

## 2021-2022 BOARD OF DIRECTORS

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## UPCOMING EVENTS

May 10, 2022

**Annual Membership Luncheon**

12:00 p.m. – 1:30 p.m.

September 13, 2022

**Annual Judicial Reception**

5:30 p.m. – 7:00 p.m.

December 13, 2022

**Annual Holiday Luncheon and Silent Auction**

12:00 p.m. – 1:30 p.m.

### COAJ Mission

To promote justice for individuals in all local, state, and federal courts; to support our membership; to assist the legal community; to improve the judicial system; and to serve the citizens of Central Ohio.

## **OHIO CASE NO. 2021-Ohio-1288**

*Corey v. Corey*

In a 7<sup>th</sup> district case, the Court of Appeals upheld the trial court's determination that Defendant was cohabitating. He characterized his mailing address as a carriage house on the same premises as his significant other, who was his landlord and resided at the primary residence. The trial court placed no weight on whether the carriage house and primary residence were connected by a breezeway or otherwise. Further, the Court found that because they spent nights together at the primary residence, in the carriage house, and on vacation together, the Defendant and his significant other "resided together" for purposes of the legal standard. Finally, although Defendant and his significant other never combined finances, Defendant was the sole signatory and exclusively paid for a \$41,000 roofing contract for the residence and attached garage. The Court characterized this as regular financial support but provided in a lump sum fashion, rather than incrementally. The Appellate Court affirmed and found that Defendant attempted to disguise the relationship as landlord/tenant, but that the evidence established that they were living together for a sustained duration. The Appellate Court also believed the roofing contract was evidence of financial commingling. Thus, the relationship was "the functional equivalent of marriage" and spousal support should be terminated.

## **OHIO CASE NO. 2022-Ohio-629**

*Everhart v. Coshocton County Memorial Hospital*

### **The Statute of Repose for Medical Claims Does Not Apply to Wrongful Death Claims**

The Tenth District Court of Appeals was recently tasked with deciding whether the trial court erred when it applied the statute of repose for medical claims to a statutory wrongful death claim. In *Everhart*, the defendants allegedly failed to properly interpret chest X-rays in December 2003, which showed abnormalities in the lungs and required further work up. *Id.* at ¶ 3. In August 2006, the plaintiff's decedent underwent a CT scan, which revealed he had advanced stage lung cancer. *Id.* at ¶ 4. The plaintiff's decedent passed away in October 2006 and a lawsuit was filed by his Estate in January 2008 alleging causes of action for medical negligence and wrongful death. *Id.* at ¶ 5. Medical negligence claims in Ohio must be filed within four years of the date of negligence. See R.C. 2305.113(C). Ohio's wrongful death statute provides that a decedent's estate may file a wrongful death claim within two years of the decedent's date of death. See R.C. 2125.02. The defendants filed a motion for judgment on the pleadings arguing the plaintiff's wrongful death claim was a medical claim and, therefore, barred by the four-year statute of repose, even though the lawsuit was filed within two years of the decedent's date of death. *Mercer*, at ¶ 8. The trial court granted defendants motion, but the Tenth District reversed finding that the trial court erred in finding the four-year statute of repose for medical claims applied to wrongful death claims. *Id.* at ¶¶ 9, 55. In so finding, the Tenth District noted that the General Assembly declined to include a statute of repose related to medical claims within the language of R.C. 2125.02 but did specifically include statutes of repose related to wrongful deaths involving product liability claims. *Id.* at ¶ 21. Likewise, the Tenth District reasoned the General Assembly has demonstrated it is capable of enacting a statute of repose in other contexts should it intend to do so. *Id.* at ¶ 27. Indeed, in 1963, the General Assembly adopted a statute of repose for claims derived from unsafe conditions of real property improvement. *Id.*; see also R.C. 2305.131. Thus, the Tenth District concluded that the General Assembly did not intend to create a statute of repose for wrongful death arising out of a medical claim, succinctly noting: "if the legislature had intended a statute of repose in this context, it would have said so either expressly in R.C. 2125.02, as was the case in the products liability context, or expressly included wrongful death in the medical malpractice statute of repose, R.C. 2305.113, as it did in R.C. 2305.131 for claims derived from unsafe conditions of real property improvement." *Id.* at ¶ 29.