

# SANTEN & HUGHES



## ABOUT US

600 Vine Street  
Suite 2700  
Cincinnati, Ohio 45202  
Office (513) 721-4450  
[www.santen-hughes.com](http://www.santen-hughes.com)

### INSIDE THIS ISSUE:

About Us

Recognitions

Legal Perspectives

On October 22, 2009, the Cincinnati Bar Foundation will present The Lifetime Achievement In Law Award to Harry H. Santen, one of the founders and former managing partner of our firm. This Award is presented to one attorney each year to recognize 50 years of exemplary service reflecting the highest principles and traditions of the legal profession. Harry's accomplishments include being: president of the Cincinnati Bar Association, president of the Legal Aid Society of Cincinnati, a founding member and chairman of the board of the Volunteer Lawyers for the Poor Foundation and Volunteer Lawyers Project, a founding member and initial chairman of the board of the Center for Mediation of Legal Disputes, and founding member of the CBA/BLAC Round Table program to promote employment of minority law clerks in major downtown firms. Harry has also been involved with numerous civic organizations including Catholic Inner-City Schools Education, Cincinnati Opera Association, Madeira & Indian Hill Fire Company, University of Cincinnati College of Law, Heart Association of Southwest Ohio, and the City Garden Club Community Garden Project. In all that he has done, Harry has worked tirelessly to promote equal justice for all and opportunities for the advancement of minorities and the poor. Harry is an inspiration to the attorneys at Santen & Hughes, who follow his example by being involved in legal service organizations and other community service. We congratulate Harry on receiving this well-deserved Award, and thank him for his continued leadership.

## RECOGNITIONS:

Deepak Kanti Desai has become a shareholder ("partner") of Santen & Hughes. Deepak works in the areas of construction & real estate law, governmental & municipal law, employment & labor law, commercial litigation and chapter 11 bankruptcies.

Bill Santen, Sr. is the chairman of the Senior Lawyers Committee of the Cincinnati Bar Association which undertook a project to support the Sixth Annual USO Riverfest Gala. This annual event has generated more than \$2 million to support programs for recuperating veterans and their families.

John Holschuh has been reappointed for another year as president of the Cincinnati Bar Foundation. He recently spoke on Theobald and physician immunity in the Court of Claims for the Ohio Association for Justice.

Katrina Farley is speaking about Wills and Trusts at the Cincinnati Bar Association Basic Estate Planning Seminar on November 13. She will also speak at a public seminar at the Boone County Library (Scheben Branch, located at 8899 US 42, Union, Kentucky 41091) concerning estate planning issues related to death and disability on October 20 at 7:00 p.m.

Sarah Tankersley is chairing the subcommittee presenting the annual Judge Judy West luncheon and scholarship for the Northern Kentucky Bar Association on September 3. She is also running for NKBA president-elect.

Rob Linneman, an avid musician, will perform with his group, the Foster Grants, at the Cincinnati Bar Association fundraiser on November 12 at Cadillac Ranch. The theme of this year's fundraiser is a performance competition similar to "American Idol."



The Center at 600 Vine

## LEGAL PERSPECTIVES

### Effective Collection Strategies

By: J. Robert Linneman, Esq.

In the current economy, many businesses have seen a sharp rise in non-payment and collection problems. Businesses can minimize the incidence of unrecoverable accounts and reduce the cost of collection by establishing sound practices from the beginning of a credit relationship with a customer.

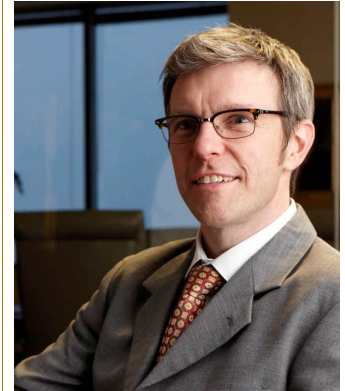
Prior to a transaction, when a customer seeks credit, the credit terms should be reduced to a written agreement, which the customer signs before any goods or services are provided. The agreement should contain clear language setting forth the time when payment is expected, a provision for interest on invoices not paid on time, and an agreement by the customer to pay the costs of collection including attorney's fees in the event of default. This is also the time to ensure that the customer is identified by the correct legal name (if it is an entity), to acquire a social security number or employer identification number, and to obtain trade references and banking information. Each of these pieces of information will be useful if collection becomes necessary. In the case of a corporation or other entity, only the most creditworthy should be permitted to receive credit without a personal guarantee of payment from the owner or some other individual. A personal guarantee provides back-up financial responsibility if the debtor entity goes out of business. Other useful terms to be included in the credit agreement are time limits for making claims about the quality of goods or services, and consent to jurisdiction of the local courts.

Sellers should maintain records of purchase orders transmitted by the customer. After default, the quantity, timing, or other details of the order may be disputed by a customer, and their P.O. provides the best proof of the contract. As the customer makes payments on the account, sellers should keep copies of the checks to track the banking relationships of the customer. Proof of delivery, acknowledgment of completion of services, or acceptance of goods or services should be obtained in order to document satisfactory performance.

When non-payment occurs because of the customer's financial difficulty (as opposed to a dispute over delivery or quality of goods), it is often useful to engage the customer in a dialogue for extended terms. Offering flexibility to a customer may lead to at least partial payment on an account, thus minimizing the exposure, and it is also an opportunity to evidence the amount and timing of payment by a separate contract or promissory note. Once a payment agreement is reached, it can limit the ability of the customer to later assert a dispute with the goods or services. If collection litigation becomes necessary, this will streamline the issues by avoiding certain defenses. The use of a cognovit promissory note (in Ohio) can minimize legal costs by permitting the creditor to obtain judgment immediately upon filing suit.

Having a written credit agreement, purchase orders, and proof of delivery provides the evidence necessary to obtain judgment, often without the need of trial. A properly drafted credit agreement permits the seller to recover court costs and attorney's fees, which discourages customers from engaging in an extended legal battle over frivolous matters. Obtaining personal guarantees often makes the difference between collection and non-collection. Keeping updated records of a customer's banking relationships often make it possible to recover payment from the customer's bank account by court order.

By establishing a simple credit procedure at the beginning of a relationship, a seller can ensure that it has the best chance to collect in the event of nonpayment.



*“Offering flexibility to a customer may lead to at least partial payment on an account, thus minimizing the exposure, and it is also an opportunity to reduce the amount and timing of payment to a separate contract or promissory note”*

## LEGAL PERSPECTIVES

### Remarriage and Estate Planning

By: Katrina Z. Farley, Esq.

Statistics indicate that 50% of divorced individuals remarry and 60% of first time remarriages end in divorce (the divorce rate increases for subsequent remarriages). Remarriage creates special issues, including the protection of pre-marital assets, the provision for spousal and child support related to prior marriages, and the limitation of the rights each party has against the other by virtue of the marriage.



Lawyers have lots of tools in their tool bag to deal with these issues. They include Prenuptial Agreements, Qualified Terminal Interest Property Trusts, life insurance, and documents relating to medical care in the event of incapacity and bodily remains after death.

A Prenuptial Agreement is a contract between unmarried individuals. It provides for the financial relationship of the parties during the marriage (including the liability for future health care or nursing home expenses), the division of property in the event of divorce, and the disposition of property upon the death of either spouse. Under Ohio law, surviving spouses have an automatic right to receive a portion of a spouse's probate estate (sometimes referred to as an "elective share") unless that right is waived in a Prenuptial Agreement. This elective share exists even if the Will of the deceased spouse leaves all of their assets to their children from a prior marriage. If the deceased spouse has no Will, a spouse (regardless of the length of the marriage) still has the right to receive a portion of the probate estate of the deceased spouse. These issues can be addressed with proper planning.

A Qualified Terminal Interest Property Trust is a type of trust that allows a person who is remarrying to make sure that their spouse is provided for during their life, without disinheriting children from a prior marriage. It has the added benefit of allowing for the deferral of estate taxes until the death of the surviving spouse, a "win-win" situation for all!

Another "win-win" in a remarriage can be the use of life insurance. The purchase of a life insurance policy naming the second spouse as the beneficiary can provide for them at little expense to children from a prior marriage. The big decisions will be the amount of insurance coverage (determined by the price of the premium) and who will be the owner of the policy (which carries with it the right to name the beneficiary of the policy).

Other issues of remarriage include, who will make medical decisions for "Mom or Dad", and whether life prolonging treatment will be utilized. The creation of legal documents like a Living Will and Health Care Surrogate (or Durable Power of Attorney for Health Care) can resolve these issues before they arise.

Effective communication and proper planning can result in long, happy marriages, and less conflict in the event of disability, divorce, or death!

*"Under Ohio law, surviving spouses have an automatic right to receive a portion of a spouse's probate estate (sometimes referred to as an "elective share") unless that right is waived in a Prenuptial Agreement."*