

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunrise Analysis of Process Servers

Summary

We performed a sunrise analysis of whether the State should regulate civil process servers to protect the public. We concluded that the public interest is best served by not regulating them. Usually, sunrise analysis occurs before regulation is enacted, but the 1991 Legislature directed the auditor to perform an after-the-fact sunrise analysis of the regulation of process servers.

“Process” refers to formal documents issued by a court to obtain jurisdiction over someone. “Service of process” is the delivery of these documents to a person in order to give notice that a civil or criminal case has been filed against him or her. In civil cases, the documents served on a defendant are the plaintiff’s complaint and a summons.

Until recently, Section 634-21, Hawaii Revised Statutes limited service of process in civil cases to sheriffs, police officers, court bailiffs, or other persons specially appointed by the court. Deputy sheriffs in the Department of Public Safety serve most civil process. But Act 123 of 1989 (Chapter 634D) added licensed process servers to those already authorized to serve process under Section 634-21, HRS. The Supreme Court is to develop qualifications for this new category of process servers and to license them. Chapter 634D requires a \$25 application fee and a \$5,000 bond. The licensing program has not yet been set up.

We found that a new regulatory program for civil process servers is not warranted. The federal government and most states do not regulate them. True, delays in service of process can harm plaintiffs who seek to obtain a judgment while the defendant still has assets. But the plaintiff’s attorney is responsible for proper service. Delays by the sheriffs in serving process have been alleged. But the remedy for this lies more in market competition than in licensing. Defendants could be harmed if the server falsely claims to have made the delivery, but we found no evidence that this is occurring.

We also found problems in the new licensing law. It requires the Supreme Court to set qualifications for licensed process servers, but no special qualifications or competency are needed to prevent consumer harm. In addition, both the need for a \$5,000 bond and the process for recovering on it are unclear. Further, the law does not define improper service or provide for disciplinary action.

Recommendations and Response

We recommend that Chapter 634D be repealed. The Hawaii Revised Statutes and the pertinent court rules should be amended to follow Rule 4 of the *Federal Rules of Civil Procedure* which allows civil process to be served by any person not a party to the case who is at least 18 years old. Federal officials whom we interviewed reported no difficulties with this procedure. This could bring new process servers into the system and foster healthy competition. At most, process servers could be required to register with the Supreme Court so that a list could be posted for the convenience of consumers.

The Judiciary concurs with our recommendations to repeal Chapter 634D and adopt the federal approach. Concerned with workload demands and possible entanglements with litigation against process servers, however, the Judiciary recommends that any registration be the responsibility of the Department of Commerce and Consumer Affairs. We believe that this proposal has merit.

The Department of Public Safety approves of repealing Chapter 634D but disapproves of adopting the federal approach. It fears that a "laissez faire" strategy could lead to more costly or less effective service of process.

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