Opinion No. 2012-030

April 3, 2012

The Honorable Kim Hammer
State Representative
1411 Edgehill
Benton, Arkansas 72015-3128

Dear Representative Hammer:

This is in response to your request for my opinion on your questions about process servers:

1. Are Process Servers considered an officer of the court (not to be confused with court officers)?

2. If an Appointed Process Server is considered an "officer of the court" and while performing duties are they granted a limited exemption or affirmative defense against Criminal trespass (5-39-203) and Criminal trespass on land located in unincorporated area (5-39-305)? Are Process Servers authorized by law to enter Posted Property per 5-39-305(c)(4)?

3. Could you please clarify if 16-58-106 pertains to law enforcement or Private Process Servers? In 16-58-106(d)(1) it states "It may be executed on Sunday if the "officer" having the process believes". After reading Title 16 Subtitle 5 Chapter 58 nowhere is any reference made to Private Process Server all references are made to sheriffs. Are Private Process Servers allowed to serve civil process on Sundays?

RESPONSE

I am unable to render an opinion in this instance because the answers to your questions could be directly relevant to issues involved in pending litigation.

A Notice of Appeal captioned *In Re: Matter of Serving Legal Process and Appointment of William E. Black* was filed February 21, 2012, in Benton County Circuit Court. I am informed that this matter arose from the nonrenewal of a person's appointment, under Administrative Order Number 20 of the Arkansas Supreme Court, to serve process. I am further informed that the matter may involve questions about an appointed process server's status, if any, as an officer of the court, as that status may be relevant to the person's due process rights, if any, in connection with such a nonrenewal, as well as questions about the propriety of Mr. Black's alleged entry upon private property to serve process.

Your first and third questions involve whether and the extent to which an appointed process server is an officer, and your second question involves the propriety of an appointed process server's entry upon land in circumstances that might otherwise involve trespass. Because your questions relate directly to legal issues that may be before the court in the pending matter, I must respectfully decline to render an opinion. I have a statutory duty to render my opinion to legislators, prosecuting attorneys, and other state officials on certain matters of state law. A.C.A. § 25-16-706 (Repl. 2002). But my office follows a long-standing policy against issuing opinions on questions that are the subject of current or impending litigation. *See, e.g.*, Op. Att'y Gen. 2011-124, 2008-034, 2003-294. The policy of refraining from rendering opinions on matters before or likely to be before courts for determination recognizes the judiciary's independent constitutional role. Any opinion from my office on the underlying legal issues in this instance would amount to executive comment on matters that are before a judicial body.

Assistant Attorney General J. M. Barker prepared the foregoing, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh