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DUTY OF CLERK OF COURTS TO ISSUE SUMMONS AND DELIVER IT TO SHERIFF—BY MAIL OR OTHERWISE. SECTIONS 2703.02, 2703.03, R.C.

SYLLABUS:

Pursuant to Sections 2703.02 and 2703.03, Revised Code, it is the duty of the clerk of courts to issue summons and deliver it to the sheriff of the proper county by mail or otherwise after the filing of a proper praecipe for same.

Columbus, Ohio, December 23, 1959

Hon. Fred F. Fox, Prosecuting Attorney  
Noble County, Caldwell, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Pursuant to Chapter 27 of the Revised Code, will you please advise me whether or not it is a duty of the Clerk of Court to de-

liver to the Sheriff's office for service, any summons and all summons issued from the Clerk of Court office? In this county the sheriff does not have his office in the Court House but his office is maintained in the jail which is across the street from the court house. If such duty to deliver said summons to the office of the sheriff rests upon the clerk of court, please advise whether delivery of such summons to the sheriff for service may be made by mail or whether such summons should be delivered to the sheriff's office?"

Section 2703.02, Revised Code, reads as follows :

"The plaintiff shall also file with the clerk of the court a praecipe, stating therein the names of the parties to the action, and if it is for the recovery of money only, the amount for which judgment is asked, and demanding that a summons issue."

Section 2703.03, Revised Code, reads as follows :

"The summons must be issued and signed by the clerk, and be under the seal of the court from which it is issued. Its style shall be: 'The State of Ohio, . . . . . county,' and it must be dated the day it is issued. It shall be directed to the sheriff of the county, who shall be commanded therein to notify the defendant that he has been sued, and that he must answer at a time stated therein, or the petition will be taken as true and judgment rendered accordingly. When the action is for the recovery of money only, there must be indorsed on the writ the amount stated in the praecipe, for which, with interest, judgment will be taken if the defendant fails to answer. If the defendant fails to appear, judgment shall not be rendered for a larger amount than the amount prayed for and the costs."

In 32 Ohio Jurisprudence page 374, Section 9, the following is stated :

"\* \* \* When a party has filed a petition and praecipe, although not otherwise, it is the duty of the clerk to issue the summons, and to transmit it by mail or otherwise to the sheriff of the proper county. The duties of the clerk therein are mandatory, not discretionary. \* \* \*"

In the case of *Stark Electric Railroad Co. v. McKean*, Clerk of the Supreme Court reported in 17 Ohio Nisi Prius, New Series, 593, paragraph 2 of the syllabus reads :

"When a praecipe has been filed in proper form by counsel in a case which has been taken to the Supreme Court, it is the duty of the clerk to at once issue a summons in error and transmit it by mail or otherwise to the sheriff of the proper county; and failure of the clerk to issue summons at all, or to issue it in proper time,

renders him liable with his surety for any damage which may accrue to the plaintiff in error in consequence thereof.”

In the opinion in this same case, the court stated at page 596:

“When a precipe in proper form is filed by counsel in a proceeding in error, it is the duty of the clerk to at once issue the summons in error and transmit the same by mail or otherwise to the sheriff of the proper county. When such precipe is filed, the counsel and the plaintiff in error have performed all the duty that is required of them under the law, under ordinary circumstances and conditions. If, therefore, the clerk fails to issue such summons at all; if he fails to issue the same in proper time so that the proceedings in error may be legally commenced within the time limited by statute therefore, and the action is dismissed by reason of the neglect of the clerk, there can be no doubt that he and his bondsmen are to be held for any damages that may accrue to the plaintiff in error. \* \* \*”

It would appear, therefore, that the clerk may either mail or otherwise deliver a summons to the sheriff. In the instant case, with the sheriff's office being located across the street from the clerk's office, personal delivery of summons should not be a problem. The clerk, however, is not required to make such delivery but may mail the summons if he so chooses.

Accordingly, it is my opinion and you are hereby advised that, pursuant to Sections 2703.02 and 2703.03, Revised Code, it is the duty of the clerk of courts to issue summons and deliver it to the sheriff of the proper county by mail or otherwise after the filing of a proper praecipe for same.

Respectfully,

MARK McELROY  
Attorney General