

# OFFICE OF THE ATTORNEY GENERAL <sup>91-00186</sup>



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ATTORNEY GENERAL  
STATE OF ALABAMA

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Honorable Harold Richards  
Sheriff, DeKalb County  
Fort Payne, Alabama 35967

Sheriffs - Civil Procedure -  
Service of Process - Police  
Officers

Auxiliary deputy sheriff who has not met requirements of the Peace Officers Standards and Training Act, but who has been provisionally appointed to the law enforcement position, may, before completing the necessary training, deliver service of process for sheriff pursuant to Rule 4.1, Alabama Rules of Civil Procedure. A municipal police officer does not have authority to deliver service of process for sheriff pursuant to Rule 4.1. Service of process may be delivered by person other than sheriff or his authorized deputies if that person is designated by an order of a court to do so in a particular civil action.

Dear Sheriff Richards:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. May a volunteer, auxiliary deputy sheriff serve civil court papers under the authority provided by Rule 4.1, Alabama Rules of Civil Procedure?
2. May a city police officer who is not employed as a deputy sheriff and not sworn as a deputy sheriff perfect service of civil papers as contemplated by Rule 4.1, Alabama Rules of Civil Procedure?

FACTS AND ANALYSIS

The methods of service of process are set forth in Rule 4.1, Alabama Rules of Civil Procedure. Rule 4.1(b)(1) and (b)(2) state:

"(b) Delivery by a process server.

"(1) BY SHERIFF OR CONSTABLE. When process issued from any court subject to the provisions of these rules is to be delivered personally, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

"(2) BY DESIGNATED PERSON. As an alternative to delivery by the sheriff, process issuing from any court governed by these rules may be delivered by the clerk to any person not less than 18 years of age, who is not a party and who has been designated by order of the court to make service of process."

In prior opinions this office held that pursuant to Rule 4.1, A.R.C.P., the only persons authorized to serve civil process are sheriffs, deputy sheriffs, constables and persons

designated by a court. Opinion to Honorable Jessie O. Bryan, District Attorney, 2nd Judicial Circuit, under date of October 27, 1981, and opinion to Honorable J. Harold Richards, Sheriff, DeKalb County, under date of November 18, 1981. In the opinion to Honorable Jessie O. Bryan, cited above, we stated:

"Thus the only person in the Sheriff's Office who could serve process would be the Sheriff or an individual deputized by the Sheriff and having the authority of the Sheriff. Such an individual would have to meet the requirements of the Peace Officers Standards and Training Act. Code of Alabama 1975, § 36-21-40(4)."

According to your request, the auxiliary deputy sheriff has not completed the Peace Officers Minimum Standards Training course. We note that a person may be appointed to a law enforcement position provided that the person completes such training within nine (9) months of his appointment as a law enforcement officer. Code of Alabama 1975, § 36-21-46(a)(3). This office has also held that a person can perform all duties assigned to him as a law enforcement officer while serving under a provisional appointment and before completing the necessary training. Opinion to Honorable W. H. Mullins, Mayor, Town of Kinston, under date of February 20, 1985. Accordingly, if the auxiliary deputy sheriff has been provisionally appointed, he may deliver service of process for the sheriff prior to completing the Peace Officers Minimum Standards Training course.

In response to whether a police officer can perfect service of process for the sheriff, the answer is no. This office has stated in a prior opinion that a municipal police officer has no authority to deliver service of process unless he has been designated to do so by an order of the court in each civil action in which the officer is to deliver service. Opinion to Harold Richards, Sheriff, DeKalb County, under date of December 11, 1990, and Rule 4.1(b)(2), A.R.C.P.

#### CONCLUSION

An auxiliary deputy sheriff who has not met the requirements of the Peace Officers Standards and Training Act, but who

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has been provisionally appointed to the law enforcement position, may, before completing the necessary training, deliver service of process for the sheriff pursuant to Rule 4.1, Alabama Rules of Civil Procedure. A municipal police officer does not have the authority to deliver service of process for the sheriff pursuant to Rule 4.1. Service of process may be delivered by a person other than the sheriff or his authorized deputies if that person is designated by an order of a court to do so in a particular civil action.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General

By:



JAMES R. SOLOMON, JR.  
Assistant Attorney General

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