TOP 12 LEGAL TIPS

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LEGAL TIP #1. Want a lower property tax bill? Yeah, I thought so.

If you own real estate or are contemplating a real estate purchase, give some thought to your property taxes. Specifically, give some thought to whether you might be able to reduce your property taxes. Ohio permits property owners to appeal their property valuation for tax purposes by filing a complaint with the county Board of Revision. Typically, a hearing is set at which evidence is presented, and the local school district has an opportunity to contest the requested reduction. If the desired result is not obtained at the Board of Revision, there is an opportunity to appeal to the Board of Tax Appeals, and thereafter to the Ohio Supreme Court. In many cases, property owners are able to reduce their property tax bill dramatically. The deadline for filing a complaint with the Board of Revision is March 31, so interested property owners need to move quickly. Any property owner evaluating the option to appeal property taxes should consult with qualified legal counsel as early as possible.

LEGAL TIP #2. Shopping for real estate? What you don't know CAN hurt you!

If you're in the market for real estate, do yourself a favor and obtain a 100-year title search. Many title searches only look back 40 years. But sometimes 40 years does not go back far enough to reveal certain encumbrances. A good example is a utility easement. Although it might not show up in a 40-year title search, it is perpetual in duration, and the law provides that a property owner is bound by a recorded easement, even if it doesn't show up in a title search. The last thing anyone wants is to purchase a piece of property for development—or worse yet, for their home—based upon the understanding that it is unencumbered, only to find out later that a utility company has decided to exercise its easement rights.

LEGAL TIP #3. If you have a legal issue, ask a lawyer about it today.

Have a legal issue or think you might, but you aren't sure where to look for assistance from a lawyer with expertise relevant to your issue? Ask a lawyer today—any lawyer you know or are connected with. Don't worry if the lawyers you know practice the kind of law you are interested in. The fact is that legal communities—even in major cities—are well-connected "small worlds." The chances are good that any lawyer you know has the connections necessary to put you in contact with a lawyer who can help you. In fact, many lawyers appreciate the opportunity to serve as a resource in this way. And don't worry about being obligated to pay the lawyer for asking if they or someone they know can help you with a legal issue. Unless you have a formal substantive meeting with the lawyer, you generally won't be billed. If all else fails, try calling your local bar association, which may have a referral service. Time is precious, in legal matters just as in life. Waste it and you run the risk of losing opportunities. Don't let indecision over what kind of lawyer to call bog you down.

LEGAL TIP #4. Be careful with e-mail.

"Hot document" is a legal term applied to certain documents that are especially helpful to one party in a lawsuit and especially damaging to the other. All too often, a hot document is a thoughtless e-mail message sent by a party, or an employee of a party. A word of advice. Before you hit send on an e-mail that is nasty, indelicate, or downright incriminating, think about how it might look blown up on a projector screen in front of a jury that has the power to make you or your company pay for your ill-advised e-mail. If that thought makes you uncomfortable, then consider picking up the telephone.

LEGAL TIP #5. Eminent domain not for the arm-chair lawyer.

There are certain sorts of lawsuits that any litigator worth his/her salt can competently handle. Run-of-the-mill contract disputes, for example. Sometimes, however, the lawsuit calls for particular expertise in one or more areas of the law. Eminent domain is one of the areas where the specialist is likely to get better results than the generalist. For example, a lawyer unfamiliar with the eminent domain process may not understand or appreciate the numerous demanding pre-suit requirements the law places upon appropriating authorities, the ins and outs of an appraisal report, or the circumstances in which a property owner can get its legal fees paid by the appropriating authority. The bottom line is that a client who hires a generalist to handle an eminent domain matter is likely to leave money on the table.

LEGAL TIP #6. Counsel should be involved in the selection of expert witnesses.

Care needs to be taken in the selection of expert witnesses and in the preparation of experts to give testimony at trial. With large, institutional clients, there is sometimes a temptation to select an expert without input from counsel. This can be a mistake, particularly if the case is one that ends up being tried. Experts should be selected with significant input from counsel, and counsel should be sure to direct the client toward experts who will make a good appearance and presentation at trial. Few things can damage a case as much as an expert who fails to make an effective presentation on direct examination, or, worse yet, fails to hold up on cross-examination.

LEGAL TIP #7. Improve your chances of success at trial by fully preparing your experts.

Care must be taken to fully prepare an expert to testify at trial. A truly effective expert is one who not only supports your case, but also combats your opponent's. Your expert should be provided with an opposing expert's report(s) and deposition testimony prior to trial, so your expert can testify about deficiencies in the opposing expert's opinions during your case-in-chief. This can be especially helpful where you present your case first, and/or where your opponent did not arm its expert(s) with the information necessary to combat your case.

LEGAL TIP #8. What clients need to know about the attorney-client privilege

No one wants their communications with their attorney to become public knowledge, or worse, ammunition for their opponent in a lawsuit, right? Fortunately, the attorney-client privilege protects from disclosure or discovery confidential communications between a lawyer and a client or prospective client when the primary purpose of the communication is to obtain or render legal advice. Generally, the privilege applies unless it is waived by the client, which most often happens by disclosure of the communication to a third party. Thus, a verbal attorney-client communication is not privileged when a third party is present or within ear-shot. Also, while an e-mail message can be privileged if it is sent between the attorney and client, it loses its privileged status if the client copies a third party or forwards the e-mail to a third party. A client who wishes to protect the privilege should ensure that communications with his/her/its attorney remain confidential.

LEGAL TIP #9. Want to position yourself for success in a lawsuit? Stay on an even keel.

In a perfect world, only the merits of the parties' respective positions would determine the outcome of a lawsuit. In reality, however, the outcome can be affected—sometimes to a great degree—by other factors. One of the most significant of those factors is credibility with the court. Think of the court like a parent whose two kids have just burst through the door attempting to persuade the parent to settle a fight in their favor. Who is the parent more likely to believe or favor? All things being equal, the chances are good that the parent is going to look more favorably upon the kid who appears more reasonable. The same is true in a lawsuit. Always, always, always position yourself to seem like the more reasonable party in the eyes of

the Court. That means no unreasonable demands or unjustified requests for sanctions. In other words, "be nice to your sister!"

LEGAL TIP #10. The work product doctrine and how it can help you in a lawsuit

Sometimes clients involved in a lawsuit, or anticipating a lawsuit, want to do some sleuthing in order to line up key witnesses or evidence, or otherwise position themselves for a favorable result. A word of caution: make sure you consult with your lawyer before donning your detective cap. Your lawyer can tell you whether the investigation you propose may actually benefit your case. It may well be that the proposed investigation will not be beneficial, and may even be detrimental. Also, the appearance of "witness tampering" can be damaging when it comes out that a key witness was contacted about the dispute directly and "secretly" by one of the parties. Even if your lawyer agrees that the proposed investigation may be beneficial, it's still a good idea to consult about it ahead of time. Any investigation you conduct at the direction of your lawyer will generally be protected from disclosure or discovery by the work product doctrine. Without the blessing of your lawyer, however, you may be compelled by the court to provide information or documents relating to your investigation. Not only can this negate whatever competitive advantage you might have obtained, but it can also play into your opponent's "witness tampering" argument.

LEGAL TIP #11. Basic rules for success when having your deposition taken

A deposition is a question and answer session in which one or more lawyers asks a witness under oath a series of questions in order to obtain factual information relevant to a lawsuit. While the most important rule to follow if you're the witness is to tell the truth, there are other basic rules that should be kept in mind. Here are my top ten.

1 – Listen to each question carefully and make sure you understand it. Don't be afraid to ask for clarification.

2 – Think for a moment in order to frame your response before you start answering a question.

3 – Answer the question asked and only that question.

4 – When you're done with your answer, stop talking.

5 – Don't try to avoid awkward silences by rambling—especially when there's no question pending.

6 – Don't volunteer information. Make the lawyer conducting the deposition ask the right questions.

7 – Testify only to facts you know. If you don't know an answer, then say so.

8 – Give an estimate or a guess only when specifically asked to do so, and make sure you qualify your answer by indicating that it is only an estimate or a guess.

9 – Testify only to facts you remember. If your memory is uncertain, your answer should be "I don't recall."

10 – If you're represented by counsel who objects to a question, pay attention. An objection is an opportunity to pause and consider whether the answer you were about to give might violate one of these rules.

LEGAL TIP #12. Nobody has fun at a successful mediation.

Alternative dispute resolution is an umbrella term that describes ways to resolve a lawsuit without having a judge or jury decide who wins and loses. Mediation, a popular form of ADR, is settlement negotiation facilitated by a neutral third-party mediator. Typically, the mediator puts the opposing parties in separate rooms, and then spends most of a day walking from one room to another pointing out the weaknesses in each party's case and trying to figure out a resolution that everyone can live with. As most mediators will tell you, the role of the mediator is to settle the case, not to weigh the merits of the dispute and pick the winner and loser. At mediation, the merits are relevant only inasmuch as they motivate the parties to compromise. The virtue of settling a case at mediation is that the parties get to avoid the downside risk associated with taking a case to trial, where juries can be unpredictable and total defeat is always possible. But this risk mitigation comes at a cost. In order to get the certainty and finality of a settlement, one typically has to forego the possibility of a "home run" outcome, and coping with that loss can be difficult. Sometimes, the only person leaving a successful mediation happy is the mediator. Before engaging in mediation, parties need to understand the process, be prepared to compromise, and mentally prepare themselves for the emotional let-down that may accompany paying "too much" or accepting "too little" in order to get a case settled.