GENDER FAIRNESS
FACTS, ATTITUDES AND THE FUTURE

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Online rules and regulations for the digital legal world

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Many thanks to all of you who responded to my last column seeking your thoughts and ideas about whether Ohio needs another law school and how we may best use the growing number of attorneys in Ohio to serve the legal needs of the poor. Your answers were thought-provoking and thorough. We have placed some excerpts in the sidebar on page 5, and others on the OSBA website. They will provide guidance as that debate continues.

Continuing my intent to use my column to raise issues facing the legal profession or justice system, i.e., to listen to your views instead of just telling you what I think, I have another topic to discuss with you. There is a revived, substantial debate at the American Bar Association level about whether nonlawyers should be allowed to be part-owners of law firms, and whether lawyers should be permitted to share legal fees with other firms that have non-lawyer partners and owners. I would like your input on whether the Ohio State Bar Association should continue its historical opposition of such changes.

In 2009, the ABA established its Commission on Ethics 20/20 to consider the impact of technology and globalization on the legal profession and to determine whether the Model Rules of Professional Conduct should be changed as a result. In December 2011, that commission issued a discussion paper with a recommendation to allow a limited form of nonlawyer ownership in law firms. The commission also proposed draft amendments to Model Rules 1.5 and 5.4 to allow a lawyer in a jurisdiction that prohibits nonlawyer law firm ownership to split fees with a lawyer in a firm located in a jurisdiction where nonlawyer ownership is permitted. The proposed amendments also would allow intra-firm fee sharing where a firm has offices in multiple jurisdictions, some of which allow nonlawyer ownership and others that do not.

Subsequently, that commission announced that it has decided not to pursue all of the proposed changes to ABA policy prohibiting nonlawyer ownership of law firms, but indicated it would continue to consider the issues the proposed amendments to Model Rules 1.5 and 5.4 would have addressed. These issues are likely to come up again when the ABA House of Delegates meets in February, so the debate rages on.

Proponents of allowing nonlawyer ownership in law firms say the prohibition is antiquated and ignores the current globalization of legal services and the proliferation of online legal outsourcing. In addition, proponents say they will be better poised to meet client demands. For example, a law firm that focuses its practice on land use planning could partner with engineers and architects. Proponents also believe differing ethics rules on intra- and inter-firm fee splitting causes confusion for law firms that have multiple offices that include some locations in jurisdictions that permit nonlawyer ownership (e.g. the District of Columbia, Canada, England and Australia).

In my view, these proposals are directly contrary to the sacred core values of our profession in Ohio, including undivided loyalty to our clients, client confidentiality and our duty to competently exercise independent legal judgment for the benefit of our clients. Nonlawyers are not bound by these duties, but as shareholders or partners in a law firm, they could have access to information pertaining to clients and the specifics of their cases. This leads to questions about whether the attorney-client privilege is compromised.

Opponents also properly ask whether these changes will lead to the values of our profession being “sold” just to make it easier to compete. Investment interests of the nonlawyer owners might incline them to favor more profitable clients and more profitable kinds of work over others. This may even further reduce public access to legal services by reducing the willingness of firms to engage in pro bono work.

Others say, and I strongly agree, that letting nonlawyers own law firms and/or share fees with lawyers is another step toward making lawyers into a trade rather than a profession—and I do not want to be a tradesman. There is significant concern that the legal profession’s historic self-regulation prerogative would be eroded or destroyed if lawyers and nonlawyers are permitted to practice in a single entity or share fees, also.

In Ohio, as all of you know, the Supreme Court has the authority to regulate the practice of law. Nonlawyer law firm owners, however, would be regulated by very different and sometimes conflicting state and federal statutes, rules, regulations and codes. This too could lead to a dual or hybrid system that would likely include legislative authority over lawyers’ professional conduct.

**Should lawyers be able to partner with nonlawyers and split fees?**

by Judge Patrick F. Fischer

Should the OSBA continue its opposition to possible new model rules permitting nonlawyer ownership of law firms and the ban on fee sharing with nonlawyers?

I think so, what about you?
When these proposals were discussed at an ABA meeting last July, representatives of the OSBA, including myself, spoke out against these changes. But am I missing something? Am I “out of step” or too “old school”? Should I change my position against sharing with nonlawyers? Should the OSBA alter its position on these values? Should lawyers be able to partner with nonlawyers and split fees with them? Will these changes, if adopted, affect the independence of our profession or our judgment? Most importantly, would these changes hurt the public, whom we must protect?

Please take two minutes or so to let me know your thoughts.

Your response may be provided by writing a letter to the editor, posting on the OSBA’s Facebook page or contacting us through the OSBA’s Twitter feed. You may also call me the old-fashioned way or contact me through email if you would like to discuss this issue further. (See graphic for contact information.)

Judge Patrick F. Fischer is president of the Ohio State Bar Association.
**Reader reactions**

The following are only three out of several responses I received. To read all of the comments, go to ohiobar.org/prespersp.

Dear Judge Fischer,

I write in response to your editorial in the most recent edition of *Ohio Lawyer* seeking comments on whether you should continue to oppose the opening of a tenth law school in Ohio. Thank you for seeking to involve the bar (including freeloading student members such as myself) in the conversation.

I strongly urge you to continue to oppose the opening of another law school in Ohio. The labor market in Ohio cannot absorb the number of new law graduates currently produced by Ohio’s nine law schools, and the addition of another law school would only exacerbate this problem. Barrels of ink have been spilt already treating this topic, and I won’t endeavor to summarize all of it. I would call your attention to the ESMI study reported in the *New York Times* predicting that Ohio will have an annual surplus of 508 new attorneys during the first half of this decade. The unrestricted availability of non-dischargeable student debt has artificially inflated demand for legal education for years, resulting in a flood of new graduates with smothering debt obligations and dim prospects.

It is true that there is a large, underserved need for legal services; however, creating an even larger body of new graduates is an imperfect solution to the problem. While there is a demand among the indigent for legal services, most new lawyers lack the financial capacity to do pro bono work. The concept of pro bono work is predicated, in part, on two things: first, that a lawyer can afford to give away a portion of her time; and second, the notion that a lawyer owes service to the public good in exchange for so-called remuneration. If a lawyer cannot earn a living in the profession, she is inapposite that she should further de-value the service she provides by working for free.

Perhaps more importantly, few recent law graduates have the practical skill to provide effective representation to a client, indigent or otherwise. It is well known to the point of being cliché that law school does a poor job of preparing students for practice. No one is advocating that unsupported new lawyers should simply be turned loose to aid indigent clients; I only mention this part to underscore why “more lawyers” is not the solution to the problem of underserved populations. How much good could be done if the millions of dollars that it would take to open and operate a new law school were instead devoted to expanding the capacity of Ohio’s legal aid and public defender organizations and offices? Not only could more people in need of legal services be reached—but they could be reached while also providing the lawyers doing the work with the guidance they will need and perhaps even some small measure of financial security.

I am a third-year law student and serve on the managing board of my school’s law journal. I have yet to find a permanent employer for after law school and am unable to tell my family what city—or state—we will need to relocate to after graduation. While I imagine I will find some sort of job by the time I receive my bar exam results, I worry about my ability to contribute to my household after servicing my student debt. While my experience colors my (now very lengthy) comments here, I am not an unfortunate outlier. Many of my friends and colleagues are facing similar circumstances, and many of us are pessimistic about our futures in the profession. I hope that, as concerns legal education and the supply of new lawyers, the conversation within the state and national bars focuses on how to best utilize the existing supply of human capital coming out of our law schools and not adding to an already unsustainable oversupply of new attorneys.

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Travis Owensley

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Judge Fischer,

I urge you to continue to oppose adding yet another law school in Ohio—the nine we have are probably three or more than we realistically need—even if we should someday return to an economy where graduates could reasonably expect to be adequately compensated. I understand that law school enrollment is generally down—quite understandably so—thus why add yet another law school?

Your second question is in my view tougher—there does not seem to be a ready answer. Yes our nine law schools continue to churn out new lawyers, but many of them are so far in debt that they cannot provide the pro-bono or lower rate fees required to service the growing underserved. If the economy is actually turning the corner to better times and conditions we can hope that there will be more funding for expansion of legal aid programs. Wish I had an answer.

Good approach in your President’s Perspective—made me stop and think. Keep up the good work.

Jim Hopple

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I love the idea of using the President’s page to share not only your opinion, but that of OSBA members. A refreshing change and I applaud your courage to try something new.

In response to your first question, I think we have enough law schools—both in Ohio and the United States. Two pieces of advice I share with people:

1. Don’t go to law school.
2. Don’t get married.

While I’m mostly joking about #2, I’m dead serious about #1.

I briefly practiced law after passing the bar in 1994. By 1999, I had found that my true calling and passion was not in traditional law. Since then, I’ve held several different positions. I am now happily employed in the financial services sector doing regulatory and compliance work.

I’m looking forward to your next article and hearing what the membership had to say.

Thanks for the opportunity to contribute. Keep up the good work!

Liz Anderson
Study shows LSAT prep could improve intelligence

According to a study done by the University of California, Berkeley, LSAT prep courses may improve a brain's connections, leading to improved thinking, reasoning, and possibly an increased IQ score. Results from this study showed an increased connectivity in parts of the brain for individuals who participated in 100 hours of LSAT prep, compared to those with no LSAT preparation. These findings promote the use of LSAT prep courses as a way to improve necessary reasoning skills, as well as encourages the possibility that intelligence is something that can be continuously improved, even through adulthood.

LSAT training courses focus a majority of their time on improving reasoning skills, and the practice of these skills appears to strengthen the connections between the right and left brain, as well as connections between the frontal and parietal lobes, the areas responsible for problem-solving, thinking and perception.

— newscenter.berkeley.edu
Aug. 22, 2012

Social media changes rules for jury participation

In a society where social media use is becoming common place, the rules and regulations of media use by jury members are being forced to evolve. About 60 percent of judges nationwide are now incorporating some kind of social media guideline for their jury members during trial.

Since 2010, the Ohio State Bar Association Jury Instructions Committee and the Ohio Jury Instruction Committee of the Ohio Judicial Conference have released instructions for jury members reminding them not to discuss the case with anyone, and not to post anything about a case “on the internet or on any electronic device including cell phones.”

Judges hope that reminding jurors of these guidelines, as well as explaining the consequences of social media use in trial, such as mistrial and wasted time, will end this disruptive behavior. The possible interference of social media is leading to arguments that using social media in trial should be met with a punishment more severe than a dismissal from the case, as argued in a recent article in The University of Illinois Law Review.

— www.courtnewsohio.gov
Aug. 23, 2012

Americans lack basic Supreme Court knowledge

A new FindLaw.com survey found that two-thirds of Americans cannot name a single member of the U.S. Supreme Court. Despite the Supreme Court's recent relevance in the news over decisions involving health care and immigration, it was found that just 34 percent of Americans can name a single member of our nation's highest court.

Just one in five Americans can name Chief Justice John G. Roberts as a member of the court, and a mere 1 percent of the American population can name all nine sitting Justices.

These findings may be a result of the lack of media coverage for court sessions and decisions. Another reason could be the issuing of rulings as a collective body, and not as individual justices.

— www.findlaw.com
Aug. 20, 2012

Judicial branch is most trustworthy in the eyes of Americans

According to a Gallup poll, America's trust in the legislative branch has dramatically decreased since 2002, and both the executive and legislative branches continuously rank lower in trust than the judicial branch. While all three branches trust ratings increased slightly this year, the legislative branch has lost the most support in the past 10 years.

Gallup found that trust in the executive branch is a more partisan opinion than trust for the judicial or legislative branches. As of 2012, the Republicans had 17 percent confidence in the executive branch and 62 percent confidence in the judicial branch, while Democrats had 90 percent confidence in the executive branch and 69 percent confidence in the judicial branch.

— www.gallup.com
Sept. 26, 2012

Salaries for daytime television judges prove to be unrealistic

Judy Sheindlin, better known as Judge Judy, tops the list of best-paid television personalities with an annual salary of $45 million a year. In comparison, our nation's highest ranking judge, Chief Justice John G. Roberts, will make just $217,400 in 2012.

The astonishing salary is even more impressive when you consider the real-world salary of Judge Judy's position as a trial court judge at $132,500 annually. This kind of salary is not unique to Judge Judy. Her fellow television judge, Judge Joe Brown, makes approximately $20 million a year.
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GENDER
Women continue to make progress in the quest for equality within the legal profession, but research performed over the past 20 years shows the pursuit of gender fairness is still far from the finish line.

By Kalpana Yalamanchili

A recent and extensive study of general fairness in Ohio’s legal profession revealed that while much progress has been made, much remains to be done.

The Ohio State Bar Association formed a Special Committee to Review the Final Report and Recommendations of the Joint Task Force on Gender Fairness to determine progress and to recommend methods to further achieve the goal of gender fairness in the legal system.

Report and recommendations of the Joint Task Force

In 1991, the Supreme Court of Ohio and the OSBA established the Joint Task Force on Gender Fairness in the Legal Profession, which consisted of 110 members and 10 subcommittees, and focused its efforts on identifying the causes and recommending methods to eradicate gender bias.

“Our task will not be completed until the work of men and women is equally valued and equally shared. It is our purpose in this report to not only highlight the inequalities which exist in the legal system but to suggest positive change so that gender will become irrelevant in the professional setting of the justice system.”

The Joint Task Force studied the role of gender at law schools, the workplace, courts, bar associations, the criminal justice system, the disciplinary rules, domestic relations proceedings and education and issued recommendations such as:
• Require that all documents used in the justice system (rules, canons, jury instructions, etc.) contain gender-neutral language;
• Court should monitor and correct gender-based conduct;
• Encourage law firms to adopt flexible work environments for lawyers who choose to work in a nontraditional manner;
• Encourage law firms to ensure that all development or marketing efforts for lawyers are held at facilities that are open to all, regardless of gender, race or religion;
• Continue to monitor the progress of women entering partnership and management positions at law firms;
• The OSBA and other bar associations should ensure that judicial screening committees be composed of a representative cross section of bar members;
• Bar associations’ constitutions and other governing documents should contain gender neutral language, and bar associations should regularly publish leadership openings and the criteria for becoming leaders; and
• Encourage law schools to take affirmative steps to eliminate disparate treatment of women.

Special Committee to Review Gender Fairness
In 2009, the OSBA established a special committee to review the progress made since the Joint Task Force issued its final report and recommendations to determine what remains to be done and make recommendations accordingly.

The special committee, co-chaired by Ritchey Hollenbaugh, a former OSBA president, and Melissa Graham-Hurd, a member of the OSBA Board of Governors, quickly concluded that an apples-to-apples comparison of the state of gender fairness in the legal profession since the Joint Task Force Report was impossible for many reasons. Additionally, recognizing the enormity of the resources and time needed to duplicate the full work of the Joint Task Force, the special committee concentrated on only four principal areas of the original study: courts, workplaces, law schools and bar associations.

With financial support from the Ohio State Bar Foundation, the special committee retained the research firm of Laralyn & Associates to help conduct the research and to analyze the information gathered. (See the sidebar on pg. 13 on how research was conducted.)

Approach
The special committee concluded that to assess progress with respect to gender fairness, it was important to track both factual changes and behavioral or attitudinal changes. Have there been factual changes since the mid-1990s with respect to progress made by women in the profession? Have those factual and societal changes affected the attitudes and behavior of men and women in the profession?

According to committee co-chair Melissa Graham-Hurd, “We need to remain vigilant in our law schools, courts, workplaces and bar associations. Thinking the problem has been solved closes our eyes to recognizing a problem exists and taking steps to address it.”

To track factual changes, extensive quantitative data was gathered from the Supreme Court of Ohio and OSBA databases; Economics of Law Practice in Ohio; and from other national studies. The quantitative research was also conducted by use of electronic surveys and questionnaires of OSBA members and judges.

To track attitudinal or behavioral changes, qualitative research was conducted through focus groups and one-on-one interviews of lawyers and law students.

By the facts
Ohio generally tracks close to the national average in terms of the percentage of women lawyers (32.9 percent nationally and 29.2 percent in Ohio); women partners (19.2 percent nationally and 18.5 percent in Ohio); and women associates (45.6 percent nationally and 43.1 percent in Ohio). With respect to minority women lawyers, the differences are dramatic (6.33 percent nationally and 2.6 percent in Ohio). Nationally, minority women comprise about 2 percent of law firm partners. In Ohio, they are less than 1 percent.

The tracking over the last 12 years is similar for increase in women partners (from 15.04 percent to 19.21 percent nationally and from 12.75 percent to 18.52 percent in Ohio) and in women associates (from 41.39 percent to 45.66 percent nationally and from 40.1 percent to 43.12 percent in Ohio).

The most dramatic increase in numbers was in the judiciary. In 1993, 14.8 percent of Ohio judges were women; by 2010, that rose to 25.3 percent. Four of the current seven justices of the Supreme Court of Ohio are women, including the Chief Justice.

The percentage of women students in Ohio law schools is largely unchanged (in 1995 it was at 42 percent compared to 43 percent in 2010.) The current national average is at 47 percent. With respect to full-time faculty in Ohio law schools, 37 percent are women.

Information on the leadership of the OSBA and the six metropolitan bar associations was collected. Each of them made great progress in the number of women who have served as association presidents. At the Columbus Bar Association, 50 percent of its presidents from 1999-2009 were women. In 1993, the OSBA elected its first woman president, 113 years after its founding. Since then, five women have led the OSBA. Also notable is that three African-American women (Virgina Robinson in Akron, Judge Alice McCollum in Dayton and Kimberly Callery Shumate in Columbus) have served as presidents of their respective associations. At all levels of leadership in bar associations (board, committees, etc.), women have seen gains. In 1999, the OSBA had no women serving on its Board of Governors. Today, six women, two of them African-American, are members of the OSBA’s governing body.

According to the 2010 Economics of Law Practice in Ohio, the median net income reported for full-time male attorneys was $100,000 (up from $85,000 in 2000) and the same reported for full-time female attorneys was $85,000 (up from $55,000 in 2000). This percentage of wage disparity is reflected nationally as well through the data from the U.S. Bureau of Labor Statistics.

One of the most striking statistics gathered from the research was that in a representative sample of Ohio women lawyers aged 41-45, some 37 percent had no chil-
Respondents were asked to agree or disagree with the following statements. The following charts show the percent who agreed with the statement.

<table>
<thead>
<tr>
<th>LAWYERS</th>
<th></th>
<th>JUDGES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>In general, gender fairness is less of an issue in society than it was 20 years ago</td>
<td>79%</td>
<td>48%</td>
<td>Generally, male judges have been proactive in helping women judges adapt and adjust to judicial duties</td>
<td>42%</td>
<td>41%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the average, the justice system is blind to gender differences</td>
<td>58%</td>
<td>24%</td>
<td>The qualifications of judges are far more important considerations than gender</td>
<td>97%</td>
<td>97%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If you are a competent lawyer, gender differences are less of an issue</td>
<td>73%</td>
<td>44%</td>
<td>It is easier for a woman to be a judge now than years ago</td>
<td>73%</td>
<td>36%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have observed gender bias in the workplace</td>
<td>16%</td>
<td>56%</td>
<td>It makes no difference to those practicing before the court whether the judge is male or female</td>
<td>79%</td>
<td>34%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is easier for men to practice law</td>
<td>24%</td>
<td>63%</td>
<td>It makes no difference to litigants or the public whether the judge is male or female</td>
<td>71%</td>
<td>28%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For minority women, the obstacles of race and gender are reduced</td>
<td>48%</td>
<td>15%</td>
<td>It is easier for men to be elected to the bench than it is for women</td>
<td>18%</td>
<td>31%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At firms, women can be expect to be treated the same on pay and compensation as men</td>
<td>50%</td>
<td>14%</td>
<td>I have observed gender discrimination among colleagues in the judicial workplace</td>
<td>30%</td>
<td>48%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At firms, women have the same opportunity for promotion and advancement as men</td>
<td>50%</td>
<td>11%</td>
<td>The legal profession as a whole does a better job of addressing gender fairness than other professions</td>
<td>60%</td>
<td>31%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law firms should make accommodations for women who take time off to start a family</td>
<td>50%</td>
<td>61%</td>
<td>One of the best ways for women to advance their interests in the legal profession is at the ballot box. Electing more women as judges and prosecutors will bring greater positive focus on women in the law</td>
<td>47%</td>
<td>62%</td>
<td></td>
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</tr>
<tr>
<td>The legal community has done more to promote gender equality than most professions</td>
<td>52%</td>
<td>14%</td>
<td></td>
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<tr>
<td>Law schools play a critical role in whether we are successful in achieving gender equality</td>
<td>40%</td>
<td>42%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
dren, while 23 percent of men in the same age range were childless.

Fifteen percent of male attorneys reported dissatisfaction with their career paths, and 23 percent of women attorneys expressed such sentiment.

**Education/Awareness**

A primary goal of the Joint Task Force was to raise awareness of gender bias through education. Indeed, many of the Joint Task Force recommendations related to education and the special committee found that generally, those education and awareness efforts have successfully helped produce a basic sensitivity to gender discrimination. All areas of the profession seem to be aware of the necessity for institutionalizing nondiscriminatory policies and practices. While the special committee found no evidence of overt gender discrimination (with the possible exception of wage disparity), it did find that many in the profession believe that the adoption of non-discriminatory policies have “solved” the problem. As one male attorney expressed in a focus group, “Why are we still talking about these issues? Didn’t we take care of them 20 years ago?”

**By perceptions, attitudes and behavior**

There were significant and dramatic differences in perceptions between men and women on matters of gender fairness today. OSBA lawyer members were asked to agree or disagree with the statements in the left column on page 11.

It is interesting to note that no questions were raised about whether there should be equality for all lawyers, judges, court personnel or law students regardless of gender. Nor was any concern expressed about a woman attorney’s or judge’s competency because of her gender. Yet, the statistics on the right column on page 11 indicate that the belief in gender quality doesn’t translate into perceptions and behaviors.

When discussing the results of its research, the members of the special committee were met with two different responses. Men generally appeared surprised at the differences in attitudes and questioned the validity of the research, while women’s responses can be summed up colloquially as “duh.”

It was striking that almost every young woman law student that was interviewed not only expected to encounter gender inequity in the workplace when she graduated, but was already thinking about ways to deal with it. Many seem to believe that having children and pursuing a successful legal career were incompatible.

**Recommendations**

While gender discrepancies in the legal profession today do not seem to result from overt discriminatory policies or actions, they still exist. Whether the issue is compensation, opportunities for advancement or time off for childbirth and rearing, women still face obstructions in their careers. While the special committee did not focus on different sectors of the profession, there is some evidence that women in government (including judges) and in the corporate sector did not face challenges related to compensation and opportunities for advancement as their counterparts in private and nonprofit settings. There is also some suggestion as a result of the study that the economic or business model in place in law firms has a negative impact on women with respect to compensation, promotion, family planning, etc.

**Selected recommendations**

- Educational programs for judges and court personnel need to be broader and not limited to overt sexual discrimination or harassment.
- The political process for the appointments, endorsement and financing of candidates for judicial offices should be more transparent.
- Law firms should look beyond economics as the driver of work/life balance policies.
- The economic impact associated with attrition of women associates of childbearing years should be reviewed.
- Law firms and law schools should establish joint mentoring programs.
- Education related to recognizing and preventing gender and minority bias should be included in continuing legal education required of all lawyers.
- Redefine a successful legal career for law students.
- Emphasize professionalism in the law school curriculum.
- Provide practical business training as part of the law school curriculum.
- Hold faculty, administrators and students accountable for even subtle forms of sexism.
- Bar associations should take the lead in education and awareness on issues related to gender fairness.

**Moving forward**

Even with vast differences in perception of gender issues in the workplace, the priorities of men and women lawyers are strikingly similar. The following chart reflects how men and women ranked issues of importance to today’s lawyers.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pay equity</td>
<td>Promotion and advancement</td>
</tr>
<tr>
<td>2</td>
<td>Promotion and advancement</td>
<td>Pay equity</td>
</tr>
<tr>
<td>3</td>
<td>Work demands of the profession</td>
<td>Work demands of the profession</td>
</tr>
<tr>
<td>4</td>
<td>Family planning</td>
<td>Family planning</td>
</tr>
<tr>
<td>5</td>
<td>Part-time employment</td>
<td>Part-time employment</td>
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The almost identical prioritization of these issues by men and women lawyers may be reflective of the larger societal changes where responsibility for home life and work life is increasingly being shared.

The special committee issued its report and recommendations to the OSBA Board of Governors. The Board has charged the OSBA Women in the Profession Section to develop a work plan based on the recommendations. The section, chaired by C. Lynne Day of Chardon, is now moving forward on this task.

**Author bio**

Kalpana Yalamanchili is the OSBA director of bar services. She oversees the work of 42 committees and sections, the lawyer and paralegal certification programs, and OSBA special projects. She also serves as the primary liaison to metro/local bar/affinity bar associations.
How the research was conducted

Data collection
The original Joint Task Force work was reviewed and a statistical analysis of the current number and
distribution of women in the legal profession was conducted. Existing data, studies and other publica-
tions produced by the American Bar Association, Ohio State Bar Association, National Association for
Law Placement, National Association of Women Lawyers, National Directory of Law Schools, the
Supreme Court of Ohio, U.S. Census Bureau and U.S. Bureau of Labor Statistics were drawn on to
complete the qualitative aspect of the research.

Surveys
An electronic survey was sent to all 24,000 OSBA lawyer members, excluding judges. Responses came
from about 1,000 lawyers in all areas of the state, in different practice settings and were almost evenly
split between women and men. The margin of error indicates the survey captured an accurate repre-
sentation of perceptions across the spectrum of law practitioners in our state on these issues.

The survey of judges was conducted in two parts. An initial survey of judges contacted through the
OSBA membership database resulted in strong findings, but a low response rate prompted another
dissemination of the survey with the assistance of the Ohio Judicial Conference. Generating a
higher number of responses (108 judges out of 719) within an acceptable margin of error,
the second survey echoed the responses in the original survey proportionately and
nearly identically. Comparison of the responses confirmed the validity of the judicial
survey responses and the consequent conclusions drawn from those responses.

Focus groups and direct interviews
Results of the lawyer and judges surveys formed the basis for focus group
discussions and directed interviews, involving both women and men from
across Ohio and practitioners working in large, small and solo firms, in
government, in the corporate and nonprofit sectors as well as judges, non-
practitioners, law students and law school faculty.

Laralyn & Associates LLC, a strategic research firm based in Columbus,
assisted with all aspects of the research and analysis related to this study.
Women in the profession

Still changing the practice of law

by Stephanie Beougher
Women in the practice of law discuss their experiences with gender discrimination and managing a healthy “work-life balance” while highlighting programs that network and mentor fellow female attorneys.

As the Ohio State Bar Association moves forward with accomplishing the recommendations of the Special Committee for the Review of Gender Fairness in the Ohio Legal System (see article on page 8). While progress has been made, however, disparity still exists. The OSBA interviewed several women attorneys to get their views on gender fairness in the legal profession and what their law firms are doing to help women succeed in the profession.

**Gender discrimination**

Christi Perri has been a lawyer for a year, but it was her previous experience as a paralegal at a small law firm that opened her eyes to gender discrimination. “As an example, there were times when I was told that I wasn’t allowed in meetings because I was a woman and the male attorneys didn’t want me to ‘bring my emotions’ into the meeting. I had never faced sex discrimination before, or, if I did, it wasn’t as blatant.”

Judge Pat Morgenstern-Clarren, chief judge of the U.S. Bankruptcy Court in the Northern District of Ohio, began her legal career in the 1970s. She still sees some manifestations of gender bias in the courtroom. “I will occasionally see a male lawyer less than respectful to a female lawyer, but it usually only takes one comment from me to bring a stop to the behavior,” Morgenstern-Clarren said.

Virginia Conlan Whitman, managing attorney for the Legal Aid Society of Greater Cincinnati’s Volunteer Lawyers Project, knows how difficult the legal environment can be for some women. “In some environments, it’s hard for women to be taken seriously, and there’s a fine line to balance being a confident and assertive woman without being perceived as difficult. I think we need to look beyond any stereotypes we may still hold to see that all lawyers, regardless of gender, have an obligation to be assertive when advocating for clients.”

**The work-life balancing act**

Though the label “work-life balance” may be relatively new, the issue is not. Many parents and spouses, women and men alike, have struggled to find the balance that best suits them.

Amanda James’ youngest son, who is now four years old, was born while she was going to the University of Toledo Law School. She credits her family for getting her through the rigors of law school.

James, an assistant prosecutor in Wayne County, considers herself lucky to have had understanding employers. “My bosses have been incredibly accommodating if one of the boys is sick, or something outside of work needs my attention. I know that is not always the case for other women.”

Marquettes Robinson knows that is not always the case. She recalled that a friend at another firm was told she must not be serious about partnership because she was pregnant again. Robinson is a partner at the Cleveland firm of Thacker Martinsek, a women-owned firm. “The partners have children ages eight and under, so they know what it’s like to be a working mom.” She added that working moms make strong contributions to the firm: “We just had someone come back from leave and pick up all her work, maybe even more.”

Columbus attorney Valoria Hoover feels prioritizing is key. She said, “There is no bigger priority than my family and my daughter. Can I be everything to her all the time? Maybe not, but to be a good role model, you prioritize. You can’t have everything all at once but you can have it in pieces.”

Difficulty in maintaining the balancing act between being a successful lawyer and spouse or mother can drive many women in the profession to re-evaluate their legal careers. Hope Sharett felt the pressures of home and work colliding after the birth of her daughter. “I realized it wasn’t just me with the problem, it was also attorneys who took care of their elderly parents or an ailing spouse.” Sharett’s current position as executive director of the Law and Leadership Institute affords her the opportunity to stay involved with the legal community in a non-traditional legal job.

Kathy Northern was working as a litigator at a law firm and trying to raise a child when the opportunity to teach presented itself. “I recognized that academia would give me a lot more control over my schedule than being a litigator—both in raising my son and thinking about additional children,” Northern said. “There is pressure as a professor to write and publish, which does not require any less time than if I’d stayed at a firm, but you have more control of your time and that is the biggest difference.” Northern joined the law faculty of Ohio Northern University before settling in to her current position at The Ohio State University Moritz College of Law. She has never regretted the decision to teach, and is often sought out by law students for career advice.

The move to non-traditional legal jobs can be seen in a positive light, according to Sally Bloomfield, a partner at Bricker...
Work hard but always accommodate your personal responsibilities as well. As an employee, I would worry about an employee not making time for personal and family obligations.

—Chief Justice Maureen O’Connor

“This can be a rewarding, but tough profession. Being flexible and maintaining a positive attitude and sense of humor can be really helpful. Build a support network and don’t be afraid to ask for advice and help. And do what you can to help others succeed.”

—Anne Marie Sferra

“Make the focus of your performance just that—your performance and how well you get the job done. That’s all any of us can ask for: to be judged on our results. Work hard but always accommodate your personal responsibilities as well. As an employee, I would worry about an employee not making time for personal and family obligations.”

& Eckler in Columbus. “Women today are looking more at their passion when choosing where to work, which is a choice I’m not sure in years past women felt as free to make,” she said.

The economics of inequality

The average law student debt jumped 50 percent between 2001 and 2010 to an average of $68,827 for public schools and $106,249 for private schools. Toledo attorney Stuart Cubbon served on the OSBA special committee, and he believes law school debt has a greater effect on female graduates. “Women are not making partner and they are not making as much money as men,” Cubbon said. “And because women are paying the same amount for law school and not earning the same wages, I see that as a big problem.”

The Economics of Law study conducted in 2010 for the Ohio State Bar Association found female attorneys in Ohio earn a median net income of $68,000, or 72 percent of the $95,000 male attorneys net.1 One factor may be the challenge women face in developing their client base. One of the usual ways to cultivate clients in the business world is on the golf course. Many of the women lawyers interviewed say most of their counterparts are not golfers. “There are women who like to play golf, but there are sporting events that men like to go to that women don’t,” Bloomfield said. “One change from 20 years ago is there are many more women clients who, generally, have to be wooed differently than male clients. I know of women attorneys who are having spa days and similar events that women clients enjoy.”

Law firms address concerns

Law firms have implemented programs and policies to help cultivate nurturing environments for women. Marilena DiSilvio is one of the driving forces behind the Women’s Initiative at Reminger, a program founded in 2008 to provide mentoring, professional development and advancement opportunities. “We focus on each lawyer’s professional and personal growth, regardless of age,” DiSilvio said. “We want to encourage each woman in our firm to define her brand, to set personal and professional goals, and to build business networks.” The program held its first retreat this year, with female attorneys from the firm’s 11 offices located throughout the Midwest converging on Columbus to participate in day-long activities such as team-building and setting business development goals. DiSilvio adds there will be follow-up efforts with all the participants to develop committees and promote the program’s objective within the firm and the community. “While the idea for the initiative came from women, we have the support of the entire firm and Steve Walters, our managing partner. This is much more than just an opportunity for us to have a camaraderie session.”

Another example of a law firm addressing the concerns of female lawyers is the Women in Networking (WIN) Group at Bricker & Eckler in Columbus. Coordinator Anne Marie Sferra says WIN started out as a way for female attorneys to get to know each other better, and has evolved into community awareness charitable events, professional development workshops and mentoring. “There are so many different life and work-related pressures today. You have to be more deliberate with your career than those of us who started 25 years ago,” Sferra said. “We try to help our female attorneys connect their interests with community involvement and professional growth.”

Mentoring

Mentoring is not a new idea, but formalizing mentoring to assist women in the legal profession is relatively new. Amanda James participated in the Supreme Court of Ohio’s Lawyer to Lawyer mentoring program after becoming a new lawyer in 2010. “It’s nice to know someone who knows the area, the courts and the informal rules of how things work,” James said. “I had two mentors and both met with me more than the required amount, and helped me with the stressors that I hadn’t anticipated, like the first time I faced opposing counsel who was less than civil to me.” One of her mentors was Rosemary Rubin, who has served as a mentor since the program began. “It’s a great experience for me,” Rubin said. “There’s nothing like having someone you can sit
down and bounce stuff off of. It’s a wonderful addition for the young lawyers.”

Conlan Whitman signed up for the mentoring program three years ago after hearing then-president of the OSBA Barbara Howard talk about mentoring. “She spoke about the mentoring program and how there was a need in southwest Ohio, particularly for women mentors. It’s great for young women to have female role models. I’ve learned so much from women during my career, and it’s been very rewarding to now help other women in their careers.”

The Ohio Women’s Bar Association (OWBA) is expanding its pilot program that matches female law students with mentors. The OWBA, which celebrated its 20th anniversary this year, has also implemented a leadership institute. “We are trying not only to help the profession, but also to broaden the thought processes and connections for women to become leaders in their communities,” OWBA Past President Valoria Hoover said.

Diversity
Minority representation in the legal profession has nearly flat-lined in the last several years. In Ohio law firms, minority women comprised less than six percent of the associate ranks, and the percentage of minority women partners dropped to less than one percent of the entire law firm partner pool. Minority student groups at law schools remained largely the same compared to 1995.

To help boost those numbers, high school students from underserved areas of the state are getting a taste of the legal profession through the Law and Leadership Institute. While the main goal of the program is to create diversity in the legal profession, Director Hope Sharett has also seen it as an opportunity for minority females to think of themselves as lawyers. “In 2010, two-thirds of our students were female. If we’re talking about the group of people who are last in line in that progression to becoming owners of the practice, black women are still in the back. By encouraging young women of color to think about choosing a career in law, we’ll have a larger pool of those students entering law schools than we do now.”

The next 20 years
Will we still be talking about gender inequities in another 20 years? Most of the people interviewed agreed that inequality will still exist at some level. “It depends a lot on the society as a whole,” Ritchey Hollenbaugh, co-chair of the OSBA special committee said. “There will always be differences between men and women, and there will always be significant work-related issues.”

According to the committee’s other co-chair, Melissa Graham-Hurd, “We need to remain vigilant in our law schools, courts, workplaces and bar associations. Thinking the problem has been solved closes our eyes to recognizing a problem exists and taking steps to address it.”

Author bio
Stephanie Beougher is the Ohio State Bar Association communications and online media associate.

Endnotes
3 Ohio State Bar Association, “Report and Recommendations of the Special Committee to Review Gender Fairness in the Legal Profession.” Pg. 6.
4 Id. at pg. 5.

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THE NEW PRIVACY
Internet laws for a hyper-public world
part two

by Robert L. Ellis
The increasing pervasiveness of e-commerce in everyday life has resulted in new rules and regulations to help protect the rights of individuals and businesses.

In the first part of this two-part article on Internet law, “The new privacy: Internet laws for a hyper-public world,” September/October 2012 Ohio Lawyer, a case was made for how national and international laws regulating the Internet and its use have become sophisticated and effective, particularly with regard to online contracts and privacy. This second part will examine intellectual property, regulation of e-commerce and social networking.

Media file sharing and copyright law

The copying and transfer of digital media files has tested the limits of copyright law. Online digital music distribution has effectively killed the compact disc, increasing by 1,000 percent between 2004 and 2010. Apple’s iTunes service is the largest legal music download service, accounting for about 70 percent of worldwide online digital music sales; its 10 billionth download was reached in February 2010 after just 10 years. Comparing that achievement with the number of unauthorized downloads, the problem of copyright infringement becomes evident: three billion infringing copies of songs were downloaded in just the first six months of 2012. It is estimated that 95 percent of all music is downloaded without any payment to rights holders.1

The recording industry has tried various methods of reducing digital music infringement. In the 1990s it unsuccessfully attempted to stop the practice of ripping CD tracks to MP3 players. Later, in a watershed decision, a federal court ruled that online music file-sharing services, as well as their users, engaged in copyright infringement.2 In the wake of that ruling, the industry was able to shut down many file-sharing services, and also filed thousands of lawsuits against individuals alleged to have infringed copyrights by sharing music files online. In the only such case where the defendant refused to settle and instead litigated the matter (for years), Capitol Records was recently awarded statutory damages of $222,000 against an individual who had shared 24 copyrighted music files.3 The industry has now shifted away from the stick and toward the carrot by ending its practice of suing individuals for copyright infringement, and instead offering low-cost legal downloads that are easy to purchase, easy to sync among devices and easy to store in the cloud. The strategy seems to be working: In 2011 worldwide revenues from legal digital music sales increased by 8 percent, the first increase in the growth rate for more than five years.4

Online forums and social networking services that enable users to post videos and photos present different legal challenges. Unlike music files—most of which are uploaded without the copyright owner’s consent—most videos and photos are uploaded by the persons who created them. Nonetheless, some infringing video and photo content will inevitably appear on such forums. Wholesale site shutdown may have worked for music sharing sites, but would be draconian for video and photo sharing sites. If even a small percentage of infringing video or photo content would suffice to shutter a website or other forum, there could be no YouTube, Facebook or Imgur, and no blogging.

The Digital Millennium Copyright Act (DMCA), enacted in 1998, is a legislative attempt to solve this problem. The DMCA has notice-and-takedown provisions that shield online service providers from contributory infringement liability if they follow the procedures set forth in the law by registering with the copyright office, posting contact information on their website for notices of claimed infringement, and removing allegedly infringing works on notification from the copyright owner. Service providers enjoy DMCA immunity only if they comply with the procedures to the letter; failure to comply can result in a rude awakening in the form of a multimillion dollar judgment for contributory infringement.5

The notice-and-takedown provisions have functioned well and have become a routine part of business for online service providers. Courts have placed common-sense limits on the “notice” requirements: Rights holders, when sending takedown notices, cannot word them so broadly as to require the service providers to continuously police their servers for potentially infringing content. Rather, notices must specifically identify the works that are to be removed; and service providers for their part cannot take measures that would make it difficult to identify infringing material or infringers, nor can they deliberately turn a blind eye toward infringing content they know is on their servers.6

For rights owners, the notice-and-takedown provisions are extremely easy to use—almost too easy. All a rights owner, or someone who claims to be, needs to do is notify the service provider. The service provider, to preserve its DMCA immunity, must remove the material in question. The ease with which material can be
removed has led to overzealousness on the part of some rights owners. In one case, a mother posted on YouTube a home video she had taken of her toddler son dancing, with a song playing in the background. The song’s copyright owner sent a notice-and-takedown message to YouTube, which removed the video. Fortunately for the mother, the notice-and-takedown provisions also provide for “put-back” (re-posting of the content) under a set of rules to resolve copyright disputes.1 The mother then filed a declaratory judgment action. The result was a ruling that “in order for a copyright owner to proceed under the DMCA with ‘a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law,’ the owner must evaluate whether the material makes fair use of the copyright.”9

**Online-only trademark law issues**

When a business has a domain name that corresponds to its trademark, the law will protect both. The Anti-Cybersquatting Consumer Protection Act (ACPA) prohibits the bad-faith registration of a domain name that is the same as or similar to a registered trademark.10 Similarly, the Uniform Domain Name Resolution Process (UDRP) provides a quick and inexpensive means of depriving a bad-faith registrant of an infringing domain name. All domain registrants for .com and most other generic top-level domains are subject to the UDRP. A “bad faith” registrant is one who attempts to make money from a domain name by selling it to the trademark owner or by otherwise exploiting the value of the trademark. Bad faith does not, however, include buying a domain name that is similar to an existing trademark for purposes of criticizing the trademark owner’s business.11

When a business finds that another company is using its trademarks as metatags, or is paying a search engine for the exclusive use of those trademarks as keywords so that someone who types its trademark into the search engine will instead be directed to the other company’s website, is the other company liable for trademark infringement? Is the search engine? To some extent, the answer depends on how the other company is using the mark. If the use results in consumer confusion, the answer may well be “yes.”12 If the use serves primarily to identify or distinguish what the other company does, then the answer will be “no.”13

**Regulation of e-commerce**

Most people who make online purchases never bother to read the fine print of the purchase agreement or service contract. Perhaps surprisingly, in most cases, it is safe to do so—for several reasons. First, the Federal Trade Commission (FTC), which has jurisdiction over all online sales in the United States, does not ignore the fine print. The FTC actively enforces laws and rules against unfair competition, false advertising and unfair or deceptive trade practices. Advertisements must be truthful, disclaimers must be prominently displayed and invasive privacy policies must be accurately stated. Fake product reviews planted by people who are paid to write them are prohibited. Web search results that are sponsored links must be labeled as such. “Free” must really mean free.

Not only does the FTC have the enforcement power to levy substantial fines against non-compliant online merchants, but numerous state consumer protection laws, including Ohio’s, also apply to online sales.14 The U.S. Department of Justice also pursues online merchants that break the law, and the penalties can be substantial. Google, for example, agreed to pay half a billion dollars for allowing Canadian online pharmacies (which are not permitted to sell prescription drugs to U.S. residents) to advertise on its site. Although online shopping is generally safe, from a legal standpoint, it is different from traditional shopping in a few significant ways.

**Sales and use taxes**

The Internet is a sales tax haven because, unless the online merchant has a physical retail store in the same state where the customer is located, no sales tax is charged to the customer for an item purchased online. Retail store owners, who must charge sales tax, have protested that online merchants have an unfair advantage. Although consumers who purchase items online from out-of-state merchants are supposed to keep track of such purchases and pay use taxes, compliance is almost non-existent. Many people are not even aware that use taxes exist.

There is a concerted effort underway by state tax authorities and retail store merchants to reform the law to make online purchases subject to sales tax, but adapting thousands of state and local sales tax laws to an online environment is difficult, and online merchants likely will not give up their price advantage without a fight. Thus, the present sales tax situation will probably remain unchanged for at least the near future.

**Pharmaceuticals**

Due to the high cost of pharmaceuticals in the United States, many consumers shop online for cheaper alternatives, and they often find them in other countries. While “controlled substances” (those few drugs with high potential for abuse) are always illegal to import, even in person, all other prescription pharmaceuticals can be brought into the U.S.—but only in person, and only a 90-day supply. Internet purchases of pharmaceuticals from foreign pharmacies are still technically illegal, and the U.S. Customs and Border Protection is authorized to seize any package containing prescription drugs. Nevertheless, tens of millions of Americans routinely have their prescriptions filled by foreign pharmacies, and several states have even set up programs to help their residents do so. Currently, enforcement efforts are aimed mainly at “rogue” offshore pharmacies that dispense prescription drugs without requiring any prescription at all, as opposed to “responsible” offshore pharmacies that require a copy of a prescription. To be considered legal under U.S. law, an online pharmacy must be certified by the U.S. government and must display its certification information on the home page of its website.

**Gambling**

For years, federal and state governments have been trying to suppress online gambling sites, most of which are offshore. The Wire Act and the Unlawful Internet Gambling Enforcement Act of 2006, the federal laws that try to make online gam-
bling illegal and paying for it impossible, have been challenged by numerous off-shore casinos, and on several occasions the World Trade Organization (WTO) has ruled that U.S. restrictions on offshore gambling constitute an unfair trade barrier and a violation of several international treaties. Increasingly, there have been calls for legalizing online gambling so that the huge revenues generated by such sites can be earned by U.S. businesses and taxed in the United States. In a surprising development late last year, the Department of Justice released a memorandum stating that intrastate sales of lottery tickets via the Internet are legal. The conclusion was interesting enough, but the reasoning got the attention of the gambling industry: “[W]e conclude that interstate transmissions of wire communications that do not relate to a ‘sporting event or contest’ … fall outside of the reach of the Wire Act.” In other words, not only is it legal for states to sell lottery tickets online; no U.S. law prohibits any type of online gambling that does not relate to a sporting event. As a result, many states are now considering legalizing online gambling; Delaware became the first state to do so in July 2012.

### Penny auctions

Auction sites are common on the Internet, but an unusual and relatively new type of auction site is called a “penny auction.” Consumers are drawn to such sites for the prospect of being able to purchase an expensive item for far below its normal retail cost. At a penny auction site, the consumer purchases the non-refundable right to submit a specific number of bids on a consumer item. The auctions are timed and bids are increased by pennies at a time. When the time expires, the bids on a very expensive item may have reached only a fraction of its retail value, providing the winning bidder with a windfall (in theory, at least). In reality, however, several thousand people may have purchased the right to bid on a single item. This practice of selling bidding rights nets the auction site far more money than the item is worth. Furthermore, the timer can be reset if there are many last-moment bids, which usually happens. The result is that most people who participate in penny auctions spend money on bids without being able to purchase any of the items they have bid on. Penny auction sites are currently legal, but they are already the subject of FTC scrutiny as well as litigation.

### Crowdfunding

The idea of using the Internet to raise money for one’s business outside the traditional route of securities registration or exemption (so-called crowdfunding) is attractive to many entrepreneurs, but the practice is not legal—at least not yet. Last fall, the U.S. House of Representatives passed a bill that would permit crowdfunding, limited to $10,000, or 10 percent of the annual income of unaccredited investors, for a total funding of up to $2 million.

### Social networking

It is hard to believe that Facebook, which now has roughly a billion users, has only been around since 2004. Twitter did not get started until 2008 and already has more than 300 million users. Legal issues have also arisen involving social networking at the workplace. Employers like the fact that social networking profiles reveal far more (and more personal) information about a prospective employee than might be seen on a resume. The National Labor Relations Board (NLRB) has given increased scrutiny to what apparently has become a common practice among employers: checking employees’ social networking pages and making work-related decisions based on what they see. For its part, Facebook has stated that its terms of service prohibit an employer from demanding the password for an employee’s Facebook account.
site. The NLRB has noted numerous instances of employees being fired for various postings to social networking sites, on subjects ranging from complaints about co-workers or supervisors, to general comments about life. The NLRB has issued a set of guidelines that discuss what is and is not allowed under the National Labor Relations Act. The guidelines state that employers must tailor their social media policies narrowly, and may not prohibit employees from making disparaging comments about the company, their supervisors, co-workers, competitors, financial management, tax compliance or otherwise to regulate the free speech of their employees when away from the workplace. A few states are starting to pass laws prohibiting employers from demanding employees’ or prospective employees’ social networking passwords.

Finally, there is the phenomenon of “sexting,” which can be defined as taking a digital photo of oneself in some stage of undress, usually with a cell phone camera, and sending it via text message, social networking message or email. “Sexting” is generally understood to depict the more innocent side of sex; explicit photos of sexual acts are not considered “sexting.” A large but unknown portion of those who “sex” are minors, and a large but unknown portion of the photos involved seem to find their way to more people than the original recipient. Significant legal questions arise in this context: Are kids who send or receive such photos trafficking in child pornography? Should such people be sent to prison and registered as sex offenders for life? The clear consensus appears to be “no,” and prosecutors are generally reluctant to file charges as long as only minors are involved and as long as the activity is limited and not egregious. Many states, including Ohio, are considering decriminalizing or reducing the penalties for such activity.

Author bio

Robert L. Ellis is a partner at the Columbus firm of Peterson, Ellis, Fergus & Peer LLP. His areas of practice include international and domestic commercial transactions, internet and technology law and intellectual property law. Ellis is a frequent speaker on topics related to the Internet, digital technology law, international private law, privacy law and legal ethics. His email address is rellis@petersonellis.com.

Endnotes

12 See, e.g. Tdata Inc. v. Aircraft Technical Publishers, 411 E.Supp.2d 901 (S.D. Ohio 2006) (metatags); Rosetta Stone Ltd. v. Google, Inc., 676 F.3d 144 (4th Cir. 2012) (vacating summary judgment that had been granted in Google’s favor on issue of whether sale of trademarked words as advertising keywords constituted contributory trademark infringement).
13 See, e.g. Toyota Motor Sales, U.S.A., Inc. v. Tabari, 610 F.3d 1171 (9th Cir. 2010).
14 R.C. §4165.02.
17 H.R. 2930. Similar bills were introduced in the Senate: S. 1791 and S. 1970.
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For many recent war veterans, acclimating back into society at home can be a challenge, and legal troubles often arise. A new project aims to give these men and women the support they need to reclaim their freedom and their lives.

by Justice Evelyn Lundberg Stratton and Jessica Lagarce
“WrapAround” service is a common phrase used in the drug, alcohol and mental health fields, where you “wrap” targeted services around a client with specific issues. The goal of the “Veterans WrapAround Project” is to wrap services around our active military and veterans in their time of need. Active military face many issues on deployment or return from service—family crises, debt management and leases for items of no use during deployment. Veterans may enter the criminal justice system with mental health and drug abuse issues stemming from war-related incidents. There are many resources available on all of these fronts, but they are fragmented, unconnected and sometimes difficult to find or access. To break the cycle, we need the court system, as well as the federal, state and local systems, to work together. A previous article that appeared in the March/April Ohio Lawyer magazine focused on veterans’ treatment courts, but this article will focus on the many resources available to veterans involved in the court system.1

A few years ago, I was appointed to a committee set up by the Veterans Administration (VA) to help create the Veterans Justice Outreach (VJO) Program, which assigns a VJO specialist to each medical center to work with the courts and jails in efforts to help veteran defendants access treatment and other services.2 The first thing I learned when we developed the VJO program was that most judges were not asking defendants about their military experience. We also learned that we should not ask defendants if they are “a veteran,” but instead ask if they have “military experience.” This is true for a variety of reasons. First, often women will not self-identify as veterans. Second, sometimes veterans may not believe they qualify because they did not serve in combat. Finally, some veterans think that a veteran status may be perceived as negative, especially if he or she served during the Vietnam War era. The challenge is getting the courts to reframe and ask that question.

To help improve the lives of veterans in the criminal justice system, and to organize the many different resources available to a veteran once identified in the Ohio court system, I developed a management tool that I call the Veterans WrapAround Project. I use a bullseye visual to assist in understanding all of the players that need to be involved in wrapping our arms around our veterans.
Our veterans have given much to keep our country safe. Sometimes they come back, wounded in body and spirit. We must wrap our arms around our veterans and help them heal. We owe it to them for their sacrifices for us.”

Justice Evelyn Lundberg Stratton,
Supreme Court of Ohio

The first circle: The criminal justice system
The first, or inner, circle of the Wrap-Around Project represents a veteran’s initial contact in the criminal justice system as a defendant. Often that first encounter is with a police officer—so we are expanding training efforts. Crisis intervention training (CIT) trains officers and others on handling incidents with people in crisis, especially those with mental health issues. Now there is a separate CIT training for handling incidents involving veterans.

The court must then identify those defendants as veterans whom the arresting officer may not have identified—through intakes at arraignment, with the defense attorney or the public defender asking the question. Many probation officers are now using a series of questions about military background in presentence investigations (PSIs). The goal is for all probation officers to include these questions in their PSIs.

Ohio has also launched the Ohio Risk Assessment System (ORAS)—a tool used by judges for evaluating risk at the time of sentencing. The ORAS has added a screen on military background, so judges and probation officers can examine the risk of having a veteran in their system.

Judges are encouraged to use a specialized docket model—the veterans’ treatment court—because it is more efficient to combine resources, and judges have learned that veteran defendants often have unique issues caused by their military experience. We worked with the Ohio Judicial Conference and the Ohio State Bar Association to refine a guide (developed by Thomas M. Cooley Law School and attorneys from Honigan Miller Swartz and Cohn LLP), to reach the judges and lawyers about federal laws regarding the rights and protections of active military, specifically found in the Servicemembers Civil Relief Act (SCRA), as well as Ohio laws and procedure. Further, the Supreme Court of Ohio has recently adopted new forms to be used upon application for appointment of a guardian. These require disclosure of whether the ward has any military background, as many extra benefits may be available for that ward.

When you have several defendants in court in one day, the goal is to accomplish as much as possible for the veterans on that day in court. Ideally, a VJO specialist can bring a computer to that courtroom to determine the veterans’ discharge status and corresponding services to which they are entitled. Based on that information, the VJO specialist can make appointments for veterans on the spot during the court proceedings. Scheduling all veterans on the same day enables the system to maximize efficiency of scale and resources.

State and federal resources
The Veterans Service Commission (VSC) offers emergency help such as subsidies for rent, food and medical bills to veterans, active military and their families. There are VSC officers in each county appointed to help veterans apply for federal, state and local benefits. Ohio law mandates that common pleas judges make these appointments. Many judges do not realize that it is their duty to appoint VSC officers. I must admit that I was a trial judge for seven years, and I do not remember appointing a VSC officer because I was unaware of that statutory duty. A committee has now put together guide-
lines that encourage judges to interview their VSC officers and swear them in publicly in front of all the other VSC officers and the public. Judges have the corresponding power to remove VSC officers; so judges should obtain performance reports on their county’s VSC officers. The appointment of qualified VSC officers is a serious responsibility for judges. Guidelines to help judges understand these duties and best practices now appear on the Judicial Conference website under the section “Tools and Bench Aids.”

The Supreme Court was asked to consider the temporary admission to the practice of law in Ohio for spouses of veterans or active military, a procedure now recommended by the American Bar Association, the Ohio Women’s Bar Association and other groups. Further, the Court has adopted a rule to allow more judge advocate general (JAG) officers to represent active military in Ohio because active military often do not qualify for legal aid due to income restrictions, but cannot otherwise afford to hire a private attorney.

Once a criminal defendant is identified as a veteran, the second, or middle, circle connects him or her with needed state and federal resources. There are a wealth of services in all areas available to veterans, but one sometimes really has to search to find them. The Ohio Attorney General’s Office provides information on services for veterans and active military. Many state departments and agencies offer programs for veterans as well. Key resources include the Ohio Department of Veterans Services, Department of Job and Family Services, Veterans Service Commissions, Rehabilitation Service Commission (RSC) and Ohio Cares. Additionally, the U.S. Department of Veterans Affairs provides a broad range of federal services for veterans, including a wide variety of health-care benefits and financial assistance. There are also many federal job assistance websites for veterans. One of the best resources is StateSide Legal, an easy-to-use website for active military members, veterans and their families to help them access benefits and find free legal aid. Many nonprofit organizations work on veterans’ issues, such as AMVETS, the Salvation Army and veterans associations and foundations. For example, I recently joined the board of the Resurrecting Lives Foundation, which focuses on public awareness, diagnosis and treatment of traumatic brain injury (TBI), one of the signature wounds of recent wars. Research shows that many veterans are being misdiagnosed with post traumatic stress injury (PTSI), but TBI is a physical injury to the brain, which requires complex treatment, including cognitive retraining.

A new resource is the Veterans Courts and Military Affairs (VCMA) subcommittee of the Ohio Attorney General Task Force on Criminal Justice and Mental Illness (Task Force). In June 2011, the attorney general invited me to join him in chairing a task force on criminal justice and mental illness. We formed 10 active subcommittees, one being the VCMA subcommittee, co-chaired by Tammy Puff, North Central Ohio regional director and director of Veterans Outreach for the office of the attorney general, and Judge Robert P. Milich of the Youngstown Municipal Veterans’ Treatment Court. We now have a statewide committee to focus on veterans’ courts.

One of its first proposals is an addition to Ohio’s sentencing statutes to require consideration of military experience in sentencing (already required in the federal sentencing guidelines). For information on how to join the VCMA subcommittee of the Task Force, please contact Amy O’Grady, Deputy Director of Professional Standards at the Ohio Attorney General’s Office. If you would like to be added to the VCMA email “Listserve,” which gives news and information on Veterans’ Treatment Courts and resources, please contact Pete Miller, VCMA subcommittee member, who is the Veterans Treatment Court Listserve Moderator and a retired vice president of Grimes Aerospace Company.
Volunteers: Pro bono attorneys and peer mentors

The last, or outer, circle is the volunteer component, where courts establish a mentoring program to help the recovering veteran transition back to society. The mentors will be volunteer veterans or active-duty servicemembers because we have learned that veterans respond more favorably to other veterans.

Pro bono lawyers will receive special training to help the veterans and active military servicemembers with a variety of legal issues. The OSBA Military and Veterans Affairs Committee is assisting with developing a group of pro bono attorneys to wrap services around the civil needs of veterans. They represent veterans with government disability determinations, probate and estate planning, child custody matters, loan issues, creditor/debtor concerns and other civil issues. Further, there are a number of legal aid agencies and bar associations in Ohio that provide free or low-cost assistance to veterans. We have formed a committee to coordinate the pro bono project, called the Ohio Military and Veterans Legal Assistance Project that will be unveiled in more detail in our next article.

Wrapping up

We have so many resources available to help our active military, reservists and veterans. It is a big circle. Now we need to connect the dots to help our service members—from our Vietnam veterans all the way to the current recruits—by truly wrapping our arms around them.

Author bios

Justice Evelyn Lundberg Stratton, former trial judge for seven years, and justice for 16, is the daughter of American missionaries and was born and raised in Thailand. She works on state and national reforms in adoption law and with veterans and persons with mental illness in the criminal justice system.

Jessica Lagarce served as an extern to Justice Stratton while a student at Thomas M. Cooley Law School. Lagarce was admitted to the Ohio bar in May 2012 and is employed as Legal Counsel for Columbus Hospitality Management.

Endnotes

2 There are currently 11 VJO specialists in Ohio assigned to five VA medical centers. For a list of all VJO Specialists in Ohio, see U.S. Department of Veterans Affairs, Veterans Justice Outreach Contacts, www.va.gov/HOMELAND/VJO_Contacts.asp (last updated July 18, 2012).
3 See Stratton and Lagarce, supra note 1.
4 There are many rules that judges are unfamiliar with because they arise so infrequently. For example, the SCRA limits the impact of default judgments on service members and sets forth a procedure for obtaining a stay of proceedings due to military service obligations. See 50 U.S.C. App. §§520-22 and §524. The SCRA also protects service members from mortgage foreclosures and lien enforcement when military service has affected the service member’s ability to pay debt or when a creditor does not follow certain procedures. See 50 U.S.C. App. §533 (Mortgages and trust deeds) and §537 (Enforcement of storage liens). See also §527 (limiting the maximum interest rate on loans obtained before military service to 6 percent); §535 (allowing servicemembers to terminate residential and motor vehicle leases that cannot be used due to military service obligations); and §535(a) (expanding servicemember ability to terminate phone service contracts).
5 See State Veterans Affairs Commission, County Veterans Service Officer List, available at www.vab.ms.gov/files/csoList.pdf [hereinafter, VSC OFFICERS LIST], for a list of VSC officers in every Ohio county.
7 Id. ("… the commission shall be composed of five residents of the county appointed to five-year terms by a judge of the court of common pleas.").
10 Ohio Department of Veterans Services, Veterans Benefits, www.dvs.ohio.gov; Department of Job & Family Services, Veterans Services, www.jfs.ohio.gov/veterans; see VSC OFFICERS LIST, supra note 5; Access to Care, Resources Available during the Deployment Cycle, www.ohiocares.ohio.gov (follow “Access to Care” hyperlink) (providing behavioral health resources for veterans, active military, and their families pre-deployment, deployment, and post-deployment, as well as information on how to cope with the transition back to society).
11 U.S. Department of Veterans Affairs, Veterans Services, www.va.gov/lending2_vetsrv.htm; see id. at www.va.gov/health/default.asp. For a complete list of each Ohio medical center, clinic, and veteran center location and contact, see U.S. Department of Veterans Affairs, Veterans Health Admin., www2.va.gov/directory; U.S. Department of Veterans Affairs, Veterans Benefits Admin., Veterans Benefits, www.vba.va.gov/VBA (offering a wide variety of benefits such as vocational training, pensions, loans, and life insurance).
12 The U.S. Department of Labor, Veterans’ Employment Training Service (VETS), offers training and employment services to veterans through a “Jobs for Veterans State Grants” Program. The grant funds two main staff positions: Disabled Veterans’ Outreach Program (DVOP) Specialists and Local Veterans’ Employment Representatives (LVER). The DVOP specialists focus on the employment needs of veterans (focusing on the homeless and those with low education levels), while the LVERs work with employers to increase the hiring of veterans. The Ohio Department of Job and Family Services currently has 72 LVERs. To locate a LVER in your county, see http://jfs.ohio.gov/veterans/locate/index.htm. Stateside Legal, http://statesidelegal.org.
15 Amy Can be reached at her office, (740) 845-2683, or email, Amy.O’Grady@OhioAttorneyGeneral.gov.
16 Pete can be reached at (614) 284-8563, or his email, cruzen@gmail.com.
17 For list of relevant Ohio legal aid agencies and bar associations, see www.ols.or.gov/legal-aid-agencies (last visited Oct. 16, 2012).
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Council of Delegates to consider proposals

The Corporation Law Committee will propose the following:
• A proposal to amend Title 17 of the Ohio Revised Code to expand the types of entities that are permitted to serve as statutory agents under Ohio law, which should create greater convenience for Ohio businesses and greater effectiveness for service of process on Ohio businesses.

The Banking, Commercial and Bankruptcy Law Committee will propose the following:
• A proposal to amend Section 1304.55 of the Ohio Revised Code, which governs the scope of Ohio’s version of Article 4A of the Uniform Commercial Code dealing with funds transfers. The proposed amendment will preserve the current scope of Ohio’s law, which was made unclear for certain remittance transfers by changes made in federal law pursuant to the Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).

The OSBA Board of Governors will propose the following:
• A proposal to amend Rule VI of the Rules for the Government of the Bar of Ohio (Registration of Attorneys) and Rule 5.5 of the Ohio Rules of Professional Conduct (Unauthorized Practice of Law) to permit attorneys registered under corporate status to provide pro bono legal services.

The Estate Planning, Trust and Probate Law Section will propose the following:
• A proposal to amend Sections 2107.07 and 2107.10 of the Ohio Revised Code to facilitate (and ultimately require) the prompt deposit of wills in probate court.
• A proposal to amend Sections 1337.12(A)(1) and 1337.13(A)(1) of the Ohio Revised Code to enable a principal to authorize an agent for health care to access the principal’s medical information before the principal is incapacitated.
• A proposal to amend Section 1337.12(B) of the Ohio Revised Code to clarify that no attorney-in-fact or alternate attorney-in-fact designated in a durable power of attorney for health care may act as a witness to such power.
• A proposal to amend Section 1337.12 of the Ohio Revised Code by adding a new division (E) to explicitly permit the nomination of a guardian for the principal under a health care power of attorney.

Check for Council of Delegates meeting updates in the OSBA Report or at www.ohiobar.org.

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Committee and Section News

January committee and section meetings

Please plan to join us for the winter 2013 OSBA Committee and Section meetings January 11, 12, 18 and 23. Visit www.ohiobar.org for a detailed schedule. Participation by conference call will be available for most meetings.

Aviation Law
The Aviation Law Committee invited members of the Ohio Aviation Legislative Caucus to a luncheon at the MERFI Fly-In in Urbana. The goal of the luncheon was to provide an opportunity for the members of the Aviation Law Committee and the Legislative Caucus to meet and learn of each other’s interests and expertise.

William F. Hayes, chair
williamhayeslaw@gmail.com

Elder and Special Needs Law Committee
At the request of the Elder and Special Needs Law Committee, the OSBA filed an amicus brief in the U.S. Sixth Circuit Court of Appeals in Hughes v. Colbert. The case concerns the ability of the spouse of a nursing home resident to purchase an immediate annuity to increase the income of the community spouse and avoid impoverishment.

Richard F. Meyer, chair
rmeyer@elderlaw.us

Military and Veterans’ Affairs Committee
The Military and Veterans’ Affairs Committee, along with financial support of the OSBA Real Property Section, will make available to OSBA members a guide to the Servicemembers’ Civil Relief Act, which will include references to Ohio statutes supplementing the Act and case law interpreting it. Look for the guide at www.ohiobar.org.

Col. Duncan Aukland, chair
duncan.aukland@us.army.mil

Senior Lawyers Section
The OSBA Senior Lawyers Section plans to consider two major issues affecting the practice of law: disciplinary issues arising out of complications using court and law practice technology and professional liability coverage, with special emphasis on extended reporting or “tail” coverage and other issues related to liability insurance after retirement or death. Join the section and learn more about how these issues may be addressed.

Reginald S. Jackson, chair
rjackson@cjc-law.com

Young Lawyers Section
Bring a young lawyer (age 36 or younger or in practice five years or less) to the district meeting and receive a certificate for $25 off a future live OSBA CLE seminar. As an extra incentive, the young lawyer’s lunch will be complimentary—courtesy of the OSBA Young Lawyers Section. For more details and the fall district meeting schedule, visit www.ohiobar.org.

Kacey S. Chappelear, chair
kschappe@franklincountyohio.gov

The Ohio State Bar Association has 43 committees and sections. For more information on their activities or to join, please contact OSBA Committee and Section Manager Jessica Emch at jemch@ohiobar.org.

Professional development for your paralegal

Encourage your paralegal to take the next step professionally by becoming an OSBA Certified Paralegal in 2013. This special designation makes it easier for you to demonstrate the professionalism of your staff to both clients and the public. It will also help you differentiate your office from the competition.

Applications are now available at www.ohiobar.org/paralegalcert. For more information, call Melissa Quick, OSBA certification manager, at (614) 487-4411, or by email at mquick@ohiobar.org.
OSBA launches Recruit for Rewards campaign

You have demonstrated your commitment to the legal profession by being a member of the Ohio State Bar Association. Now be rewarded for encouraging others to do the same.

Through the OSBA Recruit for Rewards Campaign, you can help grow OSBA's community, save on your own membership dues and be entered to win an iPad2. Here is how it works:

• For each dues-paying member you recruit, you will receive one free month of OSBA membership for 2013 (up to 12); and
• You will be entered into a chance to win an iPad2.

Take this opportunity to recruit a member for your chance to win. Contact the OSBA Member Service Center at (800) 232-7124 or (614) 487-8585, or by email at osba@ohiobar.org for more information on the program. Offer ends Dec. 31, 2012.

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Your 2012 OSBA dues statement will be mailed in late November. You will also be able to renew online at www.ohiobar.org/dues beginning in mid-November. To encourage you to renew quickly and easily online, you will receive a coupon code worth 50 percent off an online CLE seminar of your choice if you renew online before Dec. 31, 2012. Watch for more information in your email inbox or visit www.ohiobar.org/dues.

Renew prior to Dec. 31 and enjoy uninterrupted delivery of all your OSBA member benefits. Thank you for your continued support of the Ohio State Bar Association.

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Service abroad under the new civil rules

by Michael O. Eshleman

The amendments to the Civil Rule 4.5 that took effect on July 1, 2012, clarify the procedures for serving defendants found abroad.1 For the first time, the rules acknowledge the Hague Service Convention of 1965, which the federal rules had done for years.2 Seven dozen jurisdictions are covered by the convention, including Canada, Mexico, the United Kingdom, France, Germany, Italy, Japan, China, India and Australia.3 Issues with service abroad come up more regularly than you might think—frequently encountered are divorce and custody cases involving an immigrant who has returned home.

Two Ohio appellate courts have incorrectly read the convention as prohibiting service by mail and the new rule helps—but does not eliminate—that confusion.4 The new rule provides:

If the foreign country is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, service shall be pursuant to a method allowed by the Articles of that Convention, including any method allowed by Article 8 or Article 10 to which the foreign country has not objected in accordance with Article 21.5

The convention created a new method for service, the “central authority” mechanism. Each signatory nation designated an official who would receive requests for service from abroad and then execute those requests.6 For example, the U.S. Department of Justice is the American central authority.7 (Requests are made directly to the foreign central authority—not through the American one.) The Ohio decisions incorrectly held that defendants must be served through the central authority.

As accepted by the new Ohio rule, the central authority mechanism does not pre-empt other means of service.8 The convention in Article 8 allows diplomats to serve papers. (The U.S. State Department forbids American diplomats from doing so unless a foreign government is the defendant.)9 Letters rogatory—where a court of one nation asks the help of courts in another—are allowed under Article 10(b).

That language could be read as requiring the use of the central authority. It also side-stepped the question of service by mail and was correctly changed.10 The final rule still needs improvement since it would be far better if the rule explicitly allowed mail service and thus overruled the mistaken Ohio cases.

The comment to the rule also is problematic, stating “delivery by commercial carrier service … is also authorized when the Hague Convention does not apply.”11 That language implies that the service convention does not allow the use of commercial delivery services. This is incorrect, as Hague Conference has stated there is no problem with the use of commercial carriers.12

The Ohio rules amendment provides that in countries not covered by the service convention that service may be made by mail, commercial delivery service and personal service.13 It also allows service “as directed by order of the court” which could allow service by email.14

Some things to keep in mind when serving defendants abroad:

• The service convention does not apply when a defendant’s address is unknown.15

• The service convention does not apply when it is possible to serve a defendant within the United States.16 This may be either directly or through agents—which can include corporate subsidiaries.17

• Many foreign governments require documents served through the central authorities to be translated into their own languages.18 This does not need to be done by an official translator. (Google Translate is a free and useful service and it works best if one formulates the English with “Dick and Jane” simplicity.) To save translation expenses, draft the initial complaint as simply and succinctly as possible—then amend it later if the defendant appears.19 Even where translation is not required, the use of English when the defendant doesn’t understand the language violates due process.20

• Have the court’s clerk serve all papers using registered mail with a pink return receipt—Postal Service Form 2865. (The familiar green return receipt—Form 3811—is only for domestic use.) Some countries do not recognize the American practice of having attorneys serve papers directly so get the court to do it.

• Japan poses a significant problem with service.21 It is a service convention signatory and has not objected to service by mail yet its courts will not recognize foreign judgments obtained after mail service. So serve defendants by mail and the central authority. Many times Japanese car companies are the defendants and as all foreign carmakers are required to appoint an American agent for process it is often possible to serve the defendant within the United States.22
• If a central authority is used, be prepared for service to take months whereas service by mail can be accomplished in a fortnight in places such as England or Italy. So either argue to the judge that the terms of the service convention allow mail service or be prepared to wait.

• The United States and most Latin American countries are signatories to a similar convention on service, the Inter-American Convention on Letters Rogatory.27 This alternative can be used where the service convention does not apply.

• Be redundant in your efforts—serve by mail and the central authority. This is particularly true if you might have to enforce the judgment in foreign courts.

Remember the service convention was to make things easier. Yet some perversely want to make it more difficult. Fight that impulse.

Author bio

Michael Eshleman is an assistant public defender for the New Mexico Public Defender Department, Hobbs, N.M. He graduated from the University of Dayton School of Law and clerked for Judge Stephen A. Wolaver of Greene County Common Pleas Court.

Endnotes


5 Civ.R. 4.5(A).

6 Service Convention, art. 2.

7 28 C.F.R. §0.49. The foreign central authorities are listed in Martindale-Hubbell International Law Digest IC-1 to IC-14. A supplement to that list is at Eshleman, Pregno at 356-363.

8 Cf. M.L. Saunders, The Hague Conference on Private International Law, 1966 Austl.Y.B.Internatl.L. 115, 124 (Saunders was head of the conference at the time the service convention was adopted).

9 22 C.F.R. §92.85 (State Department prohibition on serving process); 28 U.S.C. § 1608(a) (serving process on foreign government); 22 C.F.R. §93.1 (same).

10 See the status table in Eshleman, Pregno at 354-363.


14 Eshleman, Pregno passim.

15 129 Ohio St.3d lxvi-lxvii.

16 The revised language was proposed at 131 Ohio St.3d xxxix, printed in the Feb. 6, 2012 OSBA Report.

17 131 Ohio St.3d lxiv.


19 Civ.R. 4.5(B).


24 Service Convention, art. 5. See also Annotation, Requirement That Summons and Complaint Be Translated for Proper Service Under Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 7 A.L.R.Fed.2d 329 (2005).


26 Cf. Covey v. Town of Somers, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956) (giving notice to defendant when plaintiff knew the defendant could not understand the document violates due process).

27 See Eshleman, Pregno at 364-367 (discussing Japan).


The Ohio Constitutional Modernization Commission goes to work

by William K. Weisenberg

An examination of the Ohio Constitution is a daunting task. It requires careful analysis, research, full and open debate, and special scrutiny. It is an important exercise and one to be taken in a deliberate and methodical manner. It is in essence an examination of the state’s structure and foundation, enshrined in a governing document on which all else is built.

The Ohio General Assembly is to be commended for its enactment of Amended House Bill 188, the act establishing the Ohio Constitutional Modernization Commission. With House Speaker William G. Batchelder (R-Medina) as its lead sponsor and bipartisan support, the act sets forth the specific purpose of the commission and its composition.

The act provides: “The members of the Ohio Constitutional Modernization Commission should meet for the purpose of:

• Studying the Constitution of Ohio;
• Promoting an exchange of experience and suggestions respecting desired changes in the Constitution;
• Considering the problems pertaining to the amendment of the Constitution; and
• Making recommendation from time to time to the general assembly for the amendment of the Constitution.”

The act provides that “a commission recommendation is void unless it receives two-thirds vote of the membership of the Commission.” The super majority vote is important in that it ensures a consensus-building process before recommendations are made to the General Assembly. It takes a three-fifths vote of both chambers of the General Assembly to place a proposed Constitutional amendment before the electorate for its approval. The checks and balances in place for this important process are very significant in that it promotes the delicate balance between the majority and minority.

The commission is composed of 32 members (see accompanying list), 12 legislators (six Republicans and six Democrats) and 20 public members who are not from the General Assembly. The 20 public members are a diverse group representing a broad cross-section of the state. Each brings an extensive background in public policy that will contribute well to this exercise. I should note that OSBA President Patrick F. Fischer was selected as one of the public members. The co-chairs of the commission are Rep. William G. Batchelder and Rep. Vernon Sykes (D-Akron).

The commission will report to the General Assembly at least once every two years until its work is concluded with an expiration date of July 1, 2021. It is expected that other Ohioans will have an opportunity to serve on the commission as appointments end on the first day of January of every even-numbered year. Members can be reappointed.

The OSBA testified in support of Amended House Bill 188 and noted that it would assist the commission in any way possible. Our committees and sections are poised to serve as a resource on request.

There are a number of subjects the commission will examine in the months and years ahead. Among these are school funding; term limits for the General Assembly; redistricting regardless of the outcome of Issue 2 on the Nov. 6, 2012, ballot; zoning; judicial selection (election versus appointment of Supreme Court justices); home rule; and state debt. All of these are worthy subjects for examination and will require extensive study and debate. You can expect hearings, forums and other events to occur throughout the state as the commission will want to hear from Ohioans on these important subjects.

I am pleased to say that I know many of the members of the commission. They are dedicated individuals who will perform their duties and responsibilities in a professional manner with
one objective in mind—what is in the best interest of the citizens of Ohio as we move forward in the 21st century. We too have a responsibility. And that is to bring to the attention of the commission issues we believe important for examination. Therefore, please let me know what thoughts you have and I will make sure they are communicated to President Fischer as well as the members of the commission. You can contact me at wweisenberg@ohiobar.org or (614) 487-4414.

**Goodbye and thank you**

We are saying goodbye and thank you to several legislators who have been great friends of OSBA and are either retiring because of term limits or returning to their law practice.

Senate President Tom Niehaus is retiring as a result of term limits after exemplary service in the Ohio General Assembly. Niehaus has presided over the Senate with dignity and fairness and treated all with the utmost respect. He has always represented the highest standard of public service.

Representative Danny Bubp, chair of the House Judiciary Committee, retires and returns home to Brown County to practice law. Bubp always had an open door to our legislative proposals and presided over his committee in a respectful manner, bringing levity to the committee when needed.

We say farewell to three other lawyers returning to practice. Senator Mark Wagoner, chair of the Senate Judiciary Committee, returns to his law firm in Toledo. Wagoner served in both the House and Senate and his service can only be characterized as superlative and with distinction. He sponsored a number of bills for the OSBA and served as a great advocate for the legal profession and judiciary.

Representative Dennis Murray returns to Sandusky and Rep. Mark Okey to Carrollton. Both came to the General Assembly with extensive trial experience and displayed their talent in working on complex issues. They consider their time in the legislature as a true call to public service and have made lasting contributions to our state.

If you have a moment, please drop a note to these fine public servants who have given much to our state.

William K. Weisenberg is OSBA assistant executive director for public affairs, government relations and diversity initiatives.

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<td>Senate (Republicans 3; Democrats 3)</td>
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<tr>
<td><strong>Republican:</strong> Sen. Shannon Jones; Sen. Larry Obhof; Sen. Mark Wagoner</td>
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<td><strong>Democrat:</strong> Sen. Capri Cafaro; Sen. Michael Skindell; Sen. Charleta B. Tavares</td>
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<th>House (Republicans 3; Democrats 3)</th>
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<td><strong>Democrat:</strong> Rep. Kathleen Clyde; Rep. Dennis Murray; Rep. Vernon Sykes</td>
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<td>Karla L. Bell, Shaker Heights</td>
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<td>Joseph P. Rugola, Westerville</td>
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<td>Richard B. Saphire, Dayton</td>
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<td>Robert A. Taft, Springfield</td>
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<td>Kathleen M. Trafford, Columbus</td>
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<td>Richard S. Walinski, Toledo</td>
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The Supreme Court of Ohio recently reviewed the constitutionality of state law that mandates juveniles adjudicated “public-registry-qualified juvenile-offender registrants” (PRQJORs) must register as “juvenile offender registrants,” if convicted of certain sexually oriented or child-victim oriented offenses. In the case, In re C.P., the majority of the Court addressed whether R.C. 2152.86 violated the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the U.S. Constitution, and Article I, Section 9, of the Ohio Constitution and the Due Process Clause of the 14th Amendment to the U.S. Constitution.1

In ruling that the R.C. 2152.86 registration requirement is unconstitutional, the Court expressed disapproval of the mandate that juveniles comply with registration and public notification provisions that are automatic, lifelong and present obstacles to juvenile offenders related to stigma and confidentiality. The majority essentially found that it was unconstitutional to punish a juvenile with a lifetime penalty by requiring public disclosure of his or her offender registrant status, without first requiring a juvenile court to exercise its discretion to determine whether such a punishment is appropriate.

Because of the ruling, some confusion may arise relating to the potential scope and applicability of the decision in future juvenile sex offender registration cases. This potential for confusion was persuasively noted by Justice Cupp in his dissent in In re C.P., in which he stated that the majority’s decision will affect “juvenile offenders and the juvenile judges who will preside over their cases,” by “leav[ing] it to those judges to unravel the mysteries of this decision’s application.”2

Justice Cupp’s prescient observation is correct. Serious questions about the future of juvenile sex offender registration after In re C.P. are raised from the Supreme Court majority’s general expression of concern regarding stigma, confidentiality and reporting requirements with respect to juveniles. The majority’s analysis conveyed the need for protection of confidentiality of juvenile offender information in general, not just as it relates to R.C. 2152.86. The majority explained that “[c]onfidentiality has always been at the heart of the juvenile justice system” and “[t]hat core principle is trampled by any requirement of public notification.”3 Such confidentiality and stigma concerns are not confined to PRQJORs classified under R.C. 2152.86, since a juvenile court may also require public notification for non-PRQJORs who are classified as registrants under other statutes.4

Based on such concerns, the question arises whether the majority’s ruling is limited solely to cases involving automatic, lifetime sexual offender registration requirements or whether the five justices in the majority may conclude in the future that the general juvenile sexual registration and notification requirements violate the confidentiality standards that govern juvenile proceedings. For the protection of Ohio residents, and to avoid any confusion, justice and prudence dictate that In re C.P. be limited in its application solely to cases involving the imposition of automatic, mandatory, lifetime sex offender registration and notification requirements under R.C. 2152.86.
As an additional concern, Justice Cupp noted that some confusion will now exist regarding how lower courts classify juvenile offenders who would have previously been automatically classified as juvenile registrants under R.C. 2152.86. His opinion questions whether lower courts may now exercise their discretion to decide that a shorter reporting period would be appropriate under the law created by the majority or whether PRQJORs may never be classified as sex offenders under R.C. 2152.86. To remedy this concern, the Ohio General Assembly should review this issue and determine if a change should be made to address the concerns raised in the C.P. opinion or adopt a new statute that is constitutional under the majority analysis in In re C.P. After all, “the legislature is entrusted with the power to continually refine Ohio’s laws to meet the needs of our citizens.”

In applying In re C.P., attorneys, as well as lower courts, must be aware that its holding is currently limited to finding only the classification of juveniles as PRQJORs under R.C. 2152.86 to be unconstitutional. However, given the five-judge majority’s reasoning and considerable discussion of confidentiality concerns in In re C.P., as well as Justice Cupp’s concerns about the clarity of the majority’s holding, future consideration of the matter of juvenile sex offender registration is on the horizon.

**Endnotes**

1. In re C.P., 131 Ohio St.3d 513, 2012-Ohio-1446.
2. Id. at ¶136.
3. Id. at ¶62.
4. R.C. 2152.82(B).
5. Id. at ¶135.

**Author bio**

Judge Diane V. Grendell has served on the 11th District Court of Appeals for 11 years, writing and participating in more than 3,850 opinions from Ashtabula, Geauga, Lake, Portage and Trumbull counties. Judge Grendell has also been requested to hear cases on the Supreme Court of Ohio on nine occasions, and to date has had more than 73 of her opinions published.
Foundation News

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Giving grants is central to the work of the Ohio State Bar Foundation (OSBF). In the past 18 years, the OSBF has donated over $6 million to organizations throughout Ohio working to improve the justice system by supporting local, regional, and statewide nonprofit entities. Here are two recent projects impacting communities around the state.

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While there are many laws in existence that protect the rights of crime victims, there is a vast inconsistency with how they are applied. The goal of The Justice League of Ohio is to ensure that the constitutional, statutory, and inherent rights of victims of violent crime are consistently upheld throughout the criminal justice process. Through a grant from the OSBF, over 340 sexual assault nurse examiners, hospital legal counsel, law enforcement, prosecutors, prosecutor-based victim advocates, domestic violence shelter personnel and rape crisis center personnel participated in The Justice League’s cross-disciplinary training sessions. For more information about The Justice League, please visit www.thejusticeleagueohio.org.

Ohio Justice and Policy Center

According to the Ohio Justice and Policy Center (OJPC), one in six Ohioans has a misdemeanor or felony conviction. As a result, they face hundreds of state statutes and rules that restrict their employment, housing, family involvement, civic participation, and other rights and privileges.

The Ohio Civil Impacts of Criminal Convictions (CIVICC) database, created by OJPC with a grant from the Ohio State Bar Foundation, is a premier Web-based tool which identifies the civil impacts triggered by a specific conviction, and conversely lists what misdemeanor or felony offenses are likely to trigger a particular collateral consequence. It presently catalogues more than 750 civil impacts and is still growing.

The CIVICC database is not a replacement, but a resource, for legal analysis: It offers a faster and more accurate way for lawyers and judges to get the information they need to make informed decisions. The tool is also enormously helpful to social workers, school admissions offices, educators, job-placement professionals, and others working with people with criminal records that direct their clients to appropriate jobs and job-training programs.

Visit the CIVICC database online at http://opd.ohio.gov/civicc/. For more information, contact Pamela H. Thurston, OJPC Staff Attorney, at pthurston@ohiojpc.org.

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Jon A. Oldham, Oldham Kramer, is the recipient of the Greater Akron Chamber's "30 for the Future" award.

Cincinnati

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Mary L. Cicelli, McGinty Hilow & Spellacy, has been selected as the 2012 Distinguished Service to EHHS Award recipient for Kent State University's College of Education, Health and Human Services Hall of Fame Awards.

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Larry H. James, Crabbe Brown & James LLP, has received a Distinguished Alumni award from Cleveland State University.

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Joyce A. Campbell, Fairfield Municipal Court, has been selected for the Toll Fellowship Program.

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Shannah J. Morris, Frost Brown Todd LLC, has been named a YWCA of Greater Cincinnati Rising Star for 2012.
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11/1 - Cleveland - The Ritz Carlton
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11/8 - Columbus, Fairfield

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11/2 - Columbus - Ohio State Bar Association

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Secrets to Powerful Presentations
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Registration: 8 a.m.
Program: 8:30 a.m. - 4 p.m.
11/5 - Akron, Cleveland, Columbus, Perrysburg

Adobe Acrobat
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Program: 1 p.m. - 5 p.m.
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11/6 - Fairfield - Receptions Conference Center North
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11/8 - Cleveland - The Ritz Carlton

Live Simulcast
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3.0 CLE credit hours (PM)
Registration: 12:30 p.m.
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11/12 - Akron, Columbus, Perrysburg

Powerful Witness Preparation
6.0 CLE credit hours
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Program: 8:30 a.m. - 4 p.m.
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11/19 - Columbus - Ohio State Bar Association

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11/16 - Cleveland - The Ritz Carlton
11/19 - Columbus - Ohio State Bar Association

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12/7 - Cleveland - The Ritz Carlton

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11/30 - Columbus, Fairfield, Perrysburg

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12/3 - Akron, Columbus, Perrysburg

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