

Do Not Drink and Drive



Ethan Vinson

With the holiday season upon us, it is customary to share holiday cheer with friends and family. With recent changes in the drunk driving laws, you should be aware of the penalties that will be imposed if you or a loved one are caught driving with a blood alcohol content of .08% or higher.

In Michigan, it is a felony to drive while intoxicated with a passenger under 16 years of age if it is your second violation within seven years, or if it is your third violation ever. The fine is a minimum of \$500 up to \$5,000, plus imprisonment for one to five years or probation with imprisonment for 30 days to a year, along with community service for 60 - 180 days. The term of imprisonment may not be suspended.

As reported in last month's edition of *On Law* ("Legislation Updates", *On Law*, November 2010), a person who operates a motor vehicle with an alcohol content of .17% or higher will now have his or her license suspended for a year if he or she has no prior convictions within seven years or not more than two prior convictions within 10 years. The Secretary of State may issue a restricted license, but only after the first 45 days of suspension have been completed. Even if a restricted license is issued, the violator cannot operate the vehicle until it is equipped with an ignition interlock device that has been approved and certified by the Secretary of State. The device can only be removed after the Department has received verification that the person has operated the vehicle with no instances of reaching or exceeding a blood alcohol level of .025%.

A conviction for driving while intoxicated or while impaired caus-

ing the death of another person is a felony, punishable by up to 15 years in prison and fines of \$2,500 to \$10,000 (20 years if the victim is a police officer, firefighter or emergency responder). Drunk driving causing serious bodily injury to another person is also a felony, carrying a possible sentence of up to five years in prison and fines of \$1,000 to \$5,000. In either of these instances, a court may order the violator's vehicle forfeited, or for a leased vehicle, returned to the lessor. If forfeiture is not ordered, a court must order the vehicle immobilized for up to six months. For a second conviction within seven years, vehicle immobilization is mandatory for three to six months. For a third or higher conviction, immobilization will be for one to three years. Vehicle immobilization can be suspended if the violator obtains a restricted license and if an ignition interlock device is properly installed in the vehicle; however, it may be reinstated if the device has been tampered with, disabled, or circumvented or if the person's restricted license has been suspended or revoked.

The court will also impose court costs and other associated costs and fees. With attorney fees, a violator will easily spend \$3,000 to \$5,000, or more if there are any prior convictions.

There are also recent changes in the law that empower the Secretary of State to take action automatically to suspend your driver's license upon a conviction for driving under the influence and to impose additional costs. In short, there are serious and expensive consequences if you drink and drive.

Enjoy the holiday season, but if you and your friends or family members are going to drink, please remember to have a designated driver.

Ethan Vinson

Estate Planning Review

In 2011, the Federal Estate Tax returns. This would be a good time for all of us to review our estate plans and review the objectives of our plans. An estate plan is a means of controlling the timing and distribution of our estate, care and custody of minor or disabled children, controlling the costs associated with the administration of an estate and providing for any tax concerns on estates with a value in excess of \$1,000,000 in 2011. The basic estate planning tools include a will, a revocable living

trust, a general durable power of attorney and a medical patient advocate designation.

Will. A will is a direction to a probate court on how you want your assets distributed upon your death. If you do not prepare a will, Michigan law will control the distribution of the property. Current law provides that the first \$200,000 is distributed to your

continued on page 2

Estate Planning Review (cont.)

spouse plus one-half of all remaining assets. The remaining assets would be distributed to your children. A Will provides directions to the probate court and states your personal intentions as to the care of your minor or disabled children, the distribution of your remaining assets and names your preference as to who you want as a Personal Representative with the authority to transfer your remaining property. This is all handled through the probate court involving cost, disclosure, time and reporting to the probate court on a regular basis until the process is completed.

For your personal assets, the probate process only addresses the assets in your own name at the time of your death. Assets which are not included in the probate process, because they are not in your personal name at the time of your death, include real estate which is jointly owned with your spouse or with someone else giving them the rights of survivorship, and contracts with beneficiary designations such as life insurance policies, annuities, IRAs, 401(k)s, in trust for accounts and other retirement accounts.

Revocable Living Trust. A trust is frequently used to avoid the probate process. A revocable living trust is a separate legal entity created during your lifetime for the purpose of owning and controlling your assets. You create the trust for your own benefit during your lifetime and name yourself as the trustee of the trust. An advantage of creating a revocable living trust is the flexibility it provides to you in controlling the timing, frequency and conditions of any distributions from the trust to your heirs or beneficiaries.

A second benefit is to avoid probate. If your assets are titled in the trust name, those assets are not in your individual name and can avoid the probate process.

A trust offers an additional benefit if you become disabled or incapacitated during your lifetime. If the trust is properly funded, there is no need for a conservator because the assets are titled in the name of the trust and the successor trustee would assume the role of managing the financial affairs of the trust.

A trust can be named as the beneficiary on contract designations such as IRAs, life insurance policies, 401(k)s, etc. This avoids a situation where your named beneficiary predeceases you, requiring that you revise the beneficiary of each policy or asset. The trust also provides for contingencies in the event something happens to the named beneficiary. The asset would not revert to your name, but would continue to be paid per the contingencies set forth in the terms of the trust.

The last major benefit of a trust is that it can be used to reduce estate taxes. In 2010, there was no estate tax. As of today, there will be an estate tax on estates with a value over \$1,000,000 starting in the year 2011. The highest estate tax rate will be 55%. Without some changes to the estate tax laws, this could impose a substantial estate tax burden for decedents with estates of \$1,000,000. A decedent's estate includes the value of all personal property and real property, jointly owned property, life insurance benefits, retirement income benefits and other assets. If you have a house which has retained some value in the recent economic times, a life insurance policy and some retirement benefits in an IRA or a 401(k) plan, it can be quite easy to accumulate \$1,000,000 in assets.

The disadvantage of a trust principally is the time and expense necessary to establish and create a trust. It is important to remember that the cost to create of the trust, incorporating your priorities on distributions, controlling the assets and the contingent distributions of your trust assets upon your death, are no more than what would occur after your death through the probate court. In essence, you are administering your estate and making decisions as to your intent and priority on distributions while you are alive and able to control these decisions. Without the trust, you are leaving it to a third party's discretion and their determination of what your intentions were to make distributions in the event of unplanned contingencies.

General Durable Power of Attorney. Another component included in estate planning is a general durable power of attorney. This appoints an agent with the authority to make financial or business decisions and conduct transactions for you in the event that you are not capable of doing so at some point during your lifetime. These can be very beneficial to elderly people who have difficulty traveling or remain focused on financial matters. Three words of caution with the use of a durable power of attorney: (1) the person designated as your agent typically has access to all of your assets during your lifetime, (2) a general durable power of attorney is not effective after your death, and (3) if you have a properly prepared and funded revocable living trust, upon any disability or incompetency, temporary or permanent, the successor trustee named in your trust would have the same rights and authorities as the named agent and there should be no need for a general durable power of attorney. A general durable power of attorney controls the assets that are in your name, not in the trust name.

Durable Medical Patient Advocate Designation. This designates a patient advocate for you to make future medical decisions in the event that you, as the patient, are unable to make these medical decisions. The advocate is advised of your wishes and concerns regarding your decisions on future, extraordinary medical treatment. At a time when you are not able to make these decisions, the advocate will presumably weigh the facts and circumstances at the time a decision is required and make a decision for you based on the information you have provided to them.

As part of our representation of clients and closely held businesses, a key component of any estate plan is providing a succession to the business owned by the person and providing liquidity to the estate to address any tax needs or other cash needs associated with death. Key components that are considered when creating an estate plan for business owners include buy-sell agreements, shareholder agreements, deferred compensation arrangements and other retirement programs identified specifically for their ability to assist in estate planning funding or administration.

If you have any concern over your estate matters, or those of your parents or other family members, please contact CMDA to set up a review of your estate plan and review the objectives of your plan or the plan of any family members. A comprehensive estate plan is much simpler to administer and to control the distribution of assets than an inadequately prepared estate plan or no estate plan at all.

Christopher G. Schultz

Firm Celebrates 45th Anniversary and other Noteworthy Anniversaries

We at CMDA are pleased to announce the Firm's 45th anniversary in 2010. When Owen J. Cummings, the Firm's founder, first opened his law office doors back in 1965, he did not expect that the Firm would grow to its present size and stature. We have over 40 experienced attorneys and a similar number of talented and dedicated support staff. We are all proud to be celebrating this momentous anniversary. We would like to take this opportunity to thank our clients who have allowed and trusted us to assist with their legal needs for so many years.



Owen J. Cummings

In addition to the Firm's milestone, many employees also celebrated noteworthy anniversaries in 2010. Ronald Acho, a co-founder and equity partner, celebrated his 35th anniversary with the Firm. Employees celebrating 25 years with the Firm include T. Joseph Seward, equity partner and the Firm's managing partner; Tim Young, equity partner; Thomas Laginess, a labor and employment attorney; Sue Lott, the receptionist in our Livonia office about whom you may recall reading in our February edition of *On Law*; and Janet Raffaelli, our information technology specialist.



Janet Raffaelli

Firm co-founder Bernard McClorey hired Janet Raffaelli in 1985 as his legal assistant. Janet has since become the Firm's "go to" person for anything related to our computer network. Not only is Janet extremely knowledgeable about our computer and communications systems, but she always wears a smile, has a kind word for everyone and brings a tremendous amount of patience with her to work everyday.

Janet moved to the area in 1985. She recalls seeing our big brown building as she drove along I-96 on just her second day in metro Detroit. She made a comment to her husband that it would be nice to work there. Imagine her surprise when, three months later, she had a job interview at that same big brown building. Janet still smiles when she thinks about this coincidence and how she and CMDA seem to have been meant for each other.

Employees celebrating 20 years with the Firm include Tim Ferrand, a partner in our Sterling Heights office; Marie Jones and Kathy Ueberroth, both legal assistants; and Jim Glover, the Firm's courier.

Marie Jones has assisted Mr. Cummings for seven years, taking

over for his longtime legal assistant, Mary Miller, who retired in 2003. It is no wonder that Marie and Mr. Cummings work so well together. They are both kind, caring and always willing to assist others. Marie has a great sense of humor and keeps the office laughing with her wisecracks and one-liners. She enjoys getting to know all of Mr. Cummings' clients on a personal level and, according to her, truly enjoys coming to work every day.



Marie Jones



Kathy Ueberroth

Kathy Ueberroth is the only employee at the Firm who celebrates both her birthday and Firm anniversary on the same day. When she joined the Firm, she worked with Mr. Seward when he was a young, associate attorney. Two years later she worked in our Roseville office assisting Tim Ferrand and entering documents into our case management system. When she moved back to the Livonia office in 1993, Kathy became Mr. Acho's legal assistant and has worked with him since that time. Kathy has a unique ability to juggle many tasks at a time. She is thoughtful, friendly and always goes out of her way to help others.

Many of our clients already know Jim Glover. Jim has become acquainted with many of them, as he delivers important documents to and from their offices, the courts and everywhere in between. Jim wears many hats in our Firm and often refers to himself as the "Company Mule." While our HR department may not recognize that as Jim's official title, it does have a ring of truth to it. Jim is always willing to help anyone in the Firm with any project. Everyone agrees that Jim is one of the most helpful, friendly and reliable employees in the Firm.



Jim Glover

CMDA is fortunate to have such a wonderful group of employees and we thank them for their dedication. Along with our clients, they have helped make us the Firm we are today.

Whether your legal needs are for commercial, municipal, insurance or personal matters, we appreciate your business. As 2010 draws to a close and CMDA enters its 46th year, we are proud and grateful for the trust that you have placed in us and for allowing us to be one of Michigan's premier law firms.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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