

Direct Results Legal Service

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June 22, 2012

Rules Advisory Committee for the
Texas Supreme Court
via hand delivery

RE: PROPOSED RULES, PART V, TRCP RULES 511, 512, 513, 514, 574 & 575:

Dear Committee Members,

My name is Tod E. Pendergrass and I am a certified process server. Thank you for allowing me this opportunity to comment. I would like to first address the proposed Rule 512, SERVICE of process in Justice Courts.

When this committee was formed back in 1993, one of the first recommendations it made to the Court was to simplify the Texas Rules of Civil Procedure, specifically, to rely on the Federal Rules of Civil Procedure as a guide. There are currently at least 16 separate TRCP rules that deal with the two issues involving service of process, which are "who may serve" and "how to serve." It's understandable that many procedures in Justice Courts differ from District and County Courts at Law, but "who may" and "how to" serve are virtually identical; and the physical act of serving process is literally identical. The only difference that immediately came to my mind was the defendant's time to answer; currently, it's the Monday following 20 days for District and County Courts at Law and 10 days for Justice Courts. The only reason this would concern a process server is because the return of service must be on file 10 days and 3 days respectively before a default can be taken. Other than that, I believe all or nearly all aspects of "who may" serve and "how to" serve in the proposed Rules 511 – 514, and 574 & 575 can be covered with one sentence:

"Service on the defendant shall be made as prescribed by these rules for service and return of citation in District and County Courts at Law."

This concept is found in the current TRCP Rule 17, and Rule 663(a) for service of garnishment on a defendant. By including the words, "and return," all aspects of service from the moment the server receives the process to the filing of the return would be covered; and it would apply to all persons who serve including certified and non-certified servers, sheriffs, constables and clerks. More importantly, it would not widen the disparity in the rules by duplicating procedures already covered in District and County Courts. The necessity of the return to be on file at least 3 days before default can be added somewhere else, e.g., Rule 503 for the computation of time.

Additionally, the suggested sentence above would finally remedy the long-standing error currently contained in Rule 536, TRCP (see my letter to the Committee dated 4-12-2006 attached.)

I would also like to share the following concerning proposed Rules 511 and 513:

RULE 511. ISSUANCE AND FORM OF CITATION

*(c) Notice. The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Generally, your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. **Do not ignore these papers.** If you do not file an answer by the due date, a default judgment may be taken against you. For further guidance, consult Rules of Civil Procedure 500-575, which are available online at **www.therules.com** and also at the court listed on this citation." If a statement of inability to pay has been filed by the plaintiff in this suit, you may have the right to contest that statement.*

I suggest it would be inappropriate for the Court to tell a citizen what he can and cannot ignore. Instead of adding this language, the "bold" should be applied to: "If you do not file an answer by the due date, a default judgment may be taken against you." That is adequate to make it apparent to the citizen that it is not in his/her best interests to ignore the citation.

RULE 513. ALTERNATIVE SERVICE

If the methods under Rule 512 are insufficient to effect service on the defendant, the plaintiff, or the constable, sheriff, or certified process server if utilized, may make a request for alternative service. This request must include a sworn statement detailing the methods attempted under Rule 512. The request shall be that the citation, petition and documents filed with the petition be:

This does not allow for sub-service if the paper is attempted by an "uninterested person" authorized by the court to serve the citation. Excluding authorized persons from being able to pursue alternative methods of service will necessarily increase the costs of litigation.

Lastly, I would just like to point out the inconsistency of the Court's process server certification program and the current rules allowing any disinterested adult to serve all forms of civil and criminal subpoenas, including grand jury subpoenas and all state agency subpoenas like the State Office of Administrative Hearings. The physical act of serving process is the same for subpoenas and citations, and both are equally as important.

Thank you again for your time and consideration.

Sincerely,



Tod E. Pendergrass

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April 12, 2006

The Supreme Court of Texas
Attn: Advisory Committee
P.O. Box 12248
Austin, Texas 78711

Re: Rule 536, Texas Rules of Civil Procedure

Dear Members:

Despite numerous attempts to rectify the situation, including previous letters to the Texas Supreme Court, a mistake in Rule 536, T.R.C.P. remains unchanged and could possibly effect adversely thousands of cases.

Rule 536. Who may serve and method of service pertains to service of civil process issued by the Justice Courts. Section (c) reads, in part:

...the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named...

This sections should read:

...the facts showing that service has been attempted under either (b)(1) or (b)(2) at the location named...

By comparing this rule to the same rule for service of civil process issued by the District and County Courts, Rule 106, it is clear the wording was inadvertently copied verbatim. However, the structure of the paragraph is slightly different which calls for this correction.

Now would be an appropriate time to address this matter. Thank you!

Respectfully,



Tod E. Pendergrass, SCH1660
President, DRLS, Inc.
Director, The Certified Civil Process Servers Association of Texas