



The Supreme Court of Texas

Jody Hughes, Rules Attorney

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November 22, 2005

Mr. Charles L. Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Various Process Server Review Board Matters

Dear Chip:

Justice Hecht has requested that the matters set forth below relating to the Process Server Review Board ("PSRB" or "Board") be referred to the Advisory Committee, specifically the subcommittee responsible for TRCP 103-107 concerning service of process:

- The Board's proposed Code of Professional Conduct for Certified Private Process Servers ("CPPSS") (attached as Appendix A);
- The Board's request to amend section 6(b) of the Supreme Court's order in Misc. Docket No. 05-9122 (June 29, 2005), to expand the Court's approval of the course offered by the Texas Process Servers' Association to courts in all 254 Texas counties. (As issued, the Court's June 29 order approves the TPSA course for all counties except Harris County). Electronically attached to this message as a PDF file in Adobe format is a letter to Justice Hecht from PSRB member Judge Lindsay, of the 280th District Court of Harris County, requesting that the Supreme Court approve civil process service courses only for counties other than Harris County, and to amend section four ("Returns") of the PSRB's proposed Code of Conduct. Electronically attached in MS Word format is a letter from Judge Lindsay to the Justices of the Supreme Court requesting a different amendment to the same section of the proposed Code of Conduct.
- The Board's proposed policy for investigating complaints against process servers (attached at Appendix B);
- The Board's proposal to implement curriculum guidelines for civil process service courses designed to satisfy the requirement of a minimum of seven hours of monitored instruction,

implemented by order of the Supreme Court in Misc. Docket No. 05-9122 (attached as Appendix C);

- The Board's proposal that a CPPS certified by the PSRB be required to complete a minimum of seven hours of continuing education per calendar year on subjects approved by the PSRB that pertain to the process server profession;
- the Board's proposed policy on conduct affecting process server certification, which was approved by the Board and recommended for adoption after being posted for public comment, and is attached as Appendix D; and
- The Board's recommendation to adopt a proposal from the Texas Process Servers Association to create identity cards for process servers. The Board's preference was to request that the Office of Court Administration provide the cards; however, in the alternative, the Board voted to request approval of TPSA's proposal, which is attached as Appendix E.

I will separately send to Richard Orsinger, the subcommittee chair for TRCP 15-165a, copies of any correspondence from members of the judiciary, the bar, and the general public that I have received regarding the above matters. Unless Richard requests otherwise, I will plan to forward such correspondence via the same medium (i.e., paper or electronic) in which it was received by the Court.

Thank you in advance for your thoughtful consideration of these matters. I look forward to meeting you in person and working with you on these and other rules-related issues.

Respectfully submitted,

Jody Hughes
Rules Attorney

Appendix A

CODE OF PROFESSIONAL CONDUCT (CPC) OF CERTIFIED PRIVATE PROCESS SERVERS (CPPS) PROMULGATED BY THE PROCESS SERVER REVIEW BOARD (PSRB)

(1) RESPECT

A CPPS shall treat with respect all persons with whom the process server interacts in a professional capacity, expressly including any person on whom service is attempted.

(2) TRESPASSING

A CPPS shall not trespass on any property in circumstances that could subject the process server to a criminal conviction, regardless of whether such a charge is filed or a conviction obtained. A CPPS shall not trespass on any property in circumstances that would subject the CPPS to civil liability, regardless of whether a civil lawsuit is filed.

(3) TRUTHFULNESS

A CPPS shall be completely candid and truthful concerning all process service matters, including, without limitation, the following:

- (a) A process server shall not use, submit, or file any document, which is false in whole or in part.
- (b) A CPPS shall not falsely swear or commit perjury in any communication to the PSRB or any federal or state regulatory or licensing authority or court.

RETURNS

A CPPS shall comply with all applicable provisions of the Texas Rules of Civil Procedure relating to service of process. A CPPS shall make every effort to provide an accurate and correct-as-to-form return with regard to each document served. If the service performed does not exactly fit the usual form of return, the CPPS shall add or delete information to make the return completely accurate and disclose the true facts.

DISCLOSURE OF DUAL CAPACITY

If a CPPS has a government job in which it is the CPPS's job to serve process in his official capacity, the CPPS shall disclose to the elected official for whom he works that

he also performs this work in a private capacity. A CPPS shall not accept payment privately for any service performed on time for which the CPPS is being paid in an official capacity.

WEARING OF OFFICIAL UNIFORMS OR DISPLAYING BADGE OR EMBLEM OF OFFICE

A CPPS, who is serving papers in a private capacity, shall not serve or attempt to serve any document while wearing any official law enforcement officer uniform or wearing a uniform that resembles an official law enforcement uniform. A CPPS, who is serving papers in a private capacity, shall not display an official law enforcement badge or a badge that resembles an official law enforcement badge while serving or attempting to serve any document. A CPPS may display identification issued or authorized by the Supreme Court of Texas.

SERVICE BY LAW FIRM EMPLOYEES

A CPPS shall not serve any document, other than a subpoena, in any case for a lawyer or law firm by whom the process server is otherwise employed.

EXAGGERATING AUTHORITY

A CPPS shall not exaggerate his authority, nor his position or affiliation with a court or official agency.

CONTINUING EDUCATION

A CPPS shall comply with the continuing education requirements adopted by the Supreme Court.

MISREPRESENTATION OF QUALIFICATIONS

No person may advertise or represent that the person has the qualifications of a CPPS, including professional designations or membership in professional organizations, unless the person holds a then current certification under the terms of the Supreme Court order.

MAINTAINING CURRENT ADDRESS

Each CPPS shall, at all times, keep the PSRB informed of the CPPS=s current physical and mailing addresses. Such addresses shall be included on every license application and every license renewal form. In the absence of the submission of a specific written request to change a mailing address, which shall be separate from any other submission, the CPPS=s current addresses are presumed to be the addresses on the most recent

registration form. Any request for a change of address shall be sent to the PSRB within 10 days after the change of address becomes effective.

COOPERATION WITH COMPLAINT INVESTIGATION

A CPPS is required to cooperate with the investigation of all complaints within the purview of the PSRB and provide such information as is requested for completing such investigations. A CPPS shall provide to any requesting person the necessary information to file complaints with the PSRB about his or her services. The contact information shall include the current address, phone number, and internet address of the PSRB.

REPORTABLE EVENTS

A CPPS shall report in writing to the PSRB the occurrence of any of the following events within ten (10) days of the date the process server has knowledge of these events:

- o Conviction or imposition of community supervision or deferred adjudication of the CPPS with regard to any of the following:
 - ' a felony or any crime of which fraud or dishonesty is an element; or
 - ' any crime involving moral turpitude; or
 - ' any crime related to the qualifications, functions, or duties of a process server
- o Any disciplinary action, including but not limited to revocation or suspension of a license, registration, or other authority to practice.
- o Refusal by another authority to grant or renew a license, registration, or other authority to deliver process or provide process service in another jurisdiction.
- o Finding of contempt by a state or federal court.

As used in this code, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(14) EXPOSE CORRUPT OR DISHONEST CONDUCT OF ANOTHER LICENSEE

A CPPS shall report to the PSRB any violation of the Code of another CPPS, which can be supported in fact.

A CPPS shall not file a frivolous complaint with the Board.

(15) **MISCONDUCT**

- (a) A CPPS shall not violate this Code, knowingly assist or induce another to do so, or violate this Code through the acts of another.
- (b) A CPPS shall not engage in fraud or deceit.
- (c) A CPPS shall not use or represent that he or she possesses any certificate, college degree, or title to which he or she is not entitled.
- (d) A CPPS shall not commit any criminal act that reflects adversely on the CPPS=s honesty, trustworthiness, or fitness as a CPPS.
- (e) A CPPS shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (f) A CPPS shall not engage in conduct constituting obstruction of justice.
- (g) A CPPS who has been held in contempt by a state or federal court is subject to review and/or disciplinary action by the PSRB.
- (h) A CPPS shall not engage in the practice of process serving when the CPPS is on inactive status or when the authorization to serve process has been suspended or terminated, including but not limited to situations where a CPPS= right to serve process has been administratively suspended for failure to comply with the continuing education requirements as promulgated by the Supreme Court of Texas.
- (i) A CPPS shall not engage the services of a CPPS who is on inactive status or whose process server certification to deliver process has been suspended or terminated.
- (j) A CPPS shall not violate any laws of the State of Texas, other states, or of the United States, relating to the professional conduct of a CPPS or to the practice of process serving.

- (k) A CPPS shall not violate any Rule promulgated by the Supreme Court of Texas.
- (l) In connection with any felony or any crime involving fraud or dishonesty or other conduct involving moral turpitude, a CPPS shall be considered to have engaged in misconduct upon a final conviction, or imposition of community supervision, or the imposition of deferred adjudication.
- (m) A CPPS shall be considered to have engaged in misconduct if the judge of any court makes a finding in connection with a case in that judge=s court that the CPPS has filed a false return.
- (n) A CPPS shall not fail to comply with a final order of any state or federal court unless said order has been lawfully stayed.
- (o) A CPPS shall respond to a party=s or client=s inquiry within a reasonable time. Repeated failure to respond without good cause shall be misconduct.
- (p) A CPPS shall not threaten or commit assault or retaliation against parties, make libelous or slanderous statements, or make public allegations of a lack of mental capacity regarding parties, which cannot be supported in fact.
- (q.1) A CPPS shall not cause or be party to, directly or indirectly, a breach in the security of the private process server examination in any private process server course.

Appendix B

Policy on Investigating Process Server Complaints

1.0 Receipt of Complaints on Process Servers

All complaints received involving persons serving civil process will be directed to the Complaint Committee Chairman for investigation.

2.0 Formal Complaints

All complaints submitted in writing on the approved Texas Process Server Review Board complaint form shall be considered formal complaints and shall be investigated by the Complaint Review Committee until resolution.

2.1 Upon receipt of a formal complaint by the Complaint Committee Chair, the complaint shall be entered and assigned a case number into the PSRB Complaint Tracking System.

2.2 Investigation by the complaint committee members consists of collecting all statements, evidence, or affidavits necessary to make a determination or finding. The information collected should include, at a minimum:

- a. Name, address and phone number of complainant.
- b. Alternate numbers where complainant can be contacted.
- c. Name of process server if known.
- d. Date and time of contact.
- e. Full description of the complaint.
- f. Notarized signature of the complainant.

2.3 All evidence and material related to the complaint shall be available to the committee for determination of the complaint.

2.4 The Process Server will be provided a copy of all complaints as soon as possible and provided an opportunity to give a response to each allegation. Failing to cooperate or provide a response will not deter the investigation and will be treated as an admission of misconduct.

2.5 Any allegation of criminal activity will be referred to the appropriate law enforcement agency for investigation.

3. Informal Complaints

All complaints not submitted in writing or on the PSRB Complaint form shall be considered

informal unless the incident leading to the complaint compels an independent investigation as determined by the PSRB Chairman. All informal complaints will be investigated to the point possible or necessary with available information.

4. Findings

A finding for the resolution of all investigations shall be applied to each complaint with recommendation by the complaint committee using the following guideline for disposition. The details of the investigation and evidence involved may be sensitive and are not to be shared outside the confines of the PSRB prior to disposition.

- A. Unfounded B Allegation is false, or incident occurred, but was lawful.
- B. Not Substantiated B Insufficient evidence to either prove or disprove.
- C. Substantiated B Evidence is enough to prove the allegation.
- D. Never Formalized B Complainant failed to submit a written complaint.

5. Notification Upon Completion

Upon completion of a review of the investigation on any complaint, the Chairman of the PSRB shall direct a response in writing on all formal complaints, advising the complainant and accused process server of the outcome or disposition on the complaint investigation.

6. Recommendation For Disciplinary Action

Upon completion of an investigation of a complaint by the Complaint Committee a recommendation for disposition shall be forwarded to the PSRB along with all accompanying reports, statements, or evidence to support the findings. Action taken by the Chairman of the PSRB will be upon final determination following a vote of the board. Disciplinary recommendations may follow one of the following categories:

- A. Written reprimand
- B. Probation
- C. Temporary Suspension of Certification
- D. Permanent Removal of Certification

Appendix C

Process Server Review Board Education Curriculum Guidelines

In accordance with Section 7 of the Supreme Court's Misc Docket number 05-9122:

A civil process service course that meets the following requirements, similar to the courses approved in paragraph 6, may apply to the Board for approval by the Supreme Court. For the course to be recommended for approval the following, at a minimum:

I. A minimum of 7 hours of monitored instruction definition of relevant terms instruction on applicable laws including the historical development of the law, with emphasis on practical training of proper service and return of service and instruction of but not limited to:

Rules governing service and return:

- 1.1. TCRP 1, Objective Rules
- 1.2. 6: No service on Sunday
- 1.3. 15,
- 1.4. 16, Endorsement of process,
- 1.5. 103, Who may serve
- 1.6. 105, Duty of officer or person receiving
- 1.7. 106, Alternate methods of service
- 1.8. 106b,
- 1.9. 107, Return of service using completion and evaluation of sample returns depicting both correct and incorrect returns of service
- 1.10. 108, Defendant without state
- 1.11. 108a, service in a foreign country
- 1.12. 109, citation by publication
- 1.13. 109a, other substitute service
- 1.14. 116,
- 1.15. 118, Amending returns

II. Justice Court Rules

- 2.1. 536, Who may serve and method of service
- 2.2. 536a, Duty of officer or person receiving and return of service

III. Articles of the Texas Business Corporation Act:

- 3.1. 2.11, Service of Process on Corporation
- 3.2. 8.10, Service of Process on Foreign Corporation

IV. Civil Practices and Remedies Code

- 4.1. 17.021, Service on Certain Non-corporate Business Agents
- 4.2. 17.022, Service on Partnership
- 4.3. 17.024, Service on Political Subdivision
- 4.4. 17.026, Service on Secretary of State
- 4.5. 17.062, Substituted Service on Chairman of Texas Transportation Commission
- 4.6. 22.001, Witness Fees
- 4.7. 22.002, Distance for Subpoenas
- 4.8. 22.003, Fees for Witnesses Summoned by a State Agency
- 4.9. 22.004, Fee for Production or Certification of Documents

V. Rules regarding subpoenas:

- 5.1. 176, Subpoenas
- 5.2. 176.1, Form
- 5.3. 176.2, Required Actions
- 5.4. 176.3, Limitations
- 5.5. 176.4, Who May Issue
- 5.6. 176.5, Service
- 5.7. 176.6, Response
- 5.8. 176.7, Protection of Person from Undue Burden and Expense
- 5.9. 176.8, Enforcement of Subpoena

VI. Instruction on a process server=s exposure to criminal liability;

VII. Instruction on unique issues involving family law cases;

- 7.1. Texas Family Code Chapter 82, Subchapter A., Application for Protective Order
- 7.2. Texas Family Code Chapter 83, Temporary Ex Parte Orders
- 7.3. Texas Family Code 85.041, Delivery To Respondent

VIII. Basic competence testing upon completion of the course.

IX. The course curriculum and competence test shall be delivered to the PSRB along with the applicable answers in written format for review and recommendation to the Supreme Court for approval.

X. It will also be required that all courses offered shall give instruction on the Code of Professional Conduct for Private Process Servers, as approved by the Supreme Court.

XI. The methods and instruction for filing complaint against any private process server and the location for which such complaint forms may be found.

XII. The location and content of the Process Servers Review Board website.

XIII. The location of and instruction on completion of the Supreme Court of Texas Private Process Server Application.

XIV. The identification of the applicant or student of continuing education shall be verified both upon attendance and testing by examination of state photo identification.

Appendix D

**POLICY ON CONDUCT AFFECTING
CERTIFICATION TO SERVE PROCESS**

CRIMINAL HISTORY IN GENERAL

The Board may refuse to recommend process server certification to the Supreme Court of a person who has been convicted of (1) any felony or (2) any disqualifying misdemeanor as described herein.

In determining whether a criminal history should cause the rejection of an application the Board may consider the following factors among others:

1. the nature and seriousness of the crime;
2. the extent to which the approval might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
3. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a Certified Process Server;
4. the extent and nature of the person's past criminal activity;
5. the age of the person when the crime was committed;
6. the amount of time that has elapsed since the person's last criminal activity;
7. the conduct and work activity of the person before and after the criminal activity;
8. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
and
9. other evidence of the person's fitness, including letters of recommendation.

In addition to fulfilling the requirements above, if the applicant has a criminal history reflecting a conviction for a felony or a misdemeanor other than traffic tickets the applicant shall furnish proof to the Board that the applicant has:

1. maintained a record of steady employment for the past five years;

2. supported the applicant's dependents; and
3. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

MISDEMEANORS THAT MAY DISQUALIFY AN APPLICANT

The following shall be considered to be misdemeanors relating to the duties and responsibilities of a process server:

Misdemeanors as defined by the Texas Penal Code, which reflect dishonesty, fraud, deceit, misrepresentation, violence, or untrustworthiness, or any misdemeanor that indicates a clear and rational likelihood that the applicant will not properly discharge the responsibilities of a Certified Process Server

Multiple criminal convictions will always be reviewed. Multiple convictions may reflect a pattern of behavior that renders the applicant unfit for the certification from the Supreme Court of Texas

VIOLATIONS OF THE CODE OF PROFESSIONAL CONDUCT

Behavior that would be in violation of the Code of Professional Conduct, if brought before the Board before an application is approved, may be considered in determining the applicant's fitness to be a process server.

A certified process server is subject to disciplinary action by the board for any violation of the Code of Professional Conduct. Disciplinary action may include A Warning; A warning coupled with probation; A Suspension for a specified time, or a permanent disqualification to be certified as a process server.

DISQUALIFICATION FOR FALSE APPLICATION

Applicants will be automatically disqualified should they present false information on an application form, including intentionally omitting information regarding previous criminal behavior.

Appendix E

Texas Process Servers Association

P.O. BOX 743875

Dallas, Texas 75374-3875

214.553.9990 / 866.553.9990

Facsimile: 214.340.0201

To: The Supreme Court of Texas Date: October 27, 2005
Process Server Review Board
PO Box 12248
Austin, TX 78611
From: Gary Thornton
Subject: Suggestions for Process Server ID Cards

Many of the Texas Courts have historically provided ID cards to Process Servers approved to serve process. Attached are examples of the Denton and Harris county ID cards.

Also attached is a suggested prototype for consideration by the Supreme Court.

Private Process Servers have come to rely on these ID cards to properly identify themselves in situations where the public has a need to verify the process server=s authorization to serve process. Many state, county and local facilities where process is served (i.e.: jail facilities) require proper identification for entry and service of process.

There is no question that the Private Process Server should be provided with an approved ID card.

Issues:

What information should be placed on the ID card?

How will the Supreme Court approve the ID card?

Should the ID card have a picture or a seal?

Which seal should be used?

How will the logistics and expenses of the ID card be handled?

How will security be maintained for issuance of ID cards?

Suggested Solutions to the issues:

It is suggested that the Process Server Review Board review the attached examples and prototype and approve the final wording for the ID card and forward to the Supreme Court for approval.

The question of picture or seal is actually an issue of logistics. The application of a picture to the ID card will require the process server to either submit a passport size photo, which will have to be laminated to the card or to electronically submit a photo to the producer of the card. This will inherently increase the expense.

If the court decides upon the seal as opposed to the picture, it should be decided whether to use the seal of the State of Texas or the seal of The Supreme Court of The State of Texas.

Working on the assumption that the Supreme Court is not inclined to become involved in the logistics of ID card production, the following are suggestions for logistics and security.

It is suggested that the Texas Process Server=s Association be charged with the responsibility of producing and forwarding the cards to process servers as follows:

The Texas Process Server=s Association would contract with a reputable security card fulfillment company to produce the cards.

The TPSA would accept applications for the cards, check the applicant for Supreme Court authorization and forward the information to the fulfillment company. This process would be managed to the extent possible via email.

The fulfillment company would forward the card to the applicant.

The TPSA would make the cards available to members and non-members of the association at a reasonable fee, which would cover the costs of the card plus a reasonable margin to compensate the TPSA for handling the process.

Please let me know if I or any of the TPSA officers can be of assistance in moving this suggestion forward.

Regards,

Gary Thornton
Immediate Past President, TPSA
Chairman, Education Committee, TPSA

October 27, 2005

Supreme Court of Texas
201 West 14th Street, Rm. 104
Austin, TX 78711

Attention: Chief Justice Wallace B. Jefferson
Justice Don R. Willett
Justice Dale Wainwright
Justice David Medina
Justice Phil Johnson

Justice Nathan L. Hecht
Justice Harriet O'Neill
Justice Scott Brister
Justice Paul W. Green

Dear Supreme Court Justices:

I respectfully request the Court to consider adding the following to the proposed "Rules of Professional Conduct (RPC) of Certified Private Process Servers (CPPS)," Section (4) "Returns":

A process server shall promptly file with the appropriate court a complete return with regard to each document served.
A process server may furnish a copy of the return to any person, but this is not a substitute for filing the return.

Rule 105 of Texas Rules of Civil Procedure says:

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

I submit that Rule 105 already requires the action outlined in the first paragraph above; but if I am correct, an express statement is needed because many process servers currently do not file the returns they generate. Instead, many process servers have a policy of delivering the returns to the attorney who paid for the service and relying on that attorney to either file or not file the return as the attorney chooses. Three arguments sometimes put forth in support of this procedure are:

- (1) Because the attorney paid for the process and requested that the return be delivered to the attorney, a process server should be responsive to the attorney who hires the process server and should follow the wishes of the attorney.
- (2) The attorney needs to receive the return before it is filed to decide if changes need to be made in the return.
- (3) Attorneys may have their own reasons for not wanting the return to be promptly filed.

Texas law gives great weight to the presumed accuracy of filed returns. Even if a person was never served at all and knew nothing about the lawsuit until a constable arrived with a writ of execution, the unsuspecting defendant may not challenge the service without corroboration. See Primate Constr., Inc. v. Silver, 884 S.W.2d 151, 152 (Tex. 1994). Even with considerable corroboration, a trial court might nevertheless decide that the return was correct and the defendant was served. See Caldwell v. Barnes, 154 S.W.3d 93, (Tex 2004).

Surely the requirement that process be served by a disinterested person (Rule 103) is an important consideration in allowing such weight to be given to ordinary representations on a piece of paper called a "return". Allowing the process server to treat the attorney as an employer and the return as an item that the attorney has bought and paid for subverts this important basis for giving presumptive credibility to a return in the first place.

In addition, process servers sometimes do not file returns because the attorney has not paid the service fee; and the return is being held as sort of collateral. I submit that, once a process service has been performed, the process server owes a duty to the court to file the return directly and promptly with the court; and that other means of collection should be found (such as getting payment up front).

Sincerely,

Tony Lindsay

Cc: Joseph Hughes, Texas Supreme Court Rules Attorney



TONY LINDSAY
JUDGE, 280TH DISTRICT COURT
CIVIL COURTS BUILDING
HOUSTON, TEXAS 77002
(713) 755-5518

Justice Nathan L. Hecht
Supreme Court of Texas
201 West 14th Street, Rm. 104
Austin, TX 78711

October 29, 2005

Re: Process servers
Two Requests

Dear Justice Hecht:

At the meeting yesterday, the Review Board voted over my objection to recommend to the Court the approval of various process server courses for all counties, including Harris County. The judges of Harris County very much appreciated the consideration given to Harris County by the Court's order, effective July 1, 2005, allowing Harris County to retain some control over the education of process servers who will serve process for Harris County courts.

REQUEST #1: I request that the Court NOT WITHDRAW that consideration almost as soon as it has begun by now approving all courses for all counties; but rather to approve the courses only for all counties other than Harris County.

The people who teach the courses in question are neither lawyers nor judges; and I find from feedback received at the Harris County course that some misleading or incomplete information is disseminated by these well-meaning folks. One of the alarming currently popular misconceptions that is either taught or allowed to be misunderstood is about the case of Dosamantes v. Dosamantes, 500 S.W. 2d 233 (Texarkana 1973), which says:

Generally, one who is within jurisdiction has obligation to accept service when it is reasonably attempted and he is usually held to have been personally served if he physically refuses to accept papers and they are then deposited in an appropriate place in his presence or near him where he is likely to find them, but he must also be informed of nature of process and that service is being attempted. (copied from course material, not directly from opinion)..

The above quotation is dicta in the opinion, but is represented as a holding of the court. The holding of the case was that the service was no good. The case gives little guidance as to what exactly would be close enough to be good.

My most recent brush with Dosamantes involved a process server who filed a return representing that he had performed delivery in person to a certain named defendant. After a phone call from the person's wife, a letter from the person's wife, and an oral hearing at which the process server testified, I concluded that the true facts were: (1) process server thought he knew defendant's address and he went to the address given; (2) process server knocked on the door and wife came to the door; (3) process server asked to speak to named defendant; (4) wife said her husband was not the named defendant and refused to call husband to the door; (5) process server dropped the citation in the yard and left.

I doubt that the foregoing described service would have been valid, even if the victim had actually been the named defendant, which he was not. If the wrong person's wife had not been responsible enough to call the court, an unsuspecting victim would have had a default judgment against him and might never have been able to prove by adequate corroboration that he was not served. This example demonstrates more than one violation of procedure; but one thing it shows is the notion loose out there among process servers that they are free to state on a return that they have delivered a citation "in person" if, in their own judgment, they think they have met Dosamantes standards. At the very least, if a process server is relying on Dosamantes to make his otherwise invalid service valid, the process server should describe in detail on the return what he actually did and said and what the target subject did and said so that the attorney and the trial judge can later decide whether service was good or not, if the issue comes up.

REQUEST #2: Please add to the Code of Professional Conduct in Section (4) "Returns":

If a process server purports to deliver a document under circumstances the process server believes to be allowed under Dosamantes v. Dosamantes, the details shall be stated in the return, which may not recite merely that the document was delivered "in person."

Thank you for giving thought to my requests.

Sincerely,

Tony Lindsay

Tony Lindsay
Judge, 280th District Court

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cc: Chief Justice Wallace B. Jefferson
Justice Don R. Willett
Justice Dale Wainwright
Justice David Medina

Justice Phil Johnson
Justice Harriet O'Neill
Justice Scott Brister
Justice Paul W. Green

✓ Joseph Hughes, Texas Supreme Court Rules Attorney