

# Use of Private Process Servers Is Up; Concern Is, Too

By DAN MIHALOPOULOS and PATRICK REHKAMP JULY 22, 2010

When Frank Knight fell behind on his house payments in 2008 and the mortgage lender began a foreclosure case, a process server said he handed Mr. Knight the court papers at his bungalow on Chicago's Northwest Side.

But public records show that at the time the server said Mr. Knight was being served, Mr. Knight was at a job site on the West Side, more than seven miles from his brick home in the Jefferson Park neighborhood.

"He lied on his affidavit," Mr. Knight said this week. "I just feel like they were trying to foreclose upon me and my family as fast as possible. Why? So the bank could get their hands on this property, so they could turn it around."

The man responsible for hand-delivering the foreclosure papers to Mr. Knight's home is a special process server, an employee of a private detective agency. In the summer of 2007, with the housing bubble bursting and the number of foreclosure cases soaring, a Cook County judge issued an order making it easier for mortgage-foreclosure lawyers to hire special process servers to do what otherwise would be carried out by Cook County sheriff's deputies, according to records reviewed by the Chicago News Cooperative and the Better Government Association.

The process server in Mr. Knight's case was Timothy McWard, who said he did not recall the case. But Mr. McWard said he has served more than 20,000 legal documents in the past five years and the papers are "always given to somebody," he said. "They will say whatever they can to save their house."

A lawsuit filed last week in federal court in Chicago is challenging the practice, saying it is a violation of state and federal law for the judge to allow freer use of special process servers. The lawyer for David L. Washington, the foreclosed property owner who is the plaintiff in the suit, said he hoped to convert the case into a class-action suit that would void tens of thousands of foreclosure cases handled by special process servers in recent years.

Tom Dart, the Cook County sheriff, said he was eager to resume carrying out service duties for foreclosure cases, noting concerns with the behavior of private process servers, who had long been used to a lesser extent. Private servers are required to follow the same rules as sheriff's deputies, who must swear that

they have handed the court documents filed by lenders to the debtors or to another adult at the property. State law requires process servers to register with the sheriff, but only one has done so, because there are no penalties for failing to do so, said Steve Patterson, Mr. Dart's spokesman.

Mr. Dart also said that if the sheriff's office resumed process-serving duties in foreclosure cases, it would be an opportunity to take in millions of dollars a year in fees for the county.

The issue is becoming more urgent as the caseload of foreclosures in the county's courtrooms continues to increase. There were about 16,000 foreclosures in 2005; that number almost tripled in 2009.

Dorothy Kirie Kinnaird, the presiding judge in the Chancery Division of Cook County Circuit Court, cited those rising figures in issuing an order in 2007 that liberalized the process by allowing law firms to hire private companies to serve foreclosures for three months rather than having to seek permission to bypass the sheriff in each case.

Judge Kinnaird declined to comment on the order or the lawsuit challenging it.

Clifford L. Meacham, who was the supervising judge in the Mortgage Foreclosure/Mechanics Lien Section of the Chancery Division when Judge Kinnaird issued the order, defended expanding the use of special process servers as necessary to deal with the skyrocketing number of foreclosure filings.

Now retired, Mr. Meacham was asked recently at a legal seminar whether the practice violated state statutes.

"It all depends on how rigidly you want to read the law," he replied, according to an audio recording from the Distressed Real Estate Summit on May 13 at a downtown hotel. "Is there a statute that says the sheriff should get first crack? Well, yes, but you know, so what?"

In an interview this week, Mr. Meacham said his remarks as a panelist at the conference were "flippant," but he did not retreat from his defense of the order. "To the extent that people think it violates their rights, I disagree," he said. "Frankly, this is such a trivial matter."

Mr. Meacham said he believed that private process servers who were found to be doing a bad job would be removed. The main reason for Judge Kinnaird's order, he added, was that the sheriff's office was overwhelmed in dealing with the increased number of foreclosure filings.

Mr. Patterson, the sheriff's spokesman, said the office was ready to serve foreclosure papers in every case. "We would prefer to handle all process serving in the county, particularly since it is one of the few ways we are able to actually bring revenues to the county," he said.

Sheriff's deputies serve hundreds of thousands of legal documents each year, generating \$20 million in fees, Mr. Patterson said. Handling all foreclosures would bring in an additional \$5 million a year.

Edward T. Joyce, the lawyer for Mr. Washington, the plaintiff in the case, said Judge Kinnaird's order was well-intentioned. But Mr. Joyce said her action was most favorable to **banks** and foreclosure lawyers because it allowed them to serve papers on debtors more quickly and cheaply. He also said the private

process servers often engaged in “sewer service” — stuffing court papers between sewer grates in front of debtors’ homes.

Mr. Joyce said he had not discussed filing the federal case with the sheriff, although he had a long-running business relationship with Mr. Dart’s father.

Mr. Washington lost his home in Broadview, which he had bought in 2002, to Wells Fargo Bank after receiving papers from the same company that handled Mr. Knight’s case. Wells Fargo is the sole defendant in Mr. Washington’s suit. A spokesman for the bank said it followed procedures established by court officials in Cook County.

Court files show that at least five property owners who defaulted on their mortgages tried to have the cases thrown out in the last couple of years by arguing that the court’s order increasing the use of special process servers was illegal. That argument did not sway the judges in those cases, records show.

Mr. Knight, the Northwest Side homeowner facing foreclosure, bought his bungalow for \$400,000 in 2007 and stopped making his \$3,400-a-month payments after a year. He still lives in the house and is continuing to fight the foreclosure, claiming he was the victim of predatory lending.

In court, Mr. Knight produced public records showing that he was at a city sewer inspection in the 4700 block of West Superior Street when the process server swore he was presenting him with foreclosure papers in Jefferson Park. Mr. Knight testified that the foreclosure notice was left in his mailbox. As a result, the judge in Mr. Knight’s case granted his motion to “quash service.”

The favorable ruling was only a temporary reprieve for Mr. Knight. Another private process server was back at his house four days after the decision, and this time the company made sure to hand the documents to Mr. Knight’s wife, whose is also an owner of the home.

Dan Mihalopoulos is a reporter for the Chicago News Cooperative. Patrick Rehkamp is chief investigator for the Better Government Association. Emily Funk, an associate investigator for the association, contributed reporting.

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