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The Sheriff's Civil Responsibilities

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The Sheriff and the Civil Justice System

THE OFFICE OF SHERIFF is one of the oldest offices known to the common law system of jurisprudence. It has been in existence in England since the Norman Conquest and has been an office in North Carolina since its very founding. The term *sheriff* evolved from the Saxon word “scyre” meaning shire and the word “reve” meaning keeper.¹ Today the sheriff is a constitutional officer, which means that the office is named in the North Carolina Constitution (N.C. CONST. ART. VII, Sec. 2) and its duties are not enumerated in the General Statutes but are those that existed at common law. Although most citizens think of the sheriff as the chief law enforcement officer of the county, the sheriff has always had other substantial duties. The sheriff is responsible for operating the jail, maintaining security in the courtroom and acting as the bailiff in court, and serving civil process. This article explains the sheriff's role in serving civil process.

Civil process is a term that covers the service of pleadings, motions, orders, and other papers on parties in civil cases, and the service of orders to enforce judgments entered by the courts. In North Carolina process service is a mandated responsibility of the sheriff's office and for the most part only the sheriff and the sheriff's deputies may perform civil process duties; other law enforcement officers are not given that authority,² and only in limited situations

1. Walter Anderson, *Treatise on the Law of Sheriffs, Coroners and Constables*, vol. 1 (Buffalo, N.Y.: Dennis & Co., Inc., 1941), 2, §§ 1, 2.

2. GEN. STAT. 160A-285 [hereafter G.S.] provides that police officers have the power to serve civil process that may be directed to them by any officer of the General Court of Justice. The provision was added as a safeguard so that civil process

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are private process servers allowed to serve civil service. Serving civil process requires a significant commitment of the time and resources of the sheriff's department. Each order must be carried out in strict compliance with the law; otherwise a deputy subjects the sheriff to liability.

Procedures for Serving Civil Process

The sheriff must use due diligence in carrying out any civil process properly given to the sheriff for service. The difficulty in serving process depends sometimes on the kind of process to be served, and at other times on the behavior of the person to be served. It is instructive to list the most frequently issued types of process and what each process requires for proper service.

Summons

To initiate a civil lawsuit, the party bringing the lawsuit (the plaintiff) must file a complaint with the clerk of superior court. The complaint indicates who is being sued (the defendant), why that person is being sued, and for what. The clerk then issues a *summons*, which is a court process that indicates what steps the defendant must take in response to the complaint. G.S. 1A-1, Rule 4 specifies how the sheriff must serve the summons. It allows the plaintiff to serve the summons by certified mail, signature confirmation, or designated delivery service or to have the sheriff serve it.³ For an individual defendant, the sheriff or deputy sheriff must find the defendant and give a copy of the documents to the defendant personally, or must leave copies at the defendant's dwelling with a person of suitable age and discretion who also resides at the defendant's dwelling. If the defendant is a corporation, the sheriff must give a copy to the registered agent of the corporation, to an officer of the corporation, or must leave a copy at the office of an officer of the corporation with a person apparently in charge. For government units, other legal entities, or persons with special disabilities, the statute specifies how service must be accomplished. Service of the process puts the defendant on notice that he or she is being sued and gives the court jurisdiction over the defendant. Without proper service of the summons, the court cannot proceed in the case.

In 2004–5, 580,573 civil actions (including special proceedings and small claims) were filed in North Carolina, many of which had more than one defendant. Although in some cases the defendant was served by the plaintiff, in the great majority of them a deputy sheriff had to make at least one visit to the defendant's dwelling or business to try to serve the process. In some instances a deputy might have to make numerous attempts to try to locate the defendant.

Subpoenas

Another very common process that the sheriff must serve is a *subpoena*—an order from the court requiring a person to appear at a court proceeding to testify or to bring documents to the proceeding. In some cases, the attorney for the party will serve the subpoenas in the case; frequently, however, the party seeking to subpoena a person will give the subpoena to the sheriff for service. If the subpoena requires a person to testify, the sheriff may give a copy to the person personally, or may tell the person about the subpoena by telephone. Most departments try to serve the subpoena by telephone, because it is a less costly and time-consuming procedure. Also, because the sheriff may designate someone other than a deputy to serve subpoenas by telephone, many departments have the office secretary serve the subpoenas by telephone so that the deputy's time can be used more productively. The sheriff or deputy must serve a subpoena to produce documents by delivery of a copy to the person named in the subpoena.

Other Orders, Motions, and Notices

In addition to serving summonses and subpoenas, there are numerous orders that the sheriff must serve. Examples include child support orders, child custody orders, domestic violence protective orders, notices of hearings, various motions, juvenile orders, and involuntary commitment custody orders. In most of these cases, the sheriff must deliver

served by a police officer would be valid. However, the statute requires the process to be directed to the police office, and as a practical matter clerks never direct civil process to the police for service.

3. G.S. 1A-1, Rule 4(j) is written in the passive tense and provides that service on a natural person shall be by delivering personally, leaving it at the person's dwelling with a person of suitable age and discretion, mailing by certified or registered mail, depositing with a designated delivery service, or by mailing a copy by signature confirmation. Technically it does not require the sheriff to use any specific kind of service. However, the practice has been that the serving party can serve by certified mail, signature confirmation, or delivery service, and if the process is given to the sheriff, the sheriff will serve it personally or leave the process with a person of suitable age and discretion.

a copy of the order or notice to the person. However, sometimes the sheriff's duties are more significant. A child custody order might require the sheriff to take a child from one parent and deliver the child to the other parent, while an involuntary commitment custody order requires the sheriff to take a mentally ill person into custody and transport the person to a local physician for an evaluation and then to a state psychiatric hospital for a second evaluation.⁴

Serving Writs

The sheriff also must serve orders (called *writs*) commanding the sheriff to enforce judgments entered in the civil courts of North Carolina. Most writs are issued after a judgment is entered, but sometimes enforcement is ordered before the judgment is entered and these are called *prejudgment remedies*.

Executions and Attachments

The most common enforcement order that the sheriff must serve is a *writ of execution*. If a civil judgment orders the defendant to pay money to the plaintiff and the defendant does not comply with the judgment, the clerk issues a writ of execution directing the sheriff to seize a sufficient amount of the defendant's property to satisfy the judgment. The sheriff must discover what real and personal property the defendant owns in the sheriff's county, locate that property, seize it, and then, after advertisement, offer it for sale at a public auction. Obviously, this is a very complicated and time-consuming process.

In some situations the clerk will issue a *writ of attachment*, which is similar to a writ of execution except that it is issued after a lawsuit has been filed but before a judgment is entered. It orders the sheriff to seize the defendant's property and store it until the case is tried and a judgment is rendered.

Writs of Possession for Personal Property and Claim and Delivery Orders of Seizure

Sometimes a judgment orders the defendant to turn over specific personal property to the plaintiff; for example, a living room suite of furniture, motor vehicle, or mobile home. Usually this occurs because the defendant listed the property as collateral for the extension of credit and then defaulted on the debt. To enforce this kind of judgment, the clerk issues a *writ of possession for personal property* requiring the sheriff to locate the personal property, take it from the defendant, and turn it over to the plaintiff. The clerk may enter a similar order, called a *claim and delivery order of seizure*, before a judgment is entered. In that case the sheriff is ordered to seize the property, hold it for three days to give the defendant the opportunity to reclaim it, and then turn it over to the plaintiff.

Writs of Possession for Real Property

The clerk issues a *writ of possession for real property* to enforce a judgment that orders the defendant to give possession of real property (land and anything permanently attached to it) to the plaintiff. The most prevalent reason for issuing this writ is when a landlord has received a judgment evicting the tenant from the landlord's premises. The writ requires the sheriff to remove the defendant from and put the plaintiff in possession of the premises. The sheriff must notify the defendant when the eviction will occur, must remove the tenant and other persons from the premises, and must either remove the tenant's personal property and store it in a warehouse, or at the plaintiff's request, leave the tenant's property on the premises and padlock the premises.

Department Procedures for Delivering Services

There are three models for how departments are organized to discharge the civil process duties of the office. One organizational framework, found most often in counties with small populations, has the patrol deputies performing both criminal and civil functions. Patrol deputies serve all civil processes, as well as handle law enforcement responsibilities. A second model, found primarily in the most populous counties, separates criminal and civil duties by setting up a special civil process division. The deputies in the civil division serve all civil processes. Under the third—and probably most prevalent model in North Carolina—road deputies serve civil summonses and notices in addition to their regular law enforcement responsibilities, and one or more civil deputies serve writs that are more complicated and require the officer to seize property, sell property, or remove the defendant from property.

4. G.S. 122C-251 and -261 authorize police officers to serve involuntary commitment custody orders on residents of the city or persons taken into custody within the city limits.

Collection of Fees and Costs

The sheriff does recoup some of the costs of carrying out these civil duties through fees imposed by G.S. 7A-311. The sheriff receives \$15 for each item of civil process served, in other words, for each summons served on a defendant, each subpoena served, each notice, motion, order, or writ served on a party. In 2004 when the General Assembly increased the service fee from \$5 to \$15, the General Assembly required that “at least 50% of the fees collected [for service] shall be used by the county to ensure timely service of process, within the county, which may include the hiring of additional law enforcement personnel upon the recommendation of the sheriff.”⁵ This provision seems to require that those funds must be earmarked for civil process functions within the sheriff’s department. The civil process service fee must be paid in advance by the party seeking the service unless that person files the lawsuit as an indigent. Although no statewide information is available on the amount collected, in 2004–5 there were 580,573 civil filings in the state and in most of those cases at least one service fee was paid; however, that amount does not reflect fees for service of subpoenas, motions, orders, and writs.

When a sheriff enforces a civil judgment, the statute provides that the sheriff is entitled to collect all expenses of carrying out the writ. However, many sheriffs require the creditor to advance the expenses before the sheriff will carry out the writ in order to avoid the possibility that the sheriff’s office will be responsible for paying expenses of seizing, selling, or storing property if the property does not sell for a sufficient amount to recoup the costs. For example, a sheriff will not do the following:

1. seize a motor vehicle until the plaintiff pays the costs of towing the vehicle and storing it until sale;
2. levy on real property until the plaintiff pays the expenses of advertising the sale in the newspaper; or
3. evict a tenant until the landlord pays the costs of removing the tenant’s property and storing it for one month or the landlord gives a written authorization to lock the premises.

When carrying out a writ of execution, the sheriff also receives a commission of 5 percent on the first five hundred dollars of the money collected or property sold, and 2½ percent on all sums over five hundred dollars. Again, there are no data on the amount that is collected by sheriffs under this provision.

All of the fees and commissions collected by the sheriff must be remitted to the county fund; the sheriff is not entitled to keep any of these funds. The county can determine how to allocate these remissions and may choose to funnel them to the sheriff. As indicated above, the 2004 legislative provision that requires 50 percent of the \$15 service of process fee to be used to ensure the timely service of process seems to specifically earmark those funds.

Private Process Servers

In many states much of the service of process is handled by private process servers. In North Carolina private process servers are allowed in only two instances: when the sheriff refuses or neglects to execute the process or when the sheriff returns a process unexecuted. In the first instance, the clerk designates a suitable person to serve the process and the provision applies to all kinds of process.

In the second situation, the plaintiff may ask anyone who is at least twenty-one years of age, who is not a party to the action, and who is not related by blood or marriage to a party to serve the process. However, the private process server cannot serve an unexecuted complaint and summons for summary ejectment or any writ. A party may contract to pay the private process server any amount for service, but a maximum of \$50 is recoverable as costs taxed against the losing party unless the court finds that a greater amount is appropriate because of the difficulty of service.

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5. G. S. §§ 7A-311(a)(1)c.