DAILY REPORT

Sheriffs Can Ignore Private Process Servers, Judge Rules

Greg Land, Daily Report
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Judge Robert McBurney
KENT D. JOHNSON / AJC

The Georgia General Assembly may make permanent a law allowing private process servers to work throughout Georgia, but a Fulton County judge says that even if the statute is extended, unless it is changed the state's sheriffs will still control who is able to provide the service.

A 2010 statute established training and certification for private process servers, allowing them to work statewide, but it is set to expire this year. But the law also granted each county sheriff the power to deny private servers the right to serve in that jurisdiction.

Of Georgia's 159 counties, only Cherokee and Union allow private process servers. Sheriffs of all the other counties have taken advantage of that proviso and left private process servers out of the business, according to the Georgia Association of Professional Process Servers.

That rejection prompted the association in 2013 to sue the sheriffs of Fulton, Cobb, Gwinnett, DeKalb, Clayton, Forsyth and Paulding counties. It asked the court to declare that they and the rest of Georgia's sheriffs must allow private servers to operate in their counties or issue a reasoned denial on a case-by-case basis.

Last month, Superior Court Judge Robert McBurney agreed with the sheriffs, writing that "the plain language of the statute gives sheriffs the discretion to make an initial up/down policy decision as to whether to permit any certified private process servers to serve process in the county."

The association had asked for declaratory judgment, mandamus and injunctive relief, and McBurney wrote that he could grant none of relief

sought.
McBurney noted that the sheriffs "freely—almost gleefully in some instances—acknowledge that they do not allow private process servers" to work in their counties.
"If nothing else," wrote McBurney, "this litigation has permitted Petitioners and Respondents to explore various perceived infirmities in the present statute. Respondents appear to view the law as an assault on their authority and constitutional duty to serve process (and the not insubstantial revenue stream flowing from such service)."
The association, he said, in "seeking to bring change to the old way of doing things, highlighted an increasing need for rapid service in some cases and the statutory requirement that service is to be perfected in five days pursuant to [the state law governing service of process]—a deadline that may be difficult for a busy (or understaffed) sheriff's office to meet. And the evidence did show that most sheriffs allocate only a few deputies to serving civil process."
In a footnote, McBurney wrote that in civil cases where statute of limitations issues threaten the viability of an action, a plaintiff must often "either obtain a private process server or else document how regularly he pesters the sheriff's office to demonstrate a diligent pursuit of service."
Nonetheless, he wrote, while a court can order a particular sheriff's office to comport with the law by deciding whether to allow service in his county, "the court cannot mandate the option the sheriff chooses. The Legislature has left that decision to the sheriff's discretion."
During a hearing last year, the association's attorney, Lee Parks of Parks Chesin & Walbert, told McBurney that the sheriffs had unilaterally decided to ignore the clear intent of the law allowing private servers to work. Neither the sheriffs not anyone else has "unfettered discretion to ignore the law," Parks argued, presenting evidence including testimony from sheriffs that they had no intention of allowing private servers.
Attorneys for the sheriffs countered that, in addition to relying on the $50 per service fee their offices receive, they had safety concerns in allowing nonuniformed civilians to serve legal documents. They argued that the legislation makes it clear that only the sheriff has the authority to allow private servers to operate in his county.
In a short email this week, Parks said he plans to appeal McBurney's ruling. A spokesman for the state sheriffs' association said they were pleased by the decision.

Fulton County Attorney R. David Ware said, "It is clear that [the private server law] gives county sheriffs broad discretion in determining whether to allow private process servers to serve process within their jurisdiction. The court's grant of summary judgment confirms that Sheriff Ted Jackson was acting within the framework of the law and consistent with his role as an elected constitutional officer."

Carothers & Mitchell attorneys Richard Carothers and Michael Hobbs, who represent Gwinnett County Sheriff Butch Conway, said they were not authorized to comment on the ruling. Lawyers for the remaining defendant sheriffs did not respond to requests for comment.

The law governing private servers is set to expire on July 1, but bills in both the Georgia House and Senate aim to repeal the sunset provision. House Bill 298, sponsored by Reps. Mike Jacobs, R-Brookhaven; Wendell Willard, R-Sandy Springs; Mary Margaret Oliver, D-Decatur; Beth Beskin, R-Atlanta; and BJay Pak, R-Lilburn, passed the House with 150 votes in February and has been referred to the Senate Judiciary Committee.