State of Texas

Judicial Branch Certification Commission

PROCESS SERVERS CERTIFICATION CURRICULUM

JBCC
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PART ONE

What is process service?

a. "Process" means the document used to inform a defendant of the institution of proceedings against him and to compel his appearance. In a Texas civil court, this document is usually a "citation," which is issued by the clerk of the court upon request of a party to the lawsuit. "Process" may also include other notices, writs, orders, or other papers issued by the court.

   A subpoena is a document that commands a person to appear and give testimony and/or produce and permit inspection and copying of documents or tangible things. A subpoena is not "process" and need not be delivered by an authorized process server, but a process server may nevertheless be employed to make service of a subpoena.

b. "Service" means the delivery of the proper documents in a proper manner to the proper person by a person authorized to make such delivery. The process server performs a very valuable function in our society. A sloppy or irresponsible process server can cause great harm, either to the server's own client or to a defendant. The process server may severely damage the server's own client by failing to timely serve the correct person, which may seriously delay a plaintiff in obtaining needed relief and may even result in the plaintiff entirely losing the right to sue. Failure to correctly fill out and file the required paperwork may also cause the plaintiff's case to be delayed or entirely lost. The process server may also cause grievous harm to a defendant by failing to give the correct person the Notice to which the person is entitled, and thereby causing the defendant to lose the right to defend against the plaintiff's claims.

Who is allowed to serve process? (Rules 103, 108, 116, 176.5, 501.2(a)(f)).

a. Constables and sheriffs and their deputies, while working for the county, are automatically authorized to serve process. Other officials may be authorized by specific statutes.

b. A person who is at least 18 years old may be authorized by written order of the court. An individual trial court may make an order authorizing a certain person to make service in a case out of that court.

c. A person may be certified by the JBCC pursuant to order of the Texas Supreme Court. (There is no such thing as a "licensed" process server in Texas.)

d. The clerk of the court must make service by mail, if requested; but service by mail may also be made by a sheriff, constable, or private process server.

e. Only a sheriff or constable (unless a private process server is specifically authorized by a written court order) may serve a citation in an eviction case, a writ that requires the actual taking of possession of a person, property, or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. A private process server may not serve a writ of attachment, writ of sequestration, writ of execution, writ of habeas corpus, or any writ for the enforcement of a judgment or for seizure of a person or property.

f. No person who is a party to or interested in the outcome of a suit may serve any process to do with that suit. A person who is a member or an employee of a law firm may not serve process for that law firm's cases.

g. Any disinterested person who is not less than 18 years old may make service on a defendant who is absent from the State or is a nonresident of the State of Texas. (Rule 108).

h. Only a sheriff, constable, or clerk of the court may make service by publication. (Rules 109, 116). Private process servers may not perform service by publication.

i. A subpoena may be served by any sheriff or constable of Texas or by any person who is not a party and is 18 years of age or older. (Rule 176.5, 500.8(d)). A person need not be an authorized process server in order to serve a subpoena, but private process servers are frequently employed to make this service.

Where may service of process be performed?

Once a person is authorized to serve process for cases in a Texas court, then that person may serve papers from that court anywhere in Texas or in any other state. Technically, Texas rules permit a private process server to make service in a foreign country; but no private process server should attempt to do so unless the process server has gained expertise in laws applying to service in the foreign country. Each country has its own laws, which may or may not allow a Texas resident to make service in that country. The attempt by a foreigner to serve process in some countries is considered a crime.

In general, however, no subpoena, summons, complaint, citation, writ or other process may be served on any person at or near the site of any mediation session, or upon any person entering, attending, or leaving a mediation session. (Mediation is a dispute resolution process in which a neutral third party (mediator) attempts to help opposing parties arrive at an agreement to settle their dispute.) This prohibition is included in most standard mediation orders signed by courts. The order specifically applies to the mediator, the parties, and the lawyers involved in the mediation proceeding. A process server who attempted to serve process with regard to the case being mediated would cause the client to be subject to severe penalties from the court. In addition, the Texas Supreme Court has ordered that service of process is prohibited during a mediation proceeding. This order is not expressly binding on process servers, but it should be followed. (Misc. Docket No. 11-0962).

When may/must service of process be performed?

a. When a process server receives any process papers to be served, all process must be executed and returned without delay. (Rules 105, 501.3(a)(2)). In cases of a temporary restraining order (TRO), temporary injunction, or a family court protective order, service must be made immediately.

b. No process may be issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, or if citation is by publication. (Rules 6, 501.2(d)(f)).

c. Citations in delinquent ad valorem tax cases must be served within 90 days after the date of issuance or returned to the court unserved. (Rule 117a (6)).

d. Citations, other than in delinquent ad valorem tax cases, do not expire. Therefore, there is no deadline on the citation itself. However, each citation coming into the hands of a process server should be served

as promptly as possible. This is the client's expectation and the process server's duty. Claims are usually subject to a statute of limitations which will bar the suit if not brought within the time allowed. Not only must the plaintiff file the suit within the time allowed, but must also obtain service on the defendant within the time limitation. If the plaintiff and the process server have been diligent, the law may allow an exception for a few extra days for service of process. The allowance of extra days is not automatic and will be decided by the court on a case-by-case basis. The process server must always be diligent in attempting to serve process promptly. For service in the emergency proceedings listed in (a) above, the process server must be extraordinarily diligent in trying to make service as soon as possible.

e. There is no legal restriction on the time of day at which a citation may be served. However, common sense dictates that you not serve process late at night or too early in the morning. In a few instances, a defendant's schedule may mean that the only time the defendant can be reached is late at night or early in the morning. If you can do so safely, you may attempt service at these times. However, such attempts may be frightening to the defendant and dangerous for the process server and are not recommended.

f. Justice Court cases may move more rapidly than cases in county or district court. In a repair and remedy case against a landlord, the citation must be served at least 6 days before the appearance date. (Rule 509.4). In an eviction case, the citation must be served at least 6 days before the day set for trial. (Rule 510.4(b)).

Duties of a process server. (Rules 16, 105, 501.3).

a. A process server has two distinct and equally important duties: (1) to promptly and properly deliver the proper papers to the proper person; and (2) to promptly and properly complete and file with the court a return of service. The return of service, often referred to simply as the "return," is the written document used to prove that proper service has been made. A written return must be filed promptly with the court. Specific information must be stated on the return. A process server who has perfectly delivered process has completed only half the job. The extensive requirements regarding returns are discussed in a separate section.

b. Before any manner of service is made, the process server must endorse on all process and precepts coming to his hand the day and hour on which he received them. For process servers serving papers for a company, where the process is received by the company before being received by the individual process server, it is sufficient to use the day and hour the process was received by the company. **A process server company will frequently stamp the date received before giving the citation to the server to serve. This notation** may be made on the face of the **citation**. It must be made on the original, not the copy handed to the defendant.

c. A process server must be scrupulously honest and aboveboard in performing the process server duties. Every private process server should keep a reasonably detailed record of each delivery of service that the process server makes. Each server should personally keep this information in addition to whatever records the process server company may keep. The server should record the case number, date and time of the service, name of person served, description of person served (such as, "white overweight middle-aged female with brown hair"), the address where the papers were delivered, and a description of the place of delivery (such as, "red brick house with large front porch"). This information may be vitally important if the process server is called upon to defend the truth of the return of service signed by the server. A defendant may assert that the process server has lied or was mistaken and that the defendant

was never served. It is unlikely that a process server can accurately remember the details of every service that the server has made; but the court will want more detail to convince the court that the server really did go to the location claimed and really did see and deliver papers to the correct person. The process server's credibility (trustworthiness, reliability) will be at issue. It will be important to the server's client for the server to be able to give testimony complete enough to uphold the fact that service was made as previously represented by the process server. Not only may the client's case be in danger, but the process server may be in danger of being charged with a crime (such as perjury or tampering with a court document), if the court finds that the return filed by the process server is untrue. Good notes will help tremendously. Not only may a party challenge the fact of service, but a party or another person may accuse the process server of a violation of law such as a trespass or assault. A note should be made of anything that happened during service other than the simple delivery of the papers. The reputation of the process server is very important. A process server who is known to be sloppy or to stretch the truth or to fail to tell the whole truth is less likely to be believed by the court.

When a defendant alleges that the defendant was never served, it may actually be true! It is of utmost importance that a process server makes doubly sure that the correct person is receiving the process papers. So very much harm may be caused by delivering the process to the wrong person. Such harm may be multiplied if the mistake is not caught until after a default judgment has become final.

Manner of service to an individual. (Rules 106, 109, 109a, 501.2(b)(e)(f).

a. A citation always contains the name of the person or entity to be served. A citation to an individual person must be delivered only to that person unless the court has issued an order that allows otherwise. Leaving the papers with anyone else is always defective service unless the court has signed an order allowing the papers to be left with someone other than the defendant. The process server may not change the name on a citation, nor alter the citation in any way. A citation issued to one name cannot be used to attempt service on a party of another name.

b. Delivery in person. The primary, preferred, and most common manner of service is by delivery in person. This is accomplished when the process server correctly identifies the defendant and hands the papers directly to the defendant; and the defendant takes the papers into the defendant's hands. Before the citation is handed to the defendant (or left with the defendant as described below), the date of delivery must be endorsed thereon. This notation is made on the copy of the citation that is handed to the defendant. It may be made on the face of the defendant's copy of the citation, or may be made on the blank form of return that is at the bottom or on the back of the same piece of paper.

   Delivery in person sometimes may be made even when the person refuses to take the papers in hand. This may be done only in limited circumstances described below. If you are in the immediate presence of the defendant, have identified the defendant, have offered the papers to the defendant, and informed the defendant of the nature of the papers you are trying to deliver, and also informed the defendant that you are trying to make service of these papers, and if the defendant still refuses to take the papers in hand, then you may leave the papers in an appropriate place in front of the defendant where the defendant can see that you have done so. If the defendant is standing in front of you, you may lay the papers on the floor or ground at the defendant's feet. If the defendant is sitting behind a desk, you may gently lay the papers on the desk in front of the defendant. The process server should avoid touching the defendant. Do not attempt to put the papers in the defendant's pocket or otherwise slap the papers against the defendant. Such a move could constitute an assault.

A question may arise as to what constitutes being "in the immediate presence" of the defendant. If the defendant is standing behind a see-through screen door or glass door through which you can clearly see and hear each other, and you have identified the defendant, and you have informed the defendant of the nature of the process and that service is being attempted, but the defendant refuses to open the door and take the papers in hand, it is probably permissible to leave the papers on the doorstep immediately outside the door, where the papers are clearly visible to the defendant. To be completely safe, in any questionable circumstance, you should file a return of attempted (unsuccessful) service and allow the plaintiff's attorney to obtain an order for substituted service.

Do not leave the papers outside a door through which you cannot see clearly if the defendant did not open the door or if the defendant closed the door before you managed to deliver the papers in the defendant's immediate presence as outlined above. The mere fact that you may speak to someone through a door is not sufficient to allow you to leave the papers outside the door, even if the unseen person states that the person is the person you are seeking, and even if the person invites you to leave the papers outside the door.

If the person fails to come to the door, the papers may not be left for the person, even if the process server feels certain that the correct person is in the house. This is so even if someone else has answered the door and confirmed that the correct person is inside-- unless the server has an order from the court that service may be made in this manner.

The instructions given above, if followed, will more than likely be determined valid service. Some appellate courts have upheld service in which the papers were left in a spot that was not in the "immediate presence" of the defendant as described above. The unique circumstances of those cases warranted the courts' holdings in those cases. However, one can never tell what any particular trial or appellate court will do with the issue of how far to stretch the concept of "delivery in person." Because of the strict requirements for service of process, a trial judge may deny a plaintiff's motion for default judgment if service is questionable. If a default judgment is granted, most trial courts will grant a new trial if the defendant challenges the validity of the service and the service is in any way questionable. A trial court will not be reversed for granting a new trial on disputed service, but will be reversed if a default judgment is granted on questionable service and an appellate court decides the service was no good.

The best practice is to decline to make questionable service and to get an order from the court for substituted service (discussed below). Obtaining an order takes a little more time and effort; but the plaintiff is likely to save money in the long run by avoiding uncertainty and the expense of defending an appeal.

If a defendant takes the papers in hand, the process server need not explain what the papers are. After properly identifying the defendant, it will be sufficient to say something like, "I have some papers to deliver to you." If the person refuses to take the papers, and the process server must communicate “the nature of the process” there is no clear rule on what words the process server must use. It will probably be sufficient if the process server says, "I'm an authorized process server, and I'm trying to deliver [a citation, a temporary restraining order, a notice, or whatever it is] issued from the court [if it is indeed issued from the court] in a lawsuit filed against you." Whatever the process server says must fit the facts. It is not necessary to identify the lawsuit or the other party's name.

The process server is not required to give the defendant details about the contents of the documents. It is best to say as little as possible to avoid the appearance of giving advice to the defendant and to avoid the possibility of giving incorrect information or information that may be misinterpreted by the defendant. The process server should always be courteous.

It is not necessary to say, "You've been served" (like they do in the movies). This statement may have an undesirable antagonistic ring to it. It would usually be appropriate to say, "Thank you." There is a statute that purports to obligate a defendant to accept service when it is attempted; but this statute has not been interpreted to place any real obligation on the defendant. The defendant may avoid service by refusing to come to the door, by running away, by hiding, by refusing to admit who he is, or otherwise. State law provides no penalty for such behavior as long as the defendant does not commit an assault against the process server. A process server must not threaten a defendant with criminal charges or imply to the defendant that the defendant will be breaking the law if the defendant fails to cooperate in getting himself served.

You may, if desired, leave a written notice on a door which is not answered, telling the defendant that you have attempted service, and requesting the defendant to call you to arrange to receive the papers. A defendant is under no legal duty to help you complete service of a citation. Your note must not appear threatening and must not refer to the criminal statute either hinting or stating outright that the defendant is legally required to make sure the defendant arranges to receive the papers. A polite note will sometimes produce the hoped for result.

c. Delivery by registered or certified mail. Service may be made by certified or registered mail with a return receipt requested. Rule 106 (applicable to district and county courts) does not expressly require mailing by "restricted delivery," but the certified or registered mail should be sent "restricted delivery," because the return receipt must be signed by the defendant to whom the citation is addressed. No one else may sign for the defendant to complete valid service by mail. Rule 501.2(b)(2) (applicable to justice courts) expressly requires that service by mail must be sent by "restricted delivery." Therefore, if the server fails to request restricted delivery, the service may be found to be invalid, even if the defendant does sign the return receipt. The justice court rule also expressly provides that the sender may request either a return receipt or an electronic return receipt. Service by mail seems easy, but is not recommended, because it is seldom effective to obtain valid service of process. It can seldom be shown that the defendant signed the return receipt. Even when certified mail is sent with a request for "restricted delivery" the return receipt is frequently signed by someone other than the defendant. Regardless of whether or not the defendant has signed the return receipt himself, the signature is often illegible; and it cannot be shown to be the signature of the proper person. Further, a defendant can easily avoid this type of service by simply failing to pick up the registered or certified mail.

d. Substituted (alternative) service by court order when defendant's whereabouts are known.

1. The rules provide that either (b) or (c) above may automatically be used to make service; and no court order is needed to allow service by either of these methods. If service has been attempted by these methods and has not been successful, then a motion may be made in a district or county court to allow another method of service. The defendant's whereabouts must be known, because the motion must be supported by an affidavit stating the location of the defendant's usual place of business, or usual place of abode or other place where the defendant can probably be found, and

stating specifically the facts showing that service has been attempted at this location under (b) or (c) above. (See Part Two, Section VII for further affidavit requirements).

To obtain an order for substituted service, the affidavit must show that reasonable diligence has been used to obtain service under (b) or (c) above. Some courts require a greater effort than is required by other courts. A process server should make several (at least four) attempts to make service before considering the submission of an affidavit for substituted service. Before submitting such an affidavit, the process server should check with the court to learn that court's general requirements for considering a motion for substituted service. A court may require more attempts or may require specific attempts, such as attempts at different times of the day or different days of the week or allowing a certain number of days between the first and last attempts. A court will not want all the attempts to be made at a time when the defendant is away at work or on a brief vacation. Attempted service by mail may be used to show an attempt, but is not likely to be enough by itself to justify substituted service.

To obtain an order for substituted service in a district or county court, an attorney or a plaintiff pro se must file a motion for substituted service. Process servers are not permitted to draft or sign such motions. To obtain an order for substituted service in a justice court, only a "request" must be filed; and the request may be made by the process server. The requirements for the request are similar to the requirements for the affidavit that must accompany a motion to obtain an order for substituted service in a district or county court. The request must include a sworn statement describing the methods used to attempt service by the regular means of service in person or by mail and stating the defendant's usual place of business or residence or other place where the defendant can probably be found. Unlike Rule 106 for district and county courts, Rule 501.2 for justice courts does not expressly state that the request must show that service has been attempted at the location stated in the request. However, this requirement is almost certainly implied.

2. When a court is satisfied that the plaintiff has used reasonable diligence to make service, the court may sign an order authorizing service to be made by leaving a true copy of the citation, with a copy of the petition attached, with anyone over 16 years of age at the location specified in the affidavit. It is the plaintiff who must show diligence-- not merely the process server; but the process server's diligence will be the avenue for the plaintiff to show the plaintiff's diligence.

   In Justice Court cases, Rule 501.2 requires that alternative service include mailing by first class mail in addition to delivery by some other method, which may be by leaving with a person over 16 years of age as described above, or "by any other method" as described in (3) below. In effect, this will require service by two separate methods to result in one valid service. A district or county court may, but is not required to order substituted service using two separate methods.

   When service is authorized by leaving the papers with anyone over 16 years old, the process server may leave the papers with anyone fitting that description, but must be sure that the person is at least 16 years old. It may be obvious to the process server that a person who answers the door is either old enough or too young; but there will be times when suitable age is not obvious. The process server may not presume that a young person who looks reasonably mature is at least 16 years old. The process server must make sure. When age is not absolutely obvious, the process server must inquire about the person's age. A person answering the door may not be willing to answer questions about his/her age; but the process server must politely ask. If the person's age cannot be determined with

certainty, and no one else will come to the door, the papers cannot be left. The process server will have to try again.

The process server should attempt to learn the name of the person who answered the door and is receiving the papers; but regardless of whether a name is learned, it is the fact of sufficient age that is absolutely necessary to permit the process server to leave the papers with the person. Even though the rule permits the court to authorize service by leaving papers with a person over 16 years of age, a court may order that the papers may be left with a person over 18 years of age. The process server must always read carefully any order for substituted service to make sure that the process server exactly complies with the order.

The process server should keep a note of the description of the person with whom the process papers were left, as well as a note about any conversation had to determine the person's age. Of course, a declaration by a youngster that the youngster is 16 years old will not make service valid when the youngster is not really that old.

3. The court may also order substituted service by any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit. Another manner of service may be by attaching the papers to the door at the location specified. This method is favored by process servers because of its relative ease and simplicity, but is not favored by courts and may be entirely rejected by some courts. With this method of service, there is always some uncertainty regarding whether the documents will be seen by the correct person, will be seen timely, or will be seen at all. Some courts that allow this method of service will require a back-up of service by mail in addition to the attachment to the door.

   If a court requires such back-up mail, it may require regular first class mail or certified mail, return receipt requested, or both. If certified mail is required, then the difference between service by mail outlined in (c) above and this substituted service is that the substituted service will likely not require that a return receipt signed by the defendant be received and attached to the return of service. If the court requires two or more methods of service, then all methods should be performed by the same person. Only one return of service may be filed; and a process server cannot file a return with regard to actions taken by anyone other than the process server who is filing the return. Therefore, service may not be performed by one server making the attachment to the door and another person doing the mailing.

   In a case in which the court might allow service by attaching to a door, the court may allow attaching the papers to a gate if it is shown that the property is surrounded by a fence with no access to a door. If a court allows service by attachment to a door or gate, then the papers should be attached in a weatherproof wrapping and in such a manner so as not to damage the door or gate.

   A court may require service by two or more methods as described above; and all methods must be carried out. A court may also authorize service by providing a choice of methods. That is, the court may order that service may be made by doing either one thing or another. If the court authorizes, but does not require more than one method of service, then only one of the alternatives must be performed. The process server must always read an order carefully and scrupulously follow the order in every detail. If the order says service may be made by doing [this method and that method], then both methods must be carried out as described above. If the order says service may be made by

doing [this method or that method], then the process server has a choice; and only one or the other method need be used. Another possible variation is that the order may provide for a choice of methods, but one or both of the alternatives require more than one method. It is important to note where an order says "and" or "or."

4. As pointed out in (c) above, service by registered or certified mail may not be effective. In an appropriate case, a court may authorize substituted service by simply mailing by first class mail requiring no return receipt. When considering a request for this type of substituted service, it will be the duty of the court to consider how likely it is that the defendant will actually timely receive and see this piece of mail. The court will likely require proof that the defendant really does regularly receive mail at the location specified. Even if the address is shown to be a good mailing address for the defendant, the court will probably also consider that mail does sometimes get lost; and it is always possible that a single piece of mail will not be received by the defendant, despite the good intentions of the plaintiff, the plaintiff's attorney, the process server, the court, and the post office.

5. Other less used methods of substituted service may include: (1) Delivery to an apartment manager; (2) Delivery to the defendant's attorney; (3) Delivery to the defendant's parents or other relative at an address that is not the address of the defendant (as long as the defendant's address is actually known, but somehow not effective for service).

6. If an order for substituted service is used, then service must be made exactly as stated in the order. If an order for substituted service states that "service may be made by [such and such a method]," then service by that method is authorized, but not required; and if the process server encounters the defendant in person, process may still be served to the defendant in person. If the order states that "service shall be made by [such and such a method]," then it may be held that any other service, such as service in person, is not valid. An order for substituted service should always authorize a certain method of service ("may be made") rather than require a certain method ("shall be made").

7. All of the methods of substituted service discussed in this section require that the defendant's whereabouts be known. If the plaintiff cannot with due diligence locate the defendant, then the plaintiff must use Rule 109 or Rule 109a.

8. In Repair and Remedy cases against landlords, Rule 509.4 provides for specific methods of service and alternative service against landlords.

9. In Eviction cases, which, unless otherwise authorized by written court order, must be served by a sheriff or constable, Rule 510.4(b) provides for specific methods of service and alternative service against tenants.

e. Citation by publication (Rule 109) is a form of substituted service that may be made when the residence of a defendant is unknown and the plaintiff has been unable to locate the whereabouts of such defendant after using due diligence to do so. There is a split in appellate authority as to whether an order from the court is needed before this type of service is made. Therefore, it is advisable to obtain an order authorizing service by publication before such service is performed. A private process server is not allowed to make service by publication, but the affidavit of a private process server may be used to help justify service by publication where the plaintiff has found one or more possible addresses for the

defendant and the process server has attempted service at these addresses and found the addresses to be not correct current addresses for the defendant.

f. Citation pursuant to Rule 109(a) is another avenue of substituted service. Whenever service by publication (per Rule 109, described in (e) above) would be appropriate, the court may prescribe a different method of substituted service if the court finds that the method so prescribed would be as likely as publication to give the defendant actual notice of the suit. This finding must be recited in the court's order, which may be made only in response to a motion by the plaintiff. This rule is used only when the defendant's whereabouts cannot be found, as opposed to all those possibilities mentioned in (d) above, wherein the defendant's whereabouts must be known. When substituted service is ordered pursuant to Rule 109(a), the court may order that delivery of the citation be made to a parent or other relative, to a friend, to an attorney, or in any other manner that would be as likely as publication to give actual notice to the defendant. It is usually more expensive for a plaintiff to use this rule, because, when service is made pursuant to Rule 109 or 109(a), the court must appoint an attorney (referred to as an attorney ad litem) to represent the defendant. The plaintiff is likely to have to pay the attorney ad litem's fees and expenses. Because Rule 109(a) mentions "officer," and a private process server is not an "officer," a private process server may not be allowed to perform service under this rule, even though the action authorized might be something usually done by a private process server. It would be best for private process servers to decline to attempt service under this rule. However, if a plaintiff insists on using a private process server even though the process server's authority may be in doubt, the order authorizing the service should expressly state that service may be made by a private process server.

g. It is the duty of the plaintiff's attorney, not the duty of the process server, to decide how service should be made or attempted and to file any necessary motions and obtain any necessary orders.

Identification of the person to be served.

It is very important for the process server to correctly identify the person to whom the server delivers process. It is not enough to simply find a person of the correct gender at the given address. A process server may never presume that a person is the correct person. It may be helpful for the process server to have a photograph of the person to be served, but this is not sufficient, because people may not look in person the same as they look in a photo or a person may look a lot like another person. In a few instances, the process server may actually know the person to be served and there is no question of identity, but this seldom happens. A process server may be accompanied by someone who actually knows the defendant and can identify the correct person, but this also seldom happens.

In the absence of personal knowledge as to the identity of the person who is about to receive service of process, the process server must ask the person whether the person is the correct person. If the name on the citation is "Larry L. Parker," then the process server must ask the person, "Are you Larry L. Parker?" It is not sufficient to ask, "Are you Larry?" or "Are you Mr. Parker?" There may be more than one "Larry" or more than one "Mr. Parker" who lives at that address. There may be a "Larry T. Parker" as well as a "Larry L. Parker." There may be a junior and a senior. When inquiring about the identity of a person, the server must always use the suffix if a suffix is available. A person may refuse to identify himself or may lie and deny being the person that he really is. If this happens, the process server may not leave the process papers and presume that the correct person has been served. If the person cannot be identified, then the episode will have to be recorded as a failed attempt; and the attempt may be included in the proof to show the plaintiff's diligence as required to obtain an order for substituted service.

The document ("return of service") that the process server fills out and files with the court will be taken as proof that the person named in the citation was actually served. This proof will be relied upon by the plaintiff and by the court. A process server bears a heavy burden to make sure that the identity is correct. A misidentification may cause terrible damage to a defendant who was never really served; and may also cause damage to a plaintiff whose case is compromised by invalid service.

Manner of service to an entity (corporation, partnership, government, or others).

a. Except in circumstances in which a citation may be mailed to a company without a designation of a person, an entity must always be served through an individual person. It is the duty of the plaintiff to determine the identity of the individual designated, either by law or by action of the entity, to receive service on behalf of the entity. There may be more than one individual who is authorized to receive service of process on a business entity. It will be the plaintiff's duty to designate the person to whom the plaintiff wishes service to be made.

b. Most business entities doing business in Texas (regardless of whether it is a Texas company or a company formed under the laws of another state or country) must designate and continuously maintain in this state a registered agent and a registered office. The duty of the registered agent is to receive service of process on behalf of the business entity. The registered agent must have an office at the location of the entity's registered office. The registered office must be at a street address where process may be personally served on the registered agent. (B.O.C. Section 5.201). A business entity may designate an organization to be its registered agent. Some companies are formed for the sole purpose of receiving service of process on behalf of other business entities; and these companies receive service on behalf of many business entity clients. A registered agent that is an organization must have an employee available at the registered office during normal business hours to receive service of process. Any employee of this organization may receive service at the registered office during normal business hours. (B.O.C. Section 5.255).

c. In addition to the registered agent who must be designated by most business entities, the statute provides that certain persons are automatically agents of certain business entities for the purpose of receiving service of process.

    1. The president and each vice president of a corporation is an agent for service on that corporation.

    2. Each general partner of a limited partnership; and each partner of a general partnership is an agent for service on that partnership.

    3. Each manager of a manager-managed limited liability company; and each member of a member-managed limited liability company is an agent for service on that limited liability company.

    4. Each person who is a governing person of an entity, other than an entity listed in (1)-(3) above, is an agent for service on that entity.

    5. Each member of a committee of a nonprofit corporation authorized to perform the chief executive function of the corporation is an agent for service on that corporation.

d. Other statutes provide for service of process on entities not covered above or in situations not covered above or by methods not covered above. It is always the duty of the attorney to decide how service should be made. The process server will follow the instructions on the citation.

e. A little-used statute allows service in limited circumstances to a clerk or agent of an individual, partnership, or unincorporated association at the defendant's office or place of business. This may be used in a suit connected with business transacted in the county in which the place of business is located. (CPRC Section 17.021).

Another little-used statute allows process to be served on the person in charge, at the time of the service, of any business in which a nonresident defendant is engaged in this state, if the lawsuit arises from the nonresident's business in this state, and if the nonresident is not required by statute to maintain a registered agent in this state. (CPRC Section 17.043). If service is made pursuant to Section 17.043, a copy of the process and notice of the service must be immediately mailed to the nonresident or the nonresident's principal place of business. The process or notice must be sent by registered mail or by certified mail, return receipt requested. (CPRC Section 17.043(c)(d).

f. Governmental entities are not required to designate registered agents. Many separate laws designate the official who is to receive service of process for the various governmental units.

    1. The (constitutional) county judge is the agent for service on a county. (CPRC Sec. 17.024)

    2. The mayor, clerk, secretary and treasurer are all agents for service on an incorporated city, town, or village. (CPRC Sec. 17.024).

    3. The president of the school board and the superintendent are both agents for service on a school district. (CPRC Sec. 17.024).

    4. An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the Appraisal District office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. (Tax Code Sec. 42.21(d)).

g. Laws regarding service of process are spread throughout Texas statutes. For instance, the entirety of Chapter 804 (11 sections) of the Insurance Code is devoted to service of process on various types of insurance companies in various situations. CPRC Section 17.028 and various sections of the Finance Code are devoted to service of process on banks and other financial institutions. It is always the duty of the attorney to find and request the proper method of service in any case.

Substituted service on the Secretary of State

a. When an entity is required to designate a registered agent, but fails to make a designation, or fails to maintain such an agent, or the registered agent cannot with diligence be found at the registered office, or an out-of-state registration has been revoked, then the Secretary of State is automatically an agent for service on that entity. (B.O.C. Section 5.251). This statute provides an easy way to make substituted service on a business entity, but this statute applies only when service has been unsuccessfully attempted on a registered agent at the registered office or when there is no registered agent even

though such an agent is required by law. This statute cannot be used when service has been attempted only on a president, vice president, or other person designated by law as an agent to receive service for an organization. **No court order is required to use this statute**.

b. Another statute (CPRC Section 17.044) designates the Secretary of State as an agent for service of process on nonresidents who engage in business in this state, but who have no registered agent in this state. This may include individuals as well as entities. This statute further provides that the Secretary of State is an agent for service of process on a nonresident that has one or more resident agents for service of process, but two unsuccessful attempts have been made on different business days to serve each agent. This statute also provides for the Secretary of State to receive service in other less common situations. No court order is required to use this statute.

c. If the basis for serving the Secretary of State is the failure to find the registered agent at the registered office, then the return of service reflecting the failed attempts should be filed before service is made on the Secretary of State. In addition, the plaintiff will obtain a new citation directing service to be made through the Secretary of State.

d. Substituted service on the Secretary of State is made by delivering to the Secretary of State duplicate copies of the process plus any fee required by law. (B.O.C. Section 5.252). Delivery to the Secretary of State may be made by certified mail, return receipt requested, by the clerk of the court in which the case is pending or by the party or the representative of the party (CPRC Section 17.026). A process server is not needed to make substituted service on the Secretary of State, but a process server may send the documents to the Secretary of State if the plaintiff so desires. A process server is needed to provide proof of the diligence used by the plaintiff to try to make service on the registered agent if the failure to find the registered agent is the basis for service on the Secretary of State.

e. When the Secretary of State receives service documents for an entity that has an address on file with the Secretary of State, then the secretary will forward one copy of the process to the named entity at the most recent address of the entity on file with the Secretary of State. If service is made on a nonresident pursuant to CPRC Section 17.044(a)(1 or 2), the secretary must forward the copy to the nonresident's home or home office. (CPRC Section 17.045(a)). The Secretary of State requires a plaintiff to designate the specific address to which the documents are to be mailed. The process documents must be accompanied by a letter stating the address to which the Secretary of State is to forward one copy of the documents. If the defendant has an address on file with the Secretary of State, then the plaintiff may find the correct address by searching the Secretary of State's records. If the nonresident has no address on file with the Secretary of State, then it is the plaintiff's job to locate the proper home or home office address for the defendant. The documents should designate the address provided as either the most recent address on file with the Secretary of State, or the home or the home office. If the process server is the person who mails the documents to the Secretary of State, the process server should read the letter that instructs the Secretary of State where to forward the documents and make sure that the address is designated as one of the three options stated in the previous sentence. If the process server has any questions, the process server should discuss the matter with the attorney requesting service.

Service on prison inmate.

Each prison warden is required to designate an employee at the facility to serve as an agent for service of civil process on inmates confined in the facility. The employee so designated is required to promptly deliver

the process to the appropriate inmate. (CPRC Section 17.029). This requirement became effective on September 1, 2011. Prior to that time, some prison wardens allowed service to be made on inmates only by a sheriff or constable. Other prison wardens allowed private process servers access to inmates to make service. Section 17.029 does not prohibit private process servers from delivering process directly to an inmate if access can be gained.

What documents must be delivered?

a. Regardless of whether service is to an individual or to an entity, the documents to be delivered are the same. To begin a new lawsuit, the plaintiff must file a petition outlining the plaintiff's claims against the defendant(s). The plaintiff must also obtain the issuance of a citation by the clerk of the court. The citation will name the defendant to be served with that particular citation. If there is more than one defendant, the plaintiff must obtain a separate citation for each defendant. The process server must always look at the documents attached to the citation to make sure what is actually being delivered.

b. The citation is the document issued by the clerk to inform the defendant of the lawsuit and to give notice to the defendant that the defendant must appear in court before a certain deadline. The citation must be delivered with a copy of the plaintiff's petition attached (except for suits for delinquent taxes and service by publication). The document issued by the clerk may be called something other than a "citation" or the document to be attached may be something other than "Plaintiff's Original Petition." The document issued by the clerk may be called a "Precept," a "Writ," a "Notice," or something else. The pleading to be served may be an amended petition, a counterclaim, a temporary injunction or something else. The requirements for serving the papers remain the same. The process server must deliver a copy of the document issued by the clerk (stating who is to receive service) with a copy of the party's pleading or the court's order attached, to the person named to receive service.

c. A party may request that additional documents be served with the petition. These documents will usually be "discovery" documents, but may be something else. Discovery documents are used to seek information from the other side in a lawsuit. The client may request service of "Interrogatories", "Requests for Admission", "and Requests for Production ", "Requests for Disclosure", or other documents. Whatever documents the client requests to be delivered should be delivered. These extra documents should be listed on the citation. The process server must always look at the titles of the documents being served; and make sure that all the documents listed on the citation are actually included in the papers to be served and that all the papers to be served are listed on the citation. If there is a discrepancy between the document(s) that the process server actually has and the document(s) listed on the citation, the process server should call this to the attention of the attorney.

d. When service is made pursuant to an order for substituted service, a copy of the order should be included in the papers delivered to the defendant. The order may contain a provision requiring that a copy of the order be delivered with the process papers. If the order contains such a provision, then service will be invalid if no copy of the order is included. Even if the court order does not expressly require that a copy of the order be delivered with the citation, it is best to include a copy of the order. When a person receives service that is not a primary method of service, the person may not recognize the service as valid service of process. The inclusion of a copy of the order will explain the situation.

Service of a subpoena (Rules 176.5, 500.8).

A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is at least 18 years old. A person need not be an authorized process server to be allowed to serve a subpoena; but private process servers are frequently employed for this service.

A subpoena must be delivered only to the named person in person, except that, if the named person is a party to the proceeding and is represented by an attorney of record in that proceeding, the subpoena may be delivered to the attorney of record. No other form of substituted service is allowed. When a subpoena is served, it must be accompanied by any fees required by law. These fees are set by Chapter 22 of the Texas Civil Practice and Remedies Code. A witness who appears pursuant to a subpoena is entitled to $10 per day that the witness attends trial. The $10 for the first day must be paid at the time the subpoena is delivered. If a subpoena is for production or certification of documents, the object of the subpoena is entitled to $1 for such production or certification. The fee is only $1 even if multiple documents or records are requested. The one dollar is to be paid to the witness at the time the subpoena is delivered. If the person who receives the subpoena is not required to attend a trial or hearing as a live witness, but only to certify to records, then the total fee is only $1. If the person is required to both attend and give testimony and produce or certify records, then the fee is $11. The required fee(s) must be paid at the time the subpoena is delivered. The fee may be attached to the subpoena and should be paid in cash. The $10 or $11 or $1 may be paper-clipped to the subpoena so that it is readily seen by the person who receives the subpoena.

Other laws not covered in this manual (Rule 108(a) and a variety of statutes).

This manual is not intended to cover all laws that may have to do with service of process. This manual does not cover all the laws that an attorney may need to use to decide how service should be made in a particular case. This manual is designed to cover only the delivery (service) of the process and completing and filing the return of service. It is the duty of the party or the party's attorney to decide what method of service should be performed. It is the duty of the process server to perform promptly the service requested and to file promptly the proof (return) of service with the court.

Rule 108(a) is not covered by this manual. This rule states several methods that may be used to serve a defendant in a foreign country. This manual does not attempt to explain the factors to consider in making service on a person in a foreign country, because there are many things that must be considered by an attorney in deciding how to attempt such service. The attorney may use the Hague Convention, which requires no participation by a Texas process server, but does require participation of a person versed in making such service.

The Judicial Branch Certification (JBCC) website: http://www.txcourts.gov/jbcc.aspx

This website may be used to access application forms, other forms, and information about certification of private process servers. This website may also be used to access the Texas Rules of Civil Procedure as well as Texas codes and statutes, including all those mentioned in this manual and those not mentioned in this manual.

In this manual:

- “TRCP” means Texas Rules of Civil Procedure; any reference to a "rule" means a rule in the Texas Rules of Civil Procedure.

- “B.O.C.” means Business Organizations Code
- “CPRC” means Civil Practice & Remedies Code

PART TWO-- RETURN OF SERVICE

What is a return of service?

The return of service is a written document that must be filed promptly with the court after service of process has been completed. The return constitutes proof that the proper person has received the proper notice in the proper manner and that the court has jurisdiction over the defendant named in a lawsuit or the respondent named in certain other proceedings. "Jurisdiction" means that the court has the authority to exercise its power over this particular defendant with regard to this particular proceeding. A return of service may sometimes be referred to as a "proof of service" or simply as "the return."

The return may be filled out on the form provided on the same piece of paper on which the citation is printed; or the return may be drafted on a separate sheet of paper. Anything filled in by hand must be entirely legible. If the return is drafted on a separate piece of paper, it should be typed.

If a defendant files an answer in a lawsuit, then the court has jurisdiction over the person of the defendant without further proof. If the defendant fails to file an answer within the prescribed period of time, then the court can proceed only if proof has been properly filed showing that the correct person has been properly served with the required notice of the proceeding. If such proof is in the proper form the court may sign a default judgment against a defendant. Both the plaintiff and the defendant, as well as the court, must depend on the capability and integrity of the process server. The plaintiff depends on the process server to correctly complete and file a return of service so that the court will know it can proceed with the plaintiff’s case. The defendant depends on the process server to correctly state the facts so that a court will not grant a default judgment against the defendant if the defendant has not received proper notice of the suit. It is not enough that a defendant knows about a lawsuit; the defendant must receive proper notice so that the defendant knows that a response is legally required. An improperly granted default judgment may cause great, unjustified, and irreparable harm to a defendant. Likewise, an improperly granted (or even a questionable default judgment may result in great added expense to the plaintiff. A default judgment that is declared invalid may result in considerable delay to the plaintiff in obtaining a valid judgment or may result in the loss of any opportunity to obtain a valid judgment against the defendant.

The rules regarding returns of service are very precise, very strict, and must be followed exactly. The system depends on the absolute honesty, accuracy, and conscientiousness of the process server.

Rule 107 TRCP is the primary rule regarding requirements for returns of service in district and county courts. The rule expressly refers to service of a citation; but the same requirements also apply to writs, precepts, and other documents the process server may be requested to serve. Rule 501.3(b) is the rule for returns of service in justice courts. Rule 501.3(b) contains requirements identical to Rule 107.

Who must file a return of service?

Any officer or authorized person who attempts to execute a citation must complete and file a return of service. This is true regardless of whether the attempt was successful or unsuccessful. Properly drafting and filing a return is the duty of the process server-- not the duty of the process server company or anyone else. The process server may give a copy of the return to the plaintiff's attorney, but may not rely on the attorney to file the return. The return may be physically delivered to the court by another person, but any failure to deposit the return with the clerk of the court will be considered the fault of the process server who made the service.

Where and how must the return of service be filed?

The completed return must be filed with the clerk of the court in which the subject lawsuit is filed.

The return may be filed by depositing a hard copy with the clerk of the court. The return may be attached to the citation or filed separately.

The return and any document to which it is attached may be filed electronically or by facsimile if those methods of filing are available.

When must a return of service be filed?

An officer or authorized person who receives process papers to be served must execute the papers and file a return without delay. The law does not prescribe a certain number of hours or days as a deadline for filing a return. A return must be filed promptly after a citation has been executed. If an attempt to execute a citation is unsuccessful, a return of attempted service must be filed; but the process server is not required to file a return promptly after each attempt if the attempt is part of one continuous effort with each attempt being reasonably close in time to the previous attempt. However, the return still must be filed with reasonable promptness after diligent effort has been made to secure successful execution of the papers or when efforts lapse.

After one or more unsuccessful attempts to deliver process, if successful delivery is achieved within a reasonable time, then it is usually not necessary to file a return regarding the unsuccessful attempts. Issues regarding time limitations on when a lawsuit may be filed and served can sometimes make a return of unsuccessful attempts necessary even when service has been achieved. The process server should consult the attorney regarding whether a return of the unsuccessful attempts is needed.

In a repair and remedy case against a landlord in Justice Court, the return of service must be filed at least one day before the appearance date. (Rule 509.4(a)). In an eviction case against a tenant, the return must be filed at least one day before the date set for trial. (Rule 510.4(b). A private process server is not allowed to perform service in eviction cases unless expressly authorized to do so by written order of the court.)

There are a few instances when the law requires that a return not be filed until a certain number of days after service is made. For instance, when substituted service is made through the Secretary of State, the return shall not be filed less than 30 days after the day of service. Sometimes, a court order for substituted service will order that a return not be filed until a certain length of time after service is made. When any time restriction applies to a situation, the process server must take note and obey the directive.

If an attorney requests that the process server not file the return or not file the return promptly, this request is contrary to law and must not be honored. A process server may deliver a copy of the return of service to the attorney who requested service, but this does not take the place of prompt filing of the return with the clerk of the court. The return of service does not belong to the party who paid the process server to make the delivery. The return of service is a document required to be filed with the court; and the process server's duty to file the return arises when the process server makes or attempts to make service.

What must be included in a return of service? Rules 16, 107(b) and 501.3 TRCP.

Each return must include the following:

a. The cause number, case name, and the court in which the case is filed. If the return is filled out on the form that is on the same piece of paper with the citation, then these three items are on the citation and need not be repeated in the return. If the return is drafted on a separate piece of paper, then these three items should appear at the top of the page on the return.

b. A description of what was served. The process server must read the title of each document that is included in the process papers and carefully list each document on the return. The primary document to be served will be issued by the clerk of the court and will usually be a citation. A copy of the plaintiff's petition must be attached to the citation; and other documents may also be attached. The return should show that the petition was "attached." The plaintiff's petition will usually be entitled "Plaintiff's Original Petition," but may be an amended petition or supplemental petition or counterclaim. The plaintiff may include other documents that the plaintiff wishes to have served with the petition. These documents may be Interrogatories, Requests for Admission, Requests for Production, Requests for Disclosure, or something else. All included documents must be listed to show that the defendant received each one. The listing of these other documents may be vital to the plaintiff for success in subsequent pretrial procedures.

   If alternative service is made pursuant to an order of the court, and the order requires that a copy of the order be served with the citation, then a copy of the order must be included with the process papers; and the return must list such copy. If such a copy is required, the return will be invalid if the copy is not listed. If the order does not require that a copy of the order be served, but a copy of the order is nevertheless included with the process papers, such copy should be listed.

   Instead of a citation, the document issued by the clerk may be a precept, a writ, or something else. The document attached may be a temporary injunction, temporary protective order, or something else. It is the process server's duty to determine what papers are being delivered and to make sure that each document is correctly listed on the return.

c. The date and time the process was received for service. This means the date and time that the process server picked up the documents from the clerk or received them from the attorney. If a process server works for a process server company that receives process papers and subsequently distributes the papers to individual process servers to make actual delivery, the process server may use the date and time that the company received the papers rather than the date and time that the process server picked them up from the company. Process server companies frequently use a date stamp on the face of the citation to record this information. This information must also be included in the return.

d. The person or entity served. The return must include the name of the person or entity to whom the citation or other document was delivered or attempted to be delivered. The name of the person named in the return should be exactly the same as the name stated in the citation to receive service. However, the process server may state only what the process server actually knows with reasonable certainty. The process server will ask the name of the person receiving the papers and seek to obtain the person's affirmation of the complete correct name. If you ask the person if he is "Larry L. Smith;" and the person says only, "I'm Larry," then all you know is "Larry;" and that is all you may write on the return. Of course, this name will not be sufficient; and the return will be invalid. The process server must politely pursue the complete identification of the person receiving the process. If the person to receive process is named as "William L. Jones," then confirmation is needed that the person receiving the process actually is "William L. Jones." If the person will state only, "I'm Bill Jones," this is what the process server must write on the return. Sometimes, a court will accept the common name "Bill" for the common name "William," but the process server cannot really count on such leniency. In this current example, even if the court would accept "Bill" in place of "William," the return would be considered invalid without the middle initial. If the name on the citation includes a suffix, then the name on the return is not complete without the suffix (that is, "Jr.","Sr.", "III", etc.).

   A defendant may be named in his individual capacity or in a representative capacity. An example of the importance of "capacity" is a suit against a trust. A trust cannot be sued directly. Instead, the defendant must be named as "[name of individual], as Trustee of the [name of trust]." When a person is sued in a representative capacity, the name of the defendant listed on the return must include the whole designation, including "as Trustee of the [name of trust]." If you fail to include the representative capacity in the return, the return will be invalid to show delivery to the proper defendant.

   When service has been made to an entity, the name of the entity must be the same on the return as the name in the citation. If the citation says, "ABC Ltd," then the return must reflect the name of "ABC Ltd," not "ABC LCC" or any other name. If the process server finds that the name of the company is different from the name on the citation, then the unserved citation should be returned to the plaintiff for review.

e. The address served. The return must include the complete address at which the documents were delivered. The address -must include the street number, street name, apartment or suite number, city, state, and zip code. The return must also state the name of the country if service is made outside the United States. If the documents were delivered at a meeting place, such as a restaurant or a constable's office, the return must state the address of such meeting place. In addition, though it is not a legal requirement, the return should state the name of the business located at that address -- such as "Office of Constable of Precinct #4" or "McDonald's." This is so because the listing of an address that appears to have no connection to the defendant may cause the return to be questioned.

   If the documents were delivered in the middle of a street or a park or somewhere other than a precise address, then include the closest address and explain what really happened and as nearly as possible where the defendant was when the documents were delivered.

   If the documents were not delivered at the address listed in the citation, you should explain the defendant's connection to the location or why you made the delivery at the location where it was made and how you knew the person to whom the delivery was made was actually the person named in the citation. This is true also if the citation says, "Wherever he may be found." This explanation is not a legal requirement; but many courts are uncomfortable with the granting of default judgments and will want

explanations of any information that is not clearly related to the correct defendant. The process server who provides this detail will demonstrate thoroughness and reliability.

f. The date and time of service or attempted service. If service was successful, the return must state the date and time that service was made. If service was not successful, the return must state the date and time of each attempt. If service was by mail, the return must state the date and time of mailing. It is not necessary to state the date on which the defendant received the mail. If service was made pursuant to an order authorizing substituted service, and if the order required mailing in addition to another method (such as attaching to the door), the return must state the date and time that each method was performed.

g. The manner of delivery of service or attempted service. This means that you must state exactly how you delivered or attempted to deliver the process.

    1. *Delivery in person*. If you delivered the documents directly into the hands of the defendant, then you will state on the return that you delivered the documents to the defendant "in person." Do not say merely that you "personally delivered" the documents. This latter language denotes that you yourself did something. It does not state how you did it.

       If the defendant refused to take the documents in hand, and you deposited the documents in front of the defendant within the defendant's view pursuant to Part One, Section VI(b), then you may still say on the return that you delivered the documents to the defendant in person. However, if you did anything other than deliver the papers directly into the hands of the defendant, you should explain the exact facts in the return, such as: "After I told the defendant I was trying to serve this citation, the defendant refused to take the papers, so I laid them on the desk in front of the defendant."

    2. *Delivery by registered or certified mail*. If you made successful service by mail pursuant to Part One, Subsection VI(c), you must state on the return that you made service by [whichever kind of mail you used] return receipt requested, and that the return receipt is attached to the return. The original return receipt must be attached to the return. You must state the kind of mailing that was done, either "registered" or "certified," but not "by registered or certified mail." If service was in a justice court, then the return must also state that the mailing was by "restricted delivery."

       If you received back no signed return receipt, then you must make a return of attempted service. In the same return you may state attempted delivery by other means as well if you clearly state the manner of attempted delivery as to each attempt. However, the process server must keep in mind the requirement to file the return without delay. If the various attempts to deliver the citation are not all part of one continuous effort, with each attempt reasonably close in time, then an intent to make more attempts later will not permit the process server to fail to file promptly the return reflecting one or more unsuccessful attempts to deliver the process, even if the attempts are not yet enough to justify an order for substituted service. Because the signed return receipt must be attached to the return of service, the process server must wait a reasonable length of time for the receipt to be returned by the post office before filing a return regarding service or attempted service by certified or registered mail.

3. *Delivery by alternative (substituted) service pursuant to a court order.*

   a. If service is made by alternative service pursuant to Rule 106(b), the proof of service shall be made in the manner ordered by the court. The server must carefully read the entire order for substituted service to make sure that the server carefully complies with each part of the order, including any order regarding the return of service. If the order gives a directive with regard to the return, the server must make sure to follow such directive. In addition, the return must still contain all of the items otherwise required for returns. If the order says nothing about the return of service, the return must contain all the items otherwise required for returns and also contain any information needed to show that the server complied with all parts of the method of service set out in the order granting substituted service. When service is made by alternative service, the return must still state that the citation was "delivered to [defendant's name]" even though the delivery was not directly to the defendant. The return must also contain additional information as to with whom, if anyone, the papers were actually deposited.

   b. If service was made by leaving the papers with someone over 16 years of age, then the return must reflect exactly that-- that the papers were delivered "by leaving with a person over 16 years of age." This necessary information may be accompanied by additional information --such as, "a person over 16 years of age who said that she was the defendant's mother" or "a person over 16 years of age who said his name was Richard" or "a person over 16 years of age who was an overweight middle aged female." The more details you supply, the less likely it is that the court will want to hold a hearing to obtain more information in response to a motion for default judgment. Further, the more details you put in the return, the easier it will be for you to testify to give details about your service, if called upon to do so, even if you have lost your notes about the particular service at issue.

      If the order says that service may be made by leaving with a particular named person, or with the defendant's mother, attorney, property manager, or other particular description, the return must expressly state facts to show that the citation was left with the particular person described in the order.

   c. If service was made by attaching to the door, the return must describe how this method was carried out. If the order prescribes a particular door, then the return must reflect that the papers were attached to that door. If the order prescribes no particular door, the door should nevertheless be described in the return, which should state that the papers were "delivered to [defendant's name] by attaching to the [front] door at [address]." If service was made by attaching to a gate, then the return must state that the papers were attached to the gate specified in the order.

      If service is made by attaching to a door or gate, the papers should be enclosed in a wrapper sufficient to protect the documents from wind and moisture. If the order required that the documents be so enclosed, the return must state that the documents were so enclosed. If the order did not specify such protection, the return should nevertheless describe the protection provided for the documents.

The order will not likely require any particular method of attachment to the door, but it is good to include specific information as to how it was securely attached.

The form of order most often used by courts in Harris County and sometimes by courts in other counties to authorize service by attaching to a door also requires mailing by both certified mail with return receipt requested and regular first class mail to the same address at which the documents were left on the door. Other variations of this order are also used. The order may require certain specifics in the return, such as a statement as to the results of each mailing, that is, whether the mail was returned by the post office or a return receipt was received.

If service was made by attaching to the front door together with mailing by first class mail, the return should reflect exactly that-- that the papers were delivered "by attaching to the front door at [address], and mailing a copy by first class mail addressed to the defendant at the same address." If the order states that copies shall be mailed by both first class and certified mail return receipt requested, then the return must reflect that the complete process was carried out. The return must show that the papers were delivered "by attaching to the front door at [address], and by mailing copies by both first class mail and certified mail return receipt requested to defendant at the same address." If the order states that the return must include the results of any mailing, then the return must provide this information, such as "the certified mail was returned by the post office, but the first class mail was not returned." If the order states that any mail returned by the post office shall be attached to the return, then any such returned mail must be attached to the return, even though it may be bulky.

If the order states that a copy of any envelope returned by the post office must be attached to the return, then a copy of the front of the envelope must be attached to the return. If the post office notations reflecting attempted delivery are on the back of the envelope, then a copy of the back of the envelope should also be attached. When the order does not require that the entire returned envelope be attached to the return, the server should keep the returned envelope for some period of time in case there is a question regarding the mailings. When service is by mail as described in (2) above, the signed return receipt must be attached to the return. With substituted service that includes service by certified mail, the return receipt need not be signed by the defendant, but will either be part of the returned documents required by the order to be attached to the return, or will be part of the copy of the envelope that must be attached to the return.

d. If alternative service is made by first class mail, then the return must show that the documents were delivered "to [defendant's name] by mailing by first class mail to [address]." If the service is alternative service by court order, then the documents need not be mailed by certified mail and no return receipt is attached to the return of service.

4. *Additional requirements when the defendant is an entity*. Except in instances in which service is made through the Secretary of State or other narrow circumstances, a business entity or any other entity that is not an individual person must always be served by delivery to an agent as provided by law. The return of service on an entity must state that the citation was delivered to [the name of the defendant] and also show who actually received the papers for the defendant entity. A return of service on an entity must state:

a. that the papers were delivered to the defendant entity;
b. the name of the individual agent who actually received the papers;
c. the capacity of that individual to receive service on behalf of the defendant entity;
d. that such individual received the papers in person.

An example might be that the papers were executed "by delivering to defendant ABC, Inc. by delivering to Bob Doe, its registered agent, in person." The "capacity" of the person to receive service means the status that the person has that is designated by law as a class of persons who are legally authorized to receive service on behalf of an entity defendant. The best, and least likely to be challenged, way to deliver to a registered agent or other agent for service is “in person” except when the registered agent is itself an entity (organization) (see below).

When describing the capacity of an agent for service, the term "agent for service" is not sufficient. The description must show why the agent is an agent for service. That is, the agent must be described as "registered agent," "president," "vice president," "manager," "county judge," or whatever other title correctly describes the agent.

When papers are delivered to a person as an agent for another person or entity, the return must show that the person receiving the papers received them in a representative capacity. If Bob Doe is the registered agent of ABC, Inc., and the return says only that the process was delivered "to Bob Doe," this will not be sufficient to show that the defendant ABC, Inc. was served.

5. *Additional requirements when the registered agent is an organization*. A registered agent that is an organization, being itself an entity, can receive delivery of process papers only through its own agent that is an individual. A return of service for service to a registered agent that is an organization must state:

    a. that the papers were delivered to the defendant entity;
    b. the name of the organization that actually received the papers;
    c. that the organization is the registered agent;
    d. that the papers were delivered to the organization's employee in person at the registered office.

The return should state the name of the employee who actually received the papers, though the employee's name is not expressly required by the statute. It is expressly required that the person who received the papers in hand be described as an employee of the organization at the registered office. Though the registered agent organization cannot receive service in person, the employee must receive service in person.

An example might be that the papers were executed "by delivering to defendant ABC, Inc. by delivering to XYZ, Inc., registered agent, by delivering to its employee, Bob Doe, in person, at [address), which is the registered office."

6. *Substituted service on the Secretary of State*. When service is made pursuant to a statute that designates the Secretary of State as an agent for service of process in the relevant instance, the return should reflect that the process was executed by delivering duplicate copies of the [process),

together with the required fee, to the Secretary of State, to be forwarded to [name of defendant] at [address].

h. The name and signature of the person who served or attempted to serve the process; and if the process server is certified by the JBCC under order of the Supreme Court, then the process server's identification number and the date of expiration of such certification.

1. When the service was made by a sheriff, constable, or clerk of the court, the return must reflect the office of the server. If the service was made by the official personally, then the return will contain the printed name of the official, the office that the official holds, and the signature of the official. If the service was made by a deputy, then the return must contain the name and office of the official for whom the server is a deputy, the name of the deputy, and the deputy's signature. The signature is not required to be legible, but the name of the official, the office of the official, and the printed name of the deputy must be legible.

2. When the process server is a person other than a sheriff, constable, or clerk of the court, the return must be either verified or signed under penalty of perjury. In addition, if the process server is certified under order of the Supreme Court, the server must state his or her identification number and the expiration date of such certification. The signature of an authorized or certified person should be the same name as listed on the order authorizing or certifying the person. If the process server works for or through a process server company, the name of the company is not required on the return.

If the process server chooses to have the return verified, then the server must appear before an officer authorized to administer an oath, usually a notary, be sworn, state that the statements in the return are true and correct, and sign the return in front of the notary. The return must be completely filled out before it is signed. The process server may not simply fill out the return, sign it while not before the notary, and drop it in a tray to be signed by the notary later. It is against the law for a notary to notarize a document that was not signed in front of the notary. It is against the law for a notary to sign blank returns and allow the process server to fill in the return later. No one may use the name or notary seal of another person to notarize a document. No one may notarize his/her own signature.

The signature block of an authorized or certified process server together with the notary's statement should be similar to the following:

Printed name: _____ I.D. #, if applicable: _____

Expiration date: _____
Signature: _____

On this day _____ (name of server), _____
Known to me by _____ [driver's license/personal acquaintance] _____
to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that the foregoing statements are true and correct.

Sworn to and subscribed before me on this day of _____ 20_____

Printed name of notary: _____

[notary seal]

Signature of notary: _____

If the process server wishes to do so, the process server may sign the return "under penalty of perjury." This means that the process server need not appear before an officer authorized to administer an oath, but may simply write out a declaration that the information on the return is true and correct. Rules 107(e) provides a form that must be used to make such declaration. Rule 501.3(c) provides the same form for justice courts.

The form is as follows, with the addition of spaces for the identification number and expiration date.

My name is: _____ my date of birth is: _____
(First) (Middle) (Last) (Month) (Day) (Year)

And my address is _____
(Street [and Number]) (City) (State) (Zip Code) (Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____ , on the _____ day of _____
(Month) (Year)

_____ (Signature) Declarant

I.D. # (if applicable): _____ Expiration date: _____

The entire declaration should be typed, if possible, except for the signature. Both the information in the return and the declaration must be 100% readable. You must use the name on your JBCC certificate. You may not use initials unless the initials are on your birth certificate. The address may be a home address or a business address, but it must be the process server's own address. The process server may not borrow an address or use someone else's address to avoid divulging the process server's own location. The process server may use the business address of a company, if the process server is employed by that company. A process server who merely does contract work for a company may not use the company's address. If you work out of your home, then that is the address you must use. The address must include the street, street number, and any applicable suite or apartment number, together with the city, state, zip code, and country. The use of a post office box number or the address of a private mailbox service, instead of a street address, is not recommended.

Only the process server who delivered the papers to the defendant may sign the return. No one else may sign the return. A process server may not delegate this responsibility to another process server or to

anyone else. The process server may not give a power of attorney or any other permission for someone else to sign the process server's name on a return of service.

What is required in a return of attempted service?

When service has been unsuccessfully attempted, the process server is still required to file a return. The return must be filed promptly, but not necessarily promptly after each individual attempt. An allowance is made so that the process server may continue to attempt service and report a series of attempts in one return. Such a return must include all the elements required in a return of successful service, with some additions as follows:

a. The cause number, case name, and the court in which the case is filed.

b. A description of the documents the process server attempted to deliver.

c. The date and time the process was received for service.

d. The person or entity to whom service was attempted.

e. The address at which service was attempted. Each attempt will usually be made at the same address, but if attempts are made at more than one address, then each address must be reported in the return together with the other required information with respect to each attempt.

f. The date and time of each attempted service.

g. The manner in which delivery was attempted. If delivery was attempted by more than one method, such as by mail and in person, then the manner of each attempt must be reported in connection with the respective attempt. If all the attempts were made in the same manner, then the return may state the manner once and indicate that the manner applies to each attempt.

h. The diligence used to execute the process. Diligence is shown by how much effort was used to try to serve the process, which is usually shown by the number of attempts made to deliver the papers in a proper manner. Diligence may include the process server's attempts to locate the defendant when the address given for service is a bad address. It is not helpful to state, "I diligently attempted to deliver the process." The process server's assessment of the process server's own diligence will not be credited by the court. Instead, the process server must show what the process server did to try to make service.

i. The cause of failure to execute the process. The process server must give a simple description of the result of each attempt. The result is the "cause of failure." Possible results might be: "No one answered the door;" or "Woman answered door, said she was defendant's wife, and defendant not at home;" or "No one answered the door, but I saw a face peeking around the curtain at a window near the door."

j. Where the defendant is to be found, if ascertainable. If the process server believes that the address at which service was attempted is indeed the correct address, the return should contain facts to support this belief, such as: "There was a car in the driveway, license # ABC 123; I looked at [public records] and found that this license # is assigned to the defendant; I talked to the lady who said her name was Alice, who lives next door at [address], and she said that she knows the defendant and he does live at this address;" or "A woman receptionist said defendant does work here, but is not in today." If such

statements are included in the "results" of the attempts, then the statements need not be repeated; but the process server may state that the defendant should be found at the address where service was attempted based on such information.

The process server may discover that the address is vacant or that someone else, and not the defendant, now occupies the location. If the process server can ascertain a new address for the defendant, then such address should be stated, together with the facts that support the validity of such address. If feasible, the process server who finds a new address may continue to attempt service at the new address without filing a separate return regarding the original address, if all the attempts are still reasonably close in time.

k. The name and signature of the person who attempted to make service. If service was attempted by more than one process server, then each process server must file a separate return as to the attempts made by that process server. Only one process server may sign a return.

l. Identification number and date of expiration of certification, if the process server is certified under order of the Supreme Court.

m. The return must either be verified or be signed under penalty of perjury, if the process server is a person other than a sheriff, constable, or the clerk of the court. The prescribed form is given in Section V(h)(2) above.

What is required in an affidavit of attempted service to support a motion for substituted service?

An affidavit is a written statement of facts that the declarant signs and either states under oath or declares under penalty of perjury to be true and correct. Therefore, a return of service or return of attempted service properly completed by a private process server is an affidavit, because the process server must either verify the return or sign it under penalty of perjury. Even though the return is itself an affidavit, it is not sufficient for a motion for substituted service. Rule 106(b), which allows a court to grant an order for substituted service, requires that the motion for substituted service be supported by an affidavit that states the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and further states that service has been attempted at the address stated, but has not been successful. This requirement for a description of the defendant's connection with a location is not necessarily a requirement for a return of service. Therefore, the plaintiff will probably need an additional affidavit to attach to a motion for substituted service. Such an affidavit should include all the requirements for a return of attempted service plus a statement that the location specified is "defendant's usual place of business" or is "defendant's usual place of abode" or is "a place where the defendant can probably be found." Do not run together that the location is "defendant's usual place of business or usual place of abode or other place where the defendant can probably be found." This will indicate that you do not really know what the location is; and you've just been told to use this address; or maybe you have never really seen it. If service was attempted by more than one server, each server must make a separate affidavit. Two people cannot sign the same affidavit. Each affiant may testify only to facts within that affiant's personal knowledge.

When service has been unsuccessful, this leads to a natural question of whether service has been attempted at a correct address. The affidavit should state how you know the connection of this address to the defendant. The defendant's connection to an address may be shown by the description of the result of the attempted service, such as "an older man who said he was the defendant's father answered the door and said that defendant lives here but is not at home now." Absent such a definitive statement, the process server may

need to consult with neighbors or more than one public record to show that the address really is the defendant's residence.

The process server seldom has personal knowledge of the location of a defendant's residence or business, but the process server may state the address of such location and explain the facts upon which the process server bases this statement. The facts available to the process server may be something like, "the neighbor at [address], who said her name is Bess Green, told me the defendant lives at this address;" or "the receptionist at the office said the defendant works there." Either of these bits of information is probably enough by itself. Other evidence may not be as conclusive. For instance, an appraisal district record may show that the defendant is the owner of a home, but that does not necessarily mean that the defendant lives in that home. Indicators that may be used in combination are facts such as "the license tag number xyz 123 on the Chevrolet Malibu in the driveway at this address is shown on public records as issued to defendant; this is the address given for defendant on Harris County voter registration records; the U.S. postal service has confirmed that defendant receives mail at this address." All of the foregoing examples are hearsay, but may be used as evidence in this instance as long as the facts stated show that the information is probably reliable.

No court wants to allow substituted service at an address that will not likely result in actual notice to the defendant. No court wants to order service that will result in a wrongful default judgment. The courts must rely on the truthfulness and thoroughness of the process server. Courts may differ in the amount of detail required in an affidavit for substituted service.

Regardless of the amount of detail included, every statement in an affidavit must be a true statement of fact. Affidavits must not include subjective opinions or suppositions or speculations. An affidavit must be a statement of the person making the affidavit (the affiant), and not the statements of other people. The affiant may swear only to facts of which the affiant has personal knowledge. If the neighbor tells you that the defendant told her he was hiding from process servers, you cannot say, "The defendant is hiding from process servers." You do not know of your own knowledge that the defendant is purposefully hiding from process servers. But you may say, "The next door neighbor at [address], who said her name is Jill, told me that the defendant told her that he was hiding from process servers." This statement is hearsay, but it can be used in this context. Your personal knowledge is knowledge of what the neighbor told you.

If the location is alleged to be an "other place where the defendant can probably be found," then facts must be stated to show that the defendant really can be found at this location with some regularity. Again, the facts stated may be hearsay as long as the affiant states the correct source of the information and facts to show the information is probably reliable.

In the body of the affidavit, the affiant must expressly state that all statements of fact in the affidavit are true and correct. If the affidavit contains hearsay statements clearly shown as made by another person, the affiant is affirming that the other person made the statement to the affiant, not that the other person's statement is true.

Return of service of a subpoena (Rule 176.5 (b).

Proof of service of a subpoena must be made by filing either:

a. the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

b. a statement by the person who made the service stating:

1. *the date and time of service;*

2. *the manner of service; and*

3. *the name of the person to whom the subpoena was delivered, which must be the same name to whom the subpoena is directed.*

The statement required in (b) above must be signed by the person who delivered the subpoena, and must show that the person who served the subpoena was authorized to do so. The authorization comes from Rules 176.5(a) and 500.8(d), which specify the manner of service and the persons who may make service. A person need not be an authorized process server in order to serve a subpoena. Therefore, the requirement that the proof of service must be either verified or signed under penalty of perjury does not apply to proof of service of a subpoena. The proof of service should reflect that the person making service is either a sheriff or constable of the State of Texas, or is a person who is not a party and is 18 years of age or older. If the process server is certified by the Supreme Court, the process server should include his or her certification number and expiration date even though these items are not expressly required by the rules for subpoenas.

A subpoena should be accompanied by a fee to the witness; and the proof of service should reflect the amount of the fee and that such fee was paid or tendered to the witness.

Amended Return of Service (Rule 118). (Not recommended).

An incorrect return of service may, according to the rules, be amended to correct deficiencies. This manual does not attempt to explain how to do a valid amended return of service. Few efforts to make an amended return are found valid by appellate courts. If a return is incorrect, the best course of action is to make service over again.

It can be said with certainty that it is improper for a process server to simply fill out and file a second return and label it as an amended return. Such a second return will be considered a nullity (a nothing), and will be a waste of time. To make an amended return, an attorney must file a proper motion accompanied by proper attachment(s), and obtain an order from the trial court that will be acceptable to an appellate court.

APPENDICES

Criminal Law

Although the enforcement of law is not within the realm of process service there are some statutes that the process server should be familiar with. The following sections from the Texas Penal Code are included as information that could possibly prevent your unknowingly violating some law resulting in your arrest or indictment. As we have always been told, ignorance of the law is no excuse.

Sec. 22.01. Assault.

(a) A person commits an offense if the person:
  (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
  (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
  (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:
  (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;
  (2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:
    (A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or
    (B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;
  (3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:
    (A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or
    (B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;
  (4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or
  (5) a person the actor knows is emergency services personnel while the person is providing emergency services.

(b-1) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:
  (1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;
  (2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

(e) In this section:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(2) Repealed by Acts 2005, 79th Leg., ch. 788, §6.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of Subsections (b)(2)(A) and (b-1)(2):

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

Practical Applications:

Assault can result from physical contact or verbal threats of harm. It is important to know that assault is open to interpretation by a person affected by the conduct, any witness present and anyone investigating the occurrence. Rule of thumb is to always look for a way to defuse or avoid any potentially emotionally charged situation. Offering courtesy, respect or even sympathy will normally ease any tense occurrence you are faced with. Sometimes the best thing to do is to remove oneself from the problem without any further communication. Having a witness with you on matters that you anticipate as potential problems can be helpful

if a situation results. Attempting to complete delivery of a legal document does not provide any additional easement or authority that provides a defense to this charge.

Sec. 38.16. Preventing Execution of Civil Process.

(a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.
(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.
(c) An offense under this section is a Class C misdemeanor.

Note: Attorney General Opinion GA-0113 was made on this subject.

Practical Applications:
Although this offense is on the books it is rarely used if at all. It is something that is not enforced due in part that most District Attorney Offices will not accept this. It has even been suggested that for a server to recite this code could be received as a threat and should be avoided altogether.

Sec. 37.02. Perjury.

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:
    (1) He makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or
    (2) He makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.
(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. Aggravated Perjury.

(a) A person commits an offense if he commits perjury as defined in Section 37.02, and the false statement:
    (1) is made during or in connection with an official proceeding; and is material.
    (2) An offense under this section is a felony of the third degree.

Sec. 37.04. Materiality.

(a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.
(b) It is no defense to prosecution under Section 37.03 (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.
(c) Whether a statement is material in a given factual situation is a question of law.

Sec. 37.05. Retraction.

It is a defense to prosecution under Section 37.03 (Aggravated Perjury) that the actor retracted his false statement:

(a) before completion of the testimony at the official proceeding; and
(b) before it became manifest that the falsity of the statement would be exposed.

Sec. 37.06. Inconsistent Statements.

An information or indictment for perjury under Section 37.02 or aggravated perjury under Section 37.03 that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Sec. 37.10. Tampering with Governmental Record.

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law or rule requiring that reporting, or a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(D) a search warrant issued by a magistrate[1].

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board under Section 41.43(a-1), Tax Code, that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

[1] Section 37.10(c)(2)(D) added by Acts, 2015, 84th Leg., H.B. 644 §3, effective September 1, 2015.

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;
(2) a felony of the third degree if the offense is committed under:
(A) Subsection (a)(1), (3), (4), or (6); or
(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and
(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

Practical Applications:

Perjury and related offenses can occur when you intentionally or knowingly report delivery or attempted delivery when those occurrences did not take place. This could be in an affidavit of service or in an affidavit to support substitute service as well as testimony given in an official proceeding. It is extremely important to make sure that the record you are providing reflects what actually took place without exception. If you discover or know that delivery was not proper you will only make matters worse by falsely reporting in your return of service. Correcting a "flawed" delivery is somewhat simple and fairly inexpensive by making delivery again compared to trying to cover up that error by falsely reporting what occurred which may result in criminal charges and potentially losing your authorization to be a process server. To help avoid mistakes in the record it is important to make good notes while working the assignment and consulting those notes when completing any affidavit. If someone else drafts the affidavit, by signing it, you as the server, are taking full responsibility for the document once completed. Proofread anything before signing it. Once the affidavit of record is filed with the court it cannot be altered in any way. If an error is discovered an amended affidavit may be the way to correct it but under no circumstances do you attempt to change or alter what is now part of the court record. Conviction of any of these charges would result in revocation of your authorization to be a process server.

Sec. 37.11. Impersonating Public Servant.

(a) A person commits an offense if he:
(1) impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; or

(2) knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

(b) An offense under this section is a felony of the third degree.

Practical Applications:

Private Process Servers are not recognized currently as public servants or officers of the court. Portraying yourself as one could result in being charged with this offense.

Sec. 30.05. Criminal Trespass.

(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:
  (1) had notice that the entry was forbidden; or
  (2) received notice to depart but failed to do so.

(b) For purposes of this section:
  (1) "Entry" means the intrusion of the entire body.
  (2) "Notice" means:
    (A) oral or written communication by the owner or someone with apparent authority to act for the owner;
    (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;
    (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;
    (D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:
      (i) vertical lines of not less than eight inches in length and not less than one inch in width;
      (ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and
      (iii) placed at locations that are readily visible to any person approaching the property and no more than:
        (a) 100 feet apart on forest land; or
        (b) 1,000 feet apart on land other than forest land; or
    (E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.
  (3) "Shelter center" has the meaning assigned by Section 51.002, Human Resources Code.
  (4) "Forest land" means land on which the trees are potentially valuable for timber products.
  (5) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.
  (6) "Superfund site" means a facility that:
    (A) is on the National Priorities List established under Section 105 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9605); or
    (B) is listed on the state registry established under Section 361.181, Health and Safety Code.
  (7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:
    (A) a chemical manufacturing facility;
    (B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;
(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
(E) a natural gas transmission compressor station;
(F) a liquid natural gas terminal or storage facility;
(G) a telecommunications central switching office;
(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;
(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or
(J) a transmission facility used by a federally licensed radio or television station.

(8) "Protected freshwater area" has the meaning assigned by Section 90.001, Parks and Wildlife Code.

(9) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:
(A) has firearm proficiency requirements for peace officers; and
(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(10) "Recreational vehicle park" has the meaning assigned by Section 13.087, Water Code.

(11) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

(d) An offense under this section is:
(1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);
(2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed:
(A) on agricultural land and within 100 feet of the boundary of the land; or
(B) on residential land and within 100 feet of a protected freshwater area; and
(3) a Class A misdemeanor if:
(A) the offense is committed:
(i) in a habitation or a shelter center;
(ii) on a Superfund site; or
(iii) on or in a critical infrastructure facility; or
(B) the person carries a deadly weapon during the commission of the offense.

(e) It is a defense to prosecution under this section that the actor at the time of the offense was:
(1) a firefighter or emergency medical services personnel, as defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;
(2) a person who was:
(A) an employee or agent of:
(i) an electric utility, as defined by Section 31.002, Utilities Code;
(ii) a telecommunications provider, as defined by Section 51.002, Utilities Code;
(iii) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code;
(iv) a gas utility, as defined by Section 101.003, Utilities Code, which for the purposes of this subsection includes a municipally owned utility as defined by that section;
(v) a gas utility, as defined by Section 121.001, Utilities Code;
(vi) a pipeline used for the transportation or sale of oil, gas, or related products; or
(vii) an electric cooperative or municipally owned utility, as defined by Section 11.003, Utilities Code; and

(B) performing a duty within the scope of that employment or agency; or

(3) a person who was:

(A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and

(B) performing a duty within the scope of that employment or agency.

(f) It is a defense to prosecution under this section that:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and

(2) the person was carrying:

(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B) a handgun:

(i) in a concealed manner; or

(ii) in a shoulder or belt holster.[2]

(g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(A)(iii), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(A)(iii) does not apply.

(i) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2.122, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

Practical Applications:

It is important to know that trespassing is subject to interpretation affected by those statements made by the accuser, any witness present and how perceived by anyone investigating the occurrence. Rule of thumb is that property owners or their agents or occupants have rights that far outweigh the rights of a process server. Notice does not have to be a verbal warning and simply can be posted or meet certain circumstances as explained above. If you are asked to leave you need to leave. Attempting to complete delivery of a legal document does not provide any additional easement or authority that provides a defense to this charge. If you choose to ignore the notices or warnings it is possible that you could be charged with trespassing resulting in a punishment that could have your authorization revoked.

[2] Includes amendments made to Section 30.05(f), Penal Code, made by Acts 2015, 84th Leg., H.B. 910, §40, effective January 1, 2016.

Federal Rules

Rule 4 governs service of a summons and complaint in federal courts. The summons must be issued by the clerk of the court, and most attorneys now do this electronically. A summons has an expiration date of 120 days after issuance, so it must be served within that time frame. It must be served by someone over the age of 18 who has no interest in the outcome of the suit. The federal courts are not concerned with the certification of process servers.

If the summons is addressed to an individual, it may be served at the residence of that individual on anyone residing at the address of appropriate age. This only applies to a summons addressed to an individual. If it is addressed to an entity in care of an individual, the individual must be served with the document, or in any fashion set forth in the Rules of Civil Procedure.

If it is addressed to an entity such as a city, corporation, etc., follow the rules set forth in the Texas Rules of Civil Procedure for serving such entities. If the person is outside the U.S. then service must be effected in the same manner as prescribed by the various treaties that exist.

As for other types of process with the exception of subpoenas, a U.S. Marshal is required to serve documents.

There is a time limit on service of a summons of 120 days from the date of issuance, so please note the date of issuance and make sure that the paper is worked within that time frame.

Rule 45 governs the issuance and service of a subpoena in the federal courts. The subpoena may be issued by the clerk of the court or by the attorney that is requesting the subpoena. Most of the time the attorney will sign off as an officer of the court. Subpoenas may be served by anyone over the age of 18 and not a party, or who does not have an interest in the outcome of the case. Again, no certification is required to serve a subpoena in federal court.

Subpoenas are dated and people are entitled to notice of appearance, so please try to get these served as soon as possible so that the person or entity has time to get what is requested prepared and ready to present at the time of appearance. Subpoenas also must state the District in which the deposition is to be held. Check to make sure that the subpoena states the correct district based on where the deposition is to be held. (For instance a subpoena for a witness in a case out of the Southern District of New York to be held in Dallas must state the Northern District of Texas at the top of the subpoena.)

Subpoenas in Federal Court have a mileage constraint of 100 miles from the county line. Please make sure that the witness you are attempting to serve is within that limit and if not, let your client know that the deponent is too far out to be required to show up at the deposition as it is stated. (For instance to request a person to appear in Dallas from Tyler, Texas is not allowed, as Tyler is 101miles from the Dallas County line.)

Title 28 Part 5 Chapter 119 Section 1821(a) (2)(b) and (c)(2) states: A witness shall be paid an attendance fee of $40.00 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services.

Bottom line, a witness fee of $40.00 plus mileage needs to be attached to a subpoena when serving the subpoena. However, there are exceptions to the rule. If you are working for a government agency, such as HUD, the witness is not entitled to a tender fee. If you are serving the government on behalf of someone else, you must tender the witness. So if you are serving for the government, no tender, if serving the government for someone else, give them the money.

All of the above is true in Bankruptcy Courts as well. The forms are different, but the rules are all the same for both courts.

NEW JUSTICE COURT RULES
SERVICE OF PROCESS EFFECTIVE
AUGUST 31, 2013
MISC. DOCKET NO. 13-9049

Discussed below are variances between the new Justice Court Rules, and the service-rules in county and district courts. There are differences. The revised 500-series Rules are the new Justice Court Rules, effective August 31, 2013.

Rule 501.2 Service of Citation

(b) Method of Service

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested. (emphasis added)

Note that Rule 106(a)(2) for county and district courts, does not require restricted delivery and does not provide for electronic return receipt:

(a) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by...

(b) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto.

Rule 501.2(c) Citation by Mail

When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature. (emphasis added)

Both the Justice Court rule, above, and Rule 107(c) require the mail receipt with addressee's signature for mail service. Disputed default judgments with service by mail, are often reversed due to the signature requirement. Common problems: 1) signature is illegible; 2) name variance --defendants often don't sign their precise name on a mail receipt; 3) returns for service by mail are often defective. For example, return should not state that defendant was served "in person" because defendant was not so served.

Rule 501.2 Alternative Service of Citation. If the methods under (b) are insufficient to serve defendant, the plaintiff, officer, or other authorized server may make request for alternative service. "This request must include a sworn statement describing the methods attempted under (b) and stating that defendant's usual place of business or residence, or other place where the defendant can probably be found."

The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person

found there who is at least 16 years of age; or (emphasis added) [common issue: the return should include a statement that the first class mailing was done, and that the person served was at least 16 years old]

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit. (emphasis added) [common issue: the return should factually state the method of service which complies precisely with the Order; and verify that the first class mailing was done]

Contrast with Alternative Service of Citation by Rule 1 06(b) for County and District Courts:

Rule 106(b) states that the "motion supported by affidavit" should state “specifically the facts showing that personal service or mail service was attempted under either paragraph (a)(l) or (a)(2) at the location named in the affidavit but has not been successful. Under Rule 1 06(b) there is no first class mail requirement. Rule 106(b) allows service:

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or
(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit. (emphasis added)

Rule 106 specifically allows service at the location specified in the affidavit with anyone over 16 years of age, and Justice Court allows service on a person "at least" 16 years old. The Justice Court rules additionally require that citation and petition be mailed by first class mail to the defendant at a specified address.

Rule 502.5(d) Answer Due Date. Defendant's answer is due by the end of the 14th day after the day the defendant was served with citation and petition. If the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday. If the 14th day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court’s next business day.

Rule 509 Repair and Remedy Cases. Rules for Service of Suits Filed by Residential Tenant under Chapter 92, Texas Property Code. Read the special rules for these cases.

Rule 509.3 Citation. This rule includes special rules as to service and appearance dates. Upon the tenant filing a written petition, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation. The appearance date must not be less than 10 days nor more than 21 days after the petition is filed.

The appearance date on the citation is the trial date.

Rule 509.4 Service. The officer or authorized person must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments to the landlord at least six days before the appearance date. Special rules apply to these cases and the entirety of Rule 509 should be reviewed. Special rules also apply to alternative service of the citations, allowing service in some instances, on landlord’s management company, on-premise manager, or rent collector.

Rule 510 Eviction Cases. Special rules also apply to service of process in eviction cases, Chapter 24, Texas Property Code. The entire rule should be reviewed.

Rule 510.4(b)(l). Unless otherwise authorized by written court order, citation must be served by sheriff or constable.

Rule 510.4(a)(10). Citation must state the date defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed.

Rule 510.4(b)(2). Service must be by delivering a copy of the citation with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached, with some person, other than the defendant, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

Rule 510.4(c). Special Alternative Rules of Service Apply, allowing “delivery to the premises” and precisely completed.

RETURN OF SERVICE
SERVICE ON INDIVIDUAL DEFENDANT, IN PERSON

Case Number: _____

Cause Number: _____ Court:_____ of _____ County, Texas

1. **Date & Time of Receipt** of Specified Documents by process server: _____ ,20 ____ at _____ ____ .m.

2. **Date & Time of Delivery** of Specified Documents to Defendant: _____ ,20 ____ at _____ ____ .m.

3. **Defendant:** _____

4. **Stated Address: (Place of delivery)** _____

5. **Specified Documents:** a true copy of the citation with date of delivery endorsed thereon with a copy of Plaintiff's Original Petition attached thereto.

6. **Method of Service:** By delivering to Defendant, in person, at the Stated Address.

I am certified under order of Texas Supreme Court to serve process, including citations in Texas. I am not a party to or interested in the outcome of this suit. My identification number and certification expiration date appear below. I received and delivered the Specified Documents to Defendant as stated above. All statements made herein are true. This return is verified or is signed under penalty of perjury.

Signature: _____ **[Complete if signed before a Notary]**
Print Name: _____
Identification Number: _____
Certification Expires: _____
Signed and sworn to by the said _____ before me on _____ ,20 ___. to certify which witness my hand and seal of office.

_____
Notary Public for the State of Texas

[Complete if not signed before a Notary]

My full name is: _____ My date of birth is: _____.
My address is: _____; zip code _____; United States.
My server identification number: _____. My certification expires: _____.
I declare under penalty of perjury that the foregoing, including the Return of Service, is true and correct.
Executed in _____, County, Texas, U.S.A., on _____ (date).

_____
Declarant (signature)

End of Return. The following does not constitute part of the return:
1) For service on individual Defendant, in person.
2) Line 4, Stated Address, including apartment or room number, if any
3) Please confirm all "form" statements are accurate, and that all inserted information is accurate.

RET.IND/10.31.13

RETURN OF SERVICE
SERVICE ON REGISTERED AGENT, AN INDIVIDUAL

Case Number: _____

Cause Number: _____ Court:_____ of _____ County, Texas

1. **Date & Time of Receipt** of Specified Documents by process server: _____ ,20 ____ at _____ ____ .m.

2. **Date & Time of Delivery** of Specified Documents to Defendant: _____ ,20 ____ at _____ ____ .m.

3. **Defendant:** _____

4. **Defendant's Registered Agent:** _____

5. **Stated Address: (Place of delivery)** _____

6. **Specified Documents:** a true copy of the citation with date of delivery endorsed thereon with a copy of Plaintiff's Original Petition attached thereto.

7. **Method of Service:** By delivering to Defendant, in person, at the Stated Address.

I am certified under order of Texas Supreme Court to serve process, including citations in Texas. I am not a party to or interested in the outcome of this suit. My identification number and certification expiration date appear below. I received and delivered the Specified Documents to Defendant as stated above. All statements made herein are true. This return is verified or is signed under penalty of perjury.

Signature: _____ **[Complete if signed before a Notary]**
Print Name: _____
Identification Number: _____
Certification Expires: _____
Signed and sworn to by the said _____ before me on _____ ,20 ___. to certify which witness my hand and seal of office.

_____
Notary Public for the State of Texas

[Complete if not signed before a Notary]

My full name is: _____ My date of birth is: _____.
My address is: _____; zip code _____; United States.
My server identification number: _____. My certification expires: _____.
I declare under penalty of perjury that the foregoing, including the Return of Service, is true and correct.
Executed in _____, County, Texas, U.S.A., on _____ (date).

_____
Declarant (signature)

End of Return. The following does not constitute part of the return:
1) For service on Registered Agent, in person.
2) Line 5, Stated Address, including apartment or room number, if any
3) Please confirm all "form" statements are accurate, and that all inserted information is accurate.

RET.RAIND/10.31.13

RETURN OF SERVICE:
SERVICE ON REGISTERED AGENT ORGANIZATION

Case Number: _____

Cause Number: _____ Court:_____ of _____ County, Texas

1. **Date & Time of Receipt** of Specified Documents by process server: _____ ,20 ____ at _____ ____ .m.

2. **Date & Time of Delivery** of Specified Documents to Defendant: _____ ,20 ____ at _____ ____ .m.

3. **Defendant:** _____

4. **Defendant's Registered Agent:** _____

5. **Defendant's Registered Office:** _____

6. **Stated Address: (Place of delivery)** _____

7. **Specified Documents:** a true copy of the citation with date of delivery endorsed thereon with a copy of Plaintiff's Original Petition attached thereto.

8. **Method of Service:** By delivering to Defendant, in person, at the Stated Address.

I am certified under order of Texas Supreme Court to serve process, including citations in Texas. I am not a party to or interested in the outcome of this suit. My identification number and certification expiration date appear below. I received and delivered the Specified Documents to Defendant as stated above. All statements made herein are true. This return is verified or is signed under penalty of perjury.

Signature: _____ **[Complete if signed before a Notary]**
Print Name: _____
Identification Number: _____
Certification Expires: _____
Signed and sworn to by the said _____ before me on _____ ,20 ___. to certify which witness my hand and seal of office.

_____
Notary Public for the State of Texas

[Complete if not signed before a Notary]

My full name is: _____ My date of birth is: _____.
My address is: _____; zip code _____; United States.
My server identification number: _____. My certification expires: _____.
I declare under penalty of perjury that the foregoing, including the Return of Service, is true and correct.
Executed in _____, County, Texas, U.S.A., on _____ (date).

_____
Declarant (signature)

End of Return. The following does not constitute part of the return:
1) For service on registered agent organization at registered office. See Bus.Org.C.§5.201(d).
2) Line 5, Defendant's Registered Office, including suite or room number, if any.

RET.RAORG/10.31.13