

# SANTEN & HUGHES



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## ABOUT US

People ask sometimes what it's like to practice in our law firm. Is it like *Law and Order* or *L.A. Law*? Or is it like *The Firm* in the John Grisham novel? While we may have some similarities to these publicized situations, there are probably not a lot. Our offices are on the 27th Floor of a downtown office building. Because we are all on one floor, we see most of the 17 attorneys who practice with us on a daily basis. We have monthly luncheon meetings where information about the firm is provided to everyone and current issues are discussed. At those meetings, various committees report on work they are doing, including things like recruiting, operational issues, marketing, and computer/IT concerns. Because a lot of our attorneys practice in the business area, working with businesses, our firm tends to operate in a business-like manner, deliberately, and with substantial transparency. And we like each other!

## RECOGNITIONS

The U.S. News - Best Lawyers® "Best Law Firms" rankings for 2010 list **Santen & Hughes** as being *first tier* in both Family Law and Personal Injury Litigation - Plaintiffs. **Bill DeCenso** focuses his practice on Family Law, and **John Holschuh**, **Bill Santen Jr.**, and **Sarah Tankersley** focus their practices on Plaintiff's Personal Injury litigation.

**Brian O'Connor** recently joined our firm awaiting results from the Ohio bar examination. Brian graduated magna cum laude from Salmon P. Chase Law School where he served on Law Review. He graduated summa cum laude from the University of Kentucky. He is a lifelong resident of Villa Hills, Kentucky.

**William J. Liss'** wife Barbara recently gave birth to their new son, Ari.

**Andrew W. Weisenberger's** wife Jessica recently gave birth to triplets, Evelyn, Emma and Eleanor.

**Jim Chalfie** was recently honored at Talbert House's 45<sup>th</sup> Anniversary Celebration for 43 years of service as a prior chairman and continuing board member. Talbert House is a community-wide nonprofit network of social services with over 30 programs focusing on prevention, assessment, treatment and reintegration.

**John D. Holschuh**, **William A. DeCenso**, **Katrina Z. Farley** and **James J. Chalfie** were recently recognized in the 2011 Best Lawyers in America.



The Center at 600 Vine

## LEGAL PERSPECTIVES

### JURISDICTION OF OHIO COURTS OVER CLAIMS INVOLVING DEFAMATION ON THE INTERNET

By: *Charles Meyer, Esq.*

When can an Ohio resident or business sue a non-resident in an Ohio court for defamatory remarks made on the internet? The Ohio Supreme Court recently addressed this issue in *Kauffman Racing Equipment LLC (“KRE”) vs. Roberts*.

The defendant, Roberts, a resident of Virginia, purchased an engine block from KRE, which maintains its sole business operations in Ohio although it sells products nationwide. KRE shipped the engine block to Roberts in Virginia, where he substantially modified it, then claimed it was defective. KRE agreed to take the engine block back to inspect it. They found that it was not defective except for Roberts’ modifications. They then shipped it back to Roberts in Virginia. Roberts subsequently posted numerous internet messages claiming that KRE sells defective engine blocks, that its service “...is less than honorable...”, and other derogatory remarks. KRE saw the internet postings as did at least five other Ohio residents who informed KRE about them. KRE filed suit in Ohio against Roberts for defamation and intentional interference with contracts and business relationships.

The legal analysis of when an Ohio court can exercise jurisdiction over a non-resident is complicated. For personal injury actions, jurisdiction can arise either when a non-resident causes injury by some act occurring within the state, or where the claim arises from acts committed outside Ohio with the purpose or the reasonable expectation of injuring persons in Ohio. The Court waded through an obstacle course of prior decisions.

The U.S. Supreme Court case of *Calder v. Jones* involved Shirley Jones, an actress living in California. She sued Florida residents who were employees of the National Enquirer, a Florida corporation, for defamatory statements made about her having a drinking problem. Although the National Enquirer publishes their paper in Florida, California is the state where it has its largest circulation. The defendants could have anticipated that the article would have a devastating impact on Ms. Jones in California where she lives and works. The court held that jurisdiction in California was appropriate.

Another case decided by the Sixth Circuit Court of Appeals involved Butch Reynolds, an Olympic gold medal-winning track star from Ohio. He brought a defamation claim against the International Amateur Athletic Federation (“IAAF”) for publishing a press release after a Monte Carlo track meet stating that Reynolds had tested positive for banned substances. This was after a drug sample was taken in Monaco and tested in France. The Court held that there was no personal jurisdiction in Ohio because the press release concerned Reynolds’ activities in Monaco, not Ohio, the drug sample was taken in Monaco and the testing done in France, Reynolds was an international athlete whose professional reputation was not centered in Ohio, the press release was not published or circulated by IAAF in Ohio but rather by other agencies, Ohio was not the focal point of the press release, and although Reynolds lost Ohio endorsements and appearance fees, there was no evidence that IAAF knew of them or their Ohio origin.

Neither the *Calder* nor the *Reynolds* case involved the internet, but the legal principles are the same. Two cases that did involve the internet are *Cadle Co. v. Schlichtmann* and *Oasis Corp.* *Cadle* was an Ohio-based debt collector working in Massachusetts. *Schlichtmann* was a Massachusetts resident who created a website to reveal what he believed to be *Cadle*’s unlawful activities in Massachusetts. The court compared the facts to those in the *Calder* and *Reynolds* cases. It declined to assert personal jurisdiction because the alleged defamatory statements were not related to any activities *Cadle* undertook in Ohio. In *Oasis*, Oklahoma residents launched a “gripe site” concerning the products of *Oasis*, an Ohio corporation. They had not purchased any items from *Oasis*, but were upset that an *Oasis* water cooler had caused a fire in a building they rented in Oklahoma. *Oasis* sued in Ohio. The court refused to assert personal jurisdiction because there was no evidence to suggest that the defendants’ communications were received by anyone in Ohio other than *Oasis*, the alleged defective *Oasis* water cooler started a fire in Oklahoma not Ohio, *Oasis* is an international company whose reputation is not centered in Ohio, and the website did not specifically target an Ohio audience.

Returning now to the recently decided case, the Ohio Supreme Court held that the Ohio court had personal jurisdiction with respect to KRE’s claims against Roberts. The reasons were that his statements concerned KRE’s Ohio activities in manufacturing and servicing engine blocks, that KRE’s reputation is centered in Ohio, Roberts’ internet postings were

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## LEGAL PERSPECTIVES

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### JURISDICTION OF OHIO COURTS ... (continued)

published to Ohio residents by Roberts and not by third parties, there was evidence that at least five Ohio residents read Roberts' postings, and that one of the focal points of Roberts' postings was to cause damage to KRE's reputation and negatively affect its contracts and business relationships in Ohio. It was also noted that Roberts had had commercial dealings with KRE involving Ohio. Since Roberts' actions allegedly caused injury to KRE in Ohio by acts committed by him outside of Ohio with the purpose of injuring KRE, thereby specifically targeting a known Ohio resident, the Ohio Supreme Court allowed the case to proceed against Roberts in Ohio.

The significance of this decision is that if Ohio businesses or residents are harmed by defamatory remarks posted on websites, blogs, or otherwise on the internet by someone located anywhere else in the world, it may be possible to sue the publisher right here in Ohio. Clearly, each case will be decided on its facts, but the framework for lining up the facts on the side of jurisdiction or against jurisdiction is at least now clearer.

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### WHY DO WE NEED AN ELECTRONIC RECORDS RETENTION POLICY?

*By: Brian O'Connor*

The digital age has undeniably affected nearly every aspect of our lives. With the rise of the internet, literally billions of people are now able to do, with the click of a mouse, a multitude of things which may have previously taken them hours, days, or weeks. Among other things, we now routinely shop, bank, research, talk, and work online. And for all of this, there is an electronic record.

The information available in the public domain is profuse. In litigation, for example, attorneys have available at their fingertips an exponentially larger amount of information about an opposing party. A growing number of public offices are making public records retrievable online, and social networking websites permit the general public to become quickly familiar with a company or person. In addition to what is now publicly available, individuals and businesses store a wealth of information on their private computers.

With all of this information becoming increasingly accessible, both businesses and individuals need to be cognizant of their electronic activities. What may appear to be innocuous electronically stored information might turn out to be valuable evidence that an opposing party to a lawsuit can discover during the course of litigation.

Most courts recognize the importance of electronically stored information, and expressly provide rules for parties in a case to obtain the electronically stored information of another party if they so desire. Furthermore, some courts have sanctioned parties who have failed to maintain or knowingly deleted electronically stored information that is relevant to a pending case. Accordingly, it is prudent to know precisely what information we store electronically and the manner in which that information is stored.

Many businesses have taken steps to institute a sound electronic records retention policy for both legal and practical reasons. A retention policy is a set of guidelines concerning the manner in which a company stores, retains, and purges electronically stored information. For example, a policy may require that all e-mails older than six months be deleted unless they have been specifically marked for retention. Every retention policy, however, must be tailored according to the size, nature, and resources of the business. All retention policies should be easily communicated to, and understood by, a company's employees.

A well-drafted policy helps a business comply with any legal duties that it may have to preserve evidence in a pending or anticipated litigation. It instructs a company how to uniformly retain what electronically stored information is useful, and purge any information which is unnecessary and not required to be kept.

The potential savings in both cost and time are also significant. When electronically stored information is uniformly organized and stored, that information is less likely to be mistakenly lost and it will be more easily found when needed. As such, a properly drafted electronic records retention policy should make far more efficient both the legal and general business needs of any company.