

HILL GILSTRAP

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

1400 WEST ABRAM STREET
ARLINGTON, TEXAS 76013
TEL 817-261-2222
FAX 817-861-4685

CHICAGO

SUITE 1050
303 WEST MADISON
CHICAGO, ILLINOIS 60606
312-853-2920

FORT WORTH

SUITE 2210
301 COMMERCE
FORT WORTH, TEXAS 76102
817-420-6701

FRANK GILSTRAP

April 19, 2007

Hon. Tom Lawrence
Justice of the Peace
Precinct 4, Place 2
7900 Will Clayton Parkway
Humble, Texas 77338

Re: Proposal to amend garnishment rules

Dear Judge Lawrence:

I am enclosing a copy of Justice Hecht's March 8, 2000, letter to Chip Babcock, which you and I discussed by phone yesterday. In this letter, Justice Hecht is asking the full committee to consider a proposal, originating with Carl Weeks, chair of the Process Server Review Board, to allow private process servers to serve writs of garnishment.

As you know, Rules 103 and 536(a) were amended in 2005 to permit private service of process by certified private process servers, except that

only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person serving the process.

No such changes, however, were made in part VI of the rules, which relates to "Ancillary Proceedings."

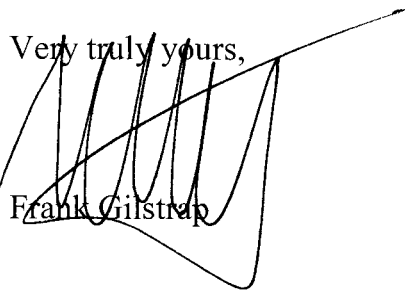
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Specifically, Rule 663 still requires the sheriff or constable “to execute the [writ] by delivering a copy thereof to the garnishee,” while Rule 663a allow the defendant to be “served in any manner prescribed for service of citation.” Despite the difference in terminology, there appears to be no difference between serving the garnishee and serving the defendant. Moreover, as I understand, garnishment does not involve seizing property.¹ Thus, the proposal to allow a private process server to serve writs of garnishment would seem to be in accord with the recent amendment to Rule 103.

Justice Hecht’s memo discussed this proposal under Rule 103, and as I understand, Chip Babcock forwarded this proposal on to Richard Orsinger, who chairs the Rules 15-165a subcommittee, and that subcommittee conferred by e-mail. While participation was not large, we concluded that this matter was non-controversial and should be sent on to the full committee. Because Richard had a prior seminar obligation, he asked me to make any required presentation, and I am prepared to do so.

But in looking at this matter further, I realize that this matter might more properly belong to the Rules 523-734 subcommittee, which you chair. While it might be possible to amend Rule 103 to expressly override the garnishment rule, it makes more sense to change the garnishment rules themselves. Accordingly, I would appreciate your thoughts as to how best to proceed, if this matter comes up on the April 27 meeting.

Thank you for your cooperation.

Very truly yours,

Frank Gilstrap

FG/ar

c. Hon. Nathan Hecht
Chip Babcock
Richard Orsinger

¹ But see TEX.CIV.PRAC. & REM. CODE § 63.003(a) (“After service of a writ of garnishment, the garnishee may not deliver any effects or pay any debt to defendant.”) (emphasis added).