

The State of South Carolina



Office of the Attorney General

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April 23, 1986

Robert H. Orr, Jr., Sheriff
County of Chester
Post Office Box 723
Chester, South Carolina 29706

Dear Sheriff Orr:

In a letter to this Office you raised several questions relating to the family court. In your first question you asked whether a family court rule to show cause issued for failure to obey a court order is considered "other process" as referenced in Rule 4 (c) of the State Rules of Civil Procedure. Such rule states:

service of summons may be made by a sheriff, his deputy or by any other person over eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy, except that a subpoena may be served as provided in Rule 45.

Pursuant to Rule 81, all of the Rules of Civil Procedure are applicable to the family courts where not inconsistent with the statutes and rules pertaining to that court. See also: Sections 20-7-745 (service of summons and any process of the family court shall be made as provided by law for service in the court of common pleas). Consistent with such, it appears that a family court rule to show cause could be construed as "other process" as provided in Rule 4 (c) of the Rules of Civil Procedure. As a result, such would be served by the sheriff or his deputy.

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You next asked whether constables appointed by the family court, but who are not commissioned as deputy sheriffs, are authorized to serve a rule to show cause issued by the family court. I am unaware of any statutory provisions authorizing the position of constable of the family court. Formerly, pursuant to Section 14-21-340 of the 1976 Code the position of constable for the family court was authorized. However, such provision was repealed by Act No. 71 of 1981.

It has been stated that "(a)bsent constitutional or statutory provisions to the contrary, the power to appoint persons to assist the court is ordinarily inherent in a court...." 20 Am.Jur.2d Courts, Section 102 p. 461. See also: 21 C.J.S. Courts, Section 140 p. 214. However, it is clear that in this State typically the position of constable has been considered to be one specifically authorized by legislation. For instance, in addition to the former statute noted above dealing with a constable for the family court, a constable has been statutorily authorized for the magistrate's court. See: Sections 22-9-10 et seq. of the 1976 Code of Laws. Therefore, while the assertion may be made that the position of constable is a position that inherently a court is authorized to designate and fill, consistent with the practice in this State, the better practice is to enact legislation specifically authorizing the position.

Noting the repeal of the former provision establishing the position of constable for the family court, I am unaware of any other statutory provisions specifically authorizing such position. Moreover, I am unaware of any practice by the family courts in this State to establish such a position. Therefore, a response to your second and fourth questions appears to be unnecessary.

As to your third question concerning whether a rule to show cause has to be served personally or whether it be served on a responsible person at the defendant's residence, again, there is no statute or court rule specifically responsive to your question. As referenced above, Rule 4 (c) can be construed to require service of a rule by a sheriff or his deputy. Pursuant to Rule 4 (d)(1) service of a summons and complaint can be made either personally or by leaving the same at the defendant's residence with a person of suitable age and discretion. A rule to show cause could be served in the same manner. However, one note of caution is in order. I have been informed by one family court judge that in his opinion such a rule should be served personally. Obviously then, the more cautious response would be that personal service be made. Therefore, while the rule can be

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read as permitting the leaving of a rule at the defendant's residence with a person of suitable age and discretion, you may wish to serve the rule personally as a matter of caution.

The family court judge who I spoke with concerning your questions also advised me that a meeting was planned in the near future when questions such as yours would be discussed. As a result, further clarification of the rules may be forthcoming.

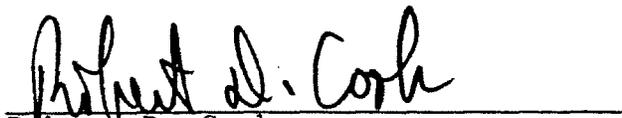
If there are any further questions, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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