

1980 WL 121099 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 18, 1980

*1 Honorable Allen F. Sloan
Blythewood Magistrate
Post Office Box 32
Blythewood, South Carolina 29016

Dear Magistrate Sloan:

In a letter to this Office you asked the following questions:

1. Can a collection agency, which has written authority from a client to serve as an agent for the purpose of collecting outstanding debts along with fraudulent checks, sign a warrant in magistrate's court for a criminal action?
2. Can a collection agent, who has written permission from a client to represent that client in criminal procedures involving fraudulent checks serve as the affiant on a fraudulent check warrant?

Concerning your first question as to whether a collection agency may serve as the affiant on an arrest warrant, please be advised that an individual must serve as the affiant on an arrest warrant. I am unaware of any authority permitting a business entity itself, such as collection agency, to serve as an affiant on an arrest warrant.

As to your remaining question concerning whether a collection agent, with written permission from a client who was given a check alleged to be fraudulent, could serve as an affiant on a fraudulent check warrant instead of the client, please be advised that, in the opinion of this Office, such an individual could serve as an affiant. The situation involving a collection agent is analogous to a law enforcement officer obtaining an arrest warrant based on facts provided by a victim of crime.

The probable cause expressed in the affidavit of an arrest warrant may be based on personal knowledge or hearsay. Of course, an agent of a collection agency employed by should be examined by the magistrate to determine if he is sufficiently familiar with the facts to act as the affiant sufficiently familiar with the facts to act as the affiant on such an arrest warrant. As in any case, if the magistrate is satisfied that the person appearing before him has made out probable cause, he may issue the warrant.

If there are any further questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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