

Public records, process servers

Number: INFORMAL

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The Honorable John F. Cosgrove
Representative, District 119
302 House Office Building
Tallahassee, Florida 32399-1300

Dear Representative Cosgrove:

You have asked whether proposed legislation exempting personal identifying information in motor vehicle records from the Public Records Law, but providing for its release in connection with judicial and quasi-judicial proceedings, including service of process, would apply to certified and special process servers.

The legislation would allow individuals to request that certain personal information contained in their motor vehicle records be exempted from disclosure under Chapter 119, Florida Statutes, the Public Records Law. Personal information would include the individual's social security number, driver identification number, name, address, telephone number, and medical or disability information. It would not include information relating to vehicular crashes, driving violations, and driver's status.

However, the legislation would authorize the Department of Highway Safety and Motor Vehicles to release personal information for use in connection with any filed civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body, including service of process, execution or enforcement of judgments and orders, or pursuant to order of any court. You are concerned whether "service of process" may be interpreted to apply only to deputy sheriffs who serve process and to exclude others, such as process servers.

Section 48.27, Florida Statutes, allows the chief judge of each judicial circuit to approve a list of natural persons who have completed the statutory requirements to become certified process servers. A person's name appearing on the list is authorized to serve initial nonenforceable civil process on persons within the circuit when a civil action has been filed against the person in the circuit court or a county court within the circuit.

In Attorney General Opinion 89-1, this office was asked to determine the meaning of "initial nonenforceable civil process" for purposes of determining what process may be served by a special process server. Recognizing that the governing statute does not define "initial nonenforceable civil process," the opinion applied the plain and ordinary meaning to the words to conclude that the term means the service of certain beginning process, in the nature of original process, in civil actions in circuit or county court. The opinion noted further that such process was not capable of being compelled. While this office could not identify each writ or process that may be served by a special process server, the opinion stated that initial non-enforceable process could be characterized as that process for which there is no statutory directive

mandating the sheriff's service.

The proposed legislation would be drafted in broad terms that appear to encompass any process that is attendant to a civil, criminal or administrative proceeding. While the limitation on the type of process that may be served by a certified process server in a civil case would preclude service of process by such a server when it is statutorily prescribed to be served by the sheriff, there is nothing in the proposed legislation as you have presented it that would restrict its application to releasing information only when service of process is by the sheriff.

I trust these informal comments will be of some assistance in addressing your concerns. Should you have further questions, please do not hesitate to contact this office.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk