



Sherri Bevan Walsh

Prosecuting Attorney
Summit County, Ohio

In an effort to preserve our natural resources, we are converting our mailings to a digital format. If you'd like to join us in going green, please email Lisa Holdt at holdt@prosecutor.summitoh.net to receive this newsletter via email.

NEWS FROM THE CIVIL DIVISION

After a lengthy and impressive career, Mary Ann Kovach retired as Chief Counsel and head of my civil division. As of August 1, Deputy Chief Prosecutor John Galonski is leading the civil division. If you have any questions or concerns about a civil matter, please contact John.

Stay safe,
Sherri Bevan Walsh

Recouping Taxpayer Money

The Prosecutor's Civil Division represents the Clerk of Courts. Always on the lookout for representing our clients, we will file a garnishment or a claim to recover funds from defendants that owe fees to the Clerk of Courts for criminal or civil cases.

We recently recovered \$11, 766.91 from a defendant who was an heir to an estate. He inherited much more than the amount owed the Clerk. Although the litigation took several years, it was worth the effort to get back some of the money paid by taxpayers for court-appointed counsel and court fees.

In another case, we learned about \$1,382 that the Fugitive Task Force seized from a Defendant when he was arrested. Whenever someone is arrested while

carrying a large sum of money that is subject to criminal forfeiture, we check whether that defendant owes money for child support or court fees.

Although this defendant did not owe child support, he did owe the Clerk of Courts far more than that amount for a number of criminal cases. Rather than give back the seized money, we filed paperwork to garnish that money with a court order.

We are happy to institute court proceedings for any of our clients when it is in their best interests. Usually we only defend and you wait to be sued. Taking a pro-active approach, we hope to better serve you and the taxpayers of Summit County.

Title VII Cases

The U.S. Supreme Court ruled this June on two Title VII cases that involved discrimination actions. In a 5 – 4 decision, the court held that a company faces greater liability for a Title VII violation if a supervisor – as opposed to an ordinary employee – engages in discriminatory behavior. The court defined a supervisor narrowly as only a person with authority to hire, fire, demote, promote, transfer or discipline workers as qualifying as a boss or supervisor. In opposition, the OCRC position advanced that anyone with authority to direct and oversee a person's daily work is a supervisor.

There is no reason to believe this same posture would not apply to government entities. As a result of this decision, officeholders and executive offices should be advised to amend their policy and

procedure manual to only allow the officeholder or a select few of the most senior people in the office to do what a "supervisor" does: discipline, transfer, promote, demote, fire or hire an employee. Others in the office could still make recommendations regarding "supervisor" actions. This would prevent Title VII actions, which could result in the awarding of attorney fees when the verdict is de-minimus.

In This Issue

Recouping Taxpayer Money	1
Title VII Cases	1
Public Employees' Political Activity	2
8th District Rules on NEORS	3
Significant Changes to HIPAA	3
New Prosecutors	4

Public Employees' Political Activities

The provisions in the Federal Hatch Act, Ohio's "Little Hatch Act" and the Summit County Political Participation Act govern the political activity of government employees at the federal, state and local levels.

On December 19, 2012, Congress passed the Hatch Modernization Act of 2012, which was signed into law by President Obama. The Hatch Act prohibits almost all federal employees from running for partisan political office. Partisan political office is one in which candidates are nominated or elected as representing a political party. The original version of the Hatch Act prohibited state and local government employees from running for partisan political office if any portion of their salary was paid through federal loans or grants. However, the 2012 amendment to the Hatch Act removed the federal prohibition on state and local government employees' candidacies for partisan political office unless the employee's salary is paid completely by federal loans or grants.

Any individual whose partisan candidacy is prohibited by the Hatch Act can still participate in the following political activities:

- Register and vote as they choose
- Assist in voter registration drives
- Express opinions about candidates and issues
- Participate in campaigns where none of the candidates represent a political party
- Contribute money to political organizations or attend political fundraising functions
- Attend political rallies and meetings
- Join political clubs or parties
- Sign nominating petitions
- Campaign for or against referendum questions, constitutional amendments and municipal ordinances

Ohio's "Little Hatch Act" in Ohio Revised Code Section 124.57 imposes restrictions on political activities by classified state or local government employees:

"[n]o officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of state . . . shall directly or indirectly . . . be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinion."

The Summit County Political Participation Act, set forth in §169.18 of Summit County Codified Ordinance, closely resembles Ohio Revised Code Section 124.57. There are, however, some differences. For instance, while the Ohio Revised Code prohibits classified employees from "campaigning by writing for publications, by distributing political material, or by writing or making speeches on behalf of a candidate for partisan elective office, when such activities are directed toward party success," the Summit County Political Participation Act allows classified employees to participate in such activities. Summit County's campaign law applies to covered county employees because it's a charter county. As such, Ohio Revised Code Section 124.57 is inapplicable.

The First Amendment casts a shadow over the enforcement of such restrictions against partisan political activity for government employees, at least in some respects. These restrictions have been challenged based on claims of unnecessary impingement upon an employee's right to freedom of speech. These challenges, however, have generally been rejected. The courts have held that such prohibitions, including the Hatch Act, do not unconstitutionally infringe upon public employees' First Amendment rights because it specifically provides that such employees still maintain the right to express opinions on political subjects and candidates.

8th District Rules on NEORSD

The Eighth District Court of Appeals issued a ruling on September 26 finding the Stormwater Management Program promulgated by the Northeast Ohio Regional Sewer District (NEORSD) was beyond the scope of its powers. The court determined that “the Sewer District’s board engaged in policy-making over matters that are legislative in nature.”

Throughout the proceedings, a group of communities from Summit and Cuyahoga County maintained that NEORSD had exceeded the powers granted to it by both their charter and the Ohio Revised Code. The opposition communities further argued that NEORSD’s program infringed upon their right to “home rule” government and usurped programs already in place within their communities.

The court issued a harsh rebuke to NEORSD in stating that NEORSD “ha[d] effectively taken upon itself to claim a share of community dollars, while other public

entities such as school districts must continue their struggle to obtain public funding.”

Finally, the opposition communities argued that the proposed “fee” was actually an illegal “tax.” They claimed that a fee is for a service rendered, one that may be turned off and on by the property owner and/or the provider. While not specifically addressing this argument, the court determined that, contrary to NEORSD assertions, the “waste water fee was not for the ‘use or service’ of a ‘water resource project.’” This paved the way for the argument that programs similar to those proposed by NEORSD may only be funded by a tax.

This case serves as a preliminary victory for home rule and for local entities involved with NEORSD. It is a strong message that powerful organizations cannot bully smaller organizations into submission. In this case, David truly did beat Goliath. We expect that NEORSD will appeal this ruling to the Ohio Supreme Court.

Significant Changes to HIPAA

On January 25, the Department of Health and Human Services issued a Final Rule: “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules.” These regulatory changes are the most significant in the history of HIPAA, most of which became effective on September 23. Following are some of the most noteworthy changes.

Under the new law, Business Associates have specific obligations and are held to the same data protection standards as Covered Entities. Where such entities exchange protected health information (PHI), HIPAA requires Business Associate Agreements that spell out each entity’s responsibilities regarding handling and monitoring of PHI. Therefore, entities should consider whether they receive PHI from a “covered entity” (health plan, health care clearinghouse or health care provider) and qualify as Business Associates.

Any entity that uses, holds or processes PHI from a Covered Entity is likely subject to HIPAA. Willful neglect to follow the rules can result in penalties of \$50,000, up to a maximum of \$1,500,000. HIPAA requires an extensive update of written policies and technological precautions to be in compliance.

HIPAA limits the general release of PHI to the patient or with the patient’s consent, but allows for release of PHI for purposes of treatment, payment and health care operations without express patient consent. Patients may request that information not be shared with a patient’s health insurance provider if the patient paid out of pocket for a service. A patient now has the right to an electronic copy of their PHI. Patients may request that copies of PHI be sent to any person or entity in electronic or paper format, but the request must be in writing and signed by the patient.

The Final Rule now presumes that where an unauthorized access to PHI has taken place, it was a breach unless the Covered Entity or Business Associate can show a low risk of data compromise. Entities must revise privacy notices to expressly state a patient’s right to be informed of a data breach and to list which disclosures of PHI require patient authorization.

The new regulations have stronger enforcement provisions, which can impose both civil and criminal penalties ranging from \$100 to \$50,000.

Given the strength of the new penalty provisions, each entity should review its policies regarding the physical, technical and administrative protections in place if HIPAA compliance is required.

New Civil Prosecutors

John Galonski and Colleen Sims have joined the Civil Division! Read on for more about John and Colleen.

John Galonski, Deputy Chief Prosecutor, Civil Division



Hire Date: January 2001

Hometown: Macedonia, Ohio

Fun Fact: I was pound-for-pound the strongest in my high school class. I bench pressed 240 pounds and only weighed 145 pounds. Additionally, I'm married to Summit County Juvenile Court Magistrate Tavia Baxter Galonski. We have two children, Antonio and Gabriella.

Education: I earned my Bachelor of Arts in History from the University of Akron and my Law Degree from the University of Akron School of Law.

Background: I worked in private practice in Canton and as a paralegal instructor at E.T.I. Technical College prior to being hired at the Summit County Prosecutor's Office. I was the chief assistant prosecutor in the Child Support Enforcement Agency before joining the Civil Division in May.

Job Duties: I provide legal representation to Summit County and the townships of Summit County in civil proceedings. I also supervise all of the staff in the Civil Division.

Most Memorable Case: An airline pilot asserted numerous defenses as to why he couldn't be his child's father. This man asserted his defenses and proceeded to trial in spite of the fact that the Genetic Probability of Paternity Index was 1,296,989,598 to 1. In English, the likelihood that someone else was that child's father was a billion to one. The pilot was found to be the father of the child and was ordered to pay \$1,390 a month in child support.

Why I Wanted to Become a Prosecutor: I became a lawyer to make a difference in the lives of people. The Summit County Prosecutor's Office is a great place to make that happen.

Colleen Sims, Assistant Prosecutor



Hire Date: 2/1/01

Hometown: Pickerington, Ohio

Fun Fact: I like military history. My favorites are the Civil War, WW II (of course) and Vietnam. My dad tells me I need to read about the Korean War.

Education: I went to undergrad at Calvin College in Grand Rapids, MI and law school at the University of Akron.

Background: I spent a little more than a year in the Juvenile Division representing Children Services in cases where children had to be removed from their parents. I transferred to the Criminal Division in 2002. In 2005, I assisted Brad Gessner in an organized crime case, which led to more organized crime cases for the next six years. For the last few years I've been prosecuting crimes ranging from murder to using a stolen credit card to buy \$48.00 worth of merchandise at a dollar store.

Job Duties: My duties in the Civil Division include representing the Summit County Sheriff's Office and handling a suit against Keith Heating & Cooling for violating consumer sales practices and failing to get proper permits.

The Best Part of my Job: My co-workers.