



President Deb Duchon holds a copy of the December 26, 2013 issue of the Daily Report.

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Process Servers Sue to Trump Sheriffs' Blockade

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One of Hollywood's comic mainstays involves the machinations of a determined process server to deliver a subpoena to a reluctant recipient; maybe it's the old flower-delivery ruse, or an attractive woman coyly slipping a hopeful Lothario a summons in lieu of a caress.

In Georgia, slippery litigants are a lesser concern for many process servers who must first overcome a more substantial obstacle: the opposition of the state's sheriffs who, according to the servers' lawsuit, have united to deny private process servers the ability to ply their craft.

In 2010, the Legislature amended the law governing the service of legal papers to establish a statewide program setting out the requirements and training necessary to become a certified process server. The rules were established by the Judicial Council of Georgia, and a 12-hour course was developed by the Administrative Office of the Courts to train servers. A registry required by the law and maintained by the Georgia Sheriffs Association lists 123 people who have completed the program and are certified process servers authorized to work throughout the state.

The law requires sheriffs to certify applicants who meet the qualifications as statewide process servers, but it allowed each county sheriff the power to deny private servers the right to serve in that jurisdiction.

Prominently displayed on the registry website is a notice that, although "Georgia sheriffs will fully comply with the provisions set forth" in the law, "each sheriff will exercise his or her discretion to approve the service of process by certified process servers in each county."

"The Georgia Sheriffs' Association strongly urges all authorized training providers to advise potential candidates for certification to first determine whether the sheriff(s) in county(ies) of which they wish to serve process will authorize such service," it says.

According to the servers' suit, all but one of the state's 159 sheriffs have refused to allow certified servers to work in their counties. Some sheriffs, it said, also have refused to accept applications and registration fees to join the registry, in violation of the law.

The petition for mandamus, declaratory judgment and injunctive relief was filed in Fulton County Superior Court by Parks, Chesin & Walbert attorneys A. Lee Parks and Harlan Miller on behalf of the Georgia Association of Professional Process Servers; its president, Deborah Duchon; and two GAPPS members. It names as respondents Fulton County Sheriff Ted Jackson, Cobb County Sheriff Neil Warren, Gwinnett County Sheriff Butch Conway, DeKalb County Sheriff Thomas Brown, Clayton County Sheriff Victor

Hill, Forsyth County Sheriff Duane Piper, and Paulding County Sheriff Gary Gullede.

The sheriffs, according to the petition, have engaged in a conspiracy to "enforce an unlawful policy and practice that prohibits all certified process servers from serving process in Georgia despite their statewide certification to do so."

Before enactment of the 2010 law, civil process could only be served by members of four groups: sheriffs or their deputies; court marshals; any U.S. citizen specially appointed by the court; or those who have been appointed as "permanent" process servers by a superior, state or magistrate court.

The law's creation of a fifth class of individuals authorized to serve process, the petition said, "constitutes an act of legislative authority which can only be exercised by the General Assembly.

The sheriffs' blanket refusal to allow certified servers to operate "effectively nullifies the state certification process" established by the Legislature. "Petitioners are in a position of great uncertainty as to their legal rights and obligations under [the law]," it said. "They have been threatened with criminal prosecution if they serve process without a Sheriff's permission. They seek a legal declaration that this statute does not delegate to the Sheriffs the complete and absolute authority to deny all certified process servers the right to serve process. Such a construction would constitute an unconstitutional delegation of legislative authority to the Sheriffs because it permits them to effectively repeal the statute."

The petition asked the court to declare the sheriffs' actions unconstitutional, or to declare the law itself unconstitutionally vague.

In separate response pleadings, the seven sheriffs named as respondents all cited the 2010 law's provisions allowing them to deny servers permission to operate in their counties, but none offered any reasoning for the denials.

Citing the pending litigation, Fulton County Sheriff Ted Jackson declined to address the issue, and neither Fulton County Attorney R. David Ware nor the lawyers for the other sheriffs' responded to a request for comment.

As the sheriff of Georgia's most populous county, Jackson has certified that 28 people have completed the server training, the petition said, but he has allowed none to work in Fulton.

Terry Norris, executive director of the Georgia Sheriffs Association, said the issue has been a sore point for many years. His organization agreed to withhold active opposition to the bill if the law contained a provision allowing each sheriff the discretion to allow or bar private process servers.

"Our fundamental concern is that it's a public-safety issue," said Norris. "Our sheriffs were concerned that there had been occasions where these private process servers had gone into the community, and to the people there they looked unofficial—they were used to seeing somebody in uniform serving these papers. So there were instances of deputies being called when an altercation erupted."

Norris said the second "was the appropriate manner in which way these papers are served. I will say that, under the new law, there's some good training for these folks who want to perform service."

The final issue, Norris said, is financial: Under Georgia law, sheriffs can charge \$50 per document served.

"If the sheriffs or marshals don't provide that service, the county is not going to collect that fee," Norris said. "In these bad economic times, the counties could be losing significant amounts of money ... that can go to the county instead of to these private servers."

Miller scoffed at the sheriffs' justifications.

"The sheriffs are used to being the most powerful person in the county, and an attempt to divest them of part of their kingdom meets with stiff resistance," he said. "Now they're being asked to justify their refusals to let these process servers work, and the only conceivable justification I've heard is this public safety issue."

The sheriffs have not provided any instance of a process server being harmed on the job, he said.

"This is all hypothetical fear-mongering," Miller said. "They've offered up this potential for violence argument, without explaining how process is served every day across Georgia without incident."

Miller noted that under federal rules, civil papers may be served by anyone 18 or older who is not a party to the case, and only rarely do U.S. marshals act as servers.

"It's absolutely ridiculous to have law enforcement officers out serving process," said Miller.

Among the legal precedent cited by the process servers is a 2001 case, *Pryor Organization v. Stewart*, 272 Ga. 487, in which the Georgia Supreme Court ruled that a sheriff's authority to bar a bondsman from working "is not absolute, but is circumscribed by

statutes from which his authority derives."

If the bondsman meets the statewide qualifications established by law, the opinion said, "then a refusal to permit him to conduct business on the county level cannot be upheld. A sheriff's decision, under those circumstances, would be without legal justification or excuse, arbitrary, illegal and capricious and an abuse of discretion."

"It's the same issue here: whether the sheriff has complete discretion, unreviewable by any authority, to do whatever he likes," Miller said. He said the seven metro sheriffs were named because they're the "heavy hitters" who represent some of the busiest department in the state, and they're all in the metro Atlanta area.

Paul Tamoroff, a lawyer and the former president of the process server group, said that in 30 years as a Georgia process server, he's had to call in police only once: when a woman angry at being served recently followed him to his motorcycle and stole papers meant for someone else (along with his motorcycle helmet).

Tamoroff and Duchon, who are also business partners in Attorneys' Legal Services, point to a study of 25 Georgia counties GAPPS commissioned earlier this year indicating that counties are actually losing money by having sworn deputies serve process.

Basing their figures on an average deputy's salary of \$48,000, plus benefits, equipment, training and overhead, the study concluded that the "true cost" of serving one document by deputy is \$143.16.

By those figures, they said, it costs a county about \$50 every time deputy serves a document, extrapolating that DeKalb County lost about \$1.5 million in 2012.

Georgia judges have long had the authority to appoint process servers, either on a case-by-case or "permanent"—which actually means a renewable, one-year appointment—Duchon said. But the judiciary has often been resistant to such appointments, she said, and although the creation of the certification program has helped convince some chief judges to initiate or increase their appointments, the fees charged and numbers of servers permitted vary widely from circuit to circuit.

Fulton County Superior Court, for instance, has 113 permanent servers, while other circuits' courts limit the number approved or deny them entirely, she said.

The sheriffs' deputies in most counties don't serve after hours or on weekends, and won't do "stake-outs" if a person to be served is out or deliberately dodging service, said Duchon. If a lawyer has an urgent need to have a document served to meet a court deadline, he may be out of luck if there is not court-appointed server available on short notice.

"We're not saying the sheriffs need to get out of the business," Duchon said. "We're saying the lawyers in Georgia need process servers, and we're providing a service they need."



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