

Complex Service Issues

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Discussion Topics

- Service of Businesses
- Alternate Service
- Service Rules v. Victim Confidentiality
- Hindering Civil Process

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Service of Businesses

Who can accept service and who can't?

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DBA's and Partnerships

- Privately Owned Businesses / dba's / Unincorporated Associations
 - Service is made on Owner / Agent
 - Service can be made on clerk if owner is out of the county (CPRC 17.021)
- Partnerships
 - General Partner of a Limited Partnership and Partner of a General Partnership [Bus. Org. Code 5.255(2)]
 - Service on a partnership can be made on any member of the partnership or a clerk at the place of business (CPRC 17.021)
 - Citation served on one member of a partnership authorizes a judgement against the partnership and the partner served (CPRC 17.022)

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Corporations

- Agents for Service (Bus. Org. Code 5.255)
 - President or Vice President of Corporation
 - Committee Members of Nonprofit Corporations Authorized to Perform the Chief Executive Function of the corporation
- Registered Agent (Bus Org. Code 5.201)
 - Individual or Business
 - Only Duty is to receive process
- Secretary of State (Bus Org. Code 5.252)
 - Send to SOS with appropriate fee
- Defunct Corporations (TRCP 29)
 - May serve any officer, manager, trustee or any person in charge of the affairs of the corporation at the time it was dissolved.

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Financial Institutions

- Service on Financial Institutions (CPRC 17.028)
 - Registered Agent
 - President or a branch manager at any office in the state
- Credit Union (CRPS 17.028c)
 - Registered Agent
 - President or Vice President
 - Cannot be served during worship service if located in a place of worship
- Claims against Customers of the Financial Institution (Finance Code 59.008)
 - Must be delivered to the Registered Agent at address listed in filing to Secretary of State

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Medical and Mental Health Facilities

- Medical Facilities
 - Registered Agent
 - President or officers of the medical facility
- Patient of a Mental Facility (Health & Safety 571.010)
 - Facility Administrator, Superintendent, Supervisor, or Manager is the agent for service
 - Person receiving papers must sign a certificate stating they are aware of the provision of HSC 571.010 and the certificate must be attached to the return.
 - Person receiving papers must forward the papers to the legal guardian of the within 3 days after receipt via registered mail.

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Inmates

- City or County Detention Facilities
 - Personal Service (Rule 103 or 106)
- Texas Department of Criminal Justice (CPRC 17.029)
 - Deliver to the employee designated as the agent for service of civil process at the facility
 - The employee will promptly deliver the papers to the inmate.

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Alternate Service

The Defendant won't accept service, Let's Get Creative!

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Service of Civil Papers

- Substitute Service
 - TRCP 106b
 - Over 16 YOA
 - Any other manner the court deems effective to give the defendant notice of the suit
 - Electronically
 - Social Media

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Social Media

- Substituted Service Through Social Media Presence (CPRC 17.033)
 - 86th Legislature changed CPRC 17.033 to include social media
 - 2020 Supreme Court changed Rule 106 to include Social Media
 - *“in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suite.”*
- The change in CPRC 17.033 does not change Rule 501.2 (Justice Court)

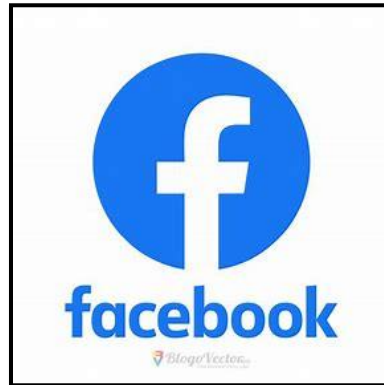
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Service by Social Media: Procedure

- The Office / Agency will create an account on Facebook (or whichever platform is specified) to be able to access.
- The officer will then scan the document to be attached.
- Send the document to the respondent to the account provided through the “message” tab on the respondent’s page.
- The officer may request confirmation, although it is not required to complete the return unless directed by the court.
- The officer will use the time/date information from the electronic platform as the date of service for the officer’s return. If requested, will also attach a screenshot of this information and response, if any, to the return.

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Facebook



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Other Social Media

Additional Social Media Platforms that have direct messenger applications:

- Instagram
- Twitter / X
- LinkedIn



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Instagram



Instagram

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LinkedIn



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Service of Civil Papers

- Substitute Service
 - TRCP 106b
 - Over 16 YOA
 - Any other manner the court deems effective to give the defendant notice of the suit
 - Electronically
 - Social Media
 - **Email or Text**

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Service by Text Message / “WhatsApp” Procedure

- The Court/plaintiff will provide a specific account/phone number for the subject being served.
- Once the correct account/phone number is received and confirmed, scan a copy of the process to be served and attach it to a message for the respondent.
- The officer may request confirmation, although it is not required to complete the return unless directed by the court.
- The time/date information from the electronic platform will be used as the date of service for the officer’s return. If requested attach a screen shot of this information and response, if any, to the return.

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Service by Email Procedure

- The Court/plaintiff will provide a specific email address for the subject being served.
- Send a scanned copy of the process to be served to provided email address.
- Request response through email provider “message received” and “message read”
- The date/time information from the “outbox” in your email program is used as the date/time of service on the officer’s return. If requested, attach a screen shot of this information and response to the return.

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Service of Civil Papers

- Substitute Service
 - TRCP 106b
 - Over 16 YOA
 - Any other manner the court deems effective to give the defendant notice of the suit
 - Electronically
 - Social Media
 - Email or Text
 - **Other Technology**

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Service by Text, Email, & Social Media

NOTE:

- Adequate Service of process will be determined by the Court.
- In many cases the officer may not be able to confirm receipt of these deliveries since there may not be any feedback from the different platforms.
- An actual response from the respondent would be a positive confirmation that **someone** at that end received the notice.

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Service of Civil Papers

- Substitute Service
 - TRCP 109-116
 - Service by Publication
 - Published in newspaper or on news internet site
 - Publication to contain details of suit
 - Published 10 days before return of service

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Service by Publication

- Rule 109 – 117
 - Generally, must be served by publication in a newspaper by a sheriff, constable, or the court clerk **and** on OCA's Public Information Internet Website by the court clerk.
 - Newspaper publication is **not** required if:
 - The party requesting citation files a Statement of Inability to Afford Payment of Court costs;
 - The total cost exceeds \$200 each week, or an amount set by the Supreme Court, whichever is greater; **or**
 - The county in which publication is required does not have any newspaper published, printed, or generally circulated in the county.

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Publication in Newspaper

- Rule 116
 - In general, the citation must be published once each week for 4 consecutive weeks, and the first publication must be at least 28 days before the return is filed.
 - But note that some specific case types have other requirements.
 - ***Suits not involving land title or real estate partition:*** must be published in a newspaper in the county where the suit is pending.
 - ***Suits involving land title or real estate partition:*** must be published in a newspaper in the county where the land, or a portion thereof, is situated.

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Returning Papers to Court

Service Returns

- Manual Returns
- Electronic Returns
- Alternate Service Returns

Requirements

- Date and time received
- Date and time delivered
- Details of delivery
 - To whom, How, Where, What was delivered, Date and time on defendants copy
- If unable to deliver, why?
- Name of elected official and title if deputy
- Signed by server (If process server, must have certification number and be notarized)
- Return to Court

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Return of Citation by Newspaper Publication

The return must:

- State how the citation was published,
- Specify the dates of publication,
- Be signed by the officer who served the citation, and
- Be accompanied by an image of the publication.

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Family Orders

Service Rules v. Confidentiality

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AG's Address Confidentiality Program

- Available to victims of:
 - Family Violence
 - Sexual Assault
 - Human Trafficking
 - Stalking
 - Child Abduction
- Provides PO Box and mail forwarding services
- Helps prevent actual address from being revealed in government documents
- Nongovernmental agencies not required to accept substitute address

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Conflict

- Rule 107 Return of Service
 - (b) The return, together with any documents to which it is attached must include the following information:
 - (6) the address served;

What do you do?
What can you do?

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Service Rule v. Confidentiality

- Possible options
 - Victims who participate in the AG's Address Confidentiality Program can be served via the AG's Office, who will forward the papers to them.
 - Victim could be served at a location other than their residence or place of work.
 - Have a District Judge make a standing order for the District Clerk's Office to redact or not release the address if listed on the return
 - A Judge can order the redaction of any information before releasing it publicly if it will be used for an improper purpose or the person's privacy rights will be violated
- TJCTC **does not** recommend redacting the required information on the return unless you have legal authority to do so.

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Hindering Civil Process

“You won’t let me in to serve this paper, I’ll just arrest you!”

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Penal Code

- Penal Code 38.16
 - 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.
 - It is an exception to the application of this section that the actor evaded service of process by avoiding detection
 - An offense under this section is a Class C misdemeanor.

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AG's Opinion GA-0113

Do Constables have the authority to go into areas not accessible to the public in order to serve civil process and is it a violation of PC 36.18 if they are not allowed into these private areas?

- Service of Civil Process is not the same as service of Criminal Process.
- Fourth Amendment violation.
- Constable are authorized to enter only to the locations that are considered accessible to the public and anything beyond that is considered private.
- Use of Rule 106 Alternate Service

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Interference and Prevention

- How does this apply to interference and prevention of civil process by:
 - Employers
 - Apartment Managers
 - Security Guards
 - Gated Communities
 - Defendants avoiding service

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Questions?