



City Hall's Second Chance: Ohio Supreme Court Clarifies Rights of Political Subdivisions to Take Interlocutory Appeals

by James A. Climer of Mazanec, Raskin, & Ryder Co. LPA. Reprinted with permission.

When someone sues City Hall or its employees, the battle typically goes like this. The plaintiff wants to get to trial. The municipal defendant (called a "political subdivision") wants to stop the case before it goes to trial, usually by persuading the court to find that statutory immunity protecting political subdivisions and its employees precludes a jury from ever hearing the case. In Ohio, political subdivision immunity is spelled out in Revised Code Chapter 2744.

Well before trial, the political subdivision usually files a motion with the court that says, "Judge, plaintiff's lawsuit is barred by immunity under R.C. 2744 or some other immunity in Ohio law. The jury need not hear this case. Can we please get back to catching up on our pot-hole filling?" As it happens, sometimes the court responds, "No, immunity does not apply. See you at trial." But is the case really going to trial?

Not necessarily. In most cases, parties are not permitted to appeal legal rulings by a court until the case is fully concluded by a trial or other final legal proceed-

ings. However, in 2003, the Ohio General Assembly amended R.C. Chapter 2744 to allow political subdivisions and their employees a right of immediate appeal from orders denying them immunity from liability in cases that involve injuries, death or loss to persons or property. R.C. §2744.02(C). This right has been available for many years in the federal court system when qualified good faith immunity is denied to public officials in civil rights actions. Because of R.C. §2744.02(C), even if a court makes a bad call on immunity, City Hall has another bite at the apple at the appellate level before the case goes to a jury.

An appeal in the middle of a case is called an interlocutory appeal, and the right to an interlocutory appeal is invaluable to political subdivisions. It provides political subdivisions and their employees an opportunity to immediately correct improper immunity rulings, frequently saving them the time, stress and the expense associated with a full trial.

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Hamilton County Law Library

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Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: Access EBSCO Titles Remotely Via Our Website

By Julie Koehne, Systems Librarian

Legal Information Reference Center contains hundreds of full-text publications and thousands of legal forms. The full-text legal reference books are provided through Nolo, the nation's oldest and most-respected provider of legal information for consumers and small businesses.

Go to our Remote Login page at <http://www.hamilton-co.org/cinlawlib/intra/login.asp>

Login using your last name only and then your borrower number.

Click on the EBSCO link. Use the user ID and password provided on the Remote Access page to connect to the Hamilton County Law Library Legal Information Reference Center.

Once connected, you will be able to search by category or by individual title.

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A Farewell Note

Mary Jenkins, Law Librarian & Director

It is with some regret that I inform our readers that I will be leaving my position at the Hamilton County Law Library on November 30, 2011 to take a position in information resources at Xavier University here in Cincinnati. While I am enthusiastic about the challenges and opportunities at Xavier, it will be hard to say goodbye to my friends and colleagues here.

Like my predecessor, David Whelan, I have served as the library director for four years. 2007-2011 has been a period of significant change in governance, personnel, collections, and services. We've had two years of county governance now, which has provided new opportunities for promoting the library and meeting the legal information needs of county offices and the public. I've acclimated to new systems of accounting, budgeting, and purchasing, thanks to help from good people in those offices. Two new hires, Laura Dixon-Caldwell in reference and Melissa Barney in technical services, have added very capably to the service the library provides and the skill with which we do it. We launched a program called *You and the Legal System* in partnership with the CBA's Lawyer Referral Service, in an effort to inform the general public about legal issues and the legal system. The CLE and training series have been expanded. New online resources include remote access to Lexis for solo attorneys, exhaustive legal content from BNA and CCH, expanded resources from Westlaw, and legal guides for the public. There are many other highlights of the last few years, but I don't need to catalog them for you here.

It has been my great pleasure to serve you, whether you come into the library daily or talk with me only occasionally by phone or email. I've had chance encounters with our subscribers at business networking events, programs at the Mercantile Library, at CBA

events, concerts, and even on the shuttle bus at the airport. Patrons always tell me that they can't believe how quickly we send requested documents, how friendly the staff is, and how useful our collection is. I'll endeavor to demonstrate that level of attention to service and user satisfaction in my new position.

As I write this, plans are not finalized for interim management; however, I assure you that Hamilton County Law Library Resources Board chair Jim O'Reilly will have the position posted by the time this newsletter is published. The goal is to have the new director in place by early February. With this very capable staff, there should be little disruption over the couple of months that the director position may remain vacant.

Thank you for the opportunity to serve your legal information needs. My best wishes.

Placing a Book on Hold

If a library book that you want is checked out to someone else, we can put it on hold for you. This means that we'll ask the person who has it to return it promptly when it is due or, if overdue, we will request its immediate return. When the item is returned, we will notify you so you can come in and check it out. It's smart to put a book on hold, because we can usually get it back more quickly than it might return on its own. You can also put a book on hold yourself, if you prefer. When you're looking at a record in our catalog for a book that is checked out, you will see the following symbol. Just click on it and then enter your borrower number and ID (which is probably also your borrower number).



Hold

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Unfortunately, many Ohio courts were initially resistant to the interlocutory appeal process when it was added to R.C. Chapter 2744. For example, in *State Automobile Ins. Co. v. Titanium Metals Corp.*, 2006-Ohio-1713, the Ohio Supreme Court held that there was no right to interlocutory appeal where the trial court fails to state the basis for its decision overruling a motion for summary judgment. So basically, under *Titanium Metals*, a judge could unilaterally deprive a political subdivision of its statutory right to an interlocutory appeal by simply not explaining the reason he denied immunity.

Another example is *Hubbell v. Xenia*, 2006-Ohio-3369, where the Second District Court of Appeals held that a denial of a motion for summary judgment asserting immunity is not a “final” denial of the immunity and therefore not immediately appealable. In other words, no need to trouble the appellate courts with this immunity stuff if the trial court could change its mind later.

Unfortunate decisions like these have been largely corrected in recent years. This trend has continued with the Ohio Supreme Court’s recent decisions in *Summerville v. City of Forest Park*, 2010-Ohio-6280, and *Sullivan v. Anderson Twp.*, 2009-Ohio-1971.

In *Summerville*, the plaintiff filed a complaint against a city and its police officers alleging violations of the federal constitution under 42 USC §1983 as well as state law claims. The officers filed a motion for summary judgment arguing that they were entitled to immunity on the state law claims and also that they were entitled to qualified good faith immunity on the federal claims. The trial court granted the motion for summary judgment on almost all claims except a federal claim for excessive force. The officers filed a notice of appeal under R.C. §2744.02(C) questioning the denial of qualified immunity.

Ironically, in federal court, the officers would clearly be entitled to an interlocutory appeal

on the denial of both the state and federal immunities. *Chesher v. Neyer*, 477 F. 3d 784 (6th Cir., 2007). However, *Summerville* was in state court and the plaintiff argued that no interlocutory appeal was available because R.C. Chapter 2744 did not apply to federal claims at all under R.C. §2744.09(E). The Supreme Court held that the interlocutory appeal provisions of R.C. §2744.02(C) were in direct conflict with R.C. §2744.09(E).

In resolving the conflict, the Court found that R.C. §2744.02(C) prevails as the more recent and specific statute. Consequently, an order denying a motion for summary judgment based on federal qualified immunity is a final appealable order pursuant to R.C. §2744.02(C).

In *Sullivan*, the Supreme Court resolved another vexing issue that led to conflicting appellate decisions in Ohio. The problem arose in cases where non-government parties were also named as defendants and who did not have any right to an interlocutory appeal themselves. Under normal circumstances, a party is not entitled to appeal a trial court order until all claims have been fully resolved against all parties in the action. This rule exists to avoid “piecemeal litigation” where a single case effectively cell-divides and each part takes on a life of its own. However, an exception to this rule exists where a trial court certifies that there is no just reason to delay the appeal pursuant Ohio Civ. R 54(B). The problem was that this certification requirement created a hurdle contrary to a political subdivision’s clear right to appeal under R.C. §2744.02(C).

In *Sullivan*, a landowner brought a number of different claims against a township and a construction company alleging that a road-widening project damaged his property. The township argued that it was immune from all of plaintiff’s claims under R.C. Chapter 2744. The trial court denied the township immunity for some of the claims, while granting immunity for others. The township filed an appeal,

and the court of appeals held that it did not have jurisdiction because the court did not make a Rule 54(B) determination that there was no just reason for delay. The township then appealed to the Ohio Supreme Court.

The Supreme Court held that the court of appeals was wrong and ordered it to consider the merits of the township's appeal. The Court found that R.C. §2744.02(C) was a policy decision by the General Assembly that denials of immunity to political subdivisions in injury and property damage cases should be immediately appealable and therefore the trial court has no need or ability to make a Rule 54(B) certification. In other words, the presence of unresolved claims against other parties could not hamstring a political subdivision from pursuing its interlocutory appeal right.

The moral of the story: while the interlocutory appeal provisions of R.C. §2744.02(C) initially drew a hostile reaction from many courts, that trend appears to have changed. Political subdivisions and their employees that have been denied immunities in trial courts should aggressively pursue their rights to an immediate review even if there is some doubt that the order qualifies for an interlocutory appeal.

For more information, contact James Climmer (jclimer@MRRLAW.com.)

CLE 2012

We have tentative plans to offer a number of CLEs throughout 2012. We'll announce the schedule and details once approvals are received. If you have an interest in a particular topic, whether as a prospective attendee or speaker, please contact reference librarian [Laura Dixon-Caldwell](mailto:Laura.Dixon-Caldwell@hamiltoncounty.org) at 513.946.5300. We're grateful for your suggestions.

Upcoming CLEs

Lexis CLE (Two Sessions)

Wednesday, November 16

Session 1: 12:30-1:30– Lexis Search Tips
Session 2: 1:45-2:45– Litigation Research: Focus on treatises, forms, and jury instructions

Westlaw CLE (Two Sessions)

Thursday, December 1

Session 1: 12:30-1:30– Jury Verdicts and Formfinder
Session 2: 1:45-2:45– Secondary Sources, Focus on Treatises

Each session is approved for 1.0 hour of general credit in Ohio.

Free to law library subscribers; \$35 per session for nonsubscribers.

To register for any of these CLE events, contact Mary Ann Sweeney at 513.946.5300 or via email at masweeney@cms.hamilton-co.org

PACER Increases Per Page Fees

The Law Library offers its subscribers and county employees access to PACER, the federal Public Access to Court Electronic Records system. It's available in the computer lab. Just ask a librarian to log you in. We absorb the cost of per page prints for our users. In mid-September, Judicial Conference of the United States announced its decision to increase the price of its electronic public access fee from \$.08 to \$.10 per page. Alternatives to PACER include [RECAP](http://www.recap.com) and [Justia Docket](http://www.justia.com).

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: Ten Rules for Prioritizing Debt

Michelle Abernathy, Senior Financial Education Coordinator at SmartMoney Community Services in Cincinnati, is our next speaker in the *You and the Legal System* series for the public. Ms. Abernathy will address matters related to money management, specifically risky debt and advice on what debt to pay off first, on Friday, November 18, 2011 at 12:00 noon at the Law Library. The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may also want to pass along the program announcement to clients, staff, and community organizations. If you would like flyers to distribute, please contact law librarian Mary Jenkins at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

What We're Blogging About

If you haven't looked at the Law Library's blog recently, please visit. You may want to subscribe to the feed to help you stay up to date on legal issues, especially those facing Ohio. We also post news about upcoming events, including CLEs, at the Law Library. <http://www.hamilton-co.org/cinlawlib/blog/default.asp>

Here are some of the recent topics about which Chuck Kallendorf has been blogging:

- Ohio Supreme Court advisory opinions
- Ohio Supreme Court Traffic Rule amendments
- Ohio Supreme Court seeking comments on Rule of Practice & Procedure amendments

Information Resources on Personal Finance

The Law Library offers an excellent collection of online law books on money and financial planning that is useful to the general public and to legal professionals alike. EBSCO's Legal Information Reference Center has a number of titles on topics like credit repair, bankruptcy, retirement, taxes, life insurance, and more. This collection is available in the lab, on the public computers, and via remote access (for subscribers with that level of access). Additionally, the Law Library has books from Nolo Press, National Consumer Law Center, and other publishers on topics related to personal finance. Here is a sampling of books that might be useful to you:

Bankruptcy basics : a step-by-step guide for pro bono attorneys, general practitioners, and legal services offices
F1524 .R36 2007

Chapter 13 bankruptcy : keep your property & repay debts over time
KF1524.6 .L46 2008

The new bankruptcy: will it work for you?
KF1524.85 .E43 2009

Collection actions : defending consumers and their assets
KF1040.Z9 S543 2011

Consumer class actions
KF1040.Z9 R65 2010

Consumer warranty law : lemon law, Magnuson-Moss, UCC, manufactured home, and other warranty statutes
KF1040.Z9 C57 2010

Credit market and subprime distress : responding to legal issues
KF1050 .C74 2008

Credit repair
HG3756.U54 L46 2009

Dodd-Frank Wall Street Reform and Consumer Protection Act : law, explanation and analysis
KF974 .D63 2010

Fair debt collection
KF1040.Z9 .H63 2011

Foreclosures : defenses, workouts, and mortgage servicing
KF1040.Z9 S542 2010

Long-term care : how to plan and pay for it
KF3826.N8 M38 2010

The National Consumer Law Center guide to surviving debt
KF1040.Z9 L661 2008-

Repossessions
KF1040.Z9 S541 2010

Stop predatory lending : a guide for legal advocates.
KF1040 .R468 2007

Student loan law
KF1040.Z9 L66 2010-

Truth in lending
KF1040.Z9 T7 2010-

Understanding Bankruptcy
KF1524 .F47 2007



Upcoming Events

November 16: Lexis CLEs: Search Tips & Litigation Research

November 18: You and the Legal System: Prioritizing Debt

December 1: Westlaw CLEs: Jury Verdicts/Formfinder and Treatises

November Holidays

The Law Library will be closed:

Friday, November 11 in observance of Veterans' Day.

Thursday, November 24 and Friday, November 25 in observance of Thanksgiving.



November 2011 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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