Opinion on Clerk Assigning Process

The justice court judge should be able to determine which constable serves process assigned to his/her court.

Some attorney general opinions conclude that pursuant to § 9-11-27 and § 11-9-107, the clerk has authority to decide how process is assigned to constables. A clear reading of those statutes, however, reveal no such authority and an attorney general's opinion is merely advisory and not binding.

§ 9-11-27, in pertinent part, provides the "clerk ... shall be empowered to ... **issue** all process necessary for the operation of the justice court." (*emphasis added*) This statute authorizes the clerk to **issue** process but does **not** dictate that the clerk is authorized to determine who serves such process.

§ 11-9-107 merely provides that if process is not returned by a constable within ten (10) working days after issuance by the clerk of the justice court, the clerk shall direct the sheriff to execute such process. This statute does **not** dictate that the clerk is authorized to determine which constable is originally assigned the process.

Statutes

§ 9-11-27. Appointment of clerk; designation of powers.

The board of supervisors of each county shall, at its own expense, appoint one (1) person to serve as clerk of the justice court system of the county, and may appoint such other employees for the justice court of the county as it deems necessary, including a person or persons to serve as deputy clerk or deputy clerks. The board of supervisors of each county with two (2) judicial districts may, at its own expense, appoint two (2) persons to serve as clerks of the justice court system of the county, one (1) for each judicial district, and may appoint such other employees for the justice court system of the county as it deems necessary including persons to serve as deputy clerks. The clerk and deputy clerks shall be empowered to file and record actions and pleadings, to receive and receipt for monies, to acknowledge affidavits, to issue warrants in criminal cases upon direction by a justice court judge in the county, to approve the sufficiency of bonds in civil and criminal cases, to certify and issue copies of all records, documents and pleadings filed in the justice court and to issue all process necessary for the operation of the justice court. The clerk or deputy clerks may refuse to accept a personal check in payment of any fine or cost or to satisfy any other payment required to be made to the justice court. All orders from the justice court judge to the clerk of the justice court shall be written. All cases, civil and criminal, shall be assigned by the clerk to the justice court judges of the county in the manner provided in Section 11-9-105 and Section 99-33-2. A deputy clerk who works in an office separate from the clerk and who is the head deputy clerk of the separate office may be designated to be trained as a clerk as provided in Section 9-11-29.

Sources: Laws, 1979, ch. 409; Laws, 1981, ch. 471, § 11; Laws, 1982, ch. 423, § 7; Laws, 1985, ch. 440, § 4; Laws, 1990, ch. 380, § 1; Laws, 1991, ch. 480, § 2; Laws, 1991, ch. 551, § 3; Laws, 1994, ch. 341, § 1; Laws, 2001, ch. 462, § 1, eff from and after July 1, 2001.

§ 11-9-107. Service of process by sheriff or constable.

When any process has not been returned by a constable within ten (10) working days after issuance by the clerk of the justice court, the clerk shall direct the sheriff of his county and his deputies to execute any such process of the justice court; and the sheriff and his deputies shall execute any process so directed to him by any clerk of the justice court.

Sources: Codes, 1857, ch. 58, art. 11; 1871, § 1311; 1880, § 2198; 1892, § 2402; Laws, 1906, § 2731; Hemingway's 1917, § 2230; Laws, 1930, § 2079; Laws, 1942, § 1813; Laws, 1981, ch. 471, § 25; Laws, 1982, ch. 423, § 28; Laws, 1995, ch. 464, § 2, eff from and after October 1, 1995.