

Direct Results Legal Service

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March 13, 2015

JBCC
via email

Re: Public Comments Regarding Proposed Code of Conduct for Process Servers

Attn: Members of the JBCC,

I have searched all the codified statutes that give you your lawful authorities and duties. They are contained in Chapters 151 through 157 of the Texas Government Code. The law does not convey statutory authority to the Supreme Court or the JBCC to create policy with regard to private process servers, including a process server code of conduct.

Further, the proposed code defines "Process Server" as a certified process server (presumably certified by the JBCC.) But, that term is not connected to any statutory authority because "Process Server" is not defined in law.

This also means that the rules adopted by the Texas Supreme Court relating to process server certification by the JBCC are not supported by codified statute. They are unconstitutional. Regardless of how the Supreme Court's rules read, the Court was not granted statutory authority to promulgate rules to regulate process servers.

I have attached sections of the law that establish the Court's and JBCC's authority to create rules and policies for three of the four occupations. As you can see, three of the occupations are defined in law; and rule making authority is conveyed in three of the four sections. Unlike the other practitioners, "Process Server" is not defined and there is no rule or policy making authority in the process server section.

Until such time that you are acting lawfully, I cannot offer comments that are specific to provision in your proposed code. In the event that you should persist in enacting a code of conduct, I would offer the following general comments.

The code you have proposed represents extreme, unnecessary, and unfounded overkill. There is little or no evidence of a need for the large majority of the proposed provisions, or evidence they will even be utilized. This is obviously an attempt to give the JBCC as many opportunities as possible to flex its muscles. It is completely stacked against the practitioner. As proposed, the code will result in an increase in the number of complaints and number of frivolous complaints.

When last checked, in the past 10 years of Supreme Court certification, there has not been one single process server (certified or not) convicted of a service related crime. Not one certified process server has reported to the Clerk of the Supreme Court a conviction of felony or misdemeanor involving moral turpitude. This is a requirement of certification; and none were found to have failed to report. Despite the fact that the former PSRB was unlawful and unconstitutional, the large majority of complaints the PSRB received were dismissed as unfounded and/or frivolous. The code you propose will create many new infractions that the JBCC will be able to act upon including, fines, sanctions, discipline and revocation; infractions that didn't exist before, and for which there is no evidence of problems that need to be addressed.

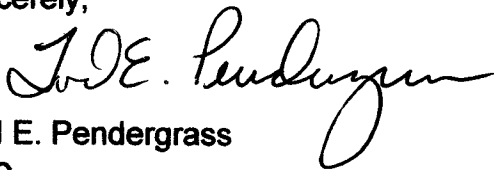
Most importantly, the proposed code fails to address the single most important instruction for all process servers. That is, to follow the instructions and directions of their licensed attorney clients. The Supreme Court and the JBCC are putting way too much focus on moving direction and control away from licensed attorneys to a group of people who only need to be disinterested adults. It is a recipe for disaster on many fronts. For instance, in the new Justice Court rules, alternate service can be requested by the constable or private server without any requirement to even inform the party or party's attorney.

The fact that such a code is even being proposed is an affront to the Texas Constitution, the rule of law, the spirit of fairness, and free-enterprise unencumbered by unnecessary and unfounded government intrusion. You, the members of the JBCC, are co-citizens with the group you are pretending to regulate. You have a responsibility to make sure your actions are legal before you begin applying the law to others. Your service on the JBCC is being overshadowed by the disservice of acting without lawful authority; just like the former PSRB. The JBCC's actions with regard to process servers are very litigious and you may be sued in your individual capacities if you act outside lawful authority.

Lastly, I must reiterate how wholly inappropriate it is for the JBCC to accept and act upon complaints when a code of conduct has not been implemented. I strongly suggest you immediately stop regulating process servers and perform only those duties that are prescribed by statute.

Thank you for your time.

Sincerely,



Tod E. Pendergrass
TDC

Law Fails To Bestow Regulatory Authority To The Texas Supreme Court or JBCC

COURT REPORTERS-

[Texas Government Code (TGC,) Sec. 154.002. RULES. The supreme court may adopt rules consistent with this subtitle, including rules governing:

- (1) the certification and conduct of official and deputy court reporters and shorthand reporters; and
- (2) the registration and conduct of court reporting and shorthand reporting firms.]

YES, the Supreme Court MAY license/regulate Court Reporters and firms.

GUARDIANS-

[TGC, Sec. 155.002. RULES. The supreme court may adopt rules consistent with this chapter, including rules governing the certification of individuals providing guardianship services.]

YES, the Supreme Court MAY license/regulate Guardians.

COURT INTERPRETERS-

[TGC, Sec. 157.101. ISSUANCE OF LICENSE; TERM. (b) The Judicial Branch Certification Commission shall adopt rules relating to licensing under this chapter. The rules must be approved by the supreme court. The director shall prescribe all forms required under this chapter.]

YES, the Supreme Court MAY license/regulate Court Interpreters.

PROCESS SERVERS-

TGC, Sec. 156...??? (there is no section regarding licensing rule making authority.)

NO! The Supreme Court/JBCC MAY NOT license/regulate Process Servers.

CONCLUSION:

THERE IS NO AUTHORITY IN THE LAW ALLOWING THE TEXAS SUPREME COURT OR THE JBCC TO ADOPT RULES OR POLICIES TO LICENSE AND REGULATE PROCESS SERVERS.

TEXAS GOVERNMENT CODE, TITLE 2, SUBTITLE K

DEFINITIONS

Chapter 154. COURT REPORTERS CERTIFICATION AND SHORTHAND REPORTING FIRMS REGISTRATION

Sec. 154.001. DEFINITIONS. (a) In this chapter:

(3) "Official court reporter" means the shorthand reporter appointed by a judge as the official court reporter.

(4) "Shorthand reporter" and "court reporter" mean a person who engages in shorthand reporting.

Chapter 155. GUARDIANSHIP CERTIFICATION:

Sec. 155.001. DEFINITIONS. In this chapter:

(3) "Guardian" has the meaning assigned by Section 601, Texas Probate Code.

(6) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

Chapter 156. PROCESS SERVER CERTIFICATION

("Process Server" is not defined.)

Chapter 157. COURT INTERPRETERS LICENSING

Sec. 157.001. DEFINITIONS. In this chapter:

(2) "Licensed court interpreter" means an individual licensed under this chapter by the commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

CONCLUSION:

SB 966 Transferred oversight of the statutory regulatory programs for Court Reporters, Guardians and Court Interpreters to the JBCC. To regulate an occupation, you must first define the practitioner of the occupation. A process server is not defined in law because the process server occupation is not regulated.