

**LETTER OPINION
2002-L-50**

August 29, 2002

Mr. Wayne P. Jones
Ransom County State's Attorney
PO Box 391
Lisbon, ND 58054-0391

Dear Mr. Jones:

Thank you for your letter asking whether a sheriff making service of process must possess the original documents at the time of making service. The duties of the sheriff include serving all process or notices in the manner prescribed by law; endorsing on all notices and process received the year, month, day, hour, and minute of reception; and certifying on each process or notice the time and manner of service, or the reasons for failing to make service. N.D.C.C. § 11-15-03(7), (8), and (9).

The Rules of Civil Procedure provide that the proof of service of the summons and complaint or notice, if served by the sheriff, is made by the officer's certificate of service. The certificate of service must contain the date, time, place, and manner of service, and additional information if served by someone other than the sheriff in that person's affidavit of service. N.D.R. Civ. P. 4(i) and (j).

None of the above provisions of law or rule, nor others dealing with the duties of the sheriff concerning service, explicitly require the sheriff to actually have in possession the original documents at the time of making service. If, however, a party is serving the Secretary of State because a registered agent cannot be found by the sheriff to serve, the serving party must file an affidavit of the sheriff together with the original and two copies of the process with the Secretary of State. N.D.C.C. § 54-09-07.

It is therefore my opinion that a sheriff or deputy serving a summons or complaint, or both, is not required to have the original documents actually in possession at the time of making service. However, it may be advisable to have the original available to address any questions about possible defects or omissions in the copy of the process served. See 62B Am. Jur. 2d Process § 78 (1990).

Sincerely,

Wayne Stenehjem
Attorney General

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