

OhioLawyer

THE OHIO STATE BAR ASSOCIATION MEMBER MAGAZINE

May/June 2017

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IS YOUR PRACTICE SECURE?


Make a cyberattack prevention plan



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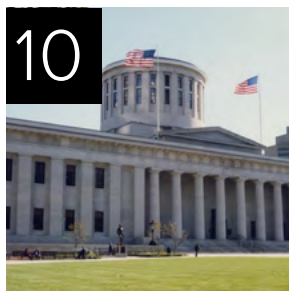
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Ronald S. Kopp

President, Ohio State Bar Association



Our noble profession today faces some very difficult challenges. For example, perhaps half our citizens have little or no real access to our civil justice system, while far too many lawyers graduated in the past five years are without full-time legal employment. For those graduates, average student debt is \$98,000!

Meanwhile, our Bar passage rates are at an all-time low. When I spoke to the new lawyers being sworn in at the Ohio Theatre last fall, there were half the number as had sat in that same theater when I was sworn in years ago. At the other end of the spectrum, 25 percent of our lawyers are aged 63 years or older, but largely due to the Great Recession, many are unprepared for retirement.

My predecessor, John Holschuh, established the Futures Commission early last year to take a look at these and other issues facing our profession. I chaired the Commission while serving as president-elect, and I passed that baton along to the current president-elect, Randall Comer, when I took over as president. Randall has done yeoman's work in marshaling the forces of this Commission!

I had a great time speaking in town hall style meetings about the future of our profession at each of our 18 districts across Ohio during the past nine months. Many of you had wonderful ideas, and we passed each of them along to the Commission. In this column, I'd like to give you a taste of what the Futures Commission report looks like as it is being prepared for consideration by our Council of Delegates.

The Commission divided itself into working groups, each of which spent a great deal of time addressing the following four areas: (1) unprecedented challenges faced by new lawyers; (2) acquisition of knowledge and skills necessary to develop and carry on a successful practice; (3) the lack of regulation for new legal service delivery

options; and (4) the widening access to justice gap. Following is a "peek" into the draft recommendations for each of these items.

Providing Support for New Lawyers

The economic downturn has made traditional pathways to training new lawyers less available to many of today's graduates. Recommended first steps toward resolution include establishing a council of law school deans and lawyers to collaboratively develop proposals to reduce the costs of legal education, streamline bar admissions in Ohio, and enhance practice proficiencies currently being offered as part of law school curriculum. We believe that training on these proficiencies should be mandatory in law school and required through the first five years of practice through bar associations and participation in pro bono clinics in order to get hands-on experience.

Toward this end, OSBA would hope to offer even more low cost practice management resources and skills-based training to new lawyers, and that those resources be offered in a one-stop shop via the OSBA website.

We also hope to collaborate with local bar associations to offer more informal mentoring opportunities, and to continue offering, and expanding upon, our "Rural Practice Initiative" to encourage new lawyers to practice in non-urban areas of Ohio.

We intend to support and advocate for public policy and law changes to implement a student loan/debt forgiveness program for new lawyers willing to serve in underserved, non-urban areas. The report also calls for greater government support for higher education in general. Since 1987, a student's contribution to the cost of public college education has increased from about 25 percent to about 50 percent. And yet we know empirically

that higher education is more important today than it has ever been!

We believe admissions testing should be revamped to better and more fully test Ohio legal knowledge and practice readiness, starting in the law school education process. This includes studying whether the uniform bar exam should be adopted, as well as whether the bar exam should be offered to students earlier in their legal education so that they are employable earlier in their practicing careers.

Developing a New Model for CLE and Professional Development

Rapid changes in technology are having a significant impact on the practice of law. Technology offers legal professionals many opportunities, but also significant challenges. Often, there aren't enough hours in the day to keep up with the law, secure new clients, run the business, and get the continuing education needed to do all of it well. We need to offer robust training in the time, increments and format that contemporary lawyers require.

To this end, we intend to serve as a conduit between the practicing bar and Ohio's law schools to assist and create practical skills offerings through CLE live and self-study curriculum and formal skills-based mentoring programs. We would focus on providing fewer live CLE program titles in order to place more emphasis on higher level institutes that appeal to veteran lawyers, while offering more accessible on-line courses in shorter increments for the convenience of attorneys in all stages of their careers.

For lawyers starting their own practices, we would develop an intensive CLE series using both live and self-study on-line courses. The focus will be on the basics of law firm practice management, including business and client development strategies and techniques.



We would work with the Ohio Supreme Court Commission on CLE to review additional technology competencies needed for contemporary lawyers. We may seek the ability to give credit for CLE increments as short as 15 minutes via on-line viewing and podcasts.

Exploring New Legal Service Delivery Options and Modernizing Regulations

The proliferation of internet legal service providers (LSPs) in the last decade has been well documented. Various LSPs can offer the provision or preparation of legal forms, advertising of legal services, lawyer referral or “matching” services, and/or the ranking or rating of lawyers. These innovative service models have developed rapidly, and they currently are not subject to oversight by the Ohio Supreme Court.

Some of our attorneys are receiving business opportunities through these platforms, while others complain that they engage in unfair and unregulated competition. Consumers often are pleased with easier and cheaper access to services, though reviews on quality have been mixed.

The draft Futures report recommends calling on the Ohio Supreme Court to establish a commission to conduct a comprehensive review of existing regulations, with the goal of proposing new regulations or laws to be enacted by the Ohio General Assembly that will provide adequate protection of the public. Any regulations will need to be narrowly tailored to serve that purpose. They should encourage competition, innovation, and increased access to justice—while protecting the core values of our profession.

Some states are utilizing non-lawyer legal service providers (NLPs) for the limited practice of law by legal interns in certain circumstances, such as preparing documents for uncontested divorces, bankruptcies and wills. New York City has established and is looking to expand a Court Navigator’s program, which uses trained and supervised non-lawyer professionals to assist pro se litigants in housing and civil courts.

Believing firmly that any provision of legal services should be under the direction of a licensed attorney, the draft Futures report recommends opposition to any effort that would establish new categories of NLP in Ohio. Instead, any regulations should support the development of programs or actions that would connect the unrepresented with available attorneys.

Building a Comprehensive, Online Legal Portal for Ohio

The “access to justice gap” is widely recognized to refer to estimates that 80% of the civil legal needs of low-income Americans go unaddressed. The OSBA believes that a large step forward in addressing that challenge would be an automated triage process which would direct persons needing legal assistance to the most appropriate form of assistance, and would guide self-represented litigants through the entire process.

The Ohio Legal Assistance Foundation (OLAF), Ohio’s statutorily created foundation charged with collection and remittance of IOLTA and filing fee revenues to legal aids serving all 88 counties, has undertaken development of such a platform for Ohio as part of its strategic plan.

The draft Futures report recommends that the OSBA collaborate closely with OLAF as OLAF leads the design, construction and deployment of Ohio’s legal portal. OSBA will advocate for an automated triage process employing branching logic, which will enable a site visitor to enter information about their legal problem and be referred to the appropriate legal resource, including legal aid services (when eligible), bar associations and lawyer referral services.


In addressing the access to justice challenge, the OSBA also will continue its strong advocacy and support of higher rates for appointed counsel in criminal cases, as well as continued funding for legal aid clinics through the now endangered Legal Services Corporation.

The draft Futures Commission report soon will be posted on the OSBA

website. I encourage you to review it and provide us with your comments. The final report will be issued following a special Council of Delegates meeting later in the year. It has been my pleasure to discuss these and other challenges facing our profession as I have traveled the state in recent months. Thanks to so many of you who came out to the district meetings to engage in this conversation. Our future is bright, but only if we look these challenges square in the eye and address them.

I mentioned above our great partner, OLAF, which is the single largest state funder of Ohio’s legal aids, in part, because of interest paid on lawyer trust accounts (IOLTA). By banking with one of OLAF’s Prime Partner Banks, attorneys and firms can increase the dollars available to support civil legal aid in Ohio and increase access to justice for all Ohioans. Why? Because these banks have committed to pay higher interest rates on IOLTA and IOTA accounts to ensure that all Ohioans have a legal voice and access to justice.

Currently, OLAF’s Prime Partner Banks are Citizens Bank, Congressional Bank, Fifth Third Bank, Heartland Bank and Key Bank. I encourage you to choose one of these banks for your IOLTA or IOTA account, or have a conversation with your current bank and encourage it to become a Prime Partner Program.

While private and voluntary, the Ohio State Bar Association is a vital cog in Ohio’s system of justice. The OSBA watches out for the interests of our members, but also advocates for improvements to that branch of government of which we are all such a significant part. It has been a privilege to serve in this position. Thank you to Mary Amos Augsburger and her remarkable OSBA staff, as well as to my firm and my assistant, Kathy Patonai. But even more, thanks to you, our terrific members. 



Hamilton

Hon. Henry J. Bruewer received the 2017 Butler County Bar Association James S. Irwin Professionalism Award.

Hon. J. Gregory Howard received the 2017 Butler County Bar Association Michael D. Shanks Trial Advocacy Award.

Dayton

Mandy Jamison, Jamison Law, LLC, was selected as an American Law Society member.

Columbus

Hon. Stephen L. McIntosh, Franklin County Common Pleas Court, received the 2017 David D. White Award presented by Capital University Law School and the African American Law Alumni Association.

Hon. Charles A. Schneider, Franklin County Common Pleas Court, received the 2017 George Meany Community Service Award.

Cleveland

Patricia A. Shlonsky, Ulmer & Berne LLP, was appointed to the board of Business Volunteers Unlimited: The Center for Nonprofit Excellence.

Mark S. Edelman, McGlinchey Stafford, was elected Fellow of the American College of Consumer Financial Services Lawyers.

Howard Groedel, Ulmer & Berne LLP, was appointed to the Board of Directors of the Cleveland Institute of Art.

Michael P. Hurley, Nelson, Sweet & Hurley, received the American Bar Association Solo and Small Firm Lifetime Achievement Award.

In Memoriam

2017

Thomas L. Startzman 87
Columbus January 8, 2017

Richard Hackney Ward 93
Cincinnati January 25, 2017

John Bell Marshall 94
Portsmouth January 27, 2017

Joseph D. DeSanto 90
New Smyrna Beach, FL February 25, 2017

Charles Edward Crowley 79
Columbus March 5, 2017

Lawrence Anthony Sutter 53
Cleveland March 6, 2017

Judge Barbara Ansted Wilson 67
Fremont March 9, 2017

Thomas Robert Jacklitch, Jr. 74
Kirkwood, MO March 10, 2017

This column is limited to awards and civic duties. The news listed is edited from press releases that are sent to the OSBA. Other submitted member news, such as promotions and new positions, is featured on the OSBA website.

To keep up to date with the most recent member news, visit ohiobar.org/membernews. To submit an announcement for consideration in Member News, please email it to the editor at membernews@ohiobar.org.

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New Fellows Invest in Impact


The Ohio State Bar Foundation is proud to welcome a dedicated group of new Fellows at the 2017 Induction Ceremony on June 6 at the Supreme Court of Ohio. Foundation President Andrew C. Storar and Chief Justice Maureen O'Connor will preside over the program and officially welcome the fellows.

These Fellows will join the ranks of more than one thousand civic-minded attorneys from across the state to support law-related philanthropy. While new Fellows will have the opportunity to work on a number of mission-related volunteer projects, their donations will fuel the Foundation's grant-making efforts. Since the early 1990s, the Foundation has invested more than \$11 million to causes that advance public understanding of the rule of law and help build a better justice system throughout Ohio.

To learn more about the Fellows Program, visit www.osbf.org or contact Liz Volpe at (614) 487-4474 or lvolpe@osbf.net.

Recognizing Excellence

Do you know an outstanding attorney or organization doing great work in your community?

Help us recognize excellence in the profession during our Annual Awards Dinner. Award nominations for 2017 are due June 1. For awards criteria and a nomination form, visit www.osbf.net/what-we-do/awards or contact Liz Volpe at lvolpe@osbf.net or (614) 487-4474. 



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Columbus, OH



Helen S.
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Akron, OH



Patrick K.
Dunphy
Dayton, OH



Susan L.
Durr
Cuyaboga Falls, OH



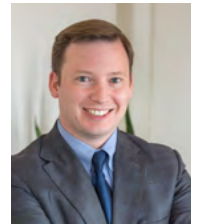
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Lazares
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Lodge
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Margaret A.
Matejkovic
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Melissa M.
Tuttle
Painesville, OH



Yukiko V.
Yee
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Fellows not pictured

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Columbus, OH

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Dayton, OH

Kylie Ehrhart
Bucyrus, OH

Thomas C. Loepf
Stow, OH

Paul Roderer, Jr.
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CyberOhio Initiative Aims to Help Ohio Businesses

MIKE DEWINE

Mike DeWine is the
Ohio Attorney General.



We live in an unprecedented era of connectedness. From our mobile devices or computers, we can instantly communicate with family and friends, purchase products from anywhere in the world or even turn up the heat in our home. However, the convenience and speed of technology can come at a high cost. Every day cybercriminals launch sophisticated cyberattacks targeting businesses seeking financial gain or the personal information of their customers.

For example, the recent attack on Dyn Co., one of the largest internet domain name service providers, shut down several internet services throughout the East Coast including Netflix, CNN, and Twitter, costing Dyn and the affected

businesses millions in lost revenue and damages. Dyn was the victim of one of the largest denial of services attacks on record. A denial of service attack is when hackers overwhelm a website or internet hosted service with so much traffic the website or service cannot be accessed. In the case of Dyn, cybercriminals used something called a “botnet” to accomplish their attack. A botnet is a network of computers, infected with a certain type of malware that allows the cybercriminal to control the computer. Shockingly, hackers created a botnet comprised of tens of thousands of internet-enabled devices we use at home every day, including DVRs, security cameras and baby monitors. Once the devices were infected with malware and

under the control of the hackers, the hackers instructed the devices to attack Dyn. The amount of simultaneous attacks overwhelmed Dyn's safeguards and shut down their services.

The cybersecurity playing field often can seem one-sided in favor of the hackers. Cybercriminals only have to be right once to get into an organization's computer system, but businesses must get it right every time. No organization is exempt from attacks like this. Business owners all over Ohio must devote significant time and expertise as well as financial resources to defend and respond to cyberattacks. Dyn had significant protections in place, and yet Dyn and Dyn's customers were prevented from doing business as normal. Dyn is not alone. It joined the ranks of several other businesses who over the last few years have suffered significant cyberattacks including Yahoo, Target, Wendy's and Home Depot.

Law firms are no exception and need to be as vigilant as possible with the confidential information they possess. Law firms are a target-rich environment for cybercriminals due to a perceived lack of robust security measures coupled with a "treasure trove" of personal information from clients. As a result, hackers are targeting law firms with social engineering attacks like "phishing." Phishing is an attack where cybercriminals send emails that look legitimate, perhaps even made to look like it's from a firm's managing partner or human resources director, asking for specific, often confidential information, such as Social Security numbers, logon and password information or requesting the end user click on a link or open an attachment. Once an employee sends the confidential information, it can be used by cybercriminals to commit identity theft. If the end user clicks on a link or attachment in a phishing email, cybercriminals may attempt to infect the computer network with malware such as ransomware. Ransomware comes

in many forms, but usually it steals or encrypts all the data of a business and refuses to provide the decryption key until a ransom is paid. Ransomware can devastate a business, and it can happen with one click.

To help level the playing field, we created the CyberOhio initiative to help businesses protect themselves against cyber threats.

CyberOhio is spearheaded by a volunteer external Cybersecurity Advisory Board. The board provides industry expertise, guidance, advice and practical suggestions for dealing with cybersecurity challenges. Kirk Herath, vice president and chief privacy officer for Nationwide Financial Services, chairs the Advisory Board.

In addition to Nationwide, a cross-section of industries and organizations are represented on the Advisory Board, including Abercrombie & Fitch, Battelle, Cardinal Health, Cleveland-Marshall College of Law, Columbus Collaboratory, Deloitte, elnformatics, L Brands, Lunarline, Ohio Health, The Ohio State University, Rev1 Ventures, Steris, U.S. Department of Energy, US Bank, Wendy's, Western & Southern Financial and XLN Systems. The representatives from these entities are working with my office to develop several initiatives that will help businesses thrive and better protect consumer data.


First, the group is working on a legislative proposal that will incentivize and reward businesses for achieving high marks in cybersecurity. In today's high-risk cybersecurity environment, it is important to reward businesses who achieve a level of excellence. Because of this commitment, the personal information of consumers will be better protected.

In addition, CyberOhio is helping small businesses by providing in-person trainings. As the Target and Home Depot breaches highlight,

small businesses are typically more vulnerable to cyberattacks, and cybercriminals target small businesses with malware to gain entry into the computer networks of larger businesses. The CyberOhio trainings break down difficult cybersecurity concepts into easy, actionable steps that any business can implement to make themselves more secure.

CyberOhio is also focused on encouraging the sharing of cyberthreats. In cybersecurity, knowledge is power. The more businesses share information across industries, the better protected they and their customers will be. To that end, we are creating a statewide information share for businesses all over Ohio to share cyberthreat information to ensure businesses can quickly react to new threats. Finally, the initiative includes an internship program, and the creation of a Cyber and Privacy Unit within the Ohio Attorney General's Office.

It is our goal to help create the best legal, technical and collaborative cybersecurity environment possible for Ohio. By helping businesses and law practices, we ultimately will help better protect Ohioans who trust their information to them.

If you would like to subscribe to our CyberOhio email to receive tips and threat information, please send your e-mail address to Craig.Rapp@OhioAttorneyGeneral.gov. 



The Voice of the Profession: Fighting any sales tax on legal services

TODD BOOK

Todd Book is the OSBA
Director of Policy and
Government Affairs.



The 132nd session of the Ohio General Assembly is well under way. Governor John Kasich's budget bill (House Bill 49) was introduced in early February. Coming in at 3,500+ pages, the bill continues its perilous voyage through the turbulent legislative seas. First stop—the Ohio House of Representatives, where legislators have been hard at work, systematically reviewing all provisions of the bill and determining what they can and cannot support.

As expected, in his continued efforts to reduce the state income tax, the governor is once again looking to consumption taxes to foot the bill. He proposed to expand the state sales tax to cover more services not previously taxed, and called for an increase in the sales tax rate from 5.75% to 6.25%.

The good news is our state elected officials clearly have heard the OSBA's concerns over the years, as legal services were not expressly targeted in the bill. However, lobbying services and

repossession services were included, and though these areas would not, to all outward appearances, include legal services, the definitions in the bill could be extended to certain aspects of what we do—for example, legal representation that includes advocating before the legislature, as well as foreclosures/collection work. Rest assured, the OSBA government affairs team has been at the Statehouse raising these very issues with key legislators. I am grateful to OSBA Taxation Committee Chair Rich Fry of Buckingham Doolittle & Burroughs LLC in Akron, who testified before the House Ways & Means Committee on behalf of the OSBA and did an outstanding job representing our position.


Knowing there is strength in numbers, the OSBA has once again partnered with the Ohio Service Industry Coalition—a diverse group of 25 businesses, trade associations and professional organizations in opposition to the sales tax increase and expansion. We collectively represent approximately one million employees, 60,000 establishments and a total compensation of nearly \$40 billion, which makes us a formative voice in the debate. Our message to all who will listen is that higher sales tax rates and new taxes on targeted services will slow sales, hurt the state's competitiveness, and raise costs for individual and business consumers.

This strategy is working. I am pleased to report that when the House rolled out its substitute version of the bill in late April, they stripped out the vast majority of the tax expansion language and the proposed sales tax increase. This is good news, but we still have some more work

to do and a long way to go before the bill is signed into law.

Following House passage, the Ohio Senate will get a chance to make its mark on the budget bill and then there will be a conference committee to iron out the differences. Remember, the budget must be balanced, passed and signed by the Governor before July 1. The Senate Finance Committee has already started holding informal hearings on the bill to meet the tight timeframe. They will have their work cut out for them as state revenue numbers are coming in lower than expected, which means they will have fewer resources to work with. Even with this added challenge, I remain cautiously optimistic that things are going to break our way, but please stay tuned because when it comes to the state budget, anything can (and will) happen.

Thanks to the continued support of our membership and the hard work of our leadership and staff, the OSBA remains a trusted voice at the Statehouse. This credibility, coupled with hard work and organization, have contributed to our success in stopping any expansion of the sales tax to legal services over the years. We will rely on that strength in the months ahead as legislators work to bring the final budget bill into port.

Please stay in touch. If you have questions about the HB 49 or any other issues pending before the General Assembly, please contact me at tbook@ohiobar.org. 


LiveCLE

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May 10, 2017

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May 11, 2017

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Columbus, Cleveland, Fairfield, Webcast

May 12, 2017

Business Law Conference
Columbus, Akron, Fairfield, Cleveland, Dayton, Perrysburg, Webcast

May 16, 2017

Toledo Regional CLE
Perrysburg

May 18, 2017

Advanced Employment Law Seminar
Columbus, Fairfield, Akron, Cleveland, Perrysburg, Webcast

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Warren Regional CLE
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Young Lawyer Connect
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June 23, 2017

Public Sector Labor & Employment
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June 27, 2017

Medicare and Medicaid Forum
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June 28, 2017

Titles to Real Estate
Columbus, Akron, Fairfield, Cleveland, Dayton, Perrysburg, Webcast

June 30, 2017

28th Annual Conference on Wealth Transfer
Columbus 

Who has jurisdiction? An alternative path to permanency



**SUSAN GARNER
EISENMAN**

Determining jurisdiction for adoptive placement of children in public children services custody.

Adoption triggers primal emotions. It touches the foundational parent-child relationship. It has been used as a literary device in such diverse legends as Shakespeare, Superman and contemporary docudramas. When a vulnerable child finds refuge in the arms of a “forever family,” there is communal joy. When adoptions fail, there is a communal gasp. Not even child welfare professionals and courts are immune from adoption’s emotional tug.

Adoptions have held the public spellbound over the fate of numerous children such as Baby Jessica, Baby Richard, and Baby M. In 2016, much of northwest Ohio followed the fate of Baby Maddy both in the news media and on social media, and at prayer vigils and rallies. Baby Maddy’s case was of special interest to Ohio’s juvenile and



probate practitioners, because the case turned on a jurisdictional argument that pitted a probate court against the juvenile court and children services agency of an adjoining county. The year-long series of trials, appeals and writs significantly clarified Ohio laws and will resolve a long series of contested adoption jurisdiction issues. It confirmed the residual rights of birthparents whose children are in public children services custody and may well afford children a quicker path to permanency.

Background

In 1914, Ohio's established juvenile courts dedicated to the needs of abandoned, dependent, neglected and abused children. This was subsequent to the enactment of adoption statutes in 1859. The adoption statutes vested jurisdiction over adoption in the probate

court, which was a creation of the Ohio Constitution. The result was a jurisdictional conflict over the adoption of abandoned, dependent, neglected and abused children. Baby Maddy's case demonstrated this conflict.

Can a probate court exercise its adoption jurisdiction when a child is under the jurisdiction of a juvenile court temporary commitment? Can a birthparent place his or her child who is in the temporary custody of a children services agency for private adoption through a probate court? What input into the adoption process does a juvenile court appointed legal custodian or temporary custodian have in an adoption brought in the probate court?

These questions were the core of the recent Ohio Supreme Court case—State

ex. Rel. Allen County Children Services Board v. Mercer County Probate Court. The case arose when a birthmother, whose child was in the temporary custody of Allen County Children Services under a temporary commitment from the Allen County Juvenile Court, decided to place her child in adoption with the long-term foster parents over the objection of Allen County Children Services. Allen County Children Services preferred a legal custody placement with an out-of-state relative who had temporary custody of a biological half-sibling of the child, although the relative stated she had grave reservations about allowing the birthmother to exercise her residual rights of visitation and had had very limited contact with the child. The foster parents had attempted unsuccessfully to intervene in the juvenile court custody case.

The birthmother then requested adoptive placement approval from the Mercer County Probate Court. The foster/proposed adoptive parents lived in Mercer County. The agency removed the child from the foster home. The Mercer County Probate Court approved the placement, which carried with it the right of the petitioners to have “care, custody, and control of the child” pending the resolution of the adoption petition.¹ The Mercer County Probate Court docket indicates that both the juvenile court and the Child Welfare Agency were served notice of the adoption by the court. The Mercer County Probate Court ordered the Children Services Agency to relinquish the child to the foster parent/petitioners. The Children Services Agency declined to do so citing an alleged “exclusive” jurisdiction of the juvenile court that had placed the child with the agency. Contempt motions, appeals and reciprocal Ohio Supreme Court motions for writs ensued. The Ohio Supreme Court then affirmed the probate court’s exclusive jurisdiction over adoptions and the right of the birthmother to place. Seven months after the initial placement order, the child was returned to the former foster parents’ home in adoptive placement. Nine months after the initial placement order, the adoption was finalized.

The Ohio Supreme Court in its decision stated:

[The] Probate court’s authority to order preadoption placement pursuant to R.C. 5103.16(D) is within its exclusive, original jurisdiction even while the child is subject to [the] continuing jurisdiction of the Juvenile Court.

The probate court has exclusive jurisdiction over adoption. The juvenile court has “exclusive original jurisdiction [c]oncerning any child who on or about the date specified in the complaint is alleged... to be a...delinquent, unruly, abused, neglected, or dependent child.”² After the initial adjudication

and depositional hearings, the court has “continuing jurisdiction (R.C. 2151.417(B)), subject to termination by an adoption decree.” However, the continuing jurisdiction is not exclusive. Therefore, if a birthparent invokes the jurisdiction of the probate court by filing a private placement application, the probate court can proceed to make adoption orders, including an order of adoptive placement.

A child need not be in the physical custody of the birthparent in order for the birthparent to bring a private adoption.³ However, the birthparent’s rights must not have been terminated by the juvenile court pursuant to an order of permanent custody.

An adoption may be brought and granted while the child is subject to the ongoing jurisdiction of the juvenile court. The exclusive jurisdiction of the juvenile court during the initial adjudication and disposition is similar to the prior finding of exclusive juvenile jurisdiction during the pendency of a parentage (paternity) matter. Previously, the Ohio Supreme Court has ruled that the probate court should defer acting on an adoption while a parentage/paternity matter is pending in the juvenile court if the parentage action had been brought prior to the filing of the adoption.

The Ohio Supreme Court—in dicta— noted that legal and/or a temporary custodian does not have a statutory right to consent to an adoption. This right, if it existed, could act as a potential bar to a private adoption. The non-necessity of the legal custodian’s consent also acts to deprive the legal custodian of the right to participate and formally object to the adoption.

Implications

The minority opinion contained an allegation that the probate court had been misled. The probate court subsequently noted on the record that in fact the probate court had complete information at the time of its decision

and had not been misled. The Ohio Supreme Court’s decision produced a strong emotional and litigative response. The local media covered the case in great detail. Both sides were supported in their motions for writs by amici briefs from state and national foster care and adoption groups. The case produced a strongly worded minority opinion.

The decision has generated much discussion about the respective jurisdiction of the juvenile and probate courts and residual birthparent rights when the birthparent does not have full custody. The supporters of the children services position fear that the child will not be adequately protected in the private adoption process and that such placement undercut the authority of children services agencies. This fear exists despite the necessity of a best interest of the child finding by the probate court prior to the granting of the adoption. Supporters of the foster parents and birthmother see this as a way to expedite the permanency process, reduce public costs, preserve extended family connections and honor residual birthparent rights.

Both proponents and opponents of the private placement option are preparing possible state legislation. Similar discussions are occurring in other states, including Florida and North Carolina.

This case has brought attention to the inconsistencies in Ohio’s child welfare and adoption laws. As these laws are in separate chapters of the Ohio Revised Code, involve different courts and reflect different philosophical origins, they are often dealt with separately by the courts and legislature. The rights of the parents and parties differ between the two courts. This has resulted in anomalies such as the child welfare code declaring legal custody to be “permanent” while the adoption code views it as temporary because the birthparent’s parental rights have not been terminated. Likewise, birthparents have a statutory right to counsel in juvenile cases that they lack



in probate proceedings. The definitions of abandonment differ. Further, the adoption code prohibits permanent placements by agencies unless the parental rights have been terminated. The adoption statutes allow the probate court to remove a child from a “permanent” legal custody placement without an opportunity for the “permanent” legal custodian to object or be heard. As a result of this case, child welfare, legal and judicial groups are forced to deal with previously ignored conflicts. This reconsideration can be expected to result in legislature review of the interaction of these statutes. Previously, the Ohio legislature has considered establishing family courts responsible for both dependency and adoption as a way to eliminate such conflicts. In 1993, there was an Ohio Supreme Court feasibility study on the family court issue.

Applications

Pending a legislative solution, this new understanding of legal custody must be used when legal custody is granted. Currently, prospective custodians (PCC) are often unrepresented and rely upon the agency’s advice. They are often told that legal custody is the equivalent of adoption and is permanent in nature, that it is an easier and quicker way to deal with parental rights than bringing a PCC, and that it will guarantee the child will remain with the custodians. Clearly, this advice is not correct. While a legal custodian may bring an adoption action in probate court to make it

permanent after obtaining legal custody, if they choose to do so, it is at their own expense. However, without such an adoption, the child’s long term custody remains unsettled. The new explanation may cause families to insist that the child welfare agency complete the process of dealing with the birthparents by bringing a PCC in juvenile court. This could result in additional agency expense and require revisions in how permanency is approached by child welfare agencies.

Another possible approach would be for child welfare agencies to use the private adoption option earlier in the case plan period to streamline the process. Frequently, birthparents are aware early on that they are unable or unwilling to comply with the case plan and achieve reunification. Allowing them to voluntarily opt-out may well benefit all concerned, particularly the child. Other states, such as Florida and North Carolina, have taken this approach.

Further, until a comprehensive solution can be reached, probate courts may need to reconsider alternate ways to include the legal custodian/physical custodian in the adoption proceeding. Currently, persons having legal or physical custody are entitled to notice but not to participate or object. Particularly if the child has had a long-term relationship with the physical caregiver, some level of participation may be appropriate. The guidelines of the Uniform Child Custody Jurisdiction Act would seem to

mandate such as opportunity in either custody proceedings.⁴ Some courts, such as the Mercer County Probate Court in this case, appointed a guardian ad litem for the child to obtain information about the prior legal custody arrangement. This opportunity to participate would be similar to the rights accorded foster parents at R.C. 3107.013 and OAC 5101:2-48-11.1.

The recent Supreme Court case may well bring positive changes in how cases are processed. If the birthparents are more actively involved in the case planning, perhaps they too can agree that their child needs a new permanent home and cooperate with that plan as persons with residual parental rights to be considered.



Author



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Law and chairs the Ohio Adoption Law Roundtable. Her work has been recognized by the North American Council for Adoptable Children. She is an adoptive parent.

Endnotes

¹ R.C. 5103.16(D).

² R.C. 2151.23(A)(1).

³ In re Adoption of J.A.S., 126 Ohio St 3d 145.

⁴ R.C. 3127.19.



THE DANGERS OF CYBER BREACHES A

by **Steve Couch, J.D.,** **President and CEO, OBLIC**

The practice of law traditionally poses plenty of challenges—knowing and keeping abreast of the latest case law and statutory developments, honing your craft and improving your skills, complying with procedural and professional rules, finding and selecting desirable clients, collecting a reasonable fee and many, many others. Until just a few short years ago, protecting attorneys and their firms—whether as an owner, manager or insurer—was largely focused on helping them avoid, manage, repair and respond to the occasional mistake committed while navigating these traditional challenges.

Enter computers, digital storage, the internet, emails, the “cloud” and ever-increasing, innumerable ways to conduct business faster and easier, and then add the widely unexpected, or at least under-appreciated, cybercriminal. Most

law firms were not, and many still are not, truly prepared to defend themselves against the intentional actions of these unseen criminals. Unfortunately, customary loss prevention programs practiced by even the most sophisticated law firms were not designed to address this new risk.

Sure, it is easy to dismiss the highly publicized cyber breaches at Target (70 million records), JP Morgan Chase (76 million records), Myspace (164 million records), eBay (145 million records) and Yahoo (two breaches, 500 million and then one billion records) as not law firms and PII-rich targets (pun intended). Surely, the Democratic Party and John Podesta breaches ring a bell, but they were different—or were they?

Don’t know what “PII” means? Keep reading.

Law firms as targets

Hitting closer to home, do the breaches of the Cravath, Swaine & Moore and Weil, Gotshal & Manges law firms sound familiar? According to *Fortune*, these law firms were allegedly targeted by China because of the clientele of these firms and the potential gold mine of confidential information they maintained. The office of the U.S. Attorney for the Southern District of New York is apparently investigating.

And then there was the attack against Mossack Fonseca, a Panamanian law firm, widely referred to in the press as the “Panama Papers” story. More than 2.6 terabytes of data were stolen before the law firm realized there was a breach, and a crucial 11.5 million sensitive records were lost, leaving the law firm with difficult conversations to be had with some very unhappy clients.

Cyberattacks against law firms were first widely reported beginning in 2008, and the frequency of publicly known law firm breaches has steadily been growing.



AND HOW LAWYERS CAN AVOID THEM

In fact, Cisco, in its 2015 Annual Security Report named law firms as the seventh highest target for cyber criminals in 2014.

Spear-phishing

The most common cyberattack reported by law firms is “spear-phishing,” an email that appears to be from a trusted individual or business that is known or familiar, but instead is from a criminal hacker who wants to gain access to your computer system or obtain information to enable the theft of financial, credit card or other confidential, valuable data. The email typically requests the addressee to click on an executable link that then “opens the door” to the hacker, launching spyware, malware or a Trojan Horse. Many times, the addressee opens this door without ever realizing anything untoward has occurred.

Phishing

The kissing cousin of the “spear-phishing” attack is the rather simple “phishing” attack. This email usually appears to come from a large and well-

known company or website with a broad membership base, and like its cousin, asks the addressee to click on an executable link. Any law firm, no matter its size or sophistication, can fall victim to these types of attacks without proper loss prevention preparation and education.

Personally identifiable information

Cyber criminals are looking for all sorts of valuable information, from client confidential information to personally identifiable information (PII). PII can be used, directly or indirectly, or in combination with other information, to identify a particular individual. It includes:

- A name, identifying number, symbol or other identifier assigned to a person;
- Any information that describes anything about a person; and
- Any information that indicates actions done by or to a person, and

any information that indicates that a person possesses certain personal characteristics.

Some examples of personally identifiable information, as defined by Ohio Revised Code (ORC) 1347.01, are names, Social Security numbers, resumes, correspondence, addresses, phone numbers, driver’s license numbers, state identification numbers, professional license numbers, financial account information, medical and health information, physical characteristics and other biometric information, tax information, education information, individuals’ job classifications and salary information, performance evaluations, employment applications and timesheets. Does your law firm possess any of this type of data?

Law firms can be a perfect target

As law firms act as warehouses of client and employee data, they should recognize they are not immune to cyberattacks. Not only are they not

immune, in many ways law firms are the perfect targets. Most, if not all, law firms possess some amount of the above-described personally identifiable information and, in many instances, vast amounts of such information, whether that of their clients, employees or parties and witnesses in litigation.

Theft

In addition to the phishing attacks previously described, law firms also commonly experience cyber breaches due to the loss or theft of a laptop, thumb drive, smart phone, tablet or other mobile device. If the information on the device was not encrypted and contained or had access to files containing any of the personally identifiable information described above, a breach has likely occurred. With access to office email and other law office networks, such theft can be an open door for cyber criminals to gain access to and steal confidential information.

Employee theft is also a significant risk within the law firm environment. Whether it is the theft of a laptop as described above, theft of the actual data itself or theft of user identifications and passwords, such can occur and often go undetected for a lengthy period of time. Such conduct can originate with an employee or can originate through outside parties who “influence” an employee in a compromised position (for various reasons), i.e., social engineering. Often, by the time such conduct is discovered, the stolen data has made its way to third parties for various nefarious purposes, usually including identity theft.

Attorneys’ responsibilities

Besides the common law duty owed by attorneys to protect the confidential information entrusted to them by clients, two additional sources of duties require attorneys to protect data: the Rules of Professional Conduct and federal and state law. Rule 1.6 of the Ohio Rules of Professional Conduct requires an attorney to maintain the

confidentiality of information relating to representation of a client and Rule 1.9 requires the same for information of former clients. Rule 1.15 of the Rules of Professional Conduct requires that an attorney safeguard property of a client in his or her possession—a fiduciary obligation.

Most states and U.S. territories also have enacted data security breach notification laws. Ohio’s notification law, ORC 1349.19, applies to personally identifiable information of Ohio residents. It defines a “breach” as unauthorized access to and acquisition of unencrypted computerized data that compromises the security or confidentiality of personal information owned or licensed by a person and that results in, or is reasonably believed to cause a material risk of, identity theft or fraud to the person or property of an Ohio resident.

Pursuant to this law, a breach of security of the person’s or business’s data system must be disclosed to any resident of Ohio whose personal information was, or reasonably is believed to have been, accessed and acquired by an unauthorized person, if the access and acquisition by the unauthorized person causes, or reasonably is believed will cause, a material risk of identity theft or other fraud to the resident. Disclosure is required to be made in the most expedient time possible, but no later than 45 days following its discovery or notification of the breach of the system, subject to the legitimate needs of law enforcement activities. Failure to comply with this notice requirement is subject to investigation and a potential civil action brought by the Attorney General.

Costs involved

The types of costs associated with a data breach can be many, beginning with the expenses associated with hiring a computer forensics expert to determine how much information was compromised, and most importantly, whose information was disclosed. This cost can range from a few thousand

dollars to tens or even hundreds of thousands of dollars, depending on the breadth of the breach. Another typical cost is that associated with compliance with the notice requirements of the state(s) of residence for those persons whose information was disclosed, and depends largely on the number of records disclosed. This cost will also vary based on whether the notice can be sent electronically, whether it must be mailed, whether additional costs need be incurred to locate the persons whose information has been disclosed, and whether alternative notice or publication is necessary.

Once a breach is discovered, additional costs are often needed to repair any damage to the systems themselves, replace or restore software or data records that might be damaged or corrupted and block further access to the criminal(s) who obtained the personal information. These out-of-pocket costs do not include the potential damage to reputation caused by a breach, often occurring as a loss of trust of clients who entrusted their confidential information to the law firm. Most law firms will also experience some form of business interruption as a result of a data breach, as many hours will be devoted to investigating, responding to and repairing the breach. Finally, if clients sustain damage as a result of the data breach, such as damage to their credit resulting from identity theft or loss of funds from financial accounts, they may articulate a claim for negligence or malpractice. 🏠

Author Bio



Steve Couch is president and CEO of the Ohio Bar Liability Insurance Company.

8 ways to limit risks of cyber breaches

Law firms can take various steps to limit their risks to cyber breaches, with the most obvious being to insure against such a loss.



Plan

Law firms should develop comprehensive information security plans designed to prevent data breaches. The *ABA Cybersecurity Handbook* is a great resource.



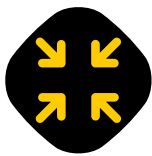
Assess

Conduct a risk assessment, which often can be aided by the services of knowledgeable, objective, independent IT vendors.



Encrypt

Use appropriate encryption technology on servers, desktops, laptops and all mobile devices.



Limit

Limit access to computer systems, email and directories only to known and trusted users and by implementing and following appropriate password policies.



Develop

Although it seems obvious, develop and follow a data retention and destruction policy, so that personal data is not at risk. It is important to sanitize and eliminate personal information that is no longer needed and, frankly, to avoid collecting personal data that is not essential. Law firms should carefully analyze where such data is kept, and limit the number of places where such data is retained.



Apply

Keep anti-virus and security software up to date, regularly applying recommended patches.



Educate

Educate employees about appropriate handling and protection of sensitive data, proper use of email and use and protection of passwords—a very important step in minimizing risk. Firms should implement and follow a written internet security protocol

(WISP) to explain in detail how internet access and usage should be conducted on firm computers and, specifically, the limits on such usage. Not only is this employee education process important, but management of this exposure also should continue through employee exit strategies, realizing that unhappy former employees pose a significant risk for a potential data breach.



Respond

Develop a comprehensive breach preparedness plan to enable decisive action and avoid operational paralysis when a data breach occurs. This will allow a firm to timely respond to a breach incident, perhaps limiting the scope of the breach and potential damages to those whose information has already been compromised, as well as limiting the amount of lost productivity and negative publicity that might result from a data breach.

With careful thought and planning, law firms can significantly lower their exposure to a potential data breach and have a road map in place when and if such event occurs.

OBLIC can help



Although a client's claim for cyber breach-related damages based on negligence or malpractice may be covered under some legal professional liability insurance policies, most often "first party-related costs/damages" are not. Such first party costs/damages can include most of those mentioned above:

business interruption, privacy breach response costs, notification expenses, breach support and credit monitoring expenses, damage to data and computer programs, cyber extortion expenses, computer forensic and investigation fees, public relations expenses, legal expenses, etc.

It is with these risks in mind, and in recognition that the costs of a cyber breach to a law firm can be significant, that the Ohio Bar Liability Insurance Company (OBLIC) includes cyber breach insurance coverage, FREE OF CHARGE, in all of its legal professional liability insurance policies protecting Ohio law firms. This coverage provides protection for the first party type damages described above,

which are not ordinarily covered by a professional liability policy, with additional protection for defense costs and penalties incurred as a result of a regulatory investigation.

Such coverage provides limits of liability of \$50,000 per claim and in the aggregate for firms of ten attorneys and fewer, and \$50,000 per claim and \$125,000 in the aggregate for firms of eleven or more. Higher limits are available on a fully underwritten basis for an additional charge. OBLIC policyholders also receive complete complimentary access to an extensive treasure trove of cyber security loss prevention tools and resources.

THE HIDDEN SIDE OF CHARITABLE LAW IN THE OHIO ATTORNEY GENERAL'S OFFICE

BY TODD DEBOE AND ABIGAIL KLINE JACOBS

One of the oldest duties of the Attorney General is to regulate charitable trusts. This tradition is rooted in common law and can be traced back to the Statute of Charitable Uses of 1601. Even during the Elizabethan period, trustees didn't always do the right thing with assets entrusted to them. And even then, there was a recognition that someone needed to be empowered to step in for the beneficiaries and ensure that the right thing happened with those funds. The Ohio Attorney General maintains that common law authority, as well as additional statutory authority and responsibilities.

Charity leaders and board members are probably most familiar with the Attorney General's work through the online charitable registration system. The vast majority of Ohio charities, as well as non-Ohio charities that solicit Ohioans, must make annual filings with the office that are available to the public through the Research Charities function at www.OhioAttorneyGeneral.gov. This

database shows whether charities are compliant with their filing obligations and can provide valuable information for clients or others who are trying to be wise donors.

The public may be familiar with the Attorney General's work on charitable issues through media coverage of enforcement actions when charitable board members have breached their fiduciary duties or when fraudulent solicitation efforts have taken place. Ensuring the protection and proper use of charitable assets is always a chief goal of the Ohio Attorney General.

But there are other less publicized, although important, occasions when charities need to contact the Attorney General's Office. Those working with and advising charities need to be mindful of statutory requirements to provide notice to the Attorney General when a charity is contemplating certain transactions or looking to deviate from the purposes of restricted gifts.

Transactions and Nonprofit Combinations

Under the requirements of several different statutory provisions, charities may need to provide notice to the Attorney General's Charitable Law Section of asset sales and transactions. The guiding public policy provisions center on whether the transactions constitute a fiduciary breach and whether the charitable assets remain protected.

Mergers/Combinations of Charities

Situation A: The boards of nonprofit Homes for Cats and for-profit Homes for Pets have decided that it would be more efficient for the two groups to work together. The board of Homes for Cats votes to transfer its assets to Homes for Pets, which will be the surviving entity following the merger.

Mergers involving charitable organizations are a rather routine occurrence. Sometimes, as described above, the remaining entity in a merger

or combination is not a charity. In these cases, notice to the Attorney General is required at least 20 days before the transaction and additional documentation and information will likely be required. Usually, however, the remaining entity is a charity. In such cases, the Attorney General's Office does not need advance notice. The surviving entity would continue to operate as normal and the other group would need to dissolve as described below.¹

Charity Dissolutions

Situation B: Board members of Miracles Food Pantry in Prosperous, Ohio, have decided to dissolve the organization because poverty has been cured there and no families need its services. It transfers all of its assets to a nearby community's food pantry and completes dissolution filings with the appropriate agencies.

For charities that are going out of business, final filings should be made to the IRS, the Secretary of State and the Attorney General's Office. To fulfill filing requirements with the Attorney General, the charity must (1) notify the Attorney General that it is dissolving, (2) submit all filings and fees owed at the time of dissolution, and (3) file a final annual report that includes a schedule of the organization's final distributions. In lieu of filing the final annual report and schedule of final distributions, the organization may submit the Charity Dissolution Form, which is available at ohioattorneygeneral.gov/Files/Business-and-nonprofits/Charity/Charity-Dissolution-Form. When dissolving, it is important to ensure that charitable assets are protected even on the closure of the organizations.

Dispositions of Charity Assets

Situation C: Charity GoodLands has decided to sell off a significant amount of



its property. In fact, it is entertaining a multi-million dollar offer that represents 60% of the assets of organization.

If a group is disposing of more than 50 percent of its assets within a three-year period and in a way that is not part of its ordinary course of business, it needs to provide notice to the Attorney General's Charitable Law Section at least 20 days before the consummation of the transaction.² The notice, which is a public record, is typically followed by an investigatory request from the Charitable Law Section to provide additional information about the transaction. Investigations of charitable organizations are confidential, so the responses to any such investigatory inquiry are confidential, unless the issue proceeds to litigation. Questions are likely to center on details of financial and fiduciary relationships involved in the transactions.

Usually, board members approach these transactions with sensitivity toward protecting charitable resources so future beneficiaries can continue to be served by other entities. Sometimes, however, trustees or key staff may improperly make personal use of charitable resources, sell the charity's assets far below fair market value or fail to use restricted funds for

their required purpose. When such questionable activities are observed, the Attorney General's Office may seek to recover such resources and ensure their charitable nature is protected; it also may take further action against those who have breached fiduciary duties.

Transfers of Hospital Assets

Situation D: Hope Hospital's board has decided it can't survive on its own and has put the organization up for sale. A for-profit and a nonprofit hospital corporation both have expressed interest in Hope.

The statutory requirements for transactions involving hospitals and healthcare organizations are complex. If a hospital is transferring ownership or control of 20 percent or more of its assets in a two-year period, notice must be provided to the Attorney General's Office. If the transferee is a for-profit corporation, the Attorney General's Office must approve the transaction before it can go forward. If the transferee is a nonprofit corporation, formal approval is not required. For all health-care transactions, after notice is received, the Attorney General's Office will request additional documents and information to ensure charitable assets are protected.³

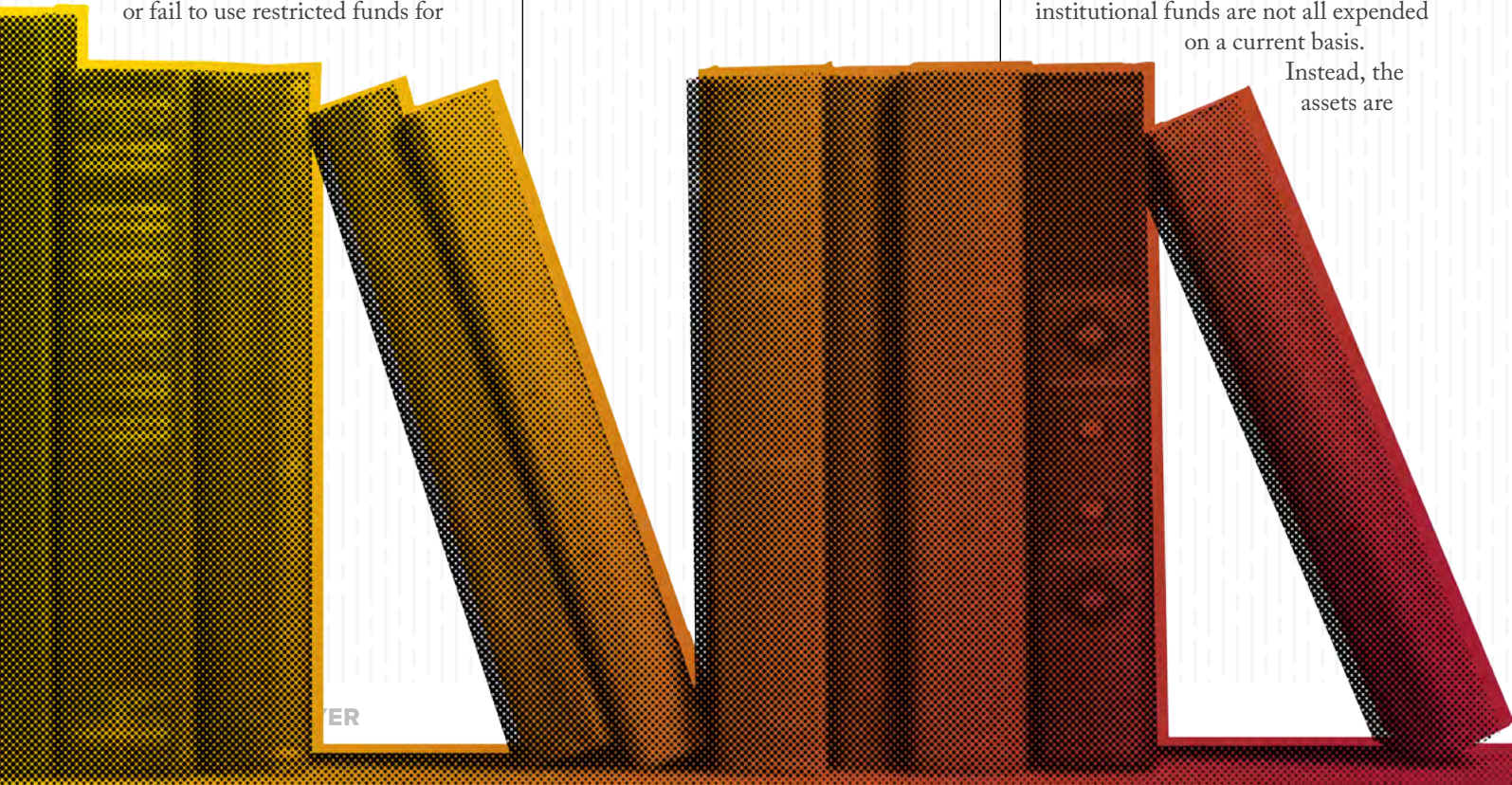
In the hospital world, too, trustees or key staff sometimes may improperly make personal use of charitable resources, sell the charity's assets far below fair market value, or fail to use restricted funds for their required purpose. Again, in this context, the Attorney General may seek to recover such resources and ensure that their charitable nature is protected and that people who have violated fiduciary duties are held to account.

Because the details surrounding transactions can be varied and complex, counsel should contact the Ohio Attorney General's Charitable Law Duty Attorney at (614) 466-3181 to determine which notice form, if any, is most appropriate.

Release or Modification of Restrictions on Institutional Funds

The Attorney General may also need to be notified when a charitable institution is seeking to release or modify restrictions on an institutional fund. Institutional funds, often called endowment funds, are funds held by a charitable institution for a charitable purpose. Such funds generally are created by the execution of an instrument containing restrictions that limit the fund's uses. The assets of institutional funds are not all expended on a current basis.

Instead, the assets are



Investigations of a charitable organization are confidential, so the responses to any such investigatory inquiry are confidential, unless the issue proceeds to litigation.

used to generate income to support the fund's charitable purpose over a period of years.

An example of an institutional fund might be a gift to a university from an alumnus with the restriction that it be used for scholarships for night students. The income generated will be used to provide annual scholarships. But situations may develop causing the charitable institution to determine that the restriction limits the institution's ability to use the fund to achieve its charitable purpose. In this example, if the university were to close its night program, it would no longer be able to use this fund; thus, the university might wish to modify or release the restrictions so that the money could be used to achieve the charitable purpose for which it was originally created or some related purpose.

Modification with Written Consent from Donor

An institution may release or modify restrictions on an institutional fund without court approval and without providing notice to the Attorney General if the institution receives the written consent of the donor.⁴

Modification through Court

If the donor is deceased, however, modification may still be permitted. The institution may seek approval through the court to modify a restriction on the fund if (1) "the restriction has become impracticable or wasteful, if it impairs

the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund"; or (2) "the particular charitable purpose or restriction becomes unlawful, impracticable, impossible to achieve, or wasteful."⁶ These cases may be filed in either the common pleas or probate court but are typically filed in probate court. And these must name the Attorney General as a party.

The party wishing to modify or release restrictions can approach the Charitable Law Section beforehand to see if the Attorney General's Office agrees to the proposed changes. If so, the Office can sign a waiver and consent that can be filed along with the complaint. To make this determination, the Office will need the draft of the complaint, any gift instruments and the proposed new instrument.

Modification without Court Approval

An institution may release or modify restrictions on an institutional fund without court approval if it determines that the restriction is "unlawful, impracticable, impossible to achieve, or wasteful..."⁷

Institutions making this determination must notify the Office's Charitable Law Section at least 60 days before modification, using the Attorney General's form, which can be found at

ohioattorneygeneral.gov/Files/Forms/Forms-for-Non-Profits/Charity-Forms/Notification_Form.aspx. It is also helpful if the institution attaches a copy of the gift instrument, a copy of the document containing the proposed new language, and a two- or three-paragraph narrative explaining the reason for the proposed change. Additionally, each of three conditions must be met. First, the institutional fund must be valued at less than \$250,000. Second, more than 10 years must have elapsed since the fund was created. Third, the institution must use the assets of the trust in a manner consistent with the charitable purposes expressed in the gift instrument. Once the Office has reviewed all of the information, it will send a letter to the institution stating its position.

For example, a fund worth \$200,000 that was created in 1950 might be restricted to scholarships for students studying at its divinity school. If that university decides to close its divinity school, it would not be able to use that fund, so it may wish to modify the restriction so that the fund could be used to support scholarships for students majoring in religion. Because the fund would still be used for scholarships, and for students studying a similar subject, it could be argued that such a modification would be consistent with the charitable purposes expressed in the gift instrument.

Charitable Trust Terminations, Modifications and Deviations

The Attorney General also has a role to play when parties engage in litigation or private agreements relating to changes to charitable trusts or organizations. R.C. 109.25 states that the Attorney General is a necessary party in actions to (1) terminate charitable trusts or distribute assets; (2) depart from the objects or purposes of a charitable trust (such as an application in cy pres or deviation); (3) construe the provisions of an instrument with respect to a charitable trust; and (4) determine the validity of a will having provisions for a charitable trust.

When the statute refers to a charitable trust, it is referring to the definition found in R.C. 109.23, which is so broad that it encompasses not just trusts, but almost any charitable organization. Therefore, when attorneys engage in litigation involving the interests of charitable organizations, they should review this statute to determine whether the Attorney General might be a necessary party.

Sometimes the Attorney General's Office can determine from the face of the complaint and relevant documents that it need not take an active role in the litigation and may be able to consent to the plaintiff's request for relief. Parties seeking such consent should send a copy of the complaint, along with any other relevant documents, such as a copy of the trust instrument, to the Office's Charitable Law Section with a brief letter outlining the case. If the Office agrees, it can sign a waiver and consent, which can be filed along with the complaint.

The Attorney General's Office sometimes also needs to be included in private settlement agreements to alter the terms of trusts with charitable beneficiaries. R.C. 5801.10 details the rules governing private settlement agreements. The statute provides that the Attorney General is a necessary party to a private settlement agreement


when (1) the agreement construes or modifies the terms of the trust that refer to various federal or state taxes; and (2) the trust is itself a charitable trust or one with charitable beneficiaries. Often, out of an abundance of caution, parties will include the Attorney General as a party to a private settlement agreement when one of the beneficiaries is a charitable organization.

Conclusion

Charities greatly enhance the quality of life we enjoy in Ohio. The Attorney General urges lawyers to contact his office with questions involving the activities of charities with which they work. Because there is so much diversity and complexity within the charitable sector, an attorney within the Charitable Law Section is available each work day at (614) 466-3181 to talk through issues and help provide direction to ensure the integrity of the charitable sector.

All notifications of transactions, requests for releases or modifications or any other action in which the Attorney General is a necessary party or must be notified should be sent to the Charitable Law Section at 150 East Gay Street, 23rd Floor, Columbus, Ohio 43215.

Numerous publications on board governance and internal controls are

available at ohioattorneygeneral.gov/Business-and-Non-Profits/Charity/Resources-for-Nonprofit-Board-Members.aspx. Additionally, staff from the Charitable Law Section would be happy to provide live training on charitable board governance if you are interested in hosting training in your community. 

Author Bios



Abigail Kline Jacobs is an Associate Assistant Attorney General in the Office of Ohio Mike DeWine's Charitable Law section. She is a graduate of The Ohio State University Moritz College of Law.



Todd DeBoe is a Principal Assistant Attorney General in the Office of Ohio Mike DeWine's Charitable Law section. He is a graduate of the University of Toledo College of Law.

(Endnotes)

¹ R.C. § § 1702.41 and 1702.411.

² R.C. § 1702.39.

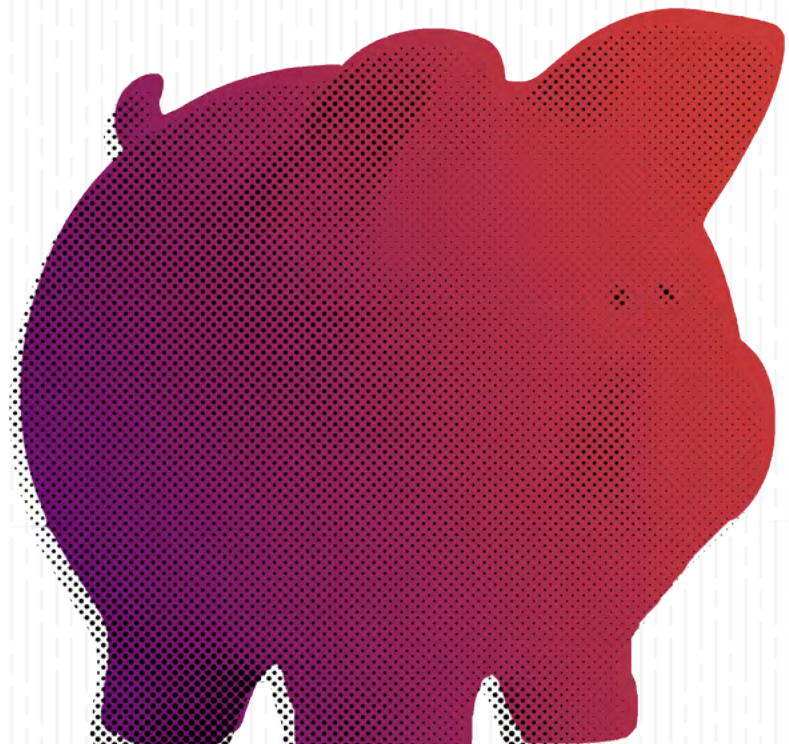
³ R.C. §§ 109.34 and 109.35.

⁴ R.C. 1715.55(A).

⁵ R.C. 1715.55(B).

⁶ R.C. 1715.55(C).

⁷ R.C. 1715.55(D).



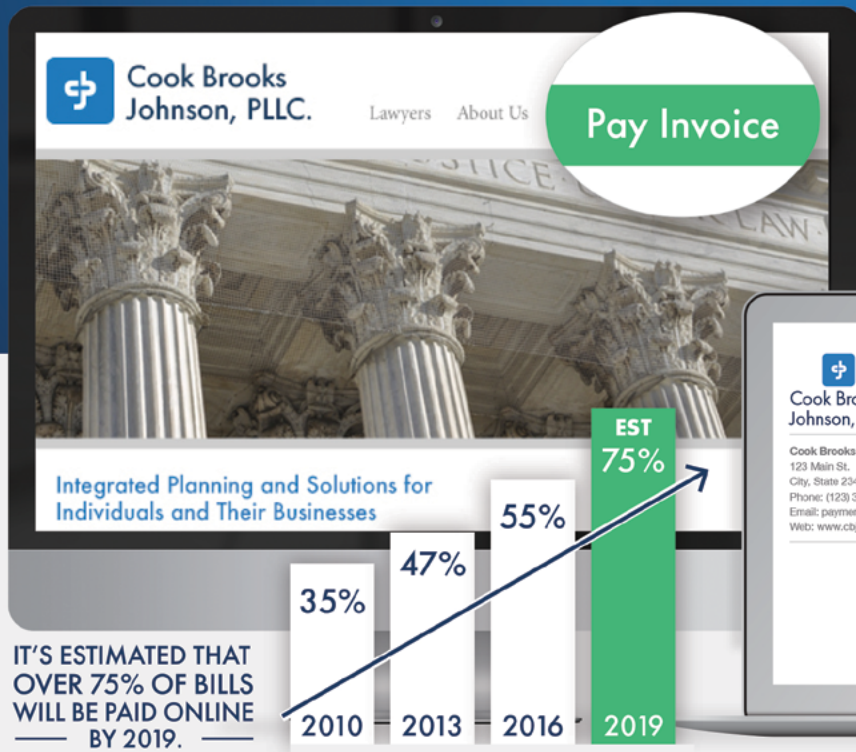
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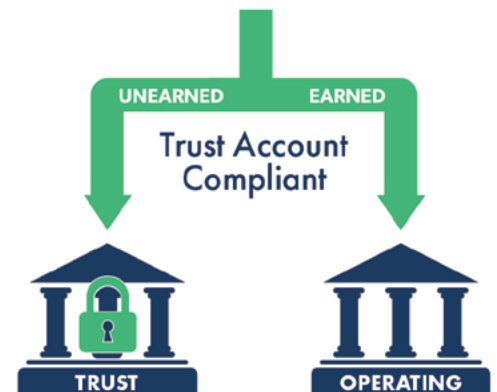
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Book Review

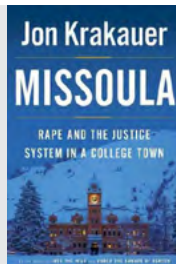
Missoula: Rape and the Justice System in a College Town

GINA H. PRESCOTT

Missoula: Rape and the Justice System in a College Town
by John Krakauer

416 pages.

New York, New York: Anchor Books. 2016. \$16.95.



One of the more painful moments in Jon Krakauer's coverage of rape cases in Missoula, Montana, is the description of Allison Huguet attending a University of Montana football game with her father the day after she was raped by one of the UM football players, Beau Donaldson.

What is so tormenting about the more innocuous description of Allison attending the football game (a father-daughter tradition) the next day, is that Allison went to the game not to upset anyone: "My dad was the last person I wanted to know that I had been raped. I was in a state of shock [...] I was just going through the motions. Mostly, at


that point, I was trying to figure out how to make my eyes not look like I had been bawling for the past five hours." This choice is both representative of the social demands women place on themselves and how decisions like Allison's frustrate most people when attempting to determine whether or not someone has actually been raped. With rape cases, it's not just about what occurred during the sexual act, which is typically private, it is also about all that comes before and after.

Krakauer picked the city of Missoula as the focus of his book, in part, because it became unwittingly famous when it was labeled the "Rape Capital of America" in a 2012 Jezebel article—a designation that Krakauer points out is an overstatement; Missoula happens to be statistically representative of most cities in regards to rape and rape prosecution.

In addition to Allison's case, Krakauer follows two other rape cases from Missoula. Using transcripts, interviews, newspaper articles, comments from online message boards, and court documents, he weaves these stories together, providing a well-paced and informative narrative of how rape is prosecuted, how it is viewed by a community, and the pain, confusion, and psychological demands the victim experiences. Krakauer covers the two

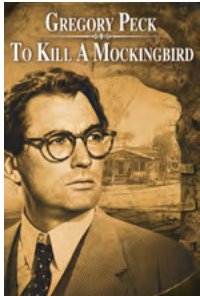
legal avenues of prosecution—under Title IX through the university system and through criminal charges brought by the state—showing how the differing standards of evidence, procedures, punishments and expectations are limiting and unsatisfying in both cases for various reasons.

Written without hyperbole and unnecessary emotional flourishes, *Missoula* is a powerful piece of narrative journalism. Krakauer lets the stories stand for themselves, which ultimately makes them more haunting. It reminds the reader how insidious and even banal rape can appear to be.

Many people have heard that rape does not take the form that we have often grown up with: violent, vicious attacks upon strangers. Krakauer has created a book that elucidates that point with devastating precision, reminding us all that rape, unfortunately, is not so simple, particularly because, as a society, we carry into it a litany of biases about what rape should be and how we presuppose women should behave. If we are to reform rape litigation, we need to recognize the historical and cultural biases that inform us, and we must fight back harder. 

T5P What is your favorite lawyer movie?

We asked our members to tell us their all-time favorite lawyer movie. Here are the top five responses.



- 1 To Kill a Mockingbird**
To Kill a Mockingbird may be the reason I am a lawyer today. How can one not be inspired by Atticus Finch's courage to face certain defeat in the name of justice? I often think of that stifling courtroom and its crowded galleries, and I hope to one day stand up for what is right when everyone is watching.

Christopher Brown, Mansfield



- 2 My Cousin Vinny**
It's a quotable classic and secretly has some good teaching tools for trial practice.

Lauren Emery, Columbus

- 3 And Justice for All**
Pacino tells the truth, even if he condemns his own client in doing so.

Terry Walrath, Hinckley

- 4 The Verdict**
Paul Newman's closing statement is my favorite.

William R. Biviano, Warren



- 5 A Few Good Men**
One of my favorite quotes from this movie: "I'm sorry, I keep forgetting. You were sick the day they taught law at law school!"

Tom Guillozet, Versailles

Honorable Mention: The Lincoln Lawyer

It provides a very real life horror situation where a lawyer's duty of confidentiality trumps all else and how this lawyer strategically handles a sociopath client without violating the ethical rules (so to speak).

Andrew Rossow, Dayton

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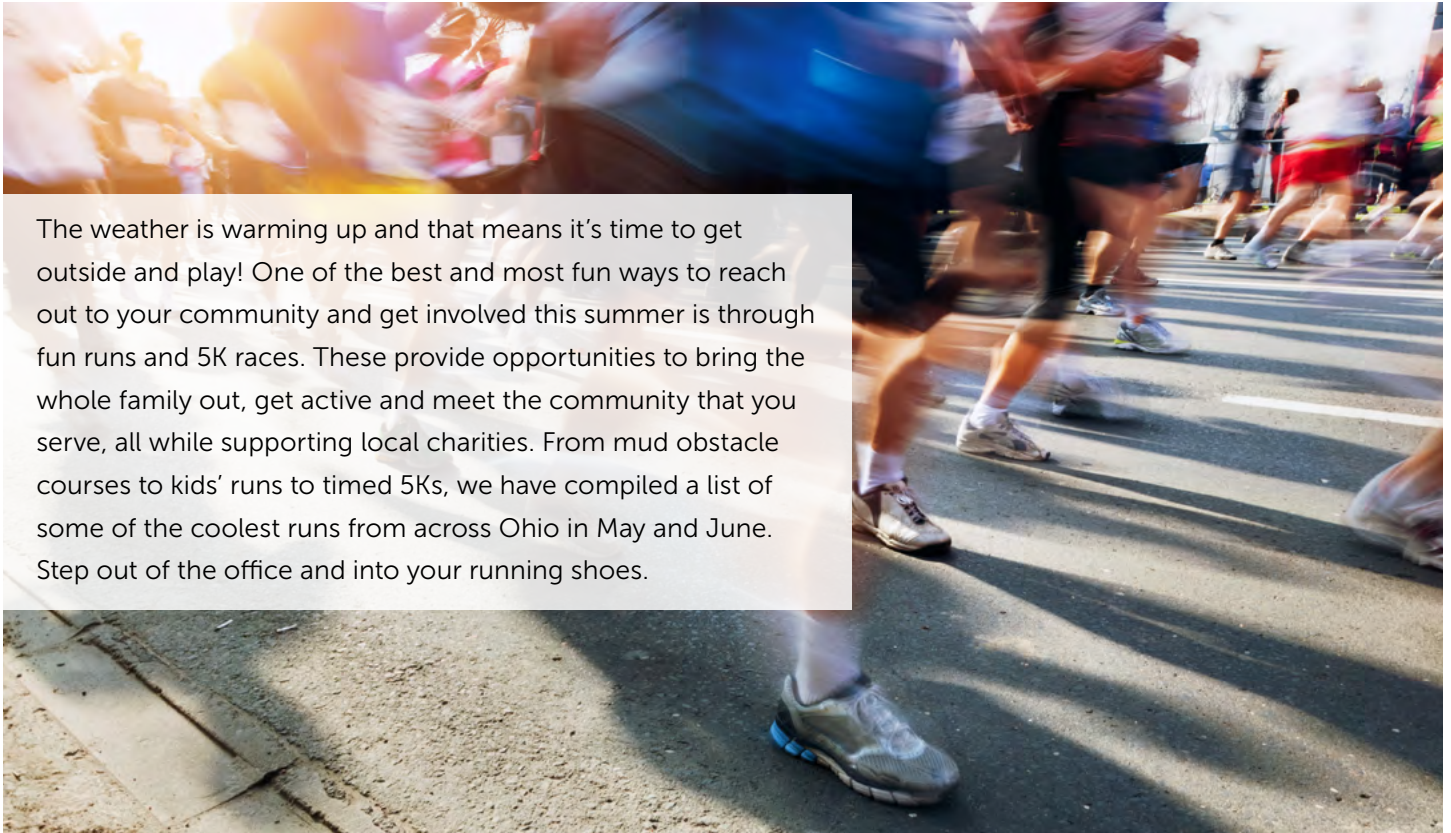


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The weather is warming up and that means it's time to get outside and play! One of the best and most fun ways to reach out to your community and get involved this summer is through fun runs and 5K races. These provide opportunities to bring the whole family out, get active and meet the community that you serve, all while supporting local charities. From mud obstacle courses to kids' runs to timed 5Ks, we have compiled a list of some of the coolest runs from across Ohio in May and June. Step out of the office and into your running shoes.

Columbus



Susan G. Komen Columbus Race for the Cure *May 20, 2017*

Celebrate, honor and remember those who have faced breast cancer.

www.komencolumbus.org

Charity Day 5K *July 2, 2017*

Several local charities will benefit from the run, runners choose which charity they would like to support.

www.charityday5k.com

Dayton



Southdale Strong 5K *May 5, 2017*

Kids run, 5k run/walk, food trucks, vendors, entertainment

Proceeds benefit Dayton Children's Hospital Capital Campaign to build new eight-story patient tower.

No Child Wet Behind 5K *May 13, 2017*

5K run/walk and 1 mile family fun run/walk

Supports the Columbus Diaper Bank and No Child Wet Behind in their mission to provide diapers to those who cannot afford them.

Run 4 The Taps 5K *May 20, 2017*

Benefits Ronald McDonald House Charities of Dayton.

Compiled by Zoe Legato, an intern in the OSBA Communications Department and a junior at The Ohio State University.

Alliance



Duke Melee 5K Run/Walk and Obstacle Challenge

May 6, 2017

5K obstacle challenge, 5K run/walk, kids fun mud run

Hosted by Marlinton Local Schools, all proceeds go to Marlinton Education Innovation Fund.

<https://runsignup.com/Race/OH/Alliance/DUKEMELEE>

Toledo

The Great Amazing Race

June 17, 2017

Teams of two (adult/kid, kid/kid) compete in outdoor obstacle course. Sponsorship opportunities for your firm to get exposure at the event.

www.GreatAmazingRace.com



Ottawa

Challenged Champions Obstacle River Run

June 10, 2017

5K obstacle course and shorter kids' course

Proceeds benefit Challenged Champions Equestrian Center to help them provide equine-assisted therapies to veterans and individuals with special needs.

<http://www.allsportsraces.com/challenged-champions-obstacle-river-run.html>



Cincinnati (Deerfield Township)

Butterfly Walk and 5K

May 13, 2017

Proceeds support CancerFree KIDS and their mission to find a cure for pediatric cancer.

<http://www.butterflywalk.com>

Cleveland

4 Miles 4 Water

May 6, 2017

Pull-tag timed run

The average person in the world must walk four miles to reach drinking water. Simulate their walk and support projects to provide clean drinking water locally and in Uganda.

<https://www.drinklocaldrinktap.org/activism/4-miles-4-water/>

Fat Little 5K & 1 Mile Walk

June 11, 2017

5K race and 1 mile fun run/walk Proceeds benefit the Alzheimer's Association.

<https://runsignup.com/Race/OH/OlmstedFalls/FatLittle5K>

A Most Excellent Race


June 25, 2017

10K and 5K chip-timed runs; 5K and 1 mile walks

Proceeds support recreation programs for children with disabilities at the Achievement Centers for Children Camp Cheerful.

<http://www.achievementcenters.org/donate/fundraising-events/race.html>



Whether you decide to go for a new personal record or get muddy on an obstacle course, these races are a great way to support local charities and the community. This list is by no means exhaustive; keep an eye on your local news for runs in your hometown. See you on the course. 



Daughters of OSBA past presidents enjoy interview 10 years in the making

JANE TAYLOR

Jane Taylor is the Director for Pro Bono and Communications for the Ohio Legal Assistance Foundation, and was president of the OSBA in 2005-2006.



In 2005, *Ohio Lawyer* published a story on a unique occurrence in OSBA history: the three daughters of two OSBA presidents, and one president-to-be, had started law school together as 1Ls at The Ohio State University Moritz College of Law ("From First Daughters to Future Lawyers: The Apple Doesn't Fall Far from the Tree," January/February 2005 *Ohio Lawyer*, Vol. 19, No. 1).

Emmy Ashmus, Colleen Bell and Kacey Chappellear shared how being the daughter of a lawyer shaped the decision to follow in their parent's footsteps, and each expressed a strong desire to pursue a career in public service after graduation [Author's note: Colleen Bell is my daughter].

Three years later, *Ohio Lawyer* invited

the daughters of by-then-past OSBA presidents Keith Ashmus, Stephen Chappellear and myself to reflect on their law school experiences and compare their expectations with reality ("First Daughters' Reflect on the Law School Experience," September/October 2007 *Ohio Lawyer*, Vol. 21, No. 5).

Each of the First Daughters had coped with law school in different ways—Kacey by investing in a good coffee maker, for example—and, at graduation, all were following through with their pursuit of a public service position.

It has now been 10 years since the First Daughters joined the legal profession as lawyers. It seems like a good time to check in with them again, and see how well the reality of the first 10 years in practice matched their expectations at

graduation. Each agreed to answer some questions by email.

Tell us where you live and work now.

Emmy Ashmus Langley: Denver, Colo.; Assistant Solicitor General in the Colorado Attorney General's Office.

Colleen Bell: I live in Washington, D.C., and work in Congress.

Kacey Chappellear: I live in Columbus, and work at the Franklin County Prosecutor's Office in the Special Victims Unit.

Has the first 10 years of your legal career turned out to be what you expected when you graduated from law school?

EAL: The procedural processes, including court appearances, brief due dates, prepping for hearings, oral arguments and trial, are very similar to what I expected when I graduated.

CB: Not even close.

KC: I was already working for the Prosecutor's Office when I graduated, so I knew (more or less) what to expect. It has been even more challenging than I expected, but also more rewarding. Working in SVU is certainly very humbling.

What has turned out differently?

EAL: I didn't realize how hard it would be to balance my legal career with motherhood. Although I enjoy my work, I wish I had more flexibility with my schedule, as I often feel like it is hard to balance my work with my kids' school activities and sometimes struggle to keep up on both ends. Work-life balance is something I continue to try to achieve.

CB: When I left law school, I was very confident that I wanted to be a litigator and would enjoy being in the courtroom frequently. In my first year of practice, I realized I enjoyed a much different skill

set and it ultimately led me to essentially changing professions. I've been working in the legislative branch of the U.S. Government since then.

KC: I have been pleasantly surprised to find that the vast majority of prosecutors and defense attorneys have good relationships in and out of the courtroom and are genuine friends. It makes it so much easier to work on tough cases when you not only respect opposing counsel, but also like them.

How has your commitment to public service been influenced, or changed, by your first 10 years as an attorney?

EAL: Sometimes large-scale change is achieved with small, slow steps. It can be challenging to focus on the smaller impacts I make each day, rather than the bigger shifts that need to be made to fully impact needed change. However, I am certain that what I do is making a difference, and I remain committed to public service.

CB: If anything, it has made it stronger. Seeing the drive, sacrifice and courage of my peers motivates me each day to work harder, smarter and better. I'm fortunate to feel that I'm impacting policies on a national level.

KC: Well, I continue to work for the government in a position that serves people who have been affected by violent crime. My commitment to public service and the need for passionate, thoughtful advocates in this field has been strengthened.

What advice would you give to someone graduating from law school in 2017?

EAL: Try to find a mentor, whether it's through your work, school or community service, that can help guide you and help you find the right path. I am still very close to the judge I clerked for and I consult him all the time about career choices. Beyond the

valuable advice he provides, it has been very valuable to have a close friend in the same field whom I can look up to and trust. It also helps that we share the same sense of humor!

CB: Take time to reflect on whether what you are doing is making you happy. You have a long career ahead of you. Be courageous and find something that will make you happy and fulfilled.

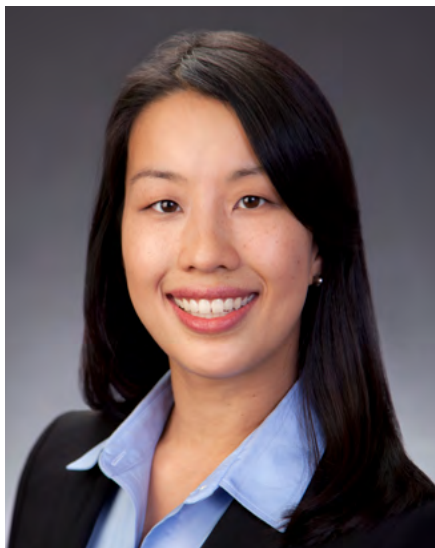
KC: Every job is going to have its good days and its bad days, so pick a job where you are excited to go to work in the morning. And be smart about your loans! Talk with a financial advisor before consolidating or making any big decisions.

If CNN were covering your life, what would today's breaking news be?

EAL: I spent many years working on criminal appeals and many of those cases helped victims and their families find peace in very troubling circumstances. I hope it would be something related to those cases.

CB: I'm getting married!

KC: Assistant County Prosecutor, once again, CANNOT believe what she is hearing. 🍷



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Compiled by Zoe Legato, an intern in the OSBA Communications Department and a junior at The Ohio State University.

What led you to a career as an attorney?

In college, I worked as a canvasser for the New York State Public Interest Research Group. Sitting on the concrete steps of dozens of homes, I heard incredible stories about medical and financial struggles and legal frustration. It was eye-opening to see how many people in our communities face daily hardships. An elderly woman said to me, "You know what dear, you should be a lawyer or something. You could do us a world of good." I'm not sure if I realized it immediately, but her words left an impression on me.

Upon graduating law school, I committed myself to making a difference. I pursued a career as a white-collar crimes prosecutor in Arizona, then Ohio. My career serving the public has been immensely gratifying.

What is the best advice you have received as an attorney?

Be humble, be authentic and do everything you can to support others. We all face pressures to act in ways that conflict with this. To "fit in" to a firm's culture, young attorneys may portray versions of themselves that they don't feel comfortable with. Or, hoping to attain a promotion or raise, lawyers sometimes find themselves struggling to balance self-promotion, humility and teamwork.

My best mentors have shown me how important it is to always strive to be the best version of you – as a person and an attorney. We must consistently work to be authentic, to be kind to co-workers and co-counsel, and always remember to not only support, but *champion*, deserving attorneys.

What legal resource do you use the most?

Bar associations! When I relocated to Ohio four years ago, I hardly knew a soul in Columbus. By using resources like the Ohio State Bar Association, Ohio Women's Bar Association and National Asian Pacific American

Bar Association, I met friends and accomplished attorneys in public and private sectors. In times of need, I have found that these are the first people I turn to and the first to come to my aid!

While networking doesn't come easily to all of us, there's value in pushing ourselves – whether we've been practicing two years or 20 – to cultivate meaningful, professional relationships with other attorneys. Bar associations are exceptional resources for accomplishing that.

Proudest moment as a lawyer?

Being recognized by the Ohio Women's Bar Association (OWBA) for helping to found the organization's Government Subcommittee (GS). I worked with the OWBA board to spearhead the new group to promote leadership and advancement opportunities for female attorneys employed by Ohio government agencies. We also created a platform for judges, attorneys, and government and government-relations attorneys to connect, educate and support each other.

With incredible support from our staff and co-chair Magistrate Amy Koorn (Franklin Court of Common Pleas), GS has grown exponentially. It has been tremendously exciting, challenging and rewarding to help build a mechanism for positive change.

Fun fact

When I'm not running after my 3- and 5-year old children, I run half-marathons with my husband. As a child, I absolutely detested running. In elementary school, we were forced to run around a dirt track on annual Field Days and I would almost always come in second-to-last. Now, as a trial attorney and mother, I find running enjoyable and therapeutic. It's satisfying to know you're good at something you were initially terrible at! Like learning the law – maybe it's a matter of a little patience, determination and practice. 🏃‍♀️



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** Thursday, August 24: open to lawyers who have been in practice five years or less, or are age 36 or younger. Participants must be OSBA members in good standing.

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Wednesday, August 23

Please visit www.ohiobar.org/forum for details about optional Wednesday activities.

Thursday, August 24

- ☐ OSBA Annual Luncheon (ticketed)
- ☐ General Assembly Meeting
- ☐ OSBA Reception for President Randall Comer (ticketed)

Alumni Reception TBD

- ☐ Alumni Reception

Name of Law School

Friday, August 25

- ☐ Complimentary Luncheon with Exhibitors

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