



Editor: Diane Slomowitz

NEGATIVE INTERNET REVIEWS—SOMETHING TO **YELP ABOUT!!**



By Michael G. Koutnik

Online posters should think twice before posting negative reviews.

That's the lesson that Jane Perez learned the hard way, according to a January 27, 2014 *Washington Post* article.

After receiving what she considered to be poor service, Ms. Perez posted a negative review of her home contractor on Yelp.com.

Shortly after, the contractor provided Ms. Perez with proper service—of a summons and complaint for defa-

mation.

Yelp.com is one of the better known online review services, with reviews of over 40 million local businesses and roughly 117 million users a month.

Countless other services exist, including paid (Angie's List) and free (City Search, Foursquare, and services from Google).

As internet reviews have become a more common and more frequently relied upon part of the marketplace, business owners are stepping up efforts to monitor negative reviews, which can significantly impact a busi-

ness.

In Ms. Perez's case, she alleged the contractor damaged her home and charged for work that was not done, and that a member of the work crew stole jewelry.

Ultimately, a Virginia jury found Ms. Perez's review defamatory, but awarded no damages.

Similar cases have occurred in other states, including one \$11.3 million judgment over defamatory posts made to an online message board.

These cases have raised some eyebrows, especially by free-speech advocates

who view the lawsuits as aggressive tactics to silence online critics.

If a negative review does not meet the legal definition of defamation, or if your company does not want to sue a negative reviewer, many options exist to address the review, aside from a lawsuit.

For example, you might reach out to the review site to remove the review. Persuading the site to remove a negative review will likely prove to be a

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FOS SERVES THE COMMUNITY

FOS employees, family and friends will ride in the September 14, 2014 Zoological Society of Milwaukee Ride on the Wild Side.

To register or contribute to this 2.5 or 27 mile ride, go to <http://www.zoosociety.org/Events/RideWild>.

In addition, The "Karen Fox Trotters," FOS's Komen Race for the Cure team, is gearing up for the September

21, 2014 walk/run. Funds aid breast cancer research.

To sign up or contribute, search for "The Karen Fox Trotters" by logging on to www.komensoutheastwi.org

FOS held its service day earlier this summer at the Despensa de la Paz food pantry. FOS greeted and distributed bags of food to more than 80 families.

MANIAN "UP AND COMING"



FOS congratulates litigation associate Jacob Manian for being named one of the 2014 Up and Coming Lawyers by the *Wisconsin Law Journal*.

Jake will be honored at a September 17, 2014 dinner at the Harley-Davidson Museum.

The Up and Coming Lawyers award honors the "rising stars of Wisconsin's legal community," according to the *Wisconsin Law Journal*.

Jake's practice focuses on civil and criminal litigation. Before joining FOS in 2012, Jake was a prosecutor in the Milwaukee County District Attorney's office.

KNOW YOUR IRA - KNOW THE RECENT IRA UPDATES



By Allan T. Young

UPDATE NO. 1

A year ago, I wrote about the case of *In Re: Clark*.

In that case, a mother named her daughter as the beneficiary of the mother's IRA. When the mother died, the daughter properly titled the IRA as an inherited IRA.

She took required minimum distributions for a few years. Then the daughter and her husband filed for bankruptcy.

The couple's creditors argued that the IRA should be available to the creditors and not protected in bankruptcy.

The Seventh Circuit Court of Appeals agreed.

While retirement plan accounts are exempt from the

claims of creditors, the court concluded that when an IRA is transferred to a beneficiary, it is no longer a true retirement plan account. Therefore, it is available to creditors.

The case was appealed to the United States Supreme Court.

Unfortunately, the Supreme Court recently agreed with the Court of Appeals.

Despite the Supreme Court decision, planning can be done to protect an inherited IRA from the claims of creditors.

The technique is to name an IRA Trust as the beneficiary of the IRA.

The family member who otherwise would be the beneficiary of the IRA is then named as the beneficiary of the IRA Trust.

UPDATE NO. 2

The Internal Revenue Code provides that an IRA may be rolled over once during any 365-day period.

The IRS consistently interpreted this provision to mean that it applies separately to each IRA that a taxpayer may own.

If a taxpayer owns three IRA's, she may roll over each IRA once during any 365-day period.

The IRS published its interpretation of the rule in instructions to the tax forms and in proposed regulations.

In the recent case of *Brobow v. Commissioner*, the U.S. Tax Court held that the once a year rule applies to all IRA's that an individual owns.

Thus, if an individual rolls over IRA #1, she cannot rollover IRA #2 until wait-

ing more than one year.

In light of the Tax Court decision, the IRS has withdrawn its proposed regulations.

Note, however, that the new rule applies only to rollovers.

A rollover is when an individual receives cash from an IRA and then deposits the cash back into the IRA or into a new IRA within 60 days of taking the distribution.

The new rule does not apply to a direct transfer of funds from one IRA to another IRA.

These developments underscore the importance of knowing and abiding by all of the retirement plan rules.

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Negative Internet Reviews

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challenge.

Your luck might improve, however, if your business can show that the negative review was written by a self-interested competitor.

If the review site won't remove the negative review, you can respond directly to the review writer.

A well-written, profession-

al, and public response to the review will confirm that your business reads reviews and takes them seriously.

You can also encourage customers to write positive reviews. These can help minimize the impact that negative reviews might have on other customers.

Your FOS attorney can help you work through the internet review process.

ALLEN AWARD

FOS shareholder Shannon Allen, a 2014 Women in the Law award winner, is profiled in a special edition of the *Wisconsin Law Journal*.

Access Shannon's profile at www.foslaw.com/newsletters.

Access Shannon's companion video at <https://www.youtube.com/watch?v=aV-qDJO2yg>.

FOS INTERN



Fouachua Xiong successfully completed her FOS high school internship, sponsored by the Eastern District Bar Association.

Foua was mentored by FOS shareholders Matt O'Neill and Shannon Allen.

SWEEPSTAKES RULES AREN'T A GAME



By Diane Slomowitz

Your company wants to try a new promotion to attract business and build goodwill. “Let’s do a sweepstakes,” you think. “We’ll just copy one from the internet. What could go wrong?”

Plenty, unless your sweepstakes rules are reviewed by an attorney knowledgeable in the law of illegal lotteries.

An illegal lottery has three components: prize, chance, and consideration. Almost all states subject illegal lotteries to fines or even harsher penalties.

A sweepstakes usually has

the first two elements. The “winner,” who gets a prize, is chosen by a random drawing involving no skill.

Picking a “winning” ticket from a bowl full of tickets could involve a sweepstakes. Estimating the number of pennies in a jar might not, because some skill is involved.

That leaves the consideration element—giving something of value to enter the contest. Wonder why sweepstakes rules have “no purchase necessary” language? Because buying a product to get an entry code constitutes consideration.

But what does “no purchase” mean? Is the gas used to drive to get an entry form a

purchase? What about stamps to get an entry form by mail? What if you have to enter via the internet, but you get your internet access at a “for-pay” internet cafe?

These and other questions have no easy answers. Moreover, state governments’ attitudes towards sweepstakes are not consistent and continue to evolve.

Some states now require sweepstakes sponsors to register. That’s why periodic review of sweepstakes’ rules is important.

These rules are a sweepstakes’ core. They should, among other things, describe the promotion’s mechanics, make the absence of consideration clear, and have liabil-

ity disclaimers.

The most effective and protective rules are drafted by competent counsel, not copied from the internet.

Sweepstakes can be great promotions for your company and its products.

No one can guaranty how a government agency will view a particular promotion.

However, your FOS attorneys can aid you in drafting sweepstakes rules, to help you pass muster.

QUESTIONS?
CALL US
414-273-3939,
OR EMAIL US
info@foslaw.com



WHO'S WITH BERNIE?

FOS shareholders Shannon Allen and Laurna Jozwiak pose with Bernie Brewer at a recent Brewers game.

UPCOMING TAX DEADLINES

- ◆ 9/15/14 extended corporate tax returns
- ◆ 10/15/14 extended individual tax returns
- ◆ 10/15/14 3rd Quarter Estimated tax payments

FOS ON THE MOVE

FOS associate **Michael Koutnik** has joined the Down Syndrome Association of Wisconsin, serving on the Association’s Philanthropy Committee.

FOS shareholder **Michael Hanrahan** spoke on the topic “*Spoliation of Evidence*”, to the Serjeant’s Inn on June 19, 2014.

FOS shareholder **Diane Slomowitz’s** articles, “It’s the Little Things That Get You” and “Don’t Sabotage Your Appeal,” were published in the July 2, and July 21, 2014, electronic editions of the *Wisconsin Law Journal*.

FOS shareholders **Bill Fox, Mike Hanrahan** and **Shannon Allen**, and FOS associate **Jake Manian**, attended the recent Milwaukee Boys & Girls Club of Greater Milwaukee’s Lawyers for Kids fundraiser in Milwaukee.

Slomowitz writes a regular

column for the *Wisconsin Law Journal* titled “Briefs for the Brief Writer.”

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YOU SAY PO-TAY-TO, I SAY PO-TAH-TO



By Laurna A. Jozwiak

You say independent contractor ("IC"), the state says employee ("EE"). No big deal, right? Wrong.

Far from a simple semantics issue, misclassifying EEs as ICs can have serious financial consequences. Federal and state agencies are looking with increasing scrutiny at how employers classify EEs and ICs.

And, if you think that this is just a problem for big businesses, think again. Some

recent targets include mom-and-pop shops, LLCs, all the way up to large corporations.

There are a variety of reasons why a business might prefer to classify a worker an IC, and not an EE, including avoiding withholding taxes, not being required to make contributions to unemployment or worker's compensation insurance, or excluding the individual from group health insurance.

While these are real costs and could result in real savings, they could all be quickly wiped away if the worker is misclassified.

Penalties for misclassification can include paying years of federal, state and local back taxes, unemployment and worker's compensation contributions. Other penalties could include paying previously unpaid overtime.

With so much on the line, it must be easy to distinguish between EEs and ICs, right?

Wrong. There is no bright line rule. Instead, you must consider a number of factors that are highly dependent on the facts of the relationship.

The IRS generally looks to three areas – behavioral con-

trol, financial control and the relationship of the parties. Wisconsin, in turn, sets out a nine-part test in the statutes governing worker's compensation, and a two part test (which includes a "six of nine" conditions requirement) for unemployment insurance.

If your business becomes the target of an investigation, don't rely on the chance that the government would agree to just "call the whole thing off." Protect your business by consulting with the attorneys at FOS first to make sure that your workers are properly classified.