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Office of the Attorney General
State of Connecticut

March 27, 2015

W. Martyn Philpot, Jr.,
Chairperson
State Marshal Commission
165 Capitol Avenue, Room 279
Hartford, CT 06106

Dear Attorney Philpot:

You have requested an opinion on several questions concerning state marshals that apparently were prompted by an e-mail from State Marshal Barbara Coffey that was attached to your request. Specifically, you divide your questions into three categories, Fees/Service, E-Filing and Lis Pendens. In the category of Fees/Service, you ask:

1. How should a return be worded if a state marshal makes service at the usual place of abode, if that can be defined, but also leaves copies at multiple addresses?

2. Are extra copies at multiple addresses to be treated as service and each paid for under a service of process fee in Conn. Gen. Stat. § 52-261?

3. If the extra copies at multiple addresses occurs or if extra time and effort is made by a state marshal at the request of a client, can the state marshal, by agreement with a client under Conn. Gen. Stat. § 6-38a(a), charge a fee for reasonable time and/or travel for service of process related efforts beyond the statutory service of process fee?

In the category of E-Filing, you ask:

4. The State Marshal Commission has concluded that a state marshal cannot use the e-filing codes of an attorney to file a writ into the court. However, does a state marshal's public officer position allow for a state marshal to become a designated filer for an attorney, or are there conflicts of interests? If it is allowed, can any fees be paid to a state marshal for such court filings?

In the category of Lis Pendens, you ask:

5. Is there any particular valuation structure for an individual seeking to be paid for recording a lis pendens, including a state marshal who is filing them? How is a state marshal to bill for such work?

6. Is it appropriate for anyone to charge a civil service fee for the recording of a notice of lis pendens?

7. For a state marshal who records a notice of lis pendens for a client can that state marshal create a corporation to record notices of lis pendens, with staffed employees?

8. If a state marshal is allowed to create a corporation, is there any particular volume of lis pendens recording work before a state marshal is obtaining personal gain off his or her appointment based on his or her foreclosure, or family, work, by taking on such recordings?

9. If a state marshal is allowed to create a corporation, can one or more other state marshals work as an employee of the corporation to record notices of lis pendens?

As will be discussed in more detail below and as discussed in prior opinions of the Attorney General, the applicable laws and regulations compel the conclusions that state marshals: must truthfully word their returns under the circumstances presented, may charge statutory fees for extra copies served pursuant to a valid court order, may not enter into agreements with their clients to override the statutory limits on fees, may not become designated filers for attorneys based on the State Marshal Commission's conclusion that its regulations prevent similar activity on conflict of interests grounds, and may not charge fees for the recording of notices of lis pendens.

I. State Marshals Must Truthfully Word Their Returns Under The Circumstances Presented

Your first question relates to the wording of a return of service. A state marshal directed to serve process is under an obligation to "make true return thereof." Conn. Gen. Stat. § 6-32. Unlike some documents, such as a summons, *see* Conn. Gen. Stat. § 52-45b, there is no statutorily prescribed language for a return of service. Therefore, a state marshal is required to make a judgment as to how to truthfully word a return under the circumstances presented.

It appears that your first question was prompted by State Marshal Coffey's concern about being able to truthfully attest "that proper service was made at THE 'usual place of abode'" where service is made at multiple addresses at a client's request. (capitalization in State Marshal Coffey's e-mail). Although returns commonly refer to "*the* usual place of abode," there is no talismanic effect to that phrase. The Connecticut Supreme Court has long recognized that "[o]ne may have two or more places of residence within a State, or in two or more States, and each may be a 'usual place of abode.' . . . Service of process will be valid if made in either of the usual places of abode." *Clegg v. Bishop*, 105 Conn. 564, 570 (1927); *see also Knutson Mortg. Corp. v. Bernier*, 67 Conn. App. 768, 772 (2002) (same).

II. State Marshals May Charge Statutory Fees For Extra Copies Served Pursuant To A Valid Court Order

The answer to your second question is that a state marshal directed to serve multiple copies of process in a given case pursuant to a valid court order may generally charge a fee for each such copy that the state marshal successfully serves. *See* Conn. Atty. Gen. Op. No. 2008-011, 2008 WL 2466716, at *2 (concluding that fees may only be charged for successful service). Section 52-261(a) provides, in pertinent part, that "each officer . . . who serves process, summons or attachments . . . shall receive a fee . . . for each process served *and an additional fee . . . for the second and each subsequent service of such process*" with exceptions not applicable here. (emphasis added).

III. The Fee Statutes Are Exclusive And State Marshals May Not Use Agreements With Their Clients to Override Them

Nearly two centuries ago, the Connecticut Supreme Court recognized that "[b]y the English common law, the sheriff," the predecessor to the state marshal, was "not entitled to fees for his official services" and that to prevent abuse the General Assembly has long "made laws to reduce the allowance for [sheriffs'] services to a known and absolute certainty." *Preston v. Bacon*, 4 Conn. 471, 477 (1823) (emphasis omitted).

Consistent with that authority and more recent court decisions, this Office has already concluded that the state marshal fee statutes "set caps on fees and are exclusive, meaning that no fees for serving papers may be charged that are not authorized in these statutes." Conn. Atty. Gen. Op. No. 2009-009, 2009 WL 3059049, at *4; *see also Rioux v. State Ethics Comm'n*, 45 Conn. Supp. 242, 247 (1997), *aff'd*, 48 Conn. App. 214 (1998) (holding that the statutory fees are

exclusive). Thus, any fees to compensate "for additional time and/or travel" beyond those the statutes expressly authorize are impermissible. *See, e.g.*, *Rioux*, 45 Conn. Supp. at 247 (holding that the statutes do not permit "an additional service fee or fee for advice, review, advancement of funds or short-term responsiveness").

Your third question raises the issue of whether an agreement under § 6-38a(a) may override the limits the statutes place on state marshal fees. Citing to the provisions of Conn. Gen. Stat. § 52-261, this Office has previously opined that § 6-38a(a) permits state marshals and their clients to enter into fee agreements as long as the fees established by those agreements "are at or below the statutory maximum and at or above the State Marshal Commission minimum." Conn. Atty. Gen. Op. No. 2009-010, 2009 WL 3330561, at *2; *see also Preston*, 4 Conn. at 480 (holding that "a contract to pay more than is due, is unquestionably void"). Given that there has been no further legislative guidance on the issue since our opinion, we see no reason to depart from that advice.

IV. There is no Apparent Basis to Conclude that a State Marshal Using an Attorney's E-Filing Codes Presents a Conflict of Interests that a State Marshal Becoming an Attorney's Designated Filer Does Not

You indicate that "[t]he State Marshal Commission has concluded that a state marshal cannot use the e-filing codes of an attorney to file a writ into the court" but ask whether "a state marshal's public officer position allow[s] for a state marshal to become a designated filer for an attorney, or are there conflicts of interest?" In addition, you ask whether—if such filings are allowed—a state marshal may charge fees for them.

You have advised my staff that the State Marshal Commission does not have a specific conflict of interests policy but that, in advising those who approach the Commission, it has interpreted its regulations to preclude conflicts of interests, apparently including a perceived conflict if state marshals were to use the e-filing code of an attorney to file a writ into the court.

"Conflict of interests is a term that is often used and seldom defined" and whether a conflict of interests exists is highly fact-dependent. *Phillips v. Warden, State Prison*, 220 Conn. 112, 137 (1991) (quotation marks omitted). You advise that the State Marshal Commission has interpreted its regulations to bar state marshals from using the e-filing codes of an attorney. The Commission's

interpretation of its regulations to prohibit state marshals from e-filing on behalf of an attorney does not appear deficient on its face.

There does not appear to be a difference between "us[ing] the e-filing codes of an attorney" and "becom[ing] a designated filer for an attorney" that would meaningfully impact the conflict of interests analysis. According to the Judicial Branch's Designated Filer Quick Reference Guide, "[d]esignated filers are individuals authorized by attorneys and law firms to file case initiation documents on their behalf." Since both the use of an attorney's e-filing codes and becoming a designated filer require the attorney's authorization, there is no apparent reason to conclude that use of e-filing codes would pose a conflict under the regulations but being a designated filer would not.

Again, whether a conflict of interests exists is a fact-intensive inquiry that will vary depending on the laws or regulations being applied. Should the State Marshal Commission be presented with facts that it believes warrant reconsideration of its conclusion that its regulations prohibit state marshals from using the electronic filing system with an attorney's sponsorship and has concerns that there may be other legal impediments to such conduct, it is free to seek this Office's guidance as to how the law applies to the facts as they may then be presented.

V. The Statutes Do Not Permit Fees To Be Charged For Recording Notices of Lis Pendens

Your last set of questions revisit the issue of whether fees may be charged for the recording of a notice of lis pendens. "Recording a notice of lis pendens can be effectuated without a State Marshal by any person or by mail." Conn. Atty. Gen. Op. No. 2009-009, 2009 WL 3059049, at *4. This Office has previously recognized that this raises the question of "whether a State Marshal can charge a fee for recording a notice of lis pendens as Conn. Gen. Stat. § 52-261 does not contain an express provision for charging a fee for recording a notice of lis pendens on the land records." Conn. Atty. Gen. Op. No. 2009-009, 2009 WL 3059049, at *4 n.2. We concluded that the absence of any statutory authority for such a fee "mean[s] presumably that none is authorized" and suggested that legislation would be necessary for state marshals to charge fees for such recordings. *Id.* Although Public Act No. 14-87 recently increased state marshal fees in some instances, no legislation authorizing state marshals to charge fees for recording a notice of lis pendens has been enacted. Consequently, state marshals may not bill for such recordings.

You ask whether it is "appropriate for anyone [other than a state marshal] to charge a civil service fee for the recording of a notice of lis pendens?" You also pose several other questions about fees for the recording of notices of lis pendens undertaken by those not acting as a state marshal, but rather as a separate corporation. We do not believe these are questions this Office can appropriately answer. Specifically, if a state marshal were to create a corporation for the purpose of accepting and charging for work recording notices of lis pendens, any legal or ethical questions that might arise would require reliance on private counsel or the Office of State Ethics, as they would not be legal questions that arise from the work of a state official. Providing advice on such questions, in our view, would not fall within our statutory mandate to provide advice to state officials related to their official duties. *See* Conn. Gen. Stat. § 3-125.

VI. CONCLUSION

I trust this opinion answers your questions.

Very truly yours,

GEORGE JEPSEN
ATTORNEY GENERAL