Columbus Bar
Summer 2016

LAWYERS QUARTERLY

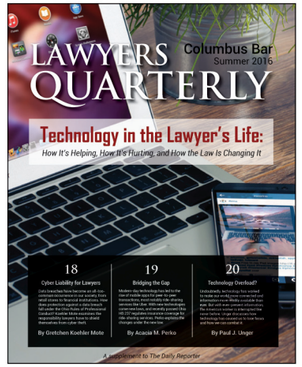
Technology in the Lawyer's Life:

How It's Helping, How It's Hurting, and How the Law Is Changing It

A supplement to The Daily Reporter

LAWYERS QUARTERLY

Columbus Bar
Summer 2016



President's Page

Moving Forward:
2016 Marks Changes to Columbus Bar Publications and Digital Directory

By Brigid E. Heid

Technology touches all parts of our daily lives. We're more interconnected than ever, able to access information at the touch of a button and constantly learn of new apps and devices promising the latest innovations. While I consume news stories online throughout the day, I unapologetically start each morning by opening my paper subscription to The Dispatch, reading it over a cup of coffee. That said, I have come to embrace technology that makes my life easier and is simple to adopt.

When it comes to technology, the legal profession has been notoriously slow to adapt. Electronic filing, e-Discovery and "the cloud" were once looked upon with an air of fear or skepticism. Self-styled "creative disruptors" promising easy access to online legal advice and referrals to virtual lawyers are seen as pariahs by many. Undoubtedly, technology has changed the practice of law, and not necessarily all for the better.

At the CBA, we strive to embrace new technology to provide improved services and enhanced value to our members. During my tenure on the Board of Governors since 2011, I've participated in many conversations with the tech-savvy staffers, knowledgeable members and industry specialists. We've conducted focus groups, watched industry trends and carefully researched technological advancements to consider which applications might be adopted at the Columbus Bar.

As a result of these efforts, I am honored to announce the following projects are launching at the outset of my presidency. First, we're forging a new media partnership with Columbus Business First offering online access to CBA member news and the central Ohio business community. Second, we'll be offering an exclusively digital Columbus Bar Lawyers Quarterly. Finally, we'll launch a redesigned digital directory, with enhanced features and a more modern look.

Columbus Bar and Business First

Effective in July, the CBA has formed a partnership with Columbus Business First for all printed publications. In addition to our daily social media and website updates, CBA news and member profiles will now be publicized in Columbus Business First on a bi-weekly basis. Publishing in Business First will increase the profile of the CBA by bringing us to the forefront of a much larger, business-oriented audience, where over 50,000 readers will now be able to see the success of our members and the great work we are doing on behalf of our clients and the Columbus community. Further, increasing digital access to our publications gives us the ability to keep our members informed on a timely basis, while reducing the time and costs associated with delivering printed communications.

Digital Lawyers Quarterly

As Columbus Bar Lawyers Quarterly moves to a digital format, the magazine also becomes interactive and more readily shared. As readers, you will be able to enjoy a more attractive, streamlined design through Issuu, an online digital publishing platform. As an author, you will gain access to more readership and thereby enjoy greater exposure. The CBA itself will be better able to track exactly which topics are of greatest interest to our readers. In short, moving publications to a digital format drives higher online traffic to authors' profiles and the CBA website.

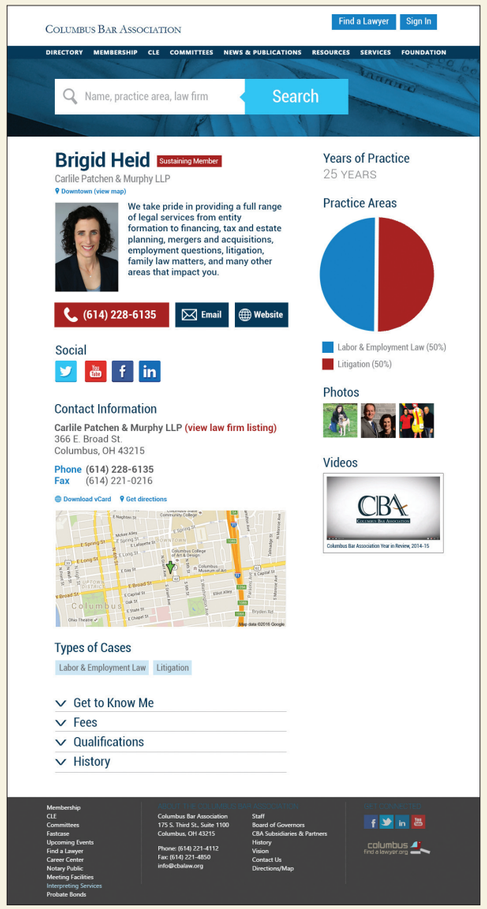
Redesigned Digital Directory

Finally, I am perhaps most excited about the launch of the dramatically improved Digital Directory. To the right of this article, on the next page, we've included an example of a new profile page and an old profile page, using my member information. As you can see, the new profile has a cleaner, more modern design and includes more information about the member, which will give a viewer a greater sense of who you are as an attorney and member of the Columbus Bar. As the internet takes over as the most widely used tool to find an attorney, we're giving you a leg up on building your online presence.

With the 2016 membership year just beginning, I am anxious to see what other improvements we might have in store. But, I'll still be reading my morning paper the old fashioned way.

Brigid E. Heid, Esq.
Carlile Patchen & Murphy LLP
bheid@cpmlaw.com

NEW Directory



Old Directory

Lawyers Quarterly Digital Edition Moves to Issuu

By Caitlin A. Roberts

From Bar Briefs to Columbus Bar Lawyers Quarterly, the Columbus Bar Association's magazine designed to capture ideas and anecdotes from attorneys in central Ohio has undergone quite a few changes throughout its life. Archives of the magazine are stored at the Columbus Bar offices – dating back to the 1970s – and it is interesting to look back at some of those changes. Now, we are undergoing a new one, as we move where the magazine is housed digitally. While Columbus Bar Lawyers Quarterly has been digitally accessible through the Columbus Bar website for some time, we recently moved it to a new digital publishing platform, Issuu.

Readers of the magazine can access content for free via desktop, laptop, tablet or mobile device, either through the Issuu website or app. Issuu gives readers a more realistic reading experience, simulating the flipping of magazine pages, with just the swipe of your finger.

Also new to the digital magazine is an interactive Table of Contents and links throughout the magazine to author's profiles. In an increasingly digital age, Issuu takes advantage of modern technology and allows us to connect with relevant parts of the Internet. Potential business clients reading an article can immediately find the author's contact information; law firms and attorney services who advertise within the magazine can link to their own websites.

Having a more robust online platform also allows authors and readers to take advantage of social media sharing with ease. Facebook, Twitter, LinkedIn and more can be used to share clips of articles or the entire magazine as a whole. This in turn allows for a larger readership, and members who author an article can raise their profile and demonstrate their legal expertise to a wider audience.

Finally, one of the most exciting components of the move to Issuu is the enhanced analytics the platform offers. We're able to see how often people are reading each issue of Columbus Bar Lawyers Quarterly and for what length of time, even down to the individual articles. As a result, we'll be able to track which topics and features are most popular, enhancing future publications and the value of the magazine to our members.

Maybe you're even reading this on Issuu right now … if so, take a look around and let us know what you think.

Caitlin A. Roberts
Publications Coordinator, Columbus Bar Association
caitlin@cbalaw.org

Common Threads Among Cases:

Factors that Impact the Ease of Mediation in Differing Courts

By David M. Cohen

I spend most of my mornings as a mediator for Community Mediation Services, a non-profit organization mediating eviction-related landlord-tenant disputes at the Franklin County Municipal Court. Most of the tenants are behind in their rent and have no legal defense. Yet, in most of these cases and particularly in the cases in which neither party is represented by counsel, a mutually agreeable resolution is reached.

I also am a volunteer mediator for the U.S. District Court, Southern District of Ohio, during the Settlement Week program done each calendar quarter. While we are often able to resolve these cases at mediation or shortly thereafter as a result of follow-up telephone conversations, these cases are less likely to settle during the Settlement Week mediation than the cases I mediate at Municipal Court.

There are inherent benefits in mediation, regardless of the court involved. Mediation provides an opportunity, and most likely the only opportunity, for the parties and their attorneys – all of the decision-makers – to be present at the same location and time in the presence of a trained neutral party to assist in the negotiations. At a minimum, the parties have the opportunity to establish a basis for future negotiations and resolution.

As I am sure all mediators do after a mediation, I ask myself why the session did or did not result in a settlement. Here are my thoughts as to why the number of mediations resulting in immediate settlement is higher in Municipal Court eviction proceedings than in District Court cases.

I originally thought mediating District Court cases would be much different than mediating in Municipal Court. I thought that the experienced, higher-paid attorneys and the clients that they represented in District Court would understand the risks and high cost of litigation, approach the mediation as business people, be creative in developing win-win scenarios and be more willing to reach a mutually beneficial resolution. In Municipal Court, all of the power seemed to be in the hands of the landlord, which I thought would be a substantial barrier to settlement.

While the dollar amounts involved in an eviction court mediation are generally less than a few thousand dollars and in District Court mediations often involve millions, there are several common elements. Whether the tenant is facing an eviction or a business person believes that they have been wronged in a contract dispute or a plaintiff in a personal injury case believes that the defendant's offers are insulting, the individuals are in very stressful situations and often emotional. I particularly think about a District Court case involving two family-owned, successful businesses in which counsel for each of the parties told me that there was no way they could recover their legal costs post-mediation. Yet, they would not negotiate a settlement at that time. Individuals have to, at least to some extent, get past those emotions and into a mental place where they can make rational decisions that are in their best interests. The cases of these individuals affect their daily lives and make them lose sleep. Emotions can run high regardless of the dollars involved and the court in which the case is pending.

As I see it, six general factors are responsible for differences in rate of immediate settlement at mediation sessions in Municipal Court and District Court.

The Presence and Role of the Parties

In pro se cases at eviction court, the landlord and the tenant are both present. When the tenant explains what has occurred, such as "I lost my job, but am starting a new job next week ... I had to miss work and lost pay because my mother was ill, etc.," the landlord is there to hear it directly from the tenant, to judge the sincerity of the tenant and to determine what he is willing to agree upon. At times, even at court, tenants will tell landlords they are appreciated for how much they have done and apologize for being behind in rent.

Denying the opportunity for the client to present his case directly to the other party can make settlement more difficult. A problem with litigation is that the client can get lost in the proceedings. Conversations go through attorneys, and the client doesn't get the opportunity to directly address the other party and may feel as though he is not getting the opportunity to express his message. Mediation provides an opportunity for each party to speak in the presence of each other, but the opportunity can only be seized if the appropriate individuals are present and encouraged to participate.

With the District Court cases that I have mediated, at least one party has been a corporation or governmental entity. The corporate party is represented by its attorney and a corporate representative – often an in-house attorney. If the defendant is an insurance company, the representative is generally the insurance claims adjuster. The plaintiff has no individual with whom to connect, and this can be very frustrating. The individuals that were responsible for whatever wrong the plaintiff perceives happened aren't present to hear the plaintiff's view of the facts, respond or sympathize with the plaintiff.

When I work with mediation students at the Moritz College of Law at The Ohio State University, there are two students on a team. One student plays the role of the attorney and one plays the role of the client. At the mediation, the "client" explains his or her position as to the facts and the "attorney" for the most part addresses any legal matters. Prior to the mediation, the "attorney" and "client" have reached an agreement as to their roles at the mediation. In joint sessions at District Court mediations, the client rarely speaks in the presence of the other party.

Meeting Face-to-Face Instead of Immediate Caucusing

The trend in District Court mediations is for the parties to immediately proceed to caucuses. The traditional model of mediation is for the parties to meet jointly and to caucus separately with the mediator only when necessary. When I conduct mediation in Municipal Court, I have the parties stay together as long as this appears to be beneficial.

I understand why counsel may want immediate caucusing. This can eliminate concerns about the client making statements that could be damaging to their case, although with limited exceptions, communications in a mediation are privileged (Section 2710.03, Ohio Revised Code). The parties believe that they have heard the other party's position, although the positions have probably been learned through reading pleadings rather than any face-to-face meetings. And yes, there is the possibility that there might be more animosity between the parties after the joint session than before the session. I consider that to be unlikely, since the attorneys or the mediator will probably separate the parties and begin the caucusing if the joint session is not going well.

Now, before a mediation begins in District Court, the attorneys generally request that the parties either don't meet jointly or meet only for introductions. When the parties go immediately to caucusing, some of the advantages of mediation are lost. As mentioned above, it is important for each party to hear the other's position directly from the other party instead of through an intermediary. If I am caucusing with a party who is convincingly explaining their position to me, it's not as impactful for me to state that position at caucus versus the other party hearing it directly.

I particularly remember an eviction case in which an elderly landlord was evicting a young woman because she had a male friend move in without adding him to the lease. The tenant needed the man to contribute toward the rent in order for her to remain. We caucused because the landlord did not want to talk to the man. As I talked to him in caucus, it became evident that he was sincere and responsible. After a half-hour or so, I just brought the man into the room to talk to the landlord. He was able to make the landlord comfortable with him being a renter, and he was added to the lease. Nothing I could have told the landlord would have gotten this result.

Also, being in the same room gives each party an opportunity to assess how the other party would appear to a court or jury. This can be particularly valuable if depositions have not yet been conducted and may help in evaluating settlement offers. Of course, if the attorney is insisting that his client not talk during the joint session, then this opportunity would be lost.

The Settlement Authority of Those Present

The landlord who owns the rented property clearly has the authority to work out an arrangement with the tenant. In District Court mediations, I always ask and am generally told that the individuals present have the necessary settlement authority. I understand that no one at a mediation can bind a public entity and that any settlement may need to be approved by commissioners, a board, the trustees or other decision-making body. In other cases, I find that the parties present have limited settlement authority. If the other party makes suggestions that are outside that settlement authority, the representatives need to make a phone call. That doesn't seem to work. I presume that the parties in the room were given the limit on their settlement authority because that's all the defendant is willing to offer based on the facts that defendant knows pre-mediation. Hearing the other party's position at the mediation through a phone call from the defendant's attorney is not the same as hearing it directly from the other party. It's too easy to just say no on a phone call from the client's attorney, who may want to present the image that he is strongly representing his client's interest and therefore does not want to recommend acceptance of a proposal that he believes his client doesn't want to hear, even if it makes sense based upon what was said at the mediation.

The Subject Matter of the Case

District Court cases are not necessarily more legally complex than the Municipal Court eviction cases. While the dollars involved in a tort case may be large, determining whether a party is liable may not be in dispute. In Municipal Court there may be legal issues concerning the owner of the property and the right of one party to evict the other, such as in cases where a family member or members desire to evict another family member. However, damages in the District Court cases may be very difficult to quantify. The parties can differ as to the reasonable amount to pay for pain and suffering, loss of a family member or punitive damages. The relevant facts can vary enough from case to case to make it difficult to determine a settlement value. In eviction cases, there generally is not a dispute as to rent owed.

The Timing of the Mediation

The mediation at eviction court is happening at the last possible minute – past the courthouse steps and literally just outside the courtroom. For the tenant it's now or never. Chances are that if there is no agreed upon resolution, they have about a week to find a new place and remove all of their belongings before those items are physically put outside. In District Court, cases often go to mediation before much of the discovery is done. While it makes sense to reach a reasonable resolution before the cost of discovery is incurred, the lack of information can be a barrier to settlement.

The Consequences of Not Settling

In many cases, I hear that there is principle involved and that a settlement would mean not pursuing that principle. The tenants may claim that the property is unfit for habitation and that if they continue to stay in the unit and pursue the case, then somehow they can force the landlord to make the necessary repairs. However, the reality is that the tenants will be evicted for nonpayment of rent, regardless of the condition of the property – unless they have followed the rent escrow procedures, which is rarely done. In District Court, the plaintiff may believe that if the settlement is for too little an amount, then the defendant is not sufficiently punished and will engage in similar future conduct. However, the reality may be that the plaintiff will incur considerable costs and spend considerable effort in pursuing a case that may well not end the way the plaintiff hopes.

The consequences of not settling are huge and immediate for a tenant. In a very short period, they and their children could lose most of their belongings and be in a homeless shelter or on the street. This generally gets them past the desire to stand on principle such that they become willing to reach an agreement. Landlords don't find it pleasant to remove a tenant's belongings. They'd like to avoid taking that action. If they can get comfortable with the tenant being able to make future rent payments and maybe even payments for all or part of the back rent through a payment plan, then they don't have to refurbish the unit and find a new tenant. Further, if the matter can be resolved amicably, the chances of the tenant damaging the unit may be less.

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The Hot Housing Market and its Hot New Regulation: TRID

By Melonia A. Bennett

The current housing market in Columbus, Ohio is hot; locals have joked, "it's like the recession never happened here."

It turns out that there is some truth to this perception. In 2015, U.S. home sellers realized an average price gain of 11 percent or $20,378, the largest average price gain since 2007 and an eight-year high. Columbus exceeded the national benchmark – it reached a 10-year high for single family home and condominium sales in 2015. A report by the Columbus Board of Realtors shows that 2,362 central Ohio homes and condominiums sold in March alone, a 6.3 percent increase over one year ago. Nearly 30,000 homes sold last year in the Columbus and central Ohio Multiple Listing Service area.

All of this data suggests home sales and financing purchases continue to be a big business. Like any major industry, the big home mortgage business is subject to numerous new legal requirements. Historically, lenders and real estate professionals for home mortgages were required to provide borrowers with many pages of complex disclosures about their mortgage transactions and costs to close the loan. But in October 2015, the legal requirements for these disclosures substantially changed, forcing mortgage lenders and real estate professionals to master the new rule: TRID.

TRID is an acronym for TILA-RESPA Integrated Disclosure, also referred to as the TILA-RESPA Rule or "Know Before You Owe." It outlines required disclosures for mortgage borrowers. The 1,888-page final TRID Rule is enforced by the Consumer Financial Protection Bureau (CFPB), led by Ohio-native and former Attorney General Richard Cordray. TILA stands for the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq*., and enacting Regulation Z, and RESPA stands for the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601–2617, and enacting Regulation X. The old disclosure requirements and forms are now regulated by the CFPB under the TRID Rule in Regulation Z.

TILA and RESPA were designed to protect borrowers from certain unfair practices in the lending industry. The new TRID Rule is part the CFPB's "Know Before You Owe" mortgage initiative, designed to help borrowers better understand their loan options. TRID hopes to assist borrowers in part by making the mortgage forms easier for the borrower to understand transaction costs and allow borrowers to shop for mortgages. Unlike many of the CFPB mortgage rules, the TRID Rule does not include an exception for small creditors.

Before the TRID Rule, under TILA and RESPA, lenders or brokers were required to supply mortgage borrowers with a series of disclosures before consummation to help explain the transaction to them: the Good Faith Estimate, the Initial Truth-In-Lending Statement, the Settlement Statement (HUD-1) and the Final Truth-In-Lending Statement. The TRID Rule consolidates the four previous disclosures into two forms: the Loan Estimate (LE) and the Closing Disclosure (CD).

When a consumer must receive the TRID disclosures is dependent upon the consummation date of the transaction. Under the federal rules, the consummation date is determined by state law. The Ohio Revised Code defines consummation as the time that a borrower becomes contractually obligated on a credit transaction (R.C. § 1349.25(C)). This is often, but not always, the date of closing for a purchase the end of rescission period in a refinancing transaction, depending on the underlying obligations of the transaction.

While the TRID Rule became effective, after some delay, on Oct. 3, 2015, there was a grace period for technical non-compliance. Given the complicated nature of the rule, compliance efforts are ongoing and attorneys should be prepared to assist lenders and other real estate professionals in understanding the following general changes and processes.

Timing Is Critical

The LE must be delivered no later than the third business day after receiving the borrower's application. Borrowers must be provided with the CD at least three business days prior to consummation. If there is a change of circumstances, borrowers must receive a revised LE no later than three business days after the lender receives information sufficient to establish a need for the revision. Attorneys can prepare materials for lenders to help them adhere to these disclosure dates and ensure that adherence is documented.

Responsibilities Have Shifted

Before TRID, the title company would prepare the HUD-1 and seek final approval from the lender. Under the TRID Rule, the lender and not the title company is ultimately responsible for the CD. Lenders should coordinate with their closing service providers. Attorneys should be aware of this shift and how it might impact client business models.

Line Items Have Changed

Certain loan cost disclosures on the CD have changed from the HUD-1. Attorneys need to carefully review where line items belong under the three general categories of loan costs to be able to provide practical advice to clients.

Record Keeping Is Critical

Lenders must keep copies of the LE for three years after consummation and retain copies of the CD and all CD-related documents for five years after consummation. Attorneys should work with lenders to develop their record retention polices, keeping in mind TRID's requirements.

Tolerances Have Changed

If a borrower pays more for a service than originally disclosed in the LE that particular fee is considered not to have been disclosed in good faith, unless it falls within specific tolerance limits. While the tolerance buckets have not changed under TRID, more services and fees are subject to tolerance analyses than under the prior rules. Lenders are also faced with greater responsibility to accurately disclose changes in fees and costs of their partner service providers. Attorneys need to familiarize themselves with the services and fees that are subject to the tolerances.

This brief summary reviews only the highest level regulatory issues facing lenders and other real estate professionals. Keep in mind that the TRID Rule and form changes were designed to make it easier for borrowers to understand their costs but added many new compliance requirements for lenders and other real estate professionals. Lenders and real estate professionals will look to their attorneys to become experts on the TRID Rule and the CFPB's continuing stream of implementation guidance and to address questions and concerns with confidence.

Melonia A. Bennett, Esq.
BakerHostetler
mbennett@bakerlaw.com

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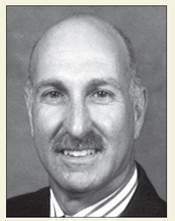
In some District Court cases we have the "deep pockets" problem. A party may not settle because they are willing to continue to spend and believe that the other side will not be able or not want to spend the money it would take to perform the required discovery, or they may believe that the other party is close to being emotionally spent and will settle for less to put an end to the matter. I doubt if any of the individuals at the table in a District Court case mediation face living in a homeless shelter if the mediation fails to result in a settlement, so the consequences of not settling are not as severe.

So to conclude, yes, there are certain inherent reasons why settling a case in District Court may be more challenging. District Court requires that the parties coming to mediation have representatives present with settlement authority. I suggest that the representatives also have a willingness to listen to the other party's side even if they believe that they already know it, the flexibility to adapt to whatever they might learn and the desire to work toward a settlement that will be in the best interest of all parties.



David M. Cohen, Esq.
Cohen Dispute Resolution Services, LLC
davidcohenmediation@gmail.com

LOSS OF SCALIA SENDS SOME SUPREME COURT CASES ON TO DIFFERENT TRAJECTORY

By Mary J. Nienaber

The unexpected passing of U.S. Supreme Court Justice Antonin Scalia in February this year not only left the court without one of its most outspoken jurists, it created an eight-justice panel with the potential to throw a number of cases on to a different trajectory. Some cases had completed oral arguments with Scalia present but had not been decided by the time of his death. This led SCOTUS experts to hypothesize about how the outcomes of various cases may change without Scalia there to vote and write.[1] Other cases had not yet been argued but would now face an eight – or in one case seven, due to recusal – justice vote. Although there is a strong possibility that Scalia was actively drafting at least one decision at the time of his death, no opinions under his name will be published posthumously.[2]

Cases that would now be decided by an eight-justice panel faced one of two fates if a majority vote was not cast for one of the parties: either a 4-4 split decision, which causes the lower court ruling to be upheld, or a re-hearing on the case in the upcoming fall term once nine justices are again sitting on the bench. With the U.S. Senate deadlocked at press time as to whether President Obama's nominee would be considered, the ability to re-hear cases with a full set of nine justices seems to be far in the future.

This article will be published shortly after the end of the SCOTUS term, so a resolution of the cases not available at press time should be available by the time you read this summary. The cases below were highlighted by several news outlets as the ones to watch for an outcome affected by Scalia's absence. Take a look at the list and consult SCOTUS Blog at http://www.scotusblog.com for updates, analysis as to how the court ruled and what may have changed without Scalia's influence and vote.

Case: Foster v. Chatman
Topic: Racial make-up in jury selection
Argument: Nov. 2, 2015
Decided: May 23, 2016
Vote: 7-1
Outcome: Reversed and remanded
Comment: This case was "on watch" because it was heard by a panel that included Scalia but was not decided until after his death.[3] The 7-1 outcome, however, would not have been affected – at least by the numbers – if Scalia had survived the publication of the opinion.[4]

Case: Fisher v. University of Texas at Austin
Topic: Affirmative action in higher education
Argument: Dec. 9, 2015
Decided: Not yet determined at press time
Vote: Not yet determined at press time
Outcome: Not yet determined at press time
Comment: The issue being considered is whether the University of Texas at Austin's "race-conscious" admissions program violates equal protection.[5] The interesting twist in this case is that because Justice Kagan recused herself, a seven-justice panel will decide the case.[6]

Case: Friedrichs v. California Teachers Assoc.
Topic: Public-sector unions
Argument: Jan. 11, 2016
Decided: March 29, 2016
Vote: 4-4. Cases in a 4-4 split do not disclose how the justices voted.[7]
Outcome: Lower court ruling upheld
Comment: This case was on the radar of SCOTUS experts, as it was another in which Scalia was present and active in oral arguments but passed away before the opinion was issued on March 29, 2016. His questions during arguments suggested that he might support overturning Abood v. Detroit Board of Education.[8] The eight justices deadlocked in a 4-4 split, resulting in the lower court decision being affirmed in favor of public unions. A petition for rehearing was filed on April 8, 2016 by counsel for the petitioner.[9]

Case: Whole Woman's Health v. Cole
Topic: Abortion restrictions
Argument: March 2, 2016
Decided: Not yet determined at press time
Vote: Not yet determined at press time
Outcome: Not yet determined at press time
Comment: This case addresses the abortion regulations enacted by the state of Texas in 2013. A 4-4 tie keeps the regulations in place and would not create precedent at the national level.[10]

Case: Zubik v. Burwell
Topic: Contraception and the ACA
Argument: March 23, 2016
Decided: May 16, 2016
Vote: 8-0
Outcome: Vacated and remanded
Comment: Religious institutions and hospitals brought suit over an accommodation to avoid the ACA contraception coverage requirement.[11] The Court sent the case back to the lower court, with an order essentially telling them to work it out or wait for a ninth Justice to be appointed.[12]

Case: United States v. Texas
Topic: Immigration and the President's Executive Order
Argument: April 18, 2016
Decided: Not yet determined at press time
Vote: Not yet determined at press time
Outcome: Not yet determined at press time
Comment: A 4-4 tie in this case would be a defeat for President Obama, as the injunction blocking his executive order would be upheld. Four million undocumented immigrants facing deportation will be affected by the ruling.[13]

Even though the outcome on these cases are pending and unclear, it is clear that Scalia's death will have a monumental impact on the highest court in the U.S. Many of this year's highly publicized cases could end in a split, with lower court rulings being upheld. Until a new justice is appointed, the future of these cases and others remains uncertain.

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Mary J. Nienaber, Esq.
Franklin County Probate Court
Mary_Nienaber@franklincountyohio.gov

The Interpreter Dilemma: Certified or Not?

By E. Pilar Warner

You just settled down with your morning tall latte. The interstate was clear and the sun is shining. Then you learn that your new client has the same first name you were given in Spanish class in high school. Your client does not seem to speak much English, and the case might go before the judge today. At that moment, you wish you ordered the venti.

When you realize that you need a legal interpreter, how do you find one? Your Spanish teacher is long retired, not an option. Your coworker might volunteer to do the job, or you might consider asking your neighbor, Manuel. But according to Ohio Revised Code 2311.14, your client will need a qualified interpreter who has taken an oath that she will make a true interpretation of the proceedings to the best of the interpreter's ability.

Rule 88 of the Superintendence for the Courts of Ohio further describes the situations when a foreign language interpreter is required, and states that a Supreme Court certified foreign language interpreter should be appointed if available. Otherwise, a provisionally qualified foreign language interpreter or a language-skilled foreign language interpreter might be appointed.

Ohio Supreme Court certified interpreters are bilingual individuals who have participated in a series of trainings on interpreting techniques, ethical rules and legal terminology among others.

Applicants for certification must first take a written exam and have a minimum of 80 percent correct answers. According to the Ohio Supreme Court Language Services website, about 58 percent of candidates in Ohio pass the written exam. After passing the written exam, a candidate is then eligible to take a rigorous oral test and must pass with at least a grade of 70 percent or better to become certified. A very low percentage of applicants pass this oral exam. Many experts in the field agree that there is no such thing as a perfect interpretation, but nationwide the profession has set up a minimum level of proficiency to be eligible to work as a certified interpreter in the courts. Your Spanish-speaking neighbor Manuel might prepare delicious arepas, but he might not be able to provide your client with the quality of interpretation that she needs during a court proceeding.

I once heard an attorney put it in a very realistic manner. "If you were in another country where a language different from yours was spoken and you had to go to court, would you want to have a certified interpreter appointed for you? Or just a 'bilingual' person?"

That really brings it home for most people. Nobody would want anything less than the best possible interpreter available.

The U.S. Constitution states that all persons deserve due process. Court interpreters aim at placing the limited English speaker in the same place as the English speaker while participating in the legal system to guarantee this right. A professional certified interpreter will provide a complete and accurate interpretation and will maintain confidentiality at all times.

One question often arises. "Does the attorney hire the interpreter, or does the court hire the interpreter?" Certified interpreters are bound to strict ethical rules that include being impartial during the course of their work. Therefore, an attorney should not hire an interpreter that will be appearing on record in a court proceeding, since this could be perceived as a potential conflict of interest to the other party. Instead, advise the court as soon as possible that your client will need an interpreter. After receiving your request, the court will refer to the Handbook for Ohio Judges, which can be viewed online on the Ohio Supreme Court website, to locate and appoint a certified interpreter.

"If you were in another country where a language different from yours was spoken and you had to go to court, would you want to have a certified interpreter appointed for you? Or just a 'bilingual' person?"

For attorney-client meetings and matters that are not going to be on the record, attorneys can hire a certified interpreter directly. The Ohio Supreme Court Language Services website contains a roster listing the names and contact information for the 85 certified and provisionally qualified court interpreters in 13 languages available in Ohio. You can locate the roster on the Ohio Supreme Court website as well.

If you feel you don't have the time to locate a certified interpreter, Columbus Bar Interpreting Services, an affiliate of the Columbus Bar Association, can promptly locate and contract certified interpreters at a competitive rate.

So the next time you realize that you need to find an interpreter for your client, skip the venti. Stay calm. Your day will still go smoothly because you know how to locate a professional certified court interpreter.

E. Pilar Warner
Certified Spanish Court Interpreter
pirowar@gmail.com

Three Project Management Tools Every Lawyer Can Use

By Kelly L. Atkinson

Most lawyers continually seek that one differentiating factor that will make them stand out above the rest. Small or large firm, litigation or transactional – how are you *different* from the competition? Many claim that they are responsive, inexpensive true business partners who understand their clients. Yes, many. Unfortunately, identifying that you can and will materialize those qualities for your clients doesn't actually separate you in their minds from what nearly every other firm can and will claim to do for them as well. You need to tout something more tangible that clients can quickly and easily see value in.

So how can you stand out to your current and prospective clients? Having an MBA with a focus on operations management and a member of my firm's Legal Practice Management team, I suggest taking a much closer look into legal project management. While there is a good deal of developing literature on the topic, particularly in the big firm/big company world, it is not evident that many Columbus lawyers have fully embraced the idea yet. LPM is an opportunity for many different kinds of lawyers to distinguish themselves, particularly among business-savvy clients.

For those of you who are new to this methodology, consider implementing just three core LPM principles that can help you better manage your clients' matters.

Develop a Communications Plan

Every client has different expectations, particularly when it comes to how and how often they want to hear from you. Some may never want to hear from you unless there's a problem. Some want a phone call every day to know you're still on top of your project. Others would prefer a weekly email status update. By defining your client's preferences up front, you can stay on top of any concerns and keep your client satisfied in the way that suits them.

This may not be necessary with the client who was your fraternity brother or close cousin; communication with those clients may be completely intuitive. However, with many clients and business clients in particular, faces change. Your close contact may leave, get reassigned or get a new boss who has a more hands on approach. A communications plan – even if not lengthy – may help demonstrate your commitment to the client's interests to that new face. Likewise, if you are pitching new work, how many of your competitors will come in with questions designed to establish a communications plan to ensure the client's needs are met?

The internal aspect of a communications plan is just as important to your client, even though it stays behind the scenes. By defining the tempo and means of internal correspondence from the beginning, you minimize the risk of duplicating work and leaving attorneys in the dark. The lead attorney should set clear expectations at the outset so everyone on the team knows who will do what and when, which will present a unified, streamlined work product to the client.

Create a Work Breakdown Schedule

Lawyers and law firms who can just work and work, then send an hourly bill at the end of the project and expect it to be paid without question are rapidly becoming extinct. Clients understandably want predictable costs up front, as is the case with most of their expenditures.

A WBS dissects a project into manageable pieces to help with both pricing and allocating resources to best serve your client. This can be as simple or complicated as it needs to be, depending on the project. While you may never be able to consider all of the twists and turns a complex litigation case may encounter, defining what you can at the start can help you anticipate risks and how to budget for those. Also, spelling out contingencies and their potential costs demonstrates your expertise – *you've done this before*. The WBS serves as a roadmap throughout a matter, regardless of complexity, and helps you better promptly communicate to the client any changes to the original plan as soon as they arise.

Finish the Job with a Debrief

Once you've – hopefully – obtained the desired result for your client on a given matter, what better way to express how much you care about them as a client than by going over what went well, what could have gone better and what actions the client can now proactively take based on what you learned together?

You should do this both internally with your client service team and externally with your client. Gathering feedback from both meetings allows you to process how you managed the matter and improve your methods for future matters. Having a conversation with your client also gives you a chance to thank them for the opportunity and to ask how else you can help them to be successful. Taking this single extra step shows that you truly do care about their business and not just getting their cash receipts in the door.

Whether you call it LPM or just good communication and matter management, the demands on lawyers to function like other businesses and demonstrate that they are doing so have increased. These three core LPM principles show you care about their business needs – because you want to put your money where your mouth is.

Kelly L. Atkinson
Barnes & Thornburg
kelly.atkinson@btlaw.com

Law Schools:
From Bad to Worse

By Jason M. Dolin

Declining Numbers

The February 2016 bar exam results were released by the Ohio Supreme Court on April 22, 2016, and it just keeps getting worse. Fifty-seven percent of all bar exam takers, including those takers who had previously failed the bar exam, and 70 percent of first-time takers passed the February bar exam. Flipping that around, 42.8 percent of all takers and 30 percent of first-time takers flunked the exam.[1] The overall February 2016 bar exam pass rate was the lowest in 12 years and the first-time taker pass rate was the lowest for the February exam in 13 years.[2] Only three other times in the last 26 years has the overall February pass rate sunk below 60 percent.[3]

With the release of the 2016 results, the February bar pass rate, both overall and for first-time takers, has now declined in Ohio for three straight years. A year-over-year decline of that length has not occurred for 14 years.[4] Locally, Capital's overall bar passage rate for the February 2016 exam was the lowest of all Ohio schools at 48 percent and was the second lowest for its first-time takers at 56 percent. Ohio State's overall pass rate was 62 percent, third best in the state, and 60 percent for its first-time takers, tied for sixth best – or worst – in the state.[5]

A Cold Wind in February

The overall February bar pass rate has always been lower than the pass rate for the July exam, in part because the February exam includes takers who have already failed the bar exam. But even within the weaker February category, the 2016 results were pretty grim and showed a steep decline from prior years. For example, in February 2011, the overall pass rate was 69.77 percent compared to the 57.2 percent pass rate in February 2016 – a drop of 12.5 percent in five years. Even if you exclude the high scoring Class of 2011, the overall pass rate has fallen from 64.3 percent in February 2014 to 57.2 percent in February 2016 – a drop of 7.1 percent in two years.

For first-time takers, the February 2011 pass rate was almost 86 percent, meaning that the pass rate for first-time takers has dropped almost 16 points in five years. But even if you exclude the results from the high scoring Class of 2011, the pass rate for first-time takers of the February bar exams for 2012, 2013 and 2014 fluctuated only between 79 and 80 percent. So putting the best possible spin on this, from 2014 to 2016, the February pass rate for first-time takers dropped nine points from 79 to 70 percent, a dramatic decline in two years.

The drop in the pass rate for first-time takers is particularly troubling for a few reasons. First, it's larger than the decline in the overall rate. But perhaps more significantly, first-time takers are *supposed* to pass the bar exam; they have no history of bar failure and through admission to and graduation from an ABA-accredited law school are presumed – with the aid of a bar prep course – to be prepared to pass the exam. When they fail the exam in ever-increasing numbers across several years, it's time to ask whether they should have been admitted to law school in the first place. By comparison, medical and dental schools don't face this problem, because they have done a much better job than law schools of upholding their admissions standards. The results of their licensing exams bear that out. Ninety-five percent of M.D. students pass Step 1 of the U.S. Medical Licensing Exam, which tests classroom knowledge taught in the first two years of medical school.[6] Dental students experience a similarly high pass rate in their licensing exam.[7] In the past 26 years, the Ohio bar passage rate has never hit 90 percent in either the February or July bar exams.[8]

Lower Admissions Standards Beget Lower Bar Passage

Something has gone very wrong but the cause is not hard to find. The decline in bar passage rates starts and probably ends with the fact that since 2011, when applications started to tumble, law schools began to admit large numbers of students with credentials that a few years ago would have resulted in their summary rejection. Since 2011, eight of Ohio's nine law schools – including Capital and Ohio State – lowered their admissions standards to keep bodies in the chairs and tuition dollars flowing. In short, admissions standards fell so that revenue wouldn't. The students admitted since 2011 are now taking the bar exam and failing in increasing numbers.

None of this should come as a surprise to the law schools. It has been well documented for almost two decades that an applicant's score on the LSAT is the best predictor of bar passage prior to that applicant's admission to law school.[9] Unfortunately, the February 2016 bar results lend further support to research which shows that law school applicants who score in the bottom quarter of the LSAT are at "extreme risk" or "high risk" of bar failure.[10] Many of these lower scoring students were admitted by Ohio law schools which knew, or should have known, that those students were at extreme or high risk of bar failure. The dollar-driven decisions by law schools a few years ago to admit low-credentialed applicants are now coming home to roost in the form of higher bar failure rates. We can expect to see continuing weak results on both the February and July bar exams for the next couple of years as the classes admitted in 2013, 2014 and 2015 move their way through the system.

A Bet that Went Wrong

In 2008, the ABA began allowing law schools to offer their own in-house bar prep courses – essentially semester long "cram" courses – for academic credit.[11] While there's no way to know with certainty, it is reasonable to suspect that the availability of these in-house cram courses may have encouraged some law schools to admit un(der)qualified students in the hope that they could be "trained to the test" and pass, regardless of their incoming qualifications. But in this era of declining bar pass rates, that tuition-generating tactic doesn't seem to be working very well. Law schools, like other institutions, demonstrate their values – what's important to them – through the standards they maintain. In the "old days" – before 2011 – law schools made value judgments that certain applicants, based on their credentials, were not good candidates for law practice. But that was then ... before the applicant pool shrank and the money got tight.

By admitting un(der)qualified students in their chase for tuition dollars, law schools have shown us their real values and told us through their actions that maintaining admissions standards is for suckers. It may well be that the language of the law is logic, but the language of the law school is money.

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5. http://www.supremecourt.ohio.gov/AttySvcs/admissions/tabulations/16feb/16feb.pdf
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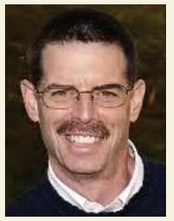
8. Information from Ohio Supreme Court Office of Bar Admissions on file with the author.
9. See Law School Admissions Council's National Longitudinal Bar Passage Study at page viii found at http://lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf
10. See http://lawschooltransparency.com/reform/projects/investigations/2015/analysis/; see also http://www.thefacultylounge.org/2014/08/david-frakt-on-his-shorter-than-expected-presentation-at-florida-coastal-school-of-law.html
11. See, for example, Capital Law School's "Core Bar Studies" and "Advanced Bar Studies" courses at http://law.capital.edu/4.9CourseListingandDescription/#946



Jason M. Dolin, Esq.
jmdolin@sbcglobal.net

Closet Dilemma:
A Capsule Wardrobe for New Attorneys

By Tara E. Turner

You land a great job fresh out of law school. You're excited, anxious and nervous all at the same time. You start thinking about what you'll do on the first day of your new job. You hope you don't do something embarrassing like trip or spill coffee all over yourself. At some point, you realize you have absolutely nothing to wear to your new professional job – one that actually has a dress code. On top of that, you have only a few weeks to build a professional wardrobe on a moderate budget.

Confession: I graduated law school in 2015 owning exactly one ill-fitting suit and a handful of mismatched dress clothes. I was pretty fortunate that my suit got me through every interview, an entire semester spent externing at the federal courthouse and the occasional group project or presentation. Suffice it to say that I wasn't very concerned with purchasing clothing appropriate for a professional office atmosphere while in law school. But once I got my first job, I knew my wardrobe needed an upgrade if I was going to show up on my first day looking professional and feeling confident.

In my quest to build a wardrobe with time and budget constraints, I kept coming back to a trend I'd read about in a few fashion magazines and blogs: the capsule wardrobe. Vogue published an article in April 2016 about the spring capsule wardrobe but I first stumbled upon the concept while following the blog "Unfancy." Essentially, you edit or discard pieces from your wardrobe until you're left with thirty to forty pieces that can be easily mixed and matched to create as many outfits as possible. Generally, neutral clothing will be the most efficient pieces in your wardrobe. It occurred to me that this concept could easily apply to your professional wardrobe – except that instead of editing down your wardrobe, you'll add versatile pieces to create a professional capsule wardrobe.

Although I don't consider myself well-versed in all things clothing, accessories and shoes, I did pick up a few tricks that could help any new attorney or law student build their own professional capsule wardrobe. To start, any basic professional wardrobe for an attorney should include suits. Even in the most casual of legal settings, there will still be situations where a suit is expected. When looking for suits, I aimed to purchase three to five suits of varying material and color that each complimented one another so that the individual pieces could be mixed and matched. For example, my navy suit jacket could easily go over a white blouse with my grey suit pants to create a new outfit. I also tried to vary the material of each suit so that I wasn't left with only wool suits in the summer or linen suits in the winter.

Because I didn't intend to wear a suit all the time – and not many people at my firm do – it was also important to purchase a few good slacks, button-up shirts and other classic short- and long-sleeve tops in a neutral color scheme. Some classic tops that I recommend for both men and women include a classic white, oxford stripe and gingham button-up shirt. Whenever I'm feeling lazy, the easiest outfit consists of well-tailored slacks and a button-up top. For women, I also suggest a few silk tops that are breathable and can be worn underneath suit jackets, cardigans and sweaters. You don't have to avoid colorful or bright tops – often these add a nice pop of color – but the essence of a capsule wardrobe is to choose pieces that can be worn with multiple outfits so a teal floral print blouse might only go with a few pieces.

Your capsule wardrobe doesn't have to last forever but I think subscribing to the concept in the beginning will allow you to build an efficient wardrobe on a budget and more importantly, help you feel confident knowing you have something professional and stylish to wear on your first day of work.

Outerwear, shoes and accessories are also part of the capsule wardrobe and can be just as important. Investing in a quality trench for rainy days and a neutral, heavier coat for the winter months was extremely important to me and I spent more money on those items than anything else. Admittedly, it was hard to limit the amount of shoes I purchased, but I did subscribe to a simple rule: make sure to have two different color options for each shoe style. For accessories, I'd suggest purchasing one nice wallet or handbag, a simple watch and a few pieces of jewelry.

Building your professional capsule wardrobe with neutral pieces means that you can always add to it over time, incorporating pieces with more color, texture and pattern. Your capsule wardrobe doesn't have to last forever but I think subscribing to the concept in the beginning will allow you to build an efficient wardrobe on a budget and more importantly, help you feel confident knowing you have something professional and stylish to wear on your first day of work.

Tara E. Turner, Esq.
BakerHostetler
tturner@bakerlaw.com

Advanced Reproductive Technologies and Bioethics: Contractual Concerns and Litigation Opportunities

By Ashley E. Gammella

Advances in science and technology not only change the medical landscape, but these innovations can raise issues in bioethics. As a result, new legal opportunities and challenges have emerged – most notably, contractual disputes and potential litigation in the areas of outsourced surrogacy and genetic selection.

The Outsourcing of Surrogacy

From a legal perspective, surrogacy is a transaction involving aspirant parent(s) and a surrogate, someone who carries the child to term. The United States, India, Thailand, Ukraine and Mexico[1] are a few of the countries that permit commercial or paid surrogacy. Within the United States, five states – Michigan, New York, New Jersey, Washington and the District of Columbia – prohibit commercial surrogacy. Eight states – California, Oregon, Nevada, New Hampshire, Rhode Island, Connecticut, Maine and Delaware – expressly allow it. The remaining 38 states neither expressly permit nor prohibit the practice of commercial surrogacy.[2]

Commercial surrogacy is an expensive practice, which has contributed to the outsourcing of the industry. India had become a popular destination for international commercial surrogacy, grossing $1 billion dollars annually and costing aspirant parents far less than comparable services domestically.[3] This industry boomed in India, until the end of 2015, when the Indian government instituted a ban on "surrogacy tourism." Nepal, Thailand and Mexico have also issued similar bans on foreigners wanting to engage in this practice.

However, experts estimate that Ukraine and potentially Greece will receive this billion-dollar business due to the closure of these markets.[4]

Capacity to Contract

The surrogacy clinics in India recruited Indian women to serve as surrogates for an international client base, from locations like the United States, Europe and Australia. Many of these women decided to be surrogates for the financial benefits and entered into a surrogacy contract. However, some of these contracts were entered into with some amount of coercion and posed questions of capacity to contract issues.

This was because many of these clinics sent recruiters to impoverished neighborhoods to pursue women who were fiscally desperate and often times illiterate.[5] These women were unable to read the contract they were required to sign and were often lied to about the compensation they were to receive. Consequently, the clinics and clinic owners grossed more of a profit than the surrogates renting their wombs. This coercive and predatory trend is currently spreading to other foreign markets, such as Ukraine.

Issues of Enforcement and Lack of Oversight

Once these contracts are executed and the embryos are implanted, there is not a significant legal structure in place to protect the surrogates. Often, surrogates are injected with multiple embryos in hopes that one will become viable. Consequently, multiple embryos may be fertilized, which is resolved by the aspirant parents taking home multiple babies, abandoning a baby – sometimes because they were not informed of the multiple pregnancy – or electing selective reduction. The need for a more strenuous legal framework was most recently demonstrated in a surrogacy transaction that gained attention in Thailand.[6]

In 2014, an Australian coupled hired a Thai surrogacy agency that contracted with a surrogate to carry a child. She conceived twins, and it is alleged that the couple requested selective reduction after being informed one of the fetuses had Down Syndrome. The Thai surrogate refused and gave birth to both children. The couple took one child and left the surrogate to care for the special needs baby. However, the Australian couple claims they had no knowledge of the second child.[7] This is a clear illustration of the lack of oversight and potential problems in the international surrogacy community.

Genetic Selection

Preimplantation Genetic Diagnosis, or PGD, is a tool used in reproductive health, which involves doctors screening embryos before implanting them via in vitro fertilization. Traditionally it has been used to prevent the genetic passing of diseases like cystic fibrosis.[8] However, it is now being utilized for more cosmetic purposes, including the selection of gender, hair color and eye color in the unborn.[9]

Genetic Abnormalities Litigation

There have been various cases surrounding PGD. PGD is not always effective, and most of the case law surrounds babies being born with the genetic abnormalities that the procedure was intended to prevent. The causes of action range from wrongful birth and medical malpractice to informed consent – due to lack of information regarding the margin of error.[10]

Cosmetic Litigation

It is unknown whether or not this same margin of error will apply to these cosmetic procedures. If so, there is a potential market for a new type of PGD litigation. These claims could potentially be pursued under the more traditional causes of action outlined above or could take the form of new causes of action like products liability.

Continued on page 27

Cyber Liability for Lawyers

By Gretchen Koehler Mote

Data breaches at retail stores and financial institutions grab the attention of the media. With the implementation of EMV chip credit cards and increased cyber security at entities that faced cyber theft in the past, cyber thieves are looking for new targets. Lawyers and law firms are increasingly among the low-hanging fruit for harvesting electronic data.

How can a data breach happen?

A data breach can occur when there is improper access to or disposal of a law firm's files or records, including loss or theft. This can happen with both electronic or the traditional paper variety.

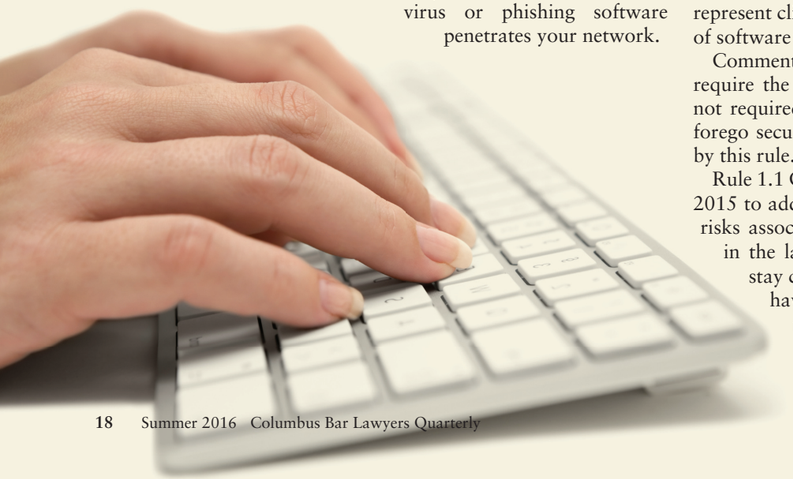
For traditional paper files or records, a breach can occur when files are not locked in a fireproof file cabinet or other secure storage when not in use. Files may be left on desks or credenzas allowing access by anyone entering the office, including cleaning crews, maintenance staff and security persons.

Improper access can also result from not regulating who can remove files from the cabinets or having unlocked doors to file storage areas that are not monitored. Improper disposal can result in a data breach when old files or records are not shredded beyond recognition using a cross-cut shredder or other means of complete destruction.

An electronic data breach can involve any device used to access and store data digitally. These devices can include a cell phone, tablet, laptop, desktop computer, server, scanner, copier or cloud and back up storage.

An electronic data breach can result from failure to log off, have adequate password protection, have established procedures on use of laptops and other electronic devices used outside the office to connect to office systems, maintain or update software including antivirus and spam software or encrypt devices, computers, servers and firewalls.

Inaction often leads to an electronic data breach. This can happen when passwords are not changed after an employee leaves or is fired, or when memory on replaced devices is not scrubbed. It can also occur when a device is stolen or lost, when a system is hacked or when virus or phishing software penetrates your network.



What happens if there is a data breach?

If there is a data breach of traditional or electronic data, there could be disclosure of client confidences. The data breach could potentially cause credit issues arising from improper access to accounts or by the use of stolen data to open new accounts. With an electronic data breach, there could also be the unintended disclosure of Personally Identifiable Information.

"Personal information," as defined in 1349.19 of the Ohio Revised Code, includes an individual's first name or first initial and last name, in combination with and linked to data elements listed in the statute. These include an individual's social security number, driver's license or state ID card number, or account number or credit or debit card number that would permit access to an individual's financial account. Personal information could be disclosed when these data elements are not encrypted, redacted or altered by technology in a manner that the data elements are unreadable.

What are a lawyer's duties relating to data breach?

Rule 1.6 of the Ohio Rules of Professional Conduct requires that a lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege. Effective April 1, 2015, Rule 1.6 (c) was amended to add new language requiring that "a lawyer shall make *reasonable* efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to representation of a client."

Comment 18 of Rule 1.6 states that such unauthorized access to or inadvertent or unauthorized disclosure does not constitute a violation of division (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards and the extent to which the safeguards adversely affect the lawyer's ability to represent clients, such as making a device or important piece of software excessively difficult to use.

Comment 18 to Rule 1.6 further notes that a client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forego security measures that would otherwise be required by this rule.

Rule 1.1 Competence was also amended effective April 15, 2015 to add new Comment [8], "including the benefits and risks associated with relevant technology" to the changes in the law and its practice with which lawyers should stay current to maintain competence. Clearly, lawyers have a duty to make *reasonable* efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to representation of a client.

What can lawyers do to mitigate the risk?

The first step is to analyze compliance basics. Be sure that encryption is adequate and is actually used. Establish password protocols that require multiple passwords for data access and mandate passwords regularly be changed.

Conduct a risk assessment to determine all electronic devices in use and where the vulnerabilities lie. Establish an IRP and a WISP. If these terms are unfamiliar, get to know what they mean and plan to implement them. Implement policies and procedures and conduct training to know what to do in the event of a data breach.

Check whether data breach coverage is provided by your lawyers' professional liability carrier. If you do not have data breach coverage, look into purchasing it.

What to do if a breach occurs?

If a data breach occurs, report it *immediately* to your insurance carrier. After you report the data breach to your carrier, assess damages and implement policies and procedures set up for a data breach. Your carrier may be able to advise or assist if you have further duties imposed by ORC 1349.19.

What's the take away?

Lawyers have a duty to protect client confidential data from inadvertent or unauthorized disclosure, whether that data is kept in traditional paper files or records or in electronic format. Taking reasonable steps to implement policies and procedures to protect data in any form and having the appropriate insurance coverage can help mitigate the risks and provide peace of mind.

Gretchen Koehler Mote, Esq.
Ohio Bar Liability Insurance Company
gmote@oblic.com

BRIDGING THE GAP:
OHIO TAPS THE BRAKES ON RIDE-SHARING SERVICE COMPANIES

By Acacia M. Perko

On March 23, 2016, Ohio's House Bill 237 governing ride-sharing service companies will take effect. Now coined Transportation Network Companies, or TNCs, these companies generally provide their drivers with insurance coverage from the time they accept a customer's ride request to the time that customer exits the driver's vehicle. However, drivers are not covered by either the TNCs commercial insurance or their personal insurance while they are logged into the TNC's network and awaiting a customer's ride request. Now, 14 newly enacted statutes and an amendment to Revised Code Section 4509.103 bridge this gap period and impose new regulations on TNCs and their drivers. First, the new law mandates minimum coverage and requires TNCs to defend claims. Second, TNCs must obtain a permit to conduct business in Ohio and must require their drivers abide by zero-tolerance drug and alcohol provisions. Third, TNC drivers are specifically excluded from classification as employees under existing minimum wage laws, workers' compensation and unemployment laws. We expect the statute to impact insurance companies, TNCs and TNC drivers across the board and increase coverage litigation in the ride-share industry.

Under the new law, TNC drivers must maintain minimum coverage during the gap period in the amount of $50,000 for bodily injury or death of a person, $100,000 for bodily injury or death of two or more persons and $25,000 for property damage. They must also maintain minimum coverage of $1 million for bodily injury or death of one or more persons and property damage from the point when they accept a customer's ride request to the point when that customer exits the TNC driver's vehicle. TNC drivers must carry and provide proof of this minimum coverage to persons involved in an accident or law enforcement. Notably, the minimum coverage may be satisfied by either a policy maintained by the TNC driver personally, a policy maintained by the TNC or a combination of both.

Additionally, the new law requires TNCs to pay and defend all claims in the event a TNC driver fails to maintain the necessary coverage. TNCs are precluded from requiring a driver's private insurer to first deny coverage before providing coverage itself. In fact, the new law specifically permits private automobile insurance providers to exclude "any and all coverage afforded . . . for any loss or injury that occurs while a [TNC] driver is logged on to the [TNC's] digital network or while the driver is providing [TNC] services." Should a coverage dispute arise, TNCs and private automobile insurance providers will exchange information regarding the precise time when a driver logged on and off of the TNC's digital network in the hours before and after an accident to determine claim coverage.

In order to conduct business in Ohio, TNCs must obtain permits with the Public Utilities Commission of Ohio. TNCs must also disclose how fares are calculated, TNC rates, estimated fares, photographs of drivers and the driver's license plate. TNCs are also required to prominently display the TNC's name on the vehicle providing the service, provide customers with a receipt following service, provide proof of insurance and conduct background checks on all prospective drivers. Further, TNCs must prohibit TNC drivers from consuming any alcohol or drug of abuse, not including prescribed medications, while transporting passengers or even while logged on to the TNC digital network.

While recent court decisions in at least one state have classified TNC

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Technology Overload?

Managing Distractions and Workload in the 21st Century

By Paul J. Unger

150 emails … 50 instant messages … 20 telephone calls … 15 walk-in interruptions … 25 social media notifications … 50 email or internet curiosity breaks … that totals 310 digital interruptions. Divide that into 480 workday minutes and that is an interruption every 1.55 minutes! Most studies that I see indicate that the average American worker is interrupted every two to three minutes.

In a 2007 Microsoft Corp. study, researchers concluded that it takes 15 minutes to return back to the work that computer programmers were performing at the time of an electronic-based interruption. If we get interrupted every two to three minutes, and it takes 15 minutes to return back to the work we were performing, how do we get anything done during the course of the day? This is why we look at our timesheets somedays at 5 p.m. and see only two hours of billable time, but we feel like we put in a 14-hour day.

The reality is that we live in an age of information overload. We are constantly connected to the world. We sleep with our smartphones. We are surrounded by 24-hour news networks. From social media to tablet computers, we can't escape a constant stream on information. This is why very smart people underperform. Do you ever wonder why your head is in a constant cloud and you are unable to focus? It is called Attention Deficit Trait, or ADT, and it is a world-wide epidemic.

ADT is a relative to Attention Deficit Disorder, but it is very different in that ADD has a genetic component. ADT does not. ADT is environmentally induced, and in today's age of information overload, those environmental factors are technology-based. In other words, ADT is a condition that is in large part caused by the technology and connectivity that we love so much. Yes, the very technology that we love is causing us to walk around with foggy brains and causing us to underperform. The scary part is that no one knows the long term effects of information overload. However, some shorter term studies suggest that the problem is getting worse. More recent studies show that it takes slightly over 23 minutes to return back to the work we were performing at the time of a digital interruption.

What can we do about it? We need to rethink and realign the way that we live with technology. Listen, I love technology – it is my life and passion – but I sometimes don't like it so much, especially when it has a negative impact on productivity and our personal lives. We can combat ADT and overcome our inability to focus by attacking ADT on four fronts: personal health, workplace health, learning a time, task and email methodology and learning attention management skills.

Personal health is important on two fronts – physical and mental. Physically, we know that when we are fit, well-rested and healthy, we feel like we can conquer anything. When we are overweight and sleep-deprived, every situation sometimes seems to be doomed for failure. As an example, we know that we cannot eat a foot-long sub full of meat and processed bread, a bag of chips and piece of pie for lunch and come back and expect to stay away or concentrate. From a mental health perspective, we also know how difficult it is to concentrate and be productive when we are depressed or when we are focusing on a personal relationship that is suffering. We can't ignore these two important areas of our personal life. If these areas need improvement, hire a personal trainer and start exercising and go see a therapist or life coach to help get your physical and mental health back on track.

Workplace or organizational health is also very important. We know how difficult it is sometimes to focus in an environment that is negative or unhealthy. We know how difficult it is to operate in an environment full of drama and distrust. We need to focus on ways to improve workplace health. I am not a subject matter expert on this, but a great starting point that I recommend would be two books – "Five Dysfunctions of a Team" and "The Advantage," both by Patrick Lencioni.

Learning a time, task and email management methodology is the third front that we need to address. We need an effective way to first process the hundreds of digital and human interruptions and tasks that we receive during the course of a day and then organize the tasks, digital information and paper information that hits our desk. In other words, we need a digital methodology to get organized and stay organized. If we don't have system in place, we will operate in state of chaos. Studies show that if we do not have an effective task management system to capture our tasks and file away that information, we continue to worry about those things, which has an enormous impact on our ability to focus. I am an advocate of using and customizing tools like Microsoft Outlook and our smartphones to process this information. I also think that legal document management systems can be extremely helpful to legal professionals. These are tools like Worldox, NetDocuments, iManage or OpenText. However, I will delve into a more detailed breakdown of setting up a time, task and email management methodology in a future article.

Attention management skills are the fourth front that we need to address. As it relates to this, I want to share five attention management tips today that are easy, practical and will make a big impact on your ability to focus.

Turn Off All Notifications

Notifications are bad. Why would we give the world a hotline to our brain? Turn all notifications off … and I mean all of them. In Outlook, email notifications can be turned off by navigating to File > Options > Mail and deselecting the four different methods of notifying you when a new message arrives. On an iPhone, go to Settings > Notifications and go through and turn off notifications by app.

Practice Single Tasking

It is not enough to say that multi-tasking is bad. We need to practice single-tasking. We need to clear our desks and our multiple monitors of information that is not directly relevant to the project that we are executing. For example, you should always minimize Outlook on your second monitor unless you are batch processing emails or planning your upcoming tasks. Why would you leave up on your beautiful 21 inch screen the single most chaotic distraction known to man in the 21st century? I'm talking about email, and that is insane if you think about it. Email feeds us distraction bombs every 30 seconds to five minutes. How can we possibly focus if we see those bombs land in our inbox? Just because we have two or three monitors doesn't mean that we need to have something displayed on them, especially if the information displayed derails our ability to focus on the task in front of us!

Pomodoro

Pomodoro is an easy technique that utilizes the 25-minute tomato timer. We single-task – preferably deep-thought work – for 25 minutes and then take a break and do whatever we want for five minutes. In other words, we work in intervals. The human brain functions very well maintaining attention to a single task for 25 minutes. After 25 minutes, we begin to lose focus. By giving ourselves a five-minute break, we can return to deep-thought work for another 25 minutes very easily. This technique will make a huge impact on productivity and will also help combat procrastination. Think about it … we can endure even the most tedious dreaded task for 25 minutes, right? Once we get a little momentum going and we get immersed in the project, it becomes a lot easier.

Tackle Deep-Thought Work Early in the Day

Dive into deep-thought work, writing and projects early morning. There is little question about it … our brains function better following quiet time or sleep. We also know that we can be highly productive while the rest of the world is sleeping because there are far fewer, if any, interruptions. This can be one of the most productive times of the day.

Create Rituals

Rituals are small checklists or short rigid schedules designed to execute the same desired tasks during a set period of time. Rituals keep you on task. They are extremely useful because they help us form positive habits and prevent us from taking email or internet curiosity breaks. As an example, I have a morning administrative ritual whenever I am physically in the office and not speaking. I start with my regular breakfast routine and then check in on possible speaking engagements, arrange coffee meetings with potential or existing clients, conduct business-related social media, send out birthday wishes and check in with partners and various levels of my team.

Rituals also remind us to do things that we frequently forget … things that we commit ourselves to do as New Year resolutions or annual goals. By adding rituals and checklists into your life, you can greatly enhance your ability to focus and do those things that seem to always fall off our radar. I discovered an awesome application for the iPhone and iPad called "Checklist Again" to organize all my daily rituals.

In the next Columbus Bar Lawyers Quarterly, I will focus on a more detailed exploration of finding a time, task and email management methodology that works for you. In the interim, focus on the above attention management skills and share them with your immediate team.

Paul J. Unger, Esq.
Affinity Consulting Group
punger@affinityconsulting.com

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drivers as employees, Section 4925.10 expressly classifies TNC drivers as non-employees, unless agreed otherwise by contract, for purposes of Ohio laws regarding minimum fair wage standards, workers' compensation, unemployment, semimonthly payment of wages and whistle blower protection. Because TNC drivers are not employees for purposes of these code sections, TNC drivers will not be afforded the protection and benefits under those laws as employees unless a written contract classifies them differently.

In sum, insurance companies, TNCs and TNC drivers should expect changes in private and commercial insurance policies addressing coverage for TNC drivers, potentially higher insurance premium rates for additional coverage, increased scrutiny of written contracts between TNCs and their drivers, increased scrutiny of TNCs actions and actions of their drivers and increased coverage litigation in the ride-sharing industry.

Acacia M. Perko, Esq.
Reminger Co., L.P.A.
aperko@reminger.com

The Underside of Progress

By Janyce C. Katz

During the early 20th century, a time of rapid societal change, fueled in part by technological innovation and advancement, some twisted the law to create a social policy that harmed the weak and the "other." We can easily point to Nazi Germany in which that part of the legal profession, those not purged by Hitler for crimes like being Jewish or opposing his ascension to power, failed the country and the rule of law.[1]

Unfortunately, some of the seeds of the Nazi's worst legal policies were originally cultivated in the United States where, in 1927, the U.S. Supreme Court enshrined the policy of sterilization of the feebleminded. Buck v. Bell, 274 U.S. 200 (1927) arose after Carrie Elizabeth Buck was raped by the nephew of the couple allegedly caring for her. Writing the Court's opinion affirming the finding of Carrie's mental deficiency based upon false evidence and shoddy defense, Justice Oliver Wendell Holmes concluded "[t]hree generations of imbeciles are enough."[2]

With that decision, not only Carrie, her mother and her infant daughter were condemned to a lesser rank of society, but also Carrie and thousands of others were sterilized without their knowledge or consent. Most of these people, like Carrie, did not have the opportunity to fully develop their minds and skills; they were not "feebleminded" even under the rather flawed test used to determine who should be separated out from the rest of society. How did this happen?

At the turn of the 20th century, when farming was being replaced by industrialism, progress seemed to be moving society forward in better ways. Perfection seemed possible as the Gilded Age gave way to the Progressive Era, and government was seen as a tool to guarantee economic and social progress.

Progress meant that many believed the human race could be improved if the environment in which people lived as well as their education and their opportunities were improved. These people built on the reforms made by mid 19th century reformers, like Dorthea Dix, who advocated improving treatment of people housed in asylums, poorhouses, country homes and almshouses, and Samuel Howe, who directed the Perkins Institution for the Blind in Boston.

While Jane Addams and the then newly created National Council of Jewish Women opened homes to train the new immigrants in the skills needed to survive and succeed in the U.S., others devoted themselves to changing policy. Thomas Dewey wrote about providing education to all children as a tool to solidify the country's culture and help move its people forward. Upton Sinclair wrote "The Jungle," starting a movement to improve food quality using governmental regulations and newly created administrative agencies to enforce the regulations. Ida B. Wells published her anti-lynching pamphlet "Southern Horrors: Lynch Law in All Its Phases" and worked to stop racism.

Women voting was thought to be another means of improving society, as it was assumed women's choices in the polling booth would be better. The National American Woman Suffrage Association worked to get women the vote, and its replacement, the League of Women Voters tried to teach women the importance of being an educated voter once they could vote.

However, with progress came turmoil and disruption of traditional patterns. People moved from farms to the city. Open borders and massive numbers of immigrants fed workers into the new industrial system but kept the salaries low. From 1890 to 1914, about 70 percent of the immigrants were Catholics, Jews and Orthodox Christians from Eastern and Southern Europe, people with disparate cultural and religious traditions.

The changes disrupted the old order. Some people found themselves uncomfortably losing stature and positions. Perhaps that is why the turn of the twentieth century also saw a rebirth of the Ku Klux Klan, depicted as heroic people in white bedsheets with pointed head caps in the film "Birth of a Nation," saving the White Protestant from the immigrant, the Afro-American, the Catholic, the Jew, the different "other." This powerful, reborn Klan reached its fingers into politics, influencing elections like the governor's race in Ohio in 1936.

The idea that the human race could be improved by culling out the bad seeds began to develop when the idea of progress and societies constantly improving thanks to technology merged with Darwinism. In 1864, Herbert Spenser's "The Principles of Biology" laid out the "survival of the fittest" theory - that nature's failures, those with mental, physical or moral deficiencies could not and should not survive. Twenty years later, the ideas of Darwin and Mendel merged in the mind of Sir Francis Galton to form Social Darwinism - the species of humanity could be improved if talented people only married other talented people, just like certain traits were passed on by natural selection. Galton, a half cousin to Darwin, coined the term "eugenics" in 1883.

The eugenics movement grew in the U.S., funded by the Rockefeller Foundation, the Harriman railroad fortune and the Carnegie Institute among other prominent, respected organizations[3] and supported by many liberals in the progressive movement as well as conservatives. According to Adam Cohen, in his well-written book "Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck" some of the leading doctors and lawyers in the U.S. supported eugenics, with one of the presidents of the American Bar Association declaring "it necessary 'to protect future generations from the evil operation of the laws of heredity.'"[4] Theodore Roosevelt and Margaret Sanger were among the many supporting progress, improvements to society and eugenics.

Indiana enacted the first law allowing sterilization on eugenic grounds in 1907, with Connecticut and California following soon after. By 1914, 12 states already had sterilization laws, but courts had struck down 10 of them. The Eugenics Records Office's head, Harry Laughlin, himself an epileptic and strong anti-Semite, published a Model Eugenical Sterilization Law, designed to override the objections of the courts. He later was honored by Nazi Germany for this model law.

Dr. Albert Priddy, the superintendent of Virginia's Colony for Epileptics and Feeble believed the eugenics movement and sterilization would ensure that mental illness and feebleminded people would disappear over time. He sterilized a few folks before being slapped for malpractice and then worked to pass a law legalizing forced sterilization. He contacted lawyer and Virginia legislator Aubrey Strode to have him draft an act based on Laughlin's model law.[5] In 1924, the same year Virginia enshrined segregation of African-Americans in a law called The Racial Integrity Act, Virginia adopted Laughlin's model law, the Virginia Sterilization Act.[6]

Carrie found herself in the institution run by Priddy just when the new law had been enacted. Priddy branded Carrie as feebleminded. He also branded Carrie's mother - whose husband had died and who had limited education, children to support, few opportunities for income and turned to prostitution - as feebleminded.

Priddy decided that Carrie epitomized generations of feeblemindedness and should be used in a test case to affirm the Virginia sterilization law. Priddy ignored the fact that Carrie's foster parents had pulled her out after sixth grade when she had been a successful student to use her for domestic service and rent her services to others. Priddy determined the raped Carrie was promiscuous and feebleminded like her mother. At four months of age, her baby was judged feebleminded by hearsay rather than real evidence. What followed was a total miscarriage of justice.

At the hearings, Stroud loaded the docket with witnesses who had never talked with Carrie but testified about her feeblemindedness and "experts" on the benefits of sterilization of the degenerates of society. Priddy testified that Carrie was a low moron, something that even the now totally discredited test he used didn't show.

Irving Whitehead failed to offer an adequate defense for Carrie. He entered no witnesses for her into the record, he asked questions that helped the other side's witnesses, and, when the case was before the Supreme Court, he failed to use as precedent important court decisions that might have helped her. Plus, he discussed his case strategy with the board members of Priddy's institution.

While one prong of the law called for consent and free will, Carrie never made a decision by her own free will to be sterilized. Carrie had no idea she was to be sterilized if she lost the case. She also was told she would be reunited with her baby if the institution won the case - another lie.

Stroud won at each level, and Whitehead appealed to higher courts when he lost. At the U.S. Supreme Court, Justice Holmes wrote the decision, with the support of Chief Justice William Howard Taft. Both believed in the eugenics movement. In his decision, from which only one Justice dissented, Holmes based his decision in part on an earlier decision affirming the government's right to vaccinate individuals to protect them from smallpox.[7] Plus, he ruled that the law did not violate equal protection as it could be applied not only the institutionalized but all degenerates. He wrote that it would be "better for all the world, if instead of waiting to execute degenerate offspring for crime or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."[8]

Carrie Elizabeth Buck was abandoned by the legal system that should have protected her. After the decision, thousands of others in the U.S. were sterilized without consent or knowledge as was Carrie. States had sterilization laws on their books until 1979, and lawyers assisted in this travesty. Illegal sterilization continued. In 2013, Time magazine described women illegally sterilized in California prisons between 2006 and 2010.[9]

Buck v. Bell, a case never overturned, should serve as a warning to lawyers today as we move forward into this brave new world of technology and vast social change. When and if the laws and rules are written to encompass current technological changes, will we lawyers remember that justice must be mixed in with law, that it is "Justice, Justice, Justice" we should pursue throughout our careers?[10]

Will we follow the example of Aubrey Ellis Strode, an attorney and Virginia legislator who, according to attorney and historian Paul Lombardo, built a successful career on a case based upon manufactured evidence and a legal sham.[11] Or worse, will we be like Strode's opponent, Irving Whitehead? What will we do?

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Janyce C. Katz, Esq.
Senior Vice President, General
Innovations & Goods, Inc.
janyce.c.katz@gmail.com

Tom Enright: Retired Political Icon, Good Source of Local History

By The Honorable David E. Cain

Tom Enright, enjoying his retirement, reminisces on the history of the Franklin County Courts.

A painting of the former Franklin County Court of Commom Pleas, where Enright served in the office of the clerk.

Although retired, a longtime local office holder is still a good source of central Ohio political history. Tom Enright served more than 30 years in the Office of the Clerk of the Franklin County Common Pleas Court – 10 years as the chief deputy from 1961 to 1971 and more than 20 years as the elected clerk from 1971 to 1992.

Political life for Enright actually began when he was six years old, campaigning with his father, Joe Enright, for judges in the Franklin County Municipal Court, where the elder Enright was a bailiff from 1931 to 1971.

The 86-year-old Tom Enright and his wife, Marge, recently moved from their Clintonville home to a nearby senior residential center. On the wall in their living room is a large painting of the courthouse where Enright began his tenure as clerk, a three-story brick structure at the southeast corner of Mound and High streets, now the site of Dorrian Commons.

The old courthouse had a lobby to rival Grand Central Station, three stories high with a wrapping staircase at the north end and an open air elevator that looked like a wrought iron cage at the other end. A small coffee stand was near the elevator.

The building was attached at the second level on the south end to the newer County Administration Building – now named after the late Sheriff Jim Karnes – at the northeast corner of Fulton and High streets. The first floor of the courthouse housed the Probate Court, the Treasurer's Office and the Auditor's Office. The clerk was on the north end of the second floor. A Press Room was in the second-level connector and the Recorder's Office was just inside the newer building, which also held a host of other county offices.

Courtrooms were on the second and third floors of the old building and on one of the floors in the new section. A larger courtroom for high interest cases, like murders, could be found on the third floor of the courthouse.

"With everything so centralized, you knew practically everyone who worked in any branch of county government," Enright recalled. "I'd have coffee with the auditor and recorder in the mornings. Sheriff Stacy Hall would come over in the afternoons. He liked to spit tobacco out of my front windows at pigeons perched on a ledge. Once in a while, he'd hit one and celebrate."

Contrast that with today's world where multiple, larger buildings spread people out and electronic filing has drastically reduced the number of times civil attorneys have even to come to the courthouse. Modern architecture and technology will make strangers of us all.

Enright said he took his young children to the courthouse some weekend days for entertainment. "They rode the cage elevator, went to the courtrooms to play judge and visited the attic to see the bats that hung around the thousands of old case files."

"From 1920 on, you had to be a veteran and member of the American Legion to even think about running for election," the former clerk pointed out. He served in Korea in the Air Force for four years beginning in 1950. His affiliation with the American Legion went back even further than that. As a boy of 10 or 12 years, Enright began playing drums in the Sons of the American Legion Drum and Bugle Corps, attached to Legion Post 82 on North High Street in Clintonville.

In 1947, Enright started drumming in a dance band at the former Aquinas High School. He soon began playing with the Dick Kelly Band in Bexley. It had a big band sound and performed for such things as high school proms and outdoor summer dances. After the Air Force, he began working at the Board of Elections and playing with a band at Rocky's Tavern on Agler Road and later with Bob Marvin's Band. Marvin was better known as a local television celebrity, Flippo the Clown.

When he became a candidate for clerk, County Republican Chairman William Schneider told him "we don't want officeholders playing in a band," so Enright gave up his musical avocation.

Enright will never forget the 1958 election when the "right to work" issue was on the statewide ballot. The only Republican – statewide or in Franklin County – that did not lose the election was County Auditor Fred Dunn.

Then in 1961, Clerk Joseph Clifford appointed Enright as chief deputy. Interestingly, it was Clifford's father, Judge Joseph Clifford, who appointed Enright's father as a bailiff 30 years earlier. That Clifford later became a Common Pleas Court judge, and his son became a Municipal Court judge.

Joe Enright first served as a service bailiff assigned to an area known as the notorious "Fly Town" just northwest of downtown Columbus. He held the title of chief bailiff his 10 years.

Tom Enright ran successfully for an unexpired term in 1970 and successfully for five more terms after that. With name recognition always being a key to a good campaign, "Vote Right, Vote Enright" was his theme for the last four campaigns, at the suggestion of his father. It must have worked better for the voting public than for some building employees, as a picture on his living room wall shows him watching as a "W" is being removed from the misspelled Enwright in large letters above the entrance to his office in the new Hall of Justice that opened in the fall of 1973.

Speaking with Enright, and evidenced by the photos decorating his home, it is clear the the Franklin County courts and his long-serving career have a special place in his life.

On the wall in (the Enrights') living room is a large painting of the courthouse where Enright began his tenure as clerk, a three-story brick structure at the southeast corner of Mound and High streets, now the site of Dorrian Commons.

Hon. David E. Cain
Franklin County Court of Common Pleas
David_Cain@fccourts.org

Lawyers With Artistic License

Jon Browning

By Heather G. Sowald

Plein air painting is done outdoors in natural light, focusing the artist's skills and attention in the moment. When he paints outside, Jon Browning estimates that he has approximately two hours to realistically capture the look, feel and coloring of his subject before the sun's position radically alters its appearance. Afterwards, he further enhances these small oil paintings in the garret of his studio law office, which he and his wife built several years ago next to their Grandview home.

Jon also joins with a few friends weekly to hone his live figure drawing and painting skills, using a hired model. He and his friends experiment with different mediums and approaches, as they too have limited time to capture the subject.

Last year, Jon submitted an essay and artwork portfolio for an artist-in-residency program. He was selected to be a resident artist in Dinan, a city in Brittany, France in June 2016, staying in a caretaker's house. His idyll had only one obligation – a gift to the program of one of his paintings.

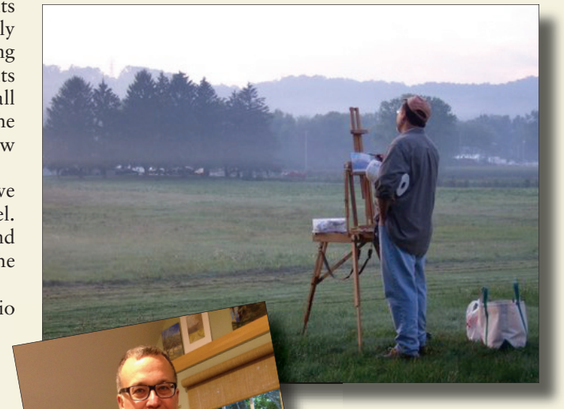
Jon grew up a block away from his current house in Grandview. He attended The Ohio State University as an undergrad, intending to be an English teacher. But, a lack of jobs led him to the University of Toledo College of Law, graduating in 1986. As a young lawyer, he clerked for Ohio Supreme Court Justice Andy Douglas, then served as an assistant Franklin County prosecutor. He subsequently left for private practice, concentrating on criminal defense and employment law, first as a solo practitioner and then with a small firm.

Jon began taking Columbus College of Art and Design painting and figure drawing classes around 12 years ago. His two years of classwork coincided with a waning of enthusiasm for his full-time law practice and recurring, undiagnosed stomach pains.

In 2006, a doctor informed Jon he needed half of his pancreas removed. Upon awakening in the hospital, his doctor casually mentioned that the cancerous portion of Jon's pancreas had been removed. This was the first time Jon learned that cancer had been the cause of his pain. It took another two years to recover from the surgery and subsequent radiation and chemotherapy. While Jon's energy still easily flags, he is grateful for the health he does have, since he says fewer than one percent of people with pancreatic cancer survive 10 years.

Jon works from his home now, serving as the part-time solicitor for the village of Lithopolis and taking on some private employment cases. His family time is spent with his wife, Pam Browning, a Franklin County Common Pleas Court magistrate whom he met at law school, and their 14-year-old son.

Just like his plein air painting, Jon focuses his attention on the here and now, counting his blessings daily. His life now is one of balance, taking his time with his health, family, friends, law practice and, of course, his artistry.



Heather G. Sowald, Esq.
Sowald Sowald Anderson, Hawley & Johnson
hsowald@sowaldlaw.com

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As a result of these advances in technology, legal and ethical questions emerge. These new methods and opportunities not only create a reproductive marketplace but will also create new legal questions and caseloads for attorneys.

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Ashley E. Gammella, Esq.
Affiliated Construction Trades
ashley.gammella@gmail.com

Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By Monica L. Waller

Verdict: $99,328.26. ($49,328.26 in economic damages, $50,000.00 in non-economic damages). Bad Faith.

In August 2012, Plaintiff Rickey Bailey Jr. purchased a used Buick Enclave for $30,628. Bailey was a route salesman for Hostess. On Sept. 29, 2012, Bailey drove the vehicle to work and left it in the parking lot as he went out on his sales route. When he returned to the parking lot after his shift, the vehicle was missing. Sometime later, his vehicle was discovered in Franklin County, Kentucky. The vehicle had been burned and was a total loss.

At the time of the loss, Bailey was insured by Defendant Grange Mutual Casualty Company under a personal auto policy that provided coverage for loss to a covered auto caused by fire or theft. The policy obligated Grange to pay the greater of the unpaid principal or up to 125 percent of the actual cash value of the vehicle. It also provided transportation expenses while the claim was pending, up to $900. Bailey promptly reported the theft to Grange.

Grange conducted an investigation of the claim and discovered that Bailey's labor union was in negotiations with Hostess and his job was in jeopardy. Grange also discovered that the purchase of the new vehicle resulted in an increase in Bailey's car payments from $260 to $533 per month. When the vehicle was located, none of its contents had been removed. It still had all of the electronics and expensive rims were still on the vehicle. Grange also retained a forensic locksmith to investigate the claim. The locksmith reported that only a properly coded transponder key could have been used to move the vehicle to where it was found.

Bailey admitted that he had two chip-coded transponder keys for the vehicle and claimed that one was in his pocket when the vehicle was moved and the other was in an envelope in his home. At the conclusion of the investigation, Grange denied Bailey's claim. Bailey sued for breach of contract and bad faith. The jury found that Grange lacked proper justification to deny the claim.

Plaintiff's Experts: Rob Painter (forensic locksmith). Defendant's Experts: Mark Ames (forensic locksmith). No settlement negotiation information available. Length of Trial: 8 days. Counsel for Plaintiff: Tim Van Eman and Keri N. Yaeger. Counsel for Defendant: Joseph G. Ritzler and Patrick J. Thomas. Magistrate Timothy McCarthy. Ricky Bailey, Jr. v. Grange Mutual Casualty Co. Case No. 13-CV-2611 (2015).

Verdict: $19,100.00 ($4,100.00 in economic damages, $15,000.00 in non-economic damages). Automobile Accident.

On April 14, 2012, Plaintiff Sheri Daniels was on East Main Street in Reynoldsburg, Ohio when a vehicle driven by Defendant Blake Tarleton that was headed in the opposite direction came left of center and struck her vehicle head-on. Daniels was driving a 2010 Ford Fusion which was totaled. She was paid the actual cash value of $23,791.13 for the vehicle. She claimed soft-tissue injuries to her neck and back. She was transported from the scene of the accident to the emergency room and then followed up with her primary care physician. She asserted that her pain worsened some time later prompting another visit to the emergency room and follow up care with a chiropractor.

Daniels was a case worker for Franklin County's Job & Family Services. She claimed that she was forced to resign from that position a year after the accident due to ongoing pain and light-headedness that she related to the accident. The limit on Tarleton's insurance coverage was $12,500. Daniels had UM/UIM coverage through State Farm with a $50,000 per person limit. She settled her claims against Tarleton for his policy limits and proceeded to trial on an underinsured motorist claim against State Farm. State Farm argued that Daniels' injuries were not permanent and did not prevent her from working. The jury awarded $4,100.00 for medical bills and $15,000.00 for pain and suffering. The award was reduced by $12,500 to offset the settlement with Tarleton.

Medical Specials: $40,368.67. Lost Wages: $620 in documented wage loss. Plaintiff's Expert: Stephen Payne, M.D. (internist). Defendant's Experts: none. Last Settlement Demand: $32,500.00. Last Settlement Offer: $3,500.00. Length of Trial: 2 days. Counsel for Plaintiff: William P. Campbell. Counsel for Defendant State Farm: Belinda S. Barnes. Judge David Cain. Case Caption: Sherry R. Daniels v. Blake B. Tarleton, et al. Case No. 14-CV-2783 (2015).

Verdict: $8,425.91. ($5,050.91 in economic damages, $3,375.00 in non-economic damages). Automobile Accident.

On Jan. 12, 2009, Plaintiff Michael E. Gold was delivering pizzas for his employer when he was involved in an automobile accident. Gold was driving eastbound on Bethel Road. Defendant Marjorie Burnham was westbound on Bethel Road and made a left turn onto Jasonway Road in front of Gold. Gold was unable to stop in time to avoid the collision. Gold claimed injury to his left shoulder which required surgery. The total of Gold's medical bills was over $108,000.

The Ohio Bureau of Workers' Compensation paid $24,799.83 in medical bills. After reductions, Gold had $9,511.25 in medical bills that remained unpaid. The BWC intervened in the lawsuit and asserted a lien of $54,743.18, which included the medical benefits, compensation indemnity and future reserves.

The defense filed a motion to exclude reference at trial to the BWC claim. The Court granted the motion and prohibited the presentation of evidence by the BWC but allowed the parties to advise the jury that the BWC paid a portion of Gold's medical bills, and an exhibit was submitted to the jury identifying the amount the BWC paid. The jury was also instructed that the verdict should not be influenced by the BWC's payment of those funds. Following the verdict, the Court entered judgment in favor of the plaintiff which included an order that $326.86 from the judgment was to be applied to the BWC lien which, upon issuance of that payment, would be satisfied in full.

Medical Specials: $108,93.41 (reduced to $34,311.08). Lost Wages: $6,600.00. Plaintiff's Experts: Robert J. Nowinski, D.O. (orthopedic surgery) and Charles May, D.O. (family practice). Defendant's Expert: Martin Gottesman, M.D. (orthopedic surgery). No settlement negotiation information available. Length of Trial: 3 days. Counsel for Plaintiff Michael Gold: John M. Gonzales. Counsel for Ohio Bureau of Workers' Compensation: Timothy E. J. Keck. Defendant's Counsel: Mitchell M. Tallan. Judge Kimberly Cocroft. Case Caption: Michael E. Gold v. Marjorie A. Burnham, et al. Case No. 12 CV 13245 (2014). Note: Plaintiff appealed arguing that the Court improperly excluded evidence from the BWC. The BWC did not join the appeal. The Tenth District upheld the trial court's decision.

Defense Verdict. Medical Malpractice.

Plaintiff Joan R. Wentz sought treatment from Defendant Richard D. Weiner, DPM in December of 2007 after an unsuccessful foot surgery with another podiatrist. In 2009, Dr. Weiner performed surgery to address Wentz's ongoing foot pain and reflex sympathetic disorder ("RSD"). The surgery alleviated Wentz's symptoms temporarily.

However, six months later her pain returned. Dr. Weiner attempted conservative treatment, but it was not successful in relieving Wentz's pain. In July of 2010, Dr. Weiner performed a second surgery which involved fusion of the major joints of her foot and removal of metatarsal bones. Following the surgery, Wentz had a significantly decreased range of motion and was unable to bear weight on the foot, resulting in gait problems.

Wentz claimed that Dr. Weiner's treatment fell below the standard of care because the surgery was too aggressive. Dr. Weiner maintained that the treatment was within the standard and successfully resolved Wentz's orthopedic problems. He asserted that Wentz's ongoing pain was related to her permanent and pre-existing RSD and other medical problems.

Medical Specials: $60,000.00 (stipulated). Lost Wages: None. Plaintiff's Experts: Howard Shapiro, DPM (podiatry). Defendant's Experts: Jeffrey Christensen, DPM (podiatry). Last Settlement Demand: $475,000. Last Settlement Offer: None. Length of Trial: 3 days. Counsel for Plaintiff: John M. Alton. Counsel for Defendants: Thomas A. Prislipsky. Visiting Judge Dale Crawford. Case Caption: Joan R. Wentz v. Richard D. Weiner, DPM, et al. Case No. 13 CV 6661 (2015).

Defense Verdict. Medical Malpractice.

On Nov. 15, 2010, Plaintiff Carla Payne was admitted to Select Specialty Hospital for surgical removal of a meningioma, a tumor of the meninges in the brain. On Nov. 30, 2010, Defendant William Emlich Jr., a gastroenterologist, performed a PEG tube placement at the request of Payne's attending hospitalist. A PEG tube is inserted through the abdominal wall and into the stomach to provide nutrition. Two days later, it was discovered that the PEG tube had become dislodged. The tube was removed and Dr. Emlich ordered a nasogastric tube without suction.

Payne's vital signs continued to be abnormal, so she was transferred to Grant Medical Center. There, she was diagnosed with septic shock and peritonitis. She underwent an emergency exploratory laparotomy during which a gastric perforation was discovered and repaired. She recovered after rehabilitation and nursing home care.

The plaintiff asserted that Dr. Emlich was negligent in failing to replace the dislodged PEG tube and in ordering an NG tube without suction. She also asserted that Dr. Emlich was negligent in deferring care to others after discovering that the PEG tube had become dislodged. Dr. Emlich asserted that he met the standard of care and that the gastric perforation was not the result of the care he provided. The plaintiff also sued Select Specialty Hospital and the attending hospitalist but dismissed those claims before trial. The jury found that Dr. Emlich had not breached the standard of care.

Medical Specials: $604,672.21 billed ($231,192.81 paid). Lost Wages: None claimed. Plaintiff's Experts: Richard Dwoskin, M.D., J.D. (gastroenterologist). Defendant's Experts: Tasos Manokas, M.D. (gastroenterologist) and

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Joseph Li, M.D. (hospitalist). Last Settlement Demand: $300,000.00. Last Settlement Offer: None. Length of Trial: 6 days. Counsel for Plaintiff: Tim Van Eman. Counsel for Defendant: Patrick Smith and Kevin W. Popham. Judge Charles Schneider. Case Caption: Carla Payne, et al. v. Select Specialty Hospital, et al. Case No. 13 CV 6661 (2015).

Defense Verdict. Employment Discrimination.

Plaintiff Janet Gay Kerekes was terminated from her employment with Defendant Cengage Learning, Inc. on March 10, 2014. Cengage provides educational content, technology and services for colleges and schools with students in grades K through 12. At the time of her termination, Kerekes had been employed by Cengage for over thirty years and was the district manager for the sales teams in the central Ohio region. She was 62 years old and was replaced by a 39-year-old. Cengage asserted that Kerekes's termination was not based on her age but was based on her job performance.

In the years leading up to Kerekes' termination, Cengage struggled financially due to changes in the industry from the increased availability of electronic resources. In an effort to address poor sales performance, Cengage reorganized its sales force and eliminated 198 sales positions. It also focused the sales management team on identifying and terminating poor sales performers among those who remained. According to Cengage, Kerekes was not meeting sales goals and receiving unacceptable ratings on her sales reviews. She was placed on a "performance improvement plan." However, her performance did not improve which lead to her termination.

The plaintiff argued that Cengage's purported justification was pretextual. She claimed that Cengage devised the performance plan with the goal of terminating her. She presented email correspondence between human resources and her supervisor that discussed options for terminating her before the performance plan was prepared. She also argued that the plan requirements were unreasonable. She pointed out that she was a top-performing sales representative until 2013 and that, in 2013, all sales representatives struggled to meet their goals.

The jury concluded that Kerekes had established a prima facie case of age discrimination but was unable to meet her burden in proving that Cengage's reason for terminating her was a pretext for discrimination.

Claimed Damages: Not provided. Plaintiff's Expert: Steven Buffo (forensic accountant). Defendant's Expert: Rob Speakman (economist). No settlement negotiation information available. Length of Trial: 6 days. Counsel for Plaintiff: Michael R. Reed. Counsel for Defendant: Michael W. Hawkins, Faith C. Whittaker and Anjali P. Chavan. Judge Jenifer French. Case Caption: Janet Gay Kerekes v. Cengage Learning, Inc., et al. Case No. 14 CV 6115 (2015).

Defense Verdict. Premises.

On March 1, 2011, Plaintiff Lori Baas-McCorkle was shopping at the Dublin Giant Eagle when she encountered an abandoned cart. The cart was blocking some products that Baas-McCorkle needed to reach, so she reached around the cart. As she did so, Baas-McCorkle slipped on a liquid substance under the cart and fell, striking her head on the cart and her left hip on the floor. There were no signs or warnings in the area of the cart, and Baas-McCorkle did not see the liquid under the cart before she fell. She explained that the cart obscured her view of the substance on the floor.

The plaintiff alleged that Giant Eagle employees discovered the spill and negligently placed the cart over it rather than cleaning the spill or providing warnings to customers. Plaintiff sustained a closed head injury with persistent headaches. She was a substitute teacher and asserted that she was unable to accept teaching assignments due to her injuries.

Medical Specials: $42,000.00. Lost Wages: Not itemized. Plaintiff's Experts: Hakim Hussein, M.D. (neurologist) and Elden Apling, M.D. (family practitioner). Defendant's Experts: None. Last Settlement Demand: $400,000.00. Last Settlement Offer: None. Length of Trial: 2 days. Counsel for Plaintiff: Jessica Olsheski. Counsel for Defendant: Roger Willia. Magistrate Mark Petrucci. Lori Baas-McCorkle v. Giant Eagle, Inc., et al. Case No. 13 CV-2079 (2015).

Monica L. Waller, Esq.
Lane Alton & Horst
mwaller@lanealton.com

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