



DELBERT HOSEMANN
Secretary of State

2009 Business Reform Study Groups
Minutes of the Model Registered Agents Act (MoRAA)
Study Group Meeting #2, August 11, 2009

This meeting of the Model Registered Agents Act Study Group (the "Study Group") was called to order on Tuesday, August 11, 2009 at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons in attendance is attached as Exhibit A.

Approval of the Minutes from the First Meeting held on June 23, 2009

The Study Group unanimously approved the minutes from the first meeting.

Presentation by Professor Jackson re: Registered Agents' Address and its Relationship to Venue in a Legal Action

Professor Jeffrey Jackson of the Mississippi College School of Law gave a brief presentation regarding the venue issues raised by MoRAA. Before discussing the act in detail, Professor Jackson expressed his support for MoRAA because its adoption would make Mississippi's laws concerning registered agents more understandable and user-friendly.

Professor Jackson noted that Section 15 of MoRAA, which provides in relevant part that "[t]he address of the agent does not determine venue in an action or proceeding involving the entity," is consistent with judicial norms. Jackson reminded the members that venue laws are in place to conveniently locate a civil action, and that Mississippi's venue statutes take this goal into account by allowing venue in the county where the defendant resides, where the defendant has its principal place of business, or where substantial acts or omissions occurred.¹ Jackson said the underlying assumption of the venue statutes is that at least one of these places will be convenient for one of the parties and/or convenient for accessing evidence and witnesses. The address of a defendant's registered agent has no relationship to the location of evidence or litigants, Jackson said, and as such, a law making the agent's location immaterial for purposes of venue makes good sense.

Next, Professor Jackson expressed his belief that the adoption of Section 15 of MoRAA would clarify, if not overrule, current Mississippi case law on this issue. In *Penn National Gaming v. Ratliff*,² the Mississippi Supreme Court held that a non-resident defendant "resides," within the meaning of a former venue statute, in the county where its agent for service of process is located. Professor Jackson

¹ Miss. Code Ann. § 11-11-3.

² *Penn National Gaming v. Ratliff*, 954 So. 2d 427, 434 (Miss. 2007).

argued that, although the case interprets a former venue law, it remains salient because the current circuit³ and chancery⁴ court venue statutes maintain the defendant's residence as a venue option. Jackson stated that Section 15 of MoRAA would overrule Penn National, assuming such case remains good law.

Finally, Professor Jackson offered his views on Section 13 of MoRAA, which covers service of process on business entities in legal actions. Jackson reminded the group that under the Mississippi Supreme Court's jurisprudence, Rule 4 of the Mississippi Rules of Civil Procedure alone governs service of process. Jackson said that thus, his recommendation would be to leave out legal service of process provisions from any proposed implementation of MoRAA. However, he assured the Study Group that any provision designating the Secretary of State as a default agent for service of process would be acceptable since Rule 4 allows service on agents appointed by law. Tom Riley, Assistant Secretary of State for the Business Services Division, expressed his preference that the Secretary of State should remain a "last resort" agent for service of process.

Discussion of Questions and Concerns Raised at the Last Meeting

1. Reason for Not Requiring Agent's Written Consent: Ms. Baker discussed concerns that were raised at the last meeting. First, she said, the reason behind MoRAA in not requiring the written consent of an agent in order for an entity to register was because of a request from the International Association of Commercial Administrators in order to aid their members in the implementation of electronic and online filing. A member attending by phone mentioned that Texas had recently changed its laws to require written consent, and said there had been some complaints throughout the state since it slowed down the process.

2. Concerns that People Could be Appointed as Agents Without Knowledge or Consent:

Another issue Ms. Baker addressed was the concern of some members of the group that persons might be appointed as agents without their consent or knowledge. She reminded the members that this is already a possibility under current law because only some of the laws require written consent. MoRAA would address this problem by providing the public with a list maintained by the Secretary of State's Office that would list every person or entity listed as a registered agent within the last fourteen days. Ms. Baker mentioned that Texas had included language in its statutes that relieves an agent of liability for refusing service of process if that agent was appointed without permission; it was suggested that such a provision might alleviate any problems surrounding the possibility of appointment without consent.

3. Consequences of Filing Without Consent. As part of the adoption of MoRAA, the bill could also make the penalties for false filings uniform among the entities. Currently the penalties vary by entity. The Study Group agreed with this staff suggestion.

4. Notification of Agent's Resignation. The MoRAA requires agents to provide notice to their represented entities when they resign but is silent on the issue of business address for notification purposes. Currently, Mississippi law varies on this issue. In some cases the Secretary of State notifies the entity that an agent has resigned, and in other cases the agent is responsible. If an agent does resign without notice to the entity, current Mississippi law allows (but does not require) the Secretary of State to

³ Miss. Code Ann. § 11-3-3.

⁴ Miss. Code Ann. § 11-5-1.

dissolve the entity or revoke their registration, but such action is in its discretion. Prior to taking either of these actions the Secretary provides numerous notices and reminders to the entity and if the entity is dissolved or its registration is revoked, the entity may apply to be reinstated.

Recommendations

1. Consent Requirement: Several options were proposed with regard to the consent requirement. Mr. Riley's recommendation was not to require written consent, because ultimately it would hinder the ability to implement electronic and online filing. The Study Group recommended that written consent not be required to appoint a registered agent but agreed that safeguards need to be written into the legislation to protect persons who have been unknowingly and unwittingly appointed. The Division will draft these safeguards for review and consideration at the next meeting.

2. Make Penalties for False Statements in MoRAA Filings Uniform for All Entities: The staff and Study Group unanimously agreed and recommended that the entity laws have uniform penalties which would include administrative dissolution.

3. Permitted Service of Process Methods: The Study Group agreed to wait for Professor Jackson's comments on this issue before proceeding with recommendations.

4. Notice of Resignation: Chairperson Jacobs expressed support for a system that places the initial burden of notification on the resigning agent, but then shifts the burden back to the company to ensure the company provides a forwarding address to the agent that is up to date and valid. The Study Group agreed with this recommendation.

Next Steps for the Upcoming Meeting

The Study Group agreed to vote on adoption of MoRAA at the next meeting. The Division will circulate a draft for approval to the Study Group members for review and comment via e-mail prior to the next meeting.

There being no further business to discuss, the meeting was adjourned at 12:39 P.M.

Respectfully Submitted,



Cheryn Baker
Assistant Secretary of State, Division of Policy and Research

Exhibit A
to the August 11, 2009 Minutes of Model Registered Agents Act Study Group, Meeting #2

Members In Attendance:

1. Joey Diaz
2. Gina Jacobs, Chair
3. William Noblin
4. Caryn Quilter
5. Tom Riley, Assistant Secretary of State, Business Services Division

Attending by Telephone:

1. Charlene Dawkins
2. Cecil Harper
3. Matthew McLaughlin

Guests in Attendance:

1. Professor Jeffrey Jackson
2. Garth Jacobson, by telephone

Secretary of State Staff in Attendance:

1. Cory Wilson, Chief of Staff
2. Cheryn Baker, Assistant Secretary of State, Policy and Research Division
3. Doug Jennings, Senior Attorney, Policy and Research Division
4. Michael Kelly, Intern, Policy and Research Division