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A Legal Professional Association

LEGAL TIDBITS

Holzfafter, Cecil, McKnight & Mues Presents:

Winter 2012 Edition

Legal TidBITS E-Newsletter

Legal Updates, Announcements and Community Links
for Our Clients and Friends

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Cell Phone Smarts and Safety Tips...

**Some unknown risks of a ubiquitous
technology:**



Cell phones have become an integral part of most of our lives. They are a great tool for keeping in touch with co-workers, friends and family. However, there are times when cell phones are just plain annoying, or as you will read potentially dangerous.

The other night I was wakened at 4:30 am, when I heard the signal from my phone that I had received a text message. I leaped up to retrieve it thinking that surely a family member, friend or client was in an emergency situation. Although I was glad this was not true, I was annoyed to see that a company I had never contacted was sending me a message about their products. Then I had difficulty falling back to sleep. I was equally annoyed when I received another text a few days later from a financial group, again who I have never contacted, asking if I needed funds to help with the new year. Very annoying indeed! To avoid receiving these unwanted texts, or calls, you can go to the National Do Not Call Registry at www.donotcall.gov to register your cell phones and also your home land line. Or if you prefer to call, the phone number is 888-382-1222. This registration will then make it illegal for telemarketers to contact you by call or text message. After being on the registry for 31 days, if you continue to receive either calls or texts, you can file a

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complaint with the Do Not Call Registry. There is a "loophole" unfortunately for companies which you have done business with in the past. Up to 18 months after you have either contacted the company or have done business with them, they are permitted to contact you. After the 18-month period, you can call the registry to be sure that company is no longer able to communicate with you. You can also speak with the company directly and ask them to no longer call you before the 18-month period is up.

On a more frightening note, owners of smart phones should be warned about the danger of posting pictures on line from their phone, or even by sending emails to friends and family with photos taken on their phone. From the pictures, hackers are able to track down the location of where the photos were taken. From there they can obtain apps that will let them know where that person lives, works or goes to school. The GPS setting which is so handy for helping us locate streets and places we need to navigate to, also has a GPS setting on your camera in the phone.

It is very easy to go into your settings on your phone and turn off the GPS setting on the camera. Be sure to take the time to watch this U-Tube video, in which a NBC Action News Reporter shows how by simply taking a photo of her young daughter, hackers were able to go in and find her daughters home, daycare, and even the section of the park she liked to play in. The video goes on to show you exactly how to disable the setting on your phone so that you can safely send photos and not worry about anyone knowing personal information. If you do not have a smart phone, but have children or grandchildren who do, please pass this information along to them. Technology and staying in touch is a wonderful thing, but we all need to be vigilant to be sure our personal information is protected and not given to people who may have dishonorable intentions.

[Video: NBC Action News Report](#)

Can a Child Qualify for Social Security Disability Benefits?

Many parents and guardians with children under the age of 18 wonder whether their children could qualify for Social Security disability benefits

[Disabled children under the age of 18 can qualify for benefits](#) under the Supplemental Security



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Income ("SSI") program, which is administered by the Social Security Administration, depending on the nature of their disabilities, on their income, and on the resources available to them.

According to 42 U.S.C. § 1382c(a)(3)(C)(i), a child under the age of 18 is disabled if the child "has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." In simpler language, a "disability" for purposes of SSI benefits must be a very serious medical condition that will last for at least one year. For example, a child who suffers from partial or total paralysis, or from mental retardation, could qualify for SSI benefits. A child with a broken leg, however, would likely not qualify. In addition to satisfying the definition of "disabled," a child may not earn more than a certain amount from employment. 42 U.S.C. § 1382c(a)(3)(C)(ii) states that a child under the age of 18 who "engages in substantial gainful activity" does not satisfy the definition of "disabled." This means that a child who is employed and who earns more than \$1,000.00 per month from employment would not qualify for SSI benefits in 2011 (the limit on a child's total monthly income changes every year). At the same time, a child who is unemployed, or who is employed but earns less than \$1,000.00 per month, could qualify.

Further, a determination of a child's eligibility for SSI benefits also involves the income of the child's parents or guardians. This part of the eligibility determination can be relatively complicated; but in short, a child whose parents or guardians could be described as among the working poor would probably qualify, whereas a child whose parents could be described as among the middle or upper class would probably not qualify (or would qualify for only minimal benefits).

Normally, a determination of eligibility can take three to five months. Children with certain conditions, however, can qualify for immediate benefit payments while the determination is pending. Examples of conditions that would qualify a child to receive immediate payments include cerebral palsy, Down syndrome, HIV infection, muscular dystrophy, total blindness and total deafness.

Although the Social Security Administration publishes a number of self-help guides regarding the eligibility of children for SSI benefits, the process of applying for SSI benefits can be complex. If you have questions about whether your child could be eligible to receive benefits, then you should schedule a

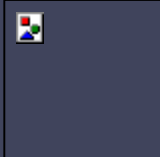
consultation with an attorney focusing in Social Security law. We work regularly on these SSI cases with Attorney John T. Nicholson. John handles these cases throughout Ohio and his phone number is (800) 596-1533. John's email address is john@johnnicholson.com.

Link to his website: <http://www.johnnicholson.com/>

Postnuptial Agreements - Are They Valid in Ohio?

Did not make a Prenuptial Agreement - Are Postnuptial Agreements allowed?

I am often asked whether a couple that never got around to executing an antenuptial (or prenuptial) agreement before they got married can execute a **postnuptial agreement** after the marriage ceremony. The answer varies greatly from state to state, and it is important to get an answer from an advisor familiar with the laws of the state in which the couple is residing.



Does Ohio Allow Postnuptial Agreements?

In Ohio, the answer is clearly "no". This goes back to the concept in Ohio that a husband and wife have a duty to support each other. In furtherance of this notion, Ohio statutory law specifically states that a husband and wife cannot alter their legal relations with each other by contract. Two exceptions to this law exist. Ohio Revised Code section 3103.06 states that *postnuptial agreements* (separation agreements) are valid when spouses agree to a separation in contemplation of a legal separation, divorce or dissolution and make provisions for the support of either of them and their children during such separation.

The second exception was created by the courts. The Ohio Supreme Court held in the case of In re Weber's Estate, that a written agreement, executed after marriage by a husband and wife, which recites that it was made for the purpose of setting forth in writing an oral antenuptial agreement between the parties and also recites the terms thereof and affirmatively shows that it is a memorandum of such oral antenuptial agreement, constitutes a sufficient memorandum or note of such agreement to comply with the statute of frauds and is not a contract between husband and wife to "alter their legal relations" as prohibited by law.

A few decades ago, a postnuptial agreement was widely considered to be invalid throughout the United States. However,

of the fifty states plus the District of Columbia, 32 currently recognize postnuptial agreements, 16 have no clear policy and Ohio is one of only 3 that does not recognize such agreements. This change in attitude was brought about by the increase in divorce rates and the introduction of no-fault divorces. Our neighboring states of Indiana and Kentucky currently honor such agreements.

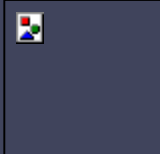
Don't rely on the exception of after the marriage memorializing in writing an oral antenuptial agreement. That plan is fraught with potential problems and is very risky! If it's your desire to have a valid and enforceable prenuptial agreement, take the steps necessary and plan ahead and get one properly drawn up with the help of an attorney experienced with antenuptial agreements!

If you are interested in the writer of this article on [Postnuptial Agreements](#) or if you would like to contact the writer to learn more, please click on the link located in this sentence.

Mues Receives 10th Anniversary Award for Highest Peer Rating!

Congratulations should be extended to Robert "Chip" Mues, Dayton, Ohio, Attorney, in achieving his 10th consecutive Martindale Hubble's AV Preeminent rating

Attorneys receive such a prestigious rating based upon both their very high ethical standards and professional ability. AV Preeminent is a significant rating accomplishment - a testament to the fact that a lawyer's peers rank him at the highest level of professional excellence! Mues' legal knowledge, analytical capabilities, judgment, ability to communicate, and legal experience has made him one of Dayton, Ohio's highly rated attorneys.



Chip received his law degree from the University of Dayton in 1978. He was admitted to the Ohio Bar in 1978, the U.S. District Court, Southern District of Ohio in 1978, and the Court of Appeals for the Sixth Circuit in 1994. Chip is a dedicated member to his community. As well as serving as a Dayton attorney, he also is the past Treasurer of the Foundation Board of the Children's Medical Center in Dayton, Ohio, a member of The Hospice of Dayton Foundation Board, and he provides pro bono assistance through the Greater Dayton Volunteer Lawyer's Project. He has

been featured in Who's Who in American Law and has been a publisher for the Ohio Family Law Blog since 2007. Not only is he a dedicated member of his community, but since 1998 he has been appointed as a member in the Dayton Bar Association's Committee on Professional Ethics.

HCM&M Organizes Holiday Charity Events

On Friday, November 18, 2011, the attorneys and staff hosted a Thanksgiving Open House.

Local Dayton area businesses, colleagues and professionals were all welcomed as we toasted in the holidays with hot cider and great food. A silent auction was held for the benefit of AIM for the Handicapped and SICSA. The bidders enjoyed a nice selection of gift baskets offering prizes such as UD Basketball and Gems Hockey tickets, gift certificates to Dorothy Lane Market and the RAVE Theatre, wine and food combinations, and many other holiday items - even for pets! As a result of everyone's generosity we were able to make a nice contribution to both SISCA and AIM for the Handicapped.

In addition, the firm collected approximately 200 pounds of food, can goods and other non-perishables for the local Dayton Area Foodbank. The Foodbank - the only one of its kind in the area - nourishes the hunger relief efforts of the community through the acquisition and distribution of food to the hungry throughout Montgomery, Greene and Preble counties. The Foodbank provides emergency food for an estimated 70,000 people annually. It is believed that 100% of HCM&M's attorneys and staff contributed to the annual project. In addition, a monetary contribution to the Foodbank was also made!

We would like to thank all our staff and friends for their generosity in assisting our community with a helping hand!

Contact Us

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