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Client Bulletin



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40 YEARS OF EXCELLENT SERVICE TO CLIENTS AND THE LAW FIRM

Forty years ago, it was not unusual for law firms and other employers to have a number of employees with long tenure, but in this day and age it is quite different. On September 5, 1978, a little over a year after her graduation from Columbus Technical Institute (now Columbus State Community College), Terri Huffman began her employment with the law firm at its office at 1630 Northwest Professional Plaza near Reed Road and Henderson Road in Columbus to the immediate south of the Cork and Cleaver Restaurant. The office building at 1630 Northwest Professional Plaza was demolished a number of years ago and the Cork and Cleaver is now Hyde Park Restaurant, but Terri still provides expertise and excellent service to the clients of the law firm.

Terri and her husband Dan reside in Delaware County and have two adult children – Danielle, a math teacher at the Delaware Area Career Center, and John, an engineer with the Delaware County Engineer's Office.

Thank you, Terri!!!!

DO YOU REALLY WANT TO BE YOUR OWN STATUTORY AGENT?

Almost always, an individual using the Secretary of State's Articles of Incorporation/Articles of Organization online forms or using internet forms to form a corporation or a limited liability company (LLC) makes themselves the statutory agent (also called a registered agent). In Ohio and in any state with rules of civil procedure patterned after the Federal Rules of Civil Procedure, service on a corporation, an LLC or other entity can be made at its principal place of business or upon its statutory agent. Because Ohio's statutes require that corporations, LLCs and other business entities, whether formed in Ohio or outside of Ohio, must have a statutory agent with a current address in the records of the Secretary of State, lawyers almost always when suing a corporation, LLC or other entity request that service of process of the plaintiff's complaint be made by certified mail service on the entity's statutory agent. A recent case, *John W. Judge Co. v. USA Freight, LLC*, 2018-Ohio-2658, illustrates why it may be preferable to use an attorney or statutory agent company (with professional liability or errors and omissions insurance) rather than serving as your own statutory agent, whether at your business location or your home.

In the *Judge* case, a default judgment was granted in favor of plaintiff because the defendant (the corporation) did not answer plaintiff's complaint. The defendant's owner and other officers became aware of the default judgment entered against the corporation after the plaintiff obtained a writ of execution and the court bailiff came to levy on the property of the defendant. The defendant filed a motion to vacate the default judgment on the grounds that it never received the plaintiff's complaint, was otherwise unaware of who signed for the certified mail service, and had a meritorious defense to the lawsuit. The evidence established that the mother of the sole shareholder (who was the statutory agent) spoke little English and was at the home of the defendant's owner/statutory agent (the address of the statutory agent in the Secretary of State's records), had signed the return receipt for the certified mail service of the complaint but allegedly had not given it to or told the owner/statutory agent. The trial court denied the motion to set aside the default judgment on the basis that service of a complaint is valid if "any person, at the address signs for the certified mail" whether or not the recipient signer is the defendant's statutory agent, that the actions (or inactions) of the statutory agent were imputed to the defendant and that the failures did not constitute "excusable neglect" (a criteria for setting aside a default judgment).

The Court of Appeals for Montgomery County agreed, citing a case out of the Fifth District Court of Appeals (which includes the counties of Delaware, Licking, Morrow, etc.) for the proposition that

inefficient or negligent internal procedures in an organization do not compromise excusable neglect and support vacating a default judgment, stating: "Had USA Freight chosen a better statutory agent, or had better procedures been in place for receiving service of process at the statutory agent's address, the mishandling of the complaint would likely have been avoided. Accordingly, the circumstances here do not constitute an unavoidable or unexpected hinderance or accident."

One can say that the takeaway from the *Judge* case is do not be your own statutory agent, but, rather, use an attorney or a statutory agent company with procedures in place to ensure that you and your entity are timely notified of and provided with the complaint or other document that must be responded to (and also has professional liability or errors and omissions insurance in place if their procedures fail).

GRANDPARENTS DAY EVENT AT SOURCEPOINT

On Saturday, September 8, 2018, from 8:30 a.m. to noon, SourcePoint will host its annual Grandparents Day celebration. The event, presented by ClearCaptions, takes place at 800 Cheshire Road, Delaware, and is free for Delaware County grandparents and their grandchildren. This year's theme is "Know Your Roots" and explores the past, present, and future through a variety of activities, including a fossil dig game, tin can phones, paper airplane launch, sock hop cakewalks, time capsule creation, interactive displays from the Delaware County Historical Society and Preservation Parks, and more. The event is sponsored by Country Club Rehabilitation and Ohio Living Sarah Moore. To register for the event, go to MySourcePoint.org/EC or call 740-363-6677.

DELAWARE GENERAL HEALTH DISTRICT FLU IMMUNIZATION CLINIC

The Delaware General Health District is providing a flu immunization clinic at SourcePoint, 800 Cheshire Road, Delaware, on Wednesday, September 26, 2018 from 9:30 a.m. to 11:30 a.m. This clinic is open to the public and insurance plans are accepted. For more information, please call (740) 203-2040 or visit DelawareHealth.org.

LAW FIRM IS A MAJOR SPONSOR OF THE DELAWARE LIONS CLUB ANNUAL GOLF SCRAMBLE

The law firm is proud to be a Major Sponsor of the Delaware Lions Club annual golf scramble being held on October 6, 2018 at Mill Creek Golf Course in Ostrander, Ohio. The firm's sponsorship makes it possible for the Club to continue its support of the Delaware community. In the last five years, the Delaware Lions Club has been able to purchase four seeing eye dogs, purchase a Sure Sight Vision Screener (used by local schools to identify vision problems in children not yet able to read) and provide eye exams and purchase glasses for children and adults in the Delaware community who lack the resources to do this for themselves.

NOTICE

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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