

# *Direct Results Legal Service*

516 West Annie Street  
Austin, Texas 78704  
(512) 447-2300 Telephone (512) 447-3303 Facsimile

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

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Attn: Advisory Committee  
P.O. Box 12248  
Austin, Texas 78711

Re: Process Service Review Board (PSRB); other recommendation(s)

Dear Members:

I am very concerned about Judge Tony Lindsay's intentions regarding officer's returns. Officer's returns are filed by the process server who serves the process. They are also filed by other process servers when networking. And, they are also filed by attorneys who make the initial request that service be executed. This system works well and is not a problem of any significance.

Furthermore, at the last legislative session, it was suggested that a "five day officer's return" rule be instituted.

A five day officer's return rule would place an undue and unnecessary burden on private process servers. It would necessarily increase the cost of service of process in the following way:

Many process servers, including myself, network with other servers around the state and across the U.S.A. A five day rule would mean the necessity of utilizing Federal Express or some other means of express delivery to get the returns back in time. This would increase the overall cost to our clients, the attorneys of Texas.

When forwarding process to servers in other states, it would be unreasonable to ask them to mail the return back to the issuing court. Furthermore, this rule would not have applied to sheriffs or constables if Senate Bill 165 had become law.

Respectfully,



Tod E. Pendergrass, SCH1660  
President, DRLS, Inc.  
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Re: Process Service Review Board (PSRB); other recommendation(s)

Dear Members:

Substituted service of process in Texas is a problem and actually causes service to be delayed. Currently, one must make diligent attempts (normally 3, and as many as 6 depending on the Judge, when attempting personal service) to personally serve a defendant at a residence before obtaining a sub. service order. Federal Rule 4(e)(2) states: "...service upon an individual...may be effected... by delivering a copy of the summons and of the complaint to the individual personally **or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.**" An amendment to T.R.C.P., Rule 106, would be beneficial in the following ways:

1. Service will be completed sooner if we could leave the process with a spouse, relative or roommate thereby moving up the answer date and speeding up the case in general.
2. Think of all the time and, more importantly these days, gasoline that could be saved by not having to go back to the same address several times.
3. Time in uncontested docket would be greatly reduced.

This method works for service of federal process and service of process in many other states. It would work for Texas and would benefit process servers, attorneys and judges (even the constables). This method should be in addition to the current method of sub. service.

Note: This change could possibly affect the precedent set by *Dosamantes v. Dosamantes*, 500 S.W. 2d 233 (Texarkana 1973).

Respectfully,

A handwritten signature in black ink, appearing to be 'T. Pendergrass', with a long, sweeping horizontal line extending from the top right of the signature.

Tod E. Pendergrass, SCH1660

President, DRLS, Inc.

Director, The Certified Civil Process Servers Association of Texas

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Re: Process Service Review Board (PSRB) and PSRB recommendations

Dear Members:

Private process servers do not need a government issued ID card. A process server's method of identification is his or her driver's license and Supreme Court order number. With these two items, anyone can verify through the Supreme Court's website that the server is certified by the Supreme Court. Furthermore, process servers can procure their own form of identification for themselves and/or their company.

The certification program was created to provide a mechanism for obtaining a statewide blanket order in lieu of separate orders for each county. It is an alternative to Rule 103 orders whether on a case by case basis or as a standing order. The problem created when the government issues an ID card is, although there is a statement on the back of the card indicating that the process server is not an employee or agent of the court, the card itself, with the state seal and officially signed by the Chairman of the PSRB, creates a *perceived* authority. This is the very authority the statement on the back seeks to prevent. Furthermore, certification only indicates that the server is *authorized* to serve the process. It does not, and should not, give the server any additional authority with regard to access to persons or property. A government issued ID card will lead to abuse and will present the server as an officer or government official.

Any change to the current certification program, including ID cards, needs to be supported by evidence that the change is necessary.

Respectfully,



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

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Re: Process Service Review Board (PSRB) and PSRB recommendations

Dear Members:

(This topic was covered in a previous letter submitted to the Supreme Court and has been revised.)

You are being asked to consider a laundry list of recommended changes to the Supreme Court's certification program. The proof that will be offered will be in the form of complaints the PSRB has received.

According to the PSRB Chairman, Carl Weeks, the Rules of Professional Conduct (RPC) a/k/a Code of Professional Conduct (and other recommendations) are necessary in light of the complaints that have been received in the short time the PSRB has been in existence.

According to Misc. Docket No. 05-9122, there is nothing giving the PSRB the power to consider complaints about behavior other than criminal convictions. However, for the sake of curiosity, let's assume the PSRB has, or will be granted, what I refer to as "good cause authority".

There are only a handful of complaints that have been received by the PSRB. Some of them complain about alleged incidents that happened *before* the certification program or the PSRB was even in existence. So, the PSRB's short existence is not relevant to this claim. The pre-certification program complaints were considered (or should have been considered) by the Supreme Court during the public comment period that was provided before the program was enacted.

According to the fiscal note for Senate Bill 165 filed at the last legislative session, the Texas Process Servers Association, of which Chairman Weeks is Vice-President, estimated a total of 3000 private process servers in Texas. The Texas Supreme Court's website reflects roughly 1600 process servers that have been certified. Assuming there are 3000 private process servers statewide, certified or not, and assuming each has served a very conservative estimate of 100 papers each since July 1, 2005, this would give an estimated total of 300,000 papers served by the private industry since the certification program began. This number is, surely, much higher. The PSRB has less than 10 *substantiated* complaints. However, even with 10 substantiated complaints, this total is representative of less than 3/1,000th of 1% of possible complaints.

Taking this idea further by basing it just on the number of *certified* process servers, the total is still only one half of 1% of the total number of certified process servers. Chairman Weeks is basing his support of the RPC, yearly training and other recommendations on this figure and the Board is following suit.

Servers who committed some of the *alleged* incidents were not *certified* private process servers because, at the time of the incidents, there was no such thing as a *certified* private process server. (And at least one recent complaint was considered by the PSRB about a non-certified process server wherein the suggestion was made by Constable Hickman that a file be created to retain the complaint in case the server in question were to apply at some future time.) Servers who are now certified by the Supreme Court should not be subjected to rule changes based on the conduct of non-certified process servers. They should not be subjected to rule changes based on such a low frequency of complaints especially *unfounded* complaints or complaints about conduct that is not criminal. The numbers speak for themselves. The private process service industry in Texas is squeaky clean. It has flourished and thrives as a better alternative to service by the constables. The fair thing would be for the PSRB to base their recommendations for changes to the program on the number of *certified* private process servers that have been *convicted* of crimes *after* the certification program was enacted.

Licensing and regulation is only appropriate in the most extreme instances when the public health or safety is in immediate peril or when fraud is so pervasive that the government cannot enforce private contracts without it. Neither is the case with the private process service industry in Texas. This is yet another example of attempts by the pro-licensing influence on the PSRB to attain a regulatory status; a status that the legislature has seen fit to quash every session for the last eighteen years.

Respectfully,



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

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April 12, 2006

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

Re: Process Service Review Board (PSRB); other recommendation(s)

Dear Members:

Attached is a copy of the response to my recent request for records pursuant to Rule 12, Texas Administrative Code.

Apparently, the PSRB has approved at least two persons with felony criminal convictions to be certified as private process servers by the Supreme Court. It is hard for me to understand why the PSRB is targeting certain process servers that have not been convicted of a crime, much less arrested or even charged, with hearings and disciplinary actions while approving others with felony criminal convictions.

It is my understanding that at least one of the two felons works for the President of the Texas Process Servers Association, of which Chairman Weeks is Vice-President. I urge you to please look into this matter.

Respectfully,



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

**The Supreme Court of Texas**  
**Process Service Review Board**  
**P.O. Box 12248**  
**Austin, Texas 78711**  
<http://www.supreme.courts.state.tx.us/psrb.asp>  
**(512) 463-2713**

April 11, 2006

Tod Pendergrass  
516 West Annie  
Austin, Texas 78704  
**FACSIMILE: 512-447-3303**

Dear Mr. Pendergrass:

In response to your Open Records Request dated April 11, 2006, "of the two certified private process servers that have a felony criminal conviction record," you asked, "how many were approved by the Texas Process Service Review Board a/k/a Texas Private Process Server Review Board a/k/a Texas Private Process Server Review Board (as opposed to being grand-fathered in)." Both were approved by the PSRB.

In future communications to the Board, you may limit your reference to the PSRB as the Texas Process Service Review Board or PSRB.

If you have any questions, please call Mena Ramon at 512-463-1682.

Sincerely,



Meredith Musick, Clerk  
Process Service Review Board

cc: Carl Weeks, Chair, Process Service Review Board

**ASSURED  
CIVIL PROCESS AGENCY**

600 Sabine St., Suite 100  
Austin, Texas 78701

#512/477-2681 (Tel)  
#512/477-6526 (Fax)

April 13, 2006

The Supreme Court of Texas  
P.O. Box 12348  
Austin, Texas 78711

Re: Proposed "Rules of Professional Conduct of Certified Process Servers"

Dear Members:

In your meeting on Friday, April 14, 2006, you will be considering the proposal of the Process Server Review Board (PSRB) to recommend "Rules of Professional Conduct of Certified Process Servers" (RPCC) to the Supreme Court for inclusion in the current certification program for private process servers. In a prior letter, I have already provided an informative response to this proposed code of conduct, and have recommended that it not be approved.

Today, I am writing specifically to provide a rebuttal to the letter of Judge Tony Lindsay, dated October 27, 2005 (~~attached hereto~~), in which she seeks to obtain a modification of the RPCC to mandate that private process servers, in compliance with her understanding of Rule 105, T.R.C.P., "*file the return directly and promptly with the court.*"

**Rule 105. 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.**

Rule 105 does not specify from whom the process is received. For private process servers, that is usually the office of a client law firm. This rule also does not specify where or to whom the return should be delivered. If it is to be returned to the source from which it was received; that would be the client law office more often than not. This rule, then, does not place a responsibility upon a private process server to "*file the return directly and promptly with the court.*"

The attorney requesting service of process has a right to be able to review an officer's return before it is filed with the court. Errors on the face of the writ, or errors on the execution of a return that are filed with the court prior to the attorney's review only cause complications and delays to litigation and increased costs to their clients.

No one deliberately makes a mistake on their officer's returns; but mistakes invariably occur. Rule 105, T.R.C.P., should not serve as a basis for imposing a demand upon certified private process servers beyond the clear instruction within the rule to execute a return '*without delay.*'

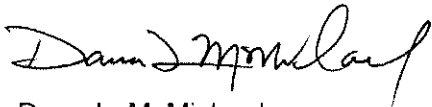
During the recent legislative session's deliberations over SB165 (a bill to license private process servers), Judge Lindsay was a principal proponent of what came to be called "the five day rule."

She promoted the imposition of the demand that all officer's returns of private process servers (not constables or sheriffs) be filed with the court within five days of service. I can only imagine that if her proposal to require all process servers to file their returns directly to the court were approved; the next thing she would seek is this five day rule.

There is no benefit provided by filing a return within five days of service. A default judgment cannot be obtained until after a return is on file with the court for ten days; but a defendant has at least 20 days to file an answer. Therefore, the standard rule within the private process service industry is to attempt to have all returns on file with the court within ten days of service. A requirement to have returns filed any earlier than that only threatens to increase court costs.

The bottom line is this. There are no complaints from within the legal community regarding the filing of officer's returns. If it isn't broken, it doesn't need fixing.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana L. McMichael". The signature is fluid and cursive, with the first name "Dana" and last name "McMichael" clearly distinguishable.

Dana L. McMichael

Owner

Assured Civil Process Agency

assuredcivilprocessagency@yahoo.com

# Larry Adelstein

---

10357 NEWCOMBE DR. ~ DALLAS, TEXAS 75228

Phone: (214) 327-3326 ~ Fax: (214) 320-1153 ~ E-Mail: larryal@sbcglobal.net

Dear Texas Supreme Court Advisory Committee:

I highly support the Supreme Court's certification program as worded. Please make no changes to the program and give it a chance to work as currently written. The newly created PSRB has lost site of what the Supreme Court authorized the Board to do. The Board has suggested many changes to the original Order. All suggested changes have been of negative impact; all suggestions are to impose more rules and regulation on process servers. The suggested "Code of Conduct" is redundant of rules and laws already in force. We do not need more rules we only need to enforce the rules and laws already in place. The Board has suggested yearly training. I am an advocate for training and the current required eight hours every three years is adequate. I believe the only reason Chairman Weeks has asked for yearly training is to raise money for the process servers association that he is the vice president of. I find it amazing that the Board has not suggested even one positive recommendation that would help process servers.

I believe the PSRB has misunderstood the Courts Order in the meaning of "Certification may be revoked for good cause, including a conviction of a felony or of a misdemeanor involving moral turpitude." It appears the PSRB thinks "good cause" gives them full authority to investigate, revoke, or terminate certifications as they deem. The PSRB has failed to apply the legal definition and case law on how "good cause" applies to administrative hearings. The PSRB has also been selective in their enforcement and I have been a victim of selective enforcement. I will give you a few case scenarios that I am aware of.

## Case One:

Roger D. Harman, SC575. A complaint was filed stating this person may be a convicted felon. On January 20, 2006, the Board ruled that since he was "grandfathered" in through Dallas County to be certified the Board had no authority to review or revoke his certification. Roger D. Harman works for the President of the Texas Process Servers Association, married to its business manager, and serves on its Board. Carl Weeks is the Vice President of the Texas Process Servers Association. This ruling shows a possible conflict of interest. Carl Weeks should have recused himself in this process.

## Case Two:

Larry K. Adelstein, SC1357. A complaint was filed against me stating I filed a fraudulent document to obtain my Dallas Order. The PSRB should have been consistent in my ruling as with their Roger D. Harman ruling. To be consistent, the Board should have ruled that since I was "grandfathered" in through Dallas County to be certified the Board had no authority to review or revoke my certification. The PSRB took another stance on my case. The PSRB thoroughly investigated, had a hearing, and considered revoking my certification. I was exonerated, but not after costing me over \$4,000.00 in legal fees. I agree that the PSRB should have had a hearing and revoked my

certification if in fact I had filed a fraudulent document to obtain my Dallas Order, which would have been a criminal offense, but not before I had been convicted of the crime. The fact is the Dallas Sheriff's Office had an open investigation when the PSRB had their hearing; the Sheriff's Office had not filed any criminal charges and I had not been arrested. After the PSRB hearing and ruling the Sheriff's Office completed their investigation and concluded no crime had occurred and I was never arrested or charged. I believe the PSRB overstepped their authority by having a hearing before I had been charged or convicted of a crime. Further, consistency dictates the PSRB should thoroughly investigate, have a hearing, and revoke a person's certification that is a convicted felon because the Court in its Order states convicted felons should not be allowed to serve process. If the PSRB is going to allow a convicted felon to serve process then what right do they have to prevent or revoke anyone's certification? This inconsistency undermines the veracity and process of the PSRB.

Case Three:


Stephen Craig Skinner.

Mr. Skinner had a complaint filed on him by a Dallas Constable in September 2005 stating he was under investigation for a possible criminal violation. As of this date Mr. Skinner has not been arrested or charged with any crime. The PSRB had a hearing and revoked his certification. Mr. Skinner was present at the hearing. Neither the complainant nor any witnesses were at the hearing. Mr. Skinner was not able to cross-examine the complainant nor any witnesses. This was a violation of Mr. Skinner's right to due process. The PSRB based part of their decision to revoke his certification on the fact the Dallas Constable's Office had an open investigation. It is a known fact Constables would like nothing more than have private process servers not be allowed to serve process. Moreover, in my case when the PSRB unfounded it there was an opened investigation by the Dallas Sheriff's Office. Again, the PSRB has not been consistent in their rulings. Here they have revoked a person's certification who has not been arrested or charged with a crime but they allow convicted felons to keep their certification.

Another issue is all complaints filed with the PSRB are put on the Supreme Court's website and are easily viewed by the public, but applicants with criminal histories are reviewed in "Executive Session" and are not opened to public view. This is another inconsistency of the PSRB. Texas law states criminal histories and court records are of public record. If this is the case, why does the PSRB shield applicants with criminal histories? The fact that my complaint will be openly displayed on the internet may hurt my business and hinder my ability to make a living. If the PSRB is compelled to shield criminals then they should also shield all persons whose complaints are unfounded by not displaying any part of the complaint on the internet.

Please recommend that the PSRB concentrate its efforts in executing the duties assigned by the Supreme Court's order. The Supreme Court did not order the PSRB to recommend changes regarding the certification of individuals, revoke certifications without criminal convictions, nor violate a server's rights and due process of law.

Respectfully,



Larry K. Adelstein

## Morris DuVal, Jr.

1214 GLEN LOCH DRIVE ~ IRVING, TEXAS 75062

Phone: (972) 258-5858 ~ Fax: (972) 570-7694

April 13, 2006

Dear Texas Supreme Court:

I appreciate what you have done for our industry. Order No. 05-9122, has greatly improved the administration of our business. The Order made a simple change to the service of process and solved a State wide problem. You created an orderly procedure for authorizing process servers state wide.

The Process Server Review Board appears to be expanding its authority and dealing with issues that are beyond the scope established for it by, Order No. 05-9122, which states: "Applications will be reviewed and approved or rejected for good cause by the Texas Process Service Review Board, appointed by the Court." It looks as though the Review Board is dealing with issues that have, in the past been adequately addressed by existing state and local agencies, which are professionally equipped to handle such issues.

I and others have experienced, what appears to be the Review Board's exercise of authority not given by the Court. My experience was at considerable, financial and emotional cost and I'm sure this is true of others. It looks as though it is reaching far beyond determining the qualifications of applicants.

The proposed PSRB Code of Conduct is totally redundant and unnecessary. Its sole purpose is to restrict process server's ability to effectively do their job. It is so ambiguous any process we serve could be construed to be in violation of this code. The current rules and laws are effective to confine process servers to serve process legally and effectively. Please do not adopt this proposed Code of Conduct.

The Review Board should be able to review the findings of other agencies similar to the way it reviews the Criminal Background Checks on applicants. This would limit the cost of supporting the activities of the Board.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MDJ', with a stylized flourish extending from the end.

Morris DuVal, Jr.

Dear Texas Supreme Court:

I am a Process Server in the State of Texas. For 6 years I diligently performed my duties as a Private Process Server. Not once in that 6 years had any of my services ever been called into question. However in or around August 2005 a private citizen made a complaint about me to a Constable in Dallas County, subsequently that Constable made a complaint to the Process Servers Review Board (PSRB). The Private Citizen alleged that I impersonated a Public Official, and an investigation by the Constables office began. To this date no facts have been brought forward in this case to prove any of the allegations that have been made.


Since then I have been to two separate review board meetings with the PSRB. The first meeting in October of 2005, the board suspended my license for 90 days pending the outcome of the investigation. The second review board meeting with the PSRB in January 2006, they revoked my license permanently. As of April 2006 there have been no charges filed against me stemming from any investigation into this matter. It is my understanding if I read the rules set forth by the Supreme Court correctly that a process servers Certification can only be revoked or denied if they have been convicted of any felony or misdemeanor involving moral turpitude.

To this date as a result of losing my license to serve process for all Counties in the State of Texas the following problems have occurred. First, and foremost my ability to earn a living has been put into serious jeopardy. I am now making less than half of the money that I was previously making. Yes I have lost more than just my dignity. Secondly, I have lost almost all of my Clients due to not being able to serve their papers. I have also lost all of my out of town work since I can no longer serve in all of the Texas Counties, and last but not least my reputation that I spent many years building and cultivating. My Clients and fellow Process Servers came to rely on my good work and honest approach to the business that I spent a long time building for myself.

All of this has been stripped away from me because one man made an allegation that to this date has not been proven in any way to be the truth. No due process has been administered in this case. I simply have been made a scapegoat for an agenda by the powers that be, to further support the need for the biased and partial PSRB. My only question to this whole thing is, "How were my rights protected in this situation?"

Your consideration in this matter is greatly appreciated. Please forward a copy of this letter to the Supreme Court Advisory Committee.

Respectfully,

  
Steven C. Skinner  
S&L Civil Process



Phones: (800) 976-9595  
Office: (361) 887-9595  
Mobile: (361) 946-3217  
Fax: (361) 887-9597

TEXAS CIVIL PROCESS, INC.

***When you hire us, you have hired the best!***

Legal Process Servers

1650 Brownlee  
Corpus Christi, Texas 78404

April 13, 2006

Texas Supreme Court Advisory Committee  
Supreme court State of Texas  
Austin, Texas

Honorable Committee Members:

Dear Members:

I write this letter in request of your approval of the following recommendations.  
Request the Process Servers Review Board to do the only job which the Supreme Court has appointed them to do: which is as follows:

Receive the applications for appointment to receive a Process Certification Number for serving civil process throughout the state of Texas.

Approve the courses for certification to the process servers, make all courses equal one for all and all for one. (remove the requirements for separate counties, include every county under one course).

Stop the requirements for courses each and every year, stop the requirements for fingerprinting each and every year.

Stop trying to prosecute every process server without due process of a hearing and investigation into complaints( in this country every accused has the right to face his accuser, also he is entitled to due course of a trial, Do not pull (HIS CERTIFICATION WITH OUT A HEARING ).  
IN SHORT THIS BOARD IS NOT A COURT, IT IS A BODY FOR SCREENING AND APPROVAL OF THOSE WHO HAVE ENDURED AND GONE THROUGH THE RIGORS OF SCHOOLING AND EXPENSES FOR THEIR MANDATES.

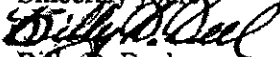
Simply stating the program is acceptable as is with the removal of the required additional schooling for service of civil process from Harris County. ( of which there is not a school being offered for that satisfaction at this time)

The program with the TRIAL PROCEEDINGS OMITTED!! WOULD WORK VERY SATISFACTORY . This Advisory Committee should approve more courses and work for the better Civil Process Service to the courts state wide only. They were not set up for prosecutions as a court. They were appointed only as a screening and approval committee that is all! Not to make laws and conduct trials.

In short We can live with the program As It Is::: if it is evenly applied to all.

Thank you for the time.

Sincerely yours



Billy D. Deel

General Manager