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DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
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OPINION 19-0031

Honorable Phillip Terrell
District Attorney
Ninth Judicial District
P.O. Box 7358
Alexandria, Louisiana 71306

10 CLERKS OF COURT - Compensation & Fees; Powers & Duties,
General

La. C.Cr.P. art. 731

The court or clerk of court are the proper entities to issue subpoenas,
arraignment, and trial notices.

Dear Mr. Terrell:

On behalf of the Rapides Parish District Attorney's Office ("Rapides DA") you have requested an opinion from our office regarding the Rapides DA's preparation of subpoenas, arraignment and trial notices for the Rapides Parish Clerk of Court ("Clerk of Court"). Specifically, you ask whether the Rapides DA is legally required to prepare these documents. In addition, you ask whether the DA's performance of these functions may constitute a violation of La. Const. art. VII, §14 or act as a waiver of the Rapides DA's absolute immunity in prosecutorial matters. Further, you ask whether Rapides DA secretaries may be sworn in as deputy clerks, and whether doing so would cure any such issues.

Your request specifically asks whether the Rapides DA's office may prepare subpoenas, arraignment, and trial notices.

As to your first question with respect to subpoenas, La. C.Cr.P. art. 731 states the following:

The court shall issue subpoenas for the compulsory attendance of witnesses at hearings or trials when requested to do so by the state or the defendant. Clerks of court may issue subpoenas except as provided in Article 739.

The plain language of the article makes clear that only the *courts* and the *clerks of court* may issue subpoenas. In addition, the comments to La. C.Cr.P. art. 731 provide:

Some states allow the district attorney to issue subpoenas (N.Y. Code of Crim.Proc., §§ 609-610; Cal.Pen.Code, § 1326); this has not been the practice in the Louisiana system. New authority is given the district attorney

to apply to the court for subpoenas for witnesses to appear before him for questioning, but **the district attorney may not himself issue subpoenas**. Art. 66. A coroner may issue subpoenas by authority of Art. 103.¹

While some states may permit district attorneys to issue subpoenas, Louisiana law contains no such provision. Instead, district attorneys may file a written motion ordering the clerk of court to issue a subpoena.² Nonetheless, the district attorney himself may not issue subpoenas.

As to the service of a subpoena, La. C.Cr.P. art. 734 states that "[t]he sheriff of any parish in which the witness may be found or of the parish in which the proceeding is pending shall serve the subpoena and make a return thereof without delay." The article further states that:

When the district attorney is involved in the investigation or prosecution of a criminal case, investigators who are employed by that district attorney and who are P.O.S.T. certified commissioned law enforcement officers may serve any subpoena or subpoena duces tecum which is issued in that case.³

Therefore, only the court or the clerk of court may issue a subpoena. The Rapides DA may not issue a subpoena. However, when the Rapides DA is investigating or prosecuting a criminal case, an investigator employed by the Rapides DA who is a P.O.S.T. certified law enforcement officer may serve a subpoena. We are also of the opinion that, absent any Code of Criminal Procedure article to the contrary, the DA may not issue arraignment or trial notices.

Having concluded that the clerk of court is the entity responsible for the preparation of subpoenas, arraignment, and trial notices, the remainder of your questions are moot.

Considering the foregoing, it is the opinion of this office that the court or clerk of court are the proper entities to issue subpoenas, arraignment, and trial notices.

¹ La. C.Cr.P. art. 731, comment c.

² La. C.Cr.P. art. 66.


³ La. C.Cr.P. art. 734(C). We note that the article further provides that "[e]ach investigator who serves a subpoena or subpoena duces tecum under the provisions of this Article shall execute the return of service required by Article 736."

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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ATTORNEY GENERAL

By:


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JL/CPC