

# What happens with my writ? The Constable Role

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**Hood County, Pct. 4**

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# Duties and Liabilities of the Constable

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# Liability

*USC Title 42, Section 1983*

Permits civil liability for

- Both The Agency
- And The Officer

These suits have greatly increased in recent years.

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## Duties and Liabilities

An officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer:

(1) in good faith executes the writ as provided by law and by the TRCP; and

(2) uses reasonable diligence in performing the officer's official duties.

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## 'Good Faith'

- reasonably prudent officer,
  - under the same or similar circumstances,
  - could have believed that the officer's conduct was justified base on the information the officer possessed when the conduct occurred.
- § 7.003 (c) C.P. R.C

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## Immunity

- Government employees are entitled to official immunity from suit arising from performance of their discretionary duties in good faith, so long as they are acting within the scope of their authority
- Richardson v. Parker, 903 S.W. 2d 801, 804 (Tex. 1994) (applying definition of "good faith" from City of Lancaster v. Chambers, 883 S.W. 2d 650 (Tex. 1994)

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## Service of Citation

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## Service Fees

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Communicate with constable  
office on collection of service  
fees.

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Helps them to not surprise the  
Plaintiff

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## Who pays when indigent and service by publication requested?

Sherriff or Constable

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Cook v Jones,  
521 S.W.2d  
335  
(Tex.App.-  
Dallas, 1975)

- “...the judgment of the trial court is reversed and here rendered that such Sheriff be hereby ordered to comply with the provisions of [the Texas Rules of Civil Procedure] by having citation in this case duly served by publishing the same in a newspaper published in Dallas County, Texas, providing the costs therefor, and to return such citation, following service, in the manner provided by law.”

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# Alternate Service of Citation

TRCP 501.2 (b) (e)

- Defendant cannot be served in person or via mail
- Plaintiff, constable, sheriff, or process server makes a sworn request
  - Explain how they tried to serve
  - Listing location where the defendant can be found

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## Alternate Service of Citation

- Order allowing service by first class mail AND:
  - Leaving them with someone at least 16 at a location indicated where the defendant can likely be found
- OR
- By “any other method the court finds reasonable likely to provide the defendant notice”

TRCP 501(e)

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## What the Court Sees

- Must be a sworn request
- No need for a hearing with the judge
- The method of 'reasonable service' does not have to be stated within the request
- Don't forget, it may be the Plaintiff seeking the order (especially if had it served via mail by the you and it was returned)
- Citation does not have to be returned

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- Must Provide a return
  - Endorse date/hour served
  - If served by mail, must contain the named defendant's signature
- Return has specific content requirements
  - Have to explain why unsuccessful
  - Must be signed
  - Can be faxed or e-filed
- TRCP 501.3

## Duties of the Officer

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## Constable's Perspective

- Can be denied
- Can have very specific direction
  - Serve it to anyone over >16
  - Can depend on what the constable stated in the affidavit
  - Return must state how this was accomplished

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## Service via social media

Has anyone seen these requests?

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# Writs

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## Seizure and Delivery Writ

When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

TRCP 505.2

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# Writ of Sequestration

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## Writ of Sequestration

- Temporary seizure or setting aside of specific property prior to judgment
- The objective of sequestration is to allow parties to protect and preserve their property during the suit

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## What the Court Sees

- Must be a pending suit
- Must have affidavits
- Issue only after hearing, but may be ex parte
- Bond must be posted
- TRCP 696 & 698

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## Duties of the Officer

- An officer who retains custody of sequestered property is entitled to just compensation and reasonable charges to be determined by the court that issued the writ
  - whoever picks up the property must pay all towing & storage fees prior to taking custody
- If an officer is required to expend money in the security, management, or care of sequestered property, he may retain possession of the property until the money is repaid by the party seeking to replevy the property or by that party's agent or attorney
- Writ is returned to court with officer's return in writing stating how, when and where the writ was executed

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## Limitations on Officer

- In levying the writ the officer may remove the body of the defendant and his goods and possessions from the property but must use ordinary care to avoid injury
- Officer may not use excessive force such as kicking in a door or committing assault on the defendant

T.R.C.P. 699

*Patton v. Slade*, 38 S.W. 832, 833 (Tex. Civ. App. 1897, no writ); *Mendoza v. Singer Sewing Mach. Co.*, 84 S.W.2d 715, 716 (Tex. 1935)

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## Constable's Perspective

- How to gain entry
- What if the defendant will not give you the items
  - In view, in reach, or access
- Where to store

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### Service Fees

- Sometimes lose money on writs or become “upside down” – work so many hours, do not make any money
- Investigations may take time

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## Writ of Execution

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## What the Court Sees

- Must be issued from the court with the judgment
- Must be after a judgment but not before 30 days without permission of the court
- Not to be directed to any particular county, but any officer in the state of Texas

TRCP 622, 628, & 629

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## Officer has No Duty to:

- Search for property belonging to the judgment debtor or determine whether property belongs to a judgment debtor.
- Determine whether property belonging to the judgment debtor is exempt property that is not subject to levy
- Determine the priority of liens asserted against property subject to execution
- Make multiple levies for cash or multiple levies at the same location.
- § 34.071, C.P.R.C.

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## Writ of Garnishment

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## What the Court Sees

- Underlying case must already be filed
- Supported by affidavits
- Issues after hearing, which may be ex parte
- Shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant
  - Filing fee? \$5.00 writ fee
- Shall immediately issue a writ of garnishment directed to the garnishee, commanding appearance before the court at or before 10 o'clock am the first Monday after 10 days
- TRCP 658, 659

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## Duties of the Officer

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The constable should refer to the Rule 661, T.R.C.P., if there is a question about the contents of a writ.

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What if there are and the constable asks the court to clarify?

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659, T.R.C.P.

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# Writ of Possession

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## What the Court Sees

- Must award upon demand of the plaintiff and payment of any required fees
- Must be 6 days after judgment
- Cannot issue past 60 days from the date of judgment (unless court allows, then up to 90 days)
- Cannot issue if appeal perfected
  
- TRCP 510.8 (d)

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## Execution of the writ

- Plaintiff expectations
- Schedule coordination with the constable for move-out day.
- Plaintiff securing sufficient help for the move-out
- Extra costs if the writ takes more than 2-3 hours

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# Thank you!

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