



Kansas Sheriffs Association

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TESTIMONY IN OPPOSITION TO HB2116

Date: February 4, 2013

Chairman Kinzer, Vice Chair Bruchman, Representative Pauls and House Judiciary Committee Members:

My name is Rick Newson and I am a Lieutenant in the Civil Division with the Johnson County Sheriff's Office. I am offering this testimony in opposition to HB 2116. The current statute, K.S.A. 60-303, gives direction outlining the methods of service within the state. The directions are specific regarding the types of service and what constitutes acceptable service. Electronic filing of process will increase exponentially in the coming years and to have each District Court's Chief Judge determine the procedure for service will put an undue and overwhelming burden on the Judge. K.S.A. 60-303 is all inclusive on service of process regardless of how it was filed. To burden the Chief Judge with determining the procedure for service of process for electronic filings is redundant because of the methods the statutes already outline. HB2116 takes the Court outside their judiciary scope because we believe that the Legislature should define the process of service.

The phrase, "local enforcement agency" is vague and is open to a broad interpretation as to whom the Chief Judge may enter into an agreement with. Giving the Chief Judge the authority to enter agreements with "local enforcement agencies" is beyond the scope of the District Court's responsibility. There is a procedure currently in place to allow the plaintiff to request the services of a private process server to serve the documents if they so choose. This procedure is by the approval of the Court issuing the process. The method of filing, electronic or walk-in, does not affect the methods / procedures for service of that process.

The Court has the responsibility to interpret the law; entering into agreements to serve process is beyond the Courts scope because we believe that service of process is defined in statute by the Legislature. If there is a situation that modifications need to be made regarding the serving of process in a particular District Court; the Chief Judge is currently able to put in place a Local Court Ruling to address the issue. Local Rules have been filed by the Chief Judge in many District Courts which has efficiently resolved issues regarding the service of process. If each Chief Judge "shall determine the procedure for service of process" for electronically filed documents there will be no consistency within the state regarding the service of process. With the changing of the Chief Judge, a new set of "arrangements" will be made to add to the inconsistency of service. Consistency is of enormous value to the plaintiff or attorney who files the documents in knowing that the service of process in every county in the state is held to the same standard. The Sheriff's Offices throughout the state have been given the duty to serve civil process and have completed the service under the direction of several statutes, one of which is K.S.A. 60-303.

In the accepting of electronically file documents the Sheriff should have the flexibility to determine how the service is delivered to them. With the Chief Judge determining the procedures, documents could be delivered to the Sheriff electronically which would create a heavy financial burden. If documents are electronically delivered to the Sheriff the cost to process service will increase significantly and squeeze an already limited budget. The Sheriff does not receive any portion of the service fees collected or any of the funds collected to operate or maintain the e-filing system. The County General Fund and the Courts receive the funds respectively. The printing and delivery of the e-filed documents, we believe, should be determined by the Sheriff as to the most efficient method of delivery from the court.

With regard to section 2, we believe that the service fees due to the Sheriff should be delivered along with the filed documents. HB 2116 states that fees shall be forwarded to the Sheriff "at least monthly". A delay in receiving service fees will impair the processing of the documents and the efficient service for the plaintiff due to the delay in verifying payment of the service fee. There are situations where a fee is not required, depending on the type of paper or if a poverty affidavit has been filed with the court. In the processing of the documents the Sheriff must be able to determine at that time if a service fees has been paid as required by statute. If the Sheriff receives a document for service with no fee attached, the document is returned to the plaintiff or attorney. If the fees are delivered to the Sheriff weeks after the document is delivered it is extremely difficult to verify if payment was received on specific papers. Documents are filed without a fee, either by an oversight or intentionally, and with the delay in receiving the fees the Sheriff will not be able to collect the required fee once the document has been served.

I strongly encourage this committee to reject HB2116; by doing so the integrity and consistency in the service of process throughout the state shall be maintained.

Respectfully Submitted

Rick Newson
Lt., Johnson County Sheriff's Office