

GEORGIA'S CERTIFIED PROCESS SERVER LAW
ACCORDING TO PAUL K TAMAROFF (February 27, 2013)

There is much confusion regarding the state of the law in Georgia as to who may serve process. O.C.G.A. §9-11-4[c] as amended in 2010 and O.C.G.A. §9-11-4.1, added at the same time, have caused much consternation, not just among process servers, but also among attorneys. Process servers are rightfully skeptical as to whether they should go through the certification process, spending a full weekend in Pre-certification training and spending a substantial amount of personal funds to obtain certification.

To be very clear, the Georgia Certification Program has been a huge success. A huge success that is, in every aspect but one; the responsibilities assigned to the sheriffs. Thus, the Judicial Council and Administrative Office of the Courts are very pleased with the program. The pre-certification training conducted by the Georgia Ass'n of Professional Process Servers is considered a success. The examinations administered by the Administrative Office of the Courts is considered a great success. The only problem anyone can speak of is the determined effort of the sheriffs to prevent the success of the program.

Of course, GAPPS is working to promote legislation that will "clean up" the problem. It is difficult and time consuming, but we will ultimately have a certification program we can be proud of. In the meantime, I can say that a careful analysis of the law establishes that Certified Process Servers may, in fact, serve process in all 159 counties in Georgia. Well, that is a surprise isn't it? All 159 sheriffs have taken the position that Certified Process Servers may not serve any papers in their respective counties. However, saying that does not make it so.

To determine exactly what the sheriffs may and may not prohibit, one must carefully review the last sentence of O.C.G.A. §9-11-4.1 (a). That sentence provides that a "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**." (Emphasis added). These underlined words are very important. What do they mean? Let's break it down. "the county for which process is to be served" means the county in which the papers are filed. So, the sheriff of the county in which the papers are filed may prohibit "such servers" (meaning Certified Process Servers), from serving process. But what process may they prohibit? The sentence provides, "in such county" (referring back to "the county for which process is to be served"). So, **a sheriff of a county in which the papers are filed may prohibit a certified process server from serving those papers in that county!** The statute does not authorize the sheriff of the county in which the papers are filed to prohibit a Certified Process Server from serving those papers in any other county. Indeed, the sheriff's authority ends at the county line.

An example of how the statute really works then might be as follows: Let's say the papers are filed in Fulton County. The sheriff of Fulton County prohibits service by a Certified Process Server from serving those papers in Fulton County. Going further, let's add that one of the defendants must be served in Cherokee County. The Fulton County sheriff cannot prohibit the Certified Process Server from serving the papers in Cherokee County. This begs the question; may the sheriff of Cherokee County prohibit the Certified Process Server from serving the papers issued in Fulton County on a resident in Cherokee County? **The answer is NO!** The sheriff of Cherokee County has no authority over papers issued in another county. Moreover, the sheriff of Cherokee County is not the sheriff of the county "for which process is to be served".

This also solves the problem of serving papers from other states, the laws of which require that the process server is authorized to serve in the Georgia county where the defendant resides (Florida for example). As shown above, Certified Process Servers may serve process in every Georgia County, except the county in which the papers are filed. Out-of-state papers are not filed in any of the Georgia counties. Therefore, such papers may be served by Certified Process Servers.

Additionally, the Georgia Sheriffs' Association (GSA), has, pursuant to the undersigned's request as president of GAPPS, put into writing that none of Georgia's 159 sheriffs object to Certified Process Servers serving service from other states.

Could my analysis be flawed? I do not believe so. However, it is up to each Certified Process Server to advise their clients on this reading of the law. Provide them with Tamaroff's Analysis. If they do not wish to take a risk, that is their decision.

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