

CITATION BY PUBLICATION USING THE INTERNET

by

Richard R. Orsinger, Chair
Rule 16-165a Subcommittee
Supreme Court Advisory Committee

March 24, 2011

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I. CITATION BY PUBLICATION VIA THE INTERNET. The assignment is to consider whether notice of citation by publication, required under Tex. R. Civ. P. 116 to be published in a “newspaper,” should be altered to permit or require publication on the Internet, in addition to or in lieu of publication in a newspaper of the county in question.

II. CURRENT TEX. R. CIV. P. 116.

Here is the language of current TRCP 116:

Rule 116. Service of Citation by Publication

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

III. ISSUES TO CONSIDER. Issues to be considered include:

(1) As used in the current TRCP 116, does the term “published” mean only that the notice must be printed in a paper newspaper, as the Rule implies? Or can publication be accomplished by posting the notice at a web site? If the latter, then at whose web site, the newspaper’s or the government’s?

(2) As used in the current TRCP 116, does the term “newspaper” mean just the paper copy that is distributed by hand delivery, at newsstands or news racks, by street vendors, and by US Mail, or does it require that the notice be included in the electronic version of the

newspaper that is published on the newspaper's web site or distributed to subscribers by email?

(3) How does the Term "published once a week" apply to the posting of an electronic notice that is continuously available 24-hours a day?

(4) Is a web site more likely to give actual notice to the absent party, or to persons who might communicate the notice to the absent party, than publication in a newspaper in the county where the suit is filed, or where the land is located? Is there a way to insure that such notices will be picked up by popular Internet search engines such as Google, Yahoo, etc. so that when people search for their own names or names of persons they know the notices will be listed high up in the search results?

(5) If we recognize Internet-based publication of notice, do we merely (i) suggest publication through both the paper and the electronic version of the newspaper, or (ii) do we *require* such dual publication, or (iii) do we permit the plaintiff or sheriff to choose whether to publish notice through either a newspaper or an internet posting at a government-maintained web site in lieu of newspaper publishing, or (iv) do we require that notice be published at a government-maintained web site instead of through a newspaper?

(6) If a government-maintained web site is to be involved, should each county operate their own, or should citations by publication be published at a central site maintained by the State of Texas, through the Secretary of State or other government office?

(7) How does cost figure in the decision?

(8) What does the litigant do when there is no paper newspaper in the county or an adjoining county?

IV. HOUSTON CHRONICLE AGAINST GOVERNMENT WEB SITE NOTICES.

— Houston Chronicle. March 12, 2011

Hear ye, hear ye: Public notices regarding public money need to be where we'll see them — in newspapers

Timely access to information: Nothing is more crucial to the smooth functioning of the institutions of our democracy. And nothing is more fundamental to that access than the traditional published public notice in the newspaper. It spreads the word about meeting agendas, bidding processes for contracts and other nuts and bolts of the operation of agencies large and small financed with public dollars.

Published notices in newspapers are the time-honored successors to the town criers of old. They get the word out so that voters — taxpayers — can be in the know. They do so

efficiently, economically and impartially. Importantly in this Internet age, they also do so electronically, via newspaper websites, as well as a statewide newspaper industry website that aggregates all public notices from Texas papers in one place, independently operated and not run by the government (http://www.txheadlines.com/index.php/public_notices).

That venerable method of informing the public is being put at risk in Texas by a movement in the Legislature to amend the public notice process for our 1,000-plus school boards and 254 county governments, as well as our municipal governments.

Spearheading this ill-advised effort is HB 507, by Rep. Angie Chen Button, (R-Richardson), that would allow school districts, municipalities and counties to move some public notices on bids to the Internet.

We acknowledge, up front, our self-interest. Publishing public notices creates a revenue stream for newspapers, albeit a relatively small one in many cases. By law, Texas newspapers must charge their lowest classified rate for public notices.

To do the same job newspapers already do, governments would have to spend thousands of additional taxpayer dollars for secure servers, programming, posting and auditing. So much for the cost-benefit argument for changing over.

The prospect of posting competitive bidding notices on the websites of the public entities — school districts, cities and counties — without some independent oversight is particularly alarming. These are your tax dollars. Competitive bidding notices should be published in a newspaper, where they can be seen by all taxpayers.

Newspapers are watchdogs. We routinely monitor and report the acts of government. This is a benefit that no government entity can possibly provide in this important area.

We hope state lawmakers will bring discernment and judgment to their review of this issue and continue the requirement that public notices be published in newspapers.

A majority of Texans rely on their local newspaper as the primary source of information in their community.

This is where such vital information concerning taxpayer dollars should be placed.

V. PENDING LEGISLATION. The following bills have been introduced in the current session of the Texas Legislature.

H.B. No. 1082

A BILL TO BE ENTITLED AN ACT relating to authority for certain school districts to provide public notice by posting the notice on the district's Internet website.

Sec. 11.177. AUTHORITY FOR CERTAIN DISTRICTS TO PUBLISH NOTICE ON DISTRICT WEBSITE.

(a) This section applies to a school district only if:

(1) there is not a daily, weekly, or biweekly newspaper published in the district; and

(2) the population of the district constitutes less than 10 percent of the total population of the county in which the district 's central administrative office is located.

(b) If a school district, the district 's board of trustees, or an officer of the board is required under state law to publish notice concerning the district in a newspaper, the district, board, or officer may instead post the notice on the district 's Internet website.

(c) Notice posted on an Internet website under Subsection (b) must meet any content or deadline or other date requirements established by law or rule for publishing that notice in a newspaper and must meet or exceed any duration or frequency requirements established by law or rule for publishing that notice in a newspaper. The notice or a link to the notice must be posted in a prominent place on the homepage of the website.

(d) Notice posted on an Internet website under Subsection (b) is not required to meet any page or type-size requirements established by law or rule for publishing that notice in a newspaper.

H.B. No. 1094

A BILL TO BE ENTITLED AN ACT relating to the availability on the Internet of reports of political expenditures and contributions filed in connection with certain county and municipal offices.

SECTION 1. The heading to Section 254.0401, Election Code, is amended to read as follows:

Sec. 254.0401. AVAILABILITY OF [ELECTRONIC] REPORTS ON INTERNET.

SECTION 2. Section 254.0401, Election Code, is amended by adding Subsections (a-1) and (c) and amending Subsection (f) to read as follows:

(a-1) Each county clerk shall make a report filed with the clerk under this subchapter in connection with a county office or the office of county commissioner available to the public on the county 's Internet website not later than the second business day after the date the report is filed.

(c) The clerk of a municipality with a population of 500,000 or more shall make a report filed with the clerk under this subchapter in connection with the office of mayor or member of the municipality 's governing body available to the public on the municipality 's Internet website not later than the second business day after the date the report is filed.

H.B. No. 1153

A BILL TO BE ENTITLED AN ACT relating to public access to financial and tax rate information of political subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0241 to read as follows:

Sec. 403.0241. INTERNET PORTAL TO LOCAL GOVERNMENT FINANCES.

(b) The comptroller shall establish an Internet portal to allow a member of the public to access without charge financial and tax information for political subdivisions of this state. The portal must include a search feature that retrieves the information specified by this section in response to a user 's entry of the address of a location in this state.

(c) The Internet portal must be accessible by members of the public and must be designed to retrieve, with respect to any address of a location in this state that a user enters into the search feature, the following information for each political subdivision within the boundaries or extraterritorial jurisdiction of which the address is located, organized by political subdivision:

- (1) the name of the political subdivision; and
- (2) the political subdivision 's Internet website address or, if the political subdivision does not operate an Internet website, contact information to enable a member of the public to obtain from the political subdivision financial and tax information.

(d) Subject to Subsection (e), for each political subdivision identified as required by Subsection (c), the Internet portal must be designed to enable the user to access the following financial information on the political subdivision 's Internet website:

- (1) budget for the political subdivision 's current fiscal year;
- (2) each proposed budget for the following fiscal year that currently is under consideration by the political subdivision 's governing body;
- (3) the most recent annual financial report published by the political subdivision 's governing body;

etc.

H.B. No. 2816

Sec. 11.177. AUTHORITY TO PUBLISH NOTICE ON DISTRICT WEBSITE.

(a) If a school district, the district's board of trustees, or an officer of the board is required under state law to publish notice concerning the district in a newspaper, the district, board, or officer may instead post the notice on the district's Internet website.

(b) Notice posted on an Internet website under Subsection (a) must meet any content or deadline or other date requirements established by law or rule for publishing that notice in a newspaper and must meet or exceed any duration or frequency requirements established by law or rule for publishing that notice in a newspaper. The notice or a link to the notice must be posted in a prominent place on the home page of the website.

(c) Notice posted on an Internet website under Subsection (a) is not required to meet any page or type-size requirements established by law or rule for publishing that notice in a newspaper.

H.B. No. 3364

SECTION 1. Section 51.002, Property Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) If a county maintains an Internet website, the county must post a notice of sale filed with the county clerk under Subsection (b)(2) on the website on a page that is publicly available for viewing without charge or registration.

S.B. No. 690

A BILL TO BE ENTITLED AN ACT relating to the enforcement of a self-service storage facility lien

(d) The notice required by this section may be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the lessor submits a written request by verified mail to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled requesting information relating to the identity of the last known owner of record and any lienholder of record;

VI. LEGAL ENCYCLOPEDIAS.

6C Nichols Cyc. Legal Forms § 138:1

Nichols Cyclopedia of Legal Forms Annotated
Database updated November 2010

Chapter 138. Newspapers and Magazines

I. Suggestions

§ 138:1. Newspapers and magazines, in general

West's Key Number Digest, Constitutional Law 90(1) to (3), 90.1 to 90.3, 274.1
West's Key Number Digest, Newspapers 1 to 6, 6.1, 6.5

A.L.R. Library

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822

Legal Encyclopedias

C.J.S. Constitutional Law §§ 848 to 852
C.J.S. Newspapers §§ 1 to 2, 24 to 26

There are several characteristics that newspapers have in common: they are published periodically, usually at short, regular intervals not exceeding a week; they are meant to appeal to a wide spectrum of the general public; they usually contain advertisements, and; their purpose is to convey news or advocate opinions.[FN1] Newspapers may also be defined in state law to identify the types of publications in which legal notices may be published.[FN2] Other statutes that may contain definitions regarding newspapers include those relating to taxation and licensing, libel, antitrust, regulation of news racks, postal rates, and regulation of pornography.[FN3]

Publications with narrower appeal, such as a daily sports sheet or a publication devoted to radical social and political commentary, may qualify as newspapers, magazines, or periodicals.[FN4]

Practice Note: Due to the Internet, the very nature of what may be considered a "newspaper" is changing, requiring that practitioners review the effect of other laws. That the online edition of a newspaper is in fact an "edition" of the "newspaper" has been accepted by many courts.[FN5]

One issue the online version of a newspaper presents for users that is different—yet the same—as that presented by the print version is copyright infringement. Since the Internet allows users to browse and "assemble" the equivalent of their own newspaper by pulling news content from the servers of various publishers according to their needs and interests, many users may erroneously believe—despite online access agreements, website copyright notices, and disclaimers—the content is not copyright protected or in the public domain.[FN6]

Magazines are commonly understood to be synonymous with the term "periodical." Each issue of a periodical contains a variety of original articles by different authors. The largest class of periodicals would be magazines, which are pamphlets published periodically, containing miscellaneous papers, compositions, articles, stories, or poems, which are often illustrated.[FN7] To be treated as second class matter under the postal regulations, a periodical must be a printed paper or publication, issued in pamphlet or book form, at stated or regular intervals of more than one day between each issue. It contains either general, class, trade, technical, scientific, serial articles, or other reading matter, and advertising.[FN8] To qualify for periodical-class mail, a magazine must be regularly issued at stated intervals at least four times a year. It must bear a date of issue and be numbered consecutively. Periodical-class mail must have a known office of publication, and it must be formed of printed sheets and not reproduced by means of the stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.[FN9]

[FN1] Am. Jur. 2d, Newspapers, Periodicals, and Press Associations § 1.

[FN2] See, e.g., Ind. Code Ann. § 5-3-1-0.4 (defining a "newspaper" a publication that: (1) is a daily, weekly, semiweekly, or triweekly newspaper of general circulation; (2) has been published for at least three (3) consecutive years in the same city or town; (3) has been entered, authorized, and accepted by the United States Postal Service for at least three (3) consecutive years asailable matter of the periodicals class; and (4) has at least 50% of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal).

[FN3] See Am. Jur. 2d, Newspapers, Periodicals, and Press Associations § 2.

[FN4] For additional discussion of the definition of newspapers, magazines, and other periodicals, see What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

[FN5] See, e.g., *Pogliani v. U.S. Army Corps of Engineers*, 166 F. Supp. 2d 673 (N.D. N.Y. 2001), judgment aff'd, 306 F.3d 1235 (2d Cir. 2002) and aff'd in part, remanded in part, 49 Fed. Appx. 327 (2d Cir. 2002); *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F. Supp. 949, 152 A.L.R. Fed. 793 (C.D. Cal. 1997), judgment aff'd, 194 F.3d 980, 44 Fed. R.

Serv. 3d 1207 (9th Cir. 1999); *American Libraries Ass'n v. Pataki*, 969 F. Supp. 160 (S.D. N.Y. 1997); *American Civil Liberties Union v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996), judgment aff'd, 521 U.S. 844, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997).

[FN6] For additional discussion of this issue and a sample online access agreement and website notices and disclaimers, see §§ 2.3242 to 2.3244.40 of this publication.

[FN7] See Am. Jur. 2d, Newspapers, Periodicals, and Press Associations § 5.

[FN8] See Am. Jur. 2d, Newspapers, Periodicals, and Press Associations § 6.

[FN9] See 39 C.F.R. pt. 3001, subpt. C, App. A. There are numerous additional requirements imposed by the postal regulations.

VII. CASE LAW IS IN ITS INFANCY. There is precious little case law on the question of internet-based notice as distinguished from paper newspaper notice.

A. VIRGIN ISLANDS. The issue was considered in *Hernandez v. Alcorta*, 2003 WL 22391311 (Terr. V.I. 2003). A copy of the Opinion is attached. The Judge in the case wrote:

Incorporating by reference an affidavit by the publisher of the Source, Plaintiff contends that not only is an internet newspaper not a deficient method for disseminating notices to the public, it is in fact superior to printed versions in many ways. The stated reasons for this superiority are (1) that internet newspapers reach a greater number of people because they are free and available 24 hours per day, (2) that an internet newspaper's audience potentially extends far beyond the confines of its original location, (3) that persons reading an internet newspaper can easily forward information contained therein to others, and (4) that legal notices published in internet newspapers are not relegated to a section in the back pages, but are immediately accessible through the home page.

The Court finds all these arguments persuasive.

Id. at *3.

B. WASHINGTON STATE. In *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wash.2d 403, 128 P.3d 588, 596 (Wash. 2006), a majority of the Washington Supreme Court held that a condemning authority's giving public notice of its meeting through the internet was sufficient notice to comply with the governing Washington statute. The Court's majority Opinion said:

There is very little case law on the subject of the sufficiency of web posting for notice requirements. Courts in several cases have rejected web posting as a method to apprise class members of a class action suit. See, e.g., *Reab v. Elec. Arts, Inc.*, 214 F.R.D. 623, 631 (D.Colo.2002). However, in such instances the posting was not an

exercise of legislative authority. Additionally, the California Court of Appeals held last year that statements on a web site “hardly could be more public.” *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 885, 17 Cal.Rptr.3d 497, 503 (2004); see also *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) (“[The Web] provides relatively unlimited, low-cost capacity for communications of all kinds.”).

Miller's argument that posting on a web site does not necessarily “furnish” notice to anyone is unfounded. Just as it is impossible to assure that anyone will look at a particular web site, it is equally impossible to assure that anyone will purchase, much less read, a newspaper. In addition, there is no way to assure that a newspaper will even publish a notice furnished by an agency because agencies are not required to buy advertising space. More important, however, is the fact that RCW 35.22.288 does not require an agency to use one of the listed methods, much less prohibit the use of the internet. The statute explicitly states that the methods “may include, but not be limited to” those specifically listed. RCW 35.22.288. Clearly, any other method that provides comparable notice to those listed would meet the statutory requirement. Miller has not shown that publication on the Sound Transit web site failed in any way to meet the standard set forth in the statute. While precedent on this subject is sparse, posting on a public web site is at least as likely to provide the community with notice as the specifically approved notice given to a newspaper, and this was the method Sound Transit had used for years.

C. A SEVENTH CIRCUIT CLASS ACTION CASE. In a class action case, *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 786 (7th Cir. 2004), after reversing on other grounds, the Seventh Circuit said this about class action notice using the Internet:

When individual notice is infeasible, notice by publication in a newspaper of national circulation (here USA Weekend, a magazine that is included in hundreds of Sunday newspapers) is an acceptable substitute. *Fed.R.Civ.P. 23(c)(2)*; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *In re Agent Orange Product Liability Litigation*, 818 F.2d 145, 167-69 (2d Cir.1987); *Montelongo v. Meese*, 803 F.2d 1341, 1351-52 (5th Cir.1986). Something is better than nothing. But in this age of electronic communications, newspaper notice alone is not always an adequate alternative to individual notice. (See Brian Walters, “ ‘Best Notice Practicable’ in the Twenty-First Century,” 2003 UCLA J.L. & Tech. 4, discussing N.D. Cal. Civ. L.R. 23-2, which requires that notice of securities class actions be posted to an online clearinghouse maintained by Stanford Law School.) The World Wide Web is an increasingly important method of communication, and, of particular pertinence here, an increasingly important substitute for newspapers. Although Fleet did not post a notice on its own website, a firm that was hired to administer the settlement maintained a website with details of the case, and so far as appears that was an acceptable substitute.

D. OTHER CLASS ACTION CASES. Other courts have ruled that a combination of internet notice and other more conventional forms of notice constituted the best notice practicable under the circumstances. There are a number of cases where internet posting, coupled with mailings or newspaper publications, were found to be *Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008); *Turner v. Murphy Oil USA, Inc.*, 472 F.Supp.2d 830 (E.D. La. 2007); *Grunewald v. Kasperbauer*, 235 F.R.D. 599 (E.D. Pa. 2006); *Nilsen v. York County*, 382 F.Supp.2d 206 (D.Me. 2005); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, 226 F.R.D. 498 (E.D.Pa. 2005); *In re Global Crossing Securities and ERISA Litigation*, 225 F.R.D. 436 (S.D.N.Y. 2004); *Mangone v. First USA Bank*, 206 F.R.D. 222 (S.D.Ill. 2001); *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461 (E.D. Pa. 2000). None of the foregoing cases evaluated Internet notice alone.

VIII. THE LAW REVIEWS.

A. WILLIAM MITCHELL LAW REVIEW. Jessica Klander, in Student Note, *Civil Procedure: Facebook Friend or Foe?: the Impact of Modern Communication on Historical Standards for Service of Process—Shamrock Development v. Smith*, 36 Wm. Mitchell L. Rev. 241, 252 (2009), wrote:

Yet, while the constitutional standard may limit divergence, it can also be a catalyst for change when rules become outdated and antiquated. [FN85] The constitutional standard of due process requires a plaintiff to use a method reasonably calculated to reach the defendant, which implies that courts must provide the methods appropriate for doing so. When the methods available are no longer reasonably calculated to reach the defendant, the courts must, in turn, make the changes necessary to comply with the standard. [FN86] Because of the influence of modern technology on communication patterns, electronic service may be a significantly better means for reaching a defendant, making the exclusion of electronic service suspect. [FN87] Due process requires that the method employed reflect an actual desire to inform the defendant, and when the defendant is best informed through electronic service, the exclusion of this method is in conflict with this underlying principle. [FN88] Because the constitutional sufficiency for affording notice is factually specific, the plaintiff is required to conform to the actual behavior of the defendant. [FN89] But when the methods for providing notice do not conform to actual behavior, due process becomes a loophole, rather than a safeguard, for defendants to evade service. [FN90]

The student author went on to state:

Despite the lack of electronic service in the United States, it cannot be long before such case law will begin to surface, because as noted by the court in *Rio Properties*, “[t]o be sure, the Constitution does not require any particular means of service of process, only that the method selected be reasonably calculated to provide notice and an opportunity to respond.” [FN144] As the internet fast becomes a necessity, and not a choice, statutory reform to include electronic service has become an imminent issue beckoning immediate attention. [FN145] Allowing electronic service has begun

to become more prevalent in other countries. [FN146] For example, in a groundbreaking service-of-process case, an Australian defendant suffered a default judgment obtained through the exercise of service by publication via Facebook. [FN147] However unique, the Australian case denotes positive signs that the judiciary worldwide is beginning to recognize and incorporate electronic methods of communication into the processes of civil procedure. [FN148]

Although the United States has not yet incorporated electronic service into service of process, there are signs that the trend is moving in that direction. [FN149] Recent changes to the Federal Rules of Civil Procedure suggest that there is a general trend toward allowing electronic service. [FN150] There have been parallel developments in the service of documents electronically in the federal and state judiciary system. [FN151] In 1996, the Federal Rules of Civil Procedure were amended to make “clear the equality of filing by electronic means with written filings.” [FN152] Similarly, rules 5(a) and 5(b)(2)(E) work together to allow the electronic delivery of all pleadings and papers as long as the parties consent to it in writing. [FN153] Furthermore, under the rules of discovery, parties are required to provide any electronically stored documents unless unduly burdensome. [FN154] But perhaps the closest analogous change is in the use of electronic postings for class action lawsuits. “Even absent judicial decree, parties to class actions are employing internet technologies, usually websites, to help meet notice requirements.” [FN155] These changes underscore the importance of electronic communication in modern litigation. Because notice forms the foundation for litigation, electronic service ought to be allowed.

Id. at 262-63.

B. HOFSTRA LAW REVIEW. Law student Lauren A. Rieders, in *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 Hofstra L. Rev. 1009, 1043 (2010). She began her article:

The American newspaper industry is dying. [FN1] Nearly two hundred newspapers have turned their last pages in recent years [FN2] due to declining advertising and subscription revenue, and the propagation of free information on the Internet. [FN3] In 2008, the 100-year-old Christian Science Monitor announced that it would cease printing daily and instead, publish its content online. [FN4] In 2009, the 146-year-old Seattle Post-Intelligencer became an online-only publication. [FN5] Recently, Arthur J. Sulzberger, Jr., the chairman and publisher of The New York Times, revealed that the company will stop printing the newspaper ““sometime in the future, date TBD.”” [FN6] The demise of the newspaper institution is unsettling, not only because newspapers have played a paramount role throughout American history, but also because their decline may compromise citizens' statutory and constitutional rights. [FN7]

Id. at 1009-1010.

The student author concludes her article with an appeal to the use of internet versions of newspapers:

The propriety of notice by publication is implicated by the troubled state of the newspaper industry. [FN249] If the purpose of notice by publication is to ensure that a notice is given the widest publicity practicable, and to make sure that the rights of all concerned are safeguarded, [FN250] online newspapers should be used to achieve these ends. [FN251] Statutes and procedural rules should no longer embrace only print newspapers as the default vehicle for providing constructive notice. [FN252] Especially in the context of initiating court proceedings, in the future, print newspapers may no longer be “reasonably calculated” to apprise a defendant that he may be deprived of his life, liberty or property rights. [FN253]

In every state where legal notices are required to be published in a newspaper, the state should instead require that notices be published in online newspapers. [FN254] Citizens no longer need to “thumb through the printed pages . . . [or] look at all the current notices” [FN255] to find out whether their interests are implicated. Rather, they can search databases of legal notices, or even have notices delivered to their personal e-mail addresses. [FN256] Furthermore, publishing notices in online newspapers will reduce the amount of litigation concerning whether notice published in a certain newspaper afforded due process protections to an interested party. [FN257] In sum, the transition from paper-based notice to Internet notice published in online newspapers will preserve the source of revenue for newspapers, and it will improve the chance that citizens are actually apprised of the content contained therein. [FN258]

Id. at 1042-1043.

C. UNIVERSITY OF CHICAGO LAW REVIEW. Another student work, by Jordan S. Ginsberg, Comment, *Class Action Notice: The Internet's Time Has Come*, 2003 U. Chi. Legal F. 739, 772 (2003), addressed electronic notice in class action proceedings. The author concludes:

The class action mechanism has changed markedly through amendments and alterations. [FN194] The same holds true for the notice requirement of the class action rule. At the dawn of the twenty-first century, courts and litigants should reassess their base assumptions about communication and information transmission. While courts have held that newspapers were the standard for providing notice of pending class actions, [FN195] the advent of the internet should force them to reevaluate this belief. National newspapers may be an appropriate means of transmitting notice in certain, select instances. However, in cases where class members are truly diverse and unknown, courts rely on the fictions of accessibility and prominence of national newspapers to sustain their effectiveness. [FN196] At the very least, the legal community should recognize the breadth and scope of the

internet; courts should recognize it as an exclusive and affordable means of providing adequate notice to unidentifiable parties. Internet notice can be as narrowly tailored to a targeted group or as widely cast as necessary. As the popularity of the internet continues to grow, the legal community will one day have to face the realization that the internet generally provides a better, more comprehensive, more accessible form of notice to a greater number of potential class members than the national newspapers do. The legal community must not be afraid to find that exclusive publication in national newspapers is an inefficient relic of the past, and a scheme of internet notice is necessary to provide the “best practicable” notice.

D. UNIVERSITY OF PITTSBURGH LAW REVIEW. A law professor and two practicing lawyers, Robert H. Klonoff, Mark Herrmann, and Bradley W. Harrison, published an article, *Making Class Actions Work: the Untapped Potential of the Internet*, 69 U. Pitt. L. Rev. 727 (2008), regarding giving notices in class action cases via the Internet. The authors reached this conclusion:

The power of the Internet to allow class members to participate in class action litigation cannot be ignored. No longer can efficiency or logistical concerns prevent courts and practitioners from engaging those unnamed class members who have been historically cast aside.

The current uses of the Internet in class action litigation alleviate some of the plight of the absent class member. At the very least, the Internet has begun to take steps aimed at empowering these individuals by enhancing their ability to gather information about pending or potential litigation. But the transition to actual and meaningful participation has just begun.

E. OTHER PUBLICATIONS. The following list of articles on electronic service is taken from Nancy Levit, *Electronic Evidence Annotated Bibliography*, 23 J. Am. Acad. Matrim. Law. 217, 244-45 (2010):

- Jeremy A. Colby, E-SOP's Fables: Recent Developments in Electronic Service of Process, 9 J. Internet L. 3 (June 2006) (addressing electronic service of process cases regarding parties residing inside and outside the United States).

- Kevin W. Lewis, Comment, E-Service: Ensuring the Integrity of International E-Mail Service of Process, 13 Roger Williams U. L. Rev. 285 (2008) (focusing on the two federal cases, *Rio Properties, Inc. v. Rio International Interlink* (from the Ninth Circuit Court of Appeals) and *Broadfoot v. Diaz* (from the Northern District of Georgia Bankruptcy Court), that started the email service of process idea).

- Matthew R. Schreck, Preventing “You’ve Got Mail”™ From Meaning “You’ve Been Served”: How Service of Process by E-Mail Does Not Meet Constitutional Procedural Due Process Requirements, 38 J. Marshall L. Rev. 1121 (2005) (arguing that service by email should be a method of last resort used only when other methods fail).

- Andriana L. Shultz, Comment, Superpoked and Served: Service of Process Via Social Networking Sites, 43 U. Rich. L. Rev. 1497 (2009) (discussing an Australian case authorizing service of the notice of a default judgment on Facebook).
- Aaron R. Chacker, Note, E-ffectuating Notice: Rio Properties v. Rio International Interlink, 48 Vill. L. Rev. 597 (2003).
- Jessica Klander, Note, Civil Procedure: Facebook Friend or Foe? The Impact of Modern Communication on Historical Standards for Service of Process-- Shamrock Development v. Smith, 36 Wm. Mitchell L. Rev. 241 (2009) (Minnesota).
- John M. Murphy III, Note, From Snail Mail to E-Mail: The Steady Evolution of Service of Process, 19 St. John's J. Legal Comment. 73 (2004) (Rio Properties, Inc. v. Rio International Interlink).
- David P. Stewart & Anna Conley, E-Mail Service on Foreign Defendants: Time for an International Approach?, 38 Geo. J. Int'l L. 755 (2007).
- Maria N. Vernace, Comment, E-Mailing Service of Process: It's a Shoe-In!, 36 UWLA L. Rev. 274 (2005) (9th Cir.).

IX. POSSIBLE REVISIONS TO TEX. R. CIV. P. 116.

[Amended] Rule 116. Service of Citation by Publication

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published. [Version A] The publication requirement *may* also be met by publishing citation at such a newspaper's internet site for a period of four (4) continuous weeks, beginning at least twenty-eight (28) days before the return day of the citation, provided that the citation may be accessed by using a search capability built into the internet site.

or

[Version B] The citation *shall* also be published at the newspaper's internet site for a period of four (4) continuous weeks, beginning at least twenty-eight (28) days

before the return day of the citation, provided that the citation may be accessed by using a search capability built into the internet site.

or

[Version C] The publication requirement *may* also be met by publishing citation at an internet site maintained by the county [or “State of Texas”] for a period of four (4) continuous weeks, beginning at least twenty-eight (28) days before the return day of the citation, provided that the citation may be accessed by using a search capability built into the internet site.

or

[Version D] The publication requirement *shall* also be met by publishing citation at an internet site maintained by the county [or “State of Texas”] for a period of four (4) continuous weeks, beginning at least twenty-eight (28) days before the return day of the citation, provided that the citation may be accessed by using a search capability built into the internet site.

or

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published at an internet site maintained by the county [or “State of Texas”] for the purpose of publishing legal notices, for a period of four (4) continuous weeks, beginning at least twenty-eight (28) days before the return day of the citation, provided that the citation may be accessed by using a search capability built into the internet site. ~~In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.~~