

THE REPORTS OF GAPPS' DEATH HAVE BEEN GREATLY EXAGGERATED

By Paul K. Tamaroff

The news is out! Fulton County Superior Court Judge Robert McBurney has issued his decision in GAPPS vs [7 Georgia Sheriffs], and concluded that Georgia Sheriffs have the absolute right to refuse to allow Georgia's certified process servers to serve process, thereby sounding the death knell for Georgia Statute 9-11-4.1 (the Georgia Certification Program) and, along with it the Georgia Association of Professional Process Servers. So, what happens now? Actually, not much.

Of course, we are a bit disappointed in Judge McBurney's decision. But, we always knew that whichever party lost at the trial level, the case would be taken up on appeal. That is one reason why we needed to file suit against seven Metro-Atlanta County sheriffs and not all 159 Georgia Sheriffs. Once an appellate decision is issued, it will apply state-wide. This is, and has always been, our goal. Our Notice of Appeal is now being filed with the Clerk of the Court.

But, one asks, what about the sunset clause in the certification statute. The certification statute does have a sunset clause which, if it is not removed, will cause the statute to expire July 1, 2015. If the statute expires, an appeal of Judge McBurney's Decision becomes moot. However, House Bill 298, the amendment to the certification bill has passed the Georgia House and is in the Senate and, we are reliably informed, will have a senate vote and pass on or about March 23. We believe this will happen because the Georgia Sheriffs' Association has publicly informed the House and Senate Judiciary Chairmen that they will no longer oppose the bill.

Presuming the sunset clause is removed, what is the status of Georgia process servers while the appeal is pending? Answer – we maintain the status quo. That is, we continue to get court appointments to serve process. However, many courts now require certification (or at a minimum taking the pre-certification course), as a requisite to be granted a permanent appointment to serve process by the court. This means the certification program will continue. In the meantime, additional courts have come on board and others will follow. The word is out. The certification program is working and the judges relying on it to make their appointments love it.

The sheriffs have already been complaining that they want to get rid of the administrative duties assigned to them by the statute and the rules established by the Georgia Judicial Council. This may open the doors to negotiation. The fact is however, that by the time the Court of Appeals decides the case, the certification program will probably be fully developed, with many courts relying on the program to make process server appointments. Like Robin of Loxley vs. Sir Guy of Gisbourne (The Sheriff of Nottingham), it will be time for the sheriffs of Georgia to surrender.