

Presidential Message • Tom Theado

In my inaugural comments at our Bar Association's Annual Meeting on June 3, and again in my first report to you which appeared in the last issue of our Newsletter, I emphasized that the goals on which I, and the rest of your Executive Committee, will be working this year are to deliver more and better member benefits while making more money. As for the money part, I can report that in our term's first month - July (which is the most recent month for which numbers are available as of the time I'm writing this) - our Association increased its real net assets by more than \$26,000. But that figure is skewed and gives far too rosy a picture inasmuch as the Association's dues-related income pours in during the months of July and August. We will have to wait a few months to determine the quality of our fiscal stewardship. But that doesn't mean there's nothing to report on how we're doin' on our goals. Let's talk about what your Association is doing on delivering more and better member benefits!

Introducing the LCBA CLE Season Pass!

After working through the details over many meetings, just this past month your Executive Committee finalized and approved a really great deal - discounted CLE hours with the LCBA CLE Season Pass.

Yesirree, the Lorain County Bar Association is now offering its members the best deal around for your CLE hours! Members now have the option to purchase 12 hours of CLE for just \$285 - that represents a nearly one-thirds savings of over \$135, as you'd otherwise pay \$420 for the same number of hours. With the CLE Season Pass, members get 12 hours of LCBA CLE programming that can be used anytime during 2012. Here's how it works:

You buy the LCBA CLE Season Pass. To take advantage of the CLE Season Pass, or if you have questions on the program, contact the Bar office at 440-323-8416.

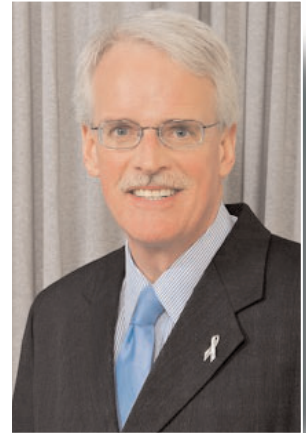
CLE Season Pass holders can register for an LCBA CLE seminar by using the event's printed registration form or by calling 440-323-8416. But please be sure to mention that you are a Season Pass holder when registering!

CLE Season Pass holders must register in advance for LCBA CLE programs to ensure that we will have appropriate materials and space available for all who attend. If you register at the door, a \$15 on-site registration fee will have to be paid.

CLE Season Pass holders must submit cancellations at least one business-day prior to a seminar. Failure to do so will result in a deduction from the member's CLE Pass hours for that particular seminar. Cancellation notices can be telephoned to 440-323-8416, or e-mailed to lcba@windstream.net, or faxed to 440-323-1922.

CLE Season Pass hours must be used by December 31, 2012. Any unused hours will be forfeited and may not be carried over or refunded or transferred. This is a great deal - the LCBA offered 18 seminars July 2010 through June 2011, for a total of 44.75 CLE hours, in all sorts of areas, including OVI law, foreclosure law, ethics, professionalism & substance abuse, domestic relations issues, juvenile law, and probate law, etc.

(continued on following page)



We're Re-Toolin' Law Day for 2012!

Bench/Bar Conference, which historically has been held on, or near to, Law Day, has had diminishing attendance the past few years. This is not the result of insufficiently interesting programs, but rather because of the policy decision which was implemented over the past decade - to provide a greater number of CLE programs on a wider variety of subjects in order to present our members more numerous options in their choice of CLE programs - which has worked to increase the overall number of programs and attendees but diminish the attendance at each program. So, with a program spear-headed by Executive Committee members Andrea Kryszak and Jennifer Riedthaler-Williams, we're goin' to do Law Day differently in 2012!

Planning for the 2012 Law Day celebration has begun! Law Day will take place on Tuesday, May 1, 2012, and our goal is to provide a benefit for both our members and the community, by doing the following:

Go Back to School Day - During the morning of May 1, 2012, between 9:00 a.m. and 11:00 a.m., volunteer Bar Members will go to a local school and speak with students about a legal topic of their choosing, for example, the history and significance of Law Day, what life is like as a lawyer, their area of practice, or what law school was like.

Community Outreach - At the same time - from 9:00 a.m. to 11:00 a.m. on May 1, 2012 - Bar Members will have an opportunity to market their law firm or organization to the community, and answer questions that are presented to them in their area of practice, at Wood & Wine Restaurant, in Avon, Ohio. A question-and-answer period will follow to 11:45 a.m., and then there'll be an all-you-can-eat lunch buffet consisting of soup, salad bar, wood-fired pizza, pasta, and non-alcoholic beverages, featuring an exciting speaker and followed by the announcement of the high-school Law Day Essay Contest winners.

If you are interested in volunteering for either event, please contact the Bar office at 440-323-8416.

We're Working on Improving the Bar's Committee and Section Structure.

In my address to the Bar at our Association's June 3 Annual Meeting, I emphasized that the Executive Committee and I would be reviewing the entirety of our Bar Association's committee and section structure, with an eye toward making that structure better serve our membership. I am happy to report that this critical review is well underway.

The members of the Executive Committee will meet with the Association's Section and Committee Chairpersons at Noon on Friday, September 23, in the Elyria City Hall's Third Floor Conference Room, to share with the Chairs the proposals which thus far have been considered and to obtain from the Chairs their insights and suggestions, with the goal that our Sections and Committees increase in their vitality and become even more important segments of our Bar Association.

I am looking forward to reporting more to you on this topic in my next report.

(continued on following page)



Executive Committee:

Thomas Theado - President
Timothy Lubbe - Vice President
Barbara Aquilla Butler - Treasurer
Kurt Anderson - Secretary
Joseph Cirigliano
Andrea Kryszak
Jennifer Riedthaler-Williams
Daniel Gibbons
Frank Janik

Lorain County Bar Association

401 Broad Street, Suite 205
Elyria, Ohio 44035
Phone: 440-323-8416
Fax: 440-323-1922
Email: lcba@windstream.net
Web: www.loraincountybar.org

Lotsa CLE the Remainder of This Year!

I'm not certain how we can do it (well, yes I do - it's due to our simply exceptional staff, Tammie Blansett and the extraordinary Jeannie Motylewski), but we've already have scheduled and have in place for the remainder 2011 a total of six different CLE programs offering our membership a total of 15 CLE hours of credit:

Firm Productivity& Profitability	Oct. 14 - 11:30 a.m. till 1:00 p.m.	1 Hour Gen'l CLE
Mental Health	Oct. 21 - 1:00 till 4:15 p.m.	3 Hours Gen'l CLE
Trucking Negligence	Nov. 10 - 1:00 till 4:30 p.m.	3.5 Hours Gen'l CLE
Annual Probate Seminar	Nov. 10 - 8:00 till 11:45 a.m.	3. Hours Gen'l CLE
Ethics, Professionalism, & Substance Abuse	Dec. 9 - 9:00 till 11:30 a.m.	1 Hr Ethics & 1 Hr
Fee Agreements	Dec. 15 - 11:30 a.m. till 1:30 p.m.	2 Hours Gen'l CLE

For information on any of these programs, contact the Bar office at 440-323-8416 or via e-mail at lcba@windstream.net.

Even More to Come!

Okay, I'm being told I've written enough for this report and that I have to leave some space for all the other articles. I'll have more to report in the next Newsletter, and I am looking forward to giving you that good news. Let me close by reminding each of you that it is your Executive Committee which really runs our Bar Association, and that the meetings of your Executive Committee are always open to Bar Members. Please come and see what we do, and bring your complaints and compliments whenever you wish. Our meetings vary by date, day, and time, so if you're intending to attend a meeting, please first call the Bar office to learn where and when. As always, if you have any beefs or kudos to share with me, e-mail me at TomTheado@GNTLaw.com.



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Spencer Ryan is your Lorain County Bar Association's 'Authorized Agent' for Lawyer's Malpractice Insurance. Before entering the insurance field, Spencer was licensed and practiced law in Lorain County, making him uniquely qualified to organize the complex coverage plans necessary in professional fields. For expert guidance in creating your next malpractice insurance plan, call Spencer Ryan at Ryan-St. Marie Insurance today. 440-322-3200 • spencerryan@windstream.net

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Expect More!

STANDARDS OF CONVEYANCE UPDATED

by Jack Kilroy

The office of Lorain County Auditor Mark R. Stewart and Lorain County Engineer Kenneth P. Carney are in the process of amending and updating the Lorain County Standards for Land Conveyances under the authority of Ohio Revised Code Section 315.251.

Public hearings were held on April 27 and May 11, 2011 with active participation from the public and private sectors. It is the new standards are expected to be in effect by May 16, 2011. The last update was adopted in December, 1999, which can be seen at <http://www.loraincounty.com/auditor/real-estate-taxes/land-conveyances/>. Copies of the newly revised Lorain County Standards for Land Conveyances can be obtained from the Lorain County Auditor's transfer office or viewed on the website.

Before the county auditor accepts any conveyance presented to the auditor's transfer office, the document shall be reviewed to determine whether it complies with the standards. The county auditor cannot transfer any real property that does not comply with the standards.

Since 1997, the Ohio Revised Code has authorized the auditors and engineers of each county to promulgate conveyance standards for their counties, permitting the auditors and engineers great leeway and authority to set the standards.

'With this delegation of authority to write their own rules, the legislature has empowered auditors and engineers to be as idiosyncratic as they wish, with no basis upon which they can be challenged. There is obviously no consistency required from county to county with respect to the rules placed upon the conveyancers of interests in land, so parties dealing in multiple counties in Ohio may be faced with 88 different sets of rules.' (Baldwin's Ohio Practice Ohio Real Estate Law, Kenton L. Kuehnle and Jack S. Levey, Chapter 21. Conveyances-Covenants, Warranties, and Execution, by Amelia A. Bower, Contributing Editor)

Attorneys representing real estate developers, surveyors, title companies, mortgage lenders, or realtors are well advised to become familiar with the rules of each county where they intend to record instruments conveying interests in land.

Editor's Note: Jack Kilroy is co-chair of the Real Estate Section of the Lorain County Bar Association and is the Special Projects Coordinator for Lorain County Auditor Mark R. Stewart.

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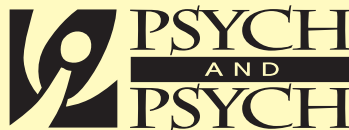
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Supreme Court Adopts Rules of Practice Amendments

On August 17, 2011, the Supreme Court of Ohio announced recently adopted amendments to the Supreme Court Rules of Practice that take effect on Oct. 1.

Changes to Rule 8.5 will have the broadest impact by requiring copies of jurisdictional memoranda and merit briefs to be single-sided. The current rule states that only the original memorandum or brief filed with the Court needs to be single-sided, while the copies could be double-sided. As of Oct. 1, both the original and copies for these specific court filings will need to be single-sided. Additional changes included in Rule 8.5 will reduce the number of copies required for jurisdictional memoranda, complaints in original actions and evidence in original actions.

Kristina Frost, clerk of the Court, said it was important for attorneys to be aware of the pending changes, especially the single-sided modification. 'We want to make certain attorneys are aware of the rule changes since we did not receive many comments during the public comment period between May 31 and June 29,' she said.

In addition, amendments to Rule 1.2 of the Rules of Practice specify that a motion for pro hac vice admission (out-of-state attorneys) shall follow the requirements of sections a-e of Gov. Bar R. XII(2)(A)(6), including the required affidavit. Motions for pro hac vice admission are to be filed with the first document on which an out-of-state attorney appears, except when filing documents to perfect an appeal. If filing to perfect an appeal, an out-of-state attorney must file a motion for pro hac vice admission within 30 days after filing an appeal, or with the first document filed after perfecting the appeal. In addition, the rules state that 'the Clerk shall refuse to file motions for pro hac vice admission that are not timely submitted or that fail to comply with these rules.'

Amendments to Rule 2.2 establish that the time to appeal to the Supreme Court is tolled (placed on hold) pending the outcome of a sua sponte en banc (consisting of all members of the court) consideration by an appeals court. Changes to Rule 18.3 place additional requirements on the Clerk of the Supreme Court to notify all parties or counsel upon the filing of a certified question of state law.



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5 Ways to Maximize Your Technology Investment

By: Joseph Marquette • President, Accellis Technology Group

When considering ways to stretch the already stretched dollar, law firms can often create substantial improvements to their own productivity without any new capital investments. It's done by understanding where the opportunities for improvement lie and by leveraging the very people you already employ to make it happen. The hardest part may simply be admitting that there are better ways to run your business. The most successful organizations in any industry - are ones that embrace the concept that they need to be a better firm tomorrow than they are today. Here's a few ideas on how you can make this concept a reality for your firm, starting right now.

1. Encourage innovation internally.

Most law firms have a group of people who love technology and are anxious to use it all day - every day. Deputize and encourage these people to 'push the envelope' and distribute what they learn to the rest of the firm. Adobe Acrobat is a great example of a solution in which most firms only use a fraction of its functionality. There are numerous features available that could save hours a day at many firms but no one is using them. Challenge the users of the system to take advantage of the programs you already own - learn their features, its short-cuts and tricks. It could change the way you handle numerous everyday tasks and save a ton of time and money.

2. Create a culture of constant improvement.

The surprising and often underappreciated thing about technology is that even in the dullest world of office work, a constant flow of new ideas will enhance productivity. Once you identify the tasks or features you wish to employ in point #1, recognize that you cannot stop there. Improvement must be a constant and ever-present expectation of the overall business. There are probably dozens of technology tools used by your firm every day and, if industry standards hold true, you're only using 10% of them. By challenging people to continually better leverage those tools to better their efforts, you're finding new ways to gather a return on your technology investment. Shoot for 15%, 25% or even 50% percent utilization. Again, be a better firm tomorrow than you are today.

3. Ask clients for suggestions.

Your best clients are the ones willing to tell you how you can do your job better. Unfortunately, most firms never ask. Just as you need to encourage constant improvement and leverage your technology savvy resources, you also need to ask your client to help you serve them better. Odds are you will be very surprised by their responses but it will provide a very clear path to meeting their expectations in the future. This feedback can be invaluable when prioritizing your tasks from points 1 & 2!

4. Leverage your vendors.

Never let your software or hardware go stale. Having a software tool that has not been updated, reviewed, or retrained in over 12 months is an investment that is rapidly losing its value. You can leverage your vendors to push this initiative. Look for their insight and support for training, customization or even simply insights on how other people are using the software. What problems have they seen other client resolve through better use of their software? Then set expectations with your providers to continually follow-up with your key users to evaluate how your tools are meeting the needs of the firm. This does not necessarily mean spending more \$\$ on your software, but it may. And never confuse 'Vendor' and 'Sales People'. Work directly with the vendor to create this sort of program.

5. Always use technology to make things EASIER!

The biggest challenge with new technology is that its introduction is often met with disruption, confusion and resistance. That will never change. However, in the timeline of these new tools, you should expect things to eventually become much easier. Whether you are using a new document management tool, practice management system or billing software, in a relatively short period of time, the firm should see everyday tasks become easier and more streamlined. If not, contact your vendor to see why not. Perhaps the firm is not using the tool as it was meant to be used or your staff has simply not been adequately trained. There are may be other reasons for the slow-down; however, the bottom line is that it is important make sure the tools are helping and not hindering your business.

Hopefully these items will stir-up some ideas and get you started in the right direction. Remember, be a better firm tomorrow than you are today. It may not happen overnight but the right mindset and approach can definitely get you there.

Joseph Marquette is the President of Accellis Technology Group, a legal technology services and consulting firm located in Cleveland, Ohio. A graduate of the University of Illinois, Joe has gathered extensive experience in the IT field by serving as the Chief Technology Officer for a large Internet company, Vice-President of Consulting services for a national technology consulting firm, President of a regional technology firm, and now founder of Accellis Technology Group. During his professional career, he has been responsible for the implementation of a wide range of enterprise business applications for business large and small across the country.

United Way of Greater Lorain County

With roots dating back to 1917, United Way of Greater Lorain County's mission continues to be to improve lives by mobilizing the caring power of our community through leadership, collaboration and resource development. You may have seen the 'Live United' billboards around town or perhaps your workplace currently runs a United Way campaign. But what exactly does United Way of Greater Lorain County do?

United Way of Greater Lorain County (UWGLC) works to advance the common good by creating opportunities for a better life for all. Be it hunger, housing, leadership training, employment skills training or youth mentoring programs, UWGLC partners throughout the community to address needs and convenes the necessary resources to build up Lorain County residents.

'United Way brings people together across Greater Lorain County with the passion, expertise and resources to get things done,' notes Executive Director Bill Harper.

Through a focus on education, income and health, UWGLC ensures the building blocks for a better quality of life. UWGLC allocated more than \$1.5 million in 2010 to 27 agencies across Lorain County. Thanks to our generous donors, this funding did more than put hot meals on tables and roofs over heads. UWGLC funding provided a hand up to individuals so they can start anew, chart the next path and attend to important needs.


Jessica Baggett, Managing Attorney at Legal Aid Society of Cleveland - one of many United Way's partner agencies - remarks, 'United Way is important to the community because it is a central way for people to make a philanthropic impact and see great outcomes. United Way's support of Legal Aid helps satisfy basic needs for the most vulnerable in our community. This strengthens our community, and makes it a better place to work, live and raise a family.'

Donors can contribute to UWGLC by donating their time, talent or resources. More than 200 employers in Lorain County run a United Way campaign, which allows more than 8,200 donors to give through payroll deduction or direction donation. Hundreds of volunteers will lend a helping hand during our Week of Caring in which we support partner agencies through various community outreach projects.

If your employer wishes to help advance the common good of the residents of Lorain County, contact United Way of Greater Lorain County to talk about engagement opportunities at 440/277.6530 or visit www.uwloraincounty.org.

Harper enthusiastically remarks, 'We believe in our community and we are committed to creating opportunities for a better life for all. We invite you to join us by volunteering, giving and advocating!'

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ENACTMENT NEWS

Enacted House Bill 86 Felony Sentencing & Juvenile Justice

Signed by the Governor on June 29, 2011

Effective September 30, 2011

Enacted House Bill 86 makes changes to Ohio's felony sentencing laws and juvenile justice system. The changes are intended to reduce the amount of public funds used to operate state prisons, to reduce the number of offenders in prison for violation of low to moderate level offenses, to increase the availability of community control sanctions, to provide the right to a jury determination of all significant facts consistent with the U.S. and Ohio Constitutions, and to enhance the juvenile justice system.

Ohio courts should be aware of the following changes:

Right to a Jury Trial: Judicial Fact-Finding during Sentencing

- **Judicial Fact-Finding.** Codifies *State v. Foster* (2006) by removing language from the Ohio Revised Code that required judicial fact-finding prior to the imposition of sentences that exceed the minimum, sentences that are at the maximum, and sentences that are consecutive. [deleted text was former Revised Code Sections 2929.14 (B) and (C); R.C. 2929.14 (D)(3)(b); R.C. 2929.14(E)(4), R.C. 2929.19 (B)(2), R.C. 2929.41 (A), and R.C. 2953.08]
- **Consecutive Sentences.** Reinstates the state policy preference for concurrent sentences; reinstates the requirement for judicial fact-finding prior to the imposition of consecutive sentences that was declared unconstitutional in *State v. Foster* (2006). This demonstrates a deliberate policy decision of the Ohio General Assembly that is consistent with the post-foster decisions of *Oregon v. Ice* (2009) and *State v. Hodge* (2010). [R.C. 2929.14(C)(4); 2929.41(A)]

Sentencing: Prison Population Reduction

- **Resources.** By repositioning the statement that judicial sentencing should not create a burden on local resources, the General Assembly has added this to the overriding purposes of felony sentencing. [R.C. 2929.11]
- **Sentencing Options—F4 and F5.** Establishes mandatory community control sanctions of at least one year's duration for non-violent, first-time F4 and F5 offenders; authorizes judges to sentence F4 and F5 offenders to prison if the offender committed the offense with a firearm or if the offender committed physical harm to another person while committing the offense; requires the court to notify the Department of Rehabilitation and Correction if the court determines that there is no adequate community control sanction available to fulfill the overriding purpose of sentencing; requires the Department of Rehabilitation and Correction to report to the court within 45 days with an appropriate community control sanction. [R.C. 2929.13]

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- **Sentencing Options—F3.** Reduces the maximum penalty to 3 years for F3 offenders where the offense is not an offense of violence, a sexually oriented offense, aggravated vehicular homicide, aggravated vehicular assault, repeat robbery, or repeat burglary. Expands sentencing optional terms to include 9 months, 12 months, 18 months, and 24 months. [R.C. 2929.14]
- **Sentencing Options--F1.** Increases the maximum penalty to 11 years for F1 offenders. [R.C. 2929.14]
- **Misdemeanor Sentencing.** Expands misdemeanor sentencing options to include up to 60 days in a community alternative or district community alternative sentencing center; provides for the establishment of a Community Alternative Sentencing Center; permits judges to sentence an OVI offender to a community alternative sentencing center. [R.C. 2929.26; 2929.34; 307.932]
- **Risk Reduction.** Authorizes courts to recommend a risk reduction sentence if the court determines it is appropriate and if the offender has not been convicted of aggravated murder, murder, murder complicity, offense of violence (F1 & F2), attempt offense of violence, offense of violence complicity, or a sexually oriented offense; requires the Department of Rehabilitation and Correction to provide risk reduction programming and treatment to eligible offenders and to release the offenders to supervised release after the offender has served each mandatory prison term and a minimum of 80% of the non-mandatory prison terms to which the offender was sentenced; requires the Department of Rehabilitation and Correction to notify the sentencing court at least 30 days prior to the date the offender is to be released. [R.C. 2929.143 and 5120.036; also see R.C. 5120.16, 5120.331, 5120.48]
- **Reentry Plan.** Requires the Department of Rehabilitation and Correction to develop a reentry plan for all offenders imprisoned for more than 30 days, except those sentenced to life without parole or death. [R.C. 5120.113]
- **Reentry Report.** Expands the information to be included in the reentry report of the ex-offender reentry coalition. [R.C. 5120.07]
- **Single Validated Risk Assessment Tool.** Requires the Department of Rehabilitation and Correction to design a single validated risk assessment tool; requires that when an assessment is ordered the single validated risk assessment tool be used by courts, probation departments, CBCF's and other entities; ties state funding and local subsidies to the use of the single validated risk assessment tool. [R.C. 5120.114, 5120.115, 5149.34; 5120.07 and 5149.31]
- **Judicial Release--Adult.** Revises the existing judicial release eligibility requirements such that inmates serving non-mandatory prison terms of 5 years may file for judicial release after 4 years, and inmates serving aggregated non-mandatory prison terms of more than 10 years may file for judicial release after 5 years or after completing half of their stated prison term. Establishes a new procedure authorizing the director of the Department of Rehabilitation to petition courts for release of inmates after serving 80 percent of their sentence. The petition may be filed not earlier than 90 days prior to 80 percent completion and the petition constitutes

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a strong recommendation to the court and should be considered in light of the purposes and principles of sentencing. Authorizes courts to deny the petition for release without a hearing; requires the court to hold a hearing prior to granting release; requires the court to notify the prosecuting attorney and the head of the state correctional institution of the hearing; authorizes the court to make a journal entry ordering the offender to be conveyed to the hearing or to permit the offender to appear at the hearing by video conferencing; requires the court to afford the offender, prosecuting attorney, victim, or other persons to present written information and, if present, oral information; requires the court to enter its ruling within 30 days of the filing of the petition; requires the court to notify the victim of the ruling; requires the court when issuing a release to place the offender under at least one community control sanction; requires the court to reserve the right to re-impose the sentence if the offender violates the sanction; and requires the court to consider ordering that the offender be monitored by GPS. [R.C. 2967.19 and 2929.20]

- **Earned Credit.** Requires judges to provide notice to offenders regarding eligibility for earned credit at time of sentencing; authorizes offenders to earn 5 days of earned credit, with a second 5 day earning potential, capped at 8 percent of the sentence; specifies that credit earned is provisional and that the Department of Rehabilitation and Correction can pull back days of earned credit if the offender commits a prison rule violation. Requires the Department of Rehabilitation and Correction to seek and consider the written feedback of the Ohio Judicial Conference and other parties interested in the operation of the correction system and earned credit. [R.C. 2929.19, 2967.193]
- **Electronic Monitoring.** Requires GPS monitoring of a prisoner placed on post-release control who was released early due to earning 60 or more days of earned credit. [R.C. 2967.28]
- **Intervention in Lieu.** Expands the eligibility for intervention in lieu of conviction for offenders with mental illness or developmental disabilities. [R.C. 2951.041]
- **Pretrial Diversion.** Authorizes a library, museum, archival institution, or merchant to establish a pre trial diversion program under certain circumstances. [R.C. 2935.041]
- **Felony Non-Support.** Requires courts to first consider community control sanctions for felony non-support violations; provides exceptions when the court determines the imposition of prison is consistent with sentencing purposes and principles, when the offender has been convicted, plead guilty, or been sentenced to prison for felony non-support, or when the offender had previously been convicted and failed to comply with the community control sanctions imposed. [R.C. 2919.21]
- **Certificate of Achievement and Employability.** Creates a certificate program to be administered by the Department of Rehabilitation and Correction that will give employers relief from civil liability for hiring an offender who was trained for a particular job. [R.C. 2961.21 through 2961.24]
- **Probation.** Requires courts of common pleas to establish policies regarding the supervision of probationers including the minimum number of supervision contacts, and a graduated response policy to govern which types of violations a probation officer may respond to and which types of violations require a hearing by the court; requires the adult parole authority of the

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department of rehabilitation and correction to collaborate and consult with the Supreme Court of Ohio in the establishment of hiring, training, evaluating, and reporting requirements for probation departments; requires the department of rehabilitation and correction to establish and administer the probation improvement grant and the probation incentive grant. [R.C. 2301.27, 2301.271, 2301.30, 5149.311]

- **Adult Parole Authority.** Changes the definition of “full board hearing” to a majority of members; establishes the terms of office for members. [R.C. 5149.01, 5149.10]
- **Absconding.** Re-defines the crime of escape based upon absconding from Adult Parole Authority Supervision [R.C. 2921.34]
- **Aggravated Murder.** Expands the scope of this offense to include offenders who purposely cause the death of another while trespassing in the habitation of another when a person is present or likely to be present. [R.C. 2903.01]
- **Concurrent Supervision Offenders.** Defines concurrent supervision offenders and establishes default standards for supervision; authorizes separate courts or judges of various courts that have jurisdiction over a concurrent supervision offender to enter into an agreement, adopt local rules of procedure, or agree by journal entry to transfer jurisdiction over that concurrent supervision offender from one court to another court. [R.C. 2951.022]
- **Cocaine and Crack Distinction.** Removes the distinction between crack and powder cocaine. [R.C. 2925.03, 2925.05, 2925.11, and 2929.01]
- **Traffic.** Prohibits arresting, charging, or convicting a person for speeding based on a peace officer’s unaided visual estimation of the speed of the vehicle. Allows the officer to make an assessment of whether vehicle was being driven at a safe speed given the weather conditions or other exigent circumstances. [R.C. 4511.091]
- **Corrections Commissions/Regional Jails.** Removes judicial seats from the Corrections Commission; establishes a judicial advisory board to make recommendations to the corrections commission on specific things that the corrections commission “considers appropriate”; and changes the representation of the county commissioners from the “president” to a “member” of the board of county commissioners. [R.C. 307.93]
- **Halfway Houses.** Removes the requirement that payments to halfway houses for beds and services be equal to the centers’ average daily per capita costs at full capacity. [R.C. 2967.14]
- **Community Based Correctional Facilities and Community Correction Programs.** Requires the Department of Rehabilitation and Correction to adopt standards for offenders whose degree of felony, revocation history, and risk level make them suitable for admission to a CBCF or participation in a community corrections program; links compliance with that standard to the level of state financial assistance or level of local subsidy. [R.C. 5120.07, 5120.111, 5149.31, 5149.32, 5149.33, 5149.34]
- **Theft Offenses.** Increases the threshold amount for theft-related offenses, vandalism, and engaging in a pattern of corrupt activity; revises and clarifies the law regarding prosecution of

(continued on following page)

multiple thefts, Medicaid fraud, workers' compensation fraud, and other offenses; includes workers' compensation fraud as a theft offense. [R.C. 926.99, 1333.99, 1707.99, 1716.99, 2901.08, 2903.01, 2903.11, 2903.12, 2905.01, 2907.21, 2907.22, 2907.323, 2909.03, 2909.05, 2909.11, 2911.12, 2913.01, 2913.02, 2913.03, 2913.04, 2913.11, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2913.61, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, and 2981.07]

- **Reparations.** Clarifies reparations law. [R.C. 2743.51, 2743.56, 2743.59, 2743.60, 2743.601]

Juvenile Justice (Note: The Judicial Conference has also prepared a more detailed analysis for juvenile judges)

- **Juvenile Competency.** Creates a rebuttable presumption that children 14 and older are competent; authorizes the court to proceed with delinquency proceedings when the child is determined to be competent; authorizes the court on its own motion or any party to file a motion for competency determination; authorizes the judge to find the child incompetent or to order an evaluation of the juvenile's competency; requires the court within 10 days to appoint an evaluator; requires the evaluator to prepare and submit to the court a written competency report within 45 days of being appointed; requires the court to make a written determination of competency within 15-30 days of receiving the competency report; authorizes the court, upon a written determination of incompetency, to dismiss charges or delay dismissal for 90 days and refer the juvenile to a provider (public children services and/or family and children first council) for services; requires the provider to submit a competency attainment plan to the court within 30 days of being contacted by the juvenile and to report on the juvenile's progress toward competency to the court every 30 days for a statutory period outlined in ORC 2152.59 (D)(2); authorizes the court, within 15 days of receiving a progress report, to hold a hearing (2152.59) to determine if a new order is necessary. [R.C. 2152.51 through 2152.59]
- **Truancy.** Permits a person filing a sworn complaint of chronic truancy to file the sworn complaint with respect to the child individually, or with respect to the child and the parent, guardian, or other person having care of the child. [R.C. 2152.021]
- **Bindovers.** Establishes a procedure for juveniles "boundover" for a gun specification or for committing an act that would be murder, attempted murder, aggravated murder, or attempted aggravated murder; requires the general division to transfer back to the juvenile division a juvenile who has been "boundover" to the general division if the juvenile is convicted of or pleads guilty to a lesser offense; requires the general division to expunge the common plea's conviction or guilty plea and all records of it upon the imposition of a serious youthful offender (SYO) dispositional sentence by the juvenile court. [R.C. 2152.02, 2152.12, 2152.121]
- **Gun Specification Complicity.** Limits judicial discretion to commit a juvenile to DYS for complicity on a gun specification to a period of one year unless the juvenile furnished, used, or disposed of the firearm. [R.C. 2152.02, 2152.13, 2152.14]
- **Judicial Release--Juvenile.** Grants courts added discretion to order judicial release to court or DYS supervision for a juvenile who has been committed on a gun specification. [R.C. 2152.17 and 2152.22, 5139.01, 5139.06, 5139.18, 5139.20, 5139.43, and 5139.52]
- **Treatment Options.** Encourages courts to use, to the extent they are available, research supported and outcome based programs and services. [R.C. 5139.43]

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Other Provisions

- **Name Change.** Prohibits probate courts from ordering a statutory change of name for a person who has committed identify fraud or who must register under the SORN law for having committed a sexually oriented offense or child victim oriented offense. [R.C. [2717.01](#)]
- **Victim Photos.** Prohibits a convicted sex offender or child-victim offender from possessing a photograph of the victim while the offender is serving a term of confinement for the offense. [R.C. [2950.17](#)]
- **Private Sentencing.** Permits greater flexibility and independence for Community Alternative Sentencing Centers. [R.C. [307.932](#)]
- **Inmate Information and Victim Services.** Expands the amount of information regarding inmates and offenders that the Department of Rehabilitation and Corrections makes available to victims and the public. [R.C. [5120.60](#), [5120.66](#)]
- **Bail Forfeiture.** Specifies that notice to the accused and each surety shall be given within 15 days after the declaration of forfeiture and requires each of them to show cause on or before a date specified in the notice but not less than 45 days or more than 60 days from the date of mailing notice. [R.C. [2937.36](#)]
- **Rule of Superintendence.** Requests the Supreme Court of Ohio to adopt a Rule of Superintendence that provides for the collection of statistical data relating to the operation of probation departments. [Am. Sub. HB 86 section 6]
- **Parole Eligibility Review.** Requires the Department of Rehabilitation and Correction to review parole eligibility for all inmates 65-years and older. [Am. Sub. HB 86 section 10]
- **Ohio Interagency Task Force on Mental Health and Juvenile Justice.** This task force is designed to investigate and make recommendations on how to most effectively treat delinquent youths who suffer from serious mental illness. The Ohio Judicial Conference and the Ohio Association of Juvenile Court Judges have appointments to this task force. [Am. Sub HB 86 section 5]

To view a document with links to the bill and frequently asked questions, visit the Enactments page of OJC website at www.ohiojudges.org. (Click on BillBoard and then click on Enactments)

This Enactment News item was prepared by the Ohio Judicial Conference on July 20, 2011.

It's not too early...

For individuals who regularly make year-end gifts to charity, it's not too early to begin thinking about which asset might offer the best opportunity as far as tax deductibility and transfer time are concerned. Cash gifts are usually fully deductible up to 50% of adjusted gross income (AGI); publicly traded or closely held stock and other capital gain property held more than one year is deductible at fair market value up to 30% of AGI; stock and capital gain property held less than one year is deductible at cost basis.

Gift transfer dates are variable.

Securities sent back to the corporation to be re-issued in the charity's name may require three to six weeks before the corporation actually issues the new shares to the charity, and this delay can be a major problem for end-of-year transfers. Gifts of stock made by U.S. Mail require the donor to send the certificates to the charity in one envelope and the witnessed stock power in a second envelope; the postmark on the stock power envelope is the transfer date.

A security such as a stock certificate endorsed and manually "hand delivered" is a deductible gift as of the hand delivery date.

Securities held in "street accounts" with financial services firms may be transferred electronically but the donor should always let the charity know to expect the gift, name the stock, and give the approximate number of shares. The financial services institution should speak with the charity to get the appropriate routing information and send a written acknowledgment to the donor that the transfer has been accomplished. Electronic transfers can be completed very rapidly if the charity has an account with the same firm as the donor; securities can simply be moved from one account to the other.

Credit card gifts are immediately deductible (Rev. Rul. 78-38) so a gift on December 31 of year one is deductible in year one, even if the bill does not arrive for payment until the following January (year two).

A gift by check is usually deductible on the date the donor mailed or delivered the check (Sec. 1.170A-1(b)) even though the gift is not actually transferred to charity until the check clears the banking institution.

Start the discussion now to make sure that all charitable gifts transfer by December 31 and qualify for a 2011 deduction.

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CO-OWNERSHIP IN PROFESSIONAL PRACTICES - WITH GOODWILL

Attorney William P. Prescott

Dental, dental specialty and veterinary practices, consisting of two or more owners are becoming more common as they grow and expand or relocate. As a result, if Dr. Senior is planning to admit Dr. Junior to the practice or is already in co-ownership, advisors need to be aware of the significant tax risks that Dr. Senior's and Dr. Junior's other partner, the IRS thinks are important under the three business and tax structures for co-ownership.

Each business and tax structure consists of three categories. They are the associate buy-in, the owner buy-out, and operations.¹ All categories need to be considered when co-ownership is contemplated because dealing with these complex issues a year or two after the associateship begins are likely to lead to disagreements over the purchase price, valuation date, and business and tax structure.

Purchase and Sale of Stock in After-Tax Dollars

The first business and tax structure is the purchase and sale of stock in a professional corporation in after-tax dollars. It is the only one without any tax risk. Unfortunately, it is also the one used the least.

Under this structure, Dr. Junior pays income tax on all compensation earned and then pays for the stock in after-tax or non-deductible dollars, while Dr. Senior pays capital gains on the proceeds from the sale of the stock, therefore, all taxes are accounted for and Dr. Senior, Dr. Junior and the practice are free from IRS scrutiny in the event of an audit.

This business and tax structure only works from an economic standpoint where the tax-neutral fair market value of the practice is adjusted downward to account for Dr. Junior paying for stock without any ability to deduct the purchase price in light of Dr. Senior receiving capital gains treatment. The downward adjustment applies to both the buy-in and buy-out.

Stock Excluding Goodwill

Risk 1 - Compensation Shifts

The purchase and sale of stock for the buy-in to a professional corporation at a low value, often the fair market value of the professional corporation's tangible assets, is sometimes coupled with a compensation shift to Dr. Senior, which represents Dr. Senior's goodwill. In exchange for selling a fractional interest of Dr. Senior's goodwill, Dr. Senior receives additional compensation by providing administrative and management services to the practice under a management agreement, often grossed up for the tax effect of receiving ordinary income instead of capital gains and again for an interest component.

Although compensation shifts have not yet presented tax problems in the buy-in piece of the transaction,² assuming that the compensation shifted equates to the management services provided,³ problems do arise in the buy-out.

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Risk 2 - Deferred Compensation

Sometimes buy-outs are structured with stock being purchased by the professional corporation at a low value, coupled with the payment, over time by the practice to Dr. Senior, of deferred or continued compensation,⁴ which represents Dr. Senior's remaining goodwill. While payments for deferred compensation are deductible to the practice, they are taxable as ordinary income to Dr. Senior.

Moreover, deferred compensation arrangements are now subject to the complexities of Internal Revenue Code (IRC) Section 409A and its harsh penalties for non-compliance. The primary effects to Dr. Senior are strict rules on the payment of accounts receivable and no ability to prepay the deferred compensation. But as a practical aspect, Dr. Senior is paid over time with little security for payment.

Risk 3 - Personal Goodwill

Another buy-out structure, which is supported by case law,⁵ is where Dr. Senior's stock is purchased by the practice at a low value but is coupled with the purchase of Dr. Senior's personal goodwill. To the extent that there is personal goodwill,⁶ the purchaser, which is the practice, is able to amortize or deduct the personal goodwill over 15 years while the purchase of stock cannot be deducted. To Dr. Senior, the personal goodwill should, arguably, be taxed at capital gains at one level and not double taxed.

Understand, however, that the purchase and sale of personal goodwill is not without problems. First, if personal goodwill is part of the transaction, Dr. Senior cannot have been, or have a written agreement that Dr. Senior will be, subject to a restrictive covenant with the practice upon the buy-out.⁷ This point effectively eliminates this business and tax structure because Dr. Junior will require that Dr. Senior be subject to a restrictive covenant and vice-versa. Second, if the practice was formed prior to August 10, 1993, the goodwill is not deductible.⁸ If this approach is used, it is important to have an appraisal that distinguishes Dr. Senior's personal goodwill versus any corporate goodwill.

Three Entity Method

Finally, an increasingly common business and tax structure for co-ownership is for Dr. Junior to form an S-corporation and purchase a fractional interest in the tangible assets and goodwill from Dr. Senior or Dr. Senior's practice entity. After the purchase, Dr. Senior and Dr. Junior operate the practice through a newly-formed limited liability company or partnership, a third entity, that collects the revenue, pays the operating expenses including employee benefits and employs the staff. Profits are distributed to the entities, which are owned by Dr. Senior and Dr. Junior and which pay the direct business expenses of each owner. The three entity method may also include use of a compensation shift, the purchase of personal goodwill, questionable S-corporation distributions and/or independent contractor relationships.

Risk 4 - The Anti-Churning Rules

If Dr. Senior's practice was formed prior to August 10, 1993, the buy-in and buy-out under the three entity method, as well as the purchase of personal goodwill by the practice upon Dr. Senior's buy-out, is subject to the IRC Section 197 Anti-Churning Rules. The Anti-Churning Rules deny amortization of the goodwill purchased by Dr. Junior⁹ if Dr. Senior and Dr. Junior jointly did or will own twenty percent or more of the third entity¹⁰ or are family members, e.g., Dr. Senior and Dr. Senior's son or daughter/professional. It is the third entity, the limited liability company or partnership, that creates the problem for non-related owners because 20% or more common ownership makes the owners related parties. IRC Section 197 does not provide for separation of the pre and post-August 10, 1993 goodwill.¹¹ While I have not seen any audits on this point yet, note that the IRS is well aware of this situation and can track assets sales through Forms 8594 that must be filed by all sellers and purchasers and there is direct authority under the IRC Section 197 Regulations for the IRS to recast the transaction, should it choose to do so.

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Risk 2 - Deferred Compensation

If, on the other hand, Dr. Senior and Dr. Junior operate separate practices under a solo group arrangement with no common ownership of a third entity, the goodwill is amortizable for the buy-in and buy-out, except for family members. What's more, each separate practice may adopt its own tax-qualified retirement and health plans without covering the eligible employees of both practices. Shared employees, e.g., hygienists in a dental practice, are permitted under solo group arrangements. Notwithstanding the ability to amortize pre-August 20, 1993 goodwill, solo groups work well because Dr. Junior is usually not required to purchase Dr. Senior's practice upon retirement but retains the option to do so. Because the practices are separate, Dr. Senior can sell his or her practice to a third party professional if Dr. Junior does not exercise the option to purchase. Death or permanent disability, however, usually requires a mandatory purchase.

Summary and Thoughts

Remaining a solo practitioner is best, and practicing in a solo group, second best. If Dr. Senior is already contemplating admitting Dr. Junior as a co-owner or are in co-ownership, any of the three business and tax structures can work if the tax risks are recognized, disclosed to the client and not taken.

Stock in After-Tax Dollars

If the practice was formed prior to August 10, 1993, my recommendation for co-ownership is the purchase and sale of stock and after-tax dollars, with adjustments for the tax benefit in light of the tax detriment. It is simple. There are no tax risks, and there is one entity.

Stock Excluding Goodwill

While a headache to calculate and keep track of, compensation shifts are workable for the buy-in piece. For the buy-out, stock at a low value coupled with deferred compensation works well provided that Dr. Senior understands that the payments will be over time. Stock at a low value coupled with the professional corporation's purchase of Dr. Senior's personal goodwill is viable provided that Dr. Senior does not, or has not agreed in writing to, have a restrictive covenant with the practice and provided that the practice was formed after August 10, 1993.

Three Entity Method

The three entity method does not work well if the practice was formed after August 10, 1993, and the owners are unrelated, notwithstanding the complexity and increased accounting costs of operating three entities. IF the practice was formed prior to August 10, 1993, understand that the goodwill sold is not amortizable or deductible to Dr. Junior. However, stay away from S-corporation dividends and do not attempt to classify the member/partner-corporations as independent contractors. Finally, solo group arrangements provide a good alternative in most circumstances to allow for goodwill to be amortized where it would otherwise not be, except for family members. Keep Dr. Senior's and Dr. Junior's other partner, the IRS in mind when developing the business and tax structure of for co-ownership for both the buy-in of Dr. Junior and buy-out of Dr. Senior.

1 This article does not consider operations, which consists of allocation of compensation in all forms and benefits, decision making control and employment of family members.

2 Tax Planning for Corporations and Shareholders, Second Edition, Zolman Cavitch, Lexis Publishing, Matthew Bender & Company, Inc., 13.04[1], [2], [3].

3 Pediatric Surgical Associates, P.C. v. Commissioner, T.C. Memo 2011-81, April 2, 2011.

4 Revenue Rule 60-31.

5 The following Technical Advice Memorandum and Revenue Ruling recognize the partial transfer of personal goodwill: TAM 200244009; Revenue Rule 70-45.

6 The following recent cases recognize the existence of personal goodwill: Muskat v. U.S.; 554 F.3d 183; Solomon v. Commissioner, T.C. Memo 2008-102, 208 WL 1744406 (U.S. Tax Ct.)

7 Martin Ice Cream v. Commissioner, 110 T.C. No. 189 (1998); Norwalk v. Commissioner, T.C.N. 1998-279; Howard v. U.S., 2010 WL 3061626 (e.d. Wash.), July 30, 2010.

8 The Tax Advisor, September 2009, 9-09 T.T.A. 573, Thomas I. Broder, Elkart, IN.

9 IRC Section (f)(9)(A)(i); IRC Reg 1.197-2(h)(2)(i).

10 IRC Reg 1.197-2(h)(6)(i)(A).

11 Mergers, Acquisitions, and Buyouts; Martin D. Ginsburg, Jack S. Levin, December, 2002, Aspen Publications, 4-118, Example 17, Section 403.4.4.4.

LCBA Seminars

The LCBA is putting together some excellent seminars for the coming months. The schedule is:

10/14/11	1.00	11:30 a.m.	Growth CFO
10/21/11	3.00	1:00 p.m.	Mental Health
11/10 /11	3.50	8:00 a.m.	Annual Probate Seminar Law
11/10/11	3.50	1:00 p.m.	Negligence Law
12/09/11	2.50	9:00 a.m.	Ethics, Professionalism & Substance Abuse
12/15/11	2.00	11:30 a.m.	Get it in Writing: Fee Agreements

For additional information, please contact Jeannie at the LCBA.

LCBA Social Events

September 29, 2011	5:00 p.m.	Football Game & Clambake at Tom's Country Place
November 18, 2011	4:30 p.m.	Welcome Reception at Lorain County Transportation Center
February 11, 2012	5:30 p.m.	Valentine's Day Ball at Fountain Bleau

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Amended HB 5 and HB 86

The Honorable Thomas Januzzi

Amended HB 5 will take effect September 23, 2011. What follows is a chart of some of the changes that will affect cases filed in the Oberlin Municipal Court. The chart is not official and is not intended to give legal advice. It is for your information and review.

Please review the legislation and draw your own conclusions. If you are aware of any other analysis regarding this bill please provide me with a copy. As with any change in the law, there will be an adjustment period.

HB 86 has been signed by the Governor. It includes changes to felony sentencing but also changes the threshold for misdemeanor theft from \$500.00 to \$1,000.00. You may wish to review HB 86 in its entirety to see if any other changes may affect your agencies.

Code Section	Former	New	Comments
R.C. 2929.18	None	Authorizes a victim of crime to obtain a certificate of judgment from the Clerk of Court for a restitution order	
R.C. 2929.24	None	The court retains jurisdiction where jail was imposed, upon motion of either party or upon the court's own motion, to substitute one or more community control sanctions for any jail days that are not mandatory jail days	This permits the court to substitute other sanctions for a jail sanction post-conviction. May used where there is a community control violation instead of imposing jail?
R.C. 2929.25	None	The court retains jurisdiction where community service was imposed, upon motion of either party or upon the court's own motion, to substitute one or more alternative community control sanctions for the community service imposed	This does not include substituting jail for community service
R.C. 2929.27	None	Permits a person who was ordered to perform community service to substitute a contribution to the political subdivision that provides funding to the court	The amount is in the discretion of the court.
R.C. 4507.35 – Failure to Display License upon Demand	M-1	Changes the degree of the crime to an UM unless the person has 2 or more prior convictions in the past 3 years	Note: The offense is not failure to “produce or show a license.” It is failure to display a license on demand IF the person has the license on his/her person
R.C. 4510.036	ALL DUS 6 POINTS; NOL 2 POINTS	<ol style="list-style-type: none"> Changes points for most DUS and FAILURE TO REINSTATE to 2 points (i.e. all DUS except for 4510.037 – 12 point suspension and 4510.14 - OVI/DUS suspensions that remain 6 points) Changes NOL to 0 points 	
R.C. 4510.11	Included any DUS except FRA. Provided separate subsections for UM crimes. Provided for mandatory license suspensions and mandatory vehicle sanctions for repeat offenders within 3 years	<ol style="list-style-type: none"> Non-certified copy of LEADS may be introduced as evidence of the Defendant's driving record – subject to rebuttal Child Support and License Forfeiture Suspensions are excluded [see New R.C. 4510.111] M-1 offense All license suspensions are discretionary All immobilizations and forfeitures are discretionary If the offender did not have insurance – permits the court to order restitution as a sanction in a sum not greater than \$5,000.00 2 Point Violation [see 4510.036] 	

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R.C. 4510.111	See old R.C. 4510.11 There were mandatory license suspensions and mandatory vehicle immobilizations and forfeitures for repeat offenses	<ol style="list-style-type: none"> 1. Section A is for license forfeitures 2. Section B is for child support suspensions 3. Non-certified copy of LEADS may be introduced as evidence of the Defendant's driving record – subject to rebuttal 4. Crime is UM unless 2 or more convictions in prior 3 years 5. Discretionary License Suspension 6. Discretionary Immobilization and Forfeiture 7. 2 Point Violation [see 4510.026] 	The intention of the legislation, in part, is to simplify the charging of these offenses by providing a separate offense for License Forfeiture and Child Support suspensions. Some courts may even provide that these are waiver offenses
R.C. 4510.12		<ol style="list-style-type: none"> 1. Non-certified copy of LEADS may be introduced as evidence of the Defendant's driving record – subject to rebuttal 2. 0 Point Violation [see 4510.036] 	
R.C. 4510.14		If the offender did not have insurance – permits the court to order restitution as a sanction in a sum not greater than \$5,000.00	
R.C. 4510.16		<ol style="list-style-type: none"> 1. Non-certified copy of LEADS may be introduced as evidence of the Defendant's driving record – subject to rebuttal 2. If the offender did not have insurance – permits the court to order restitution as a sanction in a sum not greater than \$5,000.00 3. License suspensions and vehicle sanctions are discretionary 	
R.C. 4510.21	M-1	<ol style="list-style-type: none"> 1. Non-certified copy of LEADS may be introduced as evidence of the Defendant's driving record – subject to rebuttal 2. 2 Point violation [see R.C. 4510.036] 3. UM – unless two prior convictions in past 3 years 	
R.C. 4510.22		Clarifies the code sections for which a license can be cancelled for failure to appear or failure to pay a fine and costs Changes the law from mandatory to discretionary	Delineates the following code sections: <u>4503.11</u> , <u>4503.12</u> , <u>4503.182</u> , <u>4503.21</u> , <u>4507.02</u> , <u>4507.05</u> , <u>4507.35</u> , <u>4510.11</u> , <u>4510.111</u> , <u>4510.12</u> , <u>4510.16</u> , <u>4510.21</u> , 4511.01 to 4511.76, <u>4511.81</u> , <u>4511.82</u> , 4511.84, 4513.01 to 4513.65, or 4549.01 to 4549.65 or any equivalent ordinance
R.C. 4511.19(H)(4) and R.C. 4511.19(G)(7)	None	If the offender did not have insurance – permits the court to order restitution as a sanction in a sum not greater than \$5,000.00	
R.C. 4511.203	M-1 and mandatory license and vehicle sanctions	<ol style="list-style-type: none"> 1. UM unless 2 prior offenses in past 3 years 2. Discretionary vehicle sanction and discretionary license suspension 	
R.C. 4549.02; R.C. 4549.021; R.C. 4549.03		If the offender did not have insurance – permits the court to order restitution as a sanction in a sum not greater than \$5,000.00	

ANNUAL WELCOME RECEPTION

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Time: 4:30 pm

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Lorain County Bar Association

Celebration will be held at the Lorain County Transportation & Community Center, 40 East Avenue, Elyria, Ohio



Save The Date:
February 11, 2012

***Our Valentine's Day Ball will be held on Saturday, February 11, 2012 at the Fountain Bleau.
We're planning some exciting new events so watch your email for details.***

REBELLIOUS LAWYERING

Attorney Angela Wu

Tammy approached me after Street Law class. "Ms. Wu," she said, "my little brother is being bullied here at school, and he needs your help." David was a freshman at Oberlin High School. Kids picked on him because he was slow and mouthy. They also called him the "N"-word and "gay."

"But he's not gay," she explained.

Things had gotten so bad that David would come home with serious injuries to his head, arms, and legs. This had been happening since he was in the sixth grade when he came home with a broken leg - but his family never believed his stories that other kids had done this to him. It was only this year when Tammy, a senior, had the chance to be with David in the same school that she witnessed first-hand the way that bullies terrorized David.

His teachers would usually send him to in-school retention. "Because that usually got rid of the problem," said Tammy. As a result, David had in effect missed more than half of the school year sitting in ISR. Tammy tried to talk with the principal but still nothing changed. The bullies were never punished. The teachers would often say they weren't sure whose story to believe. David continued to be pushed, spat on, hit with flying pencils, chased, subjected to name-calling, and his books and trapper-keeper stolen and used as weapons against him or thrown in the toilet. He never got them back. The worst part for Tammy was that she and David used to be very close, but David had become so distraught with his family's failed efforts that he left home for weeks on end and emotionally disconnected from his family. Discouraged, their parents had stopped even trying to fight for him.

"I need to do something about this," Tammy concluded. "I need to do it for my brother. Ms. Wu, I want you to sue the school."

If I had sued Oberlin Schools, you would have heard about it. But since I collaborate with Oberlin Schools to run my Street Law program, this wasn't even an option at the time.

To be sure, Tammy and David had a case. As the director of Oberlin Street Law, however, I was committed to a broader form of problem-solving. Tammy and David had no money. They didn't have the resources to battle a school system. But what they lacked materially they more than made up for in artistic talent. How could we use what they had to solve the problem at its core? How could we convince teachers and administrators that David was telling the truth? How could we get the bullies to stop? How could we bring the old David back to his family?

I knew Tammy wrote beautiful poems. I asked her if she would be willing to write poems about David's experience to make others aware of what was happening to him. "Actually now I'm a photographer," she responded.

"Even better!" I said.

Over the following six months from March to September 2009, Tammy worked on a weekly basis with me, my college student intern, and an old friend of mine named Teri from my own college years who was a local documentary photographer. We didn't know exactly what we were getting into. Tammy would bring us photos she took at school ("the evidence," she called them). Teri would critique them for composition, clarity, and narrative and send Tammy back with exercises to take more. Tammy caught some striking shots of one of the bullies taking David's trapper-keeper from him, hitting him on the head, and then throwing him into a head-lock. Teri then encouraged her to take shots of David outside of school. "Tell the story of David's life," Teri said. "Show us who the real David is, the one who isn't a victim."

Tammy took photos of David's family - her family - an unusual mix of seven black and Latino children adopted by white parents and a feisty grandma. She tracked David down at his best friend Miranda's house and took photos of him playing with her little sister and her cats. The more beautiful the photos that Tammy took, the more fascinated others became in the process so that in the end we were working not only with Tammy but also her sister Cathy, her brother Cameron, and David.

Fast-forward to the end of September when we opened our exhibit, "Through Our Eyes," at the FAVA Gallery in downtown Oberlin to a crowd of over 100 people. There was admiration for the artistic quality of our work; there was surprise at the complexity of David's story; and there was indignation that adults in our community would let this kind of suffering happen to one of our children. Town luminaries from the city, college, and schools attended. The overwhelming commentary was, "I didn't know bullying still happened in Oberlin." In the following year, anti-bullying initiatives were instituted in all four Oberlin City Schools.

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UCLA law professor Gerald Lopez calls this "rebellious lawyering": problem-solving in collaboration with our clients, using their on-the-ground practical knowledge and skills, telling their story in a forum outside the courts where the audience can be fact-finders and arbiters of justice. Achieving resolution that goes beyond a formal court judgment - though those are often very powerful tools - into the realm of personal, community, and cultural transformation, where we find the most profound expressions of justice.

I was proud of Tammy during our opening ceremony when she told the packed audience that David's struggles ended in a manner she least expected: the process of creating art and putting together the exhibit changed their family's attitude about themselves. Instead of feeling hopeless and tired of fighting against endless barriers, she and David found strength in the power of their art to speak to adults who had previously been deaf to their story. They realized they had the talent and ability to do something - and it was working - people were listening. More than that, people were becoming motivated to help. Right before the exhibit opened, Tammy's mom succeeded in transferring David to Lorain County Joint Vocational School - something that each time before had ended in discouragement. David was thriving at the JVS in the culinary arts program. Tammy had decided as a first-year at Lorain County Community College to major in art. And she and David were now closer than ever. The family had gotten the old David back.

Oberlin Street Law's goal is to promote problem-solving among both lawyers and non-lawyers using a broader - shall we say rebellious? - understanding of law. Law is not just what we as attorneys practice in the courts, nor is it just what our legislators write into statute, though these are important tools. Law is what people have a right to live every day. Through our Street Law classes with teens at Oberlin High School to our teen-led community initiatives to address issues and injustices affecting us all, we develop this problem-solving muscle so that people are able to engage effectively in transformation of their own struggles.

We as attorneys are powerful resources, but we are not the be all and end all in the many battles against injustice in this world. Nor should people come to rely on us - and blame us - for failing to complete a kind of transformation that winning a case simply cannot achieve. As we work each day to live up to the highest ideals of our profession, there is so much we can do beyond formal legal representation to empower our clients to bring about positive change in their day-to-day lives. Many of us do these kinds of things gratuitously as we develop our relationships with our clients - giving pep talks, offering to make phone calls to get them resources. Through Oberlin Street Law, we can partner with non-lawyers - college students, professional artists, educators, and our clients themselves - to make this kind of transformation the norm in the understanding and practice of law. Tammy and David never had to file a lawsuit, but they are enormously grateful to street law for what it has done to change their lives for the better. And they love lawyers.

Please visit our website at <http://oberlinstreetlaw.org> to find out more about our non-profit and contact me at 440-935-4518 to get involved.

LCBA 2011 Annual Golf Outing

The Lorain County Bar Association held its annual golf outing on Monday, August 29, 2011, at Oberlin Golf Club. The weather was picture perfect and the outing was enjoyed by all. Approximately 65 golfers participated in the outing and enjoyed a delicious steak dinner after the outing. Two teams tied for first place with an impressive score of 58, but the team of Gasior, Gasior, Stringer and McDonough was declared the winner because they shot a better back nine. Second place was won by Keys, Shapero, Lincoln and Thommason. Prizes were also awarded for closest to the pin: Ken Lieux, Kevin McDonough, Rich Gedeon and John Boutton; and for longest drive: Pat Riley. Congratulations! A big thank you to Spencer Ryan and Ryan-St.Marie Insurance Company for once again sponsoring the beer for the outing!



VICTIMS OF TRUCK CRASHES NEED AN EXPERIENCED TRUCK LAWYER

By Andrew R. Young, Esq. - Nurenberg, Paris, Heller & McCarthy Co., L.P.A.

Chair of the Negligence Section of the Lorain County Bar Association

An attorney who regularly handles car accident personal injury cases should not assume that an injury caused by a truck is no different than one caused by a car. In an auto accident case caused by the defendant's failure to stop within an assured clear distance ahead, for instance, one might assume the negligence element, and move on to proximate cause and damages. In a similar trucking accident case, that assumption would also hold true, but an opportunity is missed if the attorney skips past negligence and proceeds forward in the same manner. The trucking industry is heavily regulated, and these regulations provide further opportunities to develop the negligence aspect of the claim, greatly enhancing its value. An experienced truck lawyer will take an approach that will expose additional theories of liability - keeping the negligent trucking company honest, ensuring future highway safety, and maximizing the client's overall recovery.

1. Know The Code...

When considering an 80,000 pound combination tractor and trailer, traveling at speeds in excess of 65 mph, it is no surprise that the United States Department of Transportation (DOT) has heavily regulated the trucking industry. The Code of Federal Regulations (CFR), specifically 49 CFR §§ 325-399, contains hundreds of pages of safety regulations designated as the Federal Motor Carrier Safety Administration (FMCSA) Regulations. Its purpose is to mandate that a trucking company employ both safe equipment and safe drivers. DOT enforcement officers perform daily roadside inspections to determine if a truck and its driver are both code compliant. If enough violations are discovered, the truck and driver may be "tagged out-of-service" for non-compliance.

A trucking company and driver must have comprehensive knowledge of the of the FMCSA regulations. Honest truck companies will spare no expense to ensure that both their equipment and drivers are safe and code compliant. However, the trucking industry is highly competitive and many truck companies push their equipment and drivers beyond the limit and beyond code compliance. Code violations may turn an ordinary rear-end accident into something much more. Therefore, it is imperative for an attorney hired by a truck crash victim to not simply know the code, but to be able to understand the code's practical application to both the semi-truck and driver.

2. Know The Equipment and Driver Qualifications...

For instance, an ordinary car does not have an air brake system. The professional truck driver must pass a written and oral examination on air brakes before becoming licensed. According to Ohio's Commercial Drivers License Handbook, "out-of-adjustment brakes are the most common problem found in roadside inspections." The attorney handling a truck case must have an equally comprehensive understanding of air brakes if they are going to competently investigate and take the deposition of the truck driver and trucking company personnel.

Did an air brake failure cause the aforementioned rear-end accident? Were the truck's air brakes properly adjusted in accordance with 49 CFR § 393.47? Did the driver do a pre-trip examination to check to see if the brakes were properly adjusted? Did the driver perform post-trip inspections? Did the driver provide documentation as required by the code? Watch out - according to 49 CFR § 396, which governs driver vehicle inspection report(s), the code only requires reports be maintained for a three (3) month period.

3. Evidence Preservation Is Necessary...

Time is of the essence. Upon being hired, the truck lawyer will send the defendant trucking company a letter requesting the preservation of evidence. This spoliation letter should include: preservation of the actual semi-truck and trailer; maintenance records; pre-trip/post-trip inspection records; driver log books or electronic on-board recording (EOBR) devices; and, driver qualification records.

If the rear-end accident caused a wrongful death or significant injury, preservation of the semi-truck will allow the experienced lawyer and truck expert to ascertain whether the air brake system was properly adjusted. Preservation of the driver maintenance reports will also help to determine if there may be negligence due to aged or faulty equipment. Driver log books or EOBRs will help to prove whether the driver was compliant with Hours of Service Requirements pursuant to 49 CFR §§395.1-395.16. Driver qualification records are also key to determine whether the driver has a history of prior traffic collisions, has an up-to-date medical certificate, and has been properly tested for drugs and alcohol.

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4. Don't Forget FOIA...

In addition to the spoliation letter, the experienced truck lawyer will send a Freedom of Information Act (FOIA) request to the FMCSA. A FOIA letter may include a request for the following: all documents relating to the subject accident; roadside vehicle inspection reports; compliance reviews; and, out-of-service violations. The Compliance, Safety, Accountability (CSA) program is the new FMCSA program putting into place the Safety Measurement System (SMS). The SMS provides a government safety rating for a trucking company. It has replaced the old SafeStat program. The new CSA not only creates a means for the FMCSA to score the safety performance of trucking companies but now also does the same for truck drivers. The truck driver's information is stored through the FMCSA's Pre-Employment Screening Program (PSP). The PSP provides an electronic database of driver safety records, including serious safety violations and crash history. Before hiring truck drivers, trucking companies are now able to access driver records through the government sponsored PSP.

Documents retrieved through a properly worded FOIA request or preserved through a spoliation letter may provide key evidence to support a claim for punitive damages or additional theories of liability, such as a claim for negligent hiring, training, supervision, and retention. Even if documents are unable to be retrieved or provide no new information, the spoliation letter alone will demonstrate to the defendant trucking company that the crash victim has hired an attorney who not only understands the trucking industry, but also has practical knowledge of the regulations, the equipment, and driver qualifications.

5. Learn More at LCBA Negligence Section Seminar...

The Negligence Section of the Lorain County Bar Association is hosting a Trucking Negligence Seminar on November 10, 2011. At this seminar, attendees will receive a sample FOIA request letter and spoliation letter along with additional seminar materials. It is also anticipated that a real Peterbilt 359 semi-tractor will be available so that attendees can sit in the driver's seat of a big rig and walk through a pre-trip / post-trip regulatory inspection of the equipment. Speakers will discuss regulatory compliance applications for truck drivers and truck equipment. An experienced trucking litigation defense attorney will discuss his experience defending the trucking company and driver. For those who handle plaintiff's personal injury work or defend accident cases, attendance to this seminar will assist his or her journey toward becoming an experienced truck lawyer.

AMENDMENTS TO THE RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

On August 8, 2011, the Supreme Court of Ohio adopted amendments to Standard Probate Forms 14.2, 18.9 and 45(D), effective September 1, 2011.

The Amendments were prepared by the Form Committee of the Ohio Association of Probate Judges and recommended by the Commission on the Rules of Superintendence.

(continued on following page)

PROBATE COURT OF _____ COUNTY, OHIO

_____, JUDGE

ESTATE OF _____, DECEASED

CASE NO. _____

ENTRY APPROVING SETTLEMENT AND DISTRIBUTION OF WRONGFUL DEATH AND SURVIVAL CLAIMS

Upon hearing the application to approve settlement and distribution of the wrongful death and survival claims, the Court:

- ☐ Approves the proffered settlement of \$ _____.
- ☐ Orders payment of \$ _____ to be applied to decedent's funeral and burial expenses.
- ☐ Orders payment of \$ _____ to the fiduciary for services rendered with respect to the wrongful death and survival claims.
- ☐ Orders payment of \$ _____ to the attorney for reimbursement of case expenses and \$ _____ for attorney fees for services rendered with respect to the wrongful death and survival claims.
- ☐ Orders that the net proceeds of \$ _____ be allocated \$ _____ to the wrongful death claim and \$ _____ to the survival claim. The amount allocated to the survival claim shall be considered an asset of the estate and shall be reflected in the fiduciary's account of the administration of the estate.
- ☐ Finds all of the beneficiaries of the wrongful death claim are on an equal degree of consanguinity, are adults, and have agreed how the net proceeds allocated to the wrongful death claim are to be distributed.
- ☐ Orders distribution of the net proceeds allocated to the wrongful death claim to the surviving spouse, children, parents, and other next of kin, in the equitable shares shown below, fixed by the Court having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries.

Name	Residence Address	Relationship to Decedent	Birthdate of Minor	Amount

FORM 14.2 - ENTRY APPROVING SETTLEMENT AND DISTRIBUTION OF
WRONGFUL DEATH AND SURVIVAL CLAIMS

Amended: September 1, 2011
Discard all previous versions of this form

CASE NO. _____

[Reverse of Form 14.2]

Orders that the share of:

☐ _____ a minor(s) be deposited pursuant
to R.C. 2111.05.

☐ _____ a minor(s) be paid to the guardian
of the estate of such minor.

☐ _____ a child(ren) be deposited in a trust
for the benefit of the child(ren) until twenty-five years of age.

Authorizes the fiduciary to execute a release which, upon payment, shall be a discharge of the claim.

Orders the fiduciary and the attorney to report the distribution of the proceeds within thirty days of the date of this Entry.

Further orders _____

Approved:

Attorney for Fiduciary

Probate Judge

Attorney Registration No. _____

Date

PROBATE COURT OF _____ COUNTY, OHIO

ADOPTION OF _____
(Name after adoption)

CASE NO. _____

PETITIONER'S ACCOUNT

[R.C. 3107.055]

☐ PRELIMINARY ESTIMATE ACCOUNTING
(To be filed not later than date petition filed)

☐ FINAL ACCOUNTING
(To be filed not later than 10 days prior to date
of final hearing)

This accounting specifies all disbursements of anything of value the petitioner, a person on the petitioner's behalf, and the agency or attorney made and has agreed to make in connection with the minor's permanent surrender under division (B) of Section 5103.15 of the Revised Code, placement under Section 5103.16 of the Revised Code, and adoption under Chapter 3107. (Attach extra sheets if necessary)

DATE	NAME AND ADDRESS	DISBURSEMENTS MADE OR AGREED TO BE MADE	ACTUAL COSTS
	PHYSICIAN		
	HOSPITAL/MEDICAL FACILITY		
	ATTORNEY		
	ACTUAL COST TO THE ATTORNEY		
	AGENCY		
	ACTUAL COST TO THE AGENCY		
	MAINTENANCE AND MEDICAL CARE REQUIRED UNDER R.C. 5103.15		
	EXPENSES PURSUANT TO R.C. 3107.055(C)(9)		
	FOSTER CARE		
	GUARDIAN AD LITEM		
	COURT COSTS		
	ALL OTHER DISBURSEMENTS		
	TOTAL		

FORM 18.9 - PETITIONER'S ACCOUNT

Amended: September 1, 2011
Discard all previous versions of this form

CASE NO. _____

[Reverse of Form 18.9]

CERTIFICATION OF PETITIONER'S ACCOUNT

The undersigned certifies this _____ day of _____, 20____, that this accounting is true and accurate.

Attorney or Agency

Typed or Printed Name

Address

City State

Telephone Number (include area code)

The petitioner has reviewed this accounting and attests to its accuracy this _____ day _____, 20____.

Petitioner

Petitioner

PROBATE COURT OF _____ COUNTY, OHIO

IN THE MATTER OF: _____

CASE NO. _____

CONFIDENTIAL DISCLOSURE OF PERSONAL IDENTIFIERS

[Rule 45(D) of the Rules of Superintendence for the Courts of Ohio]

	Complete Personal Identifier	Institution	Abbreviation	Form No.	Filing Date
Ex.	123-45-6789	Social Security	6789	22.3	7/1/2009
Ex.	0001234567	Anytown Bank Checking	Anytown #1	6.1	7/1/2009
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____

☐ Check if additional pages are attached

Signature of Filing Party

Printed Name

Date: _____

This is page ____ of ____ pages