

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

GEORGIA ASSOCIATION OF)	
PROFESSIONAL PROCESS SERVERS, et al.,)	
)	CIVIL ACTION
Petitioners,)	FILE NO.: 2013-CV-237446
)	
v.)	
)	
THEODORE JACKSON, as Sheriff of Fulton)	
County, et al.)	
)	
Respondents.)	

**RESPONDENT SHERIFFS' RESPONSE TO PETITIONERS' STATEMENT OF
THEORIES OF RECOVERY AND MATERIAL UNDISPUTED FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

COME NOW, the Respondent Sheriffs named in the above-styled action (collectively, the "Respondents"), by and through their undersigned counsel, and pursuant to Uniform Superior Court Rule 6.5, hereby tender their Response to Petitioners' Statement of Theories of Recovery and Material Undisputed Facts in Support of Their Motion for Summary Judgment, respectfully showing the Court the following:

I. RESPONSE TO MATERIAL FACTS

1. Petitioners' purported "material facts" statement number 1 is not a short concise statement of any material facts with citation to any portion of the record to which the moving party contends there is no genuine issue to be tried, but instead presents Petitioners' unsupported conclusory allegations and legal argument masquerading as "material facts" that the Respondents' actions purportedly nullify O.C.G.A. § 9-11-4.1, the statute at issue in this case. Respondents deny Petitioners' legal argument and unsupported legal conclusions masquerading as "material facts", and in further response, state as follows: The plain wording of O.C.G.A. § 9-

11-4.1 affords each of the Respondents the discretion in deciding whether or not to allow process servers who have been certified as a process server under the statute to serve process in their respective counties. In particular, the applicable portions of the statute provide as follows:

A person at least 18 years of age who files with a sheriff of any county of this state an application stating that the movant complies with this Code section and any procedures and requirements set forth in any rules or regulations promulgated by the Judicial Council of Georgia regarding this Code section shall, absent good cause shown, be certified as a process server. Such certification shall be effective for a period of three years or until such approval is withdrawn by a superior court judge upon good cause shown, whichever shall first occur. Such certified process server shall be entitled to serve in such capacity for any court of the state, anywhere within the state, *provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county.*

O.C .G.A. § 9-11-4.1(a) (emphasis added).

Prior to the first time that a certified process server serves process in any county he or she shall file with the sheriff of the county a written notice, in such form as shall be prescribed by the Georgia Sheriffs' Association, of his or her intent to serve process in that county. *Such notice shall only be accepted by a sheriff who allows certified process servers to serve process in his or her county.* Such notice shall be effective for a period of one year; and a new notice shall be filed before the certified process server again serves process in that county after expiration of the one-year period.

O.C .G.A. § 9-11-4.1(h)(1) (emphasis added).

2. Petitioners' purported "material facts" statement number 2 is not a short concise statement of any material facts with citation to any portion of the record to which the moving party contends there is no genuine issue to be tried, but instead presents Petitioners' unsupported conclusory allegations and legal argument masquerading as "material facts" that the Respondents' are prohibiting Certified Servers from working in their counties because they contend that they are not required to consider a Certified Server's particular qualifications or any

other objective factor. Respondents deny Petitioners' legal argument and unsupported legal conclusions masquerading as "material facts", and in further response, rely on the plain wording of O.C.G.A. § 9-11-4.1 set forth above in item 1 and incorporated herein by reference.

3. Petitioners' purported "material facts" statement number 3 is not a short concise statement of any material facts with citation to any portion of the record to which the moving party contends there is no genuine issue to be tried, but instead presents Petitioners' unsupported conclusory allegations and legal argument masquerading as "material facts" that the Respondents are prohibiting Certified Servers from working in Respondents' respective counties without providing them a reason for denial or access to meaningful review to challenge such denial. In further response to the first sentence of "material facts" statement number 3, Respondents admit that to the extent they have been presented with applications for certification as a process server that meet the stated objective criteria under O.C.G.A. § 9-11-4.1(b)(1), they have approved such applicants for certification as a process server in accordance with the statute. Respondents deny the remaining unsupported conclusory allegations and legal argument masquerading as "material facts" in the second sentence of "material facts" statement number 3, and further state as follows: Respondents have complied with the plain wording of O.C.G.A. § 9-11-4.1 set forth above in item 1 and incorporated herein by reference in determining whether or not to allow process servers who have been certified as a process server under the statute to serve process in their respective counties.

4. Petitioners' purported "material facts" statement number 4 is not a short concise statement of any material facts with citation to any portion of the record to which the moving party contends there is no genuine issue to be tried, but instead consists of Petitioners'

unsupported conclusory allegations and legal argument masquerading as “material facts” regarding the meaning and purpose of the Judicial Council of Georgia’s Rules and Regulations. Respondents admit that O.C.G.A. § 9-11-4.1(a) provides for the Judicial Council of Georgia to promulgate rules or regulations regarding certified process servers in Georgia. The Judicial Council of Georgia’s Rules and Regulations implemented in accordance with the statute are set forth in full in Exhibit 4 to the Petition and speak for themselves as to their content, context and meaning. Respondents further state that the Judicial Council of Georgia’s Rules and Regulations plainly provide in Article 2, Section D.2. as follows: “The Sheriff of each county shall accept certification applications as outlined within the law and these rules. A Sheriff retains the discretion to permit or deny a certified process server to operate within the county of jurisdiction.” (Page 5 of Exh. 4 to Petition) (emphasis added).

5. Petitioners’ purported “material facts” statement number 5 is not a short concise statement of any material facts with citation to any portion of the record to which the moving party contends there is no genuine issue to be tried, but instead presents Petitioners’ unsupported conclusory allegations and legal argument masquerading as “material facts”. In further response, Respondents admit that their respective decisions to not allow Certified Servers to serve process in their respective counties is not based on a review of their qualification or criteria set forth in O.C.G.A. § 9-11-4.1(b)(1), but is in accordance with the plain wording of O.C.G.A. § 9-11-4.1 set forth above in item 1 and incorporated herein by reference. The plain wording of O.C.G.A. § 9-11-4.1 authorizing Respondents to make the determination whether or not to allow Certified Servers to serve process in their respective counties does not require Respondents to make that

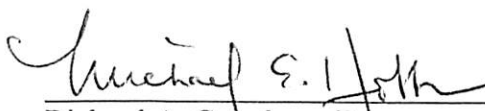
determination based on a review of the Certified Servers' qualifications or the criteria set forth in O.C.G.A. § 9-11-4.1(b)(1).

In further response to Petitioner's Statement of Material Facts, Respondents specifically incorporate by reference paragraphs 1 through 31 of their Statement of Material Facts as to Which There is No Genuine Issue to Be Tried as if fully set forth herein, which was filed of record on July 11, 2014 in support of Respondents' Motion for Summary Judgment.

II. RESPONSE TO STATEMENT OF THEORIES OF RECOVERY

In response to Petitioners' Statement of Theories of Recovery, Respondents specifically incorporate by reference the following as if fully set forth herein: (1) all argument and citation of authority set forth in the Brief in Support of Respondent Sheriffs' Motion for Summary Judgment filed on July 11, 2014 in the case at bar; (2) all argument and citation of authority set forth in Respondent Sheriffs' Brief in Opposition to Petitioners' Motion for Summary Judgment filed contemporaneously in the case at bar; and (3) the Respondent Sheriffs' Statement of Theories of Recovery in support of their Motion for Summary Judgment filed on July 11, 2014 in the case at bar.

Submitted this 13th day of August, 2014.



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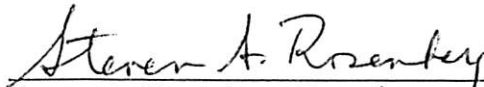
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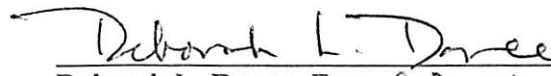
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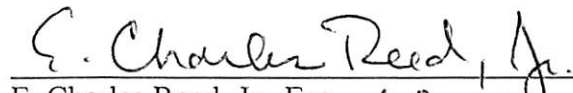
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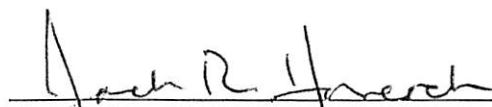
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA ASSOCIATION OF)	
PROFESSIONAL PROCESS SERVERS;)	
DEBORAH DUCHON; KRISTY BORDERS)	CIVIL ACTION
ADAMS; WILLIAM LUTWACK)	
and RODNEY J. McCLELLAN,)	FILE NO.: 2013-CV-237446
)	
Petitioners,)	
)	
v.)	
)	
THEODORE JACKSON, as Sheriff of Fulton)	
County; NEIL WARREN, as Sheriff of Cobb)	
County; BUTCH CONWAY, as Sheriff of Gwinnett))	
County; THOMAS BROWN, as Sheriff of DeKalb))	
County; VICTOR HILL, as Sheriff of Clayton))	
County; DUANE PIPER, as Sheriff of Forsyth))	
County; and GARY GULLEDGE, as Sheriff of))	
Paulding County,)	
)	
Respondents.)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing **Respondent Sheriffs' Response to Petitioners' Statement of Theories of Recovery and Material Undisputed Facts in Support of Their Motion for Summary Judgment**, by depositing a copy of same in the United States mail in a properly addressed envelope with adequate postage thereon to ensure delivery upon the following parties:

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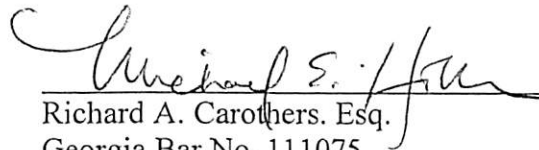
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This 13th day of August, 2014.



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