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NEWS FROM THE CIVIL DIVISION

In an effort to improve this newsletter, I am moving away from the six-page, semi-annual format. Instead, you will receive a brief update every few months to ensure that you receive news that is timely and relevant. I hope this change is beneficial to you. As always, I look forward to your feedback.

Stay safe,
Sherri Bevan Walsh

Who is a Vexatious Litigator?

According to the Ohio Revised Code section 2323.52, a vexatious litigator is a person who has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions.” Anyone who has been named a defendant in a civil case may have felt this way about the person bringing suit, especially when the defendant believes he didn’t do anything wrong! What, then, makes a “vexatious litigator” different from the average plaintiff who brings a lawsuit but may be just plain wrong?

In principle, every person has the right to bring an honest dispute before a court of competent jurisdiction. However, for a person to be a successful plaintiff, he must have more than a strong sense of being wronged. A plaintiff must be able to state a claim under a valid legal theory, prove that claim and prove that he is entitled to relief, which may include monetary damages. In other words, a sense of moral or personal outrage is never enough by itself to win in court. But suing without more is not necessarily vexatious. For example, plaintiffs who represent themselves may not understand how to successfully present a claim and may not appreciate the applicable legal standards.

A vexatious litigator is, on the other hand, a person who does more than simply sue someone without understanding the law or having the appropriate evidence. Under the revised code, such an individual has repeatedly engaged in “vexatious conduct,” which is conduct intended to harass or merely injure another person, is intended solely for delay or is not warranted under existing law. Anyone may bring a civil action to have an individual declared a vexatious litigator provided they have repeatedly defended against a plaintiff fitting this description.

Are you being sued by someone you think has a history of filing lawsuits with the intent of harassing or injuring the defendant?

*Check out the Ohio Supreme Court's list of vexatious litigators on its website at:
www.supremecourt.ohio.gov/Clerk/vexatious/*

The common pleas court may order that a person found to be a vexatious litigator must obtain court permission to file any future lawsuits or appeals. In this way, the court provides potential defendants an additional layer of protection against baseless lawsuits by acting as a screening mechanism.

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Case Summary: Ott v. Veterans Service Commission

Agencies, departments and county officials are required to manage employees. Disputes frequently arise over appropriate actions taken by these bodies respecting job duties, layoffs or discipline, including whether to reprimand orally or in writing, suspend or terminate employment for inappropriate conduct. When termination occurs, litigation can follow.

Late last year a dismissed employee filed a complaint in Common Pleas Court against the Veteran's Administration alleging wrongful discharge. The plaintiff, a government employee with civil service rights, claimed an express contract, implied contract or promissory estoppel against her employer based on the employer's personnel policy and procedures manual for that organization.

We filed a motion to dismiss primarily on the basis that the plaintiff failed to exhaust administrative remedies before the State Personnel Board of Review. The court found jurisdiction did not exist and that plaintiff did not exhaust the administrative remedies available to her. It is important to note that the policy and procedure manual established that administrative steps must be taken to contest a termination. Moreover, the manual did not create contractual expectations of any kind.

If you have concerns about the language in your policy and procedure manual, you can easily insert a disclaimer to negate claims for more employee rights beyond what would ordinarily exist.

The Latest on NEORSRD

The Northeast Ohio Regional Sewer District (NEORSRD) and the Summit County Communities continue to have conversations, despite the trial being over and Judge Pokorny issuing a preliminary decision. Recently, NEORSRD entered into settlement agreements with both the Catholic Diocese of Cleveland and the City of Cleveland School District. These agreements exempted all cemeteries from paying the "storm water fee" and carved out a cost reduction for school districts in which at least 25 percent of students receive a reduced or free lunch.

The only remaining parties to the suit at this point are the five remaining Summit County Communities, 11 Cuyahoga County Communities and a group of large parcel and business owners. The Summit County Communities' representatives met with members of NEORSRD on April 6, 2012 in an effort to seek an amicable resolution. The meeting was focused on NEORSRD's long-term vision and how NEORSRD could reconcile its budget needs with the communities' concerns about the financial burden on their residents. The Summit County Communities left this meeting with a clearer picture of where NEORSRD currently stands and the types of solutions that could potentially settle the dispute.

All parties remaining in the suit are expected to meet with Judge Pokorny one more time before he issues his final judgment.