

Evictions 101

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Instructor

Deputy John Porter

Denton County Constable Precinct 3

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Topics

- General Eviction Process
- What is an Eviction Citation?
- Requirements of the Eviction Citation
- Dates & Times for Service
- Who May Serve the Eviction Citation
- Methods of Service
- Service Duties and Requirements of the Officer
- Return Duties and Requirements of the Officer
- Safety When Serving
- Review and Discussion

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Disclaimer

The purpose of this course of instruction is to help you gain a basic understanding of Evictions.

At the conclusion of this class, should you have any questions, we direct you to follow your office policy and/or **your** county/district attorney!

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Resources

- Texas Rules of Civil Procedure (TRCP)
 - www.txcourts.gov
- Texas Statutes: www.statutes.capitol.texas.gov
 - Texas Property Code
 - Texas Civil Practices and Remedies Code
- TJCTC Website - www.tjctc.org
 - Deskbooks: <https://www.tjctc.org/tjctc-resources/deskbooks.html>
 - Texas Civil Process Field Guide
 - Civil Deskbook
 - Evictions Deskbook
 - Self-Represented Litigants page: <https://www.tjctc.org/srl.html>

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General Eviction Process



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Definitions

- **Lease** - *Property Code § 92.001(3)*
 - Any **written** or **oral** agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.
- **Landlord** - *Property Code § 92.001(2)*
 - the owner, lessor, or sublessor of a dwelling but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.
- **Tenant** - *Property Code § 92.001(6)*
 - a person who is authorized by a lease to occupy a dwelling to the exclusion of others and who is obligated under the lease to pay rent.

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Definitions (*Continued*)

- **Premises** - *Property Code § 24.0061(a)*
 - a tenant's rental unit, any area or facility the lease authorizes the tenant to use or is held out for the use of tenants generally, and that is occupied by or in the possession of the person against whom the eviction was filed.
- **Dwelling** - *Property Code § 92.001(1)*
 - one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

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Types of Eviction Cases

- **Forcible Entry and Detainer** - *Property Code § 24.001*
 - A person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.
 - This is what we call a "squatter." Note that criminal trespass is also always an option when you have a squatter.
- **Forcible Detainer** - *Property Code § 24.002*
 - A person who refuses to surrender possession of real property on demand.
 - This is when someone had a right to be there initially, but won't leave once they no longer have a right to stay (includes fixed term tenancies, tenants at will, and tenants at sufferance).
- **Procedures are the same!**
- **More information on squatters and another remedy landlords have for them:**
 - See Chapter 24B of the Property Code for a process where they can apply to a sheriff or constable for removal of the squatter without an eviction trial.

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General Eviction Process

- Landlord gives tenant a pre-suit notice and the tenant fails to comply.
- Landlord files an eviction suit in justice court.
- Court issues an eviction citation to be served on the tenant.
- Eviction case goes to trial and the judge enters a judgment.
- After the judgement is issued, the losing party has five days to appeal to county court.
- If the landlord wins (and no appeal or rent not paid into registry as required upon appeal), a writ of possession can be issued.
- Sheriff or constable posts 24-hour notice of the writ of possession on the property's front door.
- Sheriff or constable executes the writ of possession, tenant is forced to move out, and landlord or tenant removes personal items from the property.

Note: Any local rules/ordinances related to evictions are not valid if they conflict with state laws.

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Pre-Suit Notice by Landlord

- Must be written unless the defendants are squatters (in which case can be oral and immediate notice).
- If tenant has never been delinquent in rent before, must be a "pay or vacate" notice, otherwise can be a "notice to vacate."
 - Difference is the landlord cannot win an eviction suit if the tenant pays during the "pay or vacate" period, but can even if they pay during a "notice to vacate" period.
- **Usually three days' notice (required time period depends on lease/situation).**

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Delivery of the Notice

- Delivery method options:
 - Hand-delivered to any tenant of the premises who is 16 or older
 - Delivery to the inside of the premises in a “conspicuous location”.
 - Delivered by mail including a delivery service.
 - Electronic delivery if the parties have agreed in writing.
- However, if the landlord proves actual receipt of the notice, delivery method is no longer relevant.

For more information on pre-suit notice, see Evictions Deskbook Ch. 4.

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Commercial & Manufactured Home Evictions

- **Commercial Tenancy** = anything that isn't a residential or manufactured home tenancy.
- **Manufactured Home Tenancy** = leasing a lot in a manufactured home community to a tenant for the purpose of putting a manufactured home on the lot.
 - A “manufactured home community” is defined as a parcel of land on which 4 or more lots are offered for installing and occupying manufactured homes.
 - A “manufactured home” is defined as a “mobile home” or a “HUD-code manufactured home.” Does not include RVs!

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Commercial & Manufactured Home Evictions Procedures

- The general procedures and time limits that apply to all residential eviction cases also apply to commercial and manufactured home evictions.
 - In general, Chapter 24 of the Property Code & TRCP 510 will apply,
 - **EXCEPT** where Property Code Chapter 93 (Commercial) or 94 (Manufactured Home) says something different.
- There are **NO** differences for the purposes of the constable's role in the case except for the writ of possession procedures in a manufactured home eviction case (*writs of possession covered in the next class*).
- *For more information, including the differences that matter for the court's decision, please see Chapters 5 & 6 of TJCTC's Evictions Deskbook.*

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Eviction Citation



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What is an Eviction Citation?

- It is the official process by which a tenant (defendant) is notified he or she is being evicted.
 - Issued after the landlord (plaintiff) provides a pre-suit notice, files a petition, and pays a fee.
 - Accompanied by a copy of the petition when it's served.
- The eviction citation provides notice to the defendant(s) of the opportunity to:
 - Answer,
 - Appear, and
 - Defend the suit.

TRCP 510.8

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Which Court is Proper?

- Eviction citations are issued by the justice court in the precinct where the property is located.
 - If filed in the wrong precinct, the court **MUST** dismiss. The case can't simply be transferred to the correct precinct.
- The judge and the court personnel **CAN** tell a landlord which precinct the property is located in.
 - **It is not legal advice - it is legal information!**
 - Precinct maps or an online resource can and should be made available to the public in each office.

Property Code § 24.004

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Issuance of the Citation

An eviction citation must be issued for **EACH** defendant.

- The officer must serve an eviction citation and petition on each defendant.
- A service fee will be charged for every eviction citation that has to be served.

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Requirements of the Eviction Citation

- Styled "The State of Texas."
- Is signed by the clerk of the court or the judge.
- Contains the court's seal.
- Identifies the person to whom the eviction citation is directed = Defendant/Tenant.
- Includes the name, location, and address of the court where the case is filed.
- Includes the cause number.
- Identifies all parties in the case.
- Includes the date of issuance of the eviction citation.
- Includes the date the petition was filed.
- States the plaintiff's cause of action and relief sought.
- Includes the name and address of the plaintiff's attorney, or the address of the plaintiff.

TRCP 510.8(b)

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Requirements of the Eviction Citation (*continued*)

- States the date the defendant must appear for trial.
- Informs the defendant that a default judgment may be entered if the defendant fails to appear in person for trial.
- Informs the defendant that, upon timely request and payment of a jury fee, no later than 3 days before trial or 3 days after service, whichever is later, the case will be heard by a jury.
- Contains all warnings required by Chapter 24 of the Texas Property Code.
- Warns the defendant if an immediate possession bond or motion for summary disposition has been filed.
- Include the statement: "For further information, consult Rule 510 of the Texas Rules of Civil Procedure, which is available online and also at the court listed in the citation, and www.TexasLawHelp.com."

TRCP 510.8(b)

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Trial Date Must Be Included

- Trial on an eviction case **CAN'T** be set:
 - Less than 10 days, or
 - More than 21 days,After the petition is filed.

TRCP 510.8(b)(10)

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Sample Eviction Citation

TJCTC Forms Page at:
<https://www.tjctc.org/tjctc-resources/forms.html>

CAUSE NO. _____	
PLAINTIFF _____	§ IN THE JUSTICE COURT
v. _____	§
DEFENDANT _____	§ PRECINCT ____
	§
	§ _____ COUNTY, TEXAS

CITATION (EVICTION CASE)

THE STATE OF TEXAS

TO: DEFENDANT in this case:

This citation is issued based on a petition filed by Plaintiff on _____, 20____. In addition to possession of the property the Plaintiff is seeking the following relief in this case: ☐ back rent; ☐ attorney's fees; ☐ court costs; ☐ other (specify: _____). Plaintiff's attorney's name and address, or Plaintiff's address, if they have no attorney, are: _____

You must appear in this court, located at _____, TX _____, on the date and time stated below.

YOU HAVE BEEN SUED FOR EVICTION FROM YOUR RESIDENCE. THE ABOVE-NAMED PLAINTIFF SEEKS POSSESSION OF THE PREMISES AND THE OTHER RELIEF STATED ABOVE. YOU MUST APPEAR IN PERSON FOR TRIAL IN COURT AT THE LOCATION STATED ABOVE AT ____:____.M. ON _____, 20____. YOU MAY, BUT ARE NOT REQUIRED TO, FILE A WRITTEN ANSWER

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Dates & Times for Service

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Dates & Times for Service

- Eviction citations may be served Monday through Saturday, any time of the day.

TRCP 6

- Before alternative service can be approved, at least two efforts to serve must be made at each address provided. Some courts may require one day & one night attempt, on different days.

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Expiration for Service

- Eviction citations must be served **at least 4 days** before trial.
 - Service more than 7 days before trial makes jury trial timelines difficult.
- To compute time:
 - Exclude the day of the event that triggers the period,
 - Count every day, including Saturdays, Sundays, and legal holidays, and
 - Include the last day of the period.
 - (but if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday).

TRCP 510.4 & 510.8

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Who May Serve the Eviction Citation

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Who May Serve the Eviction Citation

- Eviction citations may be served by any:
 - Sheriff, constable, or their deputies; or
 - If the citation isn't served within 5 business days, the plaintiff can ask for an alias citation to be served by another law enforcement officer with training on service of process, eviction procedures, and the execution of writs.
 - The plaintiff is not entitled to a service fee refund.
- The eviction citation may be served anywhere in the state.
TRCP 510.8(d); Property Code Sec. 24.0051(f)

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Methods of Service

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Methods of Service: Evictions

- A residential eviction citation must be served in one of the following ways:
 - Personal service on the defendant at least 4 days before trial, wherever they may be found
 - This is the preferred method.
 - Give defendant a copy of the citation **AND** the petition.
 - Leaving a copy of the eviction citation and petition with:
 - Any person, **other than the plaintiff**,
 - Who is 16 years old or older,
 - Found **at the defendant's usual place of residence**,
 - At least 4 days before trial.
- Available option **AFTER** the above options are unsuccessful after at least two attempts: Alternative/Substituted Service.
TRCP 510.8(e)

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Alternative/Substituted Service

- Alternative service = delivery of the citation to the premises.
 - **Must** be requested from and approved by the court.
 - Plaintiff or the serving officer can request alternative service.
- The eviction citation may be served by delivery to the premises **IF**:
 - The serving officer is unsuccessful in serving the citation on the defendant or a person age 16 or older at the defendant's residence, and
 - The serving officer files a sworn statement that meets the requirements listed on the following slide.

TRCP 510.8(e)

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Alternative/Substituted Service: Request Requirements

- The petition filed by the plaintiff must state:
 - All known home and work addresses of the defendant, and
 - No other home or work addresses of the defendant in the county where the premises are located are known by the plaintiff.
- The sworn statement filed by the serving officer must:
 - State the officer has made diligent efforts to serve the citation on at least **TWO** occasions to **ALL** addresses of the defendant, and
 - Include the times and places where service was attempted.

TRCP 510.8(e)

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Sample Request for Alternative Service (Eviction Case)

- On the TJCTC website forms page under the **“Evictions and Landlord-Tenant”** category

■ <https://www.tjctc.org/tjctc-resources/forms.html>

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT
 v. _____ §
 DEFENDANT _____ § PRECINCT NO. _____
 _____ §
 _____ § _____ COUNTY, TEXAS

REQUEST FOR ALTERNATIVE SERVICE (EVICTION CASE)

The undersigned requests that the court authorize alternative service of process pursuant to Rule 510.4(c) by delivery to the premises and in support shows the following:

- Attempts to serve the defendant by personal delivery or by leaving a copy of the citation with a person over the age of 16 years at the defendant's usual place of residence have been unsuccessful;
- Diligent efforts to serve the citation on at least two occasions at all addresses of the defendant in this county were made as follows:

Date _____	Address of Attempt _____
Manner of Attempted Service and Result _____	
Date _____	Address of Attempt _____
Manner of Attempted Service and Result _____	
Date _____	Address of Attempt _____
Manner of Attempted Service and Result _____	
Date _____	Address of Attempt _____

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Alternative/Substituted Service: Method of Service

- If alternative service is authorized, the serving officer:
 - At least **4** days before trial,
 - Must deliver a copy of the citation and petition to the premises by placing it through a door mail chute or sliding it under the door, **AND**
 - Send copies by first-class mail to the defendant at the premises.
- If service through a mail chute or under the door is not possible, the serving officer may:
 - Post the citation and petition to the **front door or “main entry”**, **AND**
 - Send copies by first-class mail to the defendant at the premises.

TRCP 510.8(e)(2)
- Alternative service can **ONLY** be done at the designated address for the eviction.

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Service Duties & Requirements of the Officer

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Service Duties & Requirements of Officer

- For eviction citations, "officer" means law enforcement.
- The officer's **ONLY** responsibility is to hand the citation and petition to the person being served.
 - The officer **CAN'T** force a person to open the door or accept service.

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Service Duties & Requirements of Officer

- When serving the eviction citation, the officer must:
 - Enter the citation into their record keeping system.
 - Write/stamp on the citation the date and time when the officer received it.
 - Write the date of delivery on the citation before giving it to the defendant.
 - Serve the citation on the defendant.
 - Proceed without delay.
 - Attempt service at all addresses provided.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP 510.8

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Attempting Service

- The officer must make diligent efforts to serve the citation on at least **TWO** occasions to **ALL** addresses of the defendant.
 - Two attempts at **EACH** address, **not two attempts total**.
- **Remember:** alternative service cannot be requested until attempts to serve the defendant, or a person age 16 or older at the defendant's residence, by personal delivery are unsuccessful.

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Record Retention Schedules

- Records must be retained and may be destroyed pursuant to established retention schedules.
- Retention of records relating to service of process:
 - Local Schedule PS – Retention Schedule for Records of Public Safety Agencies
 - www.tsl.state.tx.us/slr/recordspubs/localretention
 - Recordkeeping and Reporting Deskbook Chapter 1

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Fee Collection

- The officer is **NOT** entitled to demand his or her fee for service in advance of serving the process.
 - The officer's fee is to be taxed and collected as other costs in the case.

TRCP 126

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Return Duties & Requirements of the Officer

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Return Duties & Requirements of Officer

- Once the eviction citation is served, the officer must complete a return of service.
 - The return of service can be attached to the citation **OR** it can be a separate document.
 - The original citation does not have to be returned.
 - The officer must sign the return and file it with the clerk of the proper court.
 - Return may be in person, electronically, or by fax.
 - The return **MUST** be filed at least one day before the trial date.
- TRCP 510.8(f)*

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Requirements of the Return of Service

- Include the cause number.
- Include the case name.
- Include the name and county of the court where the case is filed.
- Indicate the date and time the citation was received for service.
- Include the name of the person served.
- Indicate the address where the citation was served.
- Include the date(s) and time(s) of service and/or attempted service.

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Requirements of the Return of Service (*continued*)

- Indicate the manner of delivery of service and/or attempted service.
- Description of what was served.
- Name of the person(s) who served and/or attempted service.
- If delivery was by alternative service, include the date the citation was delivered to the premises and the date the citation was placed in the mail.
- Any other information required by rule or law.
- Any additional information specific to the service should be noted in the file.

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More is Better

- Don't feel obligated to use, or limited to, the return section printed on the citation.
 - If you need more space, use a separate document.
- The more detail you provide, the better off you are.
 - If proper service becomes a contested issue in court, your return will protect you and help refresh your memory if you have to testify.

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Sample Officer's Return

TJCTC Forms Page at:
<https://www.tjctc.org/tjctc-resources/forms.html>

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT
§
§
v. _____ § PRECINCT _____
§
§
DEFENDANT _____ § COUNTY, TEXAS

RETURN (EVICTON CASE)
Having received the Citation in the above case with the Eviction Petition attached on _____, 20____ at _____ M., I attempted service in the following manner:

DATES and MANNER OF ATTEMPTED SERVICE:

Date	Address	Manner of Service	Diligence and Cause of Failure to Serve

The Citation was **EXECUTED** on _____, 20____ at _____ M.,
☐ by delivering a copy of the Citation together with a copy of the Petition to: _____ Defendant,
☐ by leaving a copy of the Citation together with a copy of the Petition with _____ a person over the age of 16 years, at Defendant's usual place of residence.
☐ as authorized in the court's order granting alternative service, by delivering a copy of the Citation with a copy of the Petition attached to the premises as follows: _____ (state manner of delivery to the premises) and also by depositing a copy of the Citation with a copy of the Petition attached in the mail addressed to Defendant at the premises and sent by first class mail.

RETURNED on _____, 20____

Signature _____
Printed Name: _____
Title: _____

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Failure to Execute & Return

- If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to him or her, the constable **SHALL** be fined for contempt on the motion of the person injured by the failure or refusal.
 - Applies to deputy constables in the same way.
- Fine:
 - \$10 - \$100 plus costs.
 - Paid to the injured person.
 - Constable must be given 10 days' notice of the motion.

Local Government Code § 86.024

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Safety When Serving

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Safety When Serving

- Citations are not the most dangerous thing to serve, but tempers can flare when a person finds out they are being sued or evicted from their home.
- Always a good idea to:
 - Wear your vest.
 - Be aware of your surroundings.
 - Don't get complacent.
 - Do research on the people you will be evicting.
 - DPS Secure Site: <https://securesite.dps.texas.gov/DpsWebsite/index.aspx>
 - Your county system (follow any policies for use).
 - TLETS: It's possible that this can't be used for civil process (depending on interpretation of "criminal justice purpose" and exact circumstances). Follow the use policy and consult with your county attorney/DPS rep about what is acceptable.
- Just because the papers you're serving are civil doesn't mean the people you're serving are.

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Keep It Civil

Most of the time, the defendants are just running on hard times.

It is bad enough you are removing someone from their home. Don't add guilt and embarrassment to the situation. You are not there to chastise the defendants or allow someone else to do it.

Act in a **PROFESSIONAL** manner and expect the same from others around you.

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Review & Discussion

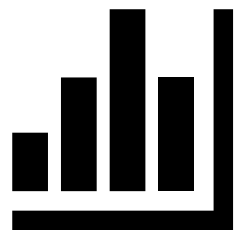
51

Question 1

You receive an eviction citation on Monday August 6 with a trial date of Tuesday August 21.

What is the **last** date you can serve the tenant with the citation?

- A. Monday, August 13
- B. Wednesday, August 15
- C. Friday, August 17
- D. Monday, August 20



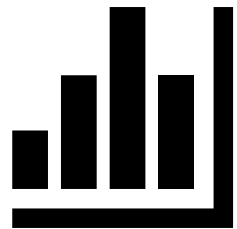
52

Question 2

Same information as the previous slide except you know the tenant, Doug will be at church on Sunday August 12.

Can you serve him there?

- A. Yes
- B. No
- C. Sure, if he'll accept service at church



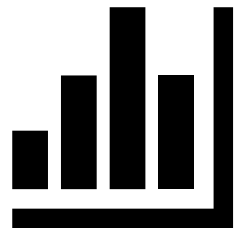
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Question 3

You go to Doug's house to try and serve him with the eviction citation and his wife answers the door. She says Doug isn't home, but she'll give him the papers.

Can you do this?

- A. Yes
- B. No
- C. Only if she swears to you that she will give Doug the papers



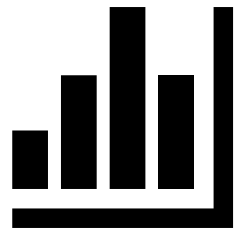
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Question 4

Same facts as the previous slide except that you're serving Doug with a citation for a small claims case.

Can you give the citation to Doug's wife?

- A. Yes
- B. No
- C. Only if she swears to you that she will give Doug the papers



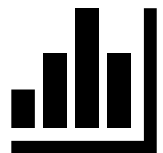
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Question 5

It's Thursday, July 16, and you need to get Doug served with his eviction citation. The case has been assigned to you, but another deputy offers to go by and serve the citation since Doug's house is on his way home.

Is this ok?

- A. Yes, any deputy in your office can serve the citation as long as any procedures specific to your office are followed.
- B. No, you have to serve the citation since the case has been assigned to you.



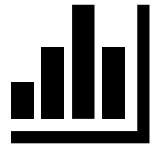
56

Question 6

You give the citation to Deputy Richards and he serves it to Doug at Doug's residence.

Who fills out the return and files it with the court?

- A. You fill out the return and sign your name as the executing officer since the case is assigned to you
- B. You fill out the return but have Deputy Richards sign it since he was the one that served it
- C. Deputy Richards fills out and signs the return since he was the one that served the citation
- D. Return? What's a return?



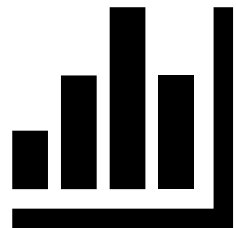
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Question 7

The citation was served on August 13 and the trial is on August 21.

What is the latest day the return has to be returned to the court?

- A. August 13
- B. August 15
- C. August 20
- D. August 21

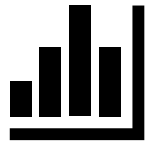


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Question 8

Is there ever a time that scaling a 10ft barbed wire fence and posting a citation on a door could be considered proper service?

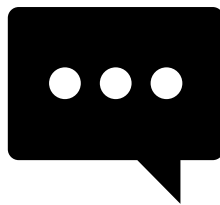
- A. No, that's never an option
- B. Yes, so long as you document in the return that you served it that way because the defendant wouldn't open the gate for you
- C. Yes, so long as you request alternate service, it's approved by the court, and you send a copy of the citation by registered mail



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Class Discussion

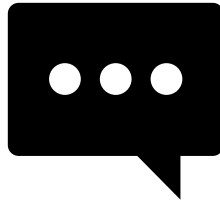
What is the strangest alternative service you have ever done?



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Class Discussion

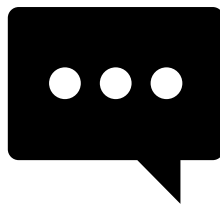
What are some “creative” ways people have avoided being served by you?



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Class Discussion

What are the common problems you run into when serving citations?



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