

COURTS: Magistrates lack the power or authority
MAGISTRATE COURTS: to appoint anyone other than public
PROCESS: officers to serve any process other than
SERVICE OF PROCESS: summonses, and then only by a strict
adherence to Section 517.100, RSMo 1959.

OPINION NO. 112 (1967)
Opinion No. 553 (1966)

June 1, 1967

Honorable William C. Phelps
State Representative, 4th District
1701 Bryant Building
Kansas City, Missouri 64106



Dear Representative Phelps:

This is in answer to your request for an opinion of this office on the question whether a magistrate judge can specially appoint persons to serve extraordinary process such as garnishments, executions, citations for examinations of debtor under oath, etc. You cite Section 506.140, RSMo. That statute, along with Supreme Court Rule 54.03, which supersedes said statute, taken in connection with Rule 41.02 and Rule 41.04, does not apply to magistrate courts.

Section 517.100, part of the magistrate code, provides as follows:

"Every magistrate or clerk of the magistrate court, upon being satisfied that any original summons issued out of his court will not be executed for want of an officer to be had in time to execute the same, or in all cases where the sheriff is a party to the pending suit or is otherwise interested in the determination thereof or to save mileage expense, may empower any suitable person designated by the plaintiff not being a party to the suit, to execute the same, by indorsement upon the process to the following effect:

At the request and risk of the plaintiff, I authorize
. . . . to execute this writ.

E. F. Magistrate
Clerk of the magistrate court

Honorable William C. Phelps

And the person so empowered shall thereupon possess all the authority of a sheriff in relation to the service of such summons, and shall be subject to the same obligations, and shall receive the same fees for his services, except mileage."

By its terms the quoted statute applies only to the original summons in a magistrate court action. As to such original summons, any suitable person designated by the plaintiff who is not a party to the suit may be empowered by the magistrate to serve such summons after executing it by endorsement with words to the effect that at the request and risk of the plaintiff, "I authorize [insert the name of the process server] to execute this writ," to be signed by the magistrate and the clerk of the magistrate court.

In Miehl et al. vs. South Central Securities Co., 227 Mo.App. 788, 58 S.W.2d 1011, the court held that plaintiff's attorney was not a "party" to the suit and that a summons served by such attorney when designated by the court was legal.

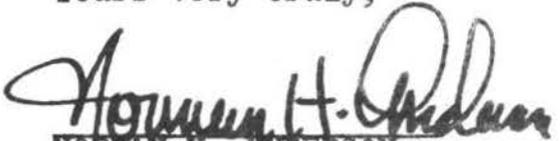
With respect to process other than summonses, the statutes do not provide for anyone other than sheriffs and constables and coroners to serve process. The Supreme Court of Missouri in Huff vs. Alsup et al., 64 Mo. 51, and in Fletcher v. Wear, 81 Mo. 524, ruled that the provisions of the statute authorizing a justice of the peace to designate someone to serve the original summons applied only to the original summons and not to garnishments, attachments, executions or the like.

CONCLUSION

It is the opinion of this office that magistrates lack the power or authority to appoint anyone other than public officers to serve any process other than summonses, and then only by a strict adherence to Section 517.100, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant Donald L. Randolph.

Yours very truly,


NORMAN H. ANDERSON
Attorney General