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## LEGAL NOTES AND NEWS – AUGUST 2012

### *What Jurors Don't Like*

Judge Victor Haddad of the Clermont County Court of Common Pleas says jurors DON'T like:

1. Attorneys who are not fully prepared or have a sloppy appearance.
2. Scowling; loudly exhaling; rolling eyes.
3. Too many objections and sidebars.
4. Witnesses not responsive or hard to understand.
5. Attorneys being disruptive and argumentative.
6. Cases not presented in chronological order.  
(Difficult to follow.)

### **ERISA Subrogation**

In *CGI v. Rose*, the 9<sup>th</sup> Circuit aligned itself with the 3<sup>rd</sup> Circuit's ruling in *US Airways v. McCutchen* by holding that traditional equitable defenses can be considered despite plan language to the contrary.

SWOTLA Vice President Mark Napier received a favorable ruling from the First District Court of Appeals. In *Rice v. Kanoza* (No. C-110595) the Court held that *Gulla v Straus*, 154 Ohio St. 193 (1950), does not limit negligent entrustment claims to vehicle owners, as had been widely interpreted, but that such claims may be brought against a permissive users who knowingly entrust a vehicle to an impaired or incompetent driver.

### *For iPad Users*

Ohio Rules of Court (Procedure, Evidence, etc.) and other docs, can now be downloaded from the Supreme Court's website and stored in "iBooks" – and it's free!

*And as for rules, note that a number of them were amended effective 7/1/12!*

*Expert Witnesses – Discovery:* As of July 1, 2012, Ohio Civil Rule 26 was amended regarding discovery of communications with experts. The Staff Note reads in part: *Civ. R. 26(B)(5) is amended to clarify the scope of expert discovery and align Ohio practice with the 2010 amendments to the Federal Rules of Civil Procedure relating to a party's ability to obtain discovery from expert witnesses who are expected to be called at trial. The amendment provides work product protection for draft reports and communications between attorneys and testifying experts, except for three categories of communications . . . [fees, facts and assumptions].*

**LAW QUOTES:** "An incompetent lawyer can delay a trial for months or years. A competent lawyer can delay one even longer." *Evelle Younger*

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