

# Locating Information for Business Litigation

By G. Ann Baker

## Introduction

In Michigan, business entities file with the Corporation Division, Bureau of Commercial Services in the Department of Labor & Economic Growth, but in many other jurisdictions they file with the secretary of state. The International Association of Commercial Administrators (IACA) website at [www.iaca.org](http://www.iaca.org) provides contact information and links to member jurisdictions in the United States, Canada, and several other countries.

European Commerce Register's Forum, <http://www.ecrforum.org/section/9/index.html>, is similar to IACA for company registration offices in Europe and provides links to worldwide registers. The EU's "Your Europe" website at <http://ec.europa.eu/youreurope/nav/en/business/index.html> provides links and contact information for EU countries.

## Who Are the Parties?

Identifying the correct business entity plays an important role in business litigation. A person carrying on business under an assumed name is required to file a certificate with the county clerk in the county where business is conducted. "Person" is defined as "1 or more individuals, partnerships, trusts, fiduciaries, or other entities capable of contracting, except corporations and limited partnerships."<sup>1</sup> A general partnership is not required to file a certificate of copartnership if it has filed an assumed name certificate under 1907 PA 101.<sup>2</sup> The act does not apply to corporations and limited partnerships, but the Michigan County Clerks Association reported in August 2008 that assumed names have been filed in some counties for corporations and limited liability companies (LLCs).

The county clerks in the counties where the business is transacted are the best source for verifying if an assumed name or certifi-

cate of copartnership has been filed. Contact information for the various counties is available online at [http://www.michigan.gov/som/0,1607,7-192-29701\\_31713\\_31714-97053--,00.html](http://www.michigan.gov/som/0,1607,7-192-29701_31713_31714-97053--,00.html).

Corporate, LLC, and limited-partnership names must contain a required word that denotes the entity as a corporation, LLC, or limited partnership.<sup>3</sup> However, there is no statutory provision to prevent entities that have not organized as such from using those words or abbreviations. Under section 2140 of the Revised Judicature Act (RJA), "evidence that such corporation, company, or association is doing business under a certain name shall be prima facie proof of its due incorporation or existence pursuant to law, and of its name."

A corporation, limited partnership, or LLC may conduct business under one or more assumed names. An assumed name distinguishable on the records of the administrator may be adopted by the filing of a certificate of assumed name with the Corporation Division.<sup>4</sup> The same name may be assumed by two or more corporations, limited partnerships, LLCs, or any combination of those entity types participating together in a partnership or joint venture. Each participant must file a certificate of assumed name with the Corporation Division. In addition, a foreign corporation, limited partnership, or LLC may obtain a certificate of authority to transact business in Michigan under a qualifying name if the entity's true name is not available for use in Michigan.

Generally, public bodies do not form nonprofit corporations under the Nonprofit Corporation Act (NPCA). However, there are exceptions. Public school academies are public bodies organized under the NPCA.<sup>5</sup> A home rule city is permitted to form a nonprofit corporation to establish, operate, or maintain a medical facility or "for purposes that are valid public purposes for cities in

this state."<sup>6</sup> The Department of Community Health is authorized to establish a nonprofit corporation to "plan, promote, and coordinate health services research with a public university or a consortium of public universities within the state" and to establish with Michigan State University a nonprofit corporation to establish and operate a center for rural health.<sup>7</sup>

Business Entity Search, [www.michigan.gov/entitysearch](http://www.michigan.gov/entitysearch), is an index to corporations, limited partnerships, and LLCs active at any time since 1978. A search may be conducted by name, keyword, or Corporation Division file number. It provides basic information such as status, resident agent, and registered office address and identifies the year of the most recent corporation annual report with officers and directors. Documents filed since 1990 can be viewed online and printed.

## Service of Process

Corporations, LLCs, and limited partnerships are required to appoint and continuously maintain a resident agent and registered office in Michigan.<sup>8</sup> Foreign limited partnerships and foreign LLCs appoint the administrator as the agent for service of process if an agent has not been appointed or cannot be found or served with the exercise of reasonable diligence.<sup>9</sup> By transacting business in this state without a certificate of authority, a foreign LLC appoints the administrator as its agent for service or process "with respect to a cause of action arising out of the transaction of business in this state."<sup>10</sup>

MCR 2.105(D)(4) provides that a corporation may be served by mailing a copy of the complaint to the corporation or an appropriate corporate officer and to the Corporation Division if the corporation has failed to appoint or maintain a resident agent, has failed

to keep up its organization, or the corporation's term has expired. Section 2582 of the RJA requires a fee of \$3 be paid to the Corporation Division at the time of such service.

A limited liability company is an unincorporated membership organization. Service of process on a partnership association or an unincorporated voluntary association is provided for in MCR 2.105(E). MCL 450.4207(4) provides that if a limited liability company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the Corporation Division a summons and copy of the complaint.

## Jurisdiction

If a foreign entity's activities constitute transacting business in the state, it is required to obtain a certificate of authority. The Business Corporation Act (BCA) and Michigan Limited Liability Company Act (MLLCA) describe activities that may not constitute transacting business in the state.<sup>11</sup> Both the statutes provide, however, that those provisions do not apply in determining the contacts or activities that may subject a foreign corporation or LLC to service of process or taxation in this state or to regulation under any other act of this state. Sections 711, 715, 731, and 735 of the RJA describe contacts and activities that may subject an entity to jurisdiction in Michigan even when no certificate of authority is required.

The absence of a certificate of authority may be an indication that the foreign corporation or LLC is not required to obtain a certificate of authority. However, if a foreign corporation or LLC is required to obtain a certificate of authority and fails to do so, it shall not maintain an action in any court of the state until it obtains a certificate of authority. Failure to obtain a certificate of authority does not impair the validity of a contract and does not prevent the entity from defending an action or proceeding.<sup>12</sup>

## Period for Bringing Claims

The BCA and MLLCA provide specific periods within which certain action must

be brought. For example, section 489 of the BCA and section 515 of the MLLCA provide specific times within which an action by a shareholder or member must be brought. Section 308 of the MLLCA provides that a proceeding for a wrongful distribution is barred unless initiated within two years after the effective date of the distribution. The Michigan Court of Appeals has upheld the procedure in sections 841a and 842a of the BCA, which permit a dissolved corporation to provide notice of its dissolution and bar claims not presented within a specific period.<sup>13</sup> Sections 806 and 807 of the MLLCA contain comparable provisions to bar claims against a dissolved LLC.

Section 2912 of the RJA provides that a civil action for malpractice may be maintained against any person "professing or holding himself out to be a member of a state licensed profession." State License Search, <http://www.michigan.gov/statelicense> search, can be used to determine whether a particular activity requires a license and to locate contact information for the licensing agency.

Section 5838 of the RJA provides that "a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." An action for malpractice must be started within six months after the plaintiff discovers or should have discovered the existence of the claim, or as prescribed in sections 5805, 5851–5856, whichever is later.

## Legislative History

When litigation involves the interpretation or application of a statute, legislative history can be helpful, and several resources are available. Legislative analysis of recent legislation is available at [www.legislature.mi.gov](http://www.legislature.mi.gov). The production of legislative bill analyses began in 1973, and copies of legislation and analysis not available on the legislature's website are available from the State Law Library at [www.michigan.gov/hal](http://www.michigan.gov/hal).

Materials produced for the Institute of Continuing Legal Education when the current entity statutes were adopted or amended frequently include commentary on the statutes and describe the changes from the prior laws. For a general overview of Michigan corporation law before the passage of the BCA, see Hamilton, "Michigan Corporation Code," and Wilgus and Hamilton, "Michigan Corporation Law." Annotations and history in the Compiled Laws for 1897, 1915, 1919, and 1948 also provide valuable information about the purpose and applicability of various statutory provisions.

## Conclusion

Finding information and locating the appropriate agency can be frustrating, and jurisdictions locate services and programs in various agencies. As the information and services available online continue to expand, the jurisdictions are taking steps to improve their services. Many jurisdictions offer good standings and certifications online. With more and increasingly efficient technology, the ability to quickly locate and obtain information will continue to improve. ■

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## FOOTNOTES

1. MCL 445.1(4)(a).
2. MCL 449.101.
3. MCL 450.1211, 450.4204, and 449.1102.
4. MCL 450.1217, 449.1104, and 450.4206.
5. MCL 380.501 and 380.502.
6. MCL 117.4o and 117.4n.
7. MCL 333.2611 and 333.2612.
8. MCL 450.1241, 450.2241, 450.4207 and 449.1105.
9. MCL 449.1902 and MCL 450.5002.
10. MCL 450.5007(4).
11. MCL 450.2012 and 450.5008.
12. MCL 450.2051 and 450.5007.
13. *Gilliam v Hi-Temp Products Inc*, 260 Mich App 98; 677 NW2d 856 (2003).