A Newsletter by Attorneys, For Attorneys

The BOYK LAW REPORT

CHARLES E. BOYK LAW OFFICES, LLC

11 Offices >>> NW Ohio & SE Michigan

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Proactive Client Helps Turn A Tough Case Into a Significant Settlement

Douglas Kidd

Douglas Kidd is a 65-year-old social worker. In March 2023, he was in the scope of employment, using his own car to drive one of his clients to their appointment in Toledo, Ohio. When he lawfully entered the intersection and began to make a left-hand turn, a private car ran their red light and smashed into his vehicle. The Toledo Police Department arrived at the scene and found the other driver had suffered a medical emergency. Our client was taken by EMS to Toledo Hospital to be evaluated for the pain in his left shoulder, chest, and neck. After an evaluation and a CT scan, doctors found that Douglas had suffered a closed fracture of his sternum and a hematoma of his neck. He remained in the hospital for two days. Within a month of the accident, however, Douglas had to return to the emergency room due to severe shortness of breath and anxiety. A few weeks after that, he was re-admitted for an additional three days for further treatment.

After countless appointments and misdiagnoses, it was eventually discovered that the client suffered damage to his phrenic nerve, resulting in diaphragmatic paralysis, due to chest trauma. This condition caused his left lung to lose function, which explained his unresolved severe shortness of breath and restricted mobility. This is a rare injury, and Douglas soon realized no doctor in Ohio could perform the surgery to treat this condition. Douglas took matters into his own hands to learn and understand his injury. His independent research led him to find a surgeon in New Jersey specializing in phrenic nerve reconstruction. After several consultations, Douglas traveled to New Jersey for the surgery. The result was a success, and the claim was processed by health insurance since Ohio Workers' Compensation refused to pay for an experimental surgery.

For his legal battle, Douglas initially retained a law firm that focused primarily on his workers' compensation claim. Unfortunately, that law firm went weeks without returning Douglas's phone calls and missed a deadline to appeal an additional medical allowance on his workers' compensation claim. He discharged that law firm and was referred to Charles Boyk Law Offices by a friend.

Our office immediately obtained the police report and learned that the at-fault driver was cited for a suspended operator's license, but the cause of the accident was deemed "a medical emergency." We contacted the defendant's insurance and pressed them on the medical emergency argument, which had the potential of relieving the other driver of liability. Their insurance company eventually waived the "medical emergency" defense and tendered their $25,000.00 policy limits. Knowing the severity of our client's injuries and because the responsible party only carried state-minimum coverage, we contacted our client's uninsured motorist insurance and obtained his insurance policy. However, Douglas's personal auto insurance policy had a valid exclusion for an accident in the scope of employment, so his insurance company denied coverage.

Next, we contacted Douglas's employer and asked for their uninsured motorist policy. Normally, we find that the employers either do not have uninsured motorist coverage or there is a valid exclusion for workers' compensation claims/actions in the scope of employment that would void coverage. His employer's policy did not have any qualifying exclusion, and there was $1 million in uninsured motorist coverage. And our only competition was Douglas's social work client who suffered a broken collarbone.

During Douglas's treatment, we ordered reports from several of his treating doctors to address proximate cause, prognosis, future limitations, and medical costs. Additionally, our team negotiated his health insurance and workers' compensation liens to get the maximum amount in our client's pocket. Ultimately, we were able to settle the underinsured motorist claim for an additional $800,000.00, totaling a final settlement of $825,000.00 while maintaining his future treatment through his workers' compensation claim.

Douglas was not only proactive when it came to his treatment, but he was also very helpful in assisting us with managing his case. We brainstormed strategies together, so he understood all his legal options. He communicated all relevant information and thoroughly documented his experience, which helped us tell his story in a way that accurately reflected the entirety of his damages. After addressing his liens, case expenses, and attorney fees, Douglas recovered a significant portion of the settlement, which he used to purchase a new house. Based on this experience and other motivations, Douglas has decided to pursue a graduate degree in Disability Studies (DS) at the University of Toledo. Looking ahead, he plans to retire from his full-time position in social work and dedicate himself to his passion for writing. With the financial security provided by this settlement, he's excited for a future as a full-time disabled scholar and advocate, using his experiences to inspire and create meaningful change.

Learning lessons:

1. ***The client's proactive involvement and cooperation in their own case is essential to achieving the best possible outcome.***
2. ***The attorney should prioritize timely communication and actively explore every possible avenue for recovery.***
3. ***The attorney must not take accident investigations at face value.***
4. ***The attorney should examine all potential sources of insurance coverage, ensuring nothing is taken for granted and every option is explored. The result may result in an excellent recovery for a proactive, cooperative client like Douglas.***

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Ethical Standards Related to AI Usage

by Zac Shaffer

Artificial technology is becoming vastly more popular in every aspect of daily life. This technological advancement cannot be discounted or ignored. This is especially true with attorneys. In the last edition, we introduced Tavrn, an AI application being used by legal practices to assist with medical record reviews. One of the biggest benefits of this app is the ability to analyze voluminous records and prepare an organized synopsis.

However, there are legal and ethical concerns when attorneys use this technology: specifically, the accuracy and due diligence to verify the information it produces. While this seems like common sense, AI usage presents even more significant ethical questions and dilemmas than simply confirming the information is valid and precise.

While there have not been any formal opinions issued by the State of Ohio or the Ohio State Bar Association, there are five ethical issues that attorneys must consider and be cognizant of while using or even thinking of using AI in their practice.

First, as all attorneys know, confidentiality is supreme. Codified in the Ohio Rules of Professional Conduct as Rule 1.6, confidentiality is one of the foundational pillars of the attorney-client privilege. When using AI technology, or looking into software that can assist your practice, make sure you know where confidential information is going. Is the AI software being used publicly accessible? If you submit medical documents, is your client's personal information, such as name, date of birth, and social security number accessible to third parties? When reviewing your software, you have an ethical obligation to your client to investigate this issue. This also includes knowing what sources or additional software is being used to generate its response.

Second, consider your ethical obligations to the tribunal as well as opposing counsel. This coincides with the issue regarding accuracy. However, compare this to a case that you cite in a motion. Just because the excerpt of a case supports your position, does the full case holding or outcome do the same. As we all know, excerpts of cases, texts, emails, etc. can easily (and almost always are) taken out of context. Just because the information from an AI software is accurate, does not mean that it is not incorrect. Attorneys should keep in mind that AI software can only do so much and is typically going to only prepare something based on the information that was input. Be sure to avoid frivolous claims, contentions, and factual or legal support that was generated from AI use.

Third, consider the extent of the use of AI and how fee agreements can be impacted. Not only do you have a duty to communicate to your client regarding their case, but you might also have an obligation to disclose your use of AI tools. Things to keep in mind are: how do you bill your time when you use AI technology? Should you bill the cost of the technology to the client if the use of AI was not disclosed in the fee agreement? If you are still learning the technology, should or can you bill your client for an excessive amount of time because you weren't familiar with said technology?

Fourth, consider who the client hired? We all are aware that we are responsible for the mistakes of our staff. So, if your staff is using AI technology without your knowledge, you can absolutely be responsible for any mistakes or problems that surface. Be cognizant of what technology is being used by those individuals who work for you. If your office uses this technology, or if vendors use AI technology, then you should be aware of what AI tool is being utilized and become familiar with said technology. In addition, referring back to the all of the issues listed above, you will need to ensure that you are checking for accuracy, reporting to the client about this use, and determining what the appropriate time and costs that can be attributed to the client.

Finally, consider CLEs and updating yourself on the use of any and all AI tools, most importantly any that you utilize. If updates to the software are released, you have an ethical obligation to know what changes were made and whether those changes permit the continued use. Not only is this imperative for the successful use of current technology, but it also allows you to diligently and ethically know if there are better services out there to promote and protect your clients' interests.

AI technology is out there. Similar to computer usage and the internet during the last century, this is not a "fad" and will only gain traction and, theoretically, will continue to improve and be utilized in most aspects of our personal and professional lives. Knowing the changes that are coming and being open to and mindful of these technological advancements can drastically impact your practice. While we all hope and aspire that this impact will be for the better, you don't want to be the "Poster-Child" for what not to do. Especially as this will negatively affect your client and potentially land you in front of the Ethics Board.

Spotlight on Legendary Toledo Attorney Eddie Cole

by Mike Bruno

Photo credit: WGTE Public Media

At 104 years of age, no one would think wrongly if Eddie Cole voiced a few complaints about his early life. but that wouldn't be Eddie Cole. He is one of the most appreciative people you'll ever meet. After all, he started practicing law in 1951, at the age of 31. He officially retired in July, 2011, after practicing at a high level for over 60 years. This is an amazing record. yet, when one includes Eddie's early years; well, this is the making of a legend!

Eddie grew up in the Deep South of Greenwood, Mississippi. His parents were sharecroppers. When Eddie was 10 his father passed away. so, to help his family during the Great Depression, 10-year-old Eddie Cole took to the fields and went to work. Did Eddie let that get him down? Apparently not. He worked hard and studied harder, becoming the valedictorian of his high school graduation class. He earned a scholarship to Tougaloo College in Jackson, Mississippi, but his college career was interrupted when Eddie enlisted with the US Army in 1943.

He was sent to the South Pacific where he served in Japan, the Philippines, and New Guinea before being honorably discharged in 1946. Returning stateside, he finished his undergraduate work and then came up to Toledo to visit his sister and look for work. He worked construction jobs and also at Electric Auto-Lite. In 1947, he met Dean Charles W. Fornoff and enrolled in night law school at what was then known as Toledo University College of Law. He and William Thomas were the only men of color in the class.

In the 1970s, he worked as Assistant Director of Law for the City of Toledo and was appointed to several positions and boards by the Governor of Ohio, including the Ohio Civil Rights Commission. He was also active in the NAACP.

Staying busy and working hard were consistent themes in the life of Eddie Cole. He recalls working Saturdays as a law student at the law office of Jesse Heslip + J. Slater Gibson, inserting the supplements into the volumes.

His early years focused on general law practice, including criminal defense. In one memorable case, Eddie defended a client charged with Breaking and Entering. The case was tried to a jury, but they couldn't agree on the verdict. As a result of Eddie's representation, an angry and frustrated Judge Harvey Straub declared a mistrial for his client.

In later years, Eddie Cole's practice focused on preparing wills and trusts, as he began serving a more mature client base. He finally recalls practicing in the Lucas County Probate Court and says he enjoyed his dealings with Judge Willis Ludeman. Outside of the law practice, Eddie was active at Braden United Methodist Church, teaching Sunday school. He was married to Edrene Benson Cole, who passed away in 2007. the couple has two children Edwin and Elecia as well as three grandchildren.

When I spoke to Eddie recently, he told me that he is living in Detroit with his son. He likes to "work, get up, and keep records." He also enjoys reading and "some TV."

Although he no longer lives here, Eddie Cole retains a strong connection to Toledo and the Northwest Ohio legal community. He returns for special law-related events including the annual Eddie M. Cole Black Legacy Scholarship Luncheon hosted by the Thurgood Marshall Law Association. After all these years, Eddie Cole is still adding to his legendary story.

Lucas County Courthouse Updates Courtroom Technology

Lucas County Common Pleas Court recently installed new technology in its courtrooms. The system features upgraded monitors, digital audio and video controls, enhanced sound reinforcement, and a multi-channel recording system.

Lucas County Common Pleas Court Administrator, Tim Lubbe says the new system was designed and Installed in all courtrooms, by BIS Digital Inc. - a Florida-based vendor and integrator.

"The previous courtroom technology was outdated," says Lucas County Court Deputy Administrator Kevin Delminski. "It also used proprietary equipment. We wanted the new installation to utilize industry-proven components that we could repair or replace as necessary."

BIS Digital created the DCR (Digital Courtroom) software to integrate and control the system components. DCR is used in thousands of courts throughout the U.S. It can record and play back recordings on multiple audio and video channels. making it an ideal solution for every environment from small hearings to large courtroom proceedings."

BIS Digital President and Founder, Steve Coldren, says "BIS Digital provides comprehensive high-quality technology systems incorporating the key elements your courtrooms require for sound, video, presentation, and communication."

While the Lucas County courtrooms are not uniform in size, they all feature the same core components, which include DCR (Digital Courtroom) presentation software, multiple cameras, audio & video recording capabilities, and monitors for the judge, jury, and attorneys.

The courtrooms also feature WolfVision document cameras, which are utilized by courtrooms nationwide, for the viewing and management of judicial evidence.

Attorneys can connect their laptops, tablets, or other devices to the presentation system, to share and highlight evidence. However, Apple OS, PCs, and Android tablets connect differently. The Lucas County Common Pleas Court employs three AV Techs to operate the system. They can also assist attorneys and paralegals with connecting to the new technology.

Lucas County AV Tech, Ray Brown, says they have a wide selection of adapters to integrate most technology into the new presentation system. However, he suggests that you contact the court ahead of time to schedule a walkthrough with their personnel to ensure that everything works as it should.

In some courtrooms, a bailiff may operate the system, or the Judge may also elect to control the system personally.

Each courtroom will have the ability to record six sources of video. These include the five digital courtroom cameras, positioned at the witness stand, the Judge's bench, each attorney's table and an overall courtroom shot. The system also records a presentation feed which can include the prosecution or defense attorney's laptop or tablet.

Opposing Council can present and highlight documents, photos, or video evidence. They can position, enlarge, or even highlight sections of the evidence presented in the color of their choice. Their devices can connect wirelessly or by HDMI cable or other wired connection at the document camera stand.

Judges retain the ability to preview digital evidence from the bench before allowing it to be shared with the jury and entered into the record. Individual Judges will dictate how they want the technology integrated into the court proceedings. The system can record audio from a multitude of sources and locations. It is also possible to include microphones at the bench or even in the Judge's chambers.

Ultimately, each Judge will dictate how they want the technology integrated into the court proceedings. With ten judges serving on the bench at the Lucas County Court of Common Pleas, you may get ten different opinions on how the technology will be implemented. Be prepared to adapt to each courtroom.

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.

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Lucas County AV Tech - Ray Brown

AV Tips for Using Technology in the Lucas County Courthouse

- Suspend sleep mode on your device or extend the timeout parameters so it doesn't disconnect once the court is in session.
- Don't rely on battery power. Bring your power supply when possible.
- The system can accept phone input, but it is not recommended.
- Store your files on your device and do not rely on access to web-based cloud storage.
- The AV Techs will provide assistance to get you operational, but if you have a unique device or unusual setup, do yourself a favor and bring the adapters with you.
- Contact the bailiff to schedule a meeting with an AV Tech on the Friday before your court appearance to conduct a tech run-through and test your connectivity.

Contact Charles Boyk Law Offices

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

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