

Hamilton County LAW LIBRARY NEWS

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July 2016

Ohio Supreme Court Paves Way for Broad Application of Abuse or Molestation Exclusion in Ohio

By David J. Oberly of Marshall Dennehey Warner Coleman & Goggin, P.C Reprinted with permission.

In *World Harvest Church v. Grange Mutual Casualty Company*, 2016 Ohio 2913, the Ohio Supreme Court was afforded its first opportunity to interpret the standardized abuse or molestation exclusion commonly seen in commercial insurance contracts today. In that case, the court found that World Harvest Church was not entitled to insurance coverage for a 2006 incident involving the beating of a small child while at the church's daycare center. The decision is a noteworthy one, especially for insurers, as the court unanimously determined that an abuse or molestation exclusion contained in a commercial insurance policy is not limited to excluding claims only for bodily injury arising from direct liability, but also excludes claims for bodily injury arising from secondary—or vicarious—liability for the same conduct.

In May 2006, Michael and Lacey Faieta instituted a civil

action against World Harvest Church and Harvest Preparatory School and its employee, Richard Vaughn, for claims stemming from an incident involving the Faietas' son, who attended WHC's daycare service. That case was settled by WHC for \$3.1 million, at which time WHC turned to its commercial insurance carrier, Grange, to reimburse the church for a portion of the settlement amount. After Grange denied the church's claim, WHC filed suit against Grange pertaining to a dispute over coverage under the church's commercial policies.

WHC prevailed in its coverage action at the trial court level, where the Franklin County Court of Common Pleas found that the insurance carrier was obligated to indemnify WHC in the amount of \$1.4 million plus interest, representing the compensatory damages, attorney fees and post-judgment interest awarded to the Faietas. On appeal, the

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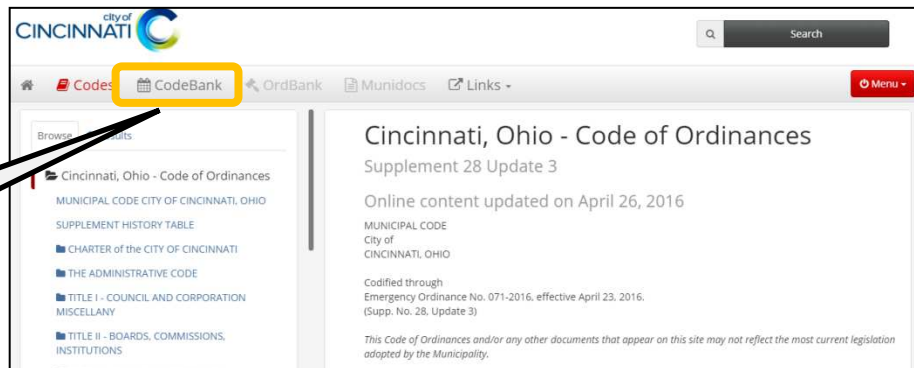
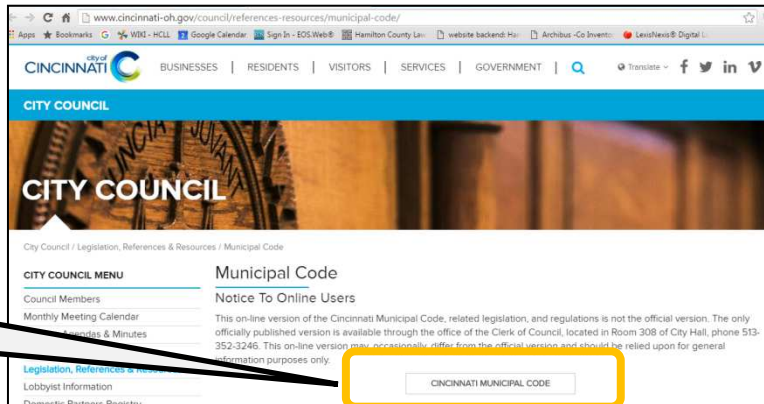
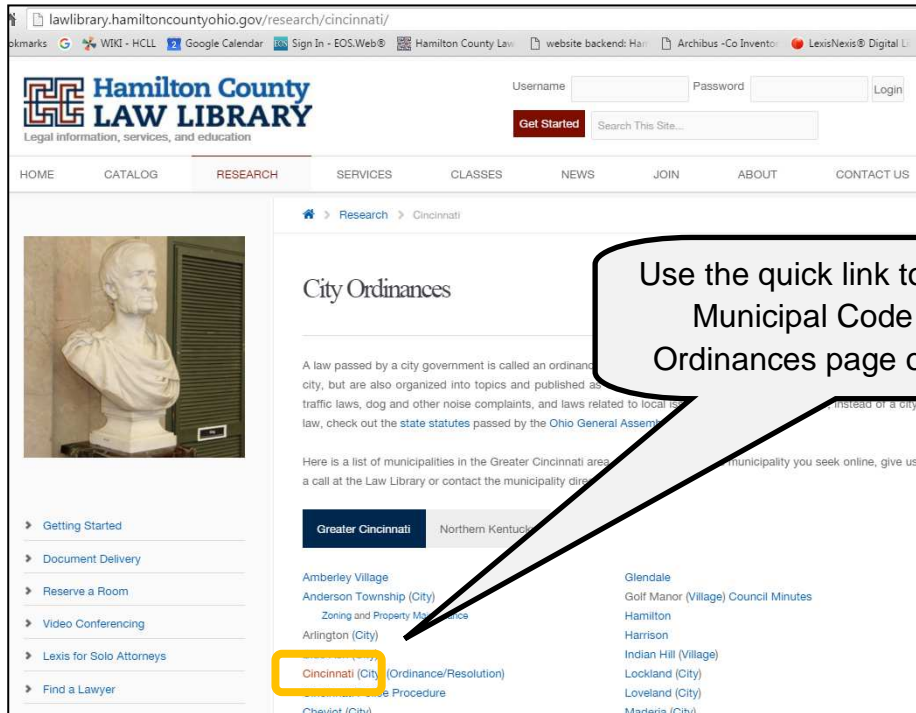
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<http://lawlibrary.hamilton-co.org>

Tech Tip: Cincinnati Municipal Code and Archives

By: Julie Koehne, Assistant Law Librarian, Systems

The current Cincinnati Municipal Code is available online. The former codes are also available online back to May 2012. If you need anything older, the Law Library may have it, so give us a call. We have the ordinances in our *City Bulletin* publication back to volume one (1927).



Select codes by update	Select codes by date
Code of Ordinances	
Supplement 28 Update 3	04/26/2016
Supplement 28 Update 2	03/30/2016
Supplement 28 Update 1	03/08/2016
Supplement 27	
Supplement 27 Update 7	02/25/2016
Supplement 27 Update 6	02/02/2016
Supplement 27 Update 5	01/12/2016
Supplement 27 Update 4	12/31/2015
Supplement 27 Update 3	12/07/2015
Supplement 27 Update 2	11/30/2015
Supplement 27 Update 1	10/15/2015
Supplement 26	
Supplement 26 Update 7	07/16/2015

Select the particular date you need.

city of CINCINNATI

CodeBank: You are viewing Supplement 27 Update 1, which was updated on 10/15/15.

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Cincinnati, Ohio - Code of Ordinances

Supplement 27 Update 1

Online content updated on October 15, 2015

MUNICIPAL CODE
City of
CINCINNATI, OHIO

Codified through
Emergency Ordinance No. 255-2015, effective July 1, 2015.
(Supp. No. 27, Update 1)

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality.

city of CINCINNATI

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701-1

TITLE VII - GENERAL REGULATIONS

Chapter 701 - ANIMALS, BIRDS, FOWL

Sec. 701-1. - Definitions.

Sec. 701-1-A. - Animal.

Sec. 701-1-C. - Cruelty; Torture; Torment.

Sec. 701-1-C-1. - Repealed.

Sec. 701-1-D. - Downed Animal.

Sec. 701-1-D-1. - Dangerous Dog.

Sec. 701-1-H. - Harbor.

Sec. 701-1-H1. - Repealed.

701-1-I. - Injury.

Search for the specific code section or use a keyword.

You also have the ability to browse through the table of contents.

(Continued from page 1)

Tenth Appellate District affirmed the decision of the trial court requiring Grange to indemnify WHC in the amount for which WHC was found to be secondarily liable under a theory of vicarious liability.

The Ohio Supreme Court reversed the decision of the appellate court, finding that the plain and unambiguous language of the policy's abuse or molestation exclusion excluded coverage for damages stemming from the insured's vicarious liability for a claim arising from its employee's physical abuse of a child. The abuse or molestation exclusion at issue provided that coverage was excluded for bodily injury stemming from "[t]he actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured" or the negligent employment, investigation or supervision of any person for whom any insured was legally responsible. The court highlighted the fact that the exclusion covered abuse or molestation by anyone and that the exclusion also eliminated coverage for damages awarded for claims of bodily injury arising from the insured's negligence in employing, investigating, supervising or retaining the bad actor. The court further found that the exclusion was devoid of any language that would limit its application to damages awarded for an insured's direct liability. As such, under the abuse or molestation exclusion, there was no coverage as long as the claim was for bodily injury that arose out of the abuse by anyone of any person while in the care, custody or control of the insured. Importantly, the court held that the abuse exclusion precluded coverage for both claims arising from direct liability, as well as claims arising from secondary,

or vicarious, liability for the same conduct. Therefore, the court concluded that "the language in the exclusion is simple and unambiguous: there is no coverage for any injury arising from abuse or molestation."

Turning to the incident involving the Fаетas' son, the court noted that WHC's vicarious liability arose from its admission that its employee acted within the scope of his employment when he committed the abusive acts while the minor was in WHC's care, custody and control. Because those acts gave rise to the damages awarded in favor of the Fаетas, the language of the exclusion encompassed WHC's vicarious liability for its employee's intentional infliction of distress arising from the abuse. As such, Grange was not obligated to indemnify WHC for any damages awarded based on vicarious liability for Vaughn's intentional infliction of emotional distress.

The court's decision that a commercial liability insurance policy excludes coverage for an award of damages based on the insured's vicarious liability for a claim arising from its employee's physical abuse of a child in the insured's care and custody is a big win for insurers. Significantly, the court concluded that the exclusion is clear and unambiguous in that it excludes all claims for bodily injury arising from vicarious liability in an identical manner to the exclusion's bar on direct liability claims stemming from abuse. In addition, the decision also provides that an abuse or molestation exclusion also applies with equal force to physical abuse as it does to sexual abuse. Accordingly, insurers are well advised to take note of the strength of this exclusion and its broad applicability in Ohio in connection with a variety of scenarios involving

physical or sexual abuse or other misconduct, as clear authority now exists to support application of the exclusion regardless of who the abuser is and regardless of the legal theory (direct or vicarious) pursued.

For more information, contact [Allison L. Krupp](#) or [David J. Oberly](#).

The material in this law alert has been prepared for our readers by Marshall Dennehey Warner Coleman & Goggin. It is solely intended to provide information on recent legal developments, and is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

Conference Rooms

Local government officials and our subscribers may reserve conference rooms at the Law Library, including the Board Room, for work-related purposes. Speak with any member of the staff. If you have technology needs as well, let's make sure we can accommodate your needs. We charge an hourly rate for Board Room use by nonsubscribers. The conference rooms may be used on a walk-in basis unless there's a reservation.

Mobile Printing

It's easy to send a print job to the Law Library for release and printing once you arrive. Just email your document to hcllcomputerroom@printspots.com or hcllcopyroom@printspots.com. You'll receive a print release code which you'll enter into the copier when you get to the Law Library. Normal photocopying charges apply. There's additional information about [mobile printing on our website](#).

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
Registration is required.

To register, call 513.946.5300, email

reference@cms.hamilton-co.org, or

register via the website

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

Legal Ethics & Access to Justice: Professional Conduct in Pro Bono Work

Wednesday, August 31

Noon-1pm

Speaker: Lauren Morrison

Approved for 1.0 hour of attorney professional conduct CLE in Ohio, and 1.0 hour of Ethics CLE in Kentucky.

New Books

We're always glad to get recommendations from you, our users, of specific books or legal topics that we could beef up in our collection. Our new books are featured in this display cases in the Main Room and are [listed in our catalog](#). County offices are encouraged to consider multi-agency purchases with the Law Library or acquisitions by the library in service to all departments.

Law Library Board Meeting

The next quarterly meeting of the Hamilton County Law Library Resources Board will be held on Thursday, July 7, 2016 at 12:00 noon in the Robert S. Kraft Board Room. Meetings are open to the public.

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 legal information databases from the Law Library, including Lexis Advance, Shepards', Westlaw, Intelli-Connect, Lexis Digital Library e-books, HeinOnline, and Loislaw treatises

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

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

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Intelli-Connect Law, Business, Tax, and Accounting

An add-on plan for Lexis access is available for subscribers in solo practice

You and the Legal System: Ohio DUI/OVI Basics

Attorney William F. Oswald, Jr. is our next speaker in the *You and the Legal System* series for the public. Mr. Oswald will discuss Ohio DUI/OVI Law on July 15 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 [Laura Dixon-Caldwell](#).

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 on our *You and the Legal System* series. Mark Napier will discuss Nursing Homes on Friday, August 19.



Criminal Law Resources

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

Anderson's Ohio criminal practice and procedure
KFO561 .A951 2015-2016

Attacking and defending drunk driving tests
KF8925.T7 B37 2014-16

Attorney's guide to defending veterans in criminal court
KF7709.A7 A88 2014

Criminal advocacy
KFO575.A75 C73 2014

Criminal law boot camp
KFO575 .P72 2014

Criminal law handbook: know your rights, survive the system
KF9619.85 B47 2013

Criminal law of Kentucky, annotated
KFK1761 .A33 K4 2015

Criminal procedure
KF9619 .L34 2015

Death penalty defense: trials and appeals
KFO565.C2 D4 2014

Federal criminal code and rules

KF8836 .F422 2016

Innovative DUI trial tools
KF2231 .K17 2014

Katz Giannelli criminal law (Ohio)
KFO561 .K37 2015

Kentucky driving under the influence law
KFK 1497.8 .K46 2014-2015

Ohio arrest, search and seizure
KFO576 .K38 2016

Ohio criminal law handbook
KFO561.Z9 O55 2016

Ohio driving under the influence law
KFO297.8 .P34 2015-2016

Relentless criminal cross examination
KF9658 .M142 2015

A short and happy guide to criminal procedure
KF9619.85 .A28 2015

Sixth Circuit criminal handbook
KF9619 .S59 2015

Online Resources: Remote Access*

Fastcase

Drunk Driving Defense

EBSCO

Criminal Law: A Desk Reference
Criminal Law Handbook

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

Upcoming Events:

July 7: Hamilton County Law Library Resources Board Meeting

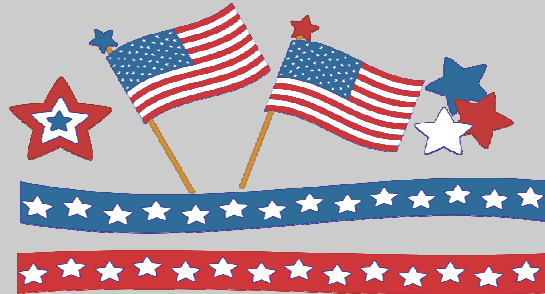
July 15: You and the Legal System: Ohio OVI/DUI

August 19: You and the Legal System: Nursing Homes

August 31: CLE: Legal Ethics & Access to Justice: Professional Conduct in Pro Bono Work

Law Library Holidays

The Law Library will be closed on Monday, July 4 in recognition of Independence Day.



July 2016 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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