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Dear Attorney Shepardson:

You have asked our opinion on several questions concerning State Marshals. In particular your questions are as follows:

1. Under Conn. Gen. Stat. § 52-261 and § 52-325(c), if the service of the lis pendens occurs at the same time as the underlying civil action, can the simultaneous service of a lis pendens and the underlying civil action result in multiple service fees, or is there authority for denying the State Marshal multiple fees for such simultaneous service?

2. If an indifferent person and a State Marshal can both work on a lis pendens, please consider the situation where the indifferent person records the original lis pendens on the land records at the town hall and the State Marshal serves the certified copy of the lis pendens on the property owner. Under those circumstances may the State Marshal state the following: "I caused to be filed on the land records" language, or something similar, in the return, or, in the alternative, are separate returns required by the indifferent person and the State Marshal on each of their actions?

3. Can a State Marshal create a single member LLC and conduct State Marshal work regarding service of process and executions under the LLC?

4. Can a group of State Marshals create a multi-member LLC and conduct their State Marshal work regarding service of process and executions under the LLC??

5. Can State Marshals, as appointed public officials, as well as independent contractors, employ other state marshals?

6. A January 16, 2002 informal advice issued by the Attorney General's office discussed whether Conn. Gen. Stat. §6-38d authorized State Marshals to divide fees for actual work

shared between State Marshals. Although the mere referral of a service for process is legally insufficient to allow fee sharing, the Commission seeks clarification on what general elements constitute work actually performed that can be put into the monetary calculation of actual work?

7. Can State Marshals, as appointed officials, as well as independent contractors, employ indifferent persons to assist them in civil process work, such as subpoenas, lis pendens, notices to quit and other areas in which indifferent persons are empowered by statute? If so, are their fees to be set by the value of the actual work performed by each individual, as would occur between State Marshals?

In evaluating these questions we have taken into consideration applicable statutes, judicial decisions and prior Opinions of the Attorney General. For the reasons summarized below we conclude as follows:

1. The provisions of Conn. Gen. Stat. § 52-261 do not allow multiple fees for simultaneous service of a lis pendens and the underlying civil action. Multiple fees for a single service of a notice of lis pendens and the underlying lawsuit are not authorized by law and are therefore improper. Further, Conn. Gen. § 52-325(c) does not authorize service of the notice of lis pendens on the property owner in a foreclosure proceeding.
2. Under no circumstances should a State Marshal include language to the effect of "I caused to be filed on the land records" or "I caused to be served" on a return where the State Marshal did not personally record and/or serve the papers involved. The State Marshal (or indifferent person where specifically authorized by law) who actually performed the service must sign the return attesting to the personal actions performed by that individual to effectuate service. If different documents are served or recorded by different people, separate returns are required, each personally signed by the persons performing each service or recording.
3. The laws governing State Marshals are inconsistent with the LLC form of business organization because the statutory authority and responsibilities of State Marshals are personal to each State Marshal as "public officers." A business organization such as an LLC is not authorized to

be a "public officer" for the purpose of receiving process to be served, receiving fees for service of such process or performing any of the other statutory duties of a State Marshal. If the Commission believes that a State Marshal LLC should be permitted, legislation would be necessary.

4. Concerns regarding a State Marshal LLC would be severely heightened by an LLC formed by several State Marshals because such an LLC would also raise questions about inappropriate fee sharing.

5. State Marshals may not employ other State Marshals. Neither may State Marshals be employed by an LLC owned by one or more State Marshals. State Marshals receive statutory fees, not salaries, and their statutory duties and responsibilities may not be performed, directed or controlled by any private entity or other State Marshal. No State Marshal may receive any direct or indirect payment from service of process work performed by another State Marshal.

6. While there are some circumstances where several State Marshals, working collaboratively, could each receive legitimate fees for serving process, current law does not authorize fee sharing or referral fees. State Marshals may share administrative costs, such as the maintenance of an office, as long as each Marshal's share of such costs is clearly apportioned according to work actually performed.

7. State Marshals may not generally use indifferent persons for the service of process. Indifferent persons may only serve process in the few discrete areas where the law *expressly* allows indifferent person service. The same fee schedule applies to service by a State Marshal and service by an indifferent person.

I. A STATE MARSHAL MAY NOT CHARGE TWICE FOR THE SIMULTANEOUS SERVICE OF A NOTICE OF LIS PENDENS AND THE UNDERLYING CIVIL ACTION.

You have asked what fees are appropriate for serving a notice of lis pendens. Specifically, you ask whether multiple fees can be charged for the simultaneous service of a notice of lis pendens and the underlying civil action. The potential fees in this situation could be: (1) charging two $30 service fees --

$30 for service of the lawsuit and $30 for serving a notice of lis pendens; and (2) charging twice for mileage and copies by treating service of the notice of lis pendens and service of the underlying action as separate service of process. We conclude that multiple fees for the simultaneous service of a lis pendens and underlying civil action are not authorized by law and are therefore improper.

The starting point for our analysis is the statutory framework governing the position of State Marshal and the service of process. The position of State Marshal is governed generally by Conn. Gen. Stat.§§ 6-29 et. seq. A notice of lis pendens is governed generally by Conn. Gen. Stat. § 52-325. Fees authorized for serving process are governed by Conn. Gen. Stat. § 52-261.

A. STATUTES GOVERNING STATE MARSHALS AND NOTICE OF LIS PENDENS

For many years, the service of legal process in Connecticut was performed by deputy sheriffs acting under a constitutional officer, the Sheriff for each county in Connecticut. The sheriff system in Connecticut was abolished by constitutional amendment effective November 30, 2000, along with sheriff reform legislation enacted by the General Assembly. Conn. Const. Amend. Art. XXX; 2000 Conn Public Acts 00-99. The process-serving functions formerly performed by sheriffs and their deputies are now performed by State Marshals. State Marshals have no inherent authority or powers, but are empowered by Connecticut statute to "provide legal execution and service of process." *See* Conn. Gen. Stat. § 6-38a. It is well settled that "an enumeration of powers in a statute is uniformly held to forbid things not enumerated."[1] *State v. White*, 204 Conn. 410, 424 (1987); *Rioux v. State Ethics Commission*, 45 Conn. Supp. 242, 247 (Conn. Super. 1997) (holding that "statutory itemization indicates that the legislature intended the list to be exclusive") *affirmed* 48 Conn App. 214 (1998) (per curiam).

Lis pendens is Latin for litigation pending. The only purpose of a notice of lis pendens is to provide public notice that litigation is pending relating to real property. In Connecticut, "[f]rom the face of the statute [Conn. Gen. Stat. § 52-325(a)] it is clear that a notice of lis pendens is appropriate only where the pending action will in some way, either directly or indirectly, affect the title to or an interest in the real property itself. [Citation omitted]." *Garcia v. Brooks Street Associates*, 209 Conn. 15, 22 (1988).

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[1] One practical consequence is that other tasks a State Marshal may be asked to perform on behalf of an attorney or client that are not "legal execution" or "service of process" (such as performing "bring down" searches) are not services performed as a State Marshal and may not be billed as State Marshal fees.

> A lis pendens is a creature of statute and a person invoking its provisions must comply with the statutory requirements. [Citation omitted]. "Nevertheless, the provisions of the statute should be liberally construed to implement reasonably and fairly its remedial intent of giving notice of claims pertaining to the real property which is the subject of the litigation." [Citation omitted].… Thus, if a person has actual notice of the lien and a suit commenced thereon, that actual notice may take the place of constructive notice imparted by the filing of a lis pendens.…

First Constitution Bank v. Harbor Village Ltd. Partnership, 37 Conn. App. 698, 703 – 704 (1995).

A notice of lis pendens is recorded on the land records of the town where the property is situated. The notice is required to contain "the names of the parties, the nature and object of the action, the court to which it is returnable and the term, session or return day thereof, the date of the process and the description of the property." Conn. Gen. Stat. § 52-325(a). Under previous law, service of a notice of lis pendens on a property owner was authorized in a foreclosure matter. *See* Conn. Gen. Stat. § 52-325(c) (2003). In 2005, however, the legislature eliminated any authorization to serve a notice of lis pendens on the property owner in a foreclosure proceeding. *See* Conn. Public Acts 05-247, § 2. "[I]n any action *except a suit to foreclose a mortgage or other lien*, no recorded notice of lis pendens shall be valid … unless the party recording such notice [serves the property owner]." (emphasis added). The purpose of this statutory change was explained by its proponent:

> The second portion, the second section of the Bill is designed to remove the requirement of serving a notice of lease pendings [sic] which is a notice of a lawsuit on the defendant property owner in a foreclosure matter.
>
> And the reason this is done is to clarify title searching and make it more efficient and properly to determine the status of the title, and there is no danger to the due-process rights of the defendant in the foreclosure action because they would be [sic] received the writ summons and complaint and would be aware of the foreclosure action.

2005 Conn. House Proceedings (June 6, 2005)

Thus, current Connecticut law does not authorize service of a notice of lis pendens on a property owner in a foreclosure proceeding. Connecticut law authorizes only that the notice of lis pendens be served on the property owner in non-foreclosure proceedings and that the notice of lis pendens be recorded[2] on the land records. Recording a notice of lis pendens can be effectuated without a State Marshal by any person or by mail.

B. STATUTES GOVERNING FEES FOR SERVICE OF PROCESS

Fees for service of process are governed by Conn. Gen. Stat. § 52-261 and Conn. Gen. Stat. § 52-261a.[3] These provisions set caps on fees and are exclusive, meaning that no fees for serving papers may be charged that are not authorized in these statutes.

> The statutes indicate that the server of process may charge "not more than" the specified fee plus mileage, copies and endorsements. "Unless there is evidence to the contrary, statutory itemization indicates that the legislature intended the list to be exclusive." (Internal quotation marks omitted.) *Zachs v. Groppo*, 207 Conn. 683, 693, 542 A.2d 1145 (1988).

Rioux v. State Ethics Commission, 45 Conn. Supp. 242, 247 (Conn. Super. 1997) *affirmed* 48 Conn App. 214 (1998) (per curiam).

A lengthy schedule of fees for serving process is set forth at Conn. Gen. Stat. § 52-261. These include the following:

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[2] The lis pendens statute authorizes recording of the notice of lis pendens on the land records, but it does not authorize service of the lis pendens on the on the town clerk. Conn. Gen. Stat. § 52-261 does authorize a State Marshal to make service of process generally, but case law also holds that the terms of a statute covering the specific matter at issue typically prevail over the terms of a general statute that might otherwise apply. *Griswold Airport, Inc. v. Town of Madison*, 289 Conn. 723, 728 (2008). Another question is 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, meaning presumably that none is authorized. These areas may be appropriate for legislative clarification.

[3] The provisions of Conn. Gen. Stat. § 52-261a only apply to papers served for the Judicial Department or Division of Criminal Justice. Since they have no applicability to this opinion they are not addressed any further here.

1. A fee of not more than $30 for each process served and an additional fee of $30 for each subsequent service of process, except that each subsequent service at the same address is $10;
2. Mileage at the same rate set for state employees from the place of receipt of the process to the place of service and place of return, except that if more than one process is served on one person at any one time the total cost should not exceed the cost of serving one process;
3. Copies at the rate of $1 per page, not to exceed a total of $900;[4]
4. Endorsements at the rate of 40¢ per page; and,
5. Actual fees paid to the town clerk.

State Marshal fees for service of process in foreclosure proceedings are limited to the fees authorized by this statute. The statute clearly contains several provisions designed to reduce fees where multiple services are made on one person or at one address.

C. THE SIMULTANEOUS SERVICE OF A NOTICE OF LIS PENDENS WITH THE UNDERLYING CAUSE OF ACTION CONSTITUTES ONLY ONE SERVICE OF PROCESS

A notice of lis pendens is a *notice* that litigation has been commenced. By recording a notice of lis pendens on the land records notice is provided to all who check the land records that litigation is pending which could affect ownership of that real estate.

Varying types of notices and documents accompany different types of lawsuits, but those documents are all part of the same service of process. A simple lawsuit involves a summons and complaint. Process in other lawsuits may involve multiple documents. For example, a lawsuit seeking an injunction may also have an application for a preliminary injunction, a proposed preliminary injunction, an

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[4]In mentioning the authorized fee for copies we assume that the copies being charged for were actually made by the State Marshal. We are aware of one Superior Court decision holding: "It is surely unreasonable to claim fees of one dollar per page for copies that the marshal did not make. Implicit in the statutory language related to the copies is that a marshal would need to do something, i.e., make copies, to receive the fees." *Francis v. Fonfara*, 2009 Conn. Super. Lexis 1407 (Conn. Super. May 21, 2009). Nevertheless we are also aware of an unpublished decision holding that State Marshal charges for copies are akin to a "handling" fee and may be charged regardless of whether the Marshal actually made the copies in question. *See Weinberg v. Dupont, Tobin ,et. al*., No. 50-49-65, J.D. of New London, (Conn. Super. Ct., Feb. 10, 1989).

application for an order to show cause, an order of notice setting a hearing date (possibly before the return date) for judicial proceedings, and either additional language in the summons or an entirely separate summons or citation commanding appearance at the court hearing. If an ex parte injunction was signed by a judge, that would also be included. In all instances the entire package of papers accompanying the lawsuit constitutes the process that is being served and fees may be charged only for serving one set of papers under Conn. Gen. Stat. §52-261. There is no precedent and no authority for treating each separate document as a separate process and charging a fee for service of each.

Similarly, in a foreclosure action, if a State Marshal serves a homeowner with a summons, complaint, numerous court notices specific to foreclosures, and a notice of lis pendens, the State Marshal may only charge for one service - - in other words, $30. The State Marshal may not charge more than one fee for the simultaneous service of the summons and complaint and the lis pendens because the lis pendens is not a process separate from the underlying lawsuit. Charging multiple fees for simultaneous service would also contradict the intent of provisions in the fee statute clearly designed to reduce fees where multiple services are made on one person or at one address. *See* Conn. Gen. Stat. § 52-261 (reducing a second service fee at the same address to $10 and prohibiting double billing of travel expenses for multiple services at one address). Finally, as stated previously, there is no present statutory authority or need to serve a notice of lis pendens on the property owner at all in a foreclosure proceeding. There is simply no justification for charging a separate service fee for an unauthorized service.

Accordingly, if a State Marshal concludes that a State Marshal is charging multiple service fees for the simultaneous service of a summons and complaint and a lis pendens, the Commission should take action to bar or reimburse such excessive and unauthorized fees and take disciplinary action if appropriate. Conn. Gen. Stat. §6-38b. *See also* Conn. Gen. Stat. §52-70.[5]

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[5] "If any officer demands and receives on any civil process more than his legal fees, *he shall pay threefold the amount of all of the fees demanded to the defendant in the action* in which the alleged illegal fees were exacted, if such fees have been paid by the defendant, otherwise to the plaintiff in such action…." Conn. Gen. Stat. §52-70 (emphasis added).

II. A STATE MARSHAL IS A PUBLIC OFFICER WHOSE AUTHORITY IS DERIVED FROM THE STATE OF CONNECTICUT AND WHOSE DUTIES AND RESPONSIBILITIES ARE THE PERSONAL DUTIES AND RESPONSIBILITIES OF THE STATE MARSHAL.

You ask us several questions concerning the ability of a State Marshal or State Marshals to form a Limited Liability Company ("LLC") for conducting business as a State Marshal. You also ask whether a State Marshal can employ or be employed by another State Marshal.

A. A STATE MARSHAL IS A PUBLIC OFFICER WHOSE POWERS AND DUTIES MUST BE FULFILLED PERSONALLY BY THE STATE MARSHAL.

The provisions of Conn. Gen. Stat. §6-38a clearly authorize each State Marshal "to provide legal execution and service of process…" Service of process in Connecticut has always been considered a sovereign function of government entrusted to public officials empowered by law.[6] "It is the wise policy of the law that its process shall be directed to known public officers, and the law sanctions a departure from this policy only in cases of supposed necessity. Statutes authorizing such departure should receive a strict construction. *Eno v. Frisbie*, 5 Day 122, 127 [(Conn. 1811)]." *Kelley v. Kelley*, 83 Conn. 274, 276 (1910).

State Marshals have the statutory duty to "receive each process directed to such marshal when tendered, execute it promptly and make true return thereof." Conn. Gen. Stat. § 6-32. In Connecticut, an officer's return is prima facie evidence of the facts stated therein. *Jenkins v. Bishop Apartments, Inc*. 144 Conn. 389, 390 (1957); *Buckingham v. Osborne*, 44 Conn. 133, 141 (1876). There are substantial consequences to filing a false return. In fact, intentionally falsely attesting to having personally served process is a crime. Conn. Gen. Stat. §53a-132(a)(2). False returns also subject State Marshals to monetary liability and discipline by the State Marshal Commission. Conn. Gen. Stat. 6-32, 6-38b.

> If any state marshal does not duly and properly execute and return such process *or makes a false or illegal return thereof, such marshal shall be liable to pay double the amount of all damages to the party aggrieved*.

Conn. Gen. Stat. §6-32 (emphasis added).

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[6] In contrast, the federal court system allows a summons initiating a civil action to be served "by any person who is not a party and who is at least 18 years of age." Fed. R. Civ. P. 4(c)(1).

> [I]t has so long been the practice in this state, to give the whole sum in damages, *for an officer's neglect of duty*, in not levying or returning an execution, *or for making a false return*, that it may now be considered as settled law.
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> … The sheriff and other officers know what their duty is on this subject, and what will be the consequences of their negligence. *The rule, thus settled, is not too rigorous upon them, and is very beneficial to the public.*

Ackley v. Chester, 5 Day 221, 222 – 223 (Conn. 1811) (emphasis added).

Several other statutes directly relate to service of process.

> All process shall be directed to a state marshal, a constable or other proper officer authorized by statute, or, subject to the provisions of subsection (b) of this section, to an indifferent person.[7] A direction on the process "to any proper officer." shall be sufficient to direct the process to a state marshal, constable or other proper officer.

Conn. Gen. Stat. § 52-50(a).

The form of summons used in Connecticut specifies that it is directed to a "proper officer," not to an indifferent person or to some type of artificial entity: Conn. Gen. Stat. §52-45b. The form requires action by the officer personally: "By authority of the state of Connecticut *you* are hereby commanded to summon…" Conn. Gen. Stat. §52-45b (emphasis added). Statutory provisions specifically govern the manner of service of process in numerous situations. *E.g.*, Conn. Gen. Stat. §§ 52-54 to 52-69.

Thus, State Marshals clearly are required to make due service of process tendered to them and file an accurate return. This obligation of service and return is personal to each State Marshal.

Very limited situations exist where the law allows someone other than the State Marshal who received process to complete service. If "an officer to whom any process is directed dies or is removed from office, or becomes physically incapacitated, or because of other good and sufficient reason is unable to complete

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[7] For reasons explained below, the provisions of Conn. Gen. Stat. §52-50(b) have no applicability to process directed to a State Marshal, are extremely limited in their use, and create significant risk of the process being defective.

service of the process, after he has commenced to serve it but before completing service, *any other proper officer* may complete service." Conn. Gen. Stat. §52-55(a) (emphasis added). Also a State Marshal who commences service of process in the State Marshal's precinct that requires going into other precincts may either complete the service anywhere else in Connecticut or deliver it to "an officer" in the other precinct. Conn. Gen. Stat. § 52-56. The applicable statutes clearly allow service by State Marshals to be completed by other State Marshals only in precisely defined situations.[8] The statutes do not provide for indifferent persons or artificial entities to have a role in the service of process.

Consequently, a State Marshal cannot lawfully provide a return to the effect that "I caused to be filed on the land records" when in fact the State Marshal did not personally perform such task, utilizing an indifferent person instead.[9] Such a return is patently inappropriate and clearly misleading. The person who effectuated service, whether a State Marshal or indifferent person, must sign the return and attest to what that person actually did. If multiple people performed different portions of service on the same papers, then multiple returns are necessary.

B. A State Marshal's Formation of a Limited Liability Company Conflicts With the Statutory Authority and Responsibility of State Marshals.

Under Connecticut law an LLC can be formed "for the transaction of any business or the promotion of any purpose which may be lawfully carried on by a limited liability company…" Conn. Gen. Stat. §34-119(a). An LLC can be formed to render professional services, but only for professional services enumerated in Conn. Gen. Stat. §34-101(23). Conn. Gen. Stat. §34-119(b). State Marshal services are not enumerated as professional services in Section 34-101(23). Nor can an LLC be appointed as a State Marshal.

Generally the personal liability of members and managers of an LLC to third parties is limited. Conn. Gen. Stat. §34-133. A State Marshal, however, is personally liable to pay double damages for failing to properly execute and return process or making a false or illegal return. (Conn. Gen. Stat. §6-32) and the LLC form cannot shield a State Marshal from such liability. Further, the statutes impose legal obligations that are personal to State Marshals. These include: (1)

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[8] Prior to commencing service, a State Marshal may give process to be served to another State Marshal when the first Marshal is unable to serve the papers. The first State Marshal cannot, however, in any way, share in the service fees for service of process by the other State Marshal.

[9] The parameters for the very limited circumstances where indifferent persons may serve certain types of legal papers are discussed below.

filing annual statements of financial interests with the Office of State Ethics, pursuant to Conn. Gene Stat. §1-83; (2) maintaining liability insurance, pursuant to Conn. Gen. Stat. § 6-30a; (3) being subject to periodic review and audit by the State Marshal Commission, pursuant to Conn. Gen. Stat. §6-38e: (4) being bonded, pursuant to Conn. Gen. State. §6-39; and (5) training and client fund requirements set by the State Marshal Commission pursuant its statutory authority. These obligations are all personal to State Marshals and cannot be avoided by the creation of an LLC.

A State Marshal is a public officer and must be a person, not an artificial entity, responsible for the personal obligations and duties imposed upon him or her by statute. Service of process may not be directed to or effectuated by an LLC and statutory fees for the services of process are payable only to a State Marshal, not to an LLC. Therefore, an LLC form of business organization is inconsistent with State Marshal work.

Concerns regarding a State Marshal LLC are heightened for any LLC formed by several State Marshals because such an LLC would also raise questions concerning inappropriate fee sharing in violation of Conn. Gen. Stat. §§6-38d & 6-39a, as explained below.

C. STATE MARSHALS MAY NOT BE EMPLOYEES OF OTHER STATE MARSHALS OR EMPLOY OTHER STATE MARSHALS.

State Marshals may not perform State Marshal services for other State Marshals where service has commenced except in extremely limited circumstances set forth in Conn. Gen. Stat. §§52-55(a) & 52-56. State Marshals may not receive salaries from other State Marshals, but may only receive fees for work they actually perform and only as established by statute. A State Marshal is "an independent contractor compensated on a fee for service basis." Conn. Gen. Stat. §6-38a. No State Marshal may receive a monetary benefit from service of process performed by other State Marshals. "No state marshal shall knowingly bill for, or receive fees for, work that such state marshal did not actually perform." Conn. Gen. Stat. §6-38d. Nor may a State Marshal who performs process serving work pay, directly or indirectly, another State Marshal for such work. "A state marshal shall not be charged any fee by a private entity for performing such state marshal's statutory duties." Conn. Gen. Stat. §6-39a.

Under the statute there are a limited number of State Marshals appointed by the State Marshal Commission for each county who have been vested with the authority to serve legal process under the authority of the State of Connecticut. Conn. Gen. Stat. §§6-38, 6-38a. All State Marshals are classified by law as independent contractors, and all have the same statutory authority and fee schedule. The duties and responsibilities of each State Marshal are personal to

each State Marshal and, therefore, cannot be changed, directed or controlled by another State Marshal.

An employer-employee relationship between and among State Marshals, whether directly or through an artificial entity such as an LLC, is incompatible with State Marshals' status as public officers, with their statutory duties and responsibilities, and with the statutory fee schedule. As we stated in a previous opinion: "Nor is there any statutory authority for [a private-business entity] to collect legal process from officers of the court, to assign or otherwise direct in any manner service of process to or by state marshals, to establish a network of state marshals, or to collect any fees from state marshals related to the legal execution and service of process." Conn. Attorney General Opinions 2007-019 (September 21, 2007). This lack of legal authority to interfere with or direct the personal authority and responsibility of State Marshals or to collect any fees for service of process is equally applicable to situations where one State Marshal may seek to employ other State Marshals to perform State Marshal work in an employer-employee relationship.[10]

On the other hand, there is nothing in the existing statutory scheme that prohibits multiple State Marshals from sharing office space and administrative expenses in order to improve efficiency and reduce overhead. The provisions of Conn. Gen. Stat. §6-38d would bar the sharing of fees and a clearly defined mechanism would be needed to properly allocate administrative expenses among the State Marshals.[11]

The State Marshal Commission has clear authority to review and audit the records and accounts of State Marshals. Conn. Gen. Stat. §6-38e. We strongly advise the State Marshal Commission to use this authority to obtain detailed information about the types of business organizations used by State Marshals

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[10] This prohibition does not prevent a State Marshal from passing on papers to another State Marshal that the first State Marshal is unable to serve where the State Marshal who actually performs the service bills for and receives all statutory fees associated with the service.

[11] Fees are only authorized for actual service and not for overhead. Any mechanism for allocating administrative expenses would need to allocate such expenses based on some bona fide relation to services actually completed. Fee splitting, referral fees and/or expense sharing arrangements among groups of State Marshals could well raise issues within the jurisdiction of the Office of State Ethics. For example, there is a significant risk that the annual statements of financial interests, pursuant to Conn. Gen. Stat. §1-83, filed by State Marshals who participate in any such arrangements could be false and/or misleading in many respects, including misreporting or undisclosed overlapping reporting of moneys received for service of process, misreporting of other income for marshal services and misreporting or undisclosed overlapping reporting of expenses. Accordingly, the State Marshal Commission should report any such fee splitting, referral fee and/or expense sharing arrangements to the Office of State Ethics in order for the Office of State Ethics to take whatever action it deems appropriate.

and/or any employer-employee relationships currently in place among State Marshals to assist the Commission in determining whether appropriate action should be taken to ensure compliance with the law.

III. INDIFFERENT PERSONS MAY NOT GENERALLY BE USED FOR SERVICE OF PROCESS.

You have asked us whether State Marshals may use indifferent persons in connection with the service of process. Except in the limited circumstances *expressly* authorized by statute, indifferent persons may not serve legal process in Connecticut.

A. INDIFFERENT PERSONS MAY ONLY SERVE PROCESS WHERE EXPRESSLY AUTHORIZED BY STATUTE.

There are a few statutory provisions permitting indifferent persons to serve specific types of legal papers. For example, an indifferent person may serve a subpoena (Conn. Gen. Stat. §52-143(a)), a notice to quit for a summary process action (Conn. Gen. Stat. §47a-23(c)), and a notice of lis pendens on a property owner, where service on the property owner is needed[12] (Conn. Gen. Stat. §52-325(c)). Such service is permissible only because it is expressly authorized by statute. None of these statutes provides authority for an indifferent person to serve any other process.

B. THE AUTHORITY OF A STATE MARSHAL TO MAKE A SPECIAL DEPUTATION IS EXTREMELY LIMITED

Conn. Gen. Stat. § 52-53 authorizes State Marshals to make special deputations in some limited circumstances.

> A state marshal may, on any special occasion, depute, in writing on the back of the process, any proper person to serve it. After serving the process, such person shall make oath before a justice of the peace that he or she faithfully served the process according to such person's endorsement thereon and did not fill out the process or direct any person to fill it out; and, if such justice of the peace certifies on the process that such justice of the peace administered such oath, the service shall be valid.

[12] The provisions of Conn. Gen. Stat. § 52-325(c) also make clear, as noted herein, that it is not necessary to serve the notice of lis pendens on the property owner in a foreclosure proceeding.

Conn. Gen. Stat. § 52-53.

This statute is a relic of the former sheriff system. The provisions of 2000 Conn. Public Acts 00-99, § 109 substitute the words "state marshal" for "sheriff" in the statutory text. Further, the use of justices of the peace for judicial functions in Connecticut ended in 1959. Our comments about this statute in Conn. Attorney General Opinions 2000-010 (March 7, 2000) are just as applicable today, and are repeated below.

> The power to command assistance is ancient in origin, "derived from a time in which the public peace depended upon the ability of the populace to summon their neighbors, through the raising of the 'hue and cry,' to come to their assistance when a crime had occurred. [Citations omitted]."" *State v. Floyd*, 217 Conn. 73, 90 - 91 (1991).
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> [The sheriff] may command all proper persons within his county, to aid and assist him in the execution of his office. This is the same power that they have in England, and is called raising the posse commitatus, or power of the county.

Swift, Zephaniah, *A System of the Laws of the State of Connectic*ut, Vol. I, p. 91 (1795).

> The sheriff has the liberty of deputing some meet person on special occasions, to serve and execute any particular process, which deputation, must be on the back of the writ… *The only instances where it is usual for sheriffs to make such special deputies are where no legal officer can conveniently be had, or the person against whom the writ is, secretes himself, and keeps himself out of the way of known officers*. In such cases, he deputes some person for that special purpose, so that there be no failure of justice…

Swift, Zephaniah, *A System of the Laws of the State of Connecticu*t, Vol. I, p. 92 (1795) (emphasis added).

Judge Swift's understanding of the ability of the Sheriff to command assistance or specially authorize someone to serve particular process was limited. The limited nature of this authority is also reflected in the sparse caselaw concerning this practice. "It is the wise policy of the law that its process shall be

directed to known public officers, *and the law sanctions a departure from this policy only in cases of supposed necessity*. Statutes authorizing such departure should receive a strict construction. *Eno v. Frisbie*, 5 Day 122, 127 [(Conn. 1811)]." *Kelley v. Kelley*, 83 Conn. 274, 276 (1910) (emphasis added).

Similarly, the modern understanding of the authority to command assistance is consistent with Judge Swift's views. Statutes authorizing an officer to command assistance "have not been construed to confer unbounded discretion upon the peace officer." *State v. Floyd*, 217 Conn. 73, 92 (1991). These statutes authorize "a peace officer to command the assistance of a civilian only when such assistance is both demonstrably necessary and reasonable under all of the circumstances." *State v. Floyd*, 217 Conn. at 92 - 93. Determining the reasonableness of a command to assist an officer looks at the following factors, at a minimum:

> the urgency of the situation giving rise to a command for assistance; the availability of other trained law enforcement officers, rather than untrained civilians, to come to an officer's aid; the nature of the assistance sought; the appropriateness of commandeering the assistance of these individuals; the provocativeness of the situation in which aid is sought; the presence or threat of the use of weapons; and the risk of injury or death to the officer, to the individual being ordered to assist, and to any other parties present…

State v. Floyd, 217 Conn. 73, 92 (1991) (footnotes omitted).

Hence, the authority of State Marshals to command assistance or to specially deputize any person to serve any particular process is extremely limited. Such authority certainly does not allow deputation for the service of process in the ordinary course of business.[13]

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[13] If this statutory provision were utilized by a State Marshal it would be necessary (1) for the State Marshal to endorse the deputation on the process being served, (2) for the person serving the process to take a specific oath before a justice of the peace, and (3) for the justice of the peace to endorse on the process itself that the prescribed oath was administered. Thus, if the State Marshal Commission became aware of any situation where this statute was utilized, the actual endorsements on the process itself would aid the Commission in ascertaining relevant facts to scrutinize in light of the applicable legal standard.

C. STATUTORY PROVISIONS FOR DIRECTING A SUMMONS TO AN INDIFFERENT PERSON IN LIMITED CIRCUMSTANCES CONFER NO AUTHORITY ON STATE MARSHALS.

The provisions of Conn. Gen. Stat. §52-50(b) permit process to be directed to indifferent persons in only certain very limited circumstances. Generally process is issued "by a commissioner of the Superior Court[14] or a judge or clerk of the court to which it is returnable."[15] Conn. Gen. Stat. §52-45a. A State Marshal has no role in the issuance of the process. The duty of the State Marshal is to serve process delivered to the State Marshal in accordance with law. As noted above, under Conn. Gen. Stat. §52-50(a), process directed "to any proper officer" is only directed to such a proper officer and not to an indifferent person. There is nothing in this statutory provision that permits a State Marshal to redirect process issued "to any proper officer" to an indifferent person for service.

Under Conn. Gen. Stat. §52-50(b) "[p]rocess shall not be directed to an indifferent person" except under very limited circumstances. These include situations where they are multiple defendants in different counties and the plaintiff (or its agent or attorney) makes oath to the authority signing the process of a true belief that the plaintiff is in danger of losing his demand unless an indifferent person is deputed for the immediate service of process.

> The authority signing the writ shall certify on the writ that he administered the oath and insert in the writ the name of the person to whom it is directed, but he need not insert the reason for such direction. *Any process directed to an indifferent person by reason of such an affidavit shall be abatable on proof that the party making the affidavit did not have reasonable grounds, at the time of making it, for believing the statements in the affidavit to be true*.

Conn. Gen. Stat. §52-50(b) (emphasis added).

This statutory command operates to limit the authority of the person issuing the process. The general rule of not directing process to an indifferent person is stated above. Further, utilization of this provision creates a significant

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[14] All attorneys at law in the State of Connecticut in good standing are Commissioners of the Superior Court. Conn. Gen. Stat. § 51-85.

[15] There are also a variety of statutory provisions authorizing governmental agencies to issue process.

risk that the court will abate the process, effectively dismissing the case, if there were not proper grounds for believing that the plaintiff's demand would be lost if an indifferent person was not deputed for the immediate service of process.

In discussing a very early case under the statute from which Conn. Gen. Stat. § 52-50(b) is derived, the Connecticut Supreme Court of Errors observed:

> The service of writs, in general, is required to be made by a known public officer; and it is no unwarrantable inference, that the protection and security of the citizen are interested in the prevention of any unnecessary departure from this principle. The plaintiff's declaration, if the facts are stated truly is an illustration and proof of this position. The direction of a writ to an indifferent person, is an exception from the general rule; and all exceptions from the common principle are to receive a strict construction.
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> * * *
>
> The direction of the writ not being legal, the indifferent person was, in no sense, an officer, nor invested with authority to make service. There being no service, nor even possibility of it, under the illegal direction, the judgment of the court was extra-judicial and void.

Case v. Humphrey, 6 Conn. 130, 139 (1826).

The legal authority to use this provision is clearly very limited. In the very narrow category of cases where Conn. Gen. Stat. §52-50(b) could be legitimately utilized, the process would be directed to a specifically named person rather than "to any proper officer." That indifferent person would serve it and sign the return of service, with all appropriate endorsements on the process itself, and subject to the risk of the process abating.

Such process need not ever be given to a State Marshal. Further, nothing in Conn. Gen. Stat. §52-50(b) permits a State Marshal to utilize an indifferent person to serve process directed "to any proper officer."

D. STATE MARSHALS MAY NOT GENERALLY USE INDIFFERENT PERSONS FOR SERVICE OF PROCESS.

Several principles flow from the above analysis. As a general rule, legal process must be served by a proper officer, of which a State Marshal is one type.

Where there is express statutory authority (such as for service of a subpoena, service of a notice to quit, or service of a notice of lis pendens on a property owner) for use of an indifferent person to make service, the use of an indifferent person is permissible. It is not permissible under any other circumstances.

State statutes direct that State Marshals serve legal process without the use of indifferent persons except in narrowly defined circumstances. The sole exceptions to this general rule are for matters where there is *express* statutory authority for an indifferent person to make service, such as subpoenas, service of notices of lis pendens on a property owner, and service of notices to quit.

Authority to specially deputize under Conn. Gen. Stat. §52-53 is extremely narrow. Further, for the reasons explained, an attorney directing service to an indifferent person under Conn. Gen. Stat. §52-50(b) need not give such process to a State Marshal and §52-50(b) provides no authority to a State Marshal to use an indifferent person for serving papers directed "to any proper officer" and in the possession of the State Marshal for service. Both of these statutes include specific detailed requirements for endorsement on the served papers which should aid the State Marshal Commission in gathering relevant facts should it ever be necessary to scrutinize attempted use of such statutes.

IV. CONCLUSION.

In evaluating these questions we have taken into consideration applicable statutes, judicial decisions and prior Opinions of the Attorney General. For the reasons summarized below we conclude as follows:

1. The provisions of Conn. Gen. Stat. § 52-261 do not allow multiple fees for simultaneous service of a lis pendens and the underlying civil action. Multiple fees for a single service of a notice of lis pendens and the underlying lawsuit are not authorized by law and are therefore improper. Further, Conn. Gen. § 52-325(c) does not authorize service of the notice of lis pendens on the property owner in a foreclosure proceeding.

2. Under no circumstances should a State Marshal include language to the effect of "I caused to be filed on the land records" or "I caused to be served" on a return where the State Marshal did not personally record and/or serve the papers involved. The State Marshal (or indifferent person where specifically authorized by law) who actually performed the service must sign the return attesting to the personal actions performed by that individual to effectuate

service. If different documents are served or recorded by different people, separate returns are required, each personally signed by the persons performing each service or recording.

3. The laws governing State Marshals are inconsistent with the LLC form of business organization because the statutory authority and responsibilities of State Marshals are personal to each State Marshal as "public officers." A business organization such as an LLC is not authorized to be a "public officer" for the purpose of receiving process to be served, receiving fees for service of such process or performing any of the other statutory duties of a State Marshal. If the Commission believes that a State Marshal LLC should be permitted, legislation would be necessary.

4. Concerns regarding a State Marshal LLC would be severely heightened by an LLC formed by several State Marshals because such an LLC would also raise questions about inappropriate fee sharing.

5. State Marshals may not employ other State Marshals. Neither may State Marshals be employed by an LLC owned by one or more State Marshals. State Marshals receive statutory fees, not salaries, and their statutory duties and responsibilities may not be performed, directed or controlled by any private entity or other State Marshal. No State Marshal may receive any direct or indirect payment from service of process work performed by another State Marshal.

6. While there are some circumstances where several State Marshals, working collaboratively, could each receive legitimate fees for serving process, current law does not authorize fee sharing or referral fees. State Marshals may share administrative costs, such as the maintenance of an office, as long as each Marshal's share of such costs is clearly apportioned according to work actually performed.

7. State Marshals may not generally use indifferent persons for the service of process. Indifferent persons may only serve process in the few discrete areas where the law *expressly* allows indifferent person service. The same fee

schedule applies to service by a State Marshal and service by an indifferent person

Steps should be taken promptly to inform marshals of these legal requirements and rules, and to enforce them when necessary. If individuals have been overcharged, appropriate remedies should be provided.

Very truly yours,

RICHARD BLUMENTHAL