

OFFICE OF THE ATTORNEY GENERAL



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Honorable Johnny Ferguson
Chief of Police
Town of Mentone
P. O. Box 295
Mentone, AL 35984

Municipalities - Police
Officers - Executions - Courts

The term "sheriff" as used in the Alabama Rules of Civil Procedure regarding service of process and executions does not include municipal police officers. A municipal police officer may serve process or executions only if designated to do so by order of the court in each civil action in which the officer is to deliver service.

Dear Chief Ferguson:

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

QUESTION

Does the term "sheriff" as used in the Alabama Rules of Civil Procedure, regarding serving of process and executions, include municipal police officers so as to allow the police officers to serve documents on behalf of a sheriff or his deputies?

FACTS, LAW AND ANALYSIS

Rule 4.1(b), Alabama Rules of Civil Procedure (ARCP), provides:

"(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."

Rule 69, ARCP, states regarding the service of executions:

"(c) SERVICE OF WRIT AND NOTICE. The sheriff shall serve the judgment debtor with a copy of both the writ of execution and the notice of exemption rights at the time of levy upon the judgment debtor's real property or seizure of the judgment debtor's personal property pursuant to the writ of execution. . . ."

The only persons authorized to serve civil process are sheriffs, deputy sheriffs, constables and persons designated by the court pursuant to Rule 4.1(b)(2), ARCP. Opinion of the Attorney General to Honorable J. Harold Richards, Sheriff of DeKalb County, dated November 18, 1981, A.G. No. 82-00084. In a second opinion to Sheriff Richards, dated December 11, 1990, A.G. No. 91-00122, it was concluded that pursuant to Rule 4.1(b)(2), ARCP, a municipal police officer has the authority to deliver service of process only if

designated to do so by order of court in each civil action in which the officer is to deliver service.

The second opinion to Sheriff Richards cited Ex Parte Shuttleworth, 410 So.2d 896 (Ala. 1982) in which the Alabama Supreme Court stated that there must be strict compliance with the rule of the Rules of Civil Procedure regarding service. The Alabama Court of Civil Appeals case of O'Donohue v. The Citizens Bank, 350 So.2d 1049 (Ala.Civ.App. 1977) was also cited which stated that if a person other than the sheriff or his deputy is desired to serve process, a request must be made to the court asking for the designation of a particular individual to make service.

CONCLUSION

The term "sheriff" as used in the Alabama Rules of Civil Procedure regarding service of process and executions does not include municipal police officers. A municipal police officer may serve process or executions only if designated to do so by order of the court in each civil action in which the officer is to deliver service.

I hope this sufficiently answers your question. 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.
Chief, Opinions Division

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