

MAGISTRATE COURT: The summons of jurors in the magistrate court may be signed by either the judge of the magistrate court or the clerk of the magistrate court.

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Dear Sir:

I.

We have received the following request for an official opinion of this department:

"There has arisen today a question under Section 7 of Senate Bill 207 which provides for the summoning of a jury in Magistrate Court. The facts are these:

"The Clerk of the Magistrate Court went to the County Clerk and obtained a list of twenty-four names from the list of jurors for the Magistrate Court. The Clerk then issued summons for each person on the list and the summons were signed by the Honorable W.K. Webb, Judge of Magistrate Court, Division No. 1, of Greene County, Missouri. When this jury was called to be used in Judge Gideon's division, which is Division No. 2 of the Magistrate Court, he turned the jury loose on the grounds that they were illegally summoned because the statute provides that 'the Clerk of the Magistrate Court shall summons each person on said list by registered mail', and that the summons were signed by Judge Webb and not the Clerk.

"Please advise whether or not a jury summoned by registered mail by a Magistrate would be a legal jury."

Section 2811.252, R.S.A., Laws 1947, Vol. 1, page 248, Sec. 7 provides for the summoning of jurors:

"Upon receipt of the list of names certified by the county clerk, the clerk of the magistrate court shall summons each person on said list

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by registered mail, requesting a return receipt signed by addressee only, to appear before the magistrate on the date fixed by the magistrate and each person so summoned shall appear in obedience to such summons and shall serve as a juror until excused by the magistrate, but no juror shall be required to serve more than five days in any twelve month period after the first day of May."

Section 2811.125, R.S.A. Laws 1945, page 765, Sec. 25, provides as follows:

"All process issued by magistrates shall run in the name of the state of Missouri, to be dated on the day issued, and shall be signed by the magistrate or clerk."

This latter statute is considered by us to be the controlling statute in the question created by your statement of facts.

The clerk signs the process for and on behalf of the magistrate in all magistrate courts. But that does not mean that the magistrate cannot or should not sign process or writs issued by his court.

The question of whether or not a summons for a jury is included within the clause "all process" has been fully considered by this department.

A list of grand jurors and alternates, petit jurors and alternates, selected by the county commissioners and furnished the sheriff as provided by the laws of Arkansas would be a process, entitling the sheriff to the fees provided in service of process according to the Supreme Court of Arkansas. In *Williams v. Hempstead County*, 39 Ark. 176, l.c. 179.

"A list of grand jurors and alternates, petit jurors and alternates, selected by the county commissioners and furnished the sheriff as provided by Gantt's Dig. Sec. 3677 et seq., would be a process, and properly--to use a familiar legal designation--a writ of venire facias, entitling the sheriff to the fees provided in service of process. *Williams v. Hempstead County*, 39 Ark. 176, 179."

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To constitute "process" in court procedure, it is essential that the document or writ must contain a direction or demand that the person to whom it is directed shall perform or refrain from the doing of some described act according to the court. In *Re Smith's Will*, 24 N.Y.S.(2d) 704, l.c. 710.

As a legal term "process" is a generic word of very comprehensive signification and many meanings. In its broadest sense it is equivalent to or synonymous with proceedings or procedure and embraces all the steps and proceedings in a cause from its commencement to its conclusion according to the Supreme Court of New Mexico in *State ex rel. Dresden v. District Court*, 112 P.(2d) 506, 509, 45 N.M. 119.

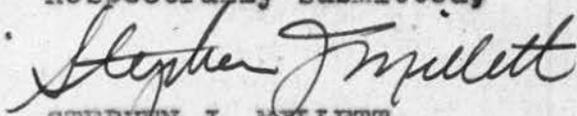
The word "process," as generally used, is understood to mean a writ, warrant, subpoena, or other formal writing issued by authority of law; but it also refers to the means of accomplishing an end including judicial proceedings. *Gollobitsh v. Rainbow*, 51 N.W. 48, 49, 84 Iowa, 567.

The clerk of the magistrate court only has such powers and duties as given to the magistrate court by law and the judge of the magistrate court has the power to perform any of the functions of the magistrate court, within the jurisdiction of the magistrate court as defined by law. The clerk does not have any powers or authority that the judge of the magistrate court does not have.

#### CONCLUSION

It is the opinion of this department that the summons of jurors in the magistrate court may be signed by either the judge of the magistrate court or the clerk of the magistrate court.

Respectfully submitted,

  
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APPROVED:

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