

*The Supreme Court of Texas*

Lisa Hobbs, Rules Attorney

201 West 14th Street Post Office Box 12248 Austin TX 78711  
Telephone: 512.463.1312 Facsimile: 512.463.1365

Direct: 512.463.6645

August 11, 2004

Mr. Charles L. Babcock  
Jackson Walker LLP  
1401 McKinney, Suite 1900  
Houston, TX 77010

Re: Rule 103 – Process Service

Dear Chip:

Justice Hecht asks that the advisory committee continue discussions on a statewide rule for serving process. We recently met with Judge Tony Lindsey, 280<sup>th</sup> District Court of Harris County. She represented that her judges would not object to a rule that allowed certification through either Harris County or the Texas Process Servers Association so long as Harris County was not required to allow a person to serve process who was not specifically certified in Harris County.

Based on these discussions, I have drafted the following alternative rules. Alternative A would simply amend the Texas Rules of Civil Procedure. Alternative B would do the same, except that it would allow the Court more flexibility, through ease of a miscellaneous court order, to respond to any unforeseen and/or changed circumstances. Alternative C, the middle ground as far as future amendments are concerned, would place the process service rule in the Rules of Judicial Administration. Naturally, Rule 536 would be similarly amended.

**Alternative A****RULE 103: WHO MAY SERVE**

(a) Citation and other notices, including process, may be served anywhere by:

- (1) any sheriff or constable or other person authorized by law; or
  - (2) by any person who is not a party to or interested in the outcome of suit and who is:
    - (A) certified through Harris County to serve process; or
    - (B) certified through the Texas Process Servers Association to serve process,
- except that such person may not serve process for Harris County.

(b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

Mr. Charles L. Babcock

Page 2

August 11, 2004

**Alternative B            RULE 103: WHO MAY SERVE**

- (a) Citation and other notices, including process, may be served anywhere by:
- (1) any sheriff or constable or other person authorized by law; or
  - (2) by any person who is not a party to or interested in the outcome of suit and who is certified to serve process as directed by the supreme court.<sup>1</sup>
- (b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

**Alternative C            RULE 14: Process Service**

- (a) Citation and other notices, including process, may be served anywhere by:
- (1) any sheriff or constable or other person authorized by law; or
  - (2) by any person who is not a party to or interested in the outcome of suit and who is:
    - (A) certified through Harris County to serve process; or
    - (B) certified through the Texas Process Servers Association to serve process, except that such person may not serve process for Harris County.
- (b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

In reviewing these draft rules—and in addition to deciding which alternative might be best—the advisory committee might consider:

- o Do we need a third tear in the rule that allows the judge discretion to allow a non-certified server serve process? In other words, it is one thing to say, "If Jane is certified, you must let her serve." It is something else entirely to say, "If Jane is not certified, you cannot let her serve."
- o Harris County requires process servers to submit to a background check and fingerprints. (Even private investigators who already have had a background check must re-submit.) Should we have a similar statewide requirement?

Thank you very much, Chip. I look forward to Friday's meeting.

Kindest Regards,



Lisa Hobbs

<sup>1</sup> Alternative B assumes the supreme court issues a miscellaneous order authorizing service by any person who is not a party to or interested in the outcome of suit and who is (A) certified through Harris County to serve process; or (B) certified through the Texas Process Servers Association to serve process, except that such person may not serve process for Harris County. The Court could also create a reporting requirement to the Clerk's Office or the Office of Court Administration.