

REPORT
REGARDING ADOPTION OF UNIFORM STANDARDS
FOR GRANTING AUTHORITY TO PRIVATE INDIVIDUALS TO
SERVE PROCESS IN CIVIL PROCEEDINGS

November 2, 2001

by

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This report summarizes a discussion held on October 18, 2001, between Richard Orsinger, Chris Griesel, Rick Keeney, and Colin Coe, on the subject of establishing uniform standards for licensing or authorizing private individuals to serve civil process. Rick Keeney owns a large private process serving organization, and he also appeared as a representative of the North Texas Process Servers Association, which Rick says has 384 members.

At the present time, there is no state-wide licensing system for private process servers. Tex. R. Civ. P. 103, which provides that "citation or other notices may be served anywhere by (1) any sheriff or constable or other person authorized by law or, (2) by any person authorized by law or by written order of the court who is not less than eighteen years of age." Parties and other persons "interested" in the outcome of the lawsuit cannot serve process in that case. Under Rule 103, the clerk of the court can serve citation by registered or certified mail. The concluding sentence to TRCP 103 provides:

The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order.

The present practice is for the judge of each court to control by court order who can serve process in a case pending in that court. Many counties with a number of courts sharing a county or district clerk have adopted an uniform order for all courts in that county, setting out requirements that must be met in order to serve process out of those courts. Dallas, Harris and Bexar Counties have done that. Some smaller counties will issue a blanket order for a process serving organization that covers all employees. Some of the larger counties issue orders on a person-by-person basis.

Process servers that work in the county where they live may be able to conveniently comply with the local standards for serving process issued out of the local courts. However, that arrangement will not work where process is issued, say out of a Dallas Court, for service in Travis County. The process will actually be served on the defendant in Travis County by a process server who lives in Travis County, but since the process is issued out of a Dallas court, that person in Travis County will have to meet the Dallas County requirements for process

servers.

A coherent state-wide system of private process serving is very difficult to set up because of the varying requirements from locale to locale. Dallas County requires that you obtain a DPS criminal history check and submit the original to the Dallas County District Clerk, plus you must take a course. Galveston County wants to run its own local criminal history check, and charges \$10.00 for it. Harris County requires the person serving process out of those courts to attend a seminar put on by the Houston Young Lawyers' Association. You must pay \$115.00 fee to Harris County for the course, but the courses are scheduled irregularly and many months apart. In McAllen, the process service has to "open up a case" in the court system, by paying a filing fee of \$175.00, just like a lawsuit was being initiated. For Nueces County, you can serve their process just by filling out an application, but you must pay \$2.00 to file the return of service. Bexar County requires process servers of its process to carry \$300,000 worth of insurance, while Tarrant County requires the process server to carry \$100,000 worth of insurance. To complicate matters worse for a business owner, each process server's authorization order issued out of a county expires on a unique date, and sometimes it is difficult to find out when an order expires.

Also, Rule 103 provides that no motion is necessary in order to obtain an order to serve process. The official Comment to Rule 103 says that this proviso was "added to avoid the necessity of motions and fees." But Harris County judges still require the motion.

According to the private process servers, various associations of private process servers have attempted to establish a uniform system and licensing for a number of years. All the attempts have been met with a varying level of failure, including one bill that passed both houses and was vetoed. Constable organizations have been opposed to the creation of the state-wide standard.

Some organizations have established a unified standard for the use of process servers. The State Attorney General uses private process servers for its cases. Rick Keeney says that his company did \$1.2 million of statewide business with the AG last year. According to Keeney, the AG's office got a bill passed to permit private process serving on their cases without a court order, and no classes and no liability insurance is required.

The process server group would like to have a licensing requirement, with uniform standards, so that once you comply then you are licensed to serve process anywhere in Texas. They suggest the following requirements: over age 18, criminal background check and exclude felons and perhaps persons convicted of a crime of moral turpitude, be a citizen of the USA, and have 7 hours of training. If the conviction is for a misdemeanor, or is more than 7 years old, then the judge of the court can waive those disabilities.

Rick Keeney talked with the Texas Department of Licensing about how they would handle this if the problem were given to them. Rick says they told him that they would be considered analogous to air conditioning installers, who go onto private property, etc., and they

must carry \$300,000 in liability insurance.

Of Texas' 254 counties, this issue of private process serving affects about 30-40 of larger counties. The rest do not generate enough lawsuits to make them a big problem.

The process servers have submitted a written proposed amendment to Rule 103 attached as Appendix A. The proposal would require a state-wide process server standards that would require the person to be over 18, a U.S. citizen, never been convicted of a felony or a crime of moral turpitude, attended a 7 hour education course, and a \$300,000 insurance policy. Upon proof of the satisfaction of these requirements, the local district or county clerk would be required to issue a photo ID that would allow the process server to serve in all the counties. The process servers also wish to be considered "officers of the court" when performing their duties. The process server would be able to serve in the same manner as constables and sheriffs and could serve process "anywhere the defendant may be found."

Suggestion by Richard Orsinger.

1. The Texas Supreme Court cannot create a state-wide licensing body. There are several practical problems, not the least of which it are the probable need for a legislative enactment and the fact that the Court has no money to fund it. An option that may need to be considered, however, is whether the Supreme Court should create uniform standards which, when met, permit the person to serve process anywhere in Texas.
2. In creating a state-wide standard, there is a potential political problem with setting state-wide standards that offer less protection than existing local requirements. Obviously, counties that have adopted education or insurance requirements did it for some purpose. It is likely that those counties would not be happy with being forced to accept a statewide standard that was lower than the county's unique standard.
3. The Supreme Court could avoid all this by issuing a set of uniform standards that include every protection presently in place in every county (e.g., 7 hours of schooling, no criminal conviction, \$300,000 liability insurance, etc.). Rule 103 could then provide that a person can go to any county or district clerk in Texas and prove that (s)he meets those uniform state-wide standards, and that clerk would be required to issue a certificate of compliance. Judges would still be permitted to issue orders allowing persons to serve process out of that Judge's court even though they don't meet the state-wide standards (i.e., Judge can permit a downward deviation). But persons who can meet the state-wide standards can apply for certification one time in one county, and their authority to serve process will be good statewide.
4. A copy of the process servers' proposal is attached. The process servers' proposal raises several questions about the standards that should be adopted. The proposal offers several standards, most notably citizenship and criminal history, that need to be examined. Second, the

proposed rule places an absolute duty on the clerks with no provision for fees to be charged. Third, the proposal does not discuss the length of time that a "license" would remain valid, nor the need for ongoing criminal history background checks. Fourth, is it wise to extend the protections of "court officer" to private process servers? Finally, is the committee satisfied with the degree of latitude afforded private process servers (the ability to serve process "in the same manner" as a sheriff or constable and the ability to serve process "anywhere the defendant is found")?