**Criminal Law Fact Pattern – Research Suggestions**

Identify the Legal Concept

We see the overarching legal concept in this fact pattern as “ineffective assistance of counsel.” You might read the fact pattern and see this issue immediately. Sometimes you read a fact pattern and don’t have a clue what the overall legal concept is. What can you do in this case? You could

* Try a natural language search using some of the key terms from the facts.
* Skim through either the text or the index of a treatise or handbook on your topic (e.g. Ohio Criminal Practice and Procedure); or do the equivalent online.
* Ask the assigning partner / discuss with a colleague.

Spot the sub-issues

In this fact pattern, we identified four possible sub-issues:

* Failure to produce expert evidence of battered women syndrome
* Poor legal research: relying on overturned case
* Hostility of trial lawyer toward client
* Unresponsiveness of lawyer toward clien

Identify the Legal Standard

Before delving right into researching the four sub-issues, we decided to return first to the overarching legal issue and asked ourselves “What is the standard for ineffective assistance of counsel?”

Some searches:

Westlaw or Lexis

Database: Ohio Jurisprudence 3d

Search: standard w/5 "ineffective assistance of counsel"

Lexis or Westlaw

Database: Ohio Cases (WL) or Ohio State Cases, Combined (L)

Search: effective or ineffective /3 assistance /4 "trial counsel" & crime

Search:

These searches turn up the *Strickland* case, which has these two prongs:

1. deficient attorney performance
2. resulting in prejudice to the defense so serious as to bring the outcome of the proceeding into quest

Sub-Issue #1 Battered Women Syndrome Expert Evidence

**Search #1:**

**Lexis**

Database: OH State Cases, Combined

Search: "battered women" /30 ((effective or ineffective) /5 assistance /5 counsel)

Results: 2 results – *Sallie* and *Fazio* cases

**Westlaw**

Database: Ohio Cases (OH-CS)

Search: "battered women" /30 ((effective or ineffective) /5 assistance /5 counsel)

Results: same two results

**Differences Lexis & Westlaw**

You get the same two cases. But WL gives you “Results Plus” on your results screen, with good leads into OHJur, Trial Handbook for OH Lawyers, and a law review article. In Lexis, once you click into one of the cases, you get “Related Content” ALR annotations, Matthew Bender treatises and other sources. Note, “Results Plus” and “Related Content” hits will vary between the two services, even in regards to titles both hold in common. They are not a substitute for searching the secondary sources thoroughly!

**Search #2:**

Ohio Jurisprudence

(effective or ineffective) w/2 "assistance of counsel" w/20 "battered woman"

Same result in both WL and Lexis.

Sub Issue # 2 Poor Legal Research

**Search #1**

Lexis

Database: Ohio State Cases, Combined

Search: (ineffective or effective) /3 counsel and (old or outdated or out-of-date /5 "case law" or statute) or (fail! or inadequate /5 research) and DISPOSITION(reversed)

Results: 17

**Search #2**.

Lexis

Database: Ohio State Cases, Combined

Search: “ineffective assistance of counsel” and research – 279 results. Then used focus search: "ineffective assistance of counsel" w/10 research

For 8 results.

**Search #3** – Suggested by Lexis rep.

 (ineffective or effective) /3 counsel and (old or outdated or out-of-date or bad or overturn! or inadequat! /5 case or law or statute) or (fail! or inadequat! or lack! or missing /5 research! or authority or cit!) – 1283

In focus: (ineffective or effective) /3 counsel and use\* or usage or using or reli! or rely! or cit! or refer! /15 (old or outdated or out-of-date or bad or overturn! or inadequat! /5 case or law or statute) or (fail! or inadequat! or lack! or missing /5 research! or authority or cit!)

269 results.

**Search #4**

Westlaw

Database: All Cases

Search: SY(OVERTURN! REVERS!) & "INEFFECTIVE ASSISTANCE" /5 COUNSEL & INSUFFICIEN! IMPROPER! INADEQUAT! INCOMPLET! /S RESEARCH

Sub Issue #3: Hostility

**Search # 1**

**Lexis**

Database: Ohio Jurisprudence 3d

Strategy: Do Search after drilling down TOC: Criminal Law -🡪 Part One Rights of Accuse -🡪 Assistance of Counsel

Search: hostil!

Results: 3 results, seem helpful

Sub Issue #4 Unresponsiveness

**Lexis**

Database: Ohio Jursiprudence 3d

Strategy: Do Search after drilling down TOC: Criminal Law -🡪 Part One Rights of Accuse -🡪 Assistance of Counsel

Search: (unresponsiv! or contact! or consult!)

Results: 24 results

**Westlaw**

Database: Ohio Cases (OH-CS)

Search: (unresponsiv! or contact! or consult! or confer!) /10 "ineffective assistance of counsel"

Results: 30 documents

**Lexis**

Database: Ohio State Cases, Combined

Search: (unresponsiv! or contact! or consult! or confer!) /10 "ineffective assistance of counsel"

Results: 40 documents

Next Step: I then changed the search to (unresponsiv! or contact! or consult! or confer!) **/5** "ineffective assistance of counsel" and got 5 results.

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