



**BRUCE O'NEILL  
IS 2010 "SUPER  
LAWYER"**



Fox, O'Neill & Shannon congratulates Bruce O'Neill for once again being named by *Super-Lawyers* magazine as one of the top business litigation attorneys in Wisconsin for 2010.

Bruce's honor was formally recognized in the December, 2010 *Super Lawyers* edition of Milwaukee Magazine.

Bruce was chosen after a rigorous nationwide search, which included state surveys, peer nominations, reviews and independent evaluations.

An FOS senior partner, Bruce specializes in commercial litigation and family law. In his over forty years of practice, he has won many high profile, "save-the-company" lawsuits and achieved multimillion dollar verdicts.

**DIVORCE IS BAD ENOUGH —  
I HAVE TO PAY ATTORNEYS FEES TOO?**



*By Laurina  
Jozwiak*

Unfortunately, debt problems and divorce often go hand-in-hand. But what happens when you face financial troubles because of the attorneys fees piling up in your divorce? Former spouses rarely agree to help pay their ex's attorneys fees from the divorce. Clients often ask how they can make their ex spouse pay part or all of their attorneys fees. Fortunately, there are a number of possibilities for relief from the burden of bearing these fees alone under Wisconsin law.

The default rule in Wisconsin is the "American Rule," where each party is responsible for paying his or her own attorneys fees, regardless of fault or who "wins" or "loses." However, specific exceptions in the Wisconsin statutes allow the courts to order that one spouse contribute towards his or her ex's attorneys fees. That is why parties often ask for "attorneys fees" in either their divorce petition or response.

The trial court has great discretion in determining

whether to award attorneys fees to a party. In examining a party's request for attorneys fees, the trial court looks at both the need of the requesting spouse for assistance and the ability of the other spouse to contribute. This analysis traditionally begins with an examination of each party's financial needs and resources, with the court looking at the assets, income and liabilities of each party. The fact that one party has more disposable income than the other does not guarantee that the court will award attorneys fees.

The trial court considers the reasonableness of the requested fees, the reasonableness of the parties' lifestyles, the parties' efforts to "over try" cases to increase expenses for their ex-spouse, and the parties' willingness to compromise. Courts can, and will, look at the actions of the parties across the scope of any proceeding in assessing whether an award of attorneys fees is appropriate to level the playing field.

A request for attorneys fees may be made as early as the temporary hearing, and throughout the divorce proceedings. The court also con-

siders such requests when determining support, and an order for maintenance may include provisions regarding the payment of a spouse's attorneys fees. The trial court may even award attorneys fees as a sanction, upon finding that a party has unreasonably withheld physical placement, or has violated another court order. In certain circumstances, an award of attorneys fees may even be appropriate upon appeal.

Because of the complexities involved in the attorneys fees issues, it is important to discuss any potential request with an attorney. Let the attorneys at FOS help you to determine whether a fee request is appropriate in your case.

**Tax Day is Almost Here!**

**Taxes are due on April 18th this year.**

Call us for your tax related needs at (414) 273-3939.

## WHEW! THEY DIDN'T PULL THE PLUG ON GRANDMA!



By Al Young

Last December, President Obama and Congress acted. They did not let taxpayers face a situation where there was no federal estate tax in December, but there would be a federal estate tax on January 1st, with an exclusion of only \$1 million and a tax rate of 55%. If that had happened, I feared that we would be seeing stories on TV about families who pulled the plug on elderly relatives in December to avoid the estate tax. What a nightmare that would have been!

Washington did act, and in a surprising way. Rather than resurrecting the estate, gift and generation skipping transfer taxes with the same exclusions and rates that applied in 2009, they increased the exclusions, cut the tax rates and made other taxpayer friendly changes.

These changes are in effect through December 31, 2012, meaning Washington must act again in 2 years. For now, significant planning opportunities are available.

### Exclusions and Tax Rates

The table below summarizes the exclusions and rates for years 2009 through 2012.

For married couples, revocable trust agreements typically use a formula clause to allocate assets of the first to die to a Family Trust in an amount equal to the federal estate tax exclusion. The balance of the assets, if any, is transferred to a trust for the surviving spouse. With an estate tax exclusion of \$5 million, in many cases, all assets of the first to die will be allocated to the Family Trust. That may be inconsistent with your wishes. You may want certain or all assets to pass directly to a spouse or to a trust for the spouse. Call us to review your situation.

### Portability

While the higher exclusions and lower tax rates have garnered most of the headlines, the new law contains a nugget that has not gotten much publicity – portability.

In years past, if the first spouse to die did not fully use his or her estate tax exclusion, it was lost. Under the new law, if the exclusion is not fully used at the first death, the surviving spouse

can use it at his or her death. The transfer of the exclusion from one spouse to the other is referred to as portability.

With portability, in many cases estate planning documents can be made much simpler. Rather than allocating \$5 million of assets to the Family Trust at the first death, all assets could be transferred to the surviving spouse, who could then use a \$10 million estate tax exclusion at his or her death.

Situations where it still makes sense to fund the Family Trust at the first death include second marriages, planning for grandchildren and estates greater than \$10 million.

Portability is only available through 2012. If it is to survive beyond then, Washington must act. A good way to take advantage of portability now is to leave all assets to the surviving spouse, but give the spouse the right to direct that certain or all assets be transferred to the Family Trust at the first death. This is known as a disclaimer. Plans that use this technique will remain viable even if portability is not extended beyond 2012.

### Gift Tax Planning

As can be seen in the table, prior to 2011, the gift tax exclusion was much less than the estate tax exclusion. In 2011 and 2012, the exclusions are the same. For those who used their \$1 million gift tax exclusion, an additional \$4 million exclusion is available. Now is a good time to make large gifts to family members, including grandchildren.

### Generation Skipping Tax

For larger estates, the increase in GST tax exclusion provides an opportunity to make additional transfers to grandchildren during lifetime and at death. It is important to note that the GST tax exclusion is not portable. If a married couple desires to leave more than \$5 million to grandchildren at death, funding a Family Trust or other trust at the first death should be done to use the \$5 million GST tax exclusion at the first death and allow the surviving spouse to leave up to another \$5 million to grandchildren at the second death.

If Washington does not extend the new law beyond 2012, the pre-2001 exclusions (\$1 million for estate and gift taxes and \$1.35 million for GST tax) and rates (55% for estate, gift, and GST taxes) will return. Act now to take advantage of today's opportunities.

Year	Estate Tax Exclusion	Gift tax Exclusion	GST Tax Exclusion	Tax Rate
2009	\$3.5 million	\$1 million	\$3.5 million	45%
2010	No tax	\$1 million	No Tax	35% (Gift Tax)
2011	\$5 million	\$5 million	\$5 million	35%
2012	\$5 million*	\$5 million*	\$5 million*	35%

\*Indexed for Inflation

## MEET OUR STAFF: JUDY JANETSKI

Most FOS clients' introduction to Judy Janetski is through a phone call, and most of the time it is while trying to pay a bill or get an invoice question answered. But, do you know anything about Judy, who is an integral part of the FOS team? Take a look...

Running a modern day law office is a complex and demanding job. Judy, the FOS office manager, is responsible for all firm financial matters, retirement plan administration, insurance administration, personnel issues and IT management. She is constantly reviewing

office procedures for ways to improve our efficiency and delivery of services to clients. For 19 years Judy has helped FOS lawyers do what they do best—represent our clients.

Next time you're in the office, say hello to Judy.



## CORPORATION OR LLC—WHICH IS RIGHT FOR MY BUSINESS?



By Eric  
Pagels

You know the importance of operating your business under the protective shield of a separate legal entity. You thought forming a corporation was the answer, but you have heard of C corporations and S corporations. And now everyone seems to be forming limited liability companies. What are these entities, and which is best for your business?

Corporations and limited liability companies (LLCs) are the most commonly formed business entities. All provide their owners liability protection. They differ, however, in their tax treatment and administrative requirements.

The two main types of corporations are C corporations and S corporations. A C corporation's income is taxed twice—at the corporation level and at the shareholder level (when divi-

dends are distributed).

S corporations offer a tax advantage if the proper election is made, with the corporation's income "passing through" to the shareholders. To qualify, S corporations must have a limited number of shareholders (100 or less), cannot have certain types of entities as shareholders (corporations, partnerships, multi-member LLCs, etc.), and must have only one class of stock (some debt types can be viewed as a second stock class). An "S" election must be timely filed with the IRS. If the S corporation violates an ownership requirement, it loses its S corporation status and can't "re-elect" S status for five years (without IRS consent).

Also, an S corporation owner may avoid some self-employment tax by taking some income via dividend rather than salary. The owner must still take a reasonable salary.

If an LLC meets the owner-

ship requirements for an S corporation, it may elect to be taxed like one, with the corresponding tax benefits. If not, an LLC will be taxed as a partnership (multi-member) or straight to the owner (single member).

Administrative requirements must also be considered. In this regard, corporations have more hoops to jump through than LLCs. In addition to articles of incorporation, both S and C corporations must make annual state filings, hold at least annual meetings, draft and keep minutes, and meet other filing and record-keeping requirements.

LLCs, on the other hand, are fairly simple to organize and maintain. Only initial articles of organization and an annual report must be filed with the state. The owner(s) should also sign an operating agreement, specifying the procedural and other rules, to avoid being governed by the state default statutes.

One might think that LLCs would outstrip corporations in popularity since they offer liability protection, like corporations, without corporations' strict filing/record keeping requirements. Depending on the business, however, a corporation may be preferable to an LLC. Different states have varying LLC statutes. Therefore, businesses operating in several states might do better as corporations. The same might be true if a business might "go public." While LLCs can raise capital through investment offerings, some investors are more comfortable with a corporation's traditional structure.

Choosing the right entity depends on the nature of your business, as applied to the different structures, requirements and benefits of several potential legal entities. FOS can help you determine the right entity for your business.



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Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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**YOU'RE BEING DEPOSED—WHAT'S THAT?**



*By Diane  
Slomowitz*

You are a party in a lawsuit. Your lawyer calls and tells you that the other side is going to take your deposition. But, what does that mean?

You flash to a vision of TV lawyer shows, with lawyers yelling, reaching across the table, and grilling you with unexpected questions and spotlights blaring. You start to sweat and fear this part of the civil process.

Relax. A real deposition is

nothing like that.

First, your lawyer will meet with you and make sure you are well prepared for the deposition long before you step into the conference room. There should be no surprises.

Second, most lawyers are respectful and courteous, not loose cannons. They will ask questions and you will answer them, all in civil dialogue.

At the deposition, there will be a court reporter (who will take down your testimony and possibly videotape the proceedings), you, your law-

yer and the other side's lawyer. The other party may also be in attendance.

The court reporter will administer the oath, and you will agree to testify truthfully. Then, the party calling the deposition will ask you questions. Your lawyer may object, but you will usually end up answering them anyway.

You may be asked questions about documents that either you or your opponent have produced. These will be marked as exhibits. When the party calling the deposition has finished asking questions, your lawyer may also ask questions or show you docu-

ments. Usually these questions and document references are to explain or give context to prior answers, or to provide more information that may be helpful to your case.

Your deposition testimony is very important to the process. Just be sure to keep your cool, tell the truth, and remember that real life is not always like TV.

**QUESTIONS?**

**CALL US**  
**414-273-3939,**

**OR EMAIL US**  
[\*\*info@foslaw.com\*\*](mailto:info@foslaw.com)