

# Hamilton County LAW LIBRARY NEWS

Professional legal information, resources, and services

A Monthly Newsletter from the Hamilton County Law Library

March 2014

## **"They Can't Do That, Can They?" Employees and Covert Recordings in the Workplace**

By Christopher R. Taylor, Bingham Greenebaum Doll LLP

Recently, one of our clients called in a panic. Without revealing privileged or confidential information, here's what the client told us: "One of our former employees secretly recorded a conversation with his supervisor, and now he's using it as evidence to support his charge of discrimination at the Equal Employment Opportunity Commission! He can't do that, can he??"

It's a question lawyers are receiving from clients with increasing regularity as cellphones with recording capabilities, smartphones, and other easily concealed recording devices become more prevalent. One estimate is that anywhere between 33 and 50 percent of employees now covertly record conversations with their bosses. In 2011, an EEOC outreach manager estimated that as many as a third of the employees filing discrimination charges in his district office brought with them some form of digital evidence, whether audio or video recordings, as part of

their initial evidence. Similarly, some lawyers representing employees say that at least half of their clients bring audio or video recordings to their initial consultation, and that they are more surprised when a potential client arrives at their office without such evidence.

### **Legality of covert recordings**

In most cases employees may lawfully and secretly record conversations in the workplace, including conversations with supervisors and managers, and use those recordings as evidence of discrimination or retaliation in court or administrative proceedings, such as at the EEOC. In the majority of states—including Indiana, Kentucky and Ohio—it is lawful to record any conversation as long as one party to the conversation consents, even if the consent is provided by the per-

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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/)

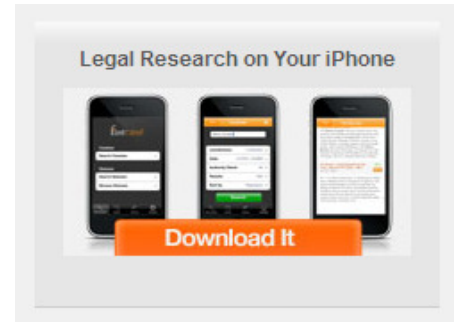
*(Continued on page 4)*

# Techtip: Mobile Sync from Fastcase

By: Julie Koehne, Systems Librarian

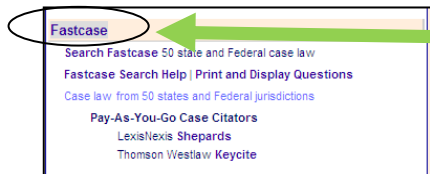
Fastcase's mobile legal research app can now be synchronized with your law library login.

The app can be downloaded from the iTunes store or from the Fastcase website at <http://www.fastcase.com>.



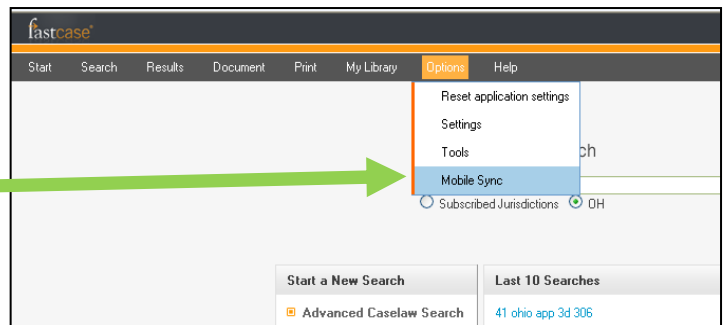
**To sync your accounts follow the instructions below:**

Log into the law library's website at <http://www.hamilton-co.org/cinlawlib/intra/login.asp>



Open Fastcase by clicking here.

Once logged in, scroll over the **Options** menu and select **Mobile Sync**.



Once on the Mobile Sync page, you will be prompted to enter an email address. This will be your username for logging in using the mobile app. When you've entered your email address, click **Go**. Fastcase will send an email to this address to confirm that you own it. The email will contain a link that you must click to complete the sync process.

**Tip:** If you already use Fastcase for the iPhone or Fastcase for the iPad and are syncing your accounts, please use the email address associated with your preexisting app account.

**Tip:** If you are creating a new mobile app account, you will be prompted to enter a password and to confirm your first and last name. After that, just click **Finish**, and your existing desktop account will be linked to your new mobile account.

**Tip:** If you have already established a mobile app account, simply click the link in the email, and your two accounts will automatically link together.

## Upcoming CLE

Free to subscribers; \$50 for non-subscribers  
To register, call 513.946.5300 or via email  
[reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org)

### Advanced Searching/ WestlawNext

Wednesday, March 12

Noon-1pm

1.0 hour of general CLE in Ohio

### If It's Not in the Record, It Didn't Happen: Keys to Success in the Court of Appeals

Presenter: Thomas W. Langlois

Thursday, March 27

Noon-1pm

1.0 hour of general CLE in Ohio and  
Kentucky

### Lexis CLE

Wednesday, April 9

Noon-1pm

1.0 general hour of CLE in Ohio

## Food in the Library

Sometimes, people sneak food into the Law Library... and that is just fine. No need to be sneaky. Enjoy it! With the new CLE rule on food, you're welcome eat your lunch during a CLE, too.

Here is the policy: Food and non-alcoholic beverages are allowed in the Library. Patrons are expected to demonstrate care for library materials and equipment and to clean up any spills and trash. Tobacco use is not allowed in the Library.

## Mobile Print

Send print jobs from any mobile device or desktop anywhere for pick up at the Law Library. Email your print job to [hcllcomputerroom@hotspots.com](mailto:hcllcomputerroom@hotspots.com) or [hcllcopyroom@hotspots.com](mailto:hcllcopyroom@hotspots.com) and release and print the job when you arrive.

Or send a print a job from these websites:  
to the copy room:

[www.printeron.net/ricoh/508692](http://www.printeron.net/ricoh/508692)

to the computer room:

[www.printeron.net/ricoh/511416](http://www.printeron.net/ricoh/511416)

For more information, look back to the [Tech Tip](#) in our January newsletter or ask any staff member.

## Unpaid Subscriptions: Revocation of Privileges

We have some subscribers whose library privileges will be revoked March 1 for nonpayment of 2014 subscriber invoices. We have to take that step but we will happily reinstate privileges upon payment. Call Vanessa at 513.946.5300 if you need more information.



(Continued from page 1)

son doing the recording. These states are known as “one-party consent” recording states. Federal law also authorizes such one-party consent recordings. In a handful of other states—California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania and Washington—such recordings may be made only if all parties to the conversation consent. Hence, these states are known as “two-party consent,” “dual consent,” or “all-party consent” states.

But even if the employee may lawfully record conversations with managers or supervisors, he or she can’t use those recordings in court, right? Wrong. Such recordings are usually admissible in court or at an administrative proceeding if the employee offering the recordings provides evidence sufficient to support a finding that the recording is authentic and of such clarity as to be intelligible and enlightening to a judge or jury. The employee offering the recording must also overcome a possible hearsay objection, but statements of supervisors and managers usually are not considered hearsay if made in the workplace regarding a matter relating to employment.

### **Protecting your business from covert recordings**

So what’s an employer to do? Must you simply accept that your employees may be recording anything and everything that’s said or done in the workplace, and that such recordings may be used against you in a court of law? Not necessarily.

Various courts have made clear that employers may lawfully adopt and enforce poli-

cies prohibiting clandestine workplace recordings, provided the employer has a good reason for doing so—such as encouraging open and honest workplace communication and protecting trade secrets or other confidential and proprietary information—and provided the policy does not interfere with employees’ rights to engage in “protected concerted activity” under the National Labor Relations Act. (See this [recent blog post](#) for a discussion of one recent case upholding such a policy under the NLRA.) Such policies are usually lawful even if their prohibitions might result in employees being unable to record their complaints about allegedly discriminatory practices—what is commonly referred to as “protected activity”—under federal anti-discrimination laws. As the Seventh Circuit Court of Appeals (which covers Illinois, Indiana and Wisconsin) recently observed in a retaliation case brought under Title VII of the Civil Rights Act of 1964:

- *Although Title VII indubitably protects an employee who complains of discrimination, the statute does not grant the aggrieved employee a license to engage in dubious self-help tactics or workplace espionage in order to gather evidence of discrimination. As we have previously explained, inappropriate workplace activities are not legitimized by an earlier-filed complaint of discrimination.*

A recent decision by the Sixth Circuit Court of Appeals (which covers Kentucky, Ohio, Michigan and Tennessee) reached a similar conclusion, holding that employers not only may implement policies that preclude employees from secretly recording conversations in the workplace, but employers may

also discipline the employee for doing so, even where the employee claims that the secret recording was “protected activity” under Title VII.

### **How to implement a policy prohibiting workplace recordings**

These rulings provide Indiana, Kentucky and Ohio employers with a tool for deterring secret recordings in the workplace. Employers who do not already have a written policy prohibiting such recordings should consider adopting one. The policy should be clearly communicated to employees and should specify examples of prohibited recording, including video recording and audio recording using devices such as smartphones. The policy should also specify the disciplinary action that could result from a violation, including possible termination from employment. A disclaimer stating that the policy is not intended and should not be interpreted to interfere with employee rights to engage in concerted activity under the NLRA also is advisable, as the National Labor Relations Board previously has indicated that a policy prohibiting employees from making covert recordings in the workplace might violate the NLRA if the policy did not include an express exception for recordings made in an effort to protect or advance employee rights under the NLRA.

If you discover that an employee is making secret recordings in your workplace, you should contact legal counsel as soon as possible. If you have questions about this topic or would like assistance drafting, adopting and implementing a policy prohibiting clandestine workplace recordings, please contact a member of Bingham Greenebaum Doll LLP’s Labor and Employment Practice Group.

## **Primary Law**

After a review of content and features, our librarians decided to eliminate some duplication in our primary law resources. We continue to offer Fastcase to our patrons on and off-site (with some limitations), but we have dropped primary law on Loislaw.

Rest assured, we still offer the excellent array of Aspen treatises on Loislaw, available remotely. Subscribers and county officials also have access to Lexis at the Law Library.

## **Lexis Anywhere**

The Law Library offers a special rate for Lexis to library subscribers who are in solo practice. For all the details and an application form, see the [Lexis for Solo Attorneys](#) information on our website. Content includes Ohio, Kentucky, and Indiana cases and codes, plus Sixth Circuit Court of Appeals, Shepardizing, SCOTUS cases, CFR and USCA. Vanessa or Mary welcome your questions at 513.946.5300.



## 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: Social Security Disability/SSI

Attorney Stephen H. Olden is our next speaker in the *You and the Legal System series* for the public. Mr. Olden will discuss Social Security Disability and SSI on Friday, March 21 at 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 want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

*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.

Save the date for the next event in the *You and the Legal System* series. James Grey Wolf will discuss Probate Law on April 25.

### April Meeting of the Law Library's Board

The Hamilton County Law Library Resources Board is scheduled to meet at 12 noon on Thursday, April 10th in the Robert S. Kraft Board Room in the Law Library. Meetings of the board are open to the public. Minutes of previous meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

## Law Practice Resources

The Law Library offers a variety of print and electronic resources on law practice management. If you have questions about access to any of these resources, just call us at 513.946.5300.

2013 solo and small firm legal technology guide: critical decisions made simple  
KF320.A9 .N45 2013

Compensation plans for law firms  
KF315 .C66 2010

Decision-making for lawyers: distraction, deception and drunkenness  
KFO76.5.A2.Z9 D42 20113

Financial planning for lawyers  
KFO77.5.564 R62 2012

Help me get organized!: sixty proven case management and billing tips  
KFO77 .M23 2012

The lawyer's guide to building your practice with referrals  
KF316.5 .S52 2012

Lawyer's guide to collaboration tools and technologies  
KF320.A9 M54 2008

Lawyer anger and anxiety: dealing with the stresses of the legal profession  
KF300 .N46 2010

Lawyers as peacemakers: practicing holistic, problem-solving law  
KF311 .W75 2010

Passing the torch without getting burned: a guide to law firm retirement and succession planning  
KF315 .G58 2013

Project management for lawyers: and Multi-tasking gone mad: how to practice law effectively in a wired, demanding, distracting world  
KFO318 .P76 2011

Run your firm like a business: an operations guide for the solo practitioner and small law firm  
KF318 .L63 2013

Sanity software: the case for practice management software: managing the paperless law practice  
KFO77.5.A95 S26 2013

Start it up, reboot or reload: the technology you need to get the most out of your practice  
KFO320.A9 S75 2011

The technology you need to start or overhaul a law practice  
KFO77.5.A95 H4 2013

Through the client's eyes: new approaches to get clients to hire you again and again  
KF311 .E92 2008

### Online Resources/Remote Access\*

#### Aspen/Loislaw

#### **Law Practice Resources Library:**

Forms & Checklists  
Lawyer's Desk Book  
The Lawyer's Almanac  
The Law of Lawyering  
Social Media: Legal Risk & Corporate Policy  
Just Memos  
Hillman on Lawyer Mobility  
Leadership Matrix  
Mastering the Art and Skill of Listening: A Guide to Negotiation

\*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

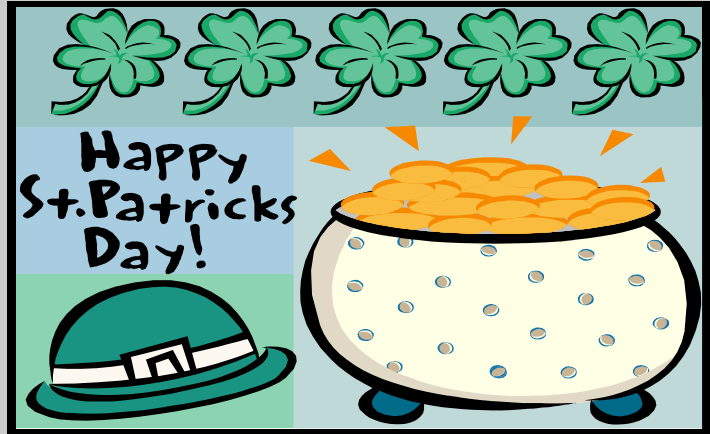
## Upcoming Events:

March 12: Westlaw CLE

March 21: You and the Legal System: Social Security

March 27: Appeals CLE

April 9: Lexis CLE



# March 2014 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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