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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 11, 2003

The Honorable Thomas Ed Taylor  
Summary Court Judge, Greenville County  
8150 Augusta Road  
Piedmont, South Carolina 29673

Dear Judge Taylor:

You have requested the opinion of this Office concerning service of process in civil matters. Your questions specifically relate to service of process in claim and delivery actions pursuant to S.C. Code Ann. §§22-3-1310 *et seq.*

1. Is it legal for a process server to serve the initial summons and right to pre seizure hearing and order for claim and delivery actions?
2. Can ... commissioned process servers who work under the Sheriff serve claim and delivery civil process?

**Law / Analysis**

You ask whether a process server or a commissioned process server can serve the summons and right to pre seizure hearing and order for claim and delivery actions. As you note in your request, the South Carolina Rules of Civil Procedure state that “[s]ervice of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action.” Rule 4(c), SCRPC. The Rules of Civil Procedure also provide, however, that “[t]hey shall apply insofar as practicable in magistrate’s courts, probate courts, and family courts *to the extent they are not inconsistent with the statutes and rules governing those courts.* (Emphasis added)” Rule 81, SCRPC.

As mentioned above, the procedures to be followed in claim and delivery actions are found in S.C. Code Ann. §§22-3-1310 *et seq.* Section 23-3-1330(a) provides in pertinent part that “...the magistrate shall at the same time issue both a summons and a notice of right to pre seizure hearing, with a copy of the undertaking and plaintiff’s affidavit, directed to the defendant *and to be served by the constable.* (Emphasis added).” Further, Section 22-3-1410 provides in part that “[t]he constable to whom the affidavit, endorsement, notice of pre seizure hearing and summons shall be delivered, shall, without delay, serve upon the defendant a copy of the affidavit, notice and

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summons, by delivering them to him personally.”

These statutes speak in mandatory terms that the magistrate’s constable is to serve the claim and delivery process. However, in South Carolina many counties no longer utilize magistrates’ constables. See Op. S.C. Atty. Gen., dated January 30, 1996. In light of this fact, this Office has previously recognized that even though

... a constable may have been the principal officer who executed process issued by magistrates ... such authority has not by any means been limited exclusively to constables. As the chief law enforcement officer of the county, the Sheriff has historically been mandated to serve process issued by all courts of record “or by other competent authority... [Section 23-15-40] ... undoubtedly, the phrase “other competent authority” includes magistrate’s court. The Sheriff has often been deemed as an officer supplementary to or even as a replacement for, the constable.

See Op. S.C. Atty. Gen., dated January 30, 1996. See also Op. S.C. Atty. Gen., dated September 18, 1995.

Further, in a March 14, 1997 opinion we recognized that the South Carolina Bench Book for Magistrates and Municipal Court Judges [the Bench Book] is an appropriate resource in determining the proper procedures for claim and delivery actions. As to the service of papers in claim and delivery actions, the Bench Book provides that “[u]pon the making out and filing of all the required papers, the magistrate should direct that the constable or sheriff attempt to locate the defendant ... and carry out the directions of the magistrate [including] ... service of the summons and other appropriate papers [affidavits, notice of right to repossession hearing, summons, notice of pre-seizure hearing, order restraining damage, etc.]” See Bench Book, pp. II 58-62.

Accordingly, it seems that, even though Sections 22-3-1330 & 22-3-1410 speak in terms of the magistrate’s constable service process, the sheriff can be “an officer supplementary to or even as a replacement for the constable.”

Moreover, Section 23-13-40 provides that

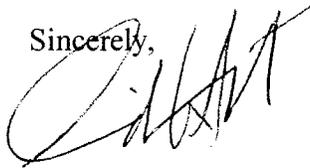
The sheriff, without seeking the approval of the circuit judge, may appoint special deputies as the exigency of his business may require for the service of process in civil and criminal proceedings only. He shall be responsible for the conduct of such special deputies.

In a previous opinion, this Office concluded that Section 23-13-40 would allow a county sheriff to contract with individuals commissioned as special deputies for the purpose of serving civil process. See Op. S.C. Atty Gen., January 28, 1991. It would therefore appear that individuals commissioned by the Sheriff as special deputies for the purpose of serving civil process could serve claim and delivery process.

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As to the use of a private process server for service of the summons and other required papers in a claim and delivery action, it would appear that the General Assembly has, through Sections 22-3-1330 and 22-3-1410, expressed the intent that this matter be put into the hands of a constable or at least a suitable substitute, i.e the Sheriff. These Sections of the Code appear to be inconsistent with the general rule expressed in Rule 4(c) of the Rules of Civile Procedure that service of the summons can also be made by "... any other person not less than eighteen (18) years of age ...". Therefore, Rule 4(c) would be inapplicable pursuant to the provisions of Rule 81, SCRCF cited above.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over the word "Sincerely,".

David K. Avant  
Assistant Attorney General