

# Process Problems in Protection Cases

By James F. Vano, District Magistrate Judge, Olathe, Kansas

**O**n my docket, I handle a fairly steady stream of civil Protection from Abuse (PFA) cases. I am frequently struck by the fact that some of our sister states return process in these presumably serious cases unserved, stating that the plaintiff failed to submit a “service fee” to the process server. The process server in the foreign jurisdiction is often a sheriff’s department or a separate civil process server’s division. Other times, the returns are sent back to us *after* our scheduled court dates for hearing the petitions.

We are required to hear the petitions for final orders in PFA cases, under Kansas law, within 20 days. I am fairly certain that other states have similar short-time restrictions for hearing evidence on the petitions. With no return of service on file, it becomes necessary to continue the temporary orders; reset the hearing date for final orders; and, once again, seek to obtain service of that continuance process upon the defendant in the sister state through the same process server. Plaintiffs (who are often indigent and may be running for their very lives) could hire and seek appointment of a special process server. That is not a workable alternative for many victims of abuse.

Delay in these cases can be deadly. Although determined perpetrators would probably be no more deterred by a paper order than by the law proscribing abuse in the first place, issuance and service of a valid protection order may be instrumental in securing prompt protection from local law enforcement officers, who may otherwise be reluctant to interfere in family relationships. In addition, the delay often brings further abuse from “the system” upon victims of domestic violence. They may have to take another day from work to come to a continuance hearing, get additional day care, incur more attorney fees, and risk further abusive conduct toward themselves and, in some cases, their children. Slow returns of process actually served may still result in the process server having to duplicate service efforts because the issuing court—having no timely return on file on the original date set for hearing the petition—had to issue the continuance process. This wastes assets.

Domestic violence cases are not run-of-the-mill civil cases. They should not be treated like regular civil damage suits. They ought to be a top priority for process servers.

Although we must limit our involvement in public policy issues and lobbying, we must bring this ongoing problem of procedure to the attention of policymakers and sheriffs’ departments. They can correct the problem in any manner they see fit. However, I do not think we would be violating the canons by letting the policymakers know how and why certain policies already adopted are not now working as intended.

I suggest judges in their respective jurisdictions address the following: (1) encourage local process servers to expedite service of foreign orders, summonses, and notices to appear on these civil PFA cases; (2) make some rhetorical inquiries on whether or not local process servers charge a fee for service of foreign PFA process and, if so, ask “why?”; and (3) encourage and see that local court rules allow for fax filing of returns.

I have asked the Department of Justice if there has been any initiative to create a standard nationwide policy regarding service of process and returns in PFA cases. I was advised that nothing has been done because no one has made them aware of the problem. The indication I got in an e-mail response was that it may be worth looking into at some point. However, I believe the Justice Department is currently attending to more pressing issues of international violence.

I also floated this problem (by “ambush,” I must confess) before the American Judges Association’s Domestic Violence Committee in Reno. I believe that the committee may be considering this issue. You might be able to help this review.

Can you tell me what your jurisdiction does about the service of foreign Protection from Abuse orders, notices, and summonses? Are they considered low, regular, high, or top priority? Is the return of such service from your sister states a problem? Does your sheriff or process department charge a service fee? Do you allow fax-filed returns? What other problems are you having with these protection cases?

Thanks for your help and concern. You can reach me via e-mail at [James.Vano@jocoks.com](mailto:James.Vano@jocoks.com); phone at (913) 715-3575; or mail at this address: James F. Vano, District Magistrate Judge, Johnson County Courthouse, 100 N. Kansas Ave. Olathe, KS 66061. 