

ASSURED CIVIL PROCESS AGENCY

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ATTN: SUPREME COURT ADVISORY COMMITTEE
HEARING: June 22, 2012

RE: Proposed Rule Changes

Dear Sirs & Madams:

Sprinkled throughout the proposed rules changes for Part V, TRCP, is the term "*certified process server*." This term recognizes a class of process server that was created by the unlawful judicial regulation of my occupation; and incorporates into the Rules a contradiction to the conclusions of this very committee.

**Hearing of the Supreme Court Advisory Committee
November 2, 2001, between the hours of 2:28 PM and 5:30 PM.**

The Committee discussed the prospect of imposing regulation of process servers by rule and the Supreme Court creating an administrative agency to regulate process servers and recognized that the Court had no authority to do either.

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MR. ORSINGER

1 The problem is, first of all, that looks
2 legislative and not rulemaking, even though it is, in
3 fact, in a rule. And secondly, the Supreme Court
4 doesn't have the authority to create an administrative
5 agency and it doesn't have the money to fund it. So
6 you'd think, "Well, probably the most the Supreme
7 Court can do," and this is, frankly, where I've gone,
8 is to say "Let's look and send a task force out, like
9 my subcommittee and let's look and see what all the
10 standards are:

**Hearing of the Supreme Court Advisory Committee
March 8, 2002, between the hours of 1:30 PM and 5:45 PM.**

The committee discussed three separate provisions for standardizing the authority of private individuals to serve civil process in Texas. The committee isolated the "notary public provision" calling it the "piggyback" provision; and voted to recommend it to the Supreme Court for implementation.

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CHAIRMAN BABCOCK: Everybody against
7 raise your hand. By a vote of 14 to zero that
8 passes.

The process server certification program represents a breach of the constitutional separation of powers. Only the Legislature may regulate an occupation in Texas (Tx Govt Code, Ch. 318).

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TRJA 14 (and the MDOs that created the certification program) are in violation of the Constitutional restriction of the Court's rulemaking authority, which states that the Court may promulgate rules that are not inconsistent with the laws of the State. The only laws ever passed regarding who may serve civil process in Texas (and there are seven of them) all give statutory authority to any disinterested adult to serve process without regard for training or background (i.e., a Fed. Rule 4 equivalent).

The Supreme Court created the Process Server Review Board as a judicial agency pursuant to TRJA Rule 12. According to Rule 12, a judicial agency may only provide an administrative support function to the Court; and yet, the Supreme Court has endowed the PSRB with unrestricted regulatory authority; and has even provided its members the authority to conduct civil and criminal investigations (which State law requires a license to perform).

I strongly encourage this committee to revisit its recommendations of November 2001 and March 2002, and urge the Court to protect its own interests and dismantle the certification program and implement the notary public provision. (The Supreme Court Rules Attorney testified under oath before a Legislative hearing in 2003 that the Supreme Court WAS going to implement this notary public provision.) If the Court does not dismantle the program, all of these inappropriate actions of the Court will come to light when the PSRB comes up for Sunset review.

Sincerely,

A handwritten signature in cursive script, reading "Dana McMichael". The signature is written in dark ink and is positioned above the printed name.

Dana McMichael