Annual Meeting & Luncheon

Sponsored by Toledo Legal News

Tuesday, June 13, 2017, NOON

The Park Inn

On the Occasion of the Installation of

Richard S. MacMillan

as President

Margaret J. Lockhart, Community Service Award

Kurt W. Bruderly, Trustees’ Award

Dean D. Benjamin Barros, Master of Ceremonies

Hon. Arlene Singer, Presiding for Oath of Office

Music provided by Mag. Paul Jomantas

Tickets—$30.00

All reserved seating–tables of 10 available upon request.
Seating is limited, please reserve early. Registration at www.toledobar.org
or contact Donna Williamson at dwilliamson@toledobar.org
As we leave graduation season and enter wedding season, we will undoubtedly be inundated with thank you notes for attending these ceremonies and for the gifts we have given. In this day and age, I am still surprised when I receive a note or letter expressing gratitude. It is so much easier to send a text, an email, or an emoji. When my son says thanks he usually sends a picture of himself holding a giant board with “Thank You” handwritten on it. Sometimes he includes decorations and colors, but that is a major stretch for my child who is artistically challenged.

When it comes to thank you notes, I did not receive the best home training. My mother believed that it was a waste of money. We were always in deficit spending mode, and therefore she would not allow the purchase of notecards, stationary, or stamps. She would always say, “They didn’t give a gift to get a thank you back. The gift is in the giving.” Although I agree that a person giving a gift receives enjoyment from the giving process, a proper acknowledgement of the gift is appropriate and simply the right thing to do.

So, here goes...

Dear members, staff, and friends of the Toledo Bar Association,

Thank you for all of the love, support, and well wishes I received during this past year. I appreciate all of the calls, emails, text messages, and in-person conversations regarding the articles I have written for the newsletter. I believe that many of you really took my stories to heart and got a glimpse into the life and times of someone whose life and experiences were different from yours. I hope you continue to reach out to lawyers from different practice areas and people outside of your comfort zone. We can all learn from each other’s life experiences and find common themes that run throughout our collective lives.

I have definitely learned a lot from each of you over the years. I learned that the lawyers in this community are strong, resilient, caring, compassionate, zealous, collegial advocates who can accomplish any task or conquer any adversity threatening to block our path to advancement.

To the TBA staff, thank you for your hard work and dedication to the success and survival of our organization. You truly exemplify the spirit of excellence in all you do!

To Brad, you have absolutely amazed me this past year. I was honored to walk with you throughout your first year as executive director. You made the job look easy and you made me look good. I look forward to your continued tenure and I anxiously await what the future holds for the TBA as you execute our strategic plan.

To the TBA Board, you are #thebomb.com! I have been honored to serve with each of you. I have learned from you and I admire your tenacity and commitment to bringing forth the best results for our organization. I appreciate the countless hours you have freely given to attend meetings, events, and retreats. Your efforts will result in positive membership benefits and growth at the TBA for years to come.

To Michelle Kranz and Rich MacMillan (past president and future president), words cannot describe the amount of gratitude and appreciation I have for you both. The TBA caused us to cross paths and my life has forever been changed by the wisdom and passion I have witnessed from your devotion. I will forever cherish the great times and the challenges we have shared. I wish you both immeasurable future successes.

It’s been a great ride, and I’ve had the time of my life. Thank you!
1. Annual Legal Directory Checklist

The legal directory will be assembled over the summer months. NOW is the time to update, correct and place advertising.

- Check your contact information at www.toledobar.org/directory. If your information is not correct, submit corrections to jgrubb@toledobar.org or log in to your profile and make corrections in real time.

- Check your photo in the 2016–2017 directory. If it does not look like you, send an updated photo (HIGH RESOLUTION only, please) to jgrubb@toledobar.org.

- Check your law firm’s listing on pages 175–183 of the 2016–2017 directory. Consider purchasing or updating your listing. Watch your inbox for more information.

- Check your certified specialist listing on pages 169–173 of the 2016–2017 directory. If you are a certified specialist, consider purchasing or updating your listing.

- Check the advertisers in the 2016–2017 directory. If you have services to advertise, consider purchasing or updating your ad.

For more information or to update information for ANY OF THE ABOVE, contact Jenna Grubb at jgrubb@toledobar.org or 419.244.1044.

2. The TBA Newsletter is going on its summer hiatus

We will return with the September 2017 edition that will feature a profile of new TBA president Rich MacMillan and many articles to help you practice law in Toledo.

In the meantime, watch for TBA E-News in your inbox. You can find current classified advertising on the TBA website at www.toledobar.org/classifieds.

3. Membership Dues

The Toledo Bar’s membership year runs from July 1, 2017, to June 30, 2018. Dues statements were mailed at the end of May. Members can pay online at www.toledobar.org/myaccount, or by check or credit card by July 1. A monthly payment plan is available. If you have questions regarding dues, contact Angie Hartzell at 419.242.9363 or ahartzell@toledobar.org. Thank you!

4. Follow the TBA on social media

- Find us on Facebook at www.facebook.com/ToledoBarAssociation/

- Follow us on Twitter at @TBAgrubb

- Join our LinkedIn group at www.linkedin.com/groups/2407507 or search for “Toledo Bar Association”
Technology in Practice ~ Useful tech tips from a local expert

Cloud Spotting
(Part 2 of a 2-part series)

by Joseph W. Shinaver, Jr., Secretary, TBA Technology Committee

The legal profession has been outsourcing services for a very long time. Electronic data and computing should be no exception. Moving some of your practice to the cloud can be a great thing, if done properly. But, whenever you put some control over your business (or your client’s business) in the hands of a third party, it is very important that you understand the ethical implications, and your responsibilities under the Ohio Rules of Professional Conduct.

Obviously, we all have an obligation to remain competent in our craft. As you are likely also aware, there are many ways to remain competent. Competence can be based on your experience and training, preparation and study, or by associating or consulting with an expert. Rule 1.1, Comment 1. We all must “keep abreast of changes in the law and its practice.” Rule 1.1, Comment 8. The comment goes on to include “the benefits and risks associated with relevant technology” in that requirement. So, if you use the technology, you must use it competently.

However, staying up to date on the latest and greatest in the technology world is a cumbersome endeavor, even for a trained tech-geek like me. I have found the “consultation” option of the competency requirement to be very useful. I constantly reach out to my geek-sociates to better understand a confusing new development in hardware or software. There are even times when, after a solid analysis, it’s clear that an association with an expert would be best.

Association with experts also has its challenges. We have an obligation to ensure that our business relationships do not interfere with our ethical responsibilities. Rule 5.3, comment 3 includes supervision of outside services, including “using an Internet-based service to store client information.” In such cases, “the lawyer must make reasonable efforts to ensure that the services are provided in a manner compatible with the lawyer’s professional obligations.” We should also familiarize ourselves with the “terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality.” So, whenever you consider using a vendor for cloud-based storage, you must be able to reasonably ensure that the vendor is also complying with the Rules. Additionally, you should speak to your client about your decision to store data in the cloud.

Rules 1.2(a), 1.4(a)(2), and 1.6(a) require a lawyer to consult with a client regarding the intended use of outside services (such as cloud computing), and to obtain informed consent before doing so. Circumstances may dictate that cloud-based storage or computing is not appropriate for certain clients or matters. If cloud-based storage is appropriate, lawyers must still use reasonable measures to prevent unauthorized disclosure.

Disclosure can occur from four potential sources: lawyers (or the lawyers’ support staff), the vendor or service provider, the client, or a malicious outside source. While you cannot always control when or to whom your client discloses information, it is good practice to try to limit access to information so that it is not inadvertently sent out. Educating your client is another effective way to do that. Also, limiting your exposure to hackers, while not guaranteed, can be done by using appropriate encryption, authentication, and access controls.

Additionally, it is very important that you, your staff, and your service providers all have an understanding of the requirements and know that proper safeguards are in place. A lawyer does not violate the rules so long as he or she “… make[s] reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to the representation of a client.” Rule 1.6(c). Comment 18 of Rule 1.6 addresses “[f]actors to be considered in determining the reasonableness of the lawyer’s efforts” which “include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients.” Again, as painful as it may be, please familiarize yourself with your vendors’ Service Level Agreements.

Finally, a 2013 Ohio State Bar Association Informal Advisory Opinion provided some exceptional guidance by stating that “… terms of service that provide or suggest that the cloud storage vendor acquires an ownership interest in the electronic data on its servers would violate the duty to keep client data [identified as such]” and appropriately safeguarded per Rule 1.15(a). OSBA Informal Advisory Opinion 2013-03. Most service providers do retain ownership rights to data in its raw format as it is saved on their servers per their Service Level Agreements. Consider whether your agreement with this service provider is reasonable under the rules. Cloud computing and storage of client data, if done properly, can be a great asset to your practice. It provides reliable access to information...

—continued on page 5
Cloud Spotting—continued from page 4

Joe Shinaver is a self-proclaimed legal tech geek. Joe is the founder of Pileus Legal Technology, LLC, and has been practicing law since May, 2016. If you have any questions about the technology in this article, or have a topic you’d like discussed here, feel free to contact Joe at 419-367-9911 or joe@pileus.technology.

for you and your client. But the proper precautions must be observed. As always, please save responsibly.

Thanks to TBA Bar Counsel Michael Bonfiglio for consultation on this article.

Members of the Toledo Bar Association can access exclusive discounts through National Purchasing Partners (NPP). Take advantage of special pricing on popular products and services for business and life. You can also share select offers with your employees.

NPP is FREE for TBA members and there is no obligation to buy. Join today to find exclusive pricing from Office Depot, Best Buy, LifeLock and, if eligible, Verizon.

As a national savings and solution provider, NPP researches member needs, discovers new technologies and negotiates impressive savings on a variety of useful products. To learn more about the discounts that are available to your firm and employees, register for free with NPP.

Once you register with NPP, you will receive an email request to set your password. Simply set your password, login and explore the catalog of offers.

If you need help registering, please contact NPP customer service at customerservice@mynpp.com or call 800.810.3909.

Savings for Business and Life: New TBA member benefit from National Purchasing Partners

Toledo Bar Association members

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Legal Services On-Demand! Are you adapting to the market around you?

by Jason Harris, Sr. Legal Marketing Consultant, FindLaw/Super Lawyers, Serving SE Michigan and NW Ohio

How many of you watch TV on-demand, have a DVR or stream with Netflix, Hulu, Sling or Amazon Prime? How many of you watch these with your iPad, tablet, mobile phone or laptop? You’re not alone, so does the rest of America. More than 70% of people don’t know an attorney and will use their electronic devices to find an attorney “on-demand.” Working with attorneys every day, I hear the same comments: “I get all my business from referrals,” “Everyone knows me,” “I have a website,” and “I don’t have time to market.” Let’s dive into these comments and see what it means for you today.

Referrals—
Getting your business from referrals is great—don’t change that. But there are downsides to having all your business come from referrals:

1. You’re not in control of your practice and you’re not in control of your growth—your clients are! If they don’t refer you to others, you won’t get new clients. What happens when referrals decline?

2. Referrals are usually handed out in twos or threes. If a referral researches your name on Google/Yahoo/Bing, what do they see? How do you compare to the other names online? Your online impression is now your first impression, not in person. What are you doing to stop the shopping process? Once they walk in your office for a meeting, they’ve already decided they’re going to hire.

Online—
If you don’t have a website by now, or if it’s dated, you’re losing business. The public, attorneys and other professionals judge you on how professional your website looks because of their website experiences with other businesses. Retail must constantly revamp their online experience to keep up with the market. If you’re not doing the same, potential clients may think you don’t care about your business and don’t take it seriously. Look at your bounce-rate from your website or online marketing, if it is high (over 65%), that’s the public telling you they don’t like what they’re seeing.

Adapt or go extinct —
Who would have thought that home phones, travel maps, Blockbuster, newspapers and more would go extinct? When is the last time you used a phone booth? I realize no one went to law school to be a business owner or marketer, but marketing is a must for your business and will be an even bigger part moving forward. You have to start marketing, take it seriously and invest time/money into it. If your firm is not visible on a mobile phone via your website, social media, local maps, local directories or tons of other places, you will be the next Blockbuster.

The power of the internet is amazing. We have information at our fingertips 24/7 practically anywhere. Our lives are busier than they’ve ever been, “spare time” is the 10 minutes before bed and even that short commute is now spent on the phone. The internet allows you to target your ideal clients with the right strategy. You need to be in control of your growth and cases. The law of business says “you’re either growing or shrinking, nobody stays the same.”

You either had more cases or fewer cases than last year. You either had more revenue or less revenue than last year; they are never exactly the same. What are you going to do moving forward to put yourself back in the driver seat and make sure you’re not going extinct?

Here are some things you should do moving forward (if you haven’t already):

1. Have a professional website/mobile website that speaks to your practice areas. Have a detailed bio describing you as a person, with a photo, not a resume. Focus your content more on the client and less about you. Avoid using we, me, I.

2. Get involved with Social Media, specifically LinkedIn and Facebook.

3. Audit your intake process: who is answering the phones, how are they answering them and what happens when you’re not around? Are they asking the right questions, do they ask for an appointment every time? Frontline staff are more important to the initial call than ever before.

4. Get listed on legal directories. Search for your areas of practice, then be sure you are listed in whichever directories show up. Directories will always be more powerful, visibility-wise, than any attorney’s website.

5. Claim and validate all local listings/directories. Be in control of your brand and reputation.

6. Encourage reviews. Practitioners are seeing a 30% increase in new cases once you get 20 or more reviews. It creates consumer confidence and allows you to increase your rates.
Plans for the New Federal Courthouse

by Hon. Jeffrey J. Helmick, U.S. District Court, Northern District of Ohio

Since 1932, the people of Northwest Ohio have been served by a beautiful Beaux Arts federal courthouse on Spielbusch Avenue in downtown Toledo. Originally designed for one federal district judge as a courthouse and customs building, the Ashley building’s tenancy grew over the years to include the bankruptcy court, a pretrial and probation office, the local U.S. Attorney’s Office, and other agencies. Now home to six judges, the courthouse has long been in need of replacement or expansion. Fortunately for our regional citizens (particularly those called to serve on juries from the 21 counties which our courthouse serves), attorneys, and court personnel, that expansion is underway due to approval by the U.S. Congress of funds to construct a new home for the district court just north of the current courthouse, and for the subsequent remodeling of the existing historic courthouse. While such a project has been on and off for some twenty years, the design of the new complex is now aggressively underway, with construction to begin next year, and completion of the new building in 2021.

After the district court has moved to the new building, the first major renovation of the historic courthouse will commence, with completion in 2023. The buildings will be joined for the convenience of all and for attendant efficiencies. All district court functions—and the U.S. Marshals Service—will be housed in the new building, save the district court’s pretrial and probation offices, which will be in the renovated courthouse. The U.S. Bankruptcy Court will be the largest tenant in the renovated building, which will also include offices for the bankruptcy trustee and the U.S. Attorney.

When completed, parties, attorneys, and prospective jurors will all enjoy state-of-the-art facilities, including improved juror facilities, larger courtrooms with contemporary technology, and attorney meeting rooms. The courts will share more details about the design of the new complex in the coming months, and welcome input from lawyers through the Toledo Bar Association’s Federal Court Committee or through the Federal Bar Association about how best to address their needs and the needs of their clients.

The design, architecture, and engineering on the project will be completed by a partnership of Schooley Caldwell Associates of Columbus, Schwartz/Silver of Boston, and RicciGreene Associates of New York. Schooley Caldwell’s president, Robert Loversidge, Jr., has a reputation for historically-sensitive work in government buildings, and his work on the Thomas J. Moyer Ohio Judicial Center, which houses the Supreme Court of Ohio, as well as his work on renovation of the Ohio Statehouse, may be familiar to TBA members. Warren Schwartz, a founding partner of Schwartz/Silver, has won numerous prestigious design awards for projects including the Shaw Center for the Arts and MIT’s Rotch Architecture Library. RicciGreene principal April Potteroff is an expert in the planning and design of courthouse and detention facilities.

Hit and Run: Not You – UIM Carrier

by Steven P. Collier, Connelly & Collier, LLP

Over the years, case law has often addressed whether uninsured motorist coverage applies in a hit-and-run motor-vehicle collision. Hit-and-run is a bit of a misnomer, because now policies do not require physical contact between the vehicles to establish coverage. But, there has been a dispute as to what evidence is required when another vehicle negligently causes a collision with the person insured with uninsured motorist coverage. This issue was recently clarified by the Sixth District in Smith vs. Erie Ins. Co., 148 Ohio St.3d 192, 2016-Ohio-7742.

In Smith, the insured claimed he was run off the road by an unidentified driver, who left the scene. No physical evidence of another vehicle existed at the scene, nor were there any other eyewitnesses. The policy required independent corroborative evidence, but stated that such evidence could come from the policyholder if supported by additional evidence.

In Smith, undisputed evidence existed that Smith had made a 911 call reporting another vehicle had caused the accident. When the Ohio State Highway Patrol responded to the scene, Smith gave a statement that he had swerved to avoid contact with another vehicle which had gone left of center. Additionally, when he later received medical treatment, the records revealed essentially the same description of the collision that noted an unknown, unidentified vehicle. The court determined that such evidence was “additional evidence” under the policy.

In Smith, the Erie Insurance Company policy contained no separate definition of “additional evidence.” Therefore, under the facts of Smith, the court determined uninsured motorist coverage was applicable to the crash to compensate Mr. Smith for his injuries.
Summer Reading List 2017

Edited by Kevin Mulder, TBA Newsletter Committee Secretary

The 2017 edition of the Summer Reading List introduces readers to a genre not often covered in the summer reading list, highlights a mix of other novels for your reading or listening pleasure, and spotlights books and other media using a hometown phrase, “Holy Toledo.” Enjoy!

Let’s start with the previously lightly covered genre. The summer reading list has not reviewed many books that would be classified as fantasy tinged with elements of science fiction written for the young adult/adult segment of the reading public. My oldest daughter, who has been devouring these books since her early teen years, has convinced me that the genre is worthy of the summer reading list. Not quite like making The New York Times Book Review, but close. Here are a few of her favorite books and series (most are series; few one hit wonders here).

**Young Wizards**
by Diane Duane. This sci-fi, fantasy adventure series explores magic, the universe, and growing up. It delves into the complicated philosophy of learning how, when, and if to use the power to change the world. Duane also explores personal relationships in all their complexity: friendships, parents and children, mentorship, siblings, and more. All of her characters, even the minor ones, are real (in a fantasy sense), and she never glosses over or pushes aside difficult questions or the consequences of hard decisions. The recent release of the series’ “Millennium Editions,” edited and updated to reflect the technological changes of the 21st century, makes now the perfect time to give these books a try.

**Howl’s Moving Castle**
by Diana Wynne Jones. One of Jones’ most beloved books, and a wonderful mixture of fairy tale, fantasy, and humor. Intrigue, quests, wicked witches and royal sorceresses with ambiguous motives, hidden princes and petulant magicians, falling stars, and a bizarre moving castle made of junk. Sophie Hatter, a quiet and hardworking hatter’s daughter, is forced to seek her fortune far from home after an encounter with the Wicked Witch of the Waste. Undaunted, she forges on with determination and practicality through the illogical mess she finds herself entangled in. Jones’ gift for storytelling is apparent in this book as she weaves a tale of compelling characters and mysterious motivations, set in a world that captures the imagination.

**The Graveyard Book**
Anything by Neil Gaiman is bound to be excellent. The Graveyard Book pretends to be a children’s story, but it has depth and feeling and a touch of horror. A quick introduction to Gaiman, filled with beautiful scenes that engage the imagination and stick with you.

**Good Omens**
One angel, one demon, and the premature arrival of the antichrist (at least, from their point of view). Full of humor and satiric commentary on religion and modern life; but never takes itself too seriously.

There you have it—unexplored territory. Come highly recommended by an unimpeachable source. Now, on to books from other genres that may catch your eye.

**Born a Crime**
by Trevor Noah. Trevor Noah was born in South Africa during apartheid. His Father was Swiss and his Mother was Xhosa. They could have been imprisoned for having this child. Trevor is now the host of The Daily Show. This well written book is fascinating, laugh out loud funny, and informative. It allows us into a culture that we can only read about and never fully understand.

**The Year the Yankees Lost the Pennant**
by David Maraniss. This easy to read book about the 1960 Olympics features Rafer Johnson and Wilma Rudolph. Other highlights include television coverage (a first) and the overriding complexities of the cold war.

**Rome 1960**
by Colson Whitehead.
This book deserves all of the awards it has won. It’s a magical realist exploration of slavery. Great characters with a gripping story that moves right along.

**The Underdog Railroad**
by Colson Whitehead. This book deserves all of the awards it has won. It’s a magical realist exploration of slavery. Great characters with a gripping story that moves right along.

**Theodore Boone: Kid Lawyer**
by John Grisham. This is the first book in a series about a 13-year-old wannabe lawyer. Theo is the only child of two busy attorneys. His passion in life is the law; he hangs out at the courthouse in his small city and knows everyone there. In a closet-sized office, he gives legal advice to classmates when their parents are filing for divorce, or their pets are charged with violating the leash law. When a big murder case goes to trial, Theo organizes a class field trip to observe the proceedings. Theo finds himself in over his head when he discovers a mysterious eyewitness to the murder. Theo must convince the witness to come forward, or else a guilty murderer will walk free.

**The Rich Part of Life**
by Jim Kokoris. A quirky novel about a family that wins millions in —continued on page 7
Politics of the Veil by Joan Wallach Scott, is well written and politically relevant. It’s about the banning of the hijab in France in the early 2000s.

For the past few years the Summer Reading List has taken a more expansive view of reading and offered reviews of audio books for those facing long summer drives. For those who like murder mysteries, Australian author Michael Robotham has written a series of books featuring a British psychologist Joseph O’Loughlin. The books are well written with good plot lines, notable characters, and usually a stab in the heart at the end. The detective element is filled by a retired Londoner, Victor Ruiz. My favorite has been Watching You. Most are available through the Toledo Lucas County Public Library.

Now, for the Toledo Centric focus. The summer reading list has investigated the use of the phrase “Holy Toledo” in various forms of media. The origins of the phrase remain uncertain, but generally come down to a contest between our beloved Toledo and our sister city, Toledo, Spain. An entertaining review of competing claims can be found at https://able2know.org/topic/27364-1. Whatever its origin, the phrase often accompanies expressions of surprise or joy. Research has uncovered two former sports announcers well known for using the phrase—Bill King from the California Bay Area and Milo Hamilton of the Houston Astros. Books with Holy Toledo in their title include a biography of the aforementioned Bill King; Holy Toledo!, a collection of poems by the English poet John Clegg; and Holy Toledo: Religion and Politics in the Life of “Golden Rule” Jones, by Marnie Jones. It also has found its way into the lyrics of several songs by artists including Crystal Bowersox, Greg Laswell, Kris Kristofferson, and Joe Ely.

Happy reading and enjoy your summer!

As part of their commitment to National Nurses Week, May 6–12, RCO Law partners Julia S. Wiley and Jason M. Van Dam presented to nurses and other healthcare providers at seven different Northwest Ohio hospitals on issues relating to licensing, documentation, and social media. National Nurses Week is celebrated annually to raise awareness of the important role of nurses.

Tony Turley, of Turley, Peppel & Timmers LLC, was appointed to the Commission on the Rules of Practice & Procedure by the Ohio Supreme Court. He had previously served a partial term also by appointment. The Commission reviews and recommends amendments to the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, Rules of Juvenile Procedure, and Rules of Evidence. Tony will serve as Chair of the Evidence Rules Committee and as a Member of the Civil Rules Committee.

Sixth District Court of Appeals Judge Arlene Singer served on the Ohio Supreme Court in place of Justice R. Patrick DeWine on May 3 in Rush v. University of Cincinnati Physicians. According to the Ohio Constitution, in the event of a recusal by a justice, the Chief Justice can select from Ohio appellate court judges to sit temporarily on the Supreme Court.

Shumaker, Loop & Kendrick announces that Brian N. McMahon and Peter R. Silverman, were selected as “Legal Eagles” for 2017 by Franchise Times Magazine. “Legal Eagles” is an annual list that recognizes the top attorneys in franchising. Additionally, Peter was inducted into the Legal Eagles Hall of Fame for being on the list for ten years.
Supreme Court Update

by Evy M. Jarrett and Tammy G. Lavalette

State v. Rahab, Slip Opinion 2017-Ohio-1401 (April 18, 2017)

Vindictiveness in sentencing is not presumed when a defendant rejects a plea bargain and is sentenced to a harsher term after a trial. The Court also held that the record did not demonstrate vindictive motive. At the plea hearing, the trial judge indicated that “the Court does not look highly on cases where people don’t take responsibility and accept that they did something wrong,” but such statements “allowed Rahab to intelligently evaluate whether he wanted to risk the possibility of a greater sentence.” Likewise, at sentencing, the trial court discussed Rahab’s letter indicating he wanted to admit to the crime all along and that he went to trial because his attorney made him. The court responded “You went to trial. You gambled, you lost.”

Such comments indicate “the court was not taking Rahab to task for going to trial but rather for acting contrite and admitting his crime only after he had been found guilty.” The trial court also had other information about Rahab to consider at sentencing, including his problems in a drug treatment program and numerous juvenile convictions.


A creditor of an estate sent notice of his claim to the decedent’s personal secretary and accountant/trustee of his trust within the six-month statutory time frame allowed after the death of the decedent. Both the secretary and the accountant/trustee promptly forwarded the notice to the executor of the estate. When the creditor later filed suit against the estate, the trial court granted the estate’s motion for summary judgment, finding that legally sufficient notice of the claim had not been timely given. The Eighth District reversed, finding the notice to “other individuals connected with the estate” sufficient.

Ruling in favor of a strict interpretation of the statute, the Court reversed. The Court found that the use of the word “shall” in the statute imposed a mandatory obligation that notice be presented to the executor/administrator directly, and not to any purported agent of those individuals.
Dissenting, Justice O’Neill noted that the correspondence was directed to the “heirs, administrators or executors...” of the estate, and it appears the executor received the forwarded correspondence within the six-month period. Under these facts, Justice O’Neill would hold the statute satisfied.


The claimant was injured in November 2004, while employed by Wal-Mart, and returned to work without restrictions in September 2005. He quit his job at Wal-Mart on April 20, 2007, and was involved in a non-work related automobile accident in June, 2007. He was terminated from his subsequent employment in November 2007, for excessive absenteeism. Thereafter, the claimant sought an award of temporary-total-disability, which the Industrial Commission denied. The 10th District reversed in part, finding a question as to whether *State ex rel. Estes Express Lines v. Indus. Comm.*, a case in which the claimant was laid off, applied to the facts of this case.

Finding that the claimant was terminated from the subsequent employment for excessive absenteeism, and that the claimant offered no evidence that his Wal-Mart workplace injury caused the absenteeism for which he was terminated, the Supreme Court held that *Estes* was inapplicable to this case. The Court reversed the Tenth District to the extent it had granted a limited writ of mandamus vacating the denial of temporary-total-disability compensation.


A high school’s protocol of searching unattended book bags to determine ownership and whether the contents are dangerous furthers a compelling governmental interest in protecting students from physical harm. *Polk* analyzed the issue as a warrantless search in a special-needs setting. The Court unanimously held that the trial court improperly suppressed evidence of bullets, which were found in a bag left on a bus, as well as evidence of a handgun discovered in a bag the student was carrying at the time he was identified as the potential owner of the bag left on the bus.
Memorial & Honorary Donations

The TBA Foundation & the TBA Pro Bono Legal Services Program acknowledge these donations:

In Memory of Hon. J. Ronald Bowman
by Hon. Ruth Ann Franks
Marvin K. Jacobs
Susan L. Martin & Jude T. Aubry
Toledo Law Association

In Memory of John P. Stockwell
by Richard A. Cohen
James & Kris Jeffery
Trish Branam

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The Toledo Bar Association Foundation accepts memorial and honorary donations. Please make checks payable to “TBA Foundation” and specify your intentions.

Fastcase Seminars

Unlimited free legal research and webinars: www.toledobar.org/fastcase

Intro to Legal Research
June 1; July 6; August 3; September 7; 1–2:00 PM
Designed for new Fastcase users; covers basic features with a focus on case law searches and statute searches.

Advanced Legal Research on Fastcase
June 8; July 13; August 10; Sept. 14; 1–2 PM
Offers a quick refresher on case law search basics as well as a number of research tips that highlight advanced features.

Intro to Boolean (Keyword) Searches
June 15; July 20; August 17; Sept. 21; 1–2 PM
Designed for users who are already familiar with the basics of Fastcase but are new to Boolean (keyword) searches.

Thanks to Channel 11 Volunteers

The weekly ASK THE ATTORNEY program is an important public service of the Toledo Bar Association. These attorneys have volunteered on Wednesday evenings to answer legal questions for those who would not otherwise be able to receive free legal advice.

Thanks to these recent volunteers!
Thom Cafferty John Pardee
Doug McCrury Laurie Kendall
William Bair Nathan Boyd
Frank Landry

Seeking volunteers for June, July & August
When: Any Wednesday • 5:15 – 7:30 PM
Where: WTOL-11 (corner of Summit & Cherry)

Please volunteer today: contact Maggie Humphrey at 419.242.4763 or mhumphrey@toledobar.org

Paralegal Association of Northwest Ohio

PANO Board Meeting
Tuesday, June 13 • 12 NOON • Toledo Bar Association

PANO Members Meeting
Monday, June 19 • 12 NOON • Toledo Bar Association

Free Meeting Rooms for Use by Toledo Bar Members

Private rooms are available at the TBA for depositions and other client meetings. Call to schedule: 419.242.9363
CLE MENU • www.toledobar.org/cle • 419.242.9363

Understanding Toledo’s Lead Ordinance
June 5, 2017 • 5:30 – 7:00 pm • 1.5 General Credit Hours
Held at Kent Branch Library
$50 TBA Member / $75 Nonmember

2017 Nicholas J. Walinski Federal Court Practice Seminar—Video Replay
June 9, 2017 • 8:20 AM – 12:00 PM • 3.00 General Credit Hours
$50 TBA Member / $147.50 Nonmember

Annual Bankruptcy Court Seminar & Cookout
June 14, 2017 • 1:30 – 5:00 pm Seminar; Cookout immediately following • Olander Park — Nederhouser Community Hall
3.00 General Credit Hours
$115 TBA Member / $160 Nonmember

Common Pleas Boot Camp — An Intro to Practice in Lucas County
June 16, 2017 • 1:30 – 3:30 pm
Lucas County Courthouse, Courtroom #1
2.0 General Hours
$35 New Lawyers (0-5 years in practice)
$70 TBA Member / $100 Nonmember

2016 Annual Workers Compensation Seminar — Video Replay
June 22, 2017 • 8:30 – 11:45 AM • 3.0 General Credit Hours
$105 TBA Member / $150 Nonmember

Register today at www.toledobar.org/cle
All seminars held at Toledo Bar Association unless otherwise noted

Law Practice Management Series
Each seminar: 1.0 hours General Credit or New Lawyer Training
Call for Special TBA Member Pricing: 419.242.9363
All 5 seminars $125 OR $35 each
Nonmembers: All 5 seminars – $175 OR $50 each
Please Note: Part 1 was held May 31. Please join us for the rest of the series

Part 2: Microsoft Outlook
Wednesday, June 7 • 3:30 – 4:30 pm
• Basic Layout & Navigation • Connecting Accounts
• Email • Calendar
• Contacts • Tasks

Part 3: Microsoft Word – Basics
Wednesday, June 14 • 3:30 – 4:30 pm
• Understanding Word • Text Editing
• Paragraph Options • Footnotes & Endnotes
• Table of Contents • Security Basics
• Bookmarks

Part 4: Microsoft Word – Advanced
Wednesday, June 21 • 3:30 – 4:30 pm
• Page Layout • Creating Text
• Intro to Document Templates • Developer Tab
• Bookmarks

Parts 1–4 presented by Joseph W. Shinaver, Jr., Esq.

Part 5: Law Office Bookkeeping
Wednesday, June 28 • 3:30 – 4:30 pm
• IOLTA bookkeeping rules • Fee Agreements
• Invoicing • Quicken Reports
• Client/Conflict lists and file naming/numbering
• Making bookkeeping entries in Quicken
• IOLTA bank statement reconciliations
Part 5 presented by James Haughn, Esq.

TBA Self-study CLE
Earn up to 12 hours of self-study CLE. Choose from a great variety of programs designed for the Toledo lawyer.

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http://toledo.fastcle.com/
Positions Available/Wanted

STAFF ATTORNEY—Lucas County Judge-Elect Lindsay D. Navarre is seeking a full time staff attorney to work directly with her. Civil experience preferred. Competitive salary and excellent benefits. For more information, or to apply, go to http://co.lucas.oh.us/Jobs.aspx?UniqueID=119&From=All&CommunityJobs=False&JobID=Staff-Attorney-872.

COMMERCIAL LITIGATION ATTORNEY—Roetzel & Andress is seeking a motivated attorney with 5+ years’ Commercial Litigation experience in its Toledo office location. This position creates an opportunity to enjoy a challenging career with competitive compensation commensurate with the level of experience. Email cover letter, resume and writing sample to DHasbrook@ralaw.com.

LITIGATION SUPPORT SERVICES—Free yourself from tedious legal tasks that consume your time and energy! Contact us at 567-233-9709 or check out our website for services offered: www.thelitigationvortex.weebly.com.

PANO JOB BANK—Looking for an experienced paralegal? Enhance service and increase profits by utilizing paralegals. Post your paralegal opportunities in the Paralegal Association of Northwest Ohio (PANO) Job Bank—FOR FREE. Place your ad today by contacting Amy Williams at PANO at Paralega-Assoc@gmail.com.

LEGAL SECRETARY—Downtown Toledo full service law firm is looking for a legal secretary with minimum 3 years’ experience. Candidate must have excellent secretarial, organizational, and communication skills. Strong computer skills in Microsoft Word and Outlook are required. Experience in Peachtree is a plus. Compensation is commensurate with experience. Interested candidates should email their resume to jsattorneyslaw@gmail.com.

PARALEGAL SERVICES—Attorneys, whether you’re understaffed, just starting your firm, have a temporary overload or just do not want to hassle with the paperwork; we can HELP! Our Service will allow you to devote more time to your firm. We will take care of all the paperwork and filing. So sit back, relax while we get the work done! Here at J.M.P. Paralegal Services we offer a variety of legal services. For more information please contact me at 419-242-1400 ext 247 and/or jward@jmpparalegal.com.

OFFICE SPACE IN THE HEART OF DOWNTOWN—Looking to rent a unique office space in the heart of downtown? Our garden level features up to 2,655 sq ft of office space including five private offices, large open office area, two restrooms, and a conference room. Lease includes access to a private entrance, parking lot, and elevator. Conveniently located near many popular downtown destinations and offers easy access to public transportation. Our building’s uncommon architecture and décor will leave a lasting impression you won’t soon forget. A perfect option for anyone looking for a budget-friendly space that offers flexibility. If you are interested in this special opportunity, please contact Hunt Sears at Danberry at 419-250-2789 or hunt@danberry.com.

SYLVANIA TOWNSHIP—Central Avenue —Country setting 5 minutes from expressway. High growth area. Great exposure. 1-3 offices plus reception area, bathrooms, common conference room & kitchen. Furnished or unfurnished. Fax & copier available. 2nd Perrysburg location negotiable. Referrals possible. Call Jeff at 419-829-5297.

Office Space Available

CENTRAL AVENUE – SYLVANIA, TOWNSHIP—Office space for 1, possibly 2 attorneys. Includes large office(s), shared waiting area, large shared conference room; area for secretary, some available file space; kitchenette; copier/fax, phone, cable, access to library services, great free parking. Very close to expressway/downtown; office sharing with potential for overflow opportunities with right attorney(s). Rent starting $600 and up depending on needs. Call David 419-842-9902 or cell 419-297-5051.


Prevent Your Non Paying Clients from Running Your Practice—CALL Scheer, Green & Burke 419-243-2283 for all your collection needs

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MISCELLANEOUS

VOLUNTEERS WANTED—We need attorneys to answer the phones for the Ask the Attorney program, Wednesday evenings 5:15-7:30 PM at WTOL. Please call Maggie at 419-242-2000 or email mhumphrey@toledobar.org.
All meetings are held at 12:00 noon at the Toledo Bar Association unless otherwise noted.

- Juvenile Court Committee: 6/1/17
- Workers Compensation Committee: 6/1/17
- LGBTQ Committee: 6/5/17
- Federal Court Committee: 6/6/17
- CLE Committee: 6/7/17
- Grievance Committee: 6/7/17
- Technology Committee: 6/7/17
- Executive Committee: 6/8/17
- Diversity Committee: 6/8/17
- Public Law Committee: 6/8/17
- Intellectual Property Committee: 6/12/17
- Annual Meeting: 6/13/17
- Probate Court/Elder Law Committee: 6/14/17
- Bankruptcy Court Committee: Olander Park CLE: 6/14/17
- Board of Directors: 6/15/17
- Common Pleas Court Committee: 6/20/17
- Real Estate Committee: 6/21/17
- Labor & Employment Law Committee: 6/21/17
- Domestic Relations Court Committee: 6/22/17
- Professionalism Committee: 6/22/17
- Lawyers & Doctors Committee: 6/27/17
- Municipal Court Committee: 6/28/17

Check the TBA website at www.toledobar.org for a complete list of committee meetings. Committee reminders are sent by email.

www.toledobar.org