviously, with electronic filing and the electronic storage of documents and files, the future legal practice should rely much less on paper. We frequently hear from members that the Columbus Bar could be useful in helping attorneys learn about these new tools. Our small and solo firm committee has been offering a series of programs designed to give members a hands-on view of the best practices and best uses of technology. I foresee the bar continuing to be a resource for members to discuss these technological advances, and hopefully the CBA will continue to be a resource for members to share their frustrations and solutions for technological issues. The CBA currently is working on its long-range plan, which will be adopted around the end of my term; and that plan will address how the bar can remain relevant for practitioners.

Overall, it is easy to opine as to how much the profession has changed. It is also easy to say that the future will be far different from the present legal profession. Even ten years ago, not many people had smartphones; today, they are everywhere. And while technology such as smartphones have allowed attorneys not to be tethered to their offices, such communication is not always a good thing with lawyers missing the face-to-face personal interactions among colleagues that is important. I hope the bar can continue to be an outlet for attorneys frustrated by the isolation that technology can create.

It has been my pleasure serving the membership of the bar, and I've learned quite a bit about our legal community. I've confirmed my belief that Columbus is a great place to practice, and the CBA is truly a superlative organization with a tremendous national reputation for being innovative. I'm confident that ten years from now, the CBA will continue to tackle tough issues facing the profession. And, I'm confident that attorneys will continue to play a significant role in the community through their service to the profession, to those who cannot afford legal services, and to their clients. As such, I'm proud to have served as the Columbus Bar 123rd President, and I'm looking forward to what the next ten years will bring to Columbus and to the Columbus Bar.

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Ink on inc

By Jill Snitcher McQuain

At this point, we are just finishing the first year of our pilot program, a venture of Columbus Bar inc – a Professional Development Center. The program was developed in collaboration with local law schools, law firms, judges, and government agencies as a response to the increasing number of new law school grads unable to find employment in the face of one of the most challenging employment markets of our time.

inc is for "incubator"[1] – a place to grow – an environment that affords an array of business support resources. Through the generous support of sponsors and donors, the Columbus Bar provides an office facility, equipment, mentoring, training and specially designed networking opportunities to help new lawyers build a successful practice based on sound business principles. In exchange for the services provided, participants agree to accept at least one pro bono case during their one-year term, creating an additional source for serving the unmet legal needs in central Ohio.

The program started up in April 2011 with eight new lawyers, who, before they could begin working, received mandatory training on the ethical and professional implications of working in this unique environment. They were cautioned about conflicts and confidentiality, received guidance on how to legally establish a law firm; advised about how to set up operating and trust accounts and how to manage the two effectively; and offered advice on effective client intake practices.

The new lawyers were introduced to judges, court personnel, and given tours of the courthouse with instruction on how to get onto the court-appointment lists. And, as the program continued, they received ongoing training on a variety of topics ranging from office management to billing practices to marketing to substantive legal issues. In addition, they have had access to a host of mentors, who have agreed to offer guidance on a variety of legal topics.

When asked what the participants value most about the program, they routinely cite the access to mentors – most notably Richard Colby, who has agreed to be available onsite one day a week every week for the past year. His contribution to the inc program is remarkable and immeasurable.

With the inc pilot at its mid-point, we are reviewing the program's success and looking ahead to what's next. The incubator program has received recognition, locally and nationally, being cited as the first bar association in the country to develop an incubator program for new lawyers interested in establishing a solo law practice. Central Ohio legal professionals have complimented the Columbus Bar for taking a bold and innovative step in addressing the challenges facing our new law grads. And, we continue to receive publicity and inquiries from legal organizations around the country seeking advice on developing similar programs.

Among our biggest supporters for the pilot phase of Columbus Bar inc is Tiano & Associates, that graciously donated 3,500 square feet of space at 175 South Third Street. Close proximity to Columbus Bar offices was key to the development of the program, making it easier for the participants to access Bar services and events. Beginning this month, the CBA will start paying rent on the inc office space, which will affect costs for the program. We continue to work with our building manager to keep costs down, while exploring our options for expanding the program to assist more attorneys. We are confident we can grow the program with minimal additional expense through modest remodeling, reduced rent, furniture donations, and additional contributions.

We are glad to be a part of the lives and careers of these new lawyers. And, we appreciate that none of it would be possible without the generous support of so many local partners. If you want to be a part of this innovative program, contact me. There are so many ways you can contribute, whether it's financially or with your time in mentoring. I can assure you, whatever your involvement, it is an incredibly rewarding experience to know you have an impact on the lives and professional careers of new, energetic, ambitious, and bright lawyers.

In just one short year, we have already "graduated" six terrific lawyers to bigger and better things. Micaela Demming launched her solo practice closer to home with a niche practice helping victims of domestic violence. Laura Lyons accepted a job working for an oil prospecting company. Summer Moses & Brian Ballinger went to work with other attorneys. Isaac Rinsky took a job with the City Attorney's office. And Andy Fuchs is now with a personal injury law firm. These lawyers have moved on – as we and they intended – and we've fill their spots from applicants on our waiting list.

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1. "Back in the day" (1849), our incubator support would have been called a "grubstake" – investment in the possibilities of something good coming from the inspiration and hard work of adventurers.

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Jill Snitcher McQuain,
Executive Director, Columbus Bar

Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By Monica L. Waller

Verdict: $21,896.73. Auto Accident. Plaintiff Kathryn Van Atta claimed that on January 4, 2008, she was traveling northbound on State Route 315 north of Bethel Road when she was rear ended by a vehicle driven by Annique Van Kley. Plaintiff alleged that her vehicle struck a highway median cable, crossed through another lane and came to rest in a ditch. Plaintiff claimed permanent injury to her left knee, lower back, upper back and neck. She also claimed to suffer from headaches. Defendant Annique Van Kley claimed that Plaintiff lost control of her car on State Route 315 and swerved out of her lane into the berm area and hit the median cable wire which sent her back across the highway and into Ms. Van Kley's lane. Defendant claimed that Plaintiff was already treating with a chiropractor prior to the accident and continued to receive excessive chiropractic treatment following the accident. Defendant claimed that Plaintiff sustained only mild soft tissue injuries which should have healed within 2-3 months. Medical Specials: $37,484. Plaintiff's Expert: MacKenzie B. Pamer, D.C. and William Fitz, M.D. Defendant's Expert: Gerald Steiman, M.D. Last Settlement Demand: $90,000. Last Settlement Offer $38,000. Counsel for Plaintiff: Bryan K. Penick and Toby K. Henderson. Counsel for Defendant: Joseph V. Erwin. Magistrate Timothy Harildstad. Length of Trial: 3 days. Case Caption: *Kathryn Van Atta v. Annique Van Kley*. Case No: 09CV-16794 (2011).

Verdict: $9,720.00. Auto Accident. On June 21, 2007, Defendant Joshua Yetzer's vehicle struck the rear of a vehicle driven by Plaintiff Susanne Spinney on Cleveland Avenue in Columbus, Ohio. Plaintiff claimed that she sustained neck and back injuries that resulted in chronic neck and back pain. Plaintiff treated with her family physician a week after the accident and followed up with a few courses of physical therapy a month following the accident. She underwent a second course of physical therapy approximately six months later. She underwent an EMG approximately a year after the accident and was diagnosed with cervical lumbar sprains/strains with a possible pinched nerve. Defendant alleged that the treatment received was excessive. Medical specials: $7,717.75 (reduced to $4,168.07). Plaintiff's Expert: John Tyznik, M.D. Defendant's Expert: Walter Hauser, M.D. Lost Wages: none. Settlement Demand $20,000. Last Settlement Offer: $8,900. Length of Trial: 3 days. Counsel for Plaintiff: David Bressman. Counsel for Defendant: Belinda Barnes. Magistrate Mike Angel. Case Caption: *Susanne Spinney v. Joshua P. Yetzer.* Case No: 09CVC-7658 (2011).

Defense Verdict. Medical Malpractice. On October 20, 2005, David F. Early, Jr. was taken to Riverside Methodist Hospital Emergency Room with a reported history of several days of inability to sleep or eat, suicidal thoughts and bizarre actions. Mr. Early was evaluated by Defendant Steven J. Eskin, M.D. and hospital social services and remained in the emergency department for approximately 4 ½ hours. Dr. Eskin concluded that Mr. Early was suffering from auditory hallucinations and homicidal tendencies and began the process of referring him to Netcare. Before Mr. Early could be admitted to Netcare, he committed suicide by jumping from the hospital parking garage. The patient's widow sued Dr. Eskin and Riverside Methodist Hospital alleging that the Defendant failed to recognize that her husband was at risk of committing suicide and failed to take the appropriate protective measures. Mr. Early was a 36 year old assembly worker earning $65,000 a year with a wife and two minor children. Defendants disputed that Mr. Early gave any indication that he was at risk for suicide during the 4 ½ hours he was observed in the hospital and upon evaluation by hospital social services. Last Settlement Demand: $1,000,000.00. Last Settlement Offer: $ None. Length of Trial: 7 days. Plaintiff's Expert: Kenneth Stein, M.D. (emergency medicine) and Timothy Michaels, M.D. (psychiatry). Defendant's Expert: Douglas A. Rund, M.D. (emergency medicine) and Gregory L. Henry, M.D. (emergency medicine). Counsel for Plaintiff: Linnes Finney, Jr. and Phyllis Gillespie (Florida); Thomas Spetnagel (Chillicothe). Counsel for Defendant: Gerald J. Todaro and Greg Foliano. Judge: Allen Travis. Case Caption: *Tamara Early, Administrator v. Ohio Health Corp., et al.*, Case No: 06 CV 10200 (2011).

Defense Verdict. Medical Malpractice. On August 22, 2007, Defendant Richard Sheetz, D.D.S. performed surgery on Neil Aquino, M.D. to treat Dr. Aquino's sleep apnea. Following the surgery, there was significant bleeding in Dr. Aquino's airway which reduced the oxygen supply to his brain. Dr. Sheetz attempted to control the bleeding and ultimately performed a tracheotomy to reestablish the airway. Dr. Aquino died five days later. Plaintiff alleged that Dr. Sheetz should have remained in the operating room until Dr. Aquino was safely extubated. Plaintiff also argued that Dr. Sheetz failed to timely establish an airway upon discovery of the bleeding. Dr. Sheetz disputed Plaintiff's claim and alleged that the airway was reestablished as quickly as possible. Plaintiff also sued the anesthesiologist but reached a settlement prior to trial for $3 million. Plaintiff's Expert: Kasey Li, D.D.S., M.D. (oral and maxillofacial surgeon/otolaryngologist) and Thomas C. Mort, M.D. (anesthesiologist). Defendant's Expert: Raymond J. Fonseca, D.D.S. (oral surgeon). Length of Trial: 8 days. Last Settlement Demand: $1,000,000.00. Last Settlement Offer: None. Counsel for Plaintiff: Gerald Leeseberg and Anne Valentine. Counsel for Defendant: Michael Romanello and Robert Kish. Judge Stephen McIntosh. Case Caption: *Nestor Aquino, M.D., Administrator v. Richard Sheetz, Jr., D.D.S., et al.* Case No: 08 CV 7675 (2011).

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Defense Verdict. Auto Accident. Plaintiff Allstate Insurance Company brought suit against Defendant Jeremiah Kofi Nti arising out of an automobile accident that occurred on June 7, 2009 on Morse Road in Columbus, Ohio. Plaintiff alleged that Mr. Nti negligently operated his motor vehicle and struck Allstate's insured Thomas Burlport's 2006 Jeep causing $17,244.46 in damage. Mr. Nti disputed Plaintiff's allegations that he was negligent or the proximate cause of the accident. Mr. Nti filed a Third-Party Complaint against the operator of Mr. Burlport's vehicle, Rebecca Burlport, alleging that she negligently failed to obey a traffic control device, was traveling at an excessive speed, failed to maintain a proper lookout and failed to yield the right of way. No information identifying testifying experts or settlement negotiations was available. Length of Trial: 1 day. Counsel for Plaintiff: Scott T. Knowles. Counsel for Defendant: Marshall W. Guerin. Counsel for Third-Party Defendant: Scott T. Knowles. Judge: Magistrate Mark Petrucci. Case Caption: *Allstate Insurance Company v. Jeremiah Kofi Nti v. Rebecca Burlport*. Case No: 09 CV 16324 (2011).

Defense Verdict. Auto Accident. On January 18, 2008, Plaintiff Therow Neail was a passenger in a vehicle headed southbound on North Wilson Road near Alberta Street in Columbus, Ohio. A vehicle driven by Defendant Emily Hedges was headed eastbound on Alberta Street. Plaintiff alleged that Ms. Hedges failed to yield when making a left-hand turn and struck a vehicle driven by Defendant Joseph Nicolini which in turn struck the vehicle in which Plaintiff was a passenger. Plaintiff also sued the driver of his vehicle, Defendant Mark McDonnell and asserted a UM/UIM claim against Allstate and a negligent entrustment claim against Timothy Hedges, the owner of the vehicle driven by Emily Hedges. Plaintiff claimed to have sustained permanent injuries to her neck and back. Prior to trial, the claims against Defendant Nicolini and Allstate were dismissed. The jury found in favor of Defendants Timothy and Emily Hedges concluding that Defendant McDonnell was the sole proximate cause of the accident. Medical Specials: $2,638.00. Last Settlement Demand: $12,500. Last Settlement Offer: $120.00. Plaintiff's Expert: Karen Jackman, D.C. Defendant's Expert: None Length of Trial: 1 day. Counsel for Plaintiff: Terry Hummel. Counsel for Defendants Emily and Timothy Hedges: Edwin J. Hollern. Counsel for Nicolini: Daniel P. Whitehead. Judge: Magistrate Ed Skeens. Case Caption: *Neail v. Nicolini, et al.* Case No: 10 CV 646 (2011).

Defense Verdict. Invasion of Privacy. Plaintiff Alan Williams alleged that he was using the restroom at an Auto Zone store when an Auto Zone employee opened the door and watched the Plaintiff relieve himself. The Plaintiff alleged that the employee refused to shut the door to allow him to finish in privacy. Plaintiff sued Auto Zone and employees Dan Williams, Maria Welch, Joseph R. Hyde, III, William C. Rhodes, III and William T. Giles. He alleged invasion of privacy, defamation, sexual harassment, professional negligence and vicarious liability. Defendant Auto Zone alleged that Plaintiff did not have permission to use the facilities and denied that Plaintiff's privacy was invaded. Defendants were granted a directed verdict on the claims of sexual harassment and professional negligence following Plaintiff's opening statement. The jury found in favor of the Defendants on the remaining claims of defamation, vicarious liability and invasion of privacy. Plaintiff appealed and the appellate court affirmed the decision on September 29, 2011. Plaintiff's Expert: None. Defendant's Expert: none. Last Settlement Demand: $30,000. Last Settlement Offer: None. Length of Trial: 5 days. Counsel for Plaintiff: None. Counsel for Defendants: Steven A. Davis. Judge Laurel Beatty. Case Caption: *Alan Williams v. Auto Zone, et al.*, Case No: 07 CV 10835 (2011).

2011 A Year in Review

Based on data collected from the Franklin County Court of Common Pleas Office of the Jury Commission and the Franklin County Clerk of Courts Office, the following statistics have been compiled which provide a snapshot of civil jury trials for 2011:

Juries rendered verdicts on 32 civil actions arising out of automobile accidents—more than any other category of civil action.
Half of those cases resulted in verdicts for the plaintiff and the other half resulted in defense verdicts.
The damages awarded to plaintiffs ranged from $1500 to over $53,000.
7 of the 16 plaintiff verdicts were over $10,000.
The average of these jury verdicts was $14,046.

7 medical malpractice cases were tried to verdict in 2011. Defense verdicts were awarded in all 7 cases.

There were 5 cases involving business disputes tried to jury verdict in 2011. Plaintiffs succeeded in 4 of those cases. Awards ranged from $7,500 to over $7 million.

2 Franklin County juries heard employment cases in 2011. In both cases, the jury found in favor of the defense.

There were 12 cases involving other civil matters including tort claims for property damage, libel and defamation, premises liability claims, consumer sales practices actions and commercial real estate matters. Plaintiffs were awarded damages in 7 of those cases. The awards ranged from a low of $93 to a high of in excess of $2 million.

**The list of civil trials was derived from a list of cases for which jurors were requested from the Office of the Jury Commission.*

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Trial by Jury — By Google

By Jack D'Aurora

We have entered the age of Google mistrials, where jurors disregard court admonitions and use the internet and social media to investigate and communicate about cases, and courts have to consider whether mistrials should be declared. Let's take a look at what is happening across the country.

The *New York Times* covered a 2009 drug trial in federal court where a juror was discovered to have been doing internet research, contrary to the judge's instructions. When questioned, the juror revealed that eight other jurors had been doing the same thing. With that, the judge declared a mistrial; the trial was in its eighth week. Asked why he had pursued internet research, the juror said, "Well, I was curious."

In their article "Juror Misconduct in the Age of Social Networking," Michael K. Kiernan and Samuel E. Cooley discussed a March 2009 federal court trial in Florida involving internet pharmacies. Nine jurors admitted that they conducted Google searches on the lawyers and parties and consulted Wikipedia for definitions. A mistrial was declared.

The *Chicago Tribune* covered a wrongful death trial in August 2009 brought by the widow of a man killed by a train. One juror wrote six blog entries about her jury service, commenting that she had talked with her husband about the case and that the jurors had a hard time abiding by the judge's instructions not to discuss the case. After a $4.75 million dollar verdict was awarded in favor of the widow, the judge denied a motion for a new trial, holding that the blogging was harmless.

In April 2011, the *California Lawyer* carried a story about a jury foreman in a murder case who had posted blogs about his observations. Undeterred by the judge's instructions, the juror posted several comments about the defense lawyer being "wacked out" and made disparaging comments about how trial was conducted, and he received comments in response.

The defendant was convicted, and the trial judge denied a motion for a new trial, finding that the jury had not been "substantially biased" and that the foreman's conduct was not prejudicial. Defendant counsel's observation is noteworthy: "The problem with his blog was, the responses he got were affirming his cynical attitude toward the judge and the process. He created an audience, and during deliberations, he was playing to an audience that other jurors didn't even know was there."

In December 2011, *The Dispatch* reported that the Arkansas Supreme Court reversed a murder conviction and ordered a new trial based, in part, on one juror tweeting during court proceedings. In spite of the trial judge's admonitions, the juror felt compelled to tweet the world. "Choices to be made. Hearts to be broken…We each define the great line." He also announced that the "coffee sucks." Although the tweets did not reveal any juror prejudice, the court held that the communications were inappropriate enough to warrant a new trial: "Even if such discussions were one-sided, it is in no way appropriate for a juror to state musings, thoughts, or other information about a case in such a public fashion."

I thought it might be interesting to see what's posted on Twitter about trials. Here's what I found:

"I just had my virtual assistant call to get me out of jury duty. Life is good."

"I got summoned for jury duty this week. Don't they realize that any jury I'm a part of will be hung?"

"Remember, any twelve people who can't get themselves out of jury duty are not your peers."

"Surprisingly boring! Also one of the lawyers is really annoying."

"Watching a felony false verification/pawnshop trial. This is so painfully boring. The prosecutor has lost the jury."

In response to the internet problem, courts are issuing instructions that include admonitions concerning social media and the internet. An example of the practice here in Franklin County is presented by the instruction given by Judge Stephen L. McIntosh:

> It is important that you be fair and attentive throughout the trial. Do not discuss the case among yourselves or with anyone else. This includes family and friends. You must not post anything about this case on the internet or any electronic device, including cell phones. This would include blogs and social networking such as Myspace, Facebook, Twitter, and others. Any such discussion, if discovered, could lead to a mistrial and would severely compromise the parties' right to a fair trial.

Florida courts supplement these instructions in their juror orientation videos. Questions about jurors' use of the internet and social media is becoming an appropriate subject for voir dire. Some commentators suggest imposing civil fines against jurors who decide to venture off; some suggest the imposition of criminal sanctions. Last October, U.S. District Judge Shira Scheindlin (S.D. New York) began the practice of requiring jurors to sign a pledge under penalty of perjury that includes the following language: "I will not use the Internet to conduct any research into any of the issues or parties involved in this trial. I will not communicate with anyone about the issues or parties in this trial, and I will not permit anyone to communicate with me."

Interested in learning more? Socialmedialawnews.com is a good source of information.

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The Behal Law Group

"SEXCOUPLETS"

By Bruce Campbell

Two things converged to suggest the style of this article.

First, a respected colleague described my writing — I think, meaning to compliment me — saying I "have a talent for stringing words together to make a simple idea complicated." Said I to myself, "Good writers should *simplify* not *complicate*." Thus chastened, I vowed to reform (at least temporarily).

The next day, I came upon the book *More Six-Word Memoirs*, complied by *Smith Magazine* (Harper Perennial, 2010). That's all it is; nothing but six-word sentences (with contractions and hyphenated words counting as one). Some are by the renowned, others by the obscure.

Needing to write an article about a pressing issue, said I to myself again, "let us try this pithy approach." All caution aside; here it goes:

Sad to say, lawyers are perishable.
The dead can't ethically practice law.
Inconveniently, some clients survive their lawyer.
Cases too outlive an exanimate barrister.
Passed pleaders' clients need corporeal counsel.
Lawyer deaths aren't always front-page news.
Daily obit scanning is not widespread.
Telepathy doesn't tell client lawyer died.
Someone must put out the word.
File assessments must be made quickly.
Court dockets should be carefully checked.
Cluelessness abounds; who can take cases?
Whom to call not always clear.
Relatives may know squat about office.
Secretary or paralegal often not around.
Without passwords, computers can't be read.
Locked drawers' contents require key access.
Office calendar (mental) died with lawyer.
Looming large may be limitation statutes.
Trust account ledgers non-existent or missing.
Voice-mail, e-mail filled to the brim.
Unpaid office utility bills threaten shutoff.
What are the survivors to do?

This cautionary tale raises grave questions:
Will you unintentionally cause chaos someday?
Will your defining legacy be snafu?
What scheme have you in place?
Who will your back-up lawyer be?
What's that person need to know?
When will you make a plan?
Will events overtake your good intentions?

I hope this is terse enough.

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Bruce Campbell,
Columbus Bar Counsel

DEAD GAIN VOICE IN FRACKING DEBATE AS DRILLING NEARS CEMETERIES

"Your burial plot is the last real estate you will ever buy," the fastidious lawyer will tell you that it is more accurate to say your final resting place is "the last easement you will ever buy."

By Sean P. Casey

A recent development in Ohio's fracking boom is raising the dead, well, at least raising concerns for the dead.

In January, an energy-development company presented trustees of a Northeastern Ohio township with an offer to lease mineral rights under land many consider hallowed – the community's cemetery.[1] The lease would give the company the right to extract oil and natural gas from beneath the Lowellville Cemetery, which is a 35-acre tract in Poland Township, near Youngstown.[2] In exchange, the township would receive an initial payment of $140,000, plus 16 percent of the royalties resulting from the drilling operation.[3]

Fracking, shorthand for hydraulic fracturing, is a method used by energy companies to release the fossil fuels trapped in shale formations thousands of feet below the surface by injecting a mixture of water, sand, and chemicals into the rock, which ultimately exerts enough pressure to crack the rock and release the oil and gas.[4] While it is not a new process, fracking has become a highly controversial issue over the last year, as energy companies have flocked to Ohio and explore the shale that lies beneath the eastern half of state.[5]

Proponents for the expanded use of fracking tout the process as a key source of economic development, increased tax revenues, and energy independence for Ohio.[6] Detractors claim that the wastewater from the fracking process poses serious environmental and health risks,[7] and that the injection of the wastewater into underground wells has been linked to a spike in earthquakes in Northeastern Ohio.[8] Certainly, all these arguments are familiar to anyone who has paid even slight attention to the news in recent months.

In regard to the proposal before the Poland Township Trustees, however, these arguments were ancillary to an interesting question of property law that must be answered first – who really owns the mineral rights under the cemetery? According to the Youngstown *Vindicator*, the Poland Township Administrator expressed uncertainty over whether the township retained the mineral rights, or if the rights belonged to the estates of those buried in the cemetery.[9] After all, burial plots in township and municipal cemeteries are platted parcels of real estate,[10] and purchasers often receive deeds to document their property interests.

If, in fact, it is the heirs of each person laid to rest in Lowellville Cemetery who own the mineral rights laying far below the resting place of their ancestor, then it is hard to imagine any deal getting done. The drilling company would have to track down all of these descendants, which would be economically impractical, if not flat-out impossible. Even if the company was successful in finding the living leaves on these myriad family trees, what then? Would it offer some tiny proportion of the lease price to each of the numerous holders of the mineral rights?

After reviewing Ohio law, however, it does not appear the company will have employees poring over the records of vital statistics any time soon. Unfortunately for heirs of those buried in Lowellville Cemetery, the mineral rights below burial plots are not theirs to deed, grant, or lease away. Those rights still belong to the township.

The purchase of a grave site in a public cemetery is a unique real estate transaction, in which an individual acquires a private interest in a public land. Even though the buyer is likely going to occupy the land in perpetuity, and even though title can pass through to heirs, the ownership is not held in fee simple.[11] The chapters of the Ohio Revised Code that provide for the creation of public cemeteries expressly state that "title to and right of possession" of the land are vested in the townships and municipalities where they are located.[12] Consequently, one who buys a plot "takes only an easement or a right of burial, rather than an absolute title."[13] Generally this same analysis would also apply to burial plots in cemeteries operated privately, including those owned by religious organizations.[14] For example, in the Roman Catholic Church, the bishop holds title to cemeteries within the diocese, in trust, for the benefit of congregation, and the church sells burial easements to the land.[15]

So, although those with a fondness for gallows humor often quip that, "Your burial plot is the last real estate you will ever buy," the fastidious lawyer will tell you that it is more accurate to say your final resting place is "the last easement you will ever buy." Therefore, it seems Poland Township itself owns the mineral rights for the land beneath Lowellville Cemetery and that the trustees have the authority to lease or sell those rights.

Answering this legal question regarding ownership gives rise, however, to the more interesting political question of whether the township *should* lease the mineral rights. Regardless of where Ohioans fall on the debate over fracking, presumably most of them would agree that cemeteries are sacred places. And though the drilling occurs thousands of feet below the earth's surface, some are uncomfortable with the notion of disturbing the ground beneath

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the dead. At the January meeting where Poland Township Trustees were presented with the lease proposal, one trustee stated, "I don't think that it's something we should do. It's a cemetery; it's your last resting place."[16]

These sentiments echo concerns raised in western Pennsylvania in September 2008, when a natural-gas drilling company leased the mineral rights beneath a 70-acre public cemetery.[17] That same company had struck a contemporaneous deal to lease the rights beneath a combined 1,254 acres of cemetery land held privately by the Diocese of Pittsburgh.[18] These agreements caused a public outcry throughout the region.[19] As an editorial in the *Pittsburgh Post-Gazette* reasoned, this disquiet arises from more than some arcane notion of disturbing the dead; drilling under cemeteries disturbs the living, as well.[20] The editorial staff argued that the noise, traffic, and unsightly equipment concomitant to drilling operations mar the "peaceful repose" generally valued by those that come to the cemetery to pay their respects.[21] The uproar over the leases ultimately resulted in Pittsburgh City Council's enactment of a drilling ban in 2010.[22] A number of Pittsburgh's surrounding communities are considering legislation that would place some restrictions on drilling activities near gravesites, as well.[23]

While deals for mineral rights beneath cemeteries make the news because of their rareness, there is a chance that they may become more common in Ohio as the fracking boom continues, because cemeteries are generally large, unified tracts of land. With all the debate on the fracking issue, though, it appears that community leaders are also considering those who have passed when making decisions that shape the state's economic future.

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1. Ashley Lutheran, *Texas Co. Wants to Lease Mineral Rights at Poland Cemetery*, Vindicator (Youngstown), Jan. 14, 2012, http://www.vindy.com/news/2012/jan/14/texas-company-wants-lease-mineral-rights-poland-tw/.
2. Id.
3. Id.
4. Spencer Hunt, *Fracking Future*, Columbus Dispatch, Sept. 25, 2011, http://www.dispatch.com/content/stories/local/2011/09/25/fracking-future.html.
5. Id.
6. Id.
7. Id.
8. *Brine Well Caused Quakes, Experts Say*, Columbus Dispatch, Jan. 2, 2012, http://www.dispatch.com/content/stories/local/2012/01/02/brine-well-caused-quakes-expert-says.html.
9. Lutheran, *supra* note 1.
10. R.C. 517.06; R.C. 759.44.
11. *Persinger v. Persinger* (Ohio C.P. 1949), 86 N.E. 335, 337.
12. R.C. 517.10. R.C. 759.08.
13. *Persinger* at 337.
14. See, e.g., *Plough v. Lavelle*, 2006-Ohio-6200, 170 Ohio App.3d 720, 868 N.E.2d 1055, at ¶30-32.
15. Id.
16. Lutheran, *supra* note 1.
17. Janice Crompton, *Anti-Shale Groups Express Concern Over Cemetery Leases*, Pittsburgh Post-Gazette, Aug. 21, 2011, http://www.post-gazette.com/pg/11233/1168818-503.stm.
18. Id.
19. Id.
20. Editorial, *Grave Reservations: Drilling Beneath Cemeteries is a Deal Too Far*, Pittsburgh Post-Gazette, Aug. 25, 2011, http://www.post-gazette.com/pg/11237/1169688-192.stm.
21. Id.
22. Crompton, *supra* note 17.
23. Id.

Sean P. Casey is a solo practitioner and one of the first participants in the Columbus Bar Inc. program. He grew up a stone's throw from LowellvilleCemetery, where he often went sled-riding, a practice yet to be linked to tectonic activity. He can be reached for comment at *seanpcaseylaw@gmail.com*.

Sean P. Casey

PERSISTENCE CONQUERS AN IMPERFECT LEGAL SYSTEM

By James D. Abrams

As the Chair of the Columbus Bar's Pro Bono Committee, I'm always pleased to learn about extraordinary efforts attorneys have taken on behalf of their pro bono clients, and the impressive results those attorneys achieve. Though this is but one of many, it is a story of utmost persistence above and beyond what is typical.

"Mr. T" is a 71-year-old homeless Trinidadian. In February 2007, Mr. T came to the Broad Street United Methodist Church Interfaith Legal Clinic seeking assistance in obtaining proof of immigration status and old age Social Security benefits. David S. Bloomfield, Sr., an attorney with Bloomfield & Kempf and frequent participant in the clinic who practices in the areas of immigration and social security disability law, assisted him at the clinic and remains his attorney today.

Following extensive meetings and interviews, David learned that Mr. T had come from Trinidad to Brooklyn with his mother in the 1950s. Mr. T remained in New York until early 2002, when he relocated to Columbus to start a new life. By the time he arrived in Columbus, he had been married and divorced, and he had an adult daughter from the marriage. He was estranged from both these women. He was vague about the types of manual labor jobs he had held, but he did pay into Social Security while employed.

In Columbus, Mr. T found work and even purchased a small house on the east side. In 2005, his house caught fire and he lost everything, including his Social Security card and his driver' license. He had only the clothes on his back and his Trinidadian birth certificate, which he always carried on his person. He had no insurance; the fire reduced him to homelessness.

Mr. T exhausted the little money he had and became permanently homeless. Because he had no identification, he was unable to maintain his job or to secure another. He lived on the streets, sometimes in an abandoned structure, and eventually and more consistently, at the Open Shelter on Mound Street.

After the first meeting in February 2007, David believed that securing a picture ID was critical for Mr. T to obtain Social Security benefits and necessary to begin the process to determine his immigration status.

Acquiring a picture ID proved very difficult. Mr. T could not obtain an identification card from the State and could not replace his driver's license. Eventually, the Open Shelter issued him a picture ID card identifying him as a shelter resident.

In March 2007, Mr. T presented the picture ID to the local Social Security office. Because had memorized his Social Security number, on the day he applied he became eligible for Medicare. Still, it took four months for Social Security to process his application. In July 2007, Social Security informed Mr. T that his Medicare eligibility was revoked and that he would not be permitted to receive his old-age benefits, even though he had paid into the system for years. Apparently, Social Security conducted a routine check with Citizenship and Immigration Service (CIS) to learn that Mr. T was not listed with immigration and, thus, did not have an immigration status. Though he believed his mother had taken the appropriate immigration steps for his family when he was a child, he did not know his status.

Once David became aware of the CIS report to the Social Security office, he prepared a registration application for Mr. T – a process requiring the applicant prove that he had lived in the United States prior to 1972 and that he had current good moral character.

Because numerous documentary searches in U.S. Census records of multiple cities revealed no record of Mr. T, David asked him to find persons who had known him prior to 1972. Fortunately, five of those people were in Columbus; unfortunately, each was also homeless. David was able to secure letters from each of them testifying to their having known Mr. T before 1972.

In April 2007, Mr. T filed his immigration registration application along with the letters and a request for a waiver of the filing fee which was more than $1000. Once the application was filed, he was required to be fingerprinted. At the time of fingerprinting, the CIS agent refused to accept Mr. T's Open Shelter ID and the process stalled. Eventually, David was able to persuade CIS to fingerprint Mr. T and the registration process continued.

In September 2007, David accompanied Mr. T to the first immigration interview. The interview appeared to go smoothly until the agent asked about his seven drug arrests and convictions in New York; good moral character was now a major issue. Even though he had asked Mr. T. several times about any arrests and convictions, David was completely unaware of these events. CIS granted Mr. T an extension of 87 days to obtain certified copies of the entries of the criminal convictions, all occurring in the period of 1979 to 1990.

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The records from Brooklyn proved the most difficult to obtain. By the end of the 87 days, David had located documents from only five of the seven offenses. In 2008, David's request for an extension was denied, as was Mr. T's immigration application.

Meantime, David persisted in his quest for documentation of the last two convictions. It took almost two years to obtain the documentation.

By the time the final documentation was in hand, CIS's *in forma pauperis* requirements had been amended to the detriment of Mr. T. The CIS regulations had changed to prohibit fee waivers for registrations. For nearly a year, David argued fiercely and often that the new amendment should not apply to Mr. T. Other immigration attorneys were also crying "foul" on the same basis and eventually, in May 2011, CIS relented and restored the waiver of fees for a registration application.

In May 2011, David filed with CIS a new registration application for Mr. T, which included the certified entries of the seven convictions. At fingerprinting time, the agent again refused to fingerprint Mr. T and again David ultimately prevailed.

In mid-July 2011, Mr. T had another interview with CIS and though his criminal record was discussed, Mr. T appeared to sufficiently answer CIS's concerns about his current moral character.

Unfortunately, in August 2011, David received a Notice of Intent to Deny the application. Devastated for Mr. T, David researched the statutes and prepared a written argument that the application should be granted. David argued that the statutes cited by the government on the issue of lack of good moral character were enacted after all but one of the convictions had occurred; thus, the requirements of the statute should not apply to convictions prior to the enactment date. David also argued that the registration procedures require current good moral character. Because the last conviction occurred approximately 20 years before the registration application was filed, David argued that the convictions were not germane to Mr. T's current good moral character. The government elected not to submit a reply to David's appeal.

Nearly five years from the day he met David Bloomfield, on November 17, 2011, Mr. T's green card stating he was a permanent resident of the U.S. arrived at the office of Bloomfield & Kempf. David immediately contacted the Open Shelter and left a message for Mr. T, who appeared in his office later in the afternoon. Armed with his green card, David immediately sent Mr. T to Social Security to apply for age benefits and for Medicare. That day, Mr. T was qualified as a Social Security recipient. Though the issue of whether benefits can be paid from the date of the first Social Security application in 2007 has not been resolved, Mr. T has been receiving benefits since November 2011.

As one might imagine, the day Mr. T's green card arrived at David's office, there was jubilation among all the office personnel. From his frequent office visits, everyone there had become well acquainted with Mr. T, who was on a first-name basis with him. Mr. T had eaten many meals with them in the firm's kitchen. All were joyful that the hard work had finally paid off.

In all, David estimates that firm personnel spent about 200 hours on Mr. T's case, about 150 hours were David's.

As of this writing, Mr. T is in the process of securing permanent housing. He has been receiving Medicare and old age benefits. He is scheduled for knee replacement surgery on damaged knees caused by many years living on the streets. Most important, Mr. T is an extremely happy (as well as very grateful) man, who has faith in our legal system.

Persistence pays off – as does the efforts of pro bono attorneys who fight for their client's rights with the same level of effort and professionalism as they do for their paying clients. So, thank you, David, for reminding us about our responsibility to help those who cannot otherwise afford legal services. Mr. T surely is grateful, as am I, for your efforts.

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James D. Abrams,
Taft Stettinius & Hollister

Persistence pays off – as does the efforts of pro bono attorneys who fight for their clients' rights with the same level of effort and professionalism as they do for their paying clients. So, thank you, David, for reminding us about our responsibility to help those who cannot otherwise afford legal services. Mr. T surely is grateful, as am I, for your efforts.

When Will Ohio Law Recognize the Modern Family?

THE LIMITATIONS OF *IN RE MULLEN*

By Paige E. Kohn

The most striking concern missing from an emotional custody dispute between a same-sex couple that recently reached the state's high court is Lucy. Lucy is an adorable little girl, who, from pictures posted on a website created for the litigation by her non-biological caregiver, Michelle Hobbs, looks happy and blessed to have Hobbs in her life. That is until the legal battle, starting in the Hamilton County Juvenile Court and finally ending at the Ohio Supreme Court, ruled Hobbs had no legal custody rights over Lucy in the case *In Re Mullen* (2011), 129 Ohio St.3d 417.

On both legal and intuitive fronts, this result is wrong. While the appellate and Supreme Court majority opinions were fairly straightforward, the case is more difficult than it might first appear. The concern that seems most obvious, gay rights, is not even the only issue. The case also implicates the best interests of children and the modern definition of family. The majority's failure to address these significant nuances was unfortunate. How did this happen?

Legally, this unsatisfying result can occur because the law requires a common law two-part analysis when courts are presented with a custody dispute between a biological parent and non-biological caregiver because the relevant statute, R.C. §3109.04, does not contemplate non-biological "parents." First, the court determines

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whether the biological parent relinquished sole custody in favor of shared parenting with the non-biological caregiver. Second, if and only if, the court finds the biological parent relinquished these rights, the best interests of the child are considered. Because the Supreme Court ruled that a shared-custody agreement between Hobbs and Lucy's biological mother, Kelly Mullen, did not exist, the best interests of Lucy were never considered. Law that omits consideration of an individual at the center of the custody dispute, the child, is counterintuitive.

The majority began their opinion with the right focus – the first part of the aforementioned analysis. The law of this factor is largely controlled by another high court case, *In Re Bonfield* (2002), 97 Ohio St.3d 387, 780 N.E.2d 241, which states a parent may voluntarily share with a nonparent the care, custody, and control of his or her child through a shared-custody *agreement*, thereby binding the biological parent. "The essence of such an agreement is the purposeful relinquishment of some portion of the parent's right to exclusive custody of the child." *In Re Mullen*, 129 Ohio St.3d at 420. A court must look to the parent's conduct "taken as a whole." *Massito v. Massito* (1986), 22 Ohio St.3d 63, 66, 488 N.E.2d 857. Further, this agreement need not be written. *In Re Mullen*, 129 Ohio St.3d at 423.

While there was not a written and specifically titled "shared-custody agreement" in Mullen, several other written documents and conduct of the parties strongly support shared custody, which is permitted. There were three documents executed by Mullen – a will, healthcare power of attorney, and durable power of attorney – that all expressed she considered Hobbs her "co-parent in every way." Another document – a ceremonial birth certificate – listed both Mullen and Hobbs as the parents of Lucy. Hobbs was present at Lucy's birth. Hobbs shared the financial costs of the in-vitro fertilization process. Hobbs helped raise Lucy. Lucy called Hobbs "Momma." The majority lost focus, however, when it upheld the trial court's determination that this evidence was not enough to prove Mullen relinquished her rights.

To the contrary, this evidence is enough. By explicitly referring to Hobbs as her "co-parent" in three documents and listing Hobbs as a parent on a birth certificate, Mullen demonstrated her "purposeful relinquishment" of her right to the exclusive custody of Lucy. The plain meaning of "co-parent" is sharing parenting, and you cannot share if you have not given something up. By the time Mullen and Hobbs even discussed an "official" Bonfield-type agreement, when Lucy was almost a year old, a Bonfield agreement had already been established by Mullen's conduct and words. Once this agreement is created, the parent is bound by that decision. The majority's reliance on the deferential standard of review, which upholds a lower court's decision if there was some "reliable, credible evidence" supporting the findings, is not a tool that should be used to ignore evidence. When considering Mullen's conduct "taken as a whole," she had already given up sole custody. It was too late.

Perhaps more than the application of the law, the result felt intuitively wrong. Justice Pfeifer said it eloquently: "[t]he law has not caught up to our culture," a sentiment also shared by Justice O'Connor in her dissent on another issue joined by Justice McGee Brown. *In Re Mullen*, 129 Ohio St.3d at 431. The Justices are right. The familial structure is no longer solely defined by a marriage between a man and a woman, who then have children together. Instead, it has become a diverse combination of traditional marriages, cohabitating partnerships between a man and a woman or same-sex couples, divorcees with new marriage partners, and grandparents who take an active role in parenting a grandchild, amongst other arrangements. When these pseudo-parents develop a meaningful and healthy bond with the child, the law should not bar the possibility of maintaining this relationship just because another relationship dissolves.

Because times have changed, the law is not working. And when the law is not working, it should be changed. Fortunately, Justices Pfeifer and O'Connor not only identified the problem, but also provided solutions to what this change might be.

Justice Pfeifer's solution was the introduction of a new test based on *In re Custody of H.S.H.-K.* (1995), 193 Wis.2d 649, 533 N.W.2d 419, which combines the first part of the current approach, determining whether a shared parenting agreement existed, into the first element of the H.S.H.-K test, and adds other elements to ensure all parties are considered—the biological parent, the child and non-biological caregiver. Justice Pfeifer's approach is in the right direction.

Justice O'Connor's solution was an implicit direction to the legislature to change the law. After noting the limited guidance Bonfield provides and the difficulty of applying the existing statutory definitions of "parent" to same-sex couples, she stated "[t]he stakes are too high to permit so much uncertainty." *In Re Mullen*, 129 Ohio St.3d at 426.

The stakes are indeed too high. Common sense should make the best interests of the child a determining factor in any custody dispute, but as the law stands, this consideration can be omitted. Unless Mullen changes her mind, the court's ruling effectively ends the mother-daughter relationship between Lucy and Hobbs. Instead of creating a just result, the law permits an unjust result.

The most realistic solution combines the best aspects of both Justice Pfeifer and O'Connor's ideas. The legislature should modify R.C. §3109.04 to permit statutory "shared parenting" with an individual other than a traditional "parent." Because times have changed, the statutory framework frustrates the healthy development of the modern family. The statute may adopt a version of Justice Pfeifer's H.S.H.-K. test or a reasonable alternative. The statute should not only give non-traditional "parents" legal rights when the circumstances plainly show an intent of the biological parent to share custody, but also protect the best interests of the child. Any opinions about same-sex couples are extraneous to the ultimate objective: doing what is best for the child. And once the legislature addresses the problem, future Lucys will not suffer, and that would be justice.

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Time Out

RELIGIOUS CHALLENGES TO EMPLOYER DRESS CODES

By David T. Ball

Clothing retailer Abercrombie & Fitch, that also operates Abercrombie Kids and Hollister stores, fosters what it calls an "all-American" image in its marketing, merchandise, décor, and in the attire of its employees. Employees are required to follow the company's "all-American look" policy, but that policy has recently been challenged on behalf of Muslim employees. The Equal Employment Opportunity Commission has brought three federal court cases on behalf of Muslim employees who were either not hired or terminated for wearing a hijab, or head scarf, according to their religious beliefs and practices. Two of the cases were brought in California, and one in Oklahoma.

The Abercrombie & Fitch cases involve the clash between employees' right to accommodation of their religious beliefs and practices and the employer's right to operate without the imposition of undue hardships in accommodating its employees' religion. Title VII of the Civil Rights Act of 1964 prohibits discrimination based on religion, and requires employers to accommodate the sincere religious beliefs or practices of employees unless doing so would impose an "undue hardship" on the business. In these cases, the sincerity and legitimacy of the employees' insistence on wearing a hijab for religious reasons is not in question. The question, rather, is whether accommodating such a practice causes an undue hardship on Abercrombie & Fitch by undermining the commercial effectiveness of its efforts to promote an "all-American" image.

This "undue hardship" exception also exists under the Americans with Disabilities Act (ADA), but the term is defined differently under the two acts. ADA regulations define undue hardship as a "*significant* difficulty or expense" that the employer would have to bear,[1] whereas under Title VII the bar is set lower, in the employer's favor. An employer is not required to accommodate an employee's religious beliefs or practices if doing so would impose a "more than *de minimis* cost" on the employer.[2] These differing undue hardship standards are both applied on a case-by-case basis, meaning that the case law must be analyzed to determine exactly what kind of burden on the employer suffices under each test. The EEOC's Compliance Manual on Religious Discrimination provides a helpful entry point into that body of caselaw.[3]

Despite that the employer need show only a "more than *de minimis*" impact for the undue hardship exception to apply, in July 2011 an Oklahoma jury found in favor of a Muslim job applicant and awarded $20,000 in compensatory damages. The jury rejected, however, the EEOC's request for punitive damages and injunctive relief.

The EEOC's perspective is that an employer's concerns about its image are generally suspect in the religious accommodation context. Permitting employers to refuse to accommodate religious practices for image-related reasons may enable employers to indulge the religious prejudices of their customers. As stated in the EEOC's Compliance manual, "While there may be circumstances in which allowing a particular exception to an employer's dress and grooming policy would pose an undue hardship, an employer's reliance on the broad rubric of 'image' to deny a requested religious accommodation may in a given case be tantamount to reliance on customer religious bias (so-called 'customer preference') in violation of Title VII."

On the other hand, according to the EEOC, "There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress code would pose an undue hardship." The EEOC cites a case in which the City of Philadelphia successfully established that it would pose an undue hardship to accommodate the wearing of a traditional religious headpiece called a khimar by a Muslim police officer while in uniform, in contravention of the department's dress code directive.[4] Yet even in the law enforcement context, in case involving correctional officers, the U.S. Department of Justice reached a settlement whereby the officers would be permitted to wear religious headwear such as kufis or yarmulkes if close fitting and solid dark blue or black in color.[5]

The pattern appears to be that, especially outside the context of uniformed law enforcement personnel, employers are likely to be in violation of Title VII, and analogous state laws, if they do not permit religious employees to wear religious headpieces. Courts seem receptive to the EEOC's position that an employer's stated concern about its image is often a proxy for deference to customer prejudices. Despite the very low "more than *de minimis*" bar that the employer must meet, in this area employers face a difficult time persuading federal courts that their image concerns are not a reflection of customer bias. On the other hand, if the Oklahoma jury's decision is any indication, a jury may on some level excuse the employer for preferencing its commercial image, at least enough to refrain from awarding punitive damages.

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1. 29 C.F.R. §1630.2(p) (emphasis added).
2. 29 C.F.R. §1605.2(e)(1) (original italicized).
3. http://www.eeoc.gov/policy/docs/religion.html.
4. *Webb v. City of Philadelphia,* 2007 WL 1866763 (E.D. Pa. June 27, 2007).
5. *U.S. v. New York State Dep't of Corr. Servs.*, Civil Action No. 07-2243 (S.D.N.Y. settlement approved Jan. 18, 2008).

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AMERICA INVENTS ACT

By Douglas L. Rogers

In 2011, Congress passed and the President signed the "America Invents Act," the first comprehensive patent reform since 1952.[1] The change that has received the most publicity is that the AIA switches the United States from granting patents to the first person to invent a machine, manufacture, composition of matter or process ("patentable subject matter") to granting patents to the first inventor to file a patent application for the patentable subject matter.[2] The House Report accompanying the AIA (the "House Report") noted, "Every industrialized nation other than the United States uses a 'first-to-file' system for determining who obtains a patent."[3]In explaining the reasons for switching to a "first-to-file" system, the House Report mentioned the "value of harmonizing our system for granting patents" with the rest of the industrialized world and asserted that the date of filing was an "objective date," versus the subjective nature of who was the first person to invent.[4] Although the effective dates of the AIA vary depending on the section involved, the effective date of the switch to first inventor to file system is March 16, 2013.[5]

Even after March 16, 2013, however, the "first to file" rule will not apply to applications that were filed before March 16, 2013 or that claim a patent application filed before March 16, 2013 as the "effective filing date."[6] Professor Donald Chisum noted this "means that there will be two patent laws in effect for decades."[7] The proper application of these two patent laws is likely to be very difficult to determine in many situations.

The AIA also changes what the Patent Office must consider in determining whether a patent is novel. One of the requirements throughout the history of patent law in this country has been that in order for someone to obtain a patent, the claimed invention must be "novel," based on the existing "prior art."[8] If an invention is not novel in light of prior art, the invention has been "anticipated," and a patent should not issue.[9] Although the AIA maintains the basic requirement of novelty, it changes the date for the determination of novelty from the date of the invention or one year prior to the date of the invention to the "effective filing date" of the patentable subject matter.[10] The "effective filing date" frequently will be earlier than the actual date of filing the patent application, since often an inventor claims an earlier application relating to the patentable subject matter that patent law effectively says "counts" for purposes of priority.

The AIA also changes what categories of information count as "prior art." For instance, under the current patent statute, patentable subject matter is not novel if it was "known or used by others in this country, or patented or described in a printed publication in this or a foreign country"[11] (emphasis added), or if "the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."[12] In contrast, the AIA eliminates any geographic limitations on prior art and modifies what constitutes prior art.[13] Under the AIA, "prior art" will include patentable subject matter described in patents, in printed publications, in public use or on sale anyplace in the world. There are many court decisions interpreting the meaning of "printed publications," "public use" and "on sale" under existing patent law, so the courts may interpret these phrases as having the same meanings under the AIA as under existing law. In any case Congress added as prior art patentable subject matter that is "otherwise available to the public" anyplace in the world on the "effective filing date" of the invention.[14] There is no case law of this phrase and no real guidance in the House Report. It remains to be seen how the addition of the phrase "otherwise available to the public" as prior art will affect court interpretation of prior art under the AIA.

As a result of these changes, an application that might have resulted in the grant of a patent under the current law might be rejected under the AIA, when the AIA is applicable. Clearly there are many complexities and unanswered questions about the meaning and future application of the AIA resulting from the switch to first-to-file and the changes in the definition of prior art. There are also many other significant changes in the law under the AIA. Two excellent summaries of the AIA and discussion of issues still to be resolved under the AIA are the articles by Donald S. Chisum referred to in the notes below.

It is important for companies and persons who rely on patent law protections to start planning and consulting with your attorneys now for legal advice on the AIA.

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1. Pub. L. No. 112-29, 125 Stat. 28 (referred to in this article the "AIA"), http://www.gpo.gov/fdsys/pkg/PLAW-112publ29/pdf/PLAW-112publ29.pdf.
2. §3 of the AIA amending 17 U.S.C. §§100, 102 and 103.
3. House Report 112-98 (112th Congress 1st session)(the "House Report"), p. 40 - http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt98/pdf/CRPT-112hrpt98-pt1.pdf
4. House Report, pp. 39-40.
5. Donald S. Chisum, "America Invents Act of 2011: Analysis and Cross-Reference," *www.chisum.com/wp-content/uploads/AIAOverview.pdf*.
6. See §3(n) of the AIA on "Effective Date" of §3 of the AIA and the definition of "effective filing date" in §3(a) o fhte AIA, amending current 35 U.S.C. §100.
7. Donald S. Chisum, "Priority Among Competing Patent Applicants Under the America Invents Act," December 5, 2011, http://ssrn.com/abstract=1969592.
8. Current 35 U.S.C. §102.
9. See, e.g., Donald S. Chisum, Tyler T. Ochoa, Shubha Ghosh and Mary LaFrance, *Understanding Intellectual Property Law* (Second Edition), §2C[3].
10. Compare current 35 U.S.C. §102(a) & (b) with §3(b)(1) of the AIA.
11. Current 35 U.S.C. §102(a)..
12. Current 35 U.S.C. §102(b).
13. §3(b)(1) of the AIA, amending 35 U.S.C. §102.
14. §3(b)(1) of the AIA, amending 35 U.S.C. §102.

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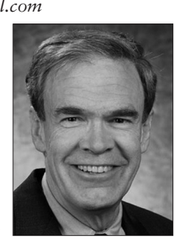

Douglas L. Rogers

A SHIFT IN FOCUS - *The Amended ADA*

In the wake of the ADAAA and the regulations implementing it, the primary focus of ADA compliance efforts and litigation has shifted away from the question of whether an applicant or employee is disabled (once a key threshold issue) to questions of qualification and accommodation – issues that were not addressed by the ADAAA.

By Chris Hogan

The ADA Amendments Act of 2008, that became effective January 2009, directed the courts and the Equal Employment Opportunity Commission to "restore the intent and protections" of the Americans with Disabilities Act of 1990, primarily with reference to what constituted a legally-protected disability. To this end, the ADAAA instructed the courts and the EEOC to construe the definition of "disability" under the ADA "in favor of broad coverage" and admonished that "the determination of whether an individual has a disability should not demand extensive analysis." On March 25, 2011, the EEOC issued final regulations implementing the ADAAA, effective on May 24, 2011. Most significantly, the regulations set forth "rules of construction" with respect to the definition of "disability" designed to compel an expansive interpretation of the term.

In the wake of the ADAAA and the regulations implementing it, the primary focus of ADA compliance efforts and litigation has shifted away from the question of whether an applicant or employee is disabled (once a key threshold issue) to questions of qualification and accommodation – issues that were not addressed by the ADAAA. What follows is a brief summary of several key issues that now receive far more attention.

Who's Qualified?

A covered disability, standing alone, is insufficient to trigger the ADA's protections. The ADA prohibits covered employers from discriminating "against a qualified individual with a disability because of the disability of such individual." The ADA defines a "qualified individual with a disability" as one who can perform the essential functions or duties of a job, with or without reasonable accommodation, and without posing a direct threat to herself or others. Being qualified generally entails meeting both the paper qualifications for the job (*e.g.,* education, employment experience, skills or licenses) and being able to perform the essential functions of the job with or without reasonable accommodation. However, an applicant or employee who poses a direct threat to herself or others in performing the job in question, which cannot be mitigated through the provision of a reasonable accommodation, will not be deemed qualified. Finally, in addition to job-specific qualifications, certain abilities can be essential functions of broad classes of jobs, such as regular attendance or the ability to work with others. With so many more impairments likely to qualify as covered disabilities, the issue of whether an applicant or employee is a "qualified individual with a disability" has taken on a new prominence in ADA compliance and litigation. Fundamental to this inquiry is the determination of what job functions are essential.

Essential Job Functions

As noted above, to be a qualified individual with a disability and, hence, protected by the ADA, an applicant or employee must be able to perform the essential functions of the job in question, with or without reasonable accommodation. The determination of what job functions are essential can be one of the more difficult inquiries under the ADA, as there can be a significant incongruity between perception and reality. In determining whether a function is essential to the job, the ADA directs that "consideration shall be given to the employer's judgment as to what functions of a job are essential," as well as consideration of any written descriptions of the job. However, since there is often significant slippage between the stated functions of a job and its actual performance, the courts and the EEOC tend to privilege the actual functioning of the job over the employer's judgment and job description. Job functions that are tied closely to the position's *raison d'être* that are clearly communicated in advance to and actually performed by the employee are the most likely to be found essential.

The Interactive Process

With questions of qualification and accommodation tending to predominate in post-ADAAA compliance and litigation, the dialogue between the employer and the covered individual seeking accommodation has never been more important. Because the ADA defines discrimination to include, among other things, not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, a breakdown in communication can result in litigation, with the party responsible for an unjustified communication breakdown often on the losing end.

The ADA provides that reasonable accommodation includes, "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices" and the like. In cases where the disability or the potential reasonable accommodation is not obvious, the EEOC envisions that the parties will engage in an "informal, interactive process." An effective interactive process will zero in on the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. Generally speaking, the employee has the initial burden of establishing a covered disability and proposing an accommodation. The employer then is generally obligated to respond in some fashion. Prior to the ADAAA, much of the interactive process was devoted to determining whether an individual, in fact, had a covered disability. Now, the bulk of the dialogue is often focused on determining the precise limitations imposed by the covered disability, the range of potential reasonable accommodations, and whether the provision of the accommodation would impose undue hardship on the employer.

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Undue Hardship

Though an employer may lawfully reject certain proposed accommodations as unreasonable – for example, accommodations that are impossible under the circumstances – the ADA provides that a failure to provide reasonable accommodation to a qualified disabled applicant or employee is not a form of disability discrimination where the employer can "demonstrate that the accommodation would impose an undue hardship." The undue hardship analysis is an individualized assessment of the expense and difficulty to the employer of providing the proposed accommodation. Obviously larger employers often have a much more difficult time establishing undue hardship than do smaller employers. Ultimately, accommodation requests founded on undue hardship are relatively rare. Nevertheless, the question is more often raised in compliance and litigation in the wake of the ADAAA.

Cases arising under ADAAA are only now beginning to work their way through the courts of appeals. While there are still many unknowns, it seems certain that far more attention will be paid questions of qualification and accommodation than to any other element of the ADA.

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Better Lawyer™

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You Got Your First Paycheck, Now What?

By Edmund F. Brown, Ulmer & Berne

Law school is over and you have studied, sat for and passed the Bar Exam. You have even applied for, interviewed and landed a relatively well-paying position with a firm, government agency or in-house legal department. For the first time in a long time, if ever, the money is starting to roll in...now what do you do with it?

In a former life, I worked as a financial advisor for an international financial services company. In my current incarnation, I am a married father of three who is learning, through trial and error, how to make smart decisions with my hard-earned greenbacks. Here are some of the savings and investment options that young attorneys may want to consider when the 1st and 15th roll around.

Life Insurance

You are old enough to have begun and, hopefully, completed law school; which means that you are nearing the age when you start to realize you are neither immortal nor invincible. Maybe your knees swell up every time you hop on the treadmill at the local gym, or you're like me and looked in the mirror recently and noticed that you have more teeth than hair follicles. Whatever the watershed moment, the fact of the matter is, time waits for no one. It is a well-known tenet in the financial services industry that you and your earning potential are your family's greatest asset. If you were to unexpectedly pass away tomorrow, what would happen to your loved ones? How would they pay the rent or mortgage, the utilities and the car note, let alone the cost of your final arrangements? Life insurance is the primary way to protect your family in the event of your demise, untimely or not.

There are two basic types of life insurance; term and whole. Both term and whole life provide a death benefit that is generally free from federal income tax. Term life insurance coverage is relatively cut-and-dry. If you purchase a $500,000, 20-year policy, your beneficiaries will receive a death benefit of $500,000 should you die during the 20-year term. At the end of the 20-year period, the policy expires and there is no death benefit paid should you die. However, a term policy can be renewed, extended or converted to a whole life policy. The main benefit of a term policy is that you can protect your loved ones in the event of your demise for a specific period of time, at a relatively low cost. Keep in mind; however, that purchasing, extending, renewing or converting a term policy later in life will be considerably more expensive.

Whole life insurance does not expire, so long as you pay the required premiums, meaning the death benefit will be paid to your beneficiaries regardless of when you die. In addition, unlike term coverage, whole life insurance also provides accumulated cash value that grows tax-deferred and can be withdrawn and used at the policy-holder's discretion. A portion of the premiums paid go into a cash account which grows over time from dividends paid into the account by the insurance company. You can take a loan against the cash value, withdraw dividends earned by the account, or use it to purchase additional life insurance. For these reasons, whole life policies are generally preferred over term policies, but they are also more expensive.

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College Savings Plans

While the life insurance conversation is "doom and gloom," there are also investment options to help you plan for an optimistic future. Five hundred and twenty-nine plans, named after the section of the Internal Revenue Code under which they were created, are "qualified tuition plans" designed to encourage families to save for future college costs. Five hundred and twenty-nine plans are operated by states and educational institutions and can be used to cover costs at qualified colleges and universities nationwide.

There are two types of 529 plans. Savings plans work much like a 401(k) or IRA (discussed later), by investing contributions in mutual funds and the like. The investor, also known as the "account holder," establishes an account on behalf of the student, also known as the "beneficiary." The account holder selects from a range of investment options and the value of the savings plan grows based on the performance of the investment option(s) selected. Pre-paid tuition plans generally allow participants to pay all or part of the cost of future tuition, usually at a public, in-state institution, at today's tuition rates. Many state-sponsored plans are guaranteed by the state. Some private colleges and universities also have pre-paid tuition plans.

There is tremendous tax savings associated with 529 plans. Although contributions are not tax deductible, any investment grows tax-deferred and investment earnings are generally exempt from federal taxation when distributed to pay for the beneficiaries' college costs. Many states also offer tax breaks, including income tax deductions on contributions and income tax exemptions on withdrawals. However, if money withdrawn from the plan is not used for eligible college-related expenses, the withdrawal will generally be subject to both federal and state income tax as well as a ten percent (10%) federal tax penalty.

Retirement Savings

Here you are, just getting your feet wet in the legal profession, and I'm already talking about retirement. It's likely that, on or before your first day of employment, you were offered participation in some type of employer-sponsored retirement plan. For those of you in public employment, you are most likely enrolled in the Ohio Public Employees Retirement System and your contributions, and those of your employer, are promulgated by statute. For the rest of us, your employer has probably established some type of 401(k) plan. 401(k) plans are defined contribution plans. They are referred to as such because contributions to the plans are "defined" by either the employee or the employer.

The 401(k) plans allow you to contribute money on a pre-tax basis, which means that the amount of your contributions will be excluded from your taxable income for federal income tax purposes. It also allows you to make contributions before the money ever hits your checking account, which greatly reduces the temptation to spend it elsewhere. Many employers will match an employee's contribution to a 401(k) plan. For instance, some employers will contribute an amount equal to the employee's contribution up to, say $5,000 per year. It is highly advantageous to contribute at least that amount to take advantage of this extra money that would otherwise be left on the table. As your income rises, you should consider contributing more to the plan. However, there are limits to the amount that can be contributed to a 401(k) plan. The Internal Revenue Service limits the amount of pre-tax contributions that can be made in a given year. For 2012, the contribution limit for traditional or safe harbor plans is $17,000.

The money contributed by you and/or your employer is placed into the investment vehicle(s) of your choosing by a third party administrator, and grows, taxed-deferred, based on the performance of the investments chosen. Upon retirement, withdrawals are treated as taxable income. One downside of 401(k) plans is the penalties that are applied if early withdrawals are made. If you withdraw money from your 401(k) account prior to age 59 1⁄2, the withdrawal will be subject to both federal and state income tax, as well as a ten percent (10%) federal penalty.

Individual Retirement Accounts (IRAs) are another option for retirement savings. While there are multiple types of IRAs, traditional and Roth plans are the most common. IRAs are accounts established by individual or self-employed taxpayers to provide for retirement savings. For traditional IRAs, contributions made to the plan may be tax deductible, depending on income levels, and grow tax-deferred until withdrawn at retirement. You can also contribute up to $5,000 per year to a traditional IRA account, even if you're already covered by a retirement plan at work. Roth IRAs are funded with contributions from money that you've already paid taxes on, also now as "after-tax" income. However, because the contributions were made from after-tax funds, both the growth of the account and any withdrawals therefrom are tax-free, so long as certain requirements are met. Individuals who are covered by an employer's retirement plan may also contribute up to $5,000 per year to Roth accounts.

Short-Term Savings

If your goal is for your money to make money in the short term, you may want to consider some options besides your traditional checking and savings accounts, which provide access to your money whenever you need it, but offer little to no interest. Money Market accounts offer many of the same features as your regular checking account, but are usually managed by banks or brokerages and offer a somewhat higher interest rate. Money market funds are a highly liquid form of investment, usually managed by brokerage houses that provide a higher rate of return than checking, savings and money market accounts. However, they are not backed by the Federal Deposit Insurance Corporation (FDIC), which makes money market funds a marginally risker choice than the other short-term options. Certificates of Deposit (CDs) offer higher, fixed yields and are federally insured, but the funds invested must remain in the account for the entire term of the deposit (generally between one month and five years) making this a less liquid option than the aforementioned short-term investments. There are also a multitude of Treasury securities, such as Treasury Bills, that offer modest returns while maintaining high liquidity.

Edmund F. Brown

Domestic Law 101

This guide will cover two primary ways to end a marriage in the state of Ohio – dissolution and divorce (without children and with children), and general information about practicing domestic law in Franklin County.

By Stephanie R. Hanna, Staff Attorney to Judge Christopher J. Geer, Franklin County Court of Common Pleas, Division of Domestic Relations & Juvenile Branch

As a new attorney, especially a solo practitioner, it is likely you will encounter a domestic case in your practice. Instead of immediately turning it away or referring it to a colleague, take a look at the basic guidelines below to help you navigate your way through the world of domestic law in Franklin County. After handling a few domestic cases, it may become a main focus of your practice. The Franklin County Court of Common Pleas Division of Domestic Relations and Juvenile Branch is located at 373 S. High Street, on floors 3 – 6.

This guide will cover two primary ways to end a marriage in the state of Ohio – dissolution and divorce (without children and with children), and general information about practicing domestic law in Franklin County. Please keep in mind this is not legal advice and is only intended to be used as a general starting point in learning more about domestic law. For the details, make sure you review Title 31 of the Ohio Revised Code; specifically Chapters 3105, 3109, and 3119.

Dissolutions (No Children)
Time Limits:
Must be final within 90 days from date of filing
Can't have hearing until after 30 days
Parties must live separate and apart for 30 days prior to hearing

Required documents:
Petition
Waiver of Service (by both parties)
Waiver of Representation (by unrepresented party)
Separation Agreement (include Waiver of Separate Findings)
2-page Income Affidavit (for each party)
7-page Property Affidavit (for each Party)
- must match Separation Agreement

Dissolutions (With Children)
Time Limits:
Must be final within 90 days from date of filing
Can't have hearing until after 30 days
Parties must live separate and apart for 30 days prior to hearing

Required documents:
Petition
Waiver of Service (by both parties)
Waiver of Representation (by unrepresented party)
Separation Agreement
Shared Parenting Plan (optional)
2-page Income Affidavit (for each party)
7-page Property Affidavit (for each Party)
- must match Separation Agreement
Health Insurance Affidavit
Parenting Proceeding Affidavit
Child Support Guidelines (both parties must sign worksheet)

Needed For Hearing:
Decree of Dissolution
Decree of Shared Parenting (if Plan was filed with Petition)
Withholding Forms (if child support ordered)
Deviation Findings (if child support deviated)

No witness required as both parties must attend.

Divorce (No Children)
Time Limits:
Must be completed within 1 year from date of filing

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Uncontested hearing cannot happen until 42 days from date of service of the Summons and Complaint

Required Documents:
Complaint (must include jurisdictional language, date of marriage, and grounds)
7-page Income and Expenses Affidavit
7-page Property Affidavit

Divorce (With Children)
Time Limits:
Must be completed within 18 months from date of filing
Uncontested hearing cannot happen until 42 days from date of service of the Summons and Complaint

Required Documents:
Complaint (must include jurisdictional language, date of marriage, and grounds)
7-page Income and Expenses Affidavit
7-page Property Affidavit
Health Insurance Affidavit
Parenting Proceeding Affidavit

Needed For Hearing
Decree of Divorce
Separate Findings of Fact Regarding Assets and Debts/Liabilities (if uncontested when Defendant does not appear or has not signed the Decree)
Waiver of Separate Findings (language should be in your Decree if the Defendant agrees and signs the Decree)
Decree of Shared Parenting (if Plan was filed with Complaint)
Withholding Forms (if child support ordered)
Deviation Findings (if child support deviated)

If the Defendant is not going to appear, your client will need a witness to testify as to the grounds in their Complaint. It is good practice to have someone with them just in case a Defendant fails to appear.

Contested Divorce Trials
If the divorce is contested and you are set for trial, please review Local Rule 3F for information regarding your trial notebooks. Specifically, you should prepare five notebooks for trial:
1. Judge
2. Staff Attorney
3. Opposing Counsel
4. Your Copy
5. Witness (should contain all of the originals)

Plaintiff's exhibits should be marked with numbers, and Defendant's exhibits should be marked with letters. It is very helpful to the Court for you to number the pages within the exhibit. For example, if you have 10 pages under Tab A, you should number each page 1-10, so that you can direct the witness and the Court to page 3 under Tab A. That way everyone is on the same page.

It is very important to the Court for you to prepare a Balance Sheet of the Assets and Liabilities in your case. It is sometimes difficult for the Court to make sure everything is covered by the testimony/evidence without the Balance Sheet.

Child Support
If you don't have access to SupportWorks or FinPlan, you can run a child support guidelines worksheet on the 3rd floor (in the corner behind Courtroom #36).
Cash medical. If deviating from child support guidelines, cash medical cannot be deviated.
CSEA Liaison's Office (5th Floor – turn left off of the elevator).

General Information
Review Local Rules. The Local Rules can be found at the Court's website at: http://www.fccourts.org/DRJ/rules.html

Where/how to file. The Domestic and Juvenile Clerks' offices are found on the 4th floor of the Courthouse.

Copies. Purchase a copy card from the receptionist for Court Administration on the 6th floor. It is helpful to bring your copies with you for an uncontested/dissolution hearing. However, if changes need to be made, with your copy card you can make copies at the Courthouse.

Please place your Supreme Court # on all documents where you sign your name. If the Clerk's office cannot read your name, they can look you up by your number. If they can't tell who the attorney is, they won't add you to the case, and you may miss getting notified of any upcoming hearings.

Form Boards in Courtrooms. Each Courtroom (both on the 3rd and 6th floors) have form boards with frequently used forms. Don't hesitate to ask the Court Officer or Bailiff if you can't find a form or don't know how to do something.

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Nonprofit Law for the Non-nonprofit attorney: The Attorney General and Charitable Trusts

The Attorney General of Ohio plays a unique role in protecting and preserving charitable assets. The role of the Attorney General in protecting these assets dates to the Elizabethan era, when the state would represent the unascertainable beneficiaries of charitable trusts.[1]

By Andromeda McGregor, Assistant Attorney General - Charitable Law Section

The Attorney General of Ohio plays a unique role in protecting and preserving charitable assets. The role of the Attorney General in protecting these assets dates to the Elizabethan era, when the state would represent the unascertainable beneficiaries of charitable trusts.[1] In addition to the traditional common law powers of the Attorney General, Revised Code Chapter 109 provides additional statutory and regulatory powers of the Attorney General to enforce and preserve charitable assets.[2] To the surprise of many, the powers of the Attorney General to regulate charitable trusts extend to numerous organizations. The purpose of this article is to explore the general statutory and regulatory framework that governs the role of the Attorney General in enforcing charitable trusts.

What is a "Charitable Trust?"

In Ohio, the term "charitable trust" is broadly defined and includes trust agreements as well as corporations, associations, or other business entities. Under R.C. § 109.23, a charitable trust is defined as follows:

> "Charitable trust" means any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable . . . purpose . . .
>
> "Charitable trust" includes the fiduciary relationship, the entity serving as trustee, the status as trustee, the corpus of such trust, or a combination of any or all of such meanings, regardless of the primary meaning of any use of the term, that is necessary in any circumstances to effect the purposes of such sections. . [3]

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The purpose of using trust assets to benefit the public is manifested by the intent of the parties and is expressed in either written instruments or conduct.[4] The parties' manifestation of intent need not express that a trust is being created specifically.[5] And in holding assets for the public's benefit, trustees of a charitable trust are held to fiduciary duties in the use and maintenance of trust assets.[6]

Charitable trusts are not limited to formal trust agreements; a charitable trust can include corporations, associations, and other business organizations.[7] Charitable trusts encompass both property and entities vested with responsibility for property held for any charitable, religious, or educational purpose.[8]

Charitable trusts, with some exceptions, are required to register with the Attorney General[9]. Registration is a one-time process that should occur within six months of the trust's formation.[10] After the initial registration, an annual report is filed concomitant with most organization's federal reporting obligations.xi

The Attorney General As a Necessary Party

The Attorney General is a necessary party to and must be served with process or with summons by registered mail in all judicial proceedings, the object of which is to:
(A) Terminate a charitable trust or distribute assets;
(B) Depart from the objects or purposes of a charitable trust as the same are set forth in the instrument creating the trust, including any proceeding for the application of the doctrine of cy pres or deviation;
(C) Construe the provisions of an instrument with respect to a charitable trust;
(D) Determine the validity of a will having provisions for a charitable trust.xii

Note that this statutory provision virtually compels service and summons in the four actions listed above, as "[a] judgment rendered in such proceedings without service of process or summons upon the attorney general is void, unenforceable, and shall be set aside upon the attorney general's motion seeking such relief.xiii"

The provision also grants intervention as a matter of right in charitable trust cases. "The attorney general shall intervene in any judicial proceeding affecting a charitable trust when requested to do so by the court having jurisdiction of the proceeding and may intervene in any judicial proceeding affecting a charitable trust when he determines that the public interest should be protected in such proceeding.xiv" Intervention at the Attorney General's discretion is governed under Ohio Civil Rule 24(A).xv

Attorney General Investigations

Under R.C. 109.24, "[t]he attorney general may investigate transactions and relationships of trustees of a charitable trust for the purpose of determining whether the property held for charitable, religious, or educational purposes has been and is being properly administered in accordance with fiduciary principles as established by the courts and statutes of this state.xvi" These investigations may include document requests or, concomitant with other statutory provisions, examinations under oath of trustees or directors of charitable trustsxvii.

R.C. 109.24 also provides the Attorney General with authority to bring actions when charitable trusts are mismanaged:

> The attorney general shall institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse of it whenever he considers such action advisable . . .
>
> Such action may be brought in his own name, on behalf of the state, or in the name of a beneficiary of the trust, in the court of common pleas of any county in which the trust property or any part of it is situated or invested, or in which the trustee resides . . .
>
> This section is intended to allow the attorney general full discretion concerning the manner in which the action is to be prosecuted, including the authority to settle an action when he considers that advisable.

Thus, the Attorney General may recover misspent charitable assets or prosecute those who breached fiduciary duties in dealing with trust property.

No person, except the Attorney General has the broad authority to protect charitable assets in Ohio. Not only does the Attorney General monitor charitable trusts through the registration and reporting requirements of Revised Code Section 109.26, but the Attorney General is required to be a party to numerous Court actions in Ohio and may intervene in others. The Attorney General also has independent authority to investigate charitable trusts and bring independent actions to protect the charitable interests and charitable beneficiaries. Attorneys advising and representing charitable trusts should be cognizant of the role and power of the Attorney General in preserving charitable trust assets.

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Franklin County Court of Common Pleas General Division:

Changes You Need To Know About

By Keesha Warmsby,
Franklin County Common Pleas Court

Sometimes protecting your client can be as simple as being familiar with a local court's building, rules, and customary practices. As seasoned attorneys know, it is the little things that make a big difference. With the recent changes in the Franklin County Court of Common Pleas, it is more important than ever to make sure you know what's new.

An obvious change is the opening of the new Franklin County Court of Common Pleas General Division Courthouse, the first LEED certified courthouse in Ohio. To meet the Court's goal to conserve energy and protect the environment, the Court has adopted Go Green Initiatives including a green roof, water efficient landscaping, and sun shading devices to minimize solar gain.

While the building itself is impressive, what is vital to new attorneys is the new technology provided in the courtrooms. Each courtroom allows attorneys to connect their laptops to the counsel tables and evidence cart. The evidence cart allows attorneys to play DVDs, plug in jump drives, and project documents onto a large screen. Additionally, the witness stand has a touch screen allowing both attorneys and witnesses to identify items on the screen for the jury and/or judge.

Another major change is the Clerk's office shift to electronic filing or e-Filing. As of December 7, 2011, all civil submissions (criminal filings are excused from this requirement) must be electronically filed through the e-Filing system. Thus, all civil pleadings, briefs, memoranda of law, deposition transcripts, transcripts of proceedings, orders, and other documents must be filed on the system. An exception exists for documents under seal, documents presented for in camera review, exhibits, Notices of Appeal, and Records of Proceeding in Administrative Cases which may be filed the conventional way.

To submit a filing on the system, attorneys must first request an account with the Clerk's office. To request your e-Filing account, visit: https://efiling.franklincountyohio.gov.

A common question is whether a document's timestamp reflects the date and time of acceptance by the Clerk's office or the date and time the document was e-filed by the filer. It depends. If the document Clerk's office "accepts" the filing, the times stamp will reflect the date and time the filer transmitted the document to the e-Filing system. But if the document is rejected, no time stamp is provided and the filer must make a new submission. Notably, while documents may be submitted for filing 24 hours a day, seven days a week; documents are only considered filed 24 hours a day, five days a week. For example, if a document is submitted for e-Filing after 11:59 p.m. on a Friday or after 11:59 on a business day before a Court holiday, the document will be deemed submitted on the following business day, despite the fact the time stamp will reflect the date and time of the submission.

Once a document is submitted and accepted by the Clerk's office, no changes may be made. Prior to acceptance, the document may be deleted. If you notice an error on the document, notify the Clerk's office immediately so they can delete it from the system. Only a judge may strike an improperly e-Filed document after its acceptance.

Another important change concerns notifying parties of the decisions, proposed orders and entries. Under the conventional filing system, the Court would make copies of signed orders, entries or decisions and mail copies to all parties. Now, whoever submits the proposed order or entry is responsible for providing all parties not registered with the e-Filing system with a signed copy of the order or entry. The Court will continue to serve all notices, decisions, orders and entries upon non-registered parties when said document is generated by the Court.

Here is a list of common pitfalls and what you can do to avoid them:

Understand The Submission Process.

Review the Administrative Orders on the Clerk's website, http://www.franklincountyohio.gov/clerk/e-File.cfm, to develop a further understanding of the e-Filing system.

Use the Correct Format. All documents filed over the e-Filing system must be filed in Portable Document Format (PDF). Proposed orders on the other hand are to be submitted in Microsoft Word Form and shall reference the motion to which it applies.

Plan extra time in your schedule. As with any new system, unforeseeable issues may occur.

Familiarize yourself with courtroom technology.

Get familiar with the ELMO cart before hearings and trials. Contact the judge's staff to schedule time to get comfortable using the equipment.

Lastly, when all else fails: ask someone! It is far better to ask someone and learn the right answer than to guess wrong and potentially harm your client.

Sources:

Franklin County Clerk of Courts' Website, E-Filing Information Page, http://www.franklincountyohio.gov/clerk/e-File.cfm
Franklin County Common Pleas General Division First Amended Administrative Order, In Re: Electronic Filing of Court Documents, October 5, 2011, http://www.franklincountyohio.gov/clerk/docs/E_file_docs/1stAmendedAdministrativeOrder.pdf
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Keesha Warmsby

The Trial and Error of a Young Solo Attorney

Jocelyn M. Armstrong is a 2009 graduate of Capital University Law School. She is the principal attorney at J. Armstrong Law Firm LLC and Program Administrator for Columbus Bar inc Professional Development Program.

Ben Stratton is a 2010 graduate of Capital University Law School. He is the principal attorney at Stratton Legal LLC and Of Counsel to Rutledge Legal LLC.

Jocelyn:

I always thought I would have my own firm; I did not imagine it would be so early in my career. My plan was to get a firm or public sector job, work for five to ten years and then hang a shingle. Graduating during an economic downturn did not factor into my plan. Six months after passing the Ohio Bar Exam, I was still working a job that had nothing to do with the law. I was frustrated and worried that I would "lose" the knowledge I gained in law school. I launched my solo practice as a part-time venture in May 2010. I spent evenings and weekends meeting clients and drafting documents. In April 2011 I took a leap of faith and transitioned into full time practice. With the help of the Columbus Bar Association, I am almost one year into running my own law firm.

Having grasped the theory of law practice in school, my practical knowledge was limited. I completed a summer clerkship and took a few additional courses. To help prepare me for what I would encounter in practice, I solicited the assistance of mentors. I spoke to attorneys who were running successful solo practices and asked them how they were able to survive. In addition to personal connections I made, I have been fortunate to be a part of Columbus
Bar inc. This development program has introduced me to practitioners who are willing to share their various levels of experience with new attorneys. The Columbus legal community is open to and supportive of new attorneys.

One of the most valuable lessons I have learned during my new venture is balancing my law firm with my personal life. Having worked in a corporate setting for over eight years prior to launching my law firm, I am familiar with the term 'work-life balance.' I have not always been successful in creating the balance. In the early stages of my solo practice, I found myself meeting clients based on their schedules and working many late nights to complete work. This did not leave much room for me. It was a repeat of my law school schedule – work all day and class all evening. Through conversations with mentors and purposeful scheduling, I am able to meet the needs of clients and participate in other activities that are important to me.

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Ben:

Like Jocelyn, I had bigger aspirations for the first year of my law practice; meaning any firm larger than just me. The plan was to find a small firm where I could work, learn, and grow. After months of fruitless job-searching, it became clear that I was not going to find it right out of law school; so, I decided to make it for myself. When I found a solo attorney with office space in Dublin and some extra work, I signed on 'Of Counsel' and launched my solo firm.

Suddenly, the term "solo" took on a whole new meaning. Every time someone asked for advice, I didn't feel experienced enough to give a competent answer, and I didn't know who to turn to for the answer. What I've learned since then, however, is that "solo" in a law practice does not mean "alone." Every solo practitioner I have met has a network of other attorneys they use to co-counsel, bounce ideas, refer cases, share stories, and get insight on difficult questions. After learning this, I started cold-calling, cold-emailing, and asking my connections for introductions to mentor attorneys. I attend Columbus Bar Association meetings, and try to offer my own experiences to others when I can. Now, in addition to the mentorship from Rutledge Legal, I have a mentor attorney in the areas of OVI, Business, Estates, Immigration, Juvenile, and Education Law. Though I am a solo, I am hardly alone.

Another issue I have found as a new solo is that building my practice and making ends meet requires a lot of difficult decisions. The next important lesson I have learned in solo practice: choose your clients, don't let them choose you. Ann Guinn talks about this in her book Minding Your Own Business; a great guide for small firm and solo lawyers. For a new lawyer paying rent and student loans, the hardest thing to do is turn away a paying client. But it has been worth making less to work with the right kind of person in the right area. I have seen it in my mentors' practices; a client comes in with her checkbook and a seemingly simple problem. You get that "red flag" feeling about it, but continue working in hopes that the feeling in your gut is just yesterday's Chipotle. Then they drop the bomb you were hoping to avoid: "Oh, by the way . . ." you fill in the blank. Your simple case and quick fee is gone, leaving only a meager fee and a mess on your desk. Choose your clients carefully and serve them to the best of your ability. The money will work itself out.

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Jocelyn Armstrong & Ben Stratton

Changing Career Paths to Study Law

By Clinton Stahler, J.D. Candidate, 2013

I had been sitting still, almost motionless for nearly seven hours. The dull hum of the engines and the endless night sky ahead were formidable adversaries in my struggle to stay awake. It was a struggle to which I had become well accustomed over several thousands of hours under these same conditions. My slight discomfort from the cold and the occasional crackle from an otherwise silent radio were my greatest allies. For the next several hours, images of warm meals and warm beds would occupy my thoughts. To be sure, the cockpit of a jet flying over the ocean at night is a place with little more to do than think.

Many of us end up in and even excel at careers we had never intended. For me, flying had started out as a teenage hobby but by my early twenties had escalated into a lucrative career. For many of us who sense we are not on our best paths at various stages in our lives, it is life's distractions that often pose the greatest obstacles to change. Those distractions come in many forms. My distraction was success, and perhaps to some extent, fear.

Studying law is an intriguing idea that strikes people from all segments of society, at different times in their lives and for a multitude of different reasons. As exhilarating as the prospects of a new challenge and a new direction in life may be, the idea of leaving the safety and comfort of a well-established path can be daunting. Just as some students will abandon another academic direction to study law, I chose to abandon an entire career.

Not everyone will understand why a person would choose to sacrifice so much in pursuit of my Juris Doctor. Even within the industry, naysayers will persist. Indeed, many a former law students-turned-authors

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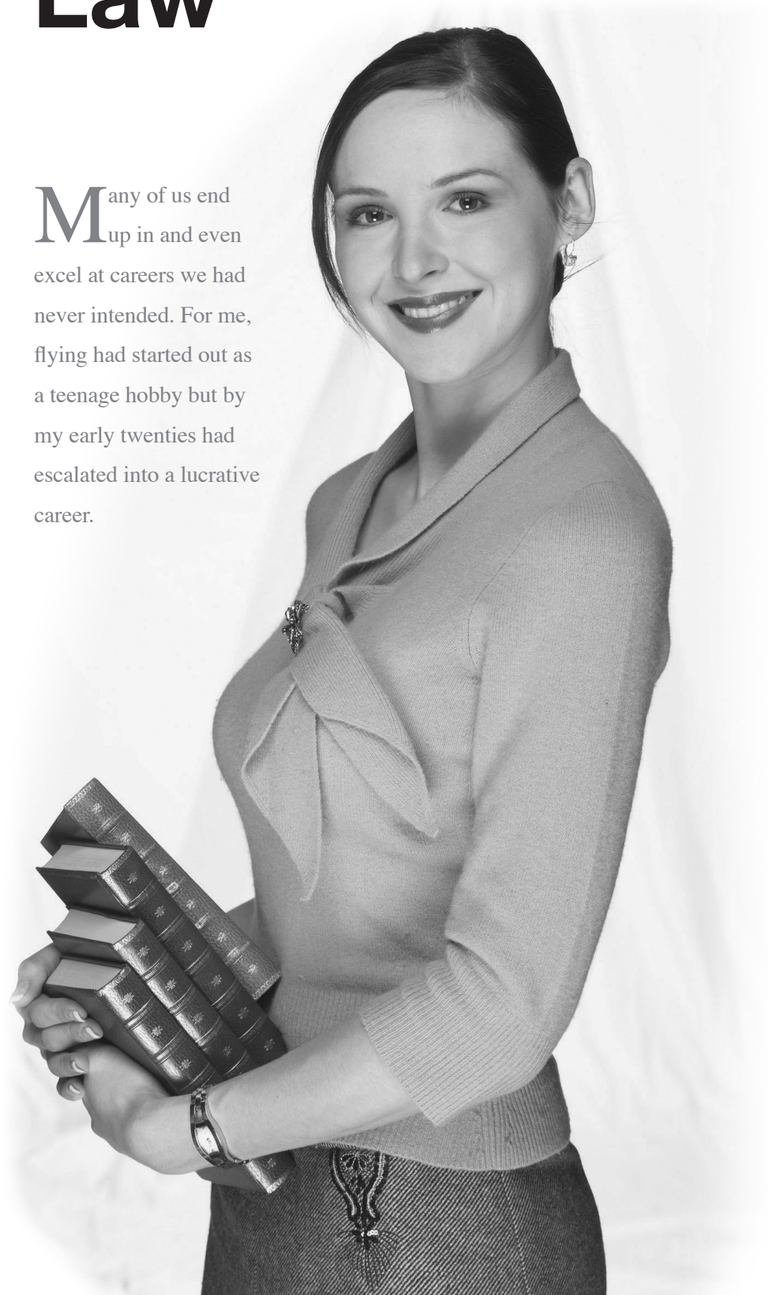

Many of us end up in and even excel at careers we had never intended. For me, flying had started out as a teenage hobby but by my early twenties had escalated into a lucrative career.

The "curve" in law school is a psychological challenge that most of us had not experienced before. Unlike most other academic programs, law students are not judged against an established performance standard. It is much more personal. In law school, our classmates set the performance standard. We must compete amongst ourselves for fewer decent grades than there are students. In law school, good grades are like lifeboats on the Titanic: There are not enough to go around. It isn't life or death, but our futures as attorneys largely depend on obtaining them.

Continued from page 29

have published their own accounts of the horrors of being a "1L." Admittedly, I had read several of these. Yet, we each has our own reasons for beginning this undertaking and I remained undeterred. Last fall, I became one of the millions of Americans to take the plunge and embark on the journey known as law school.

Upon arrival at orientation and meeting my future classmates for the first time, the reality of the situation began to set in. At The Ohio State University Michael E. Moritz College of Law, talented students come from all over the world to study law. I, like most of my classmates, graduated with honors from previous collegiate programs and scored in the top tenth percentile on the Law School Admissions Test. As I began to meet my future classmates, I felt fortunate that I would be studying law with so many interesting and talented individuals. These were the people with which I would be spending the next three years. I would become friends with many of these people, and I would know some of them for the rest of my life. What could be better? As orientation week drew to a close we turned our thoughts to the first day assignments and to the long semester ahead. Despite the general feeling of camaraderie that week, there was an unspoken realization present in all of us. When the formalities were over, we would be competing against each other. This was a competitive group.

The "curve" in law school is a psychological challenge that most of us had not experienced before. Unlike most other academic programs, law students are not judged against an established performance standard. It is much more personal. In law school, our classmates set the performance standard. We must compete amongst ourselves for fewer decent grades than there are students. In law school, good grades are like lifeboats on the Titanic: There are not enough to go around. It isn't life or death, but our futures as attorneys largely depend on obtaining them. The same people exchanging pleasantries in the halls are ultimately working to best each other on the exams and to secure their own brighter futures. The reality of law school is that not all of the students in the classroom have the potential to achieve success as they do in other programs. No matter how successful each student might have been in the past, the curve simply does not allow everyone to succeed. Welcome to law school.

On our first day of class, the halls were abuzz with excitement. Upon entering my first law school classroom I chose a seat near some acquaintances I had met at orientation. Where we chose to sit on the first day became our assigned seats and was noted by the professor. These seats would become the bastions from where each of us would defend against the professor's attacks under the "Socratic Method." The professor's seating chart ensures that no student shall be immune to such attacks. These little battles take place in front of seventy other classmates and generally end in the student's knowledge limit being exposed for all to see. Unlike other academic programs, law professors do not feel that students are entitled to sanctity in this regard. I am not sure about the merits of this teaching method. However, after watching a classmate be humiliated due to his being unprepared, I quickly learned to become a much faster and more thorough reader.

As the semester wore on I began to think about the impending exams. Like most of my classmates, I had never experienced an entire semester without graded assignments, quizzes or tests and which relied almost entirely on one final exam. No matter who defended best against the Socratic Method, nor who provided the most brilliant dialogue during class discussions, the exam is for all the marbles. In preparing for final exams, I found myself studying harder than I ever had. Studying for fourteen hours a day with two or three coffee breaks seemed perfectly normal. In just one semester, the competitive environment of law school had made me tougher.

As all things do, exams came and went. On our final day we exchanged goodbyes with our classmates, whom in a way we had become bonded through our semester-long common experience and went our separate ways for winter break. Finally, the time had come to look back across the semester and reflect on my decision to study law. I recounted some of my ups and downs throughout the semester and tried to identify my high point. Then, I thought about where I would be had I not decided to come to law school. I pictured the rest of my life with the dull hum of engines behind me, the endless night sky ahead and the constant wonder of the kind of lawyer I would have been. Realizing that I had just completed my first semester of law school and how fortunate I was to be studying law, I found my high point.

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Looking for a Niche Practice Area?

Introduction to the Development of Shale Gas in Ohio

By Jameel S. Turner, Bailey Cavalieri

For young lawyers, development of a "niche" practice area may make the difference between success and failure. The problem with niche practice areas is that there are not many left that have not been, forgive the pun, "tapped." This traditional point of view may not be applicable to law related to the latest trend in the Midwest energy production industry, shale gas wells. Therefore, young attorneys looking for a niche practice area that is sure to pick up steam in the near future should consider bringing themselves up to speed on the legal issues related to shale gas drilling and production.

Background of Shale Gas Wells

Natural gas production form tight shale rock formations, known as "shale gas," is one of the most rapidly expanding trends in onshore domestic oil and gas exploration and production today. In many cases, this has included bringing drilling and production to regions of the country that have seen little or no drilling or exploration activity in the past. Enter Ohio.

Natural gas is a mixture of light-end, flammable hydrocarbons primary composed of methane, but also containing lesser percentages of butane, ethane, propane and other gases.[1] Natural gas is an attractive energy source because it produces large amounts of energy when ignited and also burns cleanly in that it emits much smaller quantities of potentially harmful emissions than either coal or oil. It is known as the cleanest of all fossil fuels.[2]

Natural gas is found in rock formations (i.e. reservoirs) beneath the earth's surface and in some cases it may be associated with oil deposits. After extraction, natural gas is processed to eliminate other gases, water, sand and impurities.[3] After purification, natural gas is distributed through a system of pipelines across the United States for residential, commercial, industrial and transportation use. The popularity of natural gas is largely due to its versatility.[4]

Traditionally, oil and gas drillers have largely by-passed shale gas formations in the Midwest because of the combination of reduced economics and low permeability.[5] Historically, the low permeability of shale made it difficult to construct wells with daily production rates that were worthwhile. Recently, technological advances in drilling known as hydraulic fracturing and horizontal drilling have been crucial to the expansion of shale gas development in the Midwest. These drilling techniques have counterbalanced the natural low permeability of the shale in the Midwest, which had to be overcome to make a shale gas well economically viable.[6] Therefore, in the past few years, the shale gas reservoirs in the Midwest have gone from being considered economic challenges to economically viable, and, with recent increases in natural gas prices due to increased demand, shale gas drillers and explorers have been quick to react.

Legal Market for Shale Gas Lawyers in the Midwest

Needless to say, the entry of the shale gas industry into the Ohio market has created a need for attorneys who are familiar with the shale gas industry as a whole. Thus far, many of the property owners that have been approached by shale gas drillers are using counsel recommended by the driller or are using general counsel here in Ohio that have no previous experience in evaluating agreements and royalty structures related to shale gas production.

In my limited experience with the shale gas industry (which impacted one of my clients that owns a large amount of land in southeastern Ohio) there were several threshold legal issues that needed to be addressed with respect to the contract that the driller had proposed. These issues included, but were not limited to:
Amount of the signing bonus;
Amount of acreage the driller was permitted to explore and drill;
Type of drilling to be used;
Cost per ccf (100 cubic feet) of natural gas extracted;
Calculation of future royalties from the well;
Preparation of driller's property easement; and Term of driller's easement.

Because some aspects of this particular area of the law were outside of my expertise, I enlisted the assistance of another lawyer with experience in the shale gas industry. I had no idea that signing bonuses were typical in shale gas deals, what the fair market value of a shale gas well was or how well production was measured. The lawyer provided me and my client with the 30,000 foot view of the lay of the land on these issues and supplied me and my client with just enough knowledge to complete the negotiation of the agreement and ensure that my client received fair market value for any natural gas that would be extracted from the shale gas formation on his land.

After completion of the transaction, I began to do additional research into the shale gas industry and quickly realized that there is a significant amount of expertise necessary to develop a working knowledge of the practice area. In addition, I checked with friends and colleagues locally and learned that few Columbus firms have any lawyers at all with a working knowledge of the practice area.

Thus, with the potential for Ohio to have a significant presence in the shale gas industry for a number of years to come, there is an opportunity for young lawyers in the Columbus area to develop expertise in this niche practice area. The first step is educating oneself on the shale gas industry as a whole.

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1. Chemistry and Technology of Fuels and Oils. 2000. Volume 36, Number 2, pp. 82-88.
2. Id.
3. Id.
4. Id.
5. NatrualGas.org. Overview of Natural Gas. Background. www.naturalgas.org/overview/background.asp
6. Navigant Consulting. 2008. North American Natural Gas Supply Assessment. July, 2008.

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Jameel S. Turner

Grouponics:

Offering A Discount On Alcohol Through Online Promotional Coupons Could Cost You Your Liquor License

Many states, including Ohio, have begun to consider the impact that online promotional companies such as Groupon, Couponing, Living Social, Faveroo, and Eversave, have on state liquor laws.

By Thomas B. Kern, Benesch Friedlander Coplan & Aronoff

We have all seen the online promotions offering a percentage discount for an afternoon of wine tasting, a "free" alcoholic beverage with the purchase of a dinner, or something similar. The legality of these online coupon promotions have been a hot topic in the alcoholic beverage law community as of late. Many states, including Ohio, have begun to consider the impact that online promotional companies such as Groupon, Couponing, Living Social, Faveroo, and Eversave, have on state liquor laws.

For instance, in February of last year, the Massachusetts Alcoholic Beverages Control Commission informed Groupon that a $100 Groupon coupon to a Massachusetts restaurant with a liquor license, was activity in violation of Massachusetts law.[1] In a letter to Groupon, the Massachusetts Commission stated that because Groupon receives a percentage of revenue of the transactions that involve the purchase of alcoholic beverages in Massachusetts, the transactions may "unlawfully transfer a direct or indirect beneficial interest in the retailer's alcoholic beverage license to Groupon."[2] It is also being reported that New York is allowing Groupon to partner with permit holders to offer up to a 50% discount on drinks, while California has reportedly allowed similar Groupon discounts so long as the word "free" is not involved in the advertisement, as to alcoholic beverages.[3]

In Ohio, Bruce Stevenson, Superintendent of the Ohio Division of Liquor Control, offered this message on the subject in November of 2011:

The Ohio Revised Code 4301.22(D) prohibits you from giving away alcoholic beverages. Redeeming these coupons, giving more value than you were paid is discounting below your cost for the alcohol, which is a violation. The Ohio Administrative Code 4301:1-1-45 says you can't reduce the price of alcohol as part of a promotion. I sent a letter to the largest "daily deal" operators to make them aware that alcohol can't be included. Ultimately, it's your license on the line. Best practice: don't include the alcohol in the "coupon" deal.[4]

We are likely to see many more issues arise with online promotions for the discount of alcoholic beverages as states become more aware of this activity. Mr. Stevenson has made things pretty clear for permit holders in Ohio. Offering alcohol in an online promotional coupon could cost you your license. So, don't do it.

1. "Groupon restaurant discounts are under scrutiny." Boston Globe, http://www.boston.com/business/ticker/2011/03/groupon_reviews.html, March 15, 2011
2. Id.
3. Brendan Coffey. "Groupon Alcohol, Spending Woes Piling Up." Forbes.com, http://www.forbes.com/sites/brendancoffey/2011/03/21/groupon-alcohol-spending-woes-piling-up/, March 21, 2011.
4. Bruce Stevenson, Superintendent Ohio Division of Liquor Control. "Social Media And Liquor Establishments: Know The Law When You Advertise." Ohio Beverage Monthly, November 2011, p. 6.

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Thomas B. Kern

"CLARIFYING" REMOVAL

Under the Federal Courts Jurisdiction and Venue Clarification Act Of 2011

By Bryan R. Faller

In December, President Obama signed into law the Federal Courts Jurisdiction and Venue Clarification Act of 2011. As its name suggests, the Act amends various provisions of the United States Code relating to jurisdiction and venue. As one legal commentator noted, "[t]he law makes significant changes in a number confusing areas of jurisdiction and venue[.]"[1] This article focuses on several changes the Act makes to the procedure for removing a case to federal court.

Initially, the Act codifies the rule of unanimity for cases involving multiple defendants. That is, 28 U.S.C. § 1446(b)(2)(A) now expressly requires that when a civil action is removed under section 1441(a), "all defendants who have been properly joined and served must join in or consent to the removal of the action."

Turning to changes the Act brings about to the removal procedure, one of the principal changes is the clarification of when the thirty-day clock for removal begins to run in multiple-defendant cases. A defendant wishing to remove generally must file his/her notice of removal thirty days after service of the complaint. In multiple-defendant cases, therefore, the question is when does the thirty-day clock begin to run? Is it when the first defendant was served, when the last defendant is served, or somewhere in between? Before the Act, courts were split. The Sixth Circuit, for instance, held that the thirty-day clock began to run on the date of service on the last-served defendant, and earlier-served defendants could join the last-served defendant's notice of removal.[2] The Fifth Circuit, on the other hand, held that the notice of removal for all defendants had to be filed within thirty days of service on the first-served defendant.[3]

Section 1446 now contains a new sub-paragraph making clear that "[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons . . . to file the notice of removal." §1446(b)(2)(B). Additionally, Section 1446(b)(2)(C) expressly allows earlier-served defendants to join in a later-served defendant's notice of removal, even if the earlier-served defendant did not previously seek to remove. In light of these changes, a later-served defendant may now remove the case to federal court even if earlier-served defendants did not seek removal within thirty days of their being served, assuming, of course, that the earlier-served defendants consent to removal.

The Act's next significant change to the removal procedure is the creation of a separate subsection for removal in diversity-of-citizenship cases. New Section 1446(c) makes two changes to removal in diversity cases. The first relates to the temporal limitation on removal in diversity cases – that such cases cannot be removed more than one year after they began – that was formerly contained in Section 1446(b). Section 1446(c)(1) keeps the one-year limitation, but provides an exception if the "district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." For example, if a plaintiff purposely waited more than one year to reveal that its damages exceeded $75,000 in the hopes of keeping the case in state court, the federal court may find that the plaintiff had acted in bad faith, thereby allowing removal even more than one year after the case commenced.

The second change concerns uncertainties with the amount in controversy. Such uncertainties arise when state-court practice does not require, or perhaps permit, a plaintiff to assert the exact sum claimed as damages or allows the plaintiff to recover more than is asserted in the complaint. For instance, many complaints filed in Ohio state courts seek "damages in excess of $25,000" but provide no specificity about the exact amount sought. In these cases, the district court had to determine whether the defendant showed that the amount-in-controversy threshold was satisfied. Courts took different approaches as to what and how a removing defendant showed that the damages or value of the relief the plaintiff sought exceeded $75,000.

Section 1446(c)(2) removes some of the ambiguity in this context. The new subsection provides that the "sum demanded in good faith" in the complaint is deemed to be the amount in controversy, with two exceptions. The first exception is if the plaintiff seeks nonmonetary relief, such as injunctive relief. The second exception is if the plaintiff seeks monetary damages but the state-court practice either does not permit for a demand of a specific sum or permits recovery in excess of the amount demanded. §1446(c)(2)(A). In these two situations, the notice of removal may assert the amount in controversy.

It is not sufficient, of course, for a defendant simply to state in conclusory fashion that the amount in controversy exceeds $75,000. What then is sufficient? Section 1446(c)(2)(B) provides that removal is appropriate if the district court finds by a preponderance of the evidence that the amount in controversy exceeds $75,000. If a defendant cannot make this showing based upon the information available to it from the complaint, information about the amount in controversy received during discovery in state court may constitute an "other paper" upon which removal can be based pursuant to 1446(b)(3). §1446(c)(3)(B).

The Act lives up to its name, as its provisions do in fact clarify certain aspects of the removal process that have frustrated courts and attorneys over the years.

1. Howard Wasserman, *Updated: Jurisdiction and Venue Clarification Act*, PrawfsBlawg (Dec. 6, 2011), http://prawfsblawg.blogs.com
2. *Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 532-33 (6th Cir. 1999)
3. *Brown v. Demco, Inc.*, 792 F.2d 478, 481-82 (5th Cir. 1986)

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Bryan R. Faller, Porter Wright Morris & Arthur

An Epic Trial
WAS HE GUILTY?

By Lloyd E. Fisher Jr.

Even this old "anti-techie" couldn't resist Googling my name on the computer. And the result was a reminder that an unrelated "Lloyd Fisher" was a lawyer-participant in one of the most dramatic trials of the 20th century – the Lindbergh kidnapping case.

Charles Lindbergh's solo flight from New York to Paris in May, 1927, became an international symbol of the world's entry into the age of air travel. From then until his death in 1974, "Lindy" was a target for aggressive media coverage. His prickly personality and his resentment of the intrusion into his family's privacy made for a difficult relationship with the press.

Lindbergh and his wife, Anne, eventually built a large residence in a remote area near Flemington, New Jersey, and it was from the second floor nursery of that house that their first child, Charles Lindbergh, Jr., was kidnapped on the night of February 27, 1932. The kidnapper left several clues, including a ransom note demanding $50,000, a crudely constructed extension ladder which had been used to enter the nursery and a ¾" wood chisel. The crime immediately became world-wide news.

The ensuing investigation and search for the baby involved the local police, New Jersey State Police, the FBI and the Treasury Department. The head of the New Jersey State Police was H. Norman Schwarzkopf, whose son was the U.S. Army commander in Iraq in 1991. The authorities and the family received real and imagined clues from many sources. A ransom payment was made through an intermediary, using currency with serial numbers recorded by the Treasury Department but the effort was futile. Seventy-two days after his disappearance, the baby's body was found in a shallow grave about four miles from the Lindbergh house. Condolences poured in from around the world.

In September 1934, alerted by his spending of ransom bills, the police arrested Bruno Richard Hauptmann and charged him with murder and kidnapping. Hauptmann was a German immigrant carpenter, living in the Bronx, and his handwriting appeared to match that of the ransom note. A search of the Hauptmann house revealed thousands of dollars in ransom bills and a sketch of a ladder like the one left at the Lindbergh house

Hauptmann pleaded innocent to all charges and was held in the Hunterdon County jail in Flemington. A New York newspaper offered to hire a defense counsel in exchange for the exclusive rights to Mrs. Hauptmann's story. That lead attorney was Edward J. Reilly, a flamboyant New York criminal lawyer. One of the defense co-counsel was C. Lloyd Fisher.

In advance of the trial, quiet Flemington became a circus of bad taste and media madness. Hundreds of telephone and telegraph wires were strung, newspapers and radio stations from all over the country sent reporters and commentators into town and tasteless souvenirs were sold. H.L. Mencken, the Baltimore cynic, called the trial the biggest story "since the Resurrection."

The trial began on January 2, 1935, with the impaneling of a jury. The opening statement was made by New Jersey Attorney General, David Welnitz. The prosecution presented 87 witnesses, including Colonel Lindbergh and his wife. There was extensive expert testimony about the ladder, its materials and construction. Hauptmann often made loud comments and outbursts about the prosecution witnesses' testimony.

C. Lloyd Fisher gave the opening statement for the defense. He had disagreed with Reilly's decision not to challenge the identification of the child's body and told Reilly: "You are conceding this man to the electric chair." Hauptmann took the stand, did not confess and insisted that he was innocent but his testimony was often inconsistent and unconvincing. Jack Benny, a radio comedian who observed the trial said: "Bruno needs a second act." Anna Hauptmann also testified for her husband.

After 31 days of trial, the jury took but twelve hours to reach a unanimous "guilty" verdict. The judge then sentenced Hauptmann to be executed and the news was immediately transmitted around the world.

Shortly after the trial, Edward Reilly collapsed from exhaustion and Anna Hauptmann engaged Lloyd Fisher to handle the appeals. His initial filing alleged 191 errors but eventually New Jersey's highest court affirmed the guilty verdict and an execution date was set. During the appeals, there was some support for Hauptmann and the verdict was debated pro and con in the media.

During and after the trial, the Lindbergh family received threats and were under constant siege by the press. In December, 1935, Lindbergh and his family sailed for England. The New York Times headline read: LINDBERGH FAMILY SAIL FOR ENGLAND TO SEEK SAFE, SECLUDED RESIDENCE; THREATS ON SON'S LIFE FORCE DECISION.

Hauptmann's first execution date was postponed and apparently he was offered a commutation to a life sentence in exchange for a confession. Bruno refused the offer and a new execution date was set. He died in the electric chair on April 3, 1936, leaving behind a statement in which he proclaimed his innocence.

Was Hauptmann guilty? Theories and comments about the case have produced many books and articles – but no positive answer.

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Reflections from Another Lifetime

"And what were you doing at 5:04 p.m. on December 15th?" I asked. Nearly everyone who was living in Gallipolis at the time could answer such a question and Bob was no exception.

By the Honorable David E. Cain

The flashbacks began when an attorney said his mother cleaned out her attic and set aside some very old newspapers.

"They had your byline," Bob Schopis of the Public Defender's Office continued.

Knowing Bob is a native of Gallipolis, I inquired if the newspapers were from December, 1967. He affirmed.

"And what were you doing at 5:04 p.m. on December 15th?" I asked. Nearly everyone who was living in Gallipolis at the time could answer such a question and Bob was no exception.

"I was standing on First Avenue near the Our House Tavern trying to get up enough nerve to ask a girl to go with me to the upcoming Mistletoe Ball when we heard a loud snap."

The sound broke the tension, Schopis said, but not enough that he was able to ask for the date. When he got home, he found out that the earsplitting crackle came from the Silver Bridge collapsing into the Ohio River. Weeks later we would all learn that 46 people perished in the frigid water.

That conversation, and a book I recently read by Bob Greene called the *Late Edition,* took me back to the Fall of 1967 and I marveled at what an eventful period it was in my own life and that the 45th Anniversary of the bridge disaster will occur this year.

Greene's book is primarily about his working at the *Columbus Citizen-Journal* in the summers of 1967 and '68. Since the C-J published in the mornings, most of its staff worked in the evenings. I was in my first year on the night staff of *The Dispatch* in '67. Since the *Dispatch* published in the afternoons, only a handful of us were working at night – a night police reporter, a photographer, myself and the night City Editor, Les Ealy. I knew every person named in Greene's book, personally or by reputation. And we even covered some of the same stories. It brought my experiences on the night staff back to life. (I graduated to the day staff two years later).

The night crew covered everything from "wrecks, rapes and robberies" to speeches and press conferences by visiting celebrities. My routine assignment when I arrived at 6 p.m. was to check the wire services (UPI and AP) for the daily list being released the same hour by the U.S. Department of Defense of Vietnam casualties. If any Franklin County names appeared, my job was to track down the next of kin and ask them for a photograph and biographical information so I could write a short story. It was a really rotten way to learn my way around the metropolitan area.

I had migrated to Columbus from southern Guernsey County in the Fall of 1966. A year later, I moved from an apartment on East 14th Avenue to a flat on Highland Street on South Campus. More space for the rental dollar. Neighbors not easily disturbed. At the same time, I became a math teacher at Finland Junior High School in the South-Western City School District. I wanted to hang onto my job at *The Dispatch* and the management there graciously cut my hours Mondays through Thursdays, 6 to 10 p.m. Fridays remained at 6 p.m. to 2 a.m. because I was filling in at the "cop shop." It was the regular guy's night off.

The jobs were going all right but the social life on Highland Street quickly got out of hand. In the early days, we could control the crowds by assembling the roommates and removing individuals when nobody recognized them as invitees. But even that soon became impossible. One Saturday night in October, I could hardly walk through the first floor of the townhouse because of wall to wall bodies. I no sooner stepped out the front door to get some fresh air when somebody yelled out of a car window, "Where's the party." I responded with a profane instruction. When I got back from the ER at University Hospital – having been treated for multiple nasal fractures and lacerations – I discovered that my assailant was a defensive tackle for the Ohio State football team. We exchanged apologies. Years later, I found out he was a friend of Bill Pollitt, another former OSU player now a municipal judge, and from the stories Pollitt has told me, I am just glad I survived. When I went to school on Monday morning, the students loved seeing the huge black circles around my eyes and stitches hanging on my nose. Not so when I arrived in the newsroom Monday evening. Les, who was legally blind from a progressive condition, immediately observed: "I see I can't send you out on anything tonight. It would embarrass the company." A few minutes later, the photographer came hustling out from the studio saying, "Come on, come on. Richard Nixon is down in the lobby with Preston Wolfe and Carl DeBloom" (our publisher and executive editor). I went to the lobby with the photographer, but pursuant to Les's instruction, I stayed away from the guest of honor (who was campaigning for the 1968 presidential nomination).

On another Saturday night, people from our gathering totally depleted the inventory at a carryout at High Street and 9th Avenue. The proprietors closed shop and joined us at the party.

My roommates paid me rent (mine was the only name on the lease) based on the number currently living there. One month the rent was $26 per person. The last month I paid the $180 myself. Most of my roommates got drafted or married. Others ran from the scene.

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A seasoned reporter from the day staff, Jack Hicks, had been summoned to the office and, along with a photographer, we were soon on our way in a press car. When we got to the site where Rt. 35 had crossed the Ohio River into Point Pleasant, West Virginia, the scene was surreal.

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On a happier note, I had my first front page byline in October over a story about an interview with Eddie Rickenbacker, WWI Flying Ace and native of Columbus. He was calling for a "win" in Vietnam.

I will never forget walking up to 34 South Third Street on that fateful Friday night of December 15 to check in at the newsroom before heading to the police station at Marconi and Gay streets.

To say I was dragging would be a gross understatement. Our "weekend" party had started on Wednesday. I was just hoping for a quiet night on the police beat, stay in the Press Room. Maybe even lay my head on the desk. "Don't go to the cop shop yet," Les barked, a telephone in each hand. "I might have to send you south. A bridge collapsed with alot of cars on it."

A seasoned reporter from the day staff, Jack Hicks, had been summoned to the office and, along with a photographer, we were soon on our way in a press car. When we got to the site where Rt. 35 had crossed the Ohio River into Point Pleasant, West Virginia, the scene was surreal. Concrete and twisted steel sticking out of the water in a path to the other side. Portions of cars and trucks poking up in haphazard spots where the bridge had stood and in a string down the river as far as we could see into the night. Not too many people were hanging around the carnage and nobody knew much except the time of the crash and the fact that it had bumper-to-bumper traffic, the kind you would expect during Friday evening rush hour 10 days before Christmas. Of course, everyone's first instincts were to go check on family and friends. Schopis said his father crossed the bridge twice a day on his commute to and from work at Gallipolis Ferry, West Virginia. He had crossed it 45 minutes before the collapse.

At some point, Governor James A. Rhodes and his entourage arrived. He was a master politician at disaster scenes. I had become concerned that I left my car parked on 3rd Street where impoundment was a sure thing at 3 a.m. when the street cleaners came through.

I was starting to realize that I probably wouldn't be back by 3 a.m. and actually could be gone for a day or two. When I saw a photographer giving a handful of film to the Governor, I jumped in and told him the alarming prospect of my car in harm's way. "Give me your keys, son," Rhodes responded. I complied and feared no more.

Les had told us to dictate a story to him before 11 p.m. when his shift ended. We went to a bowling alley north of town. "I learned all I need to know about journalism that night," I told Schopis who said the bowling alley was Skyline Lanes.

Hicks dictated from a pay phone at Skyline and was doing the best he could with what little real information we had. He finished like this: "Meanwhile, in the cocktail lounge of a bowling alley less than three miles from the gruesome scene of massive death, drinks were being served, the jukebox was being played and jokes were being told." When he sat back down at the table, I implored: "Jack, we're the only ones drinking beer, telling jokes and playing music. We're the only ones in here." He quickly responded, "Well that doesn't mean it's not happening." He had all the makings of a great political columnist.

Shortly after that, we went further north to Pomeroy and crossed a bridge similar to the Silver, so-named because it became the country's first aluminum painted bridge when it was constructed in 1928. We travelled down the east side of the river to Point Pleasant to assess the situation from that side. About 5 a.m., I laid down on the front seat for a few minutes until a West Virginia national guardsman began pounding on the window of the driver's door that had *The Dispatch* identification on it. I opened the window to hear him shout: "You ought to know better than to sleep in a car with the engine running…even if you ARE from Columbus, Ohio." That hurt.

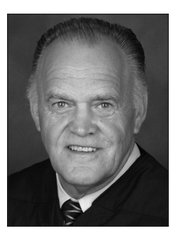
We spent Saturday interviewing people on both sides. I was most proud of my story about the only "newsman" who eye-witnessed the collapse – a 12-year-old Dispatch newspaper carrier.

Some time later, it was determined that the two-lane eye-bar suspension type bridge – 2,235 feet in length including the approaches – crashed because of a structural failure and corrosion fatigue. After all, it was built in 1928 for Model-T Fords.

When we got back to Columbus early Saturday night my car was on the Dispatch parking lot and my keys were in my mail slot on the Fifth Floor.

The next day, my life took a dramatic swing for the better. I became engaged to the woman (Mary Ann) whom I started dating earlier in the Fall shortly after we met. We're still together.

David_Cain@fccourts.org



The Honorable David E. Cain, Franklin COunty Common Pleas Court

Opening the Door

By Francine Jacobs

The best advice I've ever heard was, "When you come to a fork in the road, take it!" That is exactly what I did in 2006 when, without any vision, I made the decision to retire from the practice of juvenile law and focus, instead, on juvenile justice.

Of course I was clueless about how to proceed, until I remembered that I was still a member of the Columbus Bar and the best "idea" man I knew was Marion Smithberger. During months of meetings with Marion, whose insight and wisdom started the ball rolling, and the professional guidance and input of the great staff at the Juvenile Detention Center, the "OPEN BOOKS OPEN MINDS" project was born.

The initial phase of the project was to design the physical space at the Franklin County Juvenile Detention Center –to create a "media room" where none existed. Herb Henderson, the JDC superintendent, and his staff came up with the architectural design for the space and the organizational plan needed to operate a working library. The Juvenile Court Director and the Domestic Relations judges gave their support and approval and, in a matter of months, we celebrated the opening of the first real library/media center in the JDC.

I was moved to tears to when I entered the library for the first time and saw a bright, cheerful room decorated in functional, but inviting furniture, shelves filled with books and magazines on so many topics and genres, posters and pictures decorating the walls and an atmosphere that was prepared to invite children to explore the world of words. It is a room that shuts out the detention aspect of the building and opens the door to possibility.

I am still in awe of the daunting challenge that was met by the JDC staff led by Jessica Cleavenger, Naja Boone, and teacher Barbara Bain as they ordered, arranged and organized the materials for the library. The success of their dedication is reflected in the enthusiasm of the children who use the facility and in the frequent invoices we receive for new books to replace the ones wearing out from use!

Many of the children in lock-up have never been to a library or read a book for pleasure. Now they eagerly await their library visit and vie for the latest edition of their favorite "series." The pride of completing a book for the first time becomes a torch to light the way for other successes. Only through education and self -confidence will many of these children find their way to a more productive life.

As a result of my involvement with the JDC, I became aware of the dedicated and caring teachers who, under difficult circumstances, were working with serious offenders unable to go back to their home schools to graduate. A program had been set up to provide extra tutoring for those wishing to pursue a GED. I had been a middle school teacher decades before I became an attorney, and I asked if I could tutor some of the GED hopefuls.

Again, serendipity and availability opened the door of opportunity. My request to volunteer was granted, and I began working with the boys and girls who are preparing for the GED test. I soon became aware that the state charged an application fee to apply for the test. It was apparent that these children, however diligent, would be unable to proceed because they couldn't pay the fee. No fee, no GED.

Clearly this problem had to be solved and there was only one man who could find the answer, Marion Smithberger. Marion agreed that there was no reason that the OPEN BOOKS OPEN MIND funds could not be used to pay for eligible GED candidates held in detention – and so we expanded the scope of the fund.

During 2011, the year the OPEN BOOKS fund began this scholarship program, nine children qualified for assistance, nine children took the test and, all nine children earned their GEDs. Copies of their certificates line the JDC wall and have become a symbol of achievement.

Last Christmas, due to the generosity of those who have contributed to the fund and the dedication of the JDC staff, each child was given a book as a gift. OPEN BOOKS made it possible.

We have just scratched the surface of worthwhile uses for the Fund. We are only limited by lack of imagination and resources. Within the walls of the JDC, as in any community of young people, are future artists, writers, musicians, teachers, social workers, scientists, mathematicians, productive adults. We cannot let them down. We cannot afford to lose them to a life of crime. We must invest in their rehabilitation and reentry into society as productive citizens.

You can find out how you can make a difference by contacting the CBA Foundation and the OPEN BOOKS OPEN MINDS FUND at marion@cbalaw.org or call 614.221.4112.

The price of a paperback book is a small donation, but its impact on a child's life can be, to quote my son's documentary movie, "louder than a bomb."

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Francine Jacobs

REGARDING WOMEN IN THE PROFESSION – PROMISE AND ALARM

The National Association of Women Lawyers issued a report on the retention and promotion of women in law firms across the country. Each report shows women have made some strides in the profession, but there is still work to be done to eliminate gender bias and improve the advancement of women in all areas of the profession.

By Kerry Renker Green

In 2011, two organizations released reports regarding women in the legal profession. The Ohio State Bar Association Report is specific to Ohio and focuses on gender fairness in four areas: law schools, courts, bar associations, and the workplace. The National Association of Women Lawyers issued a report on the retention and promotion of women in law firms across the country. Each report shows women have made some strides in the profession, but there is still work to be done to eliminate gender bias and improve the advancement of women in all areas of the profession.

Final Report OSBA Special Committee for the Review of Gender Fairness in the Ohio Legal System

The OSBA Special Committee collected data to determine the degree of progress made since the mid-1990s in the presence of women in the Ohio legal profession, perceptions relating to gender differences, and behaviors that may indicate any change in the prevalence of gender bias in the profession. The research included statistical analysis of existing data, surveys of legal practitioners and judges, focus groups, interviews, and roundtable discussions.

The Report shows there has been statistical progress in all areas studied, most notably in the judiciary. Women comprise 30.6% of the total number of lawyers licensed in Ohio and nearly 25% of the total number of judges. The number of women judges in Ohio has nearly doubled since 1993. However, 45 Ohio counties still had no women judges at the time of the study and, 22 additional counties had only one woman judge. There are 21 Ohio counties with no women judges serving at any local level – common pleas, municipal or appellate district courts.

In Ohio law firms, the number of women *partners* increased to nearly 19%, up from nearly 13% in 1999. However, the numbers of women associates increased only slightly, from 40% to 43%. Ohio lags significantly behind the national average in terms of the number of minority women attorneys in law firms. In Ohio, minority women comprised less than 6% of the associate ranks and the percentage of minority women partners is down to 0.87% of the entire law firm partner pool in Ohio.

As the gateway to the legal profession, the percentage of women enrolled in law school remained nearly unchanged, from 42% in 1995 to 43% in 2009.

The Committee described wage disparities between women and men as "consistently disappointing." In 2009, the median annual wage for male attorneys in Ohio was $97,500 while the median annual wage for female attorneys was $78,468. Similarly, OSBA's triennial study on *The Economics of Law Practice in Ohio* reveals the median 2009 net income for a full-time male attorney was $100,000, while the same figure for full-time female attorneys was $74,000.

The OSBA Report highlights an interesting disparity between how men and women view the present state of gender fairness in Ohio. For example, only 36% of female judges surveyed say it is easier for a woman to be a judge today than it was then they were first elected or appointed, while more than 72% of male respondent judges said they thought it was easier for women to be judges today. Further, 50% of male survey respondents believe that, in firms, women have the same opportunity for promotion and advancement as men, but only 11% of the surveyed women agreed with that statement. Finally, 50% of male survey respondents said women can expect to be treated the same as men when it comes to pay and compensation, but only 14% of women answered that way.

The Committee concluded that there are "subtle 'inequities' related to the economic drivers that support and advance legal careers." The real work, the Committee continued, "lies in further investigating and dismantling behaviors and institutional structures that too easily preserve vestiges of gender-based disparities throughout the legal profession in Ohio." To achieve this goal, the Committee made several recommendations, including broadening educational programs on gender bias, encouraging women to consider judicial office, sponsoring a biennial conference to raise awareness on gender issues, identifying and publishing best practices for law firms and legal employers to avoid practices and attitudes leading to gender bias, and encouraging local bar associations to actively identify and engage women attorneys to develop their interests in assuming bar leadership positions.

The National Association of Women Lawyers and the NAWL Foundation's Sixth Annual National Survey on the Retention and Promotion of Women in Law Firms

The 2011 NAWL Survey paints a bleaker picture of the prospects for women in private practice than in prior years, and concludes that the economy cannot be solely to blame for the current state of affairs. The NAWL survey is an annual study that compiles national statistics from the nation's 200 largest law firms, comparing the careers and compensation of men and women lawyers at all levels of private practice, and analyzing data to explain career progression. Overall, the 2011 NAWL Survey shows that women's ranks in firms are thinning.

For the first time since NAWL started reporting on private practice statistics in 2006, the percentage of women lawyers who are associates and non-equity partners in the nation's largest firms declined. According to the Survey, in 2011 women comprised 15% of equity partners, a number that has been essentially unchanged since NAWL first began compiling this statistic six years ago, and a number that is anecdotally believed to be unchanged for the past 20 years. Also notable is the Survey's frank conclusion that of-counsel and staff attorney positions are not stepping stones to partner promotion. Further, the NAWL Survey continues to note that women played a minor role in law firm leadership governing committees overall, with a substantial number of polled firms having either no women (11%) or only one woman (35%) on their highest governing committee. Only 5% of polled firms had a female managing partner.

The NAWL Survey's statistics on compensation continue to show that women "at every stage of practice earn less than their male counterparts," with the biggest discrepancy found between equity partners. In 2011, women equity partners earned 86% of the compensation of the male peers. Further, in less senior positions, while there was no appreciable differences in salary paid to men and women associates, women were likely to receive smaller bonuses than male peers no matter what structure their firm employed for setting compensation. According to NAWL, given the subjective criteria incorporated into salary-setting decisions, at least "provisionally... the data suggest that firms' bonus systems incorporate a degree of discretion that permits gender-biased decision-making."

Finally, the NAWL Survey considered that 2011 statistics show a first-time decrease in the percentage of women attorneys entering big firm practice. The Survey showed a 1% decrease (from 48% to 47%) in the number of first and second year associates at polled firms. The Survey attributes this decline to the fact that the percentage of women entering law schools may have reached its peak. Of note, the Survey considers the momentum that could be gained by even this minor percentage decline, where "female flight gains momentum at each level of seniority, ultimately shrinking the percentage of women lawyers in the partnership pool."

Overall, the 2011 NAWL Survey concludes that while "the current economy has led to continuing challenges for big firms," it cannot be solely blamed for "the uneven progress made by women lawyers compared to their male counterparts nor the backward slide of gender equity in law firms."

While the attitudes regarding women in the profession appear to have broadened to a level of greater acceptance in Ohio, the national trend and Ohio statistics show continued cause for concern over women lawyers' ability to advance in the profession and to be treated on par with male peers. Both reports reviewed called for further analysis and thought regarding study results that could prove enlightening. Our local Women Lawyers of Franklin County presents one such avenue for discussion (see www.wlfc.ws for event opportunities and luncheons). Come join the discussion of how we locally can positively advance women in the profession.

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Kerry Renker Green, Hahn Loeser & Parks

The Importance of (Being) Google

Search Engine Optimization for the Solo Practitioner and Small Law Firms

By Ken Matejka

It is widely known that Google's U.S. market share for search is dominant (over 70% by some estimates), but what isn't as widely known is that for law-related search, Google's market share is overwhelming (over 90%). Even if a client finds a lawyer in a major directory, there's a strong likelihood that they found that directory through a Google search initially. For the small law firm, being visible on the Internet and being visible in Google are basically the same thing.

There are two ways to become more visible in Google: through Google's Sponsored Listings, and through search engine optimization (SEO). Lawyers should ideally do both, but this article will focus on SEO.

What is "Search Engine Optimization"?

SEO refers to the steps you can take with your website and elsewhere on the Internet to make your website appear more relevant to Google and the other search engines. The goal of these efforts is to be in the top half of the first page of Google's search results for the phrases that are most important to your law practice.

The first step in SEO is to figure out which phrases you want to target. The time and effort needed to raise your site's Google search ranking for the phrases you select depends on the depth of your SEO, along with factors such as competition (how many other sites are trying just as hard to raise their own ranking).When deciding the phrases you want to target for your SEO effort, you should find phrases that are specific and important to your law practice, have enough search volume to make the effort worth your trouble, and where the competition isn't too high. For example, instead of trying to optimize your site for "lawyers" (high volume, but extremely high competition), you may instead optimize your site for "san francisco child custody lawyers" (high volume, medium competition).

Once you've selected your target phrases, you'll then emphasize these search phrases consistently on each page of your site so that the next time Google indexes your site, it sees you as "relevant" to users searching for those terms (more on this later). By appearing to Google as relevant for your target search terms, your website will rank higher in Google's search results.

The Two Sides of SEO

There are two basic things you should do as part of any SEO effort: "On-page" SEO and "Off-page" SEO.

On-Page SEO is a process whereby you work your target phrases into the content and meta tags of your site, subtly though, without it looking like you're writing solely for the search engines (you want people to be moved to make contact with you once you've brought them to the site).

For example, if you're a Columbus family lawyer and you've selected two or three phrases that you would like to be relevant for Google results (e.g., "Columbus divorce lawyer" or "Columbus divorce attorney") then you would emphasize these phrases as often as possible without damaging the professionalism of the content.

It's reported that Google considers over 200 different factors when determining the relevancy of a website for a specific search query. However, one of the aspects believed to be the most important in the ranking of websites is the page's "title tag." The title tag goes into the source code of your website, and will be what appears between <title> and </title> in your page's header. You'll want to ensure that your target phrases are included naturally in the title tags, so that not only will Google know what the page is about, but visitors as well.

Also, hyperlinks between the pages on your website will help Google "crawl" it. By having good keyword phrases within the text of the links, Google will better understand the subject matter of the pages to which the links connect. For example, imagine there is a hyperlink on your website which reads: "Click Here To Learn More About Our Experienced Family Lawyers" that links to your "About Us" page. If you have the hyperlink on either the whole sentence or just the "click here" portion, that doesn't tell Google exactly what is being linked to and is a missed opportunity to underscore for Google some important phrases. The better choice would be to have the hyperlink on the words "Experienced Family Lawyers" so that Google knows what the page you're linking to is about (and will consider these terms more relevant for your site in its results).

The second part of SEO is referred to as off-page SEO and are things you do elsewhere on the web to make Google perceive your website to be important for the phrases that you are targeting for your website. Generally, this is composed of link-building, which is a deliberate act of getting other websites to link to your own. Over the course of the lifetime of your website, you should aim for between 250 to 750 links from other websites to yours.

So how do you get other sites to link to your website?

You can get links to your website in a variety of ways. You can (and should) list your website on directories, exchange links with colleagues who are not in direct competition, post to blogs, set up accounts in social media sites like Twitter and Facebook, participate in networking sites like Linked-In, and publish content to press release sites. The more sites that link to yours, the more Google will perceive your site as growing as an important source for information on the web.

And in conlusion . . .

A few final things should be noted. First, SEO can be very labor intensive and time consuming, and requires a certain personality type. If you'd rather practice law than spend hours modifying your pages and obtaining in-bound links, you should strongly consider outsourcing the project to a company that specializes in SEO for lawyers.

Second, these SEO efforts don't help your website overnight. It may be three, six or nine months before you start noticing any real gains in Google's search results.

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Ken Matejka, CEO, LegalPPC Inc.

Sharpen Your Listening Skills to Detect Fraud

By Frank A. Wisehart

We frequently forget the lessons learned as a child. If we want a cookie from the counter, sliding a chair across the kitchen floor is not the best method for concealing our actions. The noise a chair makes resonates throughout the house, alerting parents of activity. And the stupidity defense of, "I was getting a cookie for you," relies on how you deliver the message, not on the facts. A simple probing of the motive crumbles most cookie conspiracies.

Yet, as we become older, the same flimsy technique works! We ignore the telltale noise of chairs scraping across the floor in everyday speak. We listen, but we do not hear the deception.

When confronted with evidence that *might* indicate guilt, truthful people respond directly. They reply in the following manner: "I did not do that." Deceptive people respond indirectly: "That is not something I would do," "What makes you think *I* did it?" Notice in the first truthful response how the individual responds to the question asked. Truthful people believe the evidence will ultimately prove their innocence.

Deceptive people want to know what evidence you are relying upon so they can defeat or deflect its trajectory. Notice in the two deceptive responses, *"That is not something I would do"* and *"What makes you think I did it?"* – neither response constitutes a lie. Similarly, both replies are unresponsive to the initial question of "Did you do it?"

Fraudsters prefer to be deceptive rather than lie. This way they maintain a fallback position of "I never lied to you" when pressed for answers in the face of additional evidence. By tuning your ears and listening to this type of misplaced response to direct questions, you can sharpen your investigative skills. When you hear this type of response, ask more detailed questions and listen for the responses. Do the responses produce anxiety in the individual? If so, ask more questions.

Remember, no matter how flatteringly delivered, the chair scraping slowly across the floor is not someone getting you a cookie!

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FLYING SOLO OR FLYING WITH A CO-PILOT THE GROWTH OF A LAW PRACTICE

When I started my solo practice everything was new and frightening to me – mostly because I was alone. Looking back upon my progression into the practice of law I would not change the path I have taken for anything, I am pleased where I have arrived and how I arrived here.

By Derek A. DeBrosse

I never wanted to practice law on my own – I always felt having a law partner or partners was a value added benefit not only to myself but my clients as well. When I started my solo practice everything was new and frightening to me – mostly because I was alone. Looking back upon my progression into the practice of law I would not change the path I have taken for anything, I am pleased where I have arrived and how I arrived here. Over these past three years of practice I have been approached many times with the prospects of partnership. I was even in discussions with a law school classmate about partnership when I first began looking at office space. It took me a little over three years to know that the time was right to expand into a different type of law practice. Beginning this year, my solo practice became a law partnership and thus far everything is going as planned.

My experience in making this leap has been one of cautious optimism. There are a few pieces of advice that I held very close to the chest as I began to build my practice. I believe if any other practitioners are considering expanding their practice, these tips could prove useful.

A Law Partnership is a Marriage.

This above all else influenced how I approached my decision for partnership in the practice of law. I had many occasions where I was approached by attorneys, and I just knew it was not the right time. Either our personalities did not mesh or our worldviews were so diametrically opposed that a business relationship would be doomed from the start. I soon discovered that I had to be satisfied at my present station in my practice in order to grow and expand. I realized I could not force a business relationship to occur – it needed to occur organically as most things in a successful business do.

When I finally decided to make the jump into a law partnership it occurred with a discussion over a drink. I had never even considered the law partnership idea going into that particular discussion – however we both soon realized that our worldviews, desires, and philosophies with regards to the practice of law worked well together.

We spent the next seven to nine months having simple meetings to discuss the mere possibility of a law partnership. Clearly, I did not jump right into anything. I had spent three years building my practice, and I needed to be sure this was the right move. Once we had both come to a place where we were satisfied with learning everything we could about the other, we decided to put everything into writing.

Plan for the Divorce as you planned for the Marriage.

Once we were ready to put everything on paper, the most difficult part was how to plan for a potential split. Far too many businesses find themselves in trouble when they fail to accept the fact that it simply does not work out. After a month or so of discussion, both my law partner and I came to mutually agreeable terms as to how to handle particular situations in the event things simply failed to work. The importance of these discussions was more than simple planning. They were an assurance that I had chosen to enter into a business relationship with someone who was willing to discuss the difficult issues and to address them in a rational, logical and reasonable manner. If a law partner does not want to discuss such topics the business relationship may be doomed from the start.

Take Things a Day at a Time.

Finally, once everything was on paper, it was time to start practicing law. Although it may be stressful at times, if it is a well thought out and well planned decision it can also be the best decision ever made. I already have seen our business begin to grow by expanding into new practice areas. I have been able to reduce some of the work-related stress by leveraging myself against my law partner. As we have progressed forward, we simply take each day at a time and address each concern as it comes. We have made it a point to never try and do everything all at once. There is far too much to be done and far too little time in a single day.

Overall, expanding into a business relationship has so far been an excellent choice for my practice. As with any business decision, however, it can be subjective depending on numerous aspects. If an attorney at least considers the above points he or she will be far better off than simply jumping head first into the very first offer of partnership that comes along.

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Courage to Heal

By Candace Hartzler

There is nothing sure-footed about addiction except for the way it wreaks havoc on the addict's spirit and spills pain across his family system. Spirit is defined as the goodness we all carry inside, our thoughts and feelings about our place in the world, that core of inner strength carrying us through our days. Addiction creates tsunami-like damage, cutting off the addict's connection to healthy thoughts, behaviors and relationships. Addiction creates losses – bank accounts drain, employers fire, police arrest, and loved ones suffer.

Along with the flotsam of emotional and psychological pain, spiritual challenges beckon; recovery for addicts and their families becomes a three-tiered process – acknowledging the need for outside help; accepting that addiction is a life threatening illness; trust in others to help guide the process of healing.

Sakyong Mipsham Rinpoche, in his book, Mindfulness and the Twelve Steps, compares addiction to "licking honey from a razor blade. It seems like pleasure but all of a sudden it cuts." Recovery for the one addicted will not begin until the cuts begin, and even then, most will continue to deny their need for help. While tethered to bottles of Chardonnay or handfuls of opiates, addicts can swallow their painful consequences. But eventually all will fall like Humpty from the wall of broken promises; pain and shame will usurp the addict's sense of goodness and strength, and she will hit a spiritual bottom.

During the process of addiction, families feel split wide open; fear, embarrassment and anger dominate. Members have difficulty accepting addiction as a primary problem and unknowingly make the problem worse because they don't know how not to. A mother mistakenly believes her 20-year-old daughter's daily heroin habit is connected to parental neglect; "She uses because her father left when she was 10." A father bleeds hope and money onto his 25-year-old son's addiction to Percocet; "He just needs to finish his law degree." A husband remains bent on saving his Harvard graduate wife from her love affair with Grey Goose; "She's still mourning her mother's death."

Addiction is not created by a father who neglects or a mother who dies. When a breathalyzer registers .32 for the 34-year-old Harvard graduate, it is due to her cellular adaptation to the liquid drug alcohol. She may have begun her slide into alcoholic drinking through the channel of grief, but daily and excessive drinking, hiding vodka under a pile of sweaters in her walk-in closet, personality change while under the influence, and denial of all problems connected to her drinking, are all symptoms of her addiction to alcohol.

Addiction is a physiological illness occurring inside the addict's brain, and has zip-zero-nothing to do with the family member. Substance dependency and codependency are different sides of the same illness. As addiction progresses, family members cry, threaten, and rescue the addict while they sink into the emotional hell of codependency where hope and focus are difficult to sustain. Families need education and support to help control their knee-jerk emotional responses, to help them learn how to love their addicted member differently. Love is not the glue needed to patch up the addict's life, accountability is. Allowing the addict to experience the painful consequences of her use, while also protecting oneself, is key.

Recovery for the addict will include more than just abstinence. Learning the art of trusting others to lead and teach the principles of spiritual wellness is equally important. Twelve Step meetings are the avenue most recommended, where men and women hold the space for one another to grow, where addiction is viewed as a treatable illness rather than a lack of morals, where one's spirit can begin exploring a new framework for living and believing.

When a newly recovering person expresses disdain at an agency's mandate for meeting attendance – "I don't like to be told what to do," – he will be reminded that his drug of choice has told him what to do for months or years. He will be asked to risk believing in the power of people who have been there, done that, and who have found their way onto a new plane of existence. Meetings are where models of spiritual growth live, breathe and teach through example; where addicts can begin developing faith and attachment to something other than their drug of choice.

When family members become saturated with the pain of trying to single-handedly control a loved one's use of substances, when they land smack dab in yet another dark night of the soul created by yet another string of broken promises, they can begin their own process of healing. Al-Anon is for family members to provide support and education about the art of letting go; the art of developing a faith-based personal spiritual program focused on healthy detachment from the one addicted.

A drowning of all things good in the addict's life doesn't have to happen. Family members don't have to sink with the one addicted. Pain is the invitation needed for that core of strength carrying us through our days to paddle towards shore. Help stands there. The process of wellness for all those affected by addiction will begin as soon as each becomes willing to accept an extended hand.

Candace Hartzler, MA/LICDC

Happiness is Healthiness

By Robert Bailor

Editor's note: This is the final of Professor Bailor's articles on "Happiness" published in a series of four.

We have been considering "sobriety" as a mnemonic to reflect on what being happy means and what it requires. So far we have considered "S" for Serenity, "O" for Obligation as Offering, "B" for Being over Having, "R" for Respect and "I" for Inspiration. We will conclude with "E" for Ego, "T" for Trust and "Y" for Yes.

"E" stands for Ego, but not as in "egotistical," the self seen as self-contained and complete in itself. This is the Narcissist who has an inflated valuation of self, as if he or she is more important than anyone or anything else. Being "numero uno" gives him or her the right to be the final judge of truth and falsity, good and evil, worthwhileness and worthlessness. This person believes he or she deserves to be self-indulgent and self-absorbed since he or she is the center of the world. Such egotists "turn off" other people as their presence is like a drain hole that pulls everything into their own vortex. Yet, the little secret about such people is that they live this way because they are not happy with themselves. They need to belittle everything else to feel good about themselves.

On the contrary, happiness requires one to "let go my ego" in this sense. Love of self is not the same as selfishness. An existential irony is at work here. The more one focuses on the self, the less one finds there; the more one gives the self away, the more one finds value in the self. Great minds such as Sartre, Kierkegaard, Fromm, Adler and others have explained that for people to be happy with themselves they need to be growth-oriented, and this means bent on self-transcendence, not self-aggrandizement. Self-centeredness leads to isolation and a sense of being less. Happiness requires a sense of humility and a sense of risk to try something new that is beyond my current self not just indicative of it. A person comes to happiness in terms of everyone and everything thriving. Happiness is a result of perceiving universal harmony.

"T" is for Trust which is definitely not for Egotists who need to control everything. To trust is to believe without guarantee and to be vulnerable to the results. Trust/trustworthiness is the basis of any intimate personal relationship. But it is also the basis for the credibility of professionalism, a harmonious work environment, and a sense of self-confidence. There is no happiness without trust; there is only the panic that comes with the need for certainty and the impossible attempt to control everything. A life without trust is not only unhappy; it is exhausting. To be happy one must allow things and people to be what they are in their own way – as if they did not need me for them to be competent. Supervisors who micromanage their staff prompt resentment because they imply that the staff are not good enough to do what is expected of them on their own.

To trust does not mean to be naïve nor to act as a doormat. Rather, it means to let go of the need to control and to let things and people reveal how good they are naturally. In a sense trust is a self-fulfilling prophecy as the trusted become convinced of their own value and competency and thereby tend to be energized with regard to their own capacity to accomplish what they need to do. Trust plants seeds of achievement; lack of trust plants seeds of fear of failure and a panic-stricken lack of self-confidence. Trust powers empowerment.

"Y" stands for saying "Yes" to life, that is, taking a life affirming, positive attitude toward one's life and all it involves. This does not mean being naively optimistic, for realistically, some things are not good and very little is guaranteed to turn out well. A positive attitude means a trusting, hopeful, encouraging, grateful attitude that gives everything a chance to show its goodness and that forgives so that good can result even from bad.

Everyone must assume a fundamental approach to living. Either life is ultimately worthwhile or not. If it is not, there is reason to be dour, disappointed, and discouraged, to have a basic sense of gloom and a primary focus on failure and death. But if life is worthwhile, then it is a grand opportunity for engagement and enjoyment. Neither approach can be proven valid beyond doubt, but the latter fosters happiness and health, and perhaps that is proof enough.

A positive attitude affirms the intrinsic goodness of things, reverences them, and finds them worthy of celebration. This nurtures an appreciation of the bounty of whatever is or might be experienced and serves to focus on promise rather than failure. This alone encourages success. To the extent a person promotes the goodness of all, so that person senses his or her own goodness. Basking in a sense of overall goodness is happiness.

So, attending to the health of the whole person fosters happiness, and the ways of happiness foster good health. A happy, healthy person experiences inner peace, treats obligations as opportunities for gift-giving, prioritizes personal existence over personal possessions, recognizes everything and everyone as worthy of reverence, lives purposefully in terms of genuine values, seeks growth over indulgence, and affirms life by cultivating a positive attitude that celebrates intrinsic goodness and devotes itself to realizing the promise in everything.

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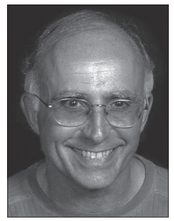

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PHARMACOKINETICS

THE CLINICAL SCIENCE OF HOW THE BODY WORKS WHEN GIVEN A MEDICATION

By Allen Nichol

For practicing attorneys whose field is related to patient injury caused by medications, or conversely, those who are in the defense of physicians wrongly accused by their patients of medical malpractice blaming prescribing decisions, this information can be the difference of winning or losing a case.

Pharmacokinetics is the study of how the body works when given medication or combinations of multiple medications. It can be further described as the branch of clinical pharmacy that studies the fate of therapeutic substances in the body. Or even more simply described as what the body does to a drug.

Pharmacokinetics has four concepts: (1) Absorptions/Administration: Identifying how the medication enters into the bloodstream. (2) Distribution: Identifying mechanistically how medication is transported throughout the body and distributed throughout the tissue and fluids of the body. (3) Metabolism: Identifying how the body begins to break down the medication once it has entered the body. The metabolism is performed by either the kidneys (renal system) or the liver (hepatic system) or in some cases a combination thereof. Metabolism of the medication evaluates how the body begins to inactivate the medication(s) once it has entered into the body. Depending upon the functionality of the kidneys or the liver, the rates and the ability to metabolize the medication(s) can be altered. Furthermore, if in the case of either renal insufficiency or hepatic insufficiency, the medications may not be able to be appropriately metabolized. From that, there could be the potential for causing an accumulation of free drug in the blood stream and the occurrence of a toxic accumulation of medications could occur, having the potential to be injurious to the patient. Also, there are numerous pathways within the hepatic system through which medications are metabolized and further complicates safe treatment considerations. (4) Excretion: Identifying how the medication and/or its metabolites are removed from the body. Enzymatic process enhances this process. The medications and their metabolites are then excreted through urine or feces.

Medications are also bound by plasma protein. Medications compete for a limited number of receptor sites within the body. If you have multiple medications that undergo similar pharmacokinetics, they have the potential to compete for those limited receptor sites. If the medications do not bind to the receptor sites as anticipated, the pharmacokinetics of the medications will be altered. This could mean that more free drug could be absorbed into the bloodstream and the effects the medication could have on the patient would be either in excess or deficient of the intention of the prescriber. That possibility could be a direct causation of injury or a non-resolution to a medical condition resulting in harm to the patient. Pharmacokinetics is taught in Colleges of Pharmacy to all Doctor of Pharmacy level students.

Practicing attorneys whose clients have issues that would benefit from an evaluation and expert opinion on pharmacokinetics may wish to consider a consultation from a clinical pharmacist who has completed a doctoral level degree (Pharm.D) program.

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When Parents Have to "Send Their Kids Away"

When parents feel they have lost the ability to control their teen, they will hire an educational consultant ("ed consultant").

By Bradley P. Koffel

I just finished 3 days of visiting therapeutic treatment centers in Utah with one of the country's leading educational consultants, Dr. Andy Erkis. We visited two Wilderness programs and two Residential Treatment Centers. I learned a lot from each visit and each program is unique. I went into the field for two days and met kids who were "sent away" (their words) by their parents for 8-12 weeks of intensive wilderness therapy. I also interviewed four teenagers over the course of an hour at another residential treatment center. Overall, I received feedback from 20 troubled, yet very promising, kids.

All of them wound up being "sent away" for a handful of reasons — behavioral issues, substance abuse, depression, anxiety and other emotional health issues. They were from some of the most affluent communities in America. I met kids who had just arrived "in the field" and others who had been in the field for 12 weeks.

I had the pleasure of visiting the country's leader in Wilderness Therapy -- Second Nature. It is in its 14th year of taking struggling teens and working them through some tough issues in their lives. The therapists and field managers are special kinds of people. I spent quite a bit of time with the founders and heard their philosophies. This is very new stuff to Ohioans. We do not have anything like this in Ohio, and it is definitely worth seeing. The kids they are working with will be industry leaders, lawyers, doctors, therapists, and other healthy, successful adults. Thankfully, the parents intervened and places like Second Nature know what they are doing.

When parents feel they have lost the ability to control their teen, they will hire an educational consultant ("ed consultant"). There are less than 50 ed consultants in America. There are less than 15 who know the programs and counselors across America fluently. Dr. Erkis, 43, is in the top five in the country, helping families save their kids from suicide, drug addictions, and other self-destructive behavior as measured by "placements" (placing a teen in long term therapy). He's an amazing psychologist who is on the cutting edge of what it takes to save kids.

I asked the kids questions, and they gave me unvarnished, non-clinical, introspective feedback. I asked them one very important question, "What advice would you give parents?" Without exception, all 20 kids from three different facilities said the same two things.

#1: "LISTEN to your kids when they are talking. Don't look at your phone, your computer, the TV, or hurry them up. Listen. Be engaged. When you cut kids off or look at your cell phone while they are talking tells them they aren't as important as whatever random thing is on your phone or computer."

#2: "Set CLEAR BOUNDARIES and set FIRM CONSEQUENCES for not following the rules. We learned as kids that we could whine enough mom would cave in. As we got older, the whining turned into defiance. By the time we were teens, we became oppositional to mom and dad. Had my parents set clear rules and stuck to the consequences, I may not be here. I lost respect for my parents which led to disrespecting other people of authority. I learned that all I had to do was manipulate or lie to get what I wanted. I was miserable and smoked marijuana to feel normal. I used other drugs because I didn't like who I was. I had suicide thoughts."

This stuff was rocket fuel. I asked the therapists, "if you could wave a magic wand and change three things inside the homes of suburban America, what would you do?" They pretty much agreed on the following:

UNPLUG THE KIDS

Severely limit downtime on the computer, cell phone, TV and XBOX. No TV's or computers in rooms. Absolutely no Facebook. I don't know how many times I heard "Facebook is evil" from adolescent psychologists and therapists. The kids agreed.

DO THINGS AS A FAMILY WITHOUT MODERN INTERRUPTIONS

Have dedicated nights or days where you go off the grid. The kids will hate it in the beginning, but by the end of the first trip, they will love it. Make this is a staple of your monthly life. Hike, backpack, rent a cabin, and tent camp. Eliminate the noise and stressors of your life and that of your kids. Parenting needs to be intentional. Not hopeful.

SET WRITTEN RULES & CONSEQUENCES

Kids crave discipline. We all do. We may not like having to go for that five mile run, but we feel great after we do it. We may not want to do that project at work, but we love feeling the sense of accomplishment. Failure to meet expectations in our adult lives comes with adult consequences. Kids need the same structure. Age appropriate rules ("boundaries") and consequences must be written out and followed to the letter. The moment mom or dad start to give in, the kids are being cheated. For example, let your son or daughter know what time they need to be "backpack on" to leave for school. Then, leave it up to them to get ready in time. If they are late, they are late. Going to the principal's office stinks. Don't be afraid to disappoint them if they fail to stay within the set boundaries.

RECREATIONAL ACTIVITIES

Just like we need to get away from it all, so do kids. The acute anxiety of growing up in the age of Facebook, texting and cyber-bulling is completely new to every parent. Get the kids out of the bubble and find safe harbors where anxiety doesn't reign supreme. When the kid complains, "there is nothing to do," then you know you are in the right place. They need to be bored, problem solve, and get creative. There is no better place than the outdoors in the woods, on a trail, or on a lake. No cell phones, no iPods, no computers. A ten-year-old boy in the woods will never be bored.

Overall, the simplest things in life are sometimes the hardest to do. There is no play book to go to for parents. However, there are fundamental building blocks that contemporary parents are afraid to use because they (a) want their kids to like them or (b) they are afraid the kid isn't resilient enough to handle failure.

After what I saw this week, our kids are a lot more resilient than we give them credit for. Let them try. Let them fail. Let them problem solve. Let them succeed. Praise them. You owe it to yourself. You owe it to them.

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Cruising to Alaska

By Janyce C. Katz

My husband, Mark, and I stood on a small, wooden bridge thirteen miles outside of Juneau, Alaska, looking at the Mendenhall Glazier and an ice cube filled lake on one side of the bridge.

A salmon-filled stream flowed out of a thickly wooded forest at the other end of the bridge toward the glazier.

Below us, hundreds of salmon jumped and wiggled their way through the ice cold water towards the glazier-ice-filled lake. Rain poured down, soaking us. The fish ignored the extra water.

Suddenly, a black bear strolled out of the bushes nearer the glazier and headed toward the stream. The bear stopped about five feet from the bridge, turned his (or her) head upwards and stared at us for a few minutes. Clearly bored and indifferent to the gawking spectators taking his or her picture, the bear walked to the stream, hooked a claw-filled paw into the water, caught a salmon, and chomped down on the squirming fish.

We were on shore for the first time since we boarded the Westerdam, a Holland-American ship, in Seattle two days earlier. The ship had docked in Juneau, the capital city of Alaska since 1900, and we had seven hours to explore the city and countryside.

Approximately 32,000 inhabitants reside in Alaska's capital, a city with quite a bit of land, almost as large as Rhode Island and Delaware combined. It is reachable only by ship or airplane, as is much of Southeastern Alaska and its ten thousand islands.

Once the ship landed, we bought a tour that took us briefly through the city and the local branch of the University of Alaska to the Glazer area, spectacular even with drenching water falling and limiting the view. There are thirty glaciers around Juneau, with Mendenhall being conveniently located just off a main road and in an area where black bears congregate for the salmon buffet in the streams.

Sadly, the tour did not allow us sufficient time to see the bear, the salmon, Mendenhall Glazier and its visitor center. When we returned to the center of town, with Mount Juneau looming over it, we could not visit government buildings because they were closed. Plus, to say the rain drenched and chilled us would have been an understatement.

When we got off the tour bus, we assessed what we would do next. In the pouring rain with its low-lying clouds, going on Roberts Tramway to the top of one of the mountains, going whale-watching or helicoptering to the top of one of the glaciers and dog-sledding on them were also Juneau activities we ruled out.

Wet and drenched throughout, we trotted back to the warmth of the ship, where we quickly showered and changed into dry clothes. Then, a quick, warm drink, a little classical music from the group located on the second level of the ship, as we stared at the landscape, strikingly beautiful even in its wetness.

We had chosen to experience the 49th state in what could best be described as a quick taste of Alaska, more because we didn't have time to thoroughly explore than because we wanted the cruise experience.

Studying tour books gave us an idea about how little of this vast state we could actually see in a short time period. The books described tours, of which there are many, depending not only upon the amount of time and money one wanted to spend, but also what one wanted to do – hunt, see whales, ride bikes, kayak, climb mountains, see museums, go above the Arctic Circle, sleep in an igloo and so forth. Or, one could fly into the state, rent a car and explore.

Once we determined we would cruise into Alaska, we faced another major choice. Ships of all sizes sail a round trip to and from a mainland city. Other ships travel seven days in one direction – to or from Alaska. People taking those trips usually add land trips before or after the cruise. Some smaller ships go into the inland and/or rough, very wild areas. The variety is endless.

Holland America seemed to be a cruise line with more sophisticated music and theatre for those of us who preferred French chanters to hip hop, but with many amenities for all ages. For us, however, the deciding factor was the great deal we found on Priceline on a seven-day tour of Alaska and the ocean around the southeastern part of it with departure and arrival from Seattle. Never having been on a cruise, I expected to be bored and took a book. Instead, I felt returned to summer camp with fun things to do and food much better than the summer camps of my childhood. An opportunity for a massage, a swim, dancing, shows, musicians and interesting people to meet. For those who gamble or like to shop, the ship provided for that as well. And the library on the tenth level had lots of books I had been meaning to read.

What we didn't understand when we embarked on this trip was that we would spend far more time on the ship than in Alaska. Luckily, we had a view from the balcony of our room – glacier-covered mountains, the occasional whale spouting water near the ship. There was an elegance to the ship and to the manner in which all activities were presented. In the upstairs dining room where we breakfasted, the Westerdam played Edith Piaf and other such singers as background music.

After hours of sailing, eating etc., we would get off the boat, get a taste of the magnificent Alaskan countryside, see a bear or an eagle or a city like Ketchikan, the fourth largest city in the state at 8,000 inhabitants. Then back to the ship and the next stop.

Our cruise took us as far north as Hubbard Glacier. In between that glacier and Ketchikan, the start of the Inland Passage, to the south, the ship stopped at Juneau and Sitka, the first capital of Alaska. On our way back to Seattle, we docked at Victoria, where we viewed a city also constructed in a beautiful area, but remarkably sophisticated in comparison to Juneau, Sitka and Ketchikan.

Tours of the various stops can be purchased before sailing, during the trip, just before getting off the ship or from vendors not connected with the cruise line who sell tours at the landing. Tours purchased dock-side may be less expensive, and, should it be raining, definitely give one the opportunity to skip an outdoor activity. However, should a cruise ship tour be late for some reason, arrangements will be made to get you back on the cruise. Good luck doing that with the other tours.

Would I do this again? You bet. Assuming the budget and schedule would permit, I would be back on that ship in a room with a view heading north in Alaska. If I had time, I would add a land tour out of Anchorage to a cruise through the Inland Channel, explore more, try a night in an igloo and really get to know our largest state.

As to cruising, if you liked summer camp, this could be for you. On a big ship like the Westerdam, there is much to do and too much to eat. It's hard to be bored.

Postscript to cruise ship Costa Concordia and the disaster that occurred off Giglio Island, Italy in January 2012: A lady I never met, very sophisticated and attractive, admitted to me as we were bussed to the Seattle port where our respective ships were docked that she never had been on a cruise and was concerned. Simultaneously, we broke into the camp song "Titanic" and soon half the bus joined in. On the Holland America ship, Westerdam, we were reassured by finding safety equipment in the closet of our cabin. Further, after everyone and their luggage had been loaded onto the boat and before the boat took off, a safety drill was announced. Everyone proceeded to the station where the boats to which we were assigned sat, waiting for the tragedy we all hoped would never occur. While we encountered hard rain during the trip, we never had storms and huge waves. However, from all the precautions the captain and the other employees took to prevent disease spread, to ensure our safety, we felt that we would have a good chance of surviving anything that the wind would blow in our direction.

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