

Magistrate Charlita Anderson-White Becomes the 83rd President of the Lorain County Bar Association



I am so very proud and humbled to give this 2019-2020 President's Message. It is such an honor to serve both the Lorain County community and our peers. I'd like to thank you, the LCBA members, our Executive Director, Jeannie Motylewski, our board and outgoing President, Andy Young, for your support and confidence in me. I hope to fulfill my duties in accordance with the LCBA mission and to further the accomplishments we have made through these many years.

I have big shoes to fill. Andy Young worked diligently to advance a health and wellness agenda, which to that end, also highlighted and promoted Lorain County's art, music and literature. We owe it to ourselves and the community to step away from the serious nature of our business and support our local offerings. Lorain County is the keeper of some of the best kept secrets in dining, music, arts and entertainment. Local providers deserve our support.

Andy knows the personal benefits of stopping to smell the roses. Taking time to fellowship with one another outside of court soothes mind, body and spirit. I want to encourage you all to continue to support his programs. Please continue to participate in our LCBA book club. We enjoy a delicious lunch and discuss a wide range of topics, including works by a local author. Also, stay tuned for information regarding regular health walks and other physical activity.

I look forward to continuing the LCBA concentration on service, advancement of camaraderie, recognition of the contributions of our attorneys and enhancing the public perceptions of the bar. Our Executive Director, Jeannie Motylewski, takes extreme care in her stewardship of the LCBA. With the support and unyielding efforts of our board and membership we have offered a variety of programming.

Our many CLE seminars are inclusive, active and engaging. The Voices for Victims Concert will celebrate its 5th year on June 4th. A fifth local victim service provider will receive the proceeds to assist victims of crime. We have recognized the stellar contributions of attorneys and community leaders alike. And we have celebrated the first female attorney in Lorain County with the "Maude Washburn" award, to recognize the boldness and courage of women in law. Moreover, our Modest Means program and partnership with Legal Aid's Legal Clinics are a vital resource for the low income population.

This year, we will strive to renew our college scholarship initiative. And with your help, we will reinvigorate our annual social outings...our golf outings, clam bake and sports events. Not only do we want to revitalize past social programming, we will give them a purpose that is important to you, much like Voices For Victims. All in all, this message is to assure you that we will continue to bring new ideas to our community. But, we need your help. We are always open to new ideas, programming, services and participation in our committees.

This organization works for and with you. Every member is welcome to make a difference. Please feel free to tell us: What do you want to learn? What do you want the community to know? What services do we need? Who would you like to impact? What causes are important to you?

Let's extend the LCBA's exciting year. Be mindful of how our community and our individual passions and talents are inextricably intertwined. This year, as we invite new lawyers and new members into this collection of friends, neighbors, adversaries and colleagues, we must leave them with a sincere message of purpose and inclusion. That we will and must do.

Again, I thank you so much. Please feel free to contact me by email charlitad@hotmail.com or by phone 440-323-8416. We look forward to working with you.

GO GREEN • Senate Bill 57 and Redefining Hemp

Attorney Brian M. Pritikin

Until a few years ago, the phrase 'going green' referred to engaging in a more ecologically responsible lifestyle for the sake of the environment. The last 10 years, however, have seen businesses and states 'going green' as waves of regulations legalizing marijuana and hemp are passed across the nation.

To date, 33 states and the District of Columbia have legalized marijuana for medicinal use with various forms of similar legislation pending in multiple other states. Ten states and the District of Columbia have legalized recreational marijuana use. Eventual nationwide legalization within the states seems inevitable.

Both hemp and marijuana come from the cannabis plant and both are currently illegal to possess or use under Ohio law, unless otherwise licensed through Ohio's Medical Marijuana Control Program, or OMMCP. Ohio's law defines marijuana as 'all parts of a plant of the genus cannabis.'¹ Under Ohio law, then, both marijuana and hemp are controlled substances. Only those so licensed can cultivate marijuana, and because hemp falls under Ohio's definition of marijuana, the same holds true for cultivating hemp.

CBD's use is becoming increasingly popular, but it cannot be consumed in Ohio without a prescription. House Bill 523 created the OMMCP, but it did not carve out an exception for the possession or use of CBD, which means CBD oil falls under Ohio's definition of marijuana. For that reason, the Ohio Board of Pharmacy stated late last year that CBD-consumable products would only be available through state licensed dispensaries. So, to legally possess CBD oil in Ohio, genuine plant extract or synthetic, with little to no THC content, one must: find a doctor licensed to prescribe marijuana, get a prescription for CBD oil, and then find a dispensary. Of the 56 dispensaries that have received licenses to operate, only 15 had opened at the time of the drafting of this article. Those dispensaries that have not yet been granted certificates of operation cite issues with such things as city ordinances preventing their operation. This broad definition exists despite the fact that hemp contains almost no Tetrahydrocannabinol, or THC (generally less than one percent), the component of the cannabis plant that can cause psychoactive reactions. Hemp contains higher levels of Cannabidiol, or CBD, which is popularly used to treat humans and animals suffering from a host of ailments, with results that have been described, in some circumstances, as life-changing. The remaining fibers in the hemp plant are used in the production of clothing, construction materials, rope, biofuel, plastic composites, health food, nutraceuticals, and hundreds of other products. Hemp has many applications, but it does not get people 'high.'

SENATE BILL 57

Last December, Congress passed the Agriculture Improvement Act of 2018, more popularly known as the Farm Bill, which the President subsequently signed into law. The Farm Bill removed hemp from the federal list of controlled substances by changing its definition so that it is no longer defined as marijuana, which remains illegal under federal law. Hemp is now defined at the federal level as:

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*'-the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.'*²

The Farm Bill does not preempt any state law regulating hemp's production or any state law that is 'more stringent' than federal law in regulating hemp production. Consequently, any state can limit or outlaw the production of hemp within that state or instill additional restrictions upon its production, as long as any such restrictions comply with all federal requirements.

Currently pending before the Ohio House is Senate Bill 57, which unanimously passed the Ohio Senate. If passed the by the House, SB 57 would legalize industrial hemp and sales of CBD products. Should SB 57 pass in its current form, it would decriminalize hemp cultivation and production. Ohio's Department of Agriculture would be charged with licensing and regulating the growers and processors. But, there would be no requirement for stores to hold licensure to sell hemp products, as plants will be tested to ensure they do not contain more than 0.03 percent of THC. The large amount of regulatory and private business support that SB 57 has received is impressive and serves as an indicator of its potential economic impact.

SB 57 took a page from the Farm Bill in that it seeks to remove hemp as a controlled substance through 'redefinition.' In SB 57's current form, hemp is defined as:

*'-the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths per cent on a dry weight basis.'*³

Passing SB 57 with this definition included would remove hemp from Ohio's Controlled Substances Act and it would no longer be considered an illicit drug. Removing the federal restrictions on the production of hemp opened the doors to an almost unlimited amount of new economic opportunities. Passing SB 57 will undoubtedly bring similar opportunities to Ohio.

Should SB 57 pass in its current form, it will create a host of new regulatory, business and employment issues to navigate. Persons or businesses with questions about medical marijuana and/or hemp in Ohio should contact competent counsel for assistance interpreting the new rules and regulations that will follow SB 57's eventual passage.

¹ R.C. 3719.01

² Farm Bill, Section 10113

³ SB 57, B928.01(B)

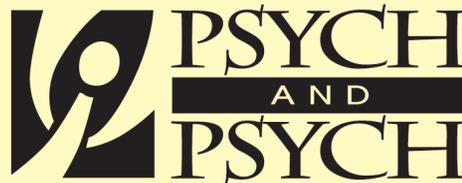
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WORKERS' COMPENSATION IMMUNITY FOR SUBCONTRACTORS ENROLLED IN A GENERAL CONTRACTOR'S SELF-INSURANCE PLAN

Margaret O'Bryon



Ohio law allows a general contractor on certain large projects to 'self-insure' and provide workers' compensation coverage for its own employees and for the employees of subcontractors that are enrolled in the general contractor's self-insurance program. Under Ohio law, an injured employee may not pursue a negligence claim against the general contractor or the enrolled subcontractor in the general contractor's self-insured plan. Instead, the injured employee must seek compensation pursuant to Ohio workers' compensation laws.

Ohio R.C. sections 4123.35 and 4123.74 provide that a self-insuring general contractor for a construction project is a single employer, for workers' compensation purposes, for employees working for the enrolled subcontractor on the project. R.C. 4123.35(O) furthers the purpose of the workers' compensation law by putting a general contractor and multiple subcontractors on the same footing as a large construction project undertaken by a single contractor. This encourages subcontractors to engage in large-scale construction projects that they might otherwise shy away from because of accident-related litigation concerns.

This system provides a quicker and more certain recourse for injured employees. In return, the self-insuring employer gains protection against claims by its own employees as well as the claims of the enrolled subcontractor employees. Additionally, the enrolled subcontractor also receives protection against claims by employees of another enrolled subcontractor.

As recently determined by the Ohio Supreme Court in *Stolz v. J & B Steel Erectors*, 155 Ohio St. 3d 567 (2018), this system of self-insurance for contractors and sub-contractors does not violate the Ohio Constitution's right-to-remedy, right to jury, or equal-provisions for injured employees while working for on a self-insured construction project.

Subcontractors should consider whether to be insured under the general contractor's self-insurance workers' compensation policy and general contractors should consider the benefits, risks and costs of providing the self-insurance coverage to the subcontractor.

Margaret O'Bryon is an attorney with the McDonald Hopkins firm in Cleveland. She focuses her practice on workers' compensation strategies and representation, public law, labor and employment. and labor and employment litigation.



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Rules of Evidence

Attorney John Toth

I am John Toth, a criminal defense attorney from Amherst. I regularly practice in Lorain & Erie Counties and have been licensed since 2010. Prior to opening my practice, I was a prosecutor in Cuyahoga County.

I am writing this portion of the newsletter because over the past year I have been in various criminal trials for almost a quarter of the year. These trials ranged from rape, to OVI, conspiracy, to attempted murder. Over the past decade, I have been involved with over a hundred trials ranging from juvenile delinquency to adult felonies.

Over the past year, I have watched a few evidentiary issues emerge (or reemerge) in criminal litigation. I also have general tips for an attorney getting ready for trial. Generally;

1 The key to winning an evidentiary issue is knowing your court

As a former prosecutor, and now a defense attorney, I have practiced before dozens of judges. Walking into a trial without scouting your court is a fool's errand. Watch a trial or an evidentiary hearing before having a trial with that judge. Get a feel for the formalities expected, the physical position the court wants the objections stated from, and what/how they want them stated.

2 Be prepared

You're a trial lawyer. You need to know the rules of evidence and have a sound theory of the case so that you know what evidentiary issues will likely arise. Have a Rules of Evidence Summary Trial Guide in your file. Have caselaw you know is needed printed and in your file.

3 If your pushing the bounds of the law

If you are pushing the bounds of a specific rule, arguing against the norm, or distinguishing your case from a general rule; Bring three copies of your case law to court. One for you, the other party, and the Court. No one is listening to your cite, they want to see the case law. The following issues are ones that I have seen emerging or re-emerging in the counties I practice.

4 Court's Witness Motions

Evidence Rule 614 allows for the Court, on its own motion, or at the request of a party, to call a witness. This allows all parties to cross examine a witness. The court's power to call a witness pursuant to Evid.R. 614(A) 'is inherent and should be exercised in fulfillment of the court's fundamental obligation to assist in arriving at the truth.' State v. Moore, 2019 Ohio 239.

This rule allows the state to 'Shanghai' a witness that is aligned with the Defense. Normally under Evidence Rule 607, a party calling a witness cannot impeach that witness by their prior inconsistent statements unless the are surprised by the witness's change in testimony and it damages the party calling the witness's case.

A decade ago, the motion was used to maneuver around a recanting victim. It was a work around for the victim who talked to police, said the Defendant hit him/her, then was called a week before trial and said she was lying. At trial, he/she couldn't be impeached as it wasn't a 'surprise'.

Recently, creative prosecutors have been utilizing Rule 614 on witnesses generally aligned with your party. It is a way to harness the powers of cross examination on your own witness. The State cites that the Court's duty is 'to assist in arriving at the truth.' The State then utilizes this testimony to bolster their own witnesses and corroborate their theory of the case.

Where this comes in as an impact is in non-confrontational issues. These motions are powerful but limited in scope. It is for witnesses that don't have grounds to assert the fifth amendment that cannot fabricate or deny the existence of some piece of evidence.

An example of a novel use of Rule 614 is for laying a foundation for other evidence via the 'other guy's witness':

"This phone number was used by your boyfriend at the time? And the records show it was used at the scene/time of a murder."

"This is a Facebook picture you posted of you and your brother at ABC Bar on July 1st? Where the victim alleged she met the Defendant before she was raped."

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5 Rule 16K

Lately there has been an uptick of cases involving expert reports and Criminal Rule 16(K). Rule 16(K) states that:

“An expert witness for either side shall prepare a written report summarizing the expert witness's testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert's qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial.”

There is a growing trend to exclude expert reports that are not exchanged pursuant to Rule 16(K).

In *State v. Walls*, 2018-Ohio-329, 6th District, the State brought a doctor's expert report on sexual grooming and abuse on the eve of trial. The Defense objected. The trial court let the expert testify.

This was reversed, based on Rule 16(K)'s requirement that 'Failure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial. Walls held that the failure to disclose the written report in enough time pursuant to Rule 16(K) precluded the expert's testimony at trial.'²⁷

This is the scenario where the State of Ohio gives Defense Counsel an expert report a week before trial. The Defense objects, but the trial court does not want to continue the trial date. The appellate districts are split on this issue. It is a meaningful objection if this issue arises.

6 Attorney Statements

As attorneys we are the agents of our clients. In *State v. Parham*, 2019 Ohio 358, another 6th District case, the Defendant retained counsel. He is charged with murder. Counsel goes into Court requesting a bond amendment. Counsel cites that the Defendant was present at the murder but didn't have anything to do with it. Unhappy with Counsel's efforts to reduce bond, he fires Counsel.

Defendant has a trial. He testifies that he wasn't at the scene of the murder. And, the client is crossed on his attorney's statements at the bond hearing. Under Evid.R. 801(D)(2)(d), these statements are not hearsay as they are "statements made by an attorney concerning a matter within the employment may be admissible against the party retaining the attorney."

In *Parham* it was an on the record statement made at a bond hearing. It was cross examination of the Defendant. Creative lawyering has taken this notion to another level.

I have recently dealt with this issue in a motion in limine. The State intended to introduce a pre-indictment and pre-arrest alibi of the Defendant that was told to police by counsel. Counsel told Police that it couldn't have been his client who committed the crime as he was in Michigan at the time of the offense with a handful of receipts from the hotel in Michigan. It was great, except the receipts showed the Defendant leaving for Michigan right after the crime occurred. Warranting a flight instruction under OJI.

Since the Attorney's statement is not hearsay under Evid.R. 801(D), the same rules would apply as in *Parham*. Counsel made this statement on his client's behalf. I had a few factual issues that kept this issue out as a preliminary matter, and a plea was entered at the last moment.

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MARSY'S LAW

Ohio Crime Victim Justice Center is a 501(c)(3) non-profit legal services organization whose mission is to ensure that victims' rights are protected and enforced throughout the criminal justice process. Ohio Crime Victim Justice Center provides free legal representation to victims to remedy rights violations, free trainings to courts, prosecutors, defense counsel, advocates, and allied professionals, and free advice to victims' advocates on victims' rights issues. For more information, please visit www.ocvjc.org.

1 Who can invoke the rights provided by Marsy's Law?

An individual must meet the definition of 'victim' in order to exercise the rights contained in Marsy's Law. 'Victim' is defined as "(1) a person against whom the criminal offense or delinquent act is committed OR (2) [a person] who is directly and proximately harmed by the commission of the offense or act."

Also, '[t]he term 'victim' does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.'

What does 'direct and proximate harm' mean?

Persons who are directly and proximately harmed by the criminal offense or delinquent act are also 'victims' under Marsy's Law. The concept of direct and proximate harm giving rise to liability is a concept originating in tort law. Per legal dictionaries, direct and proximate harm 'must have caused the damages, without intervention of another party, and cannot be remote in time or place.' Essentially, in tort law, a defendant is liable for persons directly and proximately harmed by the defendant's tortious conduct if the harm is foreseeable to the defendant.

Examples of persons who are directly and proximately harmed as the result of criminal conduct include, but are not limited to: 1) parents of child sexual assault victims; 2) surviving family members of homicide victims; and 3) children who witness domestic violence incidents. These persons would be 'victims' per Marsy's Law as they are directly and proximately harmed by the criminal offense or delinquent act and their harm is foreseeable to the criminal defendant who caused it.

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2 How do victims exercise their rights under Marsy's Law?

Marsy's Law provides that '[t]he victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated [in Marsy's Law] and any other rights afforded to the victim by law.'

'If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.' The term 'petition' commonly means to either 1) appeal or 2) file a complaint for an extraordinary writ. It is Ohio Crime Victim Justice Center's position that victims may exercise either option, as appropriate given the circumstances. Practitioners in the 8th District should take note of the court's decision in *State v. Hughes*, 8th Dist. Cuyahoga No. 107697, 2019-Ohio-1000.

Ohio Revised Code Section 2930.02 also provides victims with the right to appoint a victim's representative. This person cannot be the offender, but can be anyone else of the victim's choosing. The representative can exercise the victim's rights along with - instead of - the victim, in the victim's discretion. While representatives may be able to take informal steps to protect and enforce victims' rights, representatives should keep in mind that they are not 'the victim' and may not proceed pro se. Any attempt by a representative to take legal action could be construed as unauthorized practice of law and must be avoided. Victims' representatives may contact legal counsel for guidance on which steps may and may not be legally permissible for representatives when attempting to protect and enforce victims' rights.

3 What rights do victims have under Marsy's Law?

The right to be treated with fairness and respect for the victim's safety, dignity, and privacy.

Safety and the right to reasonable protection from the accused or any person acting on behalf of the accused.

The victim's safety, dignity, and privacy should be considered in all decisions made in the criminal justice process.

The right to be informed, in writing, of all Marsy's Law rights.

Upon first contact, law enforcement must provide victims with written information about protection orders, victims' compensation, and contact information for the law enforcement agency investigating the case, as well as information about local resources to aid victims with safety, counseling, and medical needs. This requirement can be met by providing victims with the Attorney General's publication 'Ohio Crime Victims' Rights.'

The key consideration should be compliance with the spirit of Marsy's Law by providing victims with the information necessary to have a meaningful opportunity to participate and exercise any and all of the rights the victim wishes to exercise.

The right, upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act.

A reiteration of previously existing law under Ohio Revised Code Section 2930.06, Marsy's Law provides victims the right to request - and receive - notification of public proceedings.

Victims are required to provide prosecutors and other criminal justice officials, as applicable, with their most up to date contact information, which can include phone numbers, addresses, or email addresses. Pending legislation, if passed, will require prosecutors' offices to keep records of attempts to provide notice and make attempts at least three times.

The right to be present at all public proceedings involving the criminal offense or delinquent act.

Much like the right to notification of proceedings, the right to be present at public proceedings has existed in Ohio since the 1990s in Ohio Revised Code Section 2930.09 and since 2001 in Evidence Rule 615 (the separation of witnesses rule). This right extends to a victim's representative appointed by the victim, as well.

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The right to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated.

Like many other Marsy's Law rights, the key to compliance with the new right to be heard is to provide meaningful notice of the time, date, location, and nature of proceedings, upon victim request.

The right, upon request, to confer with the attorney for the government.

The right to confer is another right preserved from Ohio's statutory scheme under Ohio Revised Code Section 2930.06. Specifically, as has been mandated since the 1990s, the prosecutor should confer with the victim, upon request, and at specific meaningful junctures in the case, such as prior to recommending pre-trial diversion, prior to dismissing or amending an indictment, prior to offering or accepting a negotiated plea, and prior to trial.

The right to proceedings free from unreasonable delay and to a prompt conclusion of the case.

Ohio Revised Code Section 2930.08 has provided victims with the substantially similar right to object to substantial delays in prosecution since the 1990s.

The right to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused, except as authorized by Section 10 of Article I of the Ohio Constitution.

Interviews

In Ohio, defendants and defense counsel have never had the right to compel a pre-trial interview of a victim. Marsy's Law merely makes explicit current Ohio law in this regard. Prosecutors have long informed Ohio's victims of the right to refuse to be interviewed by the defendant, and should continue to do so.

Depositions

In the criminal context, the criminal rules and juvenile rules provide any party the ability to depose any witness in the very limited circumstance in which the witness will be legally unavailable to provide trial testimony.

Practically speaking, it is very infrequent that a defendant would seek to preserve the trial testimony of a victim.

Discovery requests

Marsy's Law allows victims to refuse to turn over information or materials to defendants or defense counsel pursuant to defense discovery requests under Criminal Rule 16. Defendants may still seek information or documents from victims through subpoenas pursuant to Criminal Rule 17(c), which provides victims the right to file motions to quash.

The right to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim.

Marsy's Law makes restitution mandatory. Previously, restitution was discretionary, even if victims satisfactorily proved their losses in compensable categories.

Full restitution may include - but is not limited to - any or all of the following, as applicable:

- 1 The value of stolen or damaged property
- 2 Medical expenses
- 3 Mental health counseling expenses
- 4 Lost wages
- 5 Attorney's fees accrued on behalf of the victim
- 6 Relocation expenses
- 7 Expenses related to installing security system or increased monitoring
- 8 Expenses to make home or vehicle accessible if victim is disabled as a result of the crime
- 9 Expenses incurred to repair the credit of victims of identity theft or fraud

The right, upon request, to reasonable notice of any release or escape of the accused.

Currently, many victims are receiving these notifications automatically. Victims of first, second, or third degree violent felonies receive automatic notification from the Department of Rehabilitation and Correction (iDRCi) and the Department of Youth Services ('DYS'). Victims of all other crimes may request notifications from DRC and DYS.

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Many local jails also participate in VINE, an automated system that provides notifications to victims (and any other members of the public) who register to receive them.

However, not all custodial agencies participate in VINE. This is especially true for defendants who have not been convicted and are incarcerated or detained pre-trial.

Under Marsy's Law, all custodial agencies - including community corrections and private corrections facilities - are required to provide notification of defendant or offender escape or release upon request.

4 Does Marsy's Law create a claim against the State for damages if there is a violation of a victim's rights?

Marsy's Law does not create any cause of action for damages against the state, any officer, employee, or agent of the state or any political subdivision, or any officer of the court.

5 What are victims' responsibilities under Marsy's Law?

Victims must request the right to notification of proceedings, of release or escape of the defendant or offender, and the right to confer with the prosecutor.

Victims must also provide law enforcement, prosecutors, courts, and custodial agencies with up to date contact information in order to receive these notifications.

Victims must save receipts, invoices, pay stubs, medical and counseling bills, estimates, and other documentation of losses in order to support a court order for restitution.

PLEASE NOTE: Some information contained herein is not binding law and should be considered as the best practices to ensure compliance with Marsy's Law, as suggested by Ohio Crime Victim Justice Center. However, pending legislation, if passed, would establish the legal requirements discussed herein.



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Scott R. Mote, Esq., Executive Director of the Ohio Lawyers Assistance Program

When asked why you became a lawyer, a common response is 'I want to help people.' And we do just that. We help people get their homes back, we help them resolve disputes, get child support, find justice, among many other things. But, what about helping people in our own profession?

To be a good lawyer, one has to be a healthy lawyer. A recent study of more than 13,000 lawyers - The Path to Lawyer Well-Being: Practical Recommendations For Positive Change--found that 17 percent of practicing lawyers experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. The same study concluded that 40% to 70% of disciplinary proceedings and malpractice claims against lawyers involve substance use or depression, and often both.'

We hear these words, such as depression, substance use disorder, anxiety, PTSD, OCD, but do we understand their meanings? If more lawyers become familiar with some of the common ailments that plague some of those in the legal profession, we can do a better job of helping them. Helping our colleagues in distress will help maintain public confidence in the profession and reduce stigma attached to mental health and substance use disorders.

Common mental disorders

Substance use disorder

A substance use disorder (SUD) occurs when a person abuses alcohol and/or drugs (marijuana, cocaine, opiates, nicotine, prescription medications, etc.) to cope with life stresses. A SUD can lead to problems at work and at home and eventually addiction.

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Depression

Depression is different than sadness or grief. It is not something that you can just 'snap out of.' It is an illness lasting more than two weeks that negatively affects the way you feel and the way you function.

A major symptom of depression is a loss of interest in the things you enjoy. Other symptoms include:

- Frequent absences
- Inappropriate behavior, moods
- Decreasing quality of performance
- Inappropriate pleadings, decisions
- Co-workers and staff "gossip" about changes in behavior
- Malpractice and disciplinary claims
- Missed hearings, appointments, depositions
- Loss of clients, practice, respect

Anxiety

Anxiety disorder, the most common mental illness, affects 37 percent of lawyers. Anxiety is when you become tense in anticipation of a future event. Anxiety also makes a person avoid certain events because of fear.

You have probably heard of anxiety attacks, where a person is so worried about an event that it causes the person to sweat, shake uncontrollably, and fear losing control. Other common symptoms of anxiety include excessive worrying, agitation, restlessness, trouble falling or staying asleep, and avoiding social situations.

Post-traumatic stress disorder

Post-traumatic stress disorder occurs in some people who have witnessed a terrifying or shocking event. The person may have flashbacks, bad dreams or terrible thoughts, which prevent the person from doing his or her normal activities. Some people who suffer from PTSD can be easily startled, have difficulty sleeping, have angry outbursts, negative and distortive thoughts.

Bipolar disorder

There are three types of bipolar disorder, also known as manic depression, a mental health condition that causes extreme mood swings that include emotional highs (mania or hypomania) and lows (depression). Symptoms include:

- Abnormally upbeat
- Decreased need for sleep
- Poor decision-making - for example, going on buying sprees, taking sexual risks or making foolish investments
- Depressed mood
- No interest in activities
- Sleeping too much
- Feelings of worthlessness or excessive or inappropriate guilt

Dementia

Dementia is the development of multiple cognitive deficits manifested by both memory impairment (impaired ability to learn new information or to recall previously learned information) and one (or more) of the following cognitive disturbances:

- Aphasia (language disturbance);
- Apraxia (impaired ability to carry out motor activities despite intact motor function);
- Agnosia (failure to recognize or identify objects despite intact sensory function);
- Disturbance in executive functioning (i.e., planning, organizing, sequencing, abstracting).

These cognitive deficits cause significant impairment in social or occupational functioning, and represent a significant decline from a previous level of functioning.

Attention-deficit/hyperactivity disorder (ADHD)

Attention-deficit/hyperactivity disorder is a brain disorder that interferes with normal functioning. Major symptoms include inattention, hyperactivity and impulsivity. Some signs include:

- Missing details
- Making careless mistakes
- Not following through on duties
- Easily sidetracked
- Excessive energy

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Schizophrenia

Schizophrenia is a mental disorder that affects how a person thinks, feels, and behaves. Many people with schizophrenia may seem like they have lost touch with reality. Symptoms include:

- Hallucinations
- Delusions
- Thought disorders
- Movement disorders
- Reduced feelings of pleasure in everyday life
- Difficulty beginning and sustaining activities
- Trouble focusing or paying attention

Obsessive-compulsive disorder

Obsessive-compulsive disorder (OCD) is a disorder in which a person has uncontrollable, reoccurring thoughts (obsessions) and behaviors (compulsions). Common symptoms include:

- Fear of germs or contamination
- Unwanted forbidden or taboo thoughts
- Aggressive thoughts toward others or self
- Having things symmetrical or in a perfect order
- Excessive cleaning and/or handwashing
- Ordering and arranging things in a particular, precise way
- Repeatedly checking on things, such as repeatedly checking to see if the door is locked or that the oven is off
- Compulsive counting

Dual diagnosis

A dual diagnosis is when a person suffers from a mental health issue and a substance use disorder. For example, a person who is depressed who turns to alcohol or drugs to suppress his or her depression.

All of these mental disorders have one thing in common: They interfere with a lawyer's duty to be competent.

The good news

Even though some lawyers suffer from these ailments, the good news is all of these are treatable with talk therapy and/or medication.

You can also help!

Some people believe that, when they notice a colleague is having issues, that they should stay out of it, that it is none of their business. But, helping someone with a mental difficulty is your business, especially when it affects our profession.

The first step is to have a conversation with the person. Let the person know that you noticed a change in behavior and that you want to help. Listen with an open mind, ask questions, and encourage the person to get help.

Refer the person to the Ohio Lawyers Assistance Program. We help Ohio lawyers, judges and law students cope with life's stresses. No ailment is too small or too large. We are your confidential place to go when life becomes overwhelming. We help an average of 62 lawyers, judges and/or law students per quarter. Overall, we have helped thousands of lawyers recover from stress, depression, anxiety and all mental health disorders.

As lawyers, we help people. Let's start the conversation about helping our own profession recover from the stresses of being a lawyer. Helping people with mental illness can only help our profession become stronger and remain competent to our clients. We owe that to them.

Contact the Ohio Lawyers Assistance Program confidentially at ohiolap.org, bendslow@ohiolap.org or (800) 348-4343.



Elyria Municipal Recovery Court begins operation as the first municipal specialized docket court in Lorain County

By Judge Robert C. White

A 22 year old woman is found passed out in the McDonalds parking lot with a needle in her arm. She has overdosed on heroin. The squad arrives and it takes multiple doses of naloxone to revive her. She is taken to the ER for treatment, then ultimately charged and transported to the jail. Although she has been involved with drugs since her teen years, this is her first arrest. I see her for video arraignment the next day and she does not look like a 22 year old. She looks more like someone in her 40s. She also has the tell-tale signs of a history of drug use. Scabs on her face, gray teeth. She has no life in her eyes.

Her parents have been sitting in the gallery of my courtroom all morning. They told my bailiff their daughter has been struggling with drug abuse for years and has been in and out of rehab. She basically just died because of her addiction and was brought back to life. If she isn't taken off the street, they fear the next time her death will be permanent. They are begging that I keep her in jail and get her help.

This happens. More frequently than most people realize.

Earlier this year, Ohio Governor Mike DeWine announced an initiative to support the creation of 30 new drug courts in underserved areas of the state. Because of its high overdose rate, Lorain County is one of 10 areas in the United States targeted by the U.S. Attorney's office for a program to battle opioid trafficking. The Governor's initiative, as well as the real-life court cases such as the one outlined above, convinced me to create the Elyria Municipal Recovery Court ('EMRC'). There are currently five specialized docket courts in Lorain County on the Common Pleas level, all of which deal with drugs and/or alcohol addiction to some degree. The missing piece in our county has been a specialized drug docket on the municipal court level.

To use a hospital analogy, municipal courts are like the emergency room of the court system. We generally see defendants within 24 hours of their arrest and they often are in pretty bad shape. With the input of prosecutors, defense counsel and treatment providers, we now have the ability to quickly assess and identify offenders for whom treatment is a viable alternative to incarceration. They can be assessed, placed into treatment and admitted into our recovery court within two weeks of their arrest.

The EMRC will focus on providing treatment options to offenders involved in misdemeanors for which drugs and/or alcohol are identified as an underlying cause. Defendants may be admitted through one of two tracks- the intervention in lieu track and the post-conviction track. Those admitted under intervention in lieu are given the option of successfully completing treatment in lieu of a conviction for certain offenses. The post-conviction track deals with defendants who have probation violations.

Placement is initiated by completing and delivering a referral form to my Chief Probation Officer/EMRC Coordinator, Steve Zacharias. He will begin the analysis for clinical eligibility. A copy of the referral form will be given to the prosecutor to examine the case for legal eligibility. Generally, disqualifying legal factors include the following:

- a Violent felony conviction within the past 5 years
- b On active felony probation or parole
- c Pending felony charges
- d Prior conviction for drug trafficking or distribution of drugs

The program will generally last approximately one year and is divided into three phases. Participants will advance through the phases in accordance with their progress in treatment. The first phase will require intense supervision, including counseling, random testing and weekly interaction with the court. The second and third phases will advance the Participant through the process of recovery, job placement and the return to a sober, productive life. This is not an easy program to complete. Those who don't qualify, refuse help, or fail treatment will continue through the court system. Those who successfully complete the program, however, will have a legitimate chance to live a drug-free, crime-free life that will benefit themselves, their families and the community into the future.

Whether it's a spouse, family member, neighbor, or an acquaintance, very few people can say they don't know someone involved with drugs. Incarceration cannot be our only response to this problem. Our goal is to help people stop using drugs, turn their lives around and become productive members of our community. It's clear to me that treatment courts save people's jobs, families and ultimately their very lives.

I'm excited to address these issues on the municipal court level in our county.



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New Member Spotlight

John A. Minter



Tell us about yourself - where you grew up, where you went to school, where you have practiced, your personal life today.

I grew up in Marion, Ohio. I received my undergraduate degree in Philosophy from Ohio Northern University and my JD from The Ohio State University Moritz College of Law. I've practiced as an associate in a small law firm and as an assistant prosecutor in Marion, Ohio. Prior to coming to the Ninth District, I was a mediator for the Cuyahoga County Court of Common Pleas, General Division. I also was the Langdon Fellow in Dispute Resolution at The Ohio State University Moritz College of Law from 2007-2009. I'm married and have a 12 year old son.

Why did you decide to become a lawyer?

I wanted to help people solve problems, and enjoyed trying to provide structure to complicated and confusing situations.

What area of law is your primary focus?

I'm the Mediation Attorney for the Ohio Ninth District Court of Appeals, so my focus is on mediating civil cases filed with the Court. I no longer work as an attorney representing clients. I mediate cases in all civil areas of the law: probate, domestic, juvenile, and general civil.

What are your involvements outside the law?

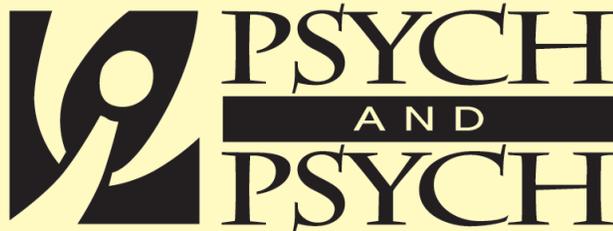
During my personal time, I enjoy watching Cleveland's sports teams and participating in outdoor activities. I'm not currently active in any groups, but previously have served on a homeless shelter board and was in the congregational leadership of my church. I also have volunteered at free legal advice clinics.

Which lawyer has made the biggest impact on your life?

When I first started practicing I worked at the firm Collins & Lowther, in Marion, Ohio. Attorneys Kevin Collins and Dave Lowther were both very influential in my development as an attorney. They have different lawyering styles, and working with them helped me learn how to be a problem solver out of the court room and a bulldog in the court room. Attorney Doug Diequez, at the same firm, also showed me how an empathetic lawyer can really help people.

Your contact info.

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Announcements



Wickens Herzer Panza is pleased to announce that the firm has received a 'Best Law Firms' ranking from U.S. News & World Report and Best LawyersÆ for 2019 in multiple areas. Rankings as a 'Best Law Firm' recognize law firms for their professional excellence and consistently impressive ratings from clients and peers. According to Best Lawyers, 'achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.' Congratulations!

The Honorable Jennifer Riedthaler Williams is pleased to announce that she has been transferred from the San Francisco Immigration Court to the Cleveland Immigration Court. Judge Williams can be contacted at United States Immigration Judge Jennifer Riedthaler Williams, Cleveland Immigration Court, 801 W Superior Avenue., STE 13-100, Cleveland, Ohio 44113; Jennifer.m.riedthaler-williams@usdoj.gov



Jennifer
Riedthaler
Williams

The Berki Law Group is excited to announce it has relocated its offices to 5077 Waterford Dr., Suite 301A, Sheffield Village, Ohio 44035 (440-323-0687).

The LCBA is pleased to welcome the following new members: James Barilla, Robert Forestall, Carly Ibold, Patrick Merrick, John Minter, Jason Mizak, Susan Stephanoff. Welcome! We are looking forward to your involvement in the Association.

Attorneys seeking Paralegal and Secretarial Candidates - The LCBA has received numerous inquiries from local law firms seeking qualified secretarial and/or paralegal candidates. If you know of any secretaries or paralegals seeking employment in the Lorain County area, please contact the LCBA.

Did you know???

- that that LCBA has a Facebook page? Like us on Facebook so you can receive important updates, see pictures of events, and just keep up with what is going on in your bar association.
- that the LCBA posts employment opportunities (both firms seeking help and individuals seeking employment) on our website for free? If you have an opening in your office, email us the employment listing and we will be happy to post it.
- that the LCBA sells materials from seminars? If you wanted to attend a seminar but couldn't fit it in your schedule, give us a call to receive the materials from the seminar for a very reasonable price.
- that the LCBA has numerous membership benefits? Check out our website for a current listing.

Use of the LCBA Offices

All members are welcome and encouraged to use the LCBA offices for meetings, depositions, work rooms, etc. Over the past two years, the use of the office has grown to a point that we must institute a policy for using the facilities. All members are welcome to use the office free of charge during regular business hours (8 a.m. until 4 p.m., unless a previously-scheduled event takes us out of the office during a given time). If your meeting runs past 4:00 p.m., a charge of \$50 per hour will be billed to you and will not be prorated. No one is permitted to use the office without a member of the LCBA staff present. Any copies that are made will be charged at \$.15 per copy and will only be made by LCBA staff. Bottled water and coffee continue to be free but there will be a charge for any other refreshments. Thank you for understanding.

Moved, merged or just have an announcement you want to share with the members of the LCBA? Contact the office with the information.

If you have a change in your contact information, please let the LCBA know so that we may keep your information current.

