Ohio Bar®
Connect. Advance. Succeed.

Solo, Small Firms and General Practice News

VOLUME 38 ISSUE 3
Published by the Ohio State Bar Association
Solo, Small Firms and General Practice Section



The Legal Burnout Solution:
Creating the Law Firm of the Future
ChatGPT in the Legal Field

By Rebecca Howlett and Cynthia Sharp

"Change is not merely necessary to life – it is life."
Futurist Alvin Toffler

Why Should Lawyers Care About ChatGPT?
By the time you read this, this article will already be out of date. Rapid advancements in generative artificial intelligence (AI) like ChatGPT are happening minute-by-minute and, since the emergence of ChatGPT and other platforms, generative AI continues to make an unprecedented global impact.

To refresh your AI knowledge, ChatGPT is an LLM – a "large language model" designed to produce human-like text when prompted with questions or other queries. Engaging with ChatGPT can feel like conversing with a very smart and well-informed human being and can be a huge time-saver, ***if used correctly***. For attorneys, evolving alongside the emergence and integration of AI within the legal field will be key if they want to stay relevant (and ethically compliant).

AI technology like ChatGPT is already becoming a mainstay of our law practices and lives. For those lawyers who have been resistant so far, here are some small steps you can take to begin your AI journey and maximize the positive benefits of employing ChatGPT, of which there are many!

Leveraging ChatGPT for Practice Management
Attorneys on the cutting-edge are already successfully integrating ChatGPT into their law practices and not looking back. For example, we know of one lawyer who uses ChatGPT so frequently that her office has named it "Gloria." After Gloria completes the first draft of an "assignment," the lawyer provides the finishing touches – a process that is significantly less time consuming than facing the tyranny of the blank page.

Examples of projects assigned to Gloria include drafting website blogs, LinkedIn posts and FAQs. The attorney related that utilizing this resource for routine marketing tasks has resulted in an increase in their personal productivity and that they now have more time to explore higher-level projects that require creativity, wisdom and judgment.

TIP: Get creative and consider areas in your law practice that could benefit from an innovative "helping hand," such as marketing or practice management. Do you have an office manual? Do you have designated processes? Do you have consistent social media posts? If not, ChatGPT could be an excellent starting point for some first drafts.

INSIDE

The Legal Burnout Solution: Creating the Law Firm of the Future 1
Ernie's Corner: Tech Tips for Attorneys 3
Book Review: Over Ruled: The Human Toll of Too Much Law 5
NAR Settlement Brings New Changes to Buying and Selling Real Estate 7
The Rights and Responsibilities of Tree Ownership 9
Breaking the Silence: The Power of Recovery and Support in the Legal Profession 11
5 Signs That You Are Ready To Retire 13

A resource for lawyers exploring the use of ChatGPT is OpenAI's guide to GPT Best Practices, which provides basic information as well as detailed suggestions on achieving better results. Those beginning their AI journey also need to understand that there is an art to framing requests to get the most helpful responses from ChatGPT and other chatbots.

Personal Uses of AI
The uses of generative AI also go beyond the professional context to make your day-to-day a bit easier. For example, Cindy recently decided to make some positive lifestyle changes to her diet given a family history of high cholesterol. So she queried ChatGPT to create a heart-healthy menu for a 70-year-old who likes dessert.

You can use ChatGPT to suggest book recommendations, write jokes and satire pieces for family celebrations and even draft personal correspondence.

The world is your oyster! And if you don't like or are allergic to shellfish, you can use ChatGPT to suggest a more palatable metaphor, like "The world is your stage!" or "The sky's the limit!" You get the idea.

Legal-Specific Generative AI
There are a number of rapidly evolving generative AI platforms designed specifically for legal work and with capabilities that include contract analysis and review, client communications, e-discovery, drafting and editing legal documents, document management and legal research.

The field is changing at warp speed but one thing remains true for attorneys using *any* AI tools for legal-specific work: **Be extra vigilant and independently verify the accuracy of the output**. Think of *anything* generated by AI as being produced by a student who requires close supervision and review.

Many firms have already created rules and best practices regarding attorney and staff use of AI. **If you haven't already, it is essential to familiarize yourself with such policies and consider developing your own. If you are an employee of a firm with an existing policy, now is the time to review it.**

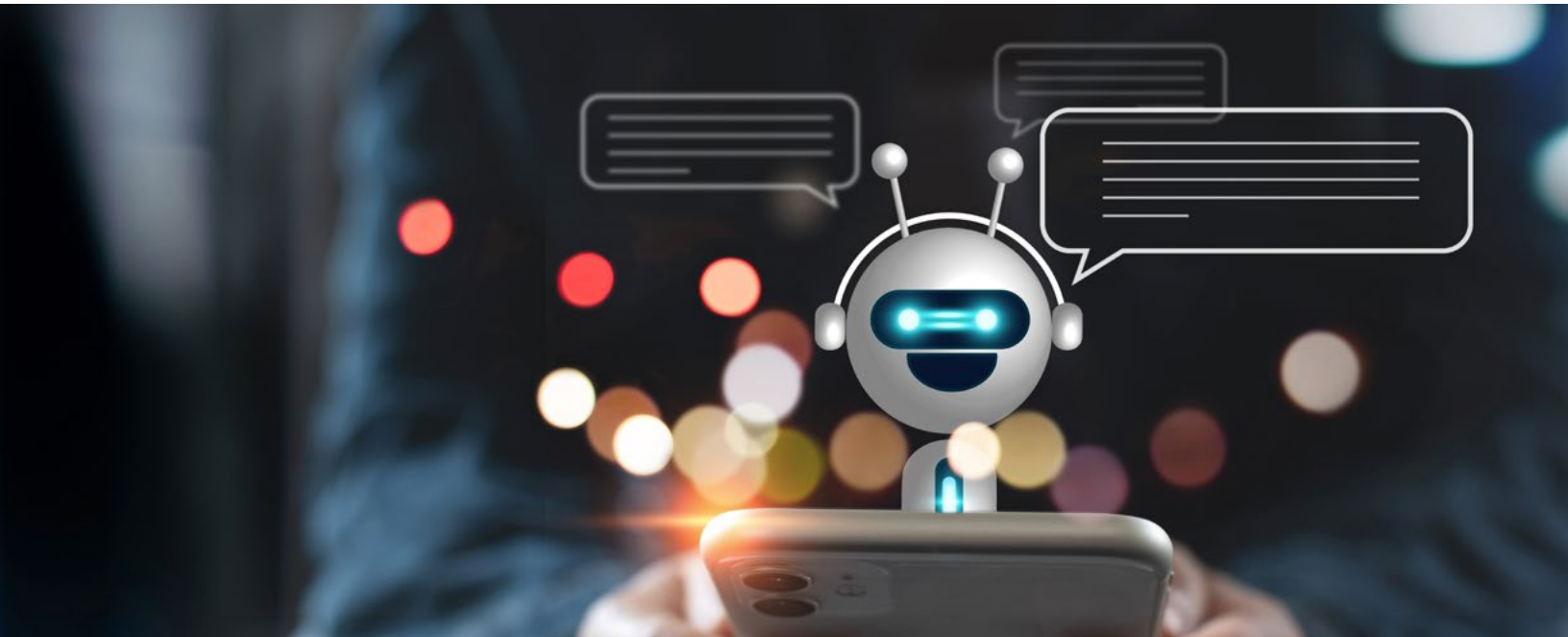
And FYI: You can also check out whether a document or message *sent to you* was drafted by ChatGPT via several online tools. The two that we tested are: AI Text Classifier (designed by OpenAI) and GPT-4, ChatGPT & AI Detector by ZeroGPT: detect OpenAI text. While these and other similar tools may not be foolproof, the results were amazingly accurate when we put them to the test with both human and AI-generated text.

Even if you decide to ignore ChatGPT or other AI tools, **keep in mind that many of your clients are already aware of and using it**. Many consumers of the DIY ilk will consult ChatGPT on their legal matters rather than seeking the advice of human counsel – there are already lots of tips out there for them. If nothing else, be prepared for prospective clients to have "done their own research" on ChatGPT.

Moving Forward
The law firm of the future must acknowledge (sooner rather than later) the infinite potential of ChatGPT and other AI. By recognizing its capabilities, developing expertise in its applications and remaining mindful of ethical considerations, the firm will be poised to be a leader in innovation, efficiency and client service.

Dip your toe in the water by exploring ChatGPT for non-legal work (there is a free version or a paid version with enhanced features). Then, you may want to do independent research on legal-specific AI tools for your firm.

About the Authors
Rebecca Howlett and Cynthia Sharp are co-founders of The Legal Burnout Solution, a community committed to the well-being of lawyers. Check out The Legal Mindset Corner, a podcast dedicated to tackling the unique challenges of the legal profession.





Ernie's Corner: Tech Tips for Attorneys

By Ernie Zore

Big Insights for Small Offices: Document Management, Security and IRS Updates

In today's fast-evolving tech landscape, staying updated on software and security practices is crucial for law offices big and small. Here, I'll discuss managing documents across multiple devices, the latest in gift tax reporting and explain how technology influences almost every aspect of law office work. In the process, we'll cover a few practical observations about how OneDrive (Microsoft's cloud drive) sets itself up.

Reclaiming Your Documents Folder in Windows
I recently encountered a puzzling issue where the Documents folder disappeared from my Windows computer after an unexpected reboot. The power had gone out during the night, causing a reboot, and my files were mysteriously missing from the Documents folder.

I did some research and identified four areas to investigate.

1. OneDrive paused or not signed in.
If OneDrive isn't active (like in a power outage), your documents may be stored locally instead of in the cloud. In my case, this seemed a likely explanation for the missing files.

2. Windows update changes.
Sometimes, a Windows update resets OneDrive's settings, causing file path issues. I don't believe Windows updated that night because none of the other computers updated. That's not always conclusive, but sleuthing can depend a lot on intuition.

3. Sync settings altered or disabled.
If your sync settings aren't configured correctly, OneDrive will stop syncing your documents. It could be this, but I'm still strong on suspect number one.

4. Manual changes to file locations.
The folder could have been manually moved without your knowledge. Impossible.

For the sake of argument, let's assume the cause was reason one. The logical follow-up question is, how do you set it back? Here are two ways that I verified to work in Windows 11.

Method 1:
1. Open OneDrive Settings by clicking the cloud icon in the system tray.

2. Select Manage Backup in the Backup tab and ensure your Documents folder is selected for backup.

3. If sync was paused, click Resume Syncing.

Method 2:
1. Right-click your Documents folder and select Properties.

2. Under the Location tab, choose Move, then navigate to the OneDrive location.

3. Confirm the move when prompted.

By following these steps, you can ensure your files in the Documents folder are safely backed up to the cloud and avoid the frustration of missing documents.

Tackling USB Port Shortages
In today's hyper-connected world, a lack of USB ports can be a surprisingly common issue. I faced this problem when connecting multiple devices to a computer with only two USB ports. The solution? Adding an external 8-port USB hub.

However, even that didn't immediately resolve the issue because the second external hard drive I had attached didn't work. The culprit turned out to be insufficient power. The hub may require additional power depending on what and how many devices you have attached.

I solved the problem easily enough by connecting the hub to an external power source. A light bulb went off in my head – so that's why there was a power connector on the hub. I'd never needed to do that before, but I never connected two external hard drives before.

Luckily, I had a spare power supply that fit the undersized port. I plugged it in and was good to go. From this experience, I learned that if your USB hub isn't functioning properly, check whether it has a port to connect a power supply and make sure it's connected.

Data Breaches: Lessons from AT&T
Security breaches are becoming all too common and a recent breach involving AT&T affected millions of customers. Between April 14-25, 2024, AT&T experienced a breach exposing the personal information of both current and former customers. The compromised data included names, email addresses and phone numbers – valuable information for cybercriminals.

This incident reminds us of the importance of data security, especially when sensitive client information is at stake. Even though this breach didn't involve financial data or Social Security numbers, the metadata can still be exploited to reveal personal details.

For solo and small law offices, robust data security protocols are not just advisable, they are necessary. Ensure you use strong encryption and regularly update security protocols to mitigate the risk of such breaches.

FYI: Gift Tax Update for 2024
One of the major tax-related updates this year comes from the IRS in the form of a new tax form, Form 709, which is used to report gift taxes and generation-skipping transfer taxes. Here are two key changes.

- For 2024, the annual gift exclusion is now $18,000, up from $17,000.
- And the lifetime basic exclusion amount increased from $12,920,000 to $13,610,000.

The Scanner You Didn't Know You Had
If you've ever needed to scan documents on the go, your smartphone is all you need. Both iPhones and Android devices have built-in scanning capabilities.

On an iPhone, the Notes app allows you to scan documents directly into an app. Similarly, Google Drive offers document scanning on Android devices. With this functionality in your pocket, there's no need to worry about fax machines or desktop scanners when you're out of the office.

In closing, I want to thank the **Ohio Bar Association** for allowing me to share my thoughts on law office technology. I also want to thank you for reading about my experiences and observations about technology in a small law office. Whether you're troubleshooting disappearing documents, enhancing your office's security practices, or tackling the latest tax updates, staying on top of technology is critical for any modern law office. I hope you've found my insights helpful and can apply them to your daily practice. I sincerely wish you a safe, happy and healthy holiday season.

Favorite Hardware Stocking Stuffers

Here are some techy stocking stuffer (or gift) ideas as we enter the holiday season.

8 Port USB Hub – Computer manufacturers cut production costs by including just a few USB ports. I recently purchased an all-in-one Lenovo desktop that had two. I needed one for the mouse and keyboard, so that left zero. The solution was an 8-port USB Hub that uses one connection and gives me four. These can be found for under $20.

Wi-Fi Repeater – When your Wi-Fi signal has trouble reaching the far corners of your home or office, this inexpensive device ($60) solves the problem.

External Hard Drive – $80 should get you a 2TB drive, providing lots of space for storage and backups. Microsoft's built-in backup/restore app, File History, requires an external drive.

Magic Jack – I've had it for over a decade, and it has served me well. A single telephone line is $40 per year. There may be cheaper options, but this one's been around a long time and is reliable.

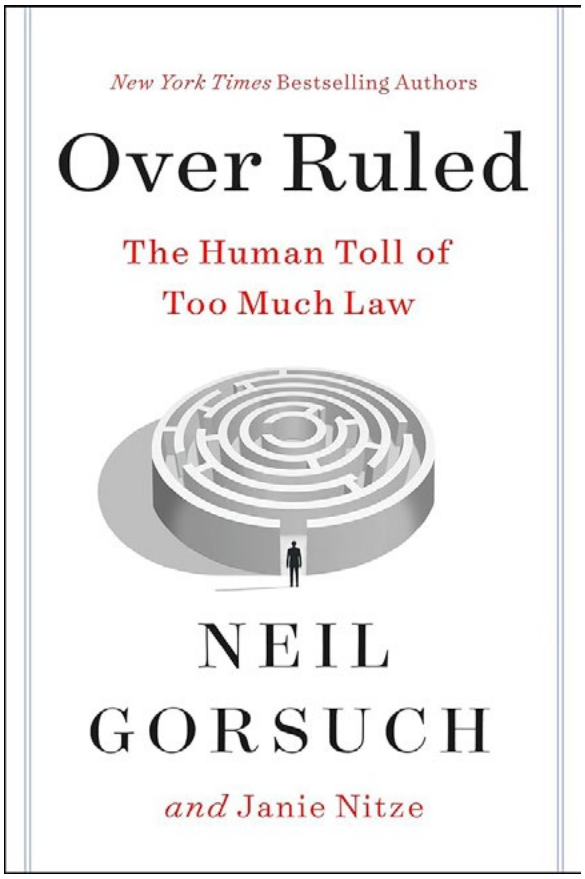
USB Fan – Sometimes equipment runs too hot, a common problem with all-in-one and laptop computers. A $10 USB fan is a great solution! It's a low-tech solution, but I use painter's tape to stick the fan over the computer air vent. Yes, people who visit the lab ridicule me for it, but the joke's on them. It works!

About the Author
Ernie Zore is a published author with a background in law and biology. His past works include "The Best of Law Office Computing," and "Silver Light & Red—Legend of the Hinckley Buzzards." He has also written "ChatGPT & The Law – A Comprehensive Guide to AI in Law Offices," with co-author Lawrence Housel. He is a regular contributor to the Ohio Bar's Solo, Small Firms and General Practice newsletter and Law Office Computing magazine. All of the mentioned above are available from Amazon.



Book Review: Over Ruled: The Human Toll of Too Much Law By Neil Gorsuch & Janie Nitze

By Bradley S. Le Boeuf



Rating:

One of the difficulties of reading a book credited with multiple authors is determining who wrote certain passages. The bylines of some academic and scientific papers identify so many coauthors involved in their publication that the lists look like the end credits of a movie. "Over Ruled: The Human Toll of Too Much Law" acknowledges two authors: Associate U.S. Supreme Court Justice Neil Gorsuch and Janie Nitze. Nitze clerked for both Gorsuch and his Supreme Court colleague, Sonia Sotomayor, but Nitze readily divulges her limited role as a research assistant in the "Acknowledgments" section of the book: "It says something special about [Gorsuch] that in a city dominated by ghostwriters working in anonymity, he not only penned every word of this book but then insisted on giving me credit as coauthor anyhow."

The front jacket cover graphic of "Over Ruled" symbolically portrays a human silhouette poised to enter a convoluted labyrinth. The paths all lead to dead ends, as if entering the maze and exploring the nuances of federal agency law will be a futile exercise.

It is evident that Gorsuch, as a judge, abhors dealing with federal overregulation. A pair of empirical graphs in the book illustrate the stark explosion of Federal Register citations, a publication Gorsuch credits as originating from a 1934 Supreme Court oral argument when Justice Louis Brandeis pressed one of the government's lawyers to identify the source of certain executive orders at issue. In rebuttal, the solicitor general's opponent then clarified they came from "the hip pocket of an agent sent down from Texas to Washington." The federal government's previous reluctance to be in the "newspaper business" soon led to the distribution of the Federal Register.

A major grievance by Gorsuch in "Over Ruled" is the difficulty of researching controlling federal law. Although U.S. Code Title 18 deals with "Crimes and Criminal Procedure," "criminal laws

are scattered here and there throughout various federal statutory titles and sections, the product of different pieces of legislation and different Congresses." He cites the estimate that "*at least 300,000* federal agency regulations carry criminal sanctions today." Various federal "guidance documents" were so obscure and difficult to locate that they could only be found tucked away "in the desk drawers of agency employees."

Gorsuch provides many examples of regulatory overreach with individual tales of the human financial and emotional impact dealing with agencies that "act as prosecutor and judge too." He explains, "This isn't an academic work or a legal brief. It is a book of stories – stories about real people, their struggles to make their way in a world awash with law, and the toll on their lives and families." Gorsuch's narratives and vignettes about a litigant's experiences navigating the intricacies of laws, statutes, regulations, rules, ordinances, policies and codes of agencies as the "fourth branch" of the federal government give a personal backdrop to the impact of agency rules. He mixes contemporary examples, such as the plethora of conflicting COVID-19 health restrictions and the consumer success of airline deregulation, with historical lessons. He praises the audacity and courage of the founders' signatures on the Declaration of Independence as tantamount to signing their own "'death warrants.'" The passages dealing with the late James Landis, former Harvard Law School dean and one of the "leading architects of the administrative state," are particularly poignant.
Ironically, Gorsuch, a Donald Trump appointee to the Supreme Court, cites Republican President Richard Nixon as guiding a "massive growth of federal administrative power" such that the Nixon administration was instrumental in seeing that "'more new regulation was imposed on the economy . . . than any other presidency since the New Deal.'"

The book's title, "Over Ruled," is an obvious pun. In Gorsuch's view, U.S. laws have become burdened with overregulation, overreaching, overcharging, over-licensing, overzealousness, overt commercial interests and susceptible to too much regulatory oversight. It is no surprise that Gorsuch joined the majority decision earlier this year in overruling the four-decade-old *Chevron* doctrine of granting agency deference to the interpretation of silent or ambiguous statutes administered by agencies. Gorsuch, an admitted "incorrigible optimist," would apparently be satisfied that the "alphabet soup" of federal agencies be reduced to a spartan diet of the Hawaiian alphabet's 13 letters.

"Over Ruled: The Human Toll of Too Much Law" by Neil Gorsuch & Janie Nitze. 291 pages. New York, NY: HarperCollins Publishers. 2024. $32.00. Illus.

About the Author
Bradley S. Le Boeuf is an attorney in Akron, Ohio. He earned his law degree from The University of Toledo College of Law. His essays and commentaries have appeared in a variety of publications and he is a member of the Hudson Writer's Group in Hudson, Ohio.





NAR Settlement Brings New Changes to Buying and Selling Real Estate

By Christopher B. Burch

On Oct. 31, 2023, a Kansas City jury returned a $1.8 billion class action verdict against the National Association of Realtors (NAR) and several large brokerage companies. The defendants were found liable for conspiring to inflate the commissions paid by home sellers to brokers.[1] The landmark verdict, known as *Sitzer/Burnett*, demolished a long-standing custom in residential real estate where brokers would typically split commissions totaling 5-6% of the sale proceeds.[2] After the verdict, with the defendants facing a potential trebling of the damages to $5.4 billion, the parties settled the *Sitzer/Burnett* matter (along with a related pending suit called *Moehrl*). The settlement calls for the NAR to pay $418 million to the class action plaintiffs over four years.[3]

The NAR also agreed to implement specific changes to the conduct of its more than 1.5 million members. And on July 25, 2024, Ohio Governor Mike DeWine signed HB466, adopting into law some of the changes in the NAR settlement – making those changes applicable to all Ohio real estate salespersons and brokers. With an implementation date of Oct. 24, 2024, these changes will soon impact virtually all residential real estate sale transactions throughout Ohio.

What are the changes?

Real estate buyers and sellers, and the lawyers assisting them, can expect to see two abrupt changes to the home-buying process stemming from the NAR settlement and the implementation of HB466.

First, the compensation paid by buyers to their brokers must be defined early in the relationship via a written contract (sometimes called a "buyer's brokerage agreement"). Historically, there was no obligation for a broker to sign a written contract with a buyer before touring homes and buyer's agents could feel confident that a seller would offer a portion of the sale proceeds as a buyer's commission. But now, a salesperson representing a buyer must contract, in writing, with the client *before* showing a property. The contract must define the specific compensation for the buyer's agent, which can be a specific dollar amount, or percentage of a sale, or "a la carte" for each service performed. The buyer-broker contract must also specify the term, specify whether the relationship is exclusive and must include a conspicuous disclosure that broker fees are not set by law, are not set by any particular party or broker and are subject to negotiation. The upshot of this change is that buyers and their agents must reach a negotiated agreement on compensation that is independent from whatever financial incentives may be offered by the seller of any given property.

Second, changes are being made to the multiple listing service (MLS). MLS is a series of regional databases, many of which are operated by NAR's local affiliates, on which agents can list properties for sale, including many specific details about the property like square footage and school district. Many widely used websites, like Zillow and Redfin, pull their data from MLS systems.[4] Historically, the MLS would list the compensation being offered to the buyer (typically 3% of the sale price). As of Aug. 17, 2024, MLS listings are barred from including any statement of compensation being offered to the buyer. This change upends the status quo of how most real estate professionals communicate about the compensation being offered by the seller to the buyer. To be clear, a seller may still offer to pay a certain amount towards a buyer's commission, and agents may communicate this information to one another, but this information cannot be included on the MLS.

How will these changes affect home buyers?
In short, buyers will now face a choice about how – and how much – to compensate their broker before they attend their first showing. Agents representing buyers are free to make any specific compensation arrangements they wish in a written agency agreement with their clients. Clients can negotiate a flat fee, an hourly rate, an "a la carte" fee for each task performed or a percentage of the sale price. However, the arrangement cannot permit the buyer's agent to be paid "whatever commission is being offered the seller." The impact of this change will be that buyers and their agents must negotiate and decide how the buyer's broker is being compensated by the buyer before the client attends showings.

How will these changes affect home sellers?
While it may take some time to determine the overall financial impact of the NAR settlement and HB466, most economists agree that the overall commissions that sellers pay when selling a home will drop.[5] Sellers' agents will negotiate with their clients to set the seller's commission, as they traditionally have done. And sellers will also set any financial incentives being offered to buyers (such as a credit towards closing costs or a commission to the buyer's agent). The difference is that they will now do so without an expectation that they must offer 3% to the buyer's agent. Accordingly, the typical 6% of sale proceeds that a seller has historically set aside for commissions is likely to drop, allowing sellers to keep a larger portion of the sale proceeds.

How will these changes affect lawyers?
Lawyers representing home buyers and brokerages will be impacted. In the short term, lawyers advising brokerages must ensure that their clients and agents are in compliance with the changing rules. Ryan Tucholski, the chief executive of the West Volusia Association of Realtors in Central Florida, described the adaptation to this new landscape as "changing the oil of the car while it's running."[6] Additionally, lawyers may take on a greater role because a larger number of buyers may be unrepresented by agents. More buyers will be "paying their own way" rather than the historic practice of relying on the seller's offer of compensation to the buyer's agent. In response, some buyers are likely to lean on a lawyer to assist with the negotiation of the purchase contract and to review and explain the documents to be signed at the closing table.

Is the NAR antitrust litigation resolved?
The March settlement of *Sitzer/Burnett* and *Moehrl* resolved claims by home sellers. But there are ongoing claims brought by buyers who may have also been damaged by the same policies and practices at issue (called *Batton I* and *Batton II*). As of the time of publication, these cases remain pending in the United States District Court for the Northern District of Illinois.

Implementation of the NAR rule changes may also result in new litigation. While the NAR settlement prohibits collusion between sellers' and buyers' agents, some of the "workarounds" to what is barred by the NAR settlement may result in additional antitrust litigation.

A DOJ investigation looms.
An antitrust investigation by the DOJ remains ongoing. Initially opened in 2019, the Justice Department's investigation was closed when an agreement was reached in 2020.[7] But later, the Justice Department reopened its investigation and issued a subpoena to the NAR. In 2023, the NAR sued, and the United States District Court for the District of Columbia held that the NAR had bargained for the "closure" of the antitrust investigation and that the DOJ must honor that bargain. In April of 2024, the Court of Appeals for the District of Columbia Circuit reversed, finding that DOJ's 2020 settlement with NAR does not prevent it from reopening its investigation.[8] An attorney for the DOJ recently described the NAR settlement as "an improvement" but the DOJ believes "offers of compensation should not be made anywhere[.]" Michael Ketchmark, one of the attorneys who prevailed at the *Sitzer/Burnett* trial in Kansas City, stated, "We fully expect the DOJ to be actively involved in shutting down any attempts to create new legal conspiracies."[9]

About the Author
Christopher B. Burch is an associate attorney in the Business Litigation Practice Group at the firm of Bailey Cavalieri in Columbus where he focuses his practice on representing clients in real estate and commercial litigation matters. He earned his law degree from The Ohio State University Moritz College of Law.

Endnotes

[1] https://www.npr.org/2023/11/05/1210800431/-1-8-billion-lawsuit-could-upend-the-real-estate-industry

[2] https://www.npr.org/2024/03/22/1239486107/realtor-fee-commission-homes-for-sale

[3] https://www.nar.realtor/newsroom/nar-reaches-agreement-to-resolve-nationwide-claims-brought-by-home-sellers

[4] https://www.zillow.com/partners/multiple-listing-service-mls/
[5] https://www.nytimes.com/2024/03/15/realestate/national-association-realtors-commission-settlement.html

[6] https://www.nytimes.com/2024/08/16/realestate/home-buyers-sellers-rules.html

[7] *Nat'l Ass'n of Realtors v. United States*, D.D.C. Civil Action No. 21-2406 (TJK), 2023 U.S. Dist. LEXIS 12285, at *1 (Jan. 25, 2023).

[8] *Natl. Assn. of Realtors v. United States*, 97 F.4th 951 (D.C.Cir.2024).

[9] https://www.inman.com/2024/08/19/michael-ketchmark-every-move-you-make-well-be-watching-you/

The Rights and Responsibilities of Tree Ownership

By Leah Hetrick

Unless it is an area of law you have branched into before, controversies stemming from trees can initially stump Ohio landowners. Being that the ownership of trees is something both urban and rural landowners have in common, logging away some general information about Ohio's tree laws may prove to be beneficial for both practitioners and their clients.

Who Owns a Tree?

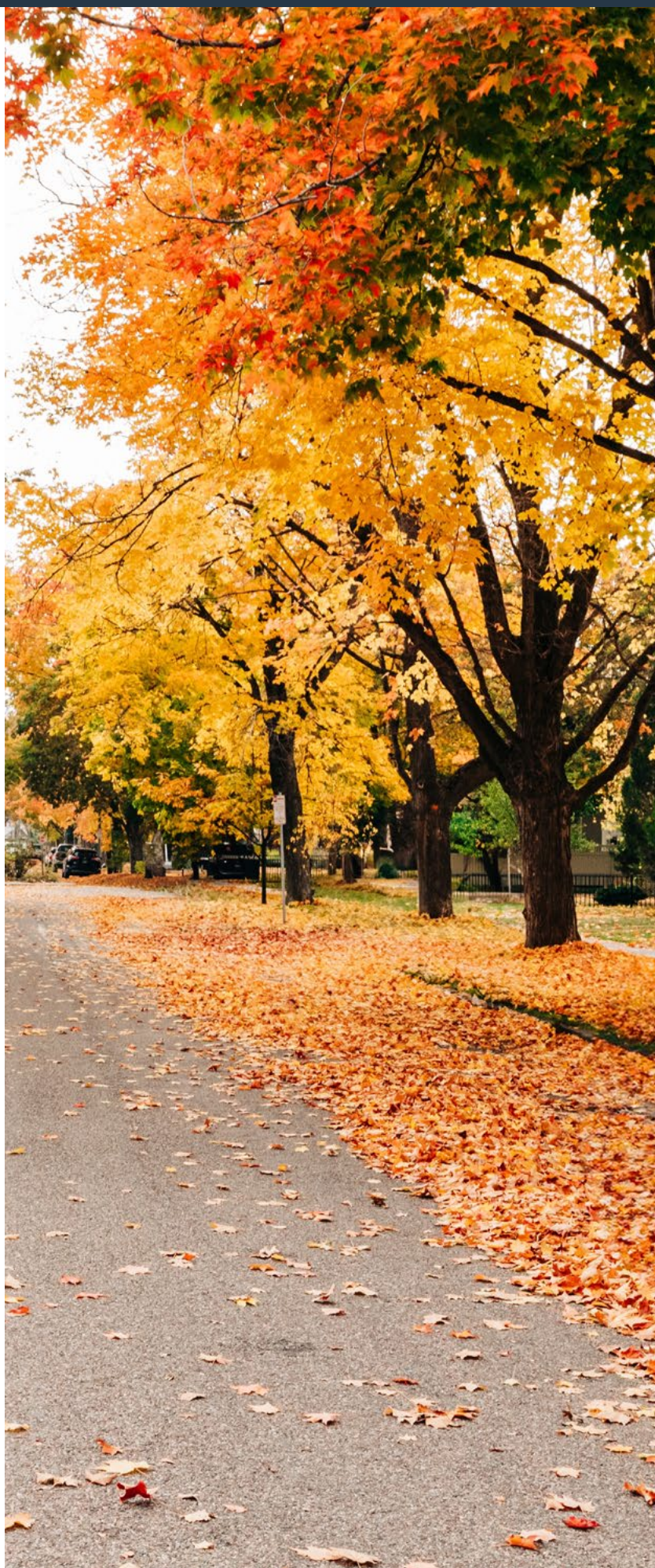
Establishing ownership of a tree, while generally a simple task, is a very important step when dealing with tree disputes. A tree is considered to be an integral part of the land and, typically, finding the owner of a tree is as simple as finding the owner of the property where the tree stands.[1] Given that nature rarely adheres to the rigid structure of established property boundaries, it is not uncommon to find a tree that resides on a boundary line or one that has branches and roots that encroach onto the property of another. A tree that sits on the boundary line between properties will generally belong to both property owners as tenants-in-common while a tree that only encroaches on another property with branches or roots will belong solely to the owner of the property where the tree stands.[2]

Encroachments

Trees that reach into neighboring properties can often be a point of concern and/or contention for neighbors. Laws dealing with the removal of tree encroachments differ by state, with many approaches relying on a varying degree of the remedy of self-help. While Ohio landowners have the right to enjoy the natural features, processes and cycles of their property, they also enjoy property rights that extend upward, into the airspace above their property.[3] To account for the sometimes-competing property interests that arise in the course of a tree's natural growth into another's airspace, Ohio courts have adopted a self-help remedy allowing the neighbors of trees to remove branches that encroach onto their. This remedy is not without its limits, however, and tree trimming neighbors must be careful to not impede on their neighbor's right to be free from trespassing. Those trimming overhead branches should refrain from any form of trespassing, such as stepping onto the neighboring property, placing debris or letting debris fall onto neighboring property or trimming parts of the tree beyond the property line. The removal of any tree encroachment should always be done with reasonable care to avoid any reckless damage or destruction to the tree.

Tree Removal or Damage

Ohio law prohibits a person from recklessly cutting down, destroying, or otherwise injuring a tree, bush, vine, shrub, sapling or crop on another's property without permission to do so.[4] Those



found to have violated this law will be guilty of a fourth-degree misdemeanor and will be liable for treble damages for the injuries caused. A person does not need to be convicted of the misdemeanor in order to be liable for the damages.[5]

Boundary line tree owners should always consult with the co-owner of the tree prior to removing the tree to avoid civil and/or criminal penalties. If both neighbors agree that the tree should be removed, it would be a best practice to work out the necessary details in advance, such as deciding how and by whom the removal costs will be paid, obtaining permission to enter onto property to safely remove the tree and resolving any questions regarding disposal of the tree and any debris or the distribution of any proceeds from the tree's products. Additionally, those who choose to clear their property's airspace of overhang branches should do so with reasonable care to avoid reckless damage to the tree. Communication between neighbors prior to trimming the tree is the best way to reduce misunderstandings and unnecessary disputes.

Falling Trees and Branches

Like with every other aspect of landowner liability, liability for the damage caused by a tree is a question for a court to decide based on the facts. Case law in Ohio offers some general principles to consider when contemplating the responsibilities of tree ownership. Property owners have a right to enjoy the natural characteristics of the land and there is no affirmative duty for tree owners to trim back or clean up trees. Generally, if an otherwise healthy tree loses branches or falls due to a naturally occurring event such as a wind storm or lighting, a landowner will not be liable for the damages caused. However, if a tree was in a dangerous condition likely to cause harm and the owner knew or should have known about that condition, the law may impose liability for damages that occur as a result of the dangerous condition, especially if the tree abuts a public roadway.[6] Landowners should use reasonable care to take note of any dangerous conditions such as disease, rotting and even dead trees and take action as needed to prevent the tree from causing harm. Whether a tree fell in an urban or rural area can play a part in the court's determination of reasonableness. This is under the rationale that urban property owners with fewer trees may have a better ability to regularly inspect all of their trees for dangerous conditions while a rural property owner with a forest of trees would not have the same duty to inspect each individual tree.[7]

While Ohio typically takes a self-help approach when dealing with encroachments, landowners should use caution when removing a fallen tree of another from their own property. Speaking with the owner of the fallen tree prior to removing or selling any of the tree will help avoid disputes over the value of the timber or cost of the removal. A landowner who removes a fallen tree without the permission of the tree owner may find themselves open to a lawsuit for the value of the tree that was removed.[8]

About the Author

Leah Hetrick is the director of legal education and member engagement for Ohio Farm Bureau.

Endnotes

[1] *Hirth v. Graham*, 50 Ohio St. 57
[2] 26 A.L.R.3d 1372
[3] *Murray v. Heabron*, 74 N.E.2d 648 (1947); Rababy v. Metter, 30 N.E3d 1018 (2015)
[4] R.C. 901.51, 901.99
[5] *Wooten v. Knisley*, 79 Ohio St.3d 282 (1997)
[6] *Heckert v. Patrick*, 15 Ohio St.3d 402 (1984)
[7] *Heckert v. Patrick*, 15 Ohio St.3d 402 (1984)
[8] *Brand v. Ogle*, 155 N.E.35 37 (2020)





Breaking the Silence: The Power of Recovery and Support in the Legal Profession

By Laura Valentino

In her memoir "Girl Walks Out of a Bar," attorney Lisa F. Smith shares a deeply personal and raw account of her struggles with alcohol and cocaine addiction. Smith's story is not just about addiction, it's about the fear of judgment and stigma that many professionals (especially in high-pressure fields like law) face when confronting substance use disorders and mental health issues. Her journey from secrecy and shame to recovery and openness serves as a powerful testament to the importance of support and understanding in the workplace.

Smith's descent into addiction was marked by a profound fear of discovery. As her life spiraled out of control, she recognized the need for professional help. However, the thought of her law firm discovering her struggles filled her with dread. "As I passed off my immediate projects for coworkers to handle, I thanked God for the privacy laws that prevented the firm from questioning me about my health," Smith recalls. The fear of being seen as "weak, defective and untrustworthy" overshadowed her need for help, reflecting a common concern among legal professionals.

This fear is not unfounded. The legal profession is known for its rigorous demands and high expectations, where any sign of vulnerability can be perceived as a career-ending flaw. Smith's reluctance to reveal her addiction was rooted in the stigma associated with substance use disorders within the legal community. "It wasn't just because I was ashamed, which I was," Smith explains, "it was also because of the stigma attached to substance abuse by lawyers. If they found out, overnight I'd go from being viewed as hardworking and smart to weak, defective and untrustworthy."

During her recovery, Smith's therapist suggested that she consider being open about her struggles at work, emphasizing that addiction is a disease, not a personal failing. "You told me that you spend a significant amount of time at work. Don't you think it will be better if the people you're with every day know that you're in the earliest stages of recovery? There's nothing to be ashamed of," the therapist advised. However, Smith's response reflects the harsh reality many in her profession face: "Yea, I get that, but no. It's not OK in a big law firm. We talk about alcoholics behind their backs. I know that sounds bad, but nobody cares that it's a disease. It's considered a weakness, and they always find a way to cut the weak from the herd. I'll come clean anywhere but at work."

But, years later, after achieving sobriety and beginning to write publicly about her addiction and recovery, Smith shared her story with her colleagues and realized that she had a strong support system in the legal field. "I trusted and respected them. I didn't want them to learn my story on the internet. It was difficult to share, but the response I received was overwhelmingly positive. I am lucky to be in a compassionate and supportive environment," she reflects.

Smith's experience highlights the importance of workplace culture in supporting individuals who are struggling with substance use disorders or mental health issues. The legal profession, like many others, is evolving to become more compassionate and supportive. There has been a growing recognition of the importance of mental health and well-being within the legal profession. Initiatives aimed at reducing stigma and promoting wellness are becoming more prevalent, signaling a positive shift in the industry, but we can always do more to help reduce the stigma.

As the clinical director at the Ohio Lawyers Assistance Program (OLAP), I have worked with many judges, magistrates and lawyers who share Smith's fears. They are often afraid that their employers will find out about their substance use disorder or mental health issues, fearing the professional consequences that might follow.

OLAP is a resource that supports attorneys, judges and law students dealing with these issues. OLAP is 100% confidential, so you can ensure that no one else will know that you asked for help. If we ever get calls about certain OLAP clients, we tell them "We cannot confirm or deny knowing that individual."
This confidentiality is also true for therapists.

However, one of the most critical messages I convey to OLAP clients is that recovery is possible, and it can be achieved privately. The most important thing to focus on is one's recovery, not the potential judgments of others. There are numerous resources available that can help individuals recover while maintaining their privacy. For instance, therapists who offer weekend appointments, telehealth services or sessions in another county provide a discreet way to seek help without the fear of being discovered by colleagues or employers.

Recovery is not a one-size-fits-all journey, and it's crucial for each person to find the path that works best for them. Whether through in-person counseling, telehealth or other forms of therapy, the key is to take that first step toward recovery. It's important to remember that seeking help is not a sign of weakness, it's a sign of strength and self-awareness. By prioritizing recovery, individuals can reclaim their lives and careers, proving that they are more than their struggles.

Substance use disorder is a disease, not a moral failing, and it should be treated as such. By fostering an environment of understanding and support, the legal community can begin to break down the barriers that prevent so many from seeking help. Colleagues and employers can play a crucial role in this by encouraging openness and creating a culture where it's safe to admit when one is struggling.

Ultimately, Lisa F. Smith's memoir is not just a story of addiction; it's a story of hope, resilience, and the power of support. Her journey reminds us that recovery is not just about getting better – it's about reclaiming your life and proving that you are more than your struggles. By prioritizing recovery, seeking help and challenging the stigma within the legal community, professionals can overcome these challenges and emerge stronger on the other side.

The path to recovery may be daunting, but it is not insurmountable. With the right support, legal professionals can navigate this challenging time while protecting their privacy and preserving their careers. Recovery is not a destination; it's a journey – a journey that is worth every step. And as more individuals like Lisa F. Smith share their stories, the legal profession will continue to evolve, becoming a place where recovery is not just possible but embraced.



About the Author
Laura Valentino is clinical director for the Ohio Lawyers Assistance Program. She is an independently licensed social worker with a supervisory designation by the State of Ohio Counselor, Social Worker and Marriage and Family Therapist Board. Valentino also owns and operates a mental health private practice located in Hilliard, Ohio. She earned her Master of Social Work from The Ohio State University.

If you or another legal professional you know needs help, contact the Ohio Lawyers Assistance Program (OLAP). OLAP is a confidential program that helps legal professionals cope with the stresses of the profession. OLAP has saved lives, careers, marriages and families. All inquiries are confidential. (800) 348-4343 / ohiolap.org



5 Signs That You Are Ready To Retire

By Scott R. Mote

It happens to all of us. We age. There will come a time when you are not as sharp as you used to be, you will begin to forget and your body will start to move slower than it once did. Although the thought of aging might sound miserable, it does not have to be! You can start to look forward to retirement and live the rest of your life the way you want. You might be wondering how you know when it is time to retire. If you identify with any of the following signs, it is probably time for you to think about the next phase of your life.

1. Your ability to do your job declines.
Retiring is a challenge for everyone, especially for judges and lawyers because you have worked so hard to achieve your accomplished positions. But, having a sharp mind is crucial to your job. It is your duty to serve and protect the public and protect the integrity of the law, yet you could be causing unintended harm to clients because of the way our minds and bodies change as we age.

Each person is unique and there is no stereotype as to how you age. And not all age-related changes are harmful or negative. Scientists suggest that aging is likely a combination of many factors. Genetics, lifestyle and disease all affect the rate at which you age.

But *one of* the effects of aging can include cognitive impairment. Cognitive impairment occurs when you have a problem with perceiving, thinking and remembering. Physical illness, mental health issues, alcohol and drug interactions are all possible causes of cognitive impairment.

Some signs and symptoms of cognitive impairment include:

- Committing obvious ethical violations.
- Missing deadlines.
- Repeatedly making the same mistakes and not remembering the first one.
- Experiencing confusion.
- Becoming forgetful.
- Having a more disheveled appearance.
- Losing skill sets.
- Being newly irritable.
- Having dissatisfied clients.
- Experiencing disciplinary problems.
- Hearing new concerns from family members, staff and courts.

If you start to experience any of the symptoms of cognitive impairment, it can affect your job and the people you are



trying to help. Obviously, you want to retire from the profession with integrity and not as a respondent in a disciplinary action because of cognitive impairment.

Note: While many aging people go through the later stages of life successfully and embrace this new phase, some people may experience mental health issues around this time. There are many mental health issues you may face as you age. Depression is the most common, though it is often under-diagnosed. Depression is different than cognitive impairment. It is *not* a normal part of the aging process. It is important to discuss any negative feelings with your physician, counselor or other mental health providers.

2. You are burned out.
Sometimes, the decision to retire is not because of aging or mental health. It is because you are just not as excited about your job as you once were. You might dread going to work, you are tired, unmotivated and disengaged. This is called burnout, and it can seriously affect your job.

If you are experiencing burnout, make a list of pros and cons about your current job. If you find that the cons outweigh the pros, then it is probably time to either retire, change the things you can to make your current job better or start searching for other opportunities.

Burnout is not just a trending topic. It is real, and it will not go away on its own. Remember that when you are burned out, you are not performing at your best and your belief in yourself is compromised. This can take a toll on your decision-making capabilities.

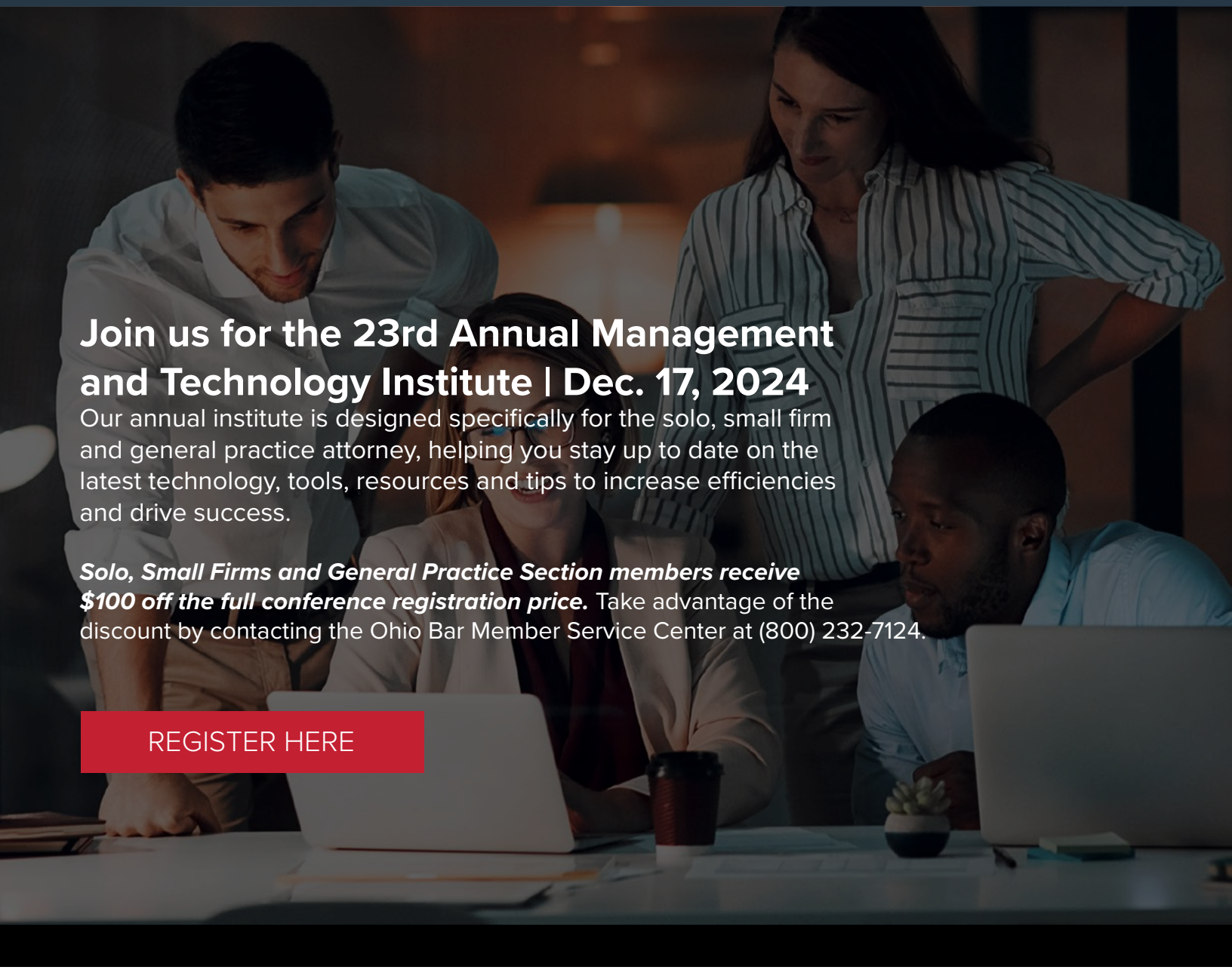
3. You are emotionally/psychologically ready.
Being a member of the legal profession is a rewarding experience. We help people every day. After a career in this field, it can be challenging to think about what comes next and if we will be fulfilled emotionally in retirement. It is important to have something to retire *to*, not just something to retire *from*. We can think of retirement as our second act, where we can do so many new things, such as a part-time job, volunteer work, spending more time with our families or traveling.

4. You have a supportive social network.
You need a support system, everyone does. We need other people to make us feel loved and that we matter. The people you turn to in a crisis or when something amazing happens to you are the people who make up your support system. This can be a combination of family, friends, co-workers, your sports team or choir or people you volunteer with in your community. If you do not have this support, you can become isolated and lonely, leading to detrimental effects on your health. So make sure you have reliable support and connection when you retire.

5. You are financially stable.
Are you at the point in your life where you are financially stable? This means that you are debt-free, you are no longer supporting children or other family members, you have a retirement budget and your financial portfolio is up to date. When you do not have to worry about making enough money to pay for your mortgage, credit card debt, your child's college tuition or other recurring bills, you are mentally in a better place to retire.

Retirement is the beginning of a whole new adventure. As you transition into this exciting phase of life, remember that you deserve all of the peace, freedom and happiness that comes along with it. You have spent your life preparing for it. Where will retirement take you?

About the Author
Scott R. Mote is the executive director of the Ohio Lawyers Assistance Program (OLAP), a private, nonprofit organization dedicated to helping Ohio's judges, attorneys and law students obtain treatment for substance abuse, chemical dependency, addiction, and mental health issues. He served as OLAP's first associate director beginning in 1995 and become executive director in 1999. He is a previous recipient of the Ohio Bar Medal, the bar's highest honor for service to the profession, and the Eugene R. Weir Award for Ethics and Professionalism. He earned his law degree from Capital University Law School.



About Solo, Small Firms and General Practice News

Solo, Small Firms and General Practice News is produced by the Ohio State Bar Association Solo, Small Firms and General Practice Section.

For more information about *Solo, Small Firms and General Practice News*, contact the editor, **Melissa Graham-Hurd at mgh@grahamhurdlaw.com**.

Articles published in this newsletter reflect the views and opinions of the writers and are not necessarily the views or opinions of the OSBA Solo, Small Firms and General Practice Section. Publication in *Solo, Small Firms and General Practice News* should not be construed as an endorsement by the committee or the OSBA.

For more information about other OSBA committee and section newsletters, contact the OSBA at 1700 Lake Shore Dr. Suite 100, Columbus, OH, 43204, (800) 282-6556 or email at osba@ohiobar.org.

© Copyright 2024 Ohio State Bar Association.