

Tricky Service Issues

Constable Carlos B. Lopez
Travis County, Precinct 5

1

Learning Objectives

While serving civil process is often straightforward, an officer must know what to do when things go south. This class will cover tricky issues that arise when serving civil process. The student will be able to:

1. Identify common issues that arise during service of process;
2. Describe the process for service by social media and publication;
3. Identify methods of service on various entities;
4. Determine when the offense of Interference with Civil Process has been committed;
5. Recognize situations where officer safety could be a concern;
6. Utilize technology to access important information and resources;
7. Utilize the Civil Process Field Guide and other handbooks, statutes, and forms relating to service of civil process.

2

Agenda

Alternative Service

Service on Entities

Interference with Civil Process

Resources

Questions & Sharing Best Practices

3

Alternative Service

Social Media, Email, Text, Publication

4

Scenario: Service by Social Media

You are requested to deliver a subpoena to an individual via Facebook. The plaintiff provided a specific account number and a photo of the main profile page that allows you to positively identify the correct account.

- Can you serve the process, and if so, where do you begin?

5

Service by Social Media: Some Context

- History
- Challenges & Benefits

6

CPRC Sec. 17.033

Substituted Service Through Social Media Presence

(a) If substituted service of citation is authorized under the Texas Rules of Civil Procedure, the court, in accordance with the rules adopted by the supreme court under Subsection (b), may prescribe as a method of service an electronic communication sent to the defendant through a social media presence.

(b) The supreme court shall adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence.

7

TRCP 106

(b) Upon motion supported by a statement—sworn to before a notary or made under penalty of perjury—listing any location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) at the location named in the statement but has not been successful, the court may authorize service:

- (1) by leaving a copy of the citation and of the petition with anyone older than sixteen at the location specified in the statement; or
- (2) in any other manner, ***including electronically by social media, email, or other technology***, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.

8

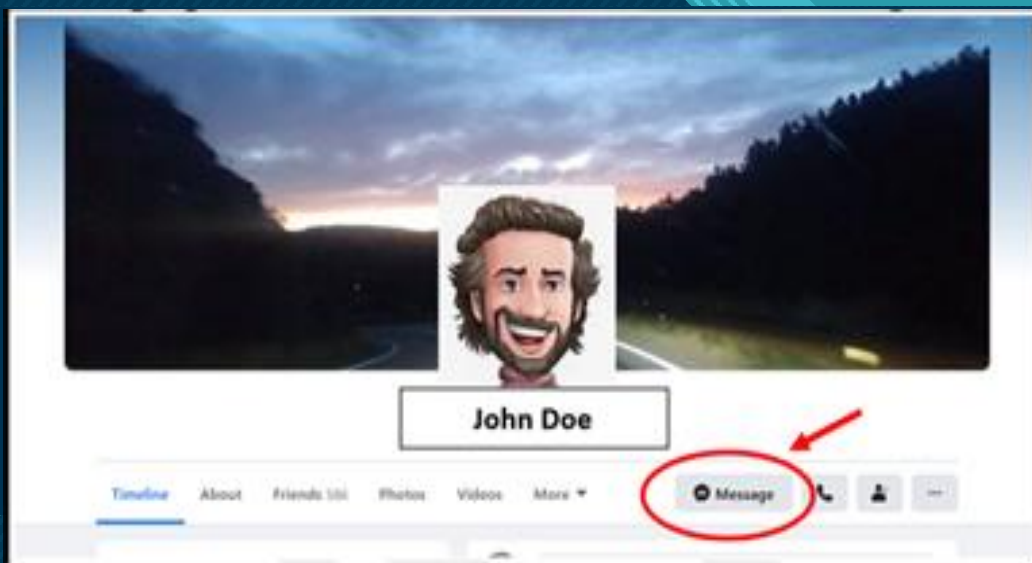
Service by Social Media: Procedure

1. The office/ Agency will create an account on Facebook (or whichever platform is specified) to be able to access.
2. The officer will then scan the document to be attached.
3. Send the document to the respondent to the account provided through the “message” tab on the respondent’s page.
4. The officer may request confirmation, although it is not required to complete the return unless directed by the court.
5. The officer will use the time/date information from the electronic platform as the date of service for the officer’s return. If requested, will also attach a screen shot of this information and response, if any, to the return.

Screenshot examples on next three slides.

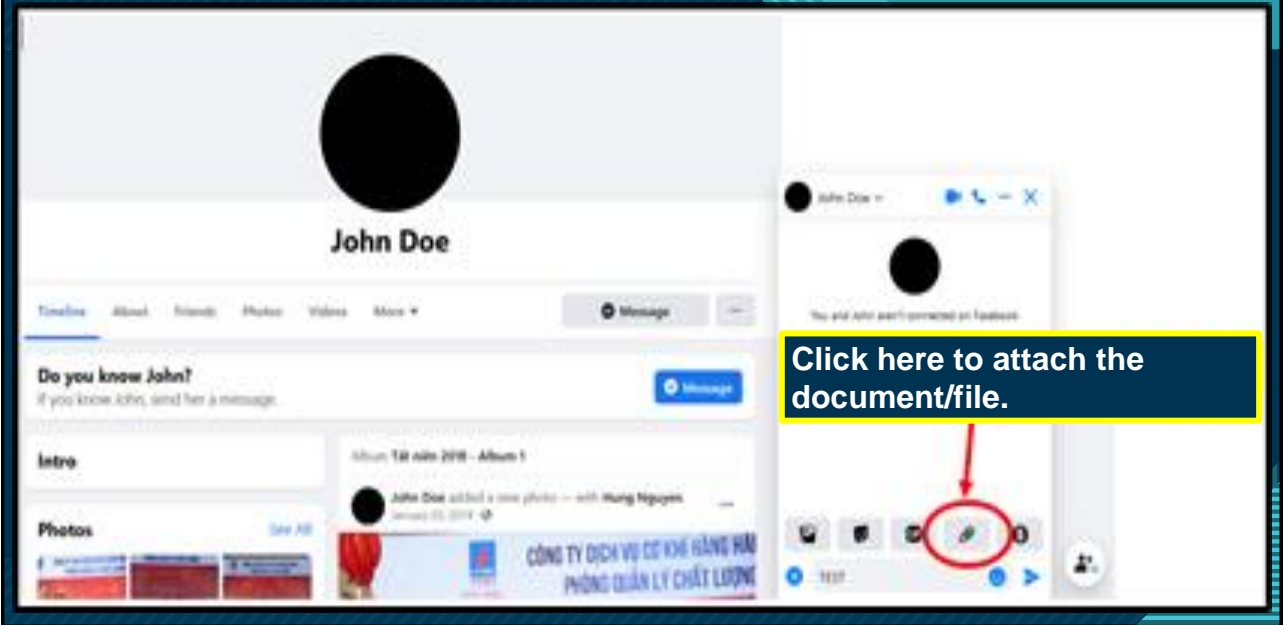
9

Message Tab



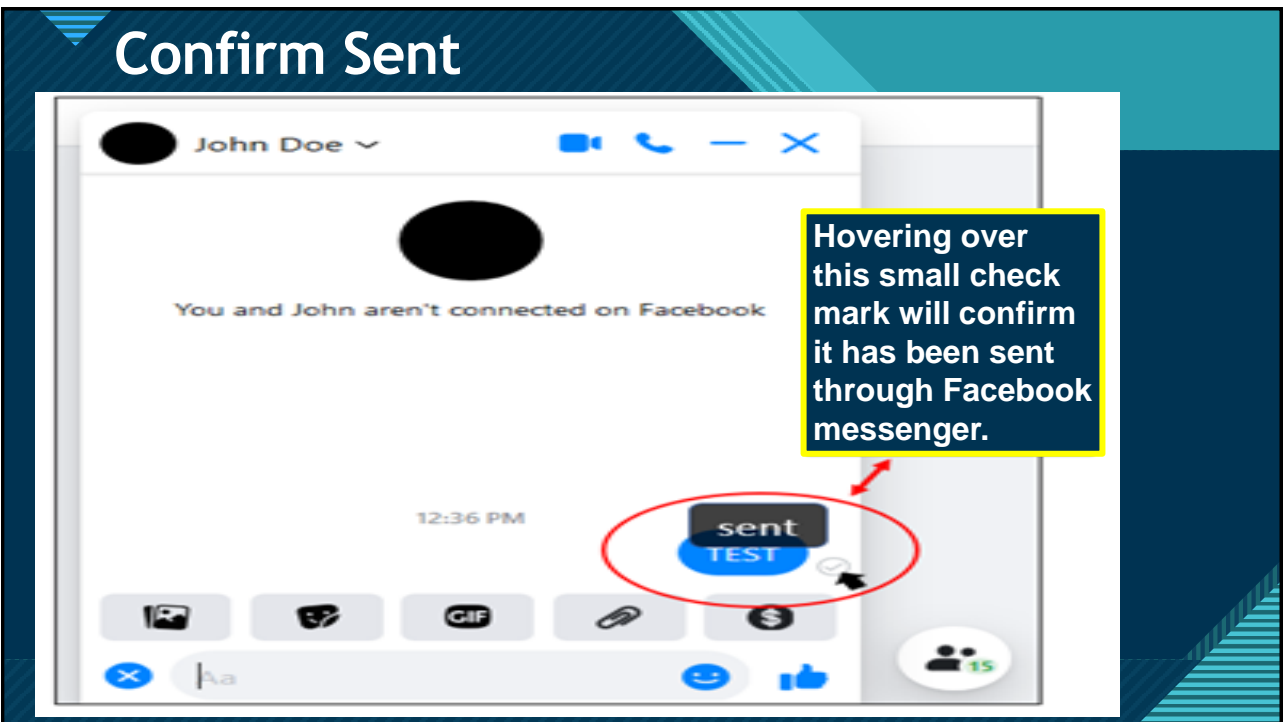
10

Attach w/ Paperclip Symbol



11

Confirm Sent

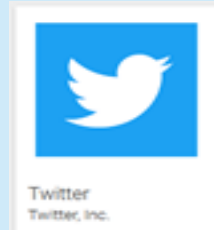


12

Other Social Media

Additional Social Media Platforms that have direct messenger applications:

- Instagram
- Twitter
- LinkedIn



Scenario: Service by Email & Text

You receive this order along with a service packet.

What do you do?

3/2/2022 9:32 AM
Velva L. Price
District Clerk
Travis County
D-1-FM-13-003061
Albert Tobeck

CAUSE NO. D-1-FM-13-003061


<p>IN THE INTEREST OF J.C.M., A CHILD.</p>	<p>§ § § § §</p>	<p>IN THE DISTRICT COURT 200TH JUDICIAL DISTRICT TRAVIS COUNTY, TEXAS</p>
--	----------------------------------	---

ORDER FOR SUBSTITUTED SERVICE

On this day came on to be considered Petitioner Kevin McBride's renewed motion for substituted service. The Court finds that substituted service is justified under Tex. R. Civ. P. 106 (b) and that the motion has merit and should be GRANTED. It is, therefore,

ORDERED that service upon Respondent Yuliana Flores be made by delivering a true copy of Petitioner's Motion for Contempt, Application for Protective Order, and Order to Appear to Respondent via email to floresyuliana[REDACTED]@gmail.com and via text message to 512-508-[REDACTED] and 512-995-[REDACTED].

SIGNED on March 1, 2022.


 Jan Soifer, Judge Presiding

Service by Email

1. The Court/plaintiff will provide a specific email address for the subject being served.
2. Send a scanned copy of the process to be served to provided email address.
3. Request response through email provider “message received” and “message read”
4. The date/time information from the “outbox” in your email program is used as the date/time of service on the officer’s return. If requested, attach a screen shot of this information and response to the return.

15

Service by Text Message or “WhatsApp”

1. The Court/plaintiff will provide a specific account/phone number for the subject being served.
2. Once the correct account/phone number is received and confirmed, scan a copy of the process to be served and attach it to a message for the respondent.
3. The officer may request confirmation, although it is not required to complete the return unless directed by the court.
4. The time/date information from the electronic platform will be used as the date of service for the officer’s return. If requested attach a screen shot of this information and response, if any, to the return.

16

Service by Text, Email, & Social Media

NOTE:

- Adequate Service of process will be determined by the Court.
- In many cases the officer may not be able to confirm receipt of these deliveries since there may not be any feedback from the different platforms.
- An actual response from the respondent would be a positive confirmation that **someone** at that end received the notice.

17

Service by Publication: TRCP 109-117

- Generally, must be served by publication in a newspaper by a sheriff, constable, or the court clerk **and** on OCA's Public Information Internet Website by the court clerk.
- Newspaper publication is **not** required if:
 - The party requesting citation files a Statement of Inability to Afford Payment of Court costs;
 - The total cost exceeds \$200 each week or an amount set by the Supreme Court, whichever is greater; **or**
 - The county in which publication is required does not have any newspaper published, printed, or generally circulated in the county.

18

Publication in Newspaper: TRCP 116

- In general, the citation must be published once each week for 4 consecutive weeks, and the first publication must be at least 28 days before the return is filed.
 - But note that some specific case types have other requirements.
- ***Suits not involving land title or real estate partition:*** must be published in a newspaper in the county where the suit is pending.
- ***Suits involving land title or real estate partition:*** must be published in a newspaper in the county where the land, or a portion thereof, is situated.

19

Return of Citation by Newspaper Publication: TRCP 117

The return must:

- State how the citation was published,
- Specify the dates of publication,
- Be signed by the officer who served the citation, and
- Be accompanied by an image of the publication.

20

Other Substituted Service - TRCP 109a

- Whenever citation by publication is authorized, the court may (on motion) order a different method of substituted service.
 - But only if the court finds in writing that that method would be as likely as publication to give the defendant actual notice.
- The return of the officer executing the citation shall:
 - State particularly the manner in which service is accomplished, and
 - Attach any return receipt, returned mail, or other evidence showing the result of such service.
- Failure of defendant to respond shall not render the service invalid.

21

Service on and At Certain Entities

22

Service on Various Entities

- Corporations (*TX Business Organizations Code 5.251*)
 - President, any VP
 - Registered Agents
 - Secretary of State
- Privately Owned Business/Partnerships
 - Owner/agent or clerk if owner is out of county. (*CPRC 17.021*)
 - Citation served on one member of a partnership authorizes a judgment against the partnership and the partner actually served. (*CPRC 17.022*)
- Financial Institutions (*TX Finance Code Sec. 201.103*)
 - Can appoint an agent authorized to accept service of process.

23

Service at Various Entities

- Mental Health Facilities
 - To the registered agent if against the medical facility.
 - If it is for a patient, the facility administrator, superintendent, supervisor or manager of an inpatient mental health facility is the agent for service.
 - Certificate is signed with the agent's title.
 - Certificate is attached to return.
- Medical Facilities
 - To the registered agent if against the facility.
 - In person if the notice is for an employee or a patient.
 - In a non compos mentis case, serve in person with a guardian present (similar to service on a juvenile).

24

Scenario: Financial Institutions

You receive a Writ of Execution with a defendant who has an account at Wells Fargo Bank. The Plaintiff's attorney includes in the writ that the defendant banks at a certain branch. Within the writ, signed by a Judge, you are directed to seize from the defendant's account enough cash from the branch tills to cover the judgement and all costs.

- What is the next move?
- Can you execute?

25

Interference with Civil Process

26

Interference and Prevention of Civil Process

- By employers
- By apartment managers
- By Security guards
- By defendants
- By individuals evading arrest

27

Texas Penal Code 38.16 - Preventing Execution of Civil Process

- (a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.
- (b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.
- (c) An offense under this section is a Class C misdemeanor.

28

Scenario #1: Preventing Execution of Civil Process

You have a citation for a doctor for medical records. You call the doctors office to see if she is in the office that day. The employee informs you the doctor is scheduled to be there all day and seeing patients. You run the LP on the vehicle parked in the doctors parking spot, It comes back to the doctor named on your citation. You go inside and asked for the doctor. The receptionist tells you the doctor is not there that day and doesn't know when she will be back.

- Could this be considered an offense of Preventing Execution of Civil Process? For the receptionist? The doctor?
- What do you do?

29

Scenario #2: Preventing Execution of Civil Process

You are serving process to a business owner and his assistant says he is in but on the phone. She goes in to tell him you are there and comes back and says he is not available. She goes out the back door, gets in her vehicle, and then you see him exit the rear of the building. She drives off with him in the vehicle while he waves good-bye.

- Could this be considered an offense of Preventing Execution of Civil Process? For the assistant? The owner?
- What do you do?

30

Scenario #3: Preventing Execution of Civil Process

You are executing a writ of property retrieval. While you are at the residence, the applicant grabs an item that is not on the list. The occupant grabs her arm and they start to tussle.

- What do you do?
- What steps should you take to ensure your own safety?

31

Resources

32

Technology is Your Friend!

- Use social media as a search tool.
 - Facebook
 - Twitter
 - Instagram
 - LinkedIn
 - Craigslist, Offerup
 - Nextdoor
- GPS
- OnStar
- Vehicle Dealers

33

Other Resources

- Texas Justice Court Training Center: <https://www.tjctc.org/>
 - Civil Process Field Guide
 - Other desk books, forms, self-paced modules, legal question board, etc.
- Texas Statutes Website: <https://statutes.capitol.texas.gov/>

34

Questions & Sharing Best Practices

35

Share with the Group!



What tricky service issues have you experienced that you weren't sure how to handle?



What tricky service issues have you experienced that you found a good solution for?

36

