

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

September 2016

Ohio Legislature Creates Fast Track for Resolving Public Records Disputes

By Michael Mayer of Faruki Cox & Ireland PLL. Reprinted with permission.

Ohio Governor John Kasich recently signed into law Senate Bill 321 to create a fast track for resolving denied public records requests. The bill received unanimous approval in the Ohio House and Senate. The new law added to the rights and remedies available to an individual who is seeking public records.

As background, Ohio's public records laws generally require that, upon request from an individual, a public office must promptly make available for inspection all public records responsive to the request. See, e.g., Ohio Rev. Code § 149.43(B)(1). A public office generally must also provide copies of the requested public records at cost and within a "reasonable" period of time. If an individual is denied a public records request, then he or she often must fight that denial in the courts — with the accompanying costs, attorneys' fees, and time.

Politicians are hailing the new law as one that will make the public records request process simpler and more accessible for Ohio citizens. Consider some of these major additions:

Court of Claims Action Now Available (Ohio Rev. Code §§149.43(C)(1), 2743.03(A)(3)(b), and 2743.75)

Arguably the biggest change is the creation of a new docket in the Ohio Court of Claims. The docket will handle complaints alleging that a public office unlawfully denied access to public records. Previously, a party's only legal recourse was filing a mandamus action.[1] The new law establishes an alternative route — one that will likely be cheaper, faster, and involve court personnel who are more familiar with this type of complaint. An individual can either (1) as previously allowed, commence a mandamus action to obtain a judgment that orders the public office to comply with

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Hamilton County Law Library

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By: Julie Koehne, Systems Librarian

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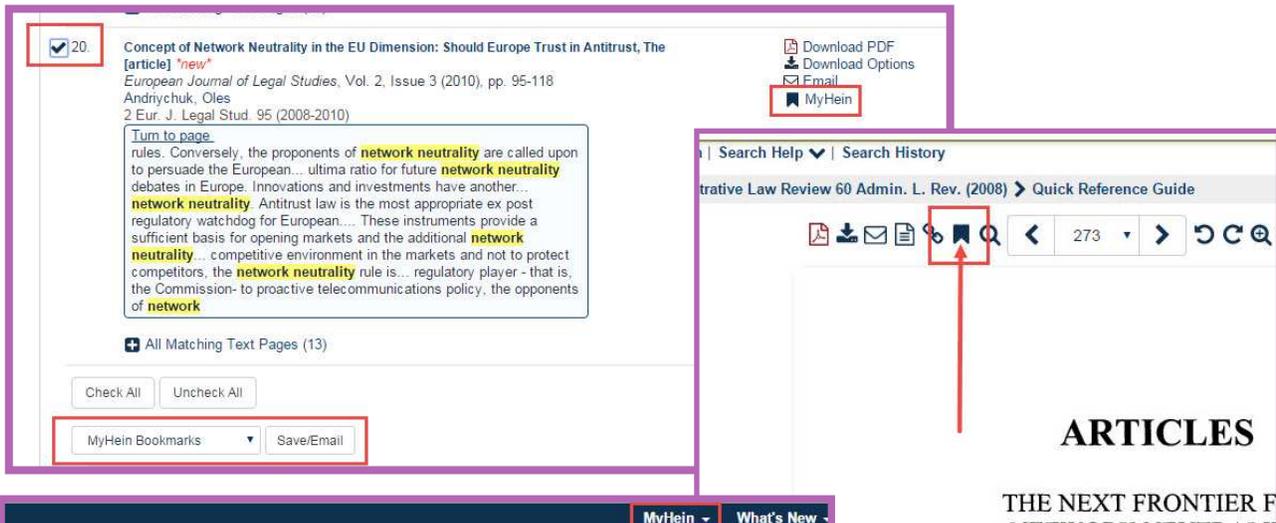


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Speaker: Craig Newburger

Tuesday, September 13, 2016

Noon-1pm

1.0 hour of general CLE pending in Ohio and
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[Fastcase CLE: Search Tips](#)

Speaker: Chuck Lowry

Tuesday, September 20

10am-11am

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Speaker: Suzanne Morris

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Speaker: Tiffany Fults

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***Note: this is not a CLE**

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the law, or (2) file a complaint directly with the Court of Claims.

The cost to file a case with the Court of Claims is only \$25, and the individual does not need to hire a lawyer. The complaint must attach copies of the original records request and any communications from the public office relating to the request. Once filed, a special master is assigned to the case, which is promptly referred to mediation services (in most circumstances). If mediation proves unsuccessful, the public office then must file a response to the complaint. No further motions or pleadings are allowed, unless directed by the special master. Discovery is not permitted, but the parties may attach supporting affidavits to their pleadings and the special master may require parties to submit additional information or documents that are supported by the affidavits. The special master then submits a report and recommendation to the Court of Claims. Either party may object to the report and recommendation. The Court of Claims then issues a final order that either adopts, modifies, or rejects the report and recommendation.

The process — from the conclusion of mediation to the Court of Claims' final order — should take a maximum of 48 days. See Ohio Rev. Code § 2743.75(E) and (F). In addition, any appeal to the Ohio Court of Appeals^[2] from the final order is given precedence by the Court of Appeals over other pending matters to ensure a prompt decision. Establishing that the Court of Claims will issue a final order ensures that the dispute's resolution will have the force of law.

Recovery of costs and attorneys' fees (Ohio Rev. Code §§149.43(C), 2743.75(F) and (G))

The new law further elaborates on when an individual can recover his or her costs and reasonable attorneys' fees in a public records dispute. As before, a court is required to award the individual his or her court costs if the court finds that the public office did not comply with the law. In a mandamus action, statutory damages are also typically awarded and an individual is entitled to recover attorneys' fees in various circumstances. The new law clarifies that the court may compel the individual to pay the public office's court costs, expenses, and reasonable attorney's fees if the mandamus action was frivolous. In a Court of Claims action, an individual is not typically entitled to recover attorneys' fees. However, the individual can be awarded attorneys' fees if, in an appeal of the Court's final order, the appellate court determines that the public office (1) violated the public records law, and (2) "obviously filed the appeal with the intent to either delay compliance with the court of claims' order from which the appeal is taken for no reasonable cause or unduly harass the aggrieved person." Ohio Rev. Code § 2743.75(G).

Additionally, despite allowing attorneys' fees awards if the public office acted in bad faith (in a mandamus action) or with intent to delay or harass via appeal (in a Court of Claims' action), the new law precludes discovery on the issue. See, e.g., Ohio Rev. Code §§ 149.43(C)(3)(b), 2743.75(G) (2). Presumably the intent of such a provision was to curb costs and delay. However, the rule hampers an individual's ability to collect the type of evidence most likely to show

bad faith or intent to delay or harass. Thus, the prospect of an attorneys' fee award will likely be limited to extreme circumstances.

Website records limitation (Ohio Rev. Code § 149.43(B)(7)(c)(ii))

The law also contains a provision that allows public offices that provide free public records on their websites to limit the number of records provided to a requester. Specifically, a public office can limit a requestor to 10 digital-format records each month, unless (1) the records requested are not provided on the website, and (2) the requestor certifies that he or she does not intend to use or forward the records or information for "commercial purposes." "Commercial purposes" is a narrowly-construed term that does not include gathering information for news reporting, among other things.

Quicker justice, but better justice?

Overall, despite the unusual step by the legislature to establish specific court rules and procedure, the new law provides more rights to the public and should make resolution of disputes cheaper and faster. In fact, the legislature expressly stated that the new procedures are "to provide for an expeditious and economical procedure" to resolve public records disputes. That intent is certainly manifest in the various "no discovery" provisions.

However, the speed arguably comes at the expense of some of the truth-seeking aspects of discovery and trial, as well as the limited ability to obtain attorneys' fees in Court of Claims cases. Also, the process may still be too slow in some instances (for example, when a media outlet is wrongfully denied public records for an urgent news story). Yet, the new law is an important step

forward and, at least on paper, a noteworthy improvement over the expensive, slow procedure that individuals had been forced to follow.

[1] A mandamus action is a lawsuit against a public office in which an individual asks the court to command the public office to perform its duties (after the public office has refused to do so).

[2] The proper appellate court is the court of appeals of the appellate district of the principal place of business where the public office is located.

For more information, contact [Michael Mayer](#).

ABA Institutes on HeinOnline Now

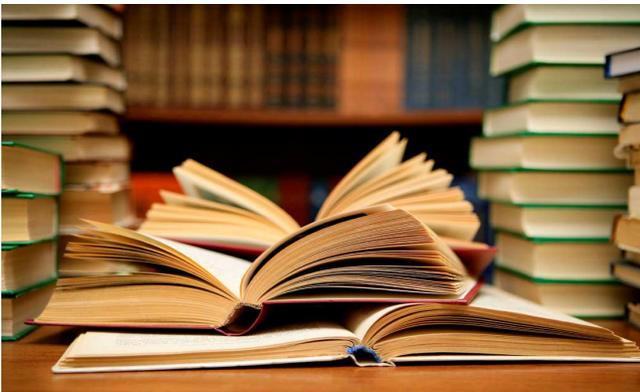
HeinOnline recently added content from the ABA Center for Professional Development's National Institutes from 2012-present. You will find them on HeinOnline in the ABA Law Library Collection Periodicals. As Hein notes, "These substantive materials are assembled each year by the faculty for these in-person programs and represent original analyses of legal developments in the subject areas being addressed." HeinOnline is available to local government officials, subscribers, and the public in the Law Library. It is also available off-site to our subscribers with 100% firms of fewer than fifty attorneys and to attorneys in solo practice. Examples of 2016 Institute topics include cybersecurity, the internet of things, internal corporate investigations, gaming law, aviation litigation, and white collar crime. If you have any questions about this service, [ask a librarian](#).

A Great Time to Join

If you discover that friends in the legal profession are not current subscribers to the Law Library, please do tout the benefits and encourage them to join for the rest of 2016. Think of it as a half price trial run to determine the value to one's firm. For just \$55 now, one can get all of the privileges of a subscription for the remainder of the calendar year. That provides access to research help, CLEs at no extra cost, use of the computer room, videoconferencing, books, and more. 100% firms and solo attorneys have off-site access to some legal information sources, too, including Fastcase and IntelliConnect, and HeinOnline. [Our application form is online](#) and prospective subscribers are welcome to call us for more information.

Used Law Books and Other Treasures

The Law Library has a protocol for discarding unneeded materials, furniture, and equipment. With the exception of some particularly outdated, low value, or damaged items, we put our discards on the [Hamilton County Auction site](#). It's worth a look, not only for the law books, but also for computers, jewelry, tools, and other items. As of this writing, there are three pianos for sale, a diamond necklace, and display cases.



You and the Legal System: Social Security Disability and Supplemental Security Income

Attorney Daryl Crosthwaite is our next speaker in the *You and the Legal System* series for the public. Mr. Crosthwaite will discuss Social Security Disability and Supplemental Security Income on Friday, September 16 at noon in the Law Library. The discussion will focus on the nuts and bolts of applying for and pursuing Social Security Disability benefits and Supplemental Security income payments from the initial application until the hearing before the Administrative Law Judge.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/event-registration/?ee=81>

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. Catharin Taylor will discuss Workers Compensation on October 14.

Law Practice Management

Law Library subscribers now have access to a variety of resources on Law Practice Management. If you have questions, or have a suggestion for a title to add, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

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

2014's best law firm technology, software, and tools: everything you need to overhaul your firm or start a new one
KFO77.5.A95 T86 2014

Build your practice and retain your clients : a roadmap to effective, ethical business developments and client service
KFO77.5 .B835 2012

Connecting with your client: success through improved client communication techniques
KF311 .N45 2015

Financial planning for lawyers
KFO77.5.564 .R62 2013

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

iPad for litigators, and Fight the paper : the pathway to a productive, paperless law practice.
KFO75.5 I63 2013

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

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

Professionalism, law office management, and client funds management : and, Ohio notary law
KFO526.N6 P765 2015

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

Surviving and thriving as a new lawyer : what you need to know about managing your new practice
KFO77 .S87 2014

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

Online Resources: Remote Access*

[Fastcase Law Practice Resources Library](#)
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Just Memos, 4th Edition
Lawyer's Desk Book
The Law of Lawyering, 4th Edition
The Lawyer's Almanac 2013

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Upcoming Events:

September 8: CCH IntelliConnect Tips and Tricks

September 13: CLE: Competency to Stand Trial vs. Competency to Waive Miranda Rights: Distinct Tests, Distinct Standards

September 20: CLE: Fastcase

September 18: You and the Legal System: Social Security Disability and Supplementary Security Income

October 14: You and the Legal System: Workers Compensation

October 26: Lexis CLE: Statutes and Legislative History Research

Law Library Holidays

The Law Library will be closed on Monday, September 5 in observance of Labor Day.



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