



COMMUNITY MATTERS

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News and Trends in Community Association Law

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Appearing in Court via Zoom: How To Avoid Cat-astrophy

by | Stephen A. Finamore, Esq.

Throughout much of 2020 and 2021, courthouses were closed for public safety reasons necessitated by COVID-19. Contrary to popular belief, this did not mean that pending

legal matters could not move forward. Courts were still able to conduct hearings and bench trials by video conference using Zoom and other virtual platforms. Even though courts began reopening in the middle part of 2021, many have continued to conduct virtual hearings and conferences. Accordingly, the presentation of association litigation matters has evolved. It has become quite common for board members and community managers to make virtual appearances in court as witnesses in court on behalf of the association, particularly in cases involving collection of assessments and covenant enforcement. Lessons have been learned in the year and half of practice with virtual appearances. Here are some tips for successful virtual court appearances via Zoom.

Testing 1-2-3. Test the video and sound on your system about 15 to 30 minutes prior to the hearing or trial calendar call. This includes making sure that your camera, speakers, and microphone are set up properly. Make sure that your speakers are far enough away from your microphone to avoid echoing. Confirm that your legal name will appear under your video pane. Nicknames or alter egos are not appropriate. Appearing in court with a screen name such as “Chuckles” or “Princess Yoga Pantz” will not be amusing to the court. Screen names including profanity or inappropriate innuendo may result in contempt of court. Also, make sure that any video filters (other than touch up) or questionable backgrounds are removed from your video settings. This year, the most popular video of a legal proceeding was of an attorney

who was unable to clear a cat filter from his video settings. Although the attorney confirmed that he was not actually a cat, and was ready to proceed with his case, this is most certainly not the impression he intended to make upon the trier of fact in the case. Winning the case is the objective, not becoming a viral sensation.

Dress for success. A significant benefit to some working from home has been the ability to dress casually. Gym clothes and pajamas are not appropriate for appearing in court. If you are appearing as a witness in a case on behalf of a community, the appropriate attire is business professional. Be cognizant of the fact that most, if not all, virtual hearings are being aired live or recorded on YouTube. Participants to virtual hearings should be mindful of their physical appearance on camera and try to present the most aesthetically pleasing version of themselves. Aside from showing the court an appropriate level of respect, this also presents an aura of preparedness, organization, and attention to detail. Participants to virtual legal process should dress as though they are appearing live in person.

Do not use the “chat” feature in the virtual platform. Most virtual platforms, including Zoom, include a feature that allows participants in the call to send messages (text) to each other or the entire group. It is easy to accidentally text the wrong individual or to accidentally broadcast a message to everyone on the call. Another concern is that although individuals may intend on their messages directly to each other to be private, it is unclear whether the judge or judicial staff are able to see these messages. Adding humorous commentary to proceedings of other cases being presented, critiquing the judge’s methods, or discussing possibly privileged information with counsel, should be avoided. If messaging is necessary, text using personal cell phones or other separate services outside of the virtual platform.

Ultimately, as with all presentations, practice makes perfect. If you have an upcoming hearing and wish to make the best possible appearance on behalf of your community, make yourself available to the association attorney to set up a practice session. ❖



How to Serve a Defendant with a Lawsuit and How to Deal with Service Evasion

by | Zachary H. Trippe, Esq.



To render a valid and enforceable judgment, a court must have personal jurisdiction over the defendant. Service of process is an essential component of personal jurisdiction.

There are a number of different ways to serve a person or entity with a lawsuit.

When it comes to service of process, personal service is the gold standard. Personal service occurs when an authorized individual personally delivers a copy of the summons and complaint to the defendant or his or her designated agent. It is not essential that the process server hand deliver the process. So long as the process server properly informs the defendant of his or her purpose, he or she can leave the process within reach.

Notorious service occurs when an authorized process server leaves a copy of the summons and complaint with an individual of suitable age and discretion at the defendant's dwelling or usual place of abode.

Defendants can also be served through publication in the newspaper in the county in which the defendant resides. Because service by publication is often unreliable, courts scrutinize its use.

Before service by publication can vest a court with jurisdiction over the defendant's person, the plaintiff must prove that the defendant: (1) is a resident of the county wherein the lawsuit was filed; (2) actually knows about the lawsuit pending against him or her; and (3) is actively evading service of process.

When it comes to the first requirement, the plaintiff can rely upon government records.

The savvy plaintiff will look to tax records as taxpayers are often required to declare, sometimes under penalty of perjury, their principal place of residence. The second showing is typically the hardest to make. Here, the plaintiff can point to telephone calls, emails, signed USPS return receipts, or other indicia of awareness of the complaint. Detailed affidavits of non-service can assist a plaintiff in satisfying the third precondition.

The court is going to want to see that the process server attempted to serve the defendant at several different hours of the day. A competent process server will take note of lights and sounds coming from inside the house and vehicles parked at or near the address. The shrewd plaintiff will pair several different affidavits of non-service with evidence of bad faith on the part of the defendant. This showing can substantially overlap with the second requirement detailed above. When conversing with the defendant, keep detailed records of him or her refusing to provide you a good place and time for service.

Service by publication can also give the court jurisdiction over a particular parcel of real estate. With this type of jurisdiction, a court can give a community association permission to foreclose its lien. Because this type of service cannot result in a money judgment, courts only require that the plaintiff demonstrate due diligence in attempting to find and serve the property's owner. To make this showing, the plaintiff

should utilize many of the methods described above. This type of service is useful when a community association does not know the rightful owner of the delinquent property. This vexing issue can arise when an owner dies without a will.

When a court grants a plaintiff permission to serve a defendant through the newspaper, you must comply strictly with the statutory regime governing such service. The cautious plaintiff will also take steps to ensure that the Clerk of Court fulfills his or her obligations under the law.

A defendant can also waive service of process. Waiver can save both parties time and money.

Service evasion is a serious problem. To get out in front of it, take reasonable steps to obtain reliable contact information for all of your members. Once you have their information, keep it current. Once service evasion becomes a problem, reach out to the defendant's neighbors. They can often tell you what the defendant looks like, what the defendant drives, when the defendant works, and what times the defendant is usually home. All of this information can assist your association attorney and process server.

This article is not meant to be an exhaustive treatment of its subject matter. If you are having a hard time serving a homeowner, contact your association attorney to utilize their experience in dealing with service evaders. ❖



2021 Georgia Legal Food Frenzy: Results and Acknowledgment

by | Cynthia C. Hodge, Esq.

The Georgia Legal Food Frenzy (or “LFF”) is a two-week food and fund drive competition done in partnership with the Georgia Attorney General, the State Bar of Georgia and

Young Lawyers Division, and the Georgia Food Bank Association. It is annually held during the last two weeks of April.

The primary purpose of the LFF has been to help stock the food banks throughout the state in preparation for the summer months. One in five children (and one in four adults) in Georgia live in food insecure households, which means they are unsure of their next meal and when it will come. Sixty percent of children in Georgia are eligible for free or reduced meals during school. When school is out for the summer, many families struggle to put food on the table. These statistics are staggering, and over the last year many people have faced some of the most difficult times in light of the COVID-19 pandemic.

In 2021, our firm’s ninth year competing in the Georgia Legal Food Frenzy, our firm’s team set a goal of raising \$9,000.00. Although this goal was the highest set by our team, it was necessary to assist with securing meals for Georgia food banks and the children and families they serve.

In years past, teams would collect online monetary donations, as well as gather physical food donations to present to regional food banks as part of the competition. With COVID protocols still in place, the 2021 competition remained completely virtual.

Now, back to the results. More than 210 firms and legal organizations and over 19,000 members of the legal community came together in 2021 and raised enough money to bring 3.7 million meals to our communities. Our firm’s team exceeded its goal and raised \$9,107.00 for the Atlanta Community Food Bank. This translates into roughly 37,131 meals for the 29-county radius that the Atlanta Community Food Bank serves.



Statewide, our team ranked:

11th in the Large Firm Category for total points

11th in the Large Firm Category for points per person

There are numerous individuals—firm employees, business partners and colleagues,

families and friends—that made generous donations, and we are eternally grateful for their support.

Additionally, a significant “thank you” goes to several generous property management companies that have made donations to our firm’s team this year (in alphabetical order):

- Access Management Group
- Beacon Management Services
- CMA (Community Management Associates)
- First Service Residential
- Heritage Property Management Services, Inc.
- HMS (Homeowner Management Services, Inc.)
- Homeside Properties, Inc.
- Liberty Community Management

Studies show that children who have access to proper nutrition have better education and health outcomes, something we know will help them thrive in the long term. The efforts of our employees, business partners, colleagues, families, and friends have helped give them a change at a brighter future.

Another successful year of donating is in the books! We are eagerly awaiting our 10th year competing in the LFF in 2022. Mark your calendars for April 18 – 29, 2022! ❖



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