



ALAN WILSON
ATTORNEY GENERAL

February 6, 2013

Mr. John M. "Jake" Knotts
500 W. Dunbar
West Columbia, South Carolina 29170

Dear Mr. Knotts:

Attorney General Alan Wilson has referred your letter of November 2, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Does a process server in South Carolina violate any trespass laws (specifically S.C. Code § 16-11-620) when serving court papers (a summons, complaint, petition, or subpoena) when:

- 1) the property posts a "No Trespassing" sign; or
- 2) the property owner tells the process server to leave the property and not return?

Short Answer: This Office believes a court faced with such questions would currently interpret the law in South Carolina to likely hold a process server does not violate any trespass laws if acting within the scope of his duties.

Law/Analysis:

By way of background, Rule 4 of the South Carolina Rule of Civil Procedure provides the following with regards to service of process in a civil action:

(c) By Whom Served. Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.

(d) Summons: Personal Service. The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or

his attorney shall be effective upon mailing, or may be served as provided in this rule. Service shall be made as follows:

(d)(1) Individuals. Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(d)(2) Minors, Incompetents and Persons Confined. Upon a minor under the age of 14 years, a person judicially declared incapable of conducting his own affairs, or an incompetent person by delivering a copy of the summons and complaint to such minor, or incompetent person personally and also a copy to (a) the guardian or committee of such person, or if there be none such within the State upon (b) a parent or other person having the care and control of such person, or (c) any competent person with whom he resides or (d) in whose service he is employed. If the individual upon whom service is made is a minor between the ages of 14 and 18, who lives with a parent or guardian, a copy of the summons and complaint shall likewise be served upon said parent or guardian, if said parent or guardian resides within the State. Service on imprisoned persons or persons confined in a state hospital or similar institution, in or out of this State, shall be made by delivering a copy of the summons and complaint to the confined person personally; and service shall be made by the sheriff of the county in which the person is imprisoned or confined. In cases of persons imprisoned, and patients in a state hospital or similar institution, personal service of process may be made by the superintendent of the institution or by the director of the prison system or by assistants duly designated by the superintendent or the director in writing for the purpose of making service of process, instead of the sheriff. The superintendent or the director or their designated assistants shall not be entitled to any costs therefore. Service on confined or imprisoned persons shall also conform to the provisions of § 15-9-510, S.C.Code, 1976.

(d)(3) Corporations and Partnerships. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(emphasis added).

As to the service of a subpoena in a civil case, Rule 45(b) of the S.C. Rules of Civil Procedure says:

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j), and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance of \$25.00 and the mileage allowed by law for official travel of State officers and employees. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(emphasis added). For criminal cases, Rule 13(b) of the South Carolina Rules of Criminal Procedure says:

(b) Service. A subpoena may be served by the sheriff of any county in which the witness may be found, by his deputy or by any other person who is not a party and is not less than eighteen years of age. Service of a subpoena upon an individual may be made by delivering a copy to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service. Service may be made on any day of the week.

Though there are other rules concerning other types of service in South Carolina, this Office is referring the above rules as a general background in service of process. In your letter, you reference this request as a question by private investigators and process servers, so this Opinion

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will not go into great length any issues concerning a law enforcement officer who is serving process.

As a background on service of process, “when the process gives the defendant actual notice of the pendency of the action, the rules, in general, are entitled to a liberal construction. When there is actual notice, every technical violation of the rule or failure of strict compliance may not invalidate the service of process.” Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc., 733 F.2d 1087, 1089 (4th Cir. 1984). “Exacting compliance with rules of civil procedure is not required to effect service of process; rather, court examines whether plaintiff has sufficiently complied with rules such that court has personal jurisdiction of defendant and defendant has notice of proceedings.” Roche v. Young Brothers, Inc., of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995) (citing Rule 4, SCRPC). “Service of process serves at least two purposes: it confers personal jurisdiction on court and assures defendant of reasonable notice of action.” Id. (citing Rule 4, SCRPC). Service of process is a question of fact. When service is contested, the burden is on the plaintiff to prove that actual service was accomplished under the law. Id.

The trespassing statute you reference in your letter, South Carolina Code §16-11-620 (1976, as amended), says that:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

All municipal courts of this State as well as those of magistrates may try and determine criminal cases involving violations of this section occurring within the respective limits of such municipalities and magisterial districts. All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another.

(emphasis added). In order to charge someone under S.C. Code §16-11-620, a person must, first of all, be there without legal cause. Service of a subpoena pursuant to the above rules (or pursuant to other rules) would suffice for a legal cause for one’s presence on the property of another. However, your question asks if a process server would violate any other trespass laws under the conditions asserted.

It is a crime in South Carolina for a person “to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process...” S. C. Code § 16-9-320 (1976). Additionally, a law enforcement officer is defined in this regard as “any duly appointed or commissioned law enforcement officer of the State, a county or municipality.” S. C. Code § 16-9-310 (1976). The Maryland Court of Appeals refers to process servers as “ministerial officers” where Maryland Rule 116 (a)(1) allows any adult to be appointed by the court to serve with the same powers and duties as a sheriff to serve. Weinreich v. Walker, 236 Md. 290, 203 A.2d 854 (1964) (citing Parker v. Berryman, 174 Md. 356, 359, 198 A. 708, 709 (1938) and Windwart v. Allen, 13 Md. 196, 200, (1859)). Illinois considers court-appointed process servers agents of the state court and therefore gives immunity for their quasi-judicial conduct. In Re Betts, 165 B.R. 233 (1994). The United States Fifth Circuit Court of Appeals held that a private process server was not an officer of the United States courts such as a marshal, bailiff, clerk or judge for purposes of a statute allowing removal of suits against such persons. Herron v. Continental Airlines, Inc., 73 F.3d 57 (1996). However, under South Carolina law it remains unclear whether process servers are ministerial officers of the court and therefore given quasi-judicial immunity. If process servers are considered ministerial officials or quasi-judicial officers of the court, the answer is simple. In South Carolina officers of the court, quasi-judicial officers, judges, prosecutors, executive and ministerial officials of government are immune from civil suit for acts done in performance of their official duties. Hartline v. Carner, 141 F.Supp. 151 (E.D.S.C. 1956).

A review of South Carolina case law provides some insight to how a court in South Carolina might rule. The South Carolina Supreme Court held private citizens appointed as guardian ad litem in custody proceedings should be given quasi-judicial immunity for acts performed within the scope of their appointment but were neither agents nor employees of the state. Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997). Clerks of court in South Carolina fall into the category of ministerial officers of the courts. Op. S.C. Atty. Gen., June 27, 2007 (2007 WL 1934803) (citing Chafee & Co. v. Rainey, 21 S.C. 11, 1884 WL 4549 (1884)). South Carolina clearly allows highway patrolman and game wardens on private property within the scope of their duties. Ops. S.C. Atty. Gen., July 23, 1971 (1971 WL 17526) (citing State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935)); 1960 WL 8158 (May 31, 1960). However surveyors may be liable for trespass in the course of their work. Op. S.C. Atty. Gen., 1967 WL 12725 (November 8, 1967). This opinion would be remiss if it did not mention that process servers are exempted, along with law enforcement officers and private investigators, under South Carolina’s harassment and stalking laws if they are performing their official duties. S.C. Code §16-3-1700 (G).

The first question presented in your letter involves whether a process server in South Carolina violates any trespass laws (specifically S.C. Code § 16-11-620) when serving court papers (a summons, complaint, petition, or subpoena) when the property posts a “No Trespassing” sign. This Office believes the answer to this question, without determining whether a court in South Carolina would go so far as to hold private process servers as having quasi-judicial immunity, is that a court is likely to hold process servers acting within the scope of their duties do not violate any trespass laws. The answer would likely be the same in the second scenario. Since process

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servers are not liable within the scope of their official duties for harassment or stalking and because they have a legal purpose for their presence, it is unlikely a court in South Carolina would hold them liable for any trespassing statutes. However, having arrived at that conclusion, if, at any point a process server goes outside of the scope of his duties, the South Carolina courts are clear. In Wright v. United Parcel Service, Inc., the court held “[a]lthough entry by a person on premises of another may initially be lawful, the person becomes a trespasser when the person fails to depart after being asked by the owner to leave.” Wright v. United Parcel Service, Inc., 315 S.C. 521, 445 S.E.2d 657 (1994) (citing Shramek v. Walker, 152 S.C. 88, 149 S.E. 331 (1929)). In State v. Thomas Dawson, in the concurrence the court stated “it [is] a fundamental principle of law, that if an officer commits an abuse of his authority, or an apparent abuse, and thereby trespasses upon the rights of a citizen, he may defend his rights, and cannot be convicted of any legal offence; notwithstanding the general power of the officer.” State v. Thomas Dawson, 3 Hill (SC) 100, 21 S.C.L. 100, 1836 WL 1498 (Ct.App. 1836). Additionally, this Office issued an opinion stating the authority to break and enter a residence by a sheriff or magistrate’s constable is for claim and delivery actions only and that does not apply to any other civil action unless specifically granted by statute. Op. S.C. Atty. Gen., 1964 WL 8341 (August 27, 1964).

Conclusion: Based on the conclusion that if a process server acts within the scope of his duties, it is unlikely a court will find him violating any trespass laws. However, this office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General