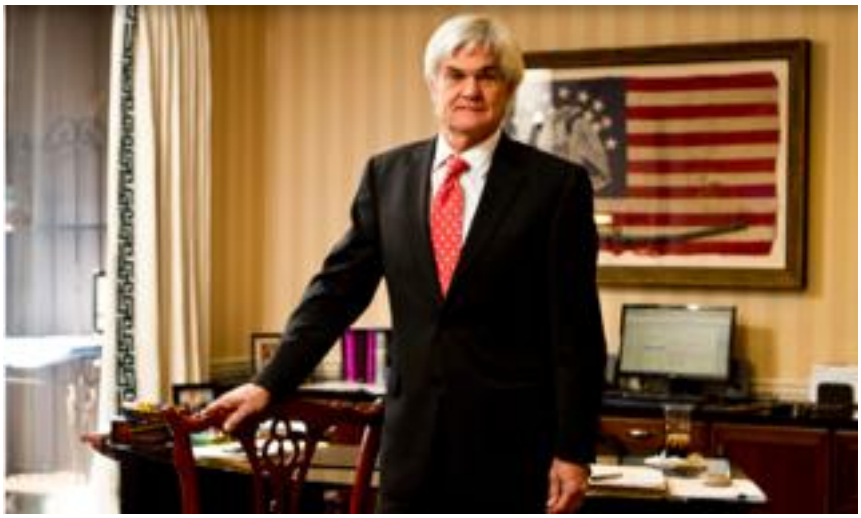
From the November 12, 2014, Fulton County Daily Report:

Private Process Servers Fight 'God'-Like Sheriffs



Lawyers for private process servers and all but two of Georgia's 159 sheriffs battled last week in Fulton County Superior Court over the sheriffs' blanket ban on allowing the servers to do their work.

Lee Parks, representing a servers' association, argued that the General Assembly wouldn't have passed a 2010 law requiring sheriffs to certify private servers who pass a training course only to let the sheriffs prohibit the servers from working in their counties.

Parks said that, in taking the sheriffs' depositions, they had

made it clear that they had no intention of approving private servers unless ordered to do so by the court. He pointed to a transcript of the deposition of Paulding County Sheriff Gary Gulledge, who was asked whether, in fact, the statute "really has no viability in Paulding County?"

"In Paulding County, no," Gulledge responded.

"Are you a higher authority than the Georgia General Assembly in Paulding County?" came the next question.

"In Paulding County, I would say yes," Gulledge said.

Parks said he had been impressed by the sheriffs' candor.

"Taking a deposition from these sheriffs has given me good practice in taking a deposition from God," said Parks. "They simply do not believe the law applies to them."

Michael Hobbs, representing sheriffs, said the Legislature had specifically allowed sheriffs to ban private servers.

"The General Assembly has said that it's a matter for the sheriffs to decide" and had "given tribute to the idea that we don't have a statewide system," Hobbs said.

In 2010, the Legislature amended the law governing the service of legal papers to establish 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 currently lists 161 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.

After the law passed, the Sheriffs' Association posted a message to process servers on its website reading: "All Sheriffs will exercise their authority under current law and PROHIBIT ALL certified process servers from serving in every county.

"This message is provided to you as a courtesy, so potential applicants can make a better informed financial decision regarding the certification process."

The total cost for certification, including training, a background check and bond, is about $700, according to court filings.

Parks, representing the Georgia Association of Professional Process Servers, said the sheriffs have unilaterally decided to thwart the General Assembly's stated purpose of allowing anyone who has passed the state training program to serve legal papers in the state. Only the sheriffs of Cherokee and Union counties have broken ranks to allow private service.

The Legislature, said Parks, has never set up a system allowing a sheriff or other elected official the "unfettered discretion to ignore the law," nor have the courts allowed

such an interpretation of the law.

"The Georgia Supreme Court has said time and time again that unfettered discretion is an abuse of discretion," said the Parks, Chesin & Walbert partner. The sheriffs, he said, "have decided to eliminate the private process server industry in Georgia."

The association sued the sheriffs of Fulton, Cobb, Gwinnett, DeKalb, Clayton, Forsyth and Paulding counties last year in an effort to force the court to declare that they—and all of Georgia's sheriffs—must allow private servers to operate in their counties or issue a reasoned denial on a case-by-case basis to individuals they deem unsuitable.

Hobbs, of Buford's Carothers & Mitchell, represents Gwinnett County Sheriff Butch Conway and presented the bulk of the sheriffs' oral arguments at the summary judgment hearing on Nov. 7.

Hobbs made no bones about the sheriffs' collective decision to bar private servers, saying the Legislature had specifically allowed them to do so.

Fulton County Superior Court Judge Robert McBurney asked why private servers, who have paid their fees and been certified, should be barred from pursuing their livelihoods.

"If it is constitutional for the General Assembly to delegate this responsibility [to certify servers] to an individual," asked McBurney, "why wouldn't due process kick in and require a showing that there is a reasonable, nonvindictive

reason" for denying servers the right to work?

Hobbs said that some of the sheriffs had cited public safety concerns for the servers and the public as among the reasons they resisted allowing private servers. While it might cost more to have a deputy serve papers, he said, there also were costs associated with any potential problems that might emerge between a private server and a litigant. Some sheriffs also were concerned that they might be liable for a private server's actions, he added.

Hobbs recounted that his client, Conway, had himself been served by a private server who "drives up in his driveway, rolls his window down three inches, throws some papers down and says, 'You've been served.' That's misconduct."

"But that's the exception," said McBurney, noting that the law allows sheriffs to deny or de-certify a server that they determine to be unsuitable or a "nut."

"Why isn't the answer that there needs to be some due process in the mix?" he asked.

Hobbs observed that private servers can still be allowed to work in Georgia counties, if they are approved by a superior court judge in that county, and thus they were not barred from working.

McBurney had asked if the situation were not akin to Georgia's statutory scheme allowing counties to determine whether they were "wet" or "dry."

Parks argued that, in the case of alcohol sales, voters were allowed to make a choice based on public safety and

religious concerns. In the servers' case, he said, the sheriffs have usurped that authority.

Hobbs responded, "As far as our clients are concerned, we're in a dry county."

"The General Assembly determined that the sheriff has the right to turn that switch on or off," said Hobbs. "It's an all-or-nothing decision."

Hobbs noted that there had been a legislative effort to remove the ability of sheriffs' to veto private service in their counties in 2012. "It did not pass," he said.

Parks said lawmakers and the Sheriffs Association reached a deal when the statute was written, by which the sheriffs agreed not to oppose it if they were allowed to double how much they charge litigants to serve process to $50—and were given the authority to approve servers.

They immediately acted to abuse that authority, he said.

"It was a political deal, and you can't cut these deals," Parks said.

Parks urged McBurney to use his authority to order the sheriffs to individually review each application submitted by a private server and either approve it or issue a denial backed by a valid reason.

In the alternative, he said, McBurney could find that the provision of the law allowing sheriffs to approve private servers is an unconstitutional delegation of legislative authority and "blue pencil" that section of the law out.

McBurney, noting that the statute is subject to a five-year sunset provision and is up for renewal next year, said he would rule "sooner rather than later."