



Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

August 2015

Are you sure you're an Ohio non-resident? Bright-line residency effectively muted: *Ohio Supreme Court rules taxpayers must satisfy the burdensome common-law domicile test for Ohio income tax even when residency affidavit filed.* By Steve Dimengo, Rich Fry, and Casey Davis of Buckingham, Doolittle & Burroughs, LLC.*

The Ohio Supreme Court delivered a significant blow to individuals claiming nonresident status for Ohio personal income tax under the bright-line residency statute. *Cunningham v. Testa*, 2015-Ohio-2744. The Ohio statute provides that an individual is irrebuttably presumed to be a nonresident if the individual satisfies three requirements: (1) maintains an abode outside Ohio for the entire year; (2) satisfies the contact period test (recently increased to less than 212 Ohio contact periods); and (3) files an affidavit verifying domicile is outside Ohio. R.C. 5747.24(B). Bright-line residency, originally enacted in 1993, is intended to streamline residency determinations which under the common-law domicile test are extremely fact intensive.

Under the previous interpretations of the bright-line residency statute, an individual filing the required affidavit was considered a nonresident provided the two factual statements in the affidavit

were true – the taxpayer maintained a non-Ohio abode and had less than the stated Ohio contact periods (182 prior to 2015). It was believed all other facts were irrelevant, even if the taxpayer would have been considered an Ohio resident under the common-law domicile test. This is no longer the case. The Supreme Court held that the presumption is not binding when the Tax Commissioner “has a substantial basis for rejecting the claim of non-Ohio domicile” that is supported by “specific information that warranted the finding.”

In *Cunningham*, the taxpayer signed a homestead exemption application for his Cincinnati residence under penalties of perjury attesting that he was domiciled in Ohio. This contradictory statement meant his residency affidavit contained a

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Hamilton County Law Library

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Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

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Tech Tip: Getting Started with Lexis Advance

By Julie Koehne

Helpful tips to access and navigate Lexis Advance here at the Law Library

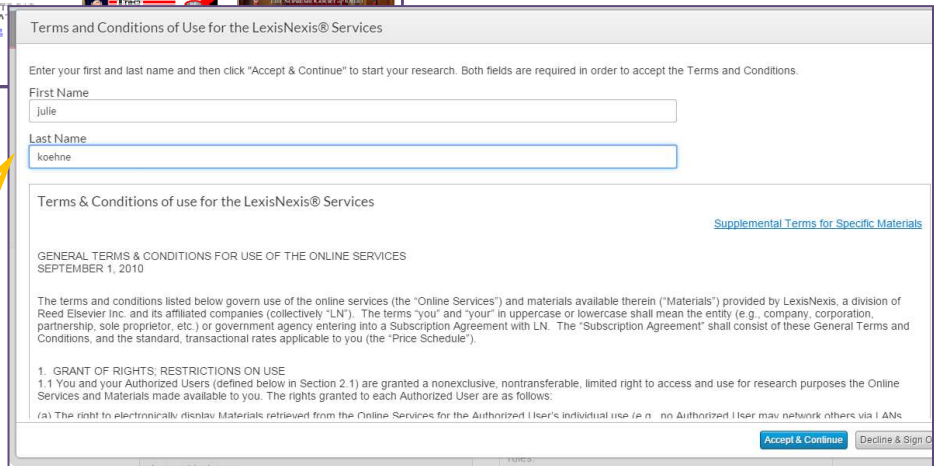


Double click on **Library Databases** on the desktop.

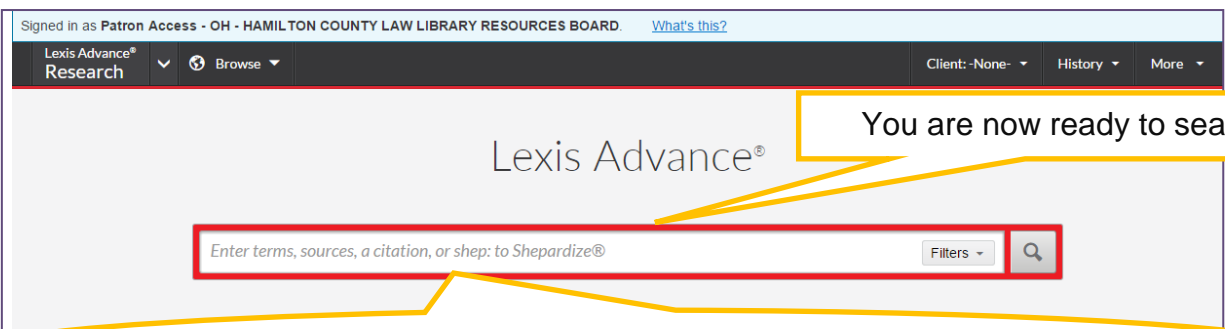


Single click on the top left image: "Lexis Advance".

Enter your First Name and Last Name, read the terms, then select the blue "Accept & Continue" button to use Lexis Advance.

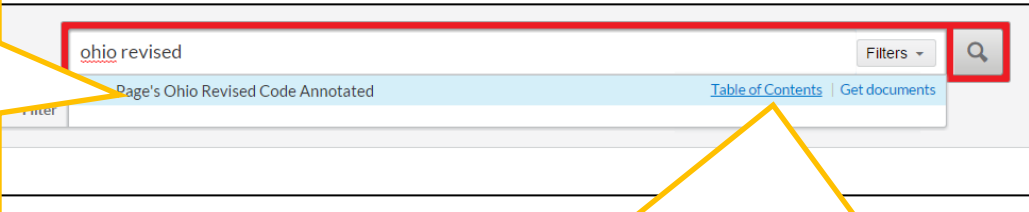


You are now ready to search.

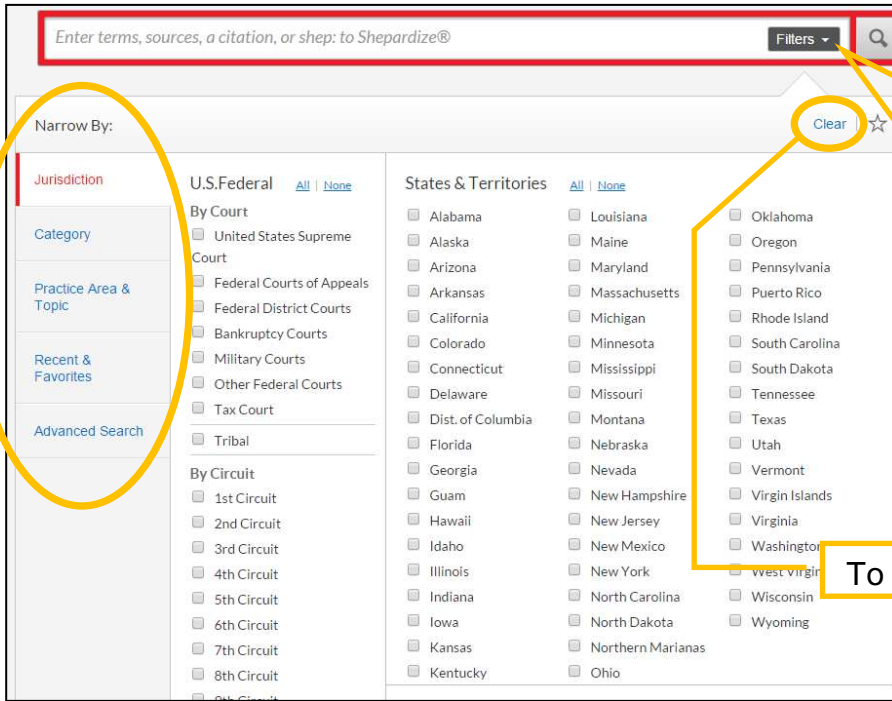


Enter terms, sources, a citation, or shep: to Shepardize.

If you know the specific title of a resource you want to search you can start typing the title and a list will display.

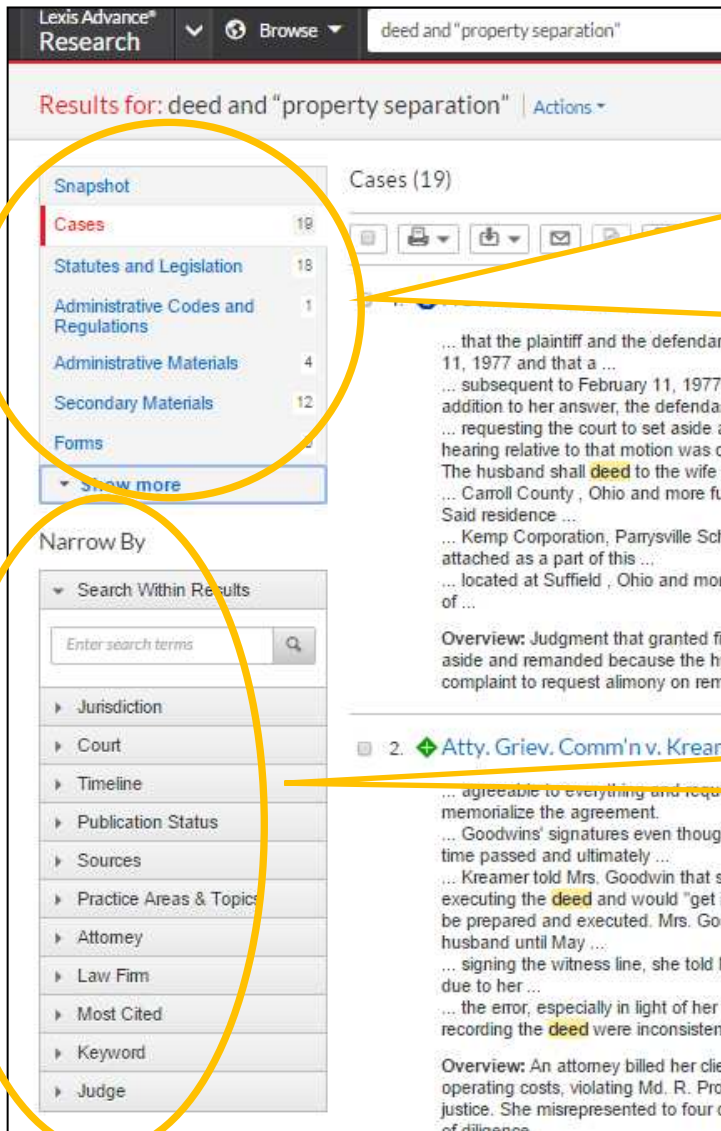


Select the title to search or go to the Table of Contents.



To start a search, you can enter your search in the search box or limit your search with filters and then enter search terms in the search box. If you do not filter, it will search across all materials in the library's subscription.

To remove any filters click "Clear".



If you do not filter your search, it will display the different types of materials where you can find your results. So in this example, searching for deed and "property separation" gives the results of 19 cases, 18 statutes, 1 administrative code, and more.

You can also narrow by jurisdiction, court, timeline, keyword, attorney, or judge.

 * Take special note that once you log out of the session, the search history will be reset and no longer available. *

false statement – that he was not domiciled in Ohio. Due to the false statement, the non-residency presumption was no longer irrebuttable and actually required the taxpayer to meet the common-law residency test. The Court then considered a bevy of additional facts in concluding the common-law test was not met – that the taxpayer voted in Ohio; held an Ohio driver’s license; was born, raised, and educated in Ohio; was married and raised a family in Ohio; and generally had mailed delivered to Ohio.

Quoting the Board of Tax Appeals’ decision, the dissent points out this decision “essentially renders the ‘bright-line’ non-residency status... moot, as the commissioner could always challenge the veracity of the statement that the taxpayer was not domiciled in Ohio.” The question now becomes what constitutes a “substantial basis” for disputing the affidavit’s non-residency statement and how specific must the Tax commissioner’s information be to support this basis. Does it require a contradictory statement sworn to under penalties of perjury, as in *Cunningham*, or is any fact supporting non-residency, such as registering a vehicle with Ohio, sufficient? The only certain protections taxpayers have are those facts which the Tax Commissioner cannot consider under O.A.C. § 5703-7-16(A).

This decision is contrary to Governor Kasich’s policy to reduce Ohio individual income tax obligations through reduced rates, minimizing tax on small-business owners, and increasing the permissible presence under the bright-line residency statute. It will have significant implications for taxpayers claiming non-Ohio residency, but having multiple residences, such as retirees with

significant investment / intangible income that split time between Ohio and another state. We will post a follow-up article with planning tips that individuals should consider to increase the likelihood their non-resident status will be recognized under this new interpretation of the bright-line statute based upon our substantial experience supporting non-resident status under the common-law domicile test. If you have any questions, contact [Steve Dimengo](#), [Rich Fry](#), or [Casey Davis](#). *Reprinted with permission.

Online Legal Research Developments

Many of our online legal research providers have recently announced new interfaces or other developments. Here’s a summary of what you’ll see as changes to the databases we offer:

Lexis

Lexis Advance is available in the computer room and will completely replace Lexis.com on August 1. One click, or universal, searching is the prominent feature and you’ll probably find the system pretty intuitive.

Fastcase

Fastcase just released Fastcase 7, a new user interface with some very nice functionality. A sleek universal search is the most obvious change, while retaining the advanced search capability. Don’t forget its mobile app and its links to HeinOnline content.

HeinOnline

For anyone who has ever grumbled about HeinOnline searching, give it another try. HeinOnline just made several major improvements including simplified, cleaner searching, improved algorithms for better search results, color pdfs, and more current

content.

IntelliConnect

Wolters Kluwer has unveiled Cheetah, its user interface that will eventually fully replace IntelliConnect as the front end to the staggering amount of legal, business, tax, and accounting content that we offer. We will provide Cheetah access here once more IntelliConnect content areas have been migrated to it.

For assistance with any of our legal information databases, whether for research strategies or technical help, ask a librarian here. After hours, call the publisher's toll-free support number or use their online help.

Upcoming CLE

Free to subscribers; \$50 for non-subscribers

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website

<http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

Breaking Down Barriers to Effective Representation: Tips on Working with Pro Se Litigants, Language Barriers and Parties from Diverse Backgrounds

Thursday, August 27

Noon-1pm

Presenter: Lauren Morrison

Approved for 1.0 general hour of CLE credit for Ohio. Kentucky credit is pending.

Ten Things You and Your Elder Client Need to Know About Long Term Care

Tuesday, September 15

Noon-1pm

Presenters: Mary Ann Jacobs and James T. O'Reilly

Approved for 1.0 general hour of CLE credit for Ohio. Kentucky credit is pending.

Lexis CLE: Finding the Needle in the Haystack

Learn how to navigate Lexis Advance and use Ebooks through the Lexis Digital Library

Wednesday, September 16

1pm-2pm

1.0 general hour of CLE credit pending in Ohio

Government Records: The What, How, When and Why of Public Access

Thursday, September 24

Noon-1pm

Presenter: James T. O'Reilly

1.0 hour of general CLE credit is pending in Ohio and Kentucky

**Note: this is the same CLE that was presented at the Law Library last year on September 25, 2014.*

Bloomberg BNA Tax Resource Training: Search Basics

Wednesday, August 5

11:00am-12:00pm

Law Library subscribers have access to a variety of databases for state and federal tax research here in the law library. Join us for a training session to learn the basics of searching and navigating BNA.

***Note: this seminar is approved for CPE credit, but not CLE.**

To register, call 946.5300 or reserve your spot online at

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 six weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', Westlaw, IntelliConnect, 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

Five 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

Bi-weekly news updates in various practice areas

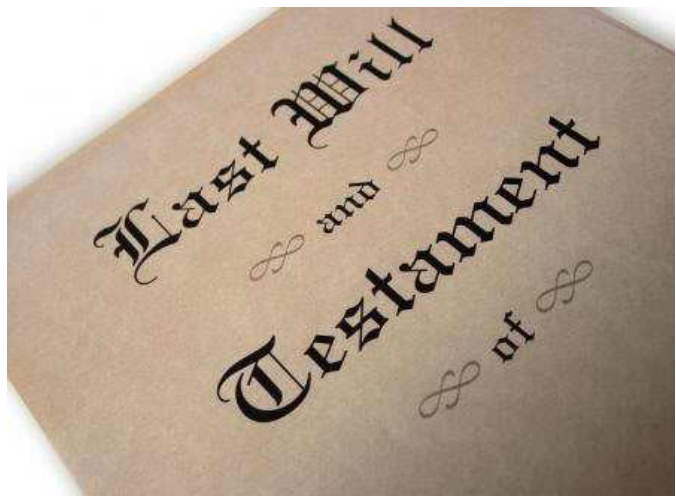
In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

You and the Legal System: Estate and Probate Law

Attorney Joseph Luken is our next speaker in the *You and the Legal System* series for the public. Mr. Luken will discuss Estate and Probate Law on Friday, August 21 at noon in the Law Library.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

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 *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. Attorney Nathan Little will discuss Neighbor/ Property Law on Friday, September 18.



Pension and Benefits Resources

Law Library subscribers have access to a variety of resources on Pensions .If you have questions about accessing these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Employee benefits management
KF3509 .A6 E46 2013

Employer's legal handbook
KF3455.Z9 S74 2015

ERISA
KFO334.5.P4 E85 2014

ERISA practice and procedure
KF3512 .C65 2015

Mandated health benefits: the COBRA Guide
KF3605.A6 H34 2015

Multistate guide to benefits law.
KF3509 .M8 2013

Pension distribution answer book
KF3512.A15 P464 2015

Pension answer book
KF3512 .P456 2015

BNA Tax Management Portfolios*

Age, sex and disability discrimination in employee benefit plans
KF6289.A1 T35 no. 363-4th

Cafeteria plans
KF6289.A1 T35 no. 397-3rd

Deferred compensation arrangements
KF6289.A1 T35 no. 385-5th

Employee benefit plans and issues for small employers
KF6289.A1 T35 no. 353-4th

Employee benefits for tax-exempt organizations
KF6289.A1 T35 no. 373-4th

Employee plans--deductions, contributions and funding
KF6289.A1 T35 no.371- 5th

Pension plan terminations : single employer plans /
KF6289.A1 T35 no. 357-5th
*Available online in the Law Library computer lab.

Online Resources-Remote Access**

CCH Intelliconnect

Benefit Practice Portfolios

COBRA Connections Newsletter

COBRA Guide

Employee Benefits Management Newsletter

Employee Benefits Explanations/New Developments

Employee Benefits Sample Documents

Pension and Deferred Compensation Guide

Pension Plan Guide

Pension Plan Guide Newsletter

Plan Administrator's Compliance Guide

Plan Administrator's Newsletter

Sample Plans/IRS Language

U.S. Master Pension Guide

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

Upcoming Events:

August 5: BNA Training

August 21: You and the Legal System: Estate and Probate Law

August 27: CLE: Breaking Down Barriers to Effective Representation

September 15: CLE: Ten Things You and Your Elder Client Need to Know About Long Term Care

September 16: Lexis CLE: Finding the Needle in the Haystack

September 18: You and the Legal System: Neighbor Law

September 24: CLE: Government Records: The What, How, When and Why of Public Access

Law Library Holidays

The Law Library will be closed on Monday, September 7 in observation of Labor Day.



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ADDRESS CORRECTION REQUESTED

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