



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 13, 2021

Samuel T. Barber, Esq.
Attorney for DeSoto County Board of Supervisors
Post Office Box 346
Hernando, Mississippi 38632

Re: Uniform Rules of Justice Court Service of Process

Dear Mr. Barber:

The Office of the Attorney General has received your request for an official opinion.

Background

In your request, you state:

[T]he Board requests an opinion on the new service of process rule and who is responsible for paying for postage and processing the mailings when a summons and complaint are required to be mailed under Rule 14(d)(2)-(3). Under Miss. Code Ann. Section 13-3-5, the clerk of the court has mailed copies of the summons and complaint when it was required to complete service. Under the new Uniform Rules of Justice Court, it is unclear if the Constables are required to complete the service by mailing or the clerk of the court can continue to mail the summons and complaints to complete service.

DeSoto County has a busy Justice Court. The Constables are responsible for serving upwards of 8,500 summons per year. It is estimated that under the new Uniform Justice Court Rule 14 that most of the summons served will have to be subsequently mailed to complete service. Under Section 13-3-5(2) only summons served by posting on the usual place of abode required subsequent mailing to be completed. Rule 14(d)(2) requires mailing for service on a family member and 14(d)(3), requires mailing, similar to the statute, for service by posting on the usual place of abode. Unlike the statute, the new rule does not state who is responsible for mailing the summons and complaint. A plain reading only mentions the constable in the

rule. The increased mailings will be a significant expense, either on the constables or on the clerk's office. It is estimated that between time, and expenses it will cost around \$11,000 to process the new required mailings. Beyond the actual costs, the new rule raises the question of when has the constable completed service? Your office has opined in the past that the constables are only entitled to fees once service is completed.

Questions Presented

1. Who is responsible and who pays for the postage and processing the mailing of the summons and complaint when required to mail under Mississippi Rule of Justice Court 14?
2. If the County, through the court clerk, can pay the cost of postage and mailings, can the court clerk adjust the court cost fees to account for new postage requirements?
3. If the constables are required to send the summons and complaints to complete service, would supplying postage, envelopes, and any necessary office supplies to the constables be a permissible expense under Section 19-3-40?
4. If the constables are required to complete the mailings of the summons and complaints, can court clerk personnel assist the constables in processing and sending the mailings out?
5. If the constables are required to complete the mailing of the summons and complaints and pay for the postage, is this a fee constables can request to be paid by the board of supervisors under Section 25-7-27 as uncollectable from the court clerk?
6. When have the constables completed service under the new rules, thus making them eligible to collect fees from the court clerk?

Response

1. The constable is responsible for mailing summons and complaints when mailing is required under Rule 14 of the Mississippi Rules of Justice Court. Pursuant to Section 19-7-23, the county must provide stationery, including postage, to the courthouse and all county offices.
2. No. Justice court costs and fees are charged in accordance with Section 25-7-25, which contains no provision for a justice court to charge additional mailing or postage fees.
3. See Response 1. Pursuant to Section 19-7-23, the county must provide stationery, including postage, to the courthouse and all county offices.
4. The constable is responsible for service of process under Mississippi Rule of Justice Court 14(d)(2)–(3), which includes mailing a copy of the summons and complaint. However, there is no prohibition against court clerk personnel assisting the constable with this requirement.
5. Our response to your first question renders this question moot.

6. For personal service, pursuant to Mississippi Rule of Justice Court 14(d)(1), service is complete upon the date of service. For “service upon a family member” and “service by posting,” pursuant to Rule 14(d)(2)–(3), service is complete on the tenth day after mailing.

Applicable Law and Discussion

The Mississippi Supreme Court has the inherent power to promulgate procedural rules to govern judicial matters. *Newell v. State*, 308 So. 2d 71 (Miss. 1975). If there is a conflict between a statute and a procedural court rule, the court rule controls. *State v. Delaney*, 52 So. 3d 348 (Miss. 2011). As you note in your request, Section 13-3-5 requires the clerk of the court to mail a copy of the summons and complaint for service by posting if the defendant’s usual place of abode is a multi-family dwelling. However, the Uniform Rules of Procedure for Justice Court were amended in 2017 and now require mailing a copy of the summons and complaint to complete service upon a family member and service by posting under Mississippi Rule of Justice Court 14(d)(2)–(3). Mississippi Rule of Justice Court 14(d)(2), titled, “*Service upon a family member*,” provides:

If service under paragraph (d)(1) cannot be made with reasonable diligence, then the constable shall deliver a true copy of the summons and complaint at the defendant’s usual place of abode with the defendant’s spouse or some other person of the defendant’s family above the age of sixteen (16) years, and within three (3) days thereafter, by mailing a true copy of the summons and complaint, by first class mail, postage prepaid, to the defendant at the address where the true copy of the summons and complaint were properly delivered. Service shall be deemed complete on the 10th day after the mailing.

Mississippi Rule of Justice Court 14(d)(3), titled, “*Service by posting*,” provides:

If service under paragraphs (d)(1) (Personal service) and (d)(2) (Service upon a family member) cannot be made with reasonable diligence, then the constable shall serve process by posting a true copy of the summons and complaint on a door of the defendant’s usual place of abode that is reasonably calculated to provide notice of the action and, within three days thereafter, by mailing a true copy of the summons and complaint by first class mail, postage prepaid, to the defendant at the address where the true copy of the summons and complaint was posted. Service shall be deemed complete on the 10th day after the mailing.

Mississippi Rule of Justice Court 14(n)(1) provides:

Service of process by the constable may be taxed as court costs for an amount not exceeding the statutory amount allowed by law. No fees for service shall be paid to a constable who has neither served nor attempted to serve process in substantial compliance to this rule.

In response to your first question, pursuant to Section 19-7-23, the board of supervisors is responsible for providing the courthouse and all county offices with certain items necessary for

the operation of such offices. This office previously opined that within reason the county must provide the necessities for county offices to do business, including postage and stationery. MS AG Op., *Barber* at *3 (Oct. 5, 2001) (citing *Downing v. Hinds County*, 36 So. 73 (Miss. 1904) and *Choctaw County v. Hughes*, 35 So. 424 (Miss. 1903)); MS AG Op., *Cobb* at *1 (Oct. 7, 2005) (same). In *Downing*, the Supreme Court of Mississippi, when determining whether a county should pay for postage required for the chancery clerk's official business, held:

We think the terms "stationery," "and all other necessary articles," in section 296 of the Revised Code of 1892, embrace necessary postage used in the public business. The word "stationery" itself is indeterminate, and is to be interpreted in the light of custom and reason. It is hardly conceivable that the lawmaking power designed all officers, great and small, to pay, out of their salaries, the postage on state or county official business. What would become of the State Superintendent of Education, the Governor, Secretary of State, Land Commissioner, Supreme Clerk, and others? Uniform usage in the state, tiding over all the legislative sessions, furnishes a practical construction of the statute which cannot be overlooked. So far as we know, corporations, banks, partnerships, and individual business enterprises include outlays for postage under the head of "stationery." But that word is re-enforced in the statute before us by the words "and all other necessary articles," and certainly postage stamps are indispensably necessary.¹

Downing, 36 So. at 73. Similarly, it is the opinion of this office that the county is responsible for providing the constable with necessary office supplies, including postage. Under Rule 14(d)(2)–(3), the constable is clearly responsible for mailing a copy of the summons and complaint.

In response to your second question, costs and fees in justice court are charged pursuant to Section 25-7-25, which does not contain any provision for other items of court costs, such as postage. Thus, court costs cannot be increased to cover the cost of the mailing.

With respect to your fourth question, while the constable is responsible for service of process under Rule 14(d)(2)–(3), we are aware of no prohibition against court clerk personnel assisting the constable with this duty.

In response to your final question, as provided by Rule 14(n)(1), "[n]o fees for service shall be paid to a constable who has neither served nor attempted to serve process in substantial compliance to this rule." For personal service, pursuant to Rule 14(d)(1), service is complete upon the date of service. For "service upon a family member" and "service by posting," pursuant to Rule 14(d)(2)–(3), service is complete on the tenth day after mailing.

¹ Section 296 of the Code of 1982 is now codified as Section 19-7-23 of the Mississippi Code of 1972. MS AG Op., *Nowak* at *2 (Oct. 25, 2019).

Samuel T. Barber, Esq.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION