

The **BOYK** LAW REPORT

11 Offices >>> NW Ohio & SE Michigan

ATTORNEYS

Charles Boyk, Michael Bruno, Andrea Young, Zac Shaffer & Sam Bolotin, Fredric Boyk, Wes Merrillat, of counsel

CONTACT US TODAY!

MAIN OFFICE

1500 Timberwolf Dr.
Holland, OH 43528
(419) 241-1395 Main
(800) 637-8170 Toll-free
(419) 241-8731 Fax

BOWLING GREEN

121 E. Wooster St., Suite 100
Bowling Green, OH 43402

DOWNTOWN TOLEDO

405 Madison Ave., Suite 1200
Toledo, OH 43604

DEFIANCE

1012 Ralston Ave.
Defiance, OH 43512

FINDLAY

612 S. Main St., Suite 107
Findlay, OH 45840

FREMONT

219 S. Front St., Suite 105
Fremont, OH 43420

LIMA

114 N. West St., Suite 203
Lima, OH 45801

MAUMEE

1683 Lance Pointe Rd
Suite 104 B
Maumee, OH 43537

SWANTON

10725 Airport Hwy.
Swanton, OH 43558

WEST TOLEDO

7659 Kings Pointe Rd., Suite B
Toledo, OH 43617

WEST UNITY

123 E. Jackson St.
West Unity, OH 43570



AUTO ACCIDENTS • MEDICAL MALPRACTICE
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MASS TORTS • SEXUAL ASSAULT VICTIMS

Governmental Immunity on the Ballot

As the presidential campaigns heat up, political and legal issues alike move to center stage. One of the biggest legal issues that is fighting for center stage is something called “qualified immunity.” In Iowa, the concept of immunity has been focused on the issues surrounding former President Donald Trump and his request for immunity from federal prosecution. However, this concept of “qualified immunity” is something that has been gaining a lot of traction among other states, including debates in Indiana and New York. So, the question remains, what is “qualified immunity” and what does it mean for you?

Qualified immunity is a rule that protects government workers, like police officers and other government employees, from being personally sued for their actions on the job. Those in favor of keeping these protections say it allows them to do their jobs without worrying about being sued. Those against immunity, however, say that it allows them to do bad things without answering for their actions.

In Ohio, a group called The Ohio Coalition to End Qualified Immunity tried to get rid of this rule by putting it to a vote in 2021. They wanted to change Ohio’s constitution to get rid of immunity altogether and hold the individual wrongdoers accountable. Despite their repeated efforts, their petition was rejected by the Attorney General’s office eight times. The reasons for the rejection have been based on problems with the wording and a dedicated point to ensure the proposal follows the necessary legal guidelines and that the language of the proposed amendment to the Ohio Constitution fairly and accurately reflects the nature and scope of the proposed amendment. This is important

as changes to a constitution not only change the legal atmosphere but also change the fundamental rights, privileges, and protections of all citizens.

One person who is against qualified immunity is Ven Johnson, a lawyer from Detroit. He won a big case in 2022, where a man was tased in a police chase for panhandling and broke his neck from the fall. A federal jury found in favor of this man, but this is not the normal outcome. In the year before this decision, the United States Supreme Court overturned lower court decisions and upheld immunity for the officers involved in those cases.

Despite police officers and law enforcement being at center stage in the news, this immunity applies to any and all government workers. For example, in Michigan, a court found that a school district and its employees were immune from being sued in a school shooting case. Another example of those who are protected are EMTs. In Michigan, a woman was pronounced dead by EMTs and after being taken to the morgue, she was found alive and gasping for air by the embalmer. A federal court in Michigan found that the EMTs were entitled to immunity and were unable to be sued.

Legal immunity comes from an old English law that said “kings could do no wrong”, and therefore a king cannot be sued. No matter what side of the political spectrum one falls on, immunity can greatly impact your legal case and personal life. While Ohio continues to go back and forth on this issue, the future of immunity remains unclear. But, whatever the future holds, if you were injured by a government worker, please contact our office and we will be happy to speak with you.



Succession Planning – How to Prepare for New Ohio Succession Plan Requirements

Planning for the future is crucial for every lawyer. An untimely death, disability or disciplinary action can create a significant lapse in representation. Creating a succession plan protects your clients, your business interests, and the legal system itself if something unexpected happens. This is especially true for lawyers who work alone.

As stated in the January 2024 issue of the Boyk Law Report, Ohio does not expressly mandate a succession plan, but the Supreme Court recently amended its rules. Beginning January 1, 2025, attorneys engaged in the private practice of law must disclose whether they have a plan in place to manage the attorney's work or caseload in the event the attorney becomes unable to practice law, either temporarily or permanently.

Comment [5] to Rule 1.3 of the Rules of Professional Conduct provides that in order to prevent neglect of client matters in the event of a sole practitioner's disability or death, the duty of diligence may require sole practitioners to prepare a plan that designates another competent lawyer to assume representation.

In upcoming issues of the Boyk Law Report, we will talk with other law firms and sole practitioners about their succession plans, and strategy to fulfill the new requirement.

If you're a private practice attorney looking for more details on succession planning or thinking about retiring from law in the future, we'd love to chat with you. We can discuss how we might assist you in safeguarding your clients, and your practice.



Chuck Boyk's Summer Reading List

"I have always been a huge fan of legal thriller novels. I grew up reading John Grisham and Scott Turow legal novels. Here are 3 authors you cannot afford to miss."
– Chuck Boyk

Lisa Scottoline

Lisa is a University of Pennsylvania law graduate who is the author of 35 novels. She is routinely on the New York Times Best Seller list. Most of her books are centered in Philadelphia. Her character development is fantastic and most of her lead characters are Italian female lawyers. Her early books on the fictional law firm of Rosato & Associates and Rosato & DiNunzio are classics.

Sheldon Siegal

Sheldon is a U. California Berkeley Boalt Law School graduate and author of 18 novels. He has been a Corporate and Security Lawyer for over 35 years. His books revolve around San Francisco and the criminal defense legal community. His high-suspense criminal defense thrillers revolve around San Francisco defense attorneys Mike Daley and Rosie Fernandez. Sheldon's novels are like comfort food and you can't put them down.

Michael Stagg

This author is writing under a pseudonym. He is really Michael Regnier, a former longtime corporate litigator with the Toledo Law Firm of Eastman & Smith. He has written 8 novels, and his main character is Nate Shepherd, a criminal defense attorney. The books concern a small fictional town on the Michigan/Ohio border. His books are an absolute do-not-miss read. Some of his characters are based loosely on real people in the Toledo legal community. I have read all 8 of his books and my only complaint is that he needs to write more and very soon.

I hope you try out these authors and share the enjoyment of a great read.

\$300,000 Policy Limits Settlement for Disputed Liability Severe Injury Car Accident

Our client was a retired lady driving from Indiana to her home in upstate New York. She entered the Ohio Turnpike from Indiana and shortly thereafter her car was rear-ended, rolled over, and struck a ditch. Our client was ejected from the vehicle and was hospitalized with a fractured back, and right leg, and ended up on kidney dialysis because of medication she was given in the hospital.

There were a few problems in the case:

- 1) She had no memory of anything.
- 2) She was not wearing a seatbelt.
- 3) The other driver said she came out of nowhere and had no lights

on when it was pitch dark at the time of the accident.

Here is how we added value:

- 1) We found a witness to provide an affidavit of how the accident happened.
- 2) We ordered video footage of our client entering the Ohio Turnpike 5 minutes before the accident that clearly showed her lights were on and in good working order.
- 3) We substantially negotiated and reduced all of her health insurance and NY PIP liens so she was able to receive a substantial recovery.

Ohio's Recreational User Statute – Protects Both Landowner & Injured During Recreational Activities on Private Property

As the seasons change, opportunities for outdoor activities become increasingly abundant. After all, recreational activities, regardless of the season, are meant to spark joy and pleasure for the community. However, whether you enjoy hunting, fishing, or even hosting cookouts and pool parties as with any other activity, these activities also present opportunities for injuries. When this happens, it is important to know what your rights are.

Ohio Revised Code § 1533.181, more commonly known as the Recreational User Statute, protects landowners from liability when a person engaging in recreational activities is injured on their property, but only when certain conditions are present. So, whether you enjoy hunting, fishing, or even hosting friends and family in your backyard, be mindful as you may or may not be protected if someone gets injured on your property.

The immunity provided to landowners through the Recreational User Statute was created to encourage landowners to open their property for recreational activities, such as hunting, fishing, snowmobiling, and other recreational activities.

As an incentive to open their property to such uses, Ohio has provided three limitations on a landowner's liability. First, landowners do not have any duty to a recreational user to keep the property safe, for entry or

use. Second, granting permission to use the property is not a guarantee that the property is safe. Third, the landowner is not liable for injuries or damages sustained by a recreational user.

While this immunity may seem like a blessing or a curse, depending on who you are when injuries happen, it is only available in certain situations.

To be protected by the statute, the injured person must qualify as a recreational user. Ohio Revised Code § 1533.181, qualifies a recreational user as a person who:

- 1. Has permission to enter or use the property;**
- 2. Was not required to pay a fee or other consideration to the owner; and**
- 3. Participates in a recreational activity while on the property.**

It is important to remember that permission does not have to be explicit or written. Ohio courts have held that permission can be written or verbal and can be given by acquiescence.

For example, if you enter a park to hike on a trail, you have permission to be there but do not need to be expressly told by a park ranger or anyone else that you are allowed to hike there. In this example, since you entered the park without paying to hike, you would be a



recreational user and the state or the owner of the park would not be liable for your injuries.

Recreational activities include hunting, fishing, trapping, camping, hiking, swimming, or operating all-terrain vehicles or snowmobiles. However, this isn't an all-inclusive list. In Ohio, a recreational activity is potentially any activity that involves nature or the "true outdoors"[i] In plain terms, the activity itself is not the deciding factor, but rather the underlying character of the land in which the activity takes place is what matters.[ii]

The Recreational User Statute can be a sword or a shield in Ohio. Despite its name, the statute is extremely technical and depends on the facts of each case. Not only does the activity matter but the land and/or property itself can greatly impact your ability to receive compensation. As the protections provided under this statute can make or break your case, it is important to speak with an attorney before it is too late.

Attorney Marc Shefman



"What sets the Charles E. Boyk Law Offices apart is their attention to detail and genuine care for their clients. They take the time to understand each case thoroughly, ensuring that the referrals they send are the right fit for my expertise. Their dedication to matching clients with the right attorney greatly enhances the likelihood of a positive resolution for all parties involved. Thank you, Charles E. Boyk Law Offices, for your consistent support and for trusting me with your referrals. I look forward to our ongoing partnership."

Co-Counsel Opportunities

Whether you have an injury case that is outside your core practice area, a case you do not have time or the resources to pursue on your own, or a case outside your geographic area, our firm would love to talk with you about a referral or being associated as co-counsel.

We are proud to work with co-counsel throughout the country. And when those cases resolve, we are honored to pay significant referral and co-counsel fees.

For more information about Co-Counsel Opportunities, contact Charles E Boyk Law Offices, by phone at 419-241-1395, email at referceb@charlesboyk-law.com or visit our website, www.charlesboyk-law.com/referral

ABOUT THE CO-COUNSEL NEWSLETTER

Charles Boyk Law was founded more than 20 years ago with the intent of helping people in need. Behind a team of outstanding lawyers, professional support staff, and state-of-the-art technology, our firm has grown to become one of the leading personal injury law firms in NW Ohio and SE Michigan.

We consider it an honor to be contacted by attorneys, both locally and across the U.S., who are seeking co-counsel to help litigate complex personal injury cases. It is an even greater honor when those attorneys refer us a case involving their loved ones or friends.

Our co-counsel newsletter is tailored to attorneys. It highlights examples of cases we are handling and provides updates on litigation. If you have a personal injury case you are looking to refer, we invite you to consider our firm. Our team of attorneys and professional staff have the experience, knowledge and resources to provide your clients with the best representation and maximize the recovery.



CHARLES E. BOYK

LAW OFFICES, LLC

CHARLES E. BOYK LAW OFFICES, LLC

1500 Timberwolf Dr.
Holland, OH 43528

PH: 419.241.1395

TF: 800.637.8170

FX: 419.241.8731

www.charlesboyk-law.com



CharlesEBoykLawOffices



Charles E. Boyk



charlesboyklaw



www.youtube.com/ceboyk

Maumee Office Established

Charles Boyk Law has opened our twelfth office in Maumee, Ohio. The new location on Lance Pointe Drive near the intersection of Dussel Drive and Perrysburg-Holland Road offers clients yet another option for meeting with one of Charles Boyk Law's team of talented attorneys.

Our newest Charles Boyk Law office has already earned over 25 Five Star Google Reviews. Charles Boyk Law serves clients all over the region.

A Newsletter by Attorneys, For Attorneys

The **BOYK** LAW REPORT

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Ohio Victims of Childhood Sexual Abuse **Have Until Their 30th Birthday to Pursue a Civil Claim**

There has been a national trend to try and protect the rights of child sexual abuse survivors. The Ohio Legislature passed a law (Ohio Revised Code Section 2305.111) effective October 12, 2023. Here is the impact on the statute of limitations for sexual abuse victims:

- 1. A person who was sexually abused as a child (under age 18) has until their 30th birthday to pursue a civil claim against the sexual abuse perpetrator.*
- 2. A person with a developmental disability or physical impairment under 21 years of*

age has until their 30th birthday to pursue a civil claim against the sexual abuse perpetrator.

3. A person who was sexually abused over the age of 18 has a 1-year statute of limitation from the later of the date of the offense or the date on which the plaintiff learns the identity of the defendant to pursue a civil claim.

The impact of this law is that a large number of childhood sexual abuse victims potentially may be

able to pursue a claim for childhood sexual abuse. An attorney wishing to pursue such a claim should carefully read O.R.C. 2305.111 in conjunction with O.R.C. 2305.115 (Sexual Assault Claim against Mental Health Professionals) to fully comprehend all the nuances.

Our law firm handles a large number of these cases and would be happy to discuss any potential claims with you.

New address or phone number? Help us stay current by letting us know! Call 419.241.1395 or e-mail marketing@charlesboyk-law.com