

Instructor Notes – Wild Card Civil Cases_FY22

Scenario 1: Service Issues

- Your precinct has a new constable who is learning civil process on the job. He comes into your office, because he wants to double-check if the service attempt he made this morning was “good service.”
- He went to John Smith’s house to serve him with a small claims citation from your court. He knocked on the door, John answered, and he properly identified him (you all went to school together, so this part was easy). After the constable explained why he was there and reached out to hand the paperwork to John, John slammed the door in his face. The constable went to his patrol car and called one of the more experienced constables, and she told him to just leave the paperwork in an envelope with his card attached right in front of the door.

Is this good service?

Probably good service - Generally, service of process needs to occur by handing the paperwork directly to the person being served. However, if the person refuses to accept service, they are held under Texas law to be personally served if 1) the person being served is identified; 2) they are informed of the nature of the process and that service is being attempted, and 3) the papers are deposited in an appropriate place in their presence or near them where they are likely to find them. *Dosamentes v. Dosamentes*, 500 S.W.2d. 233; *Texas Industries, Inc. v. Sanchez*, 521 S.W.2d. 133

Scenario 2: Multiple Parties

- Jerry Jones was rear ended by an Amazon Prime delivery person, Bobby Barnes. Jones has filed a small claims case in your court, because he filed a claim with Barnes’s insurance who denied his claim due to Barnes making work deliveries in his personal vehicle.
- Barnes’s attorney filed an answer with a counterclaim and 2 third-party claims – one against Amazon and one against his insurance company.

How do you process the claims?

The judge should add the third party to the suit. The defendant’s counterclaim is against the plaintiff and the defendant has asserted a separate claim against the third-parties.

How do you issue citation?

When a third-party petition is filed, the court must issue a citation for the third-party defendant, and the citation must be served on the third-party defendant in the manner provided in Rule 501.2. Rule 506.2(c). See pages 23-26 of the Civil Deskbook. For more information on third-party claims, please see page 48 of the Civil Deskbook.]

Scenario 3: More Service Issues

- Your new constable is back with another question! Your judge just ordered service by publication, because no other method has worked in a small claim that has been dragging on in your court.
- The constable has been reading the rules, and he is confused. There is something about a website and newspaper?

How should this case be handled?

Service by publication is only permitted if the court approves it after the plaintiff submits a sworn statement that meets the requirements of Rule 109 of the Texas Rules of Civil Procedure. Assuming the plaintiff has done that, and the court has approved service by publication, then how the citation is served is governed by Rule 116, which the Texas Supreme Court amended effective June 1, 2020, to implement Section 72.034 of the Government Code.

Under the amended Rule 116, publication of the citation must be made both in a newspaper and on the Public Information Internet Website maintained by OCA. However, newspaper publication is not required if the plaintiff filed a Statement of Inability to Afford Payment of Court Costs, if the total cost of the publication exceeds \$200 each week or an amount set by the Supreme Court (whichever is greater), or if the county in which the publication is required does not have a newspaper that is published, printed or generally circulated in the county. Rule 116(b)(2).

If newspaper publication is required, the citation “must be served by any sheriff or constable or by the clerk of the court in which the case is pending.” Rule 116(c)(1).

Service of the citation on the Public Information Internet Website must be made by the clerk of the court in which the case is pending. Rule 116(d)(1). A clerk may do so by going to this link and following the instructions under Clerk Information & Instructions: <https://www.txcourts.gov/judicial-data/citation-by-publication/>

Discuss Service by Social Media??

Scenario 4: Abstracts

- Your court rendered a judgment in Cause Number 4321 on 11/15/19 (*see handouts*) for the Plaintiff and against James Johnson.
- The Plaintiff has returned for an abstract of judgment from your court but wants you to include additional defendants Johnson Automotive and Jessica Johnson.

What do you do??

Similar Board Question

Question: I have an abstract of judgement that was signed in 2019 by the previous Judge. The plaintiff recently brought it in and asked to have it amended to include all names on the original petition

and more information on the defendants. A. can I do this? B. if so, do I need to note on the judgement itself there was an amendment?

Answer: The court should NOT amend the abstract to include parties that are not included in the judgment. An abstract should only include information from the judgment. This is important, because the original lawsuit may have been against multiple parties, but after hearing the evidence, the judge decided to only grant a judgment against one party (or something similar). However, the court may issue a new abstract. This would be the best solution if the original abstract didn't list the parties as they were listed on the judgment.

If a judgment was signed in 2019, the court also no longer has plenary power to modify that judgment. Note: the court may fix a clerical error (misspelling of a name, typo, etc.), by nunc pro tunc if there is one however that does not seem to be what is requested in this case. See Chapter 7, Section C of the Civil Deskbook for more information about the difference in clerical error (can be fixed with a nunc pro tunc) and judicial error (cannot be fixed with a nunc pro tunc).

Scenario 5 - HIPAA

- A plaintiff files a small claims suit against your local hospital related to some recent medical treatment that they had at the hospital.

Does HIPAA change the way that you process this case or what information is allowed to be presented at a hearing or requested in discovery?

HIPAA prohibits medical providers from disclosing a patient's medical information without consent. Given that the patient is filing a lawsuit to discuss their medical information, that information, to the extent it is relevant to the suit, could be disclosed.

HIPAA is a federal law that prohibits certain organizations called covered entities (*like hospitals and other medical facilities, NOT courts*) from sharing health related information. However, outside of HIPAA, there are rules and statutes dealing with courts maintaining private information.

For more information on who HIPAA applies to and what information is protected, you can visit the US Department of Health and Human Services Website.

Lightning Round

- **Courtney wants to sue her Homeowners Association, because she thinks the President, Karen, is hiding something and won't show her the books!**
 - Yes – a property owner's association can be compelled to make records of the association available to an owner in justice court under the Property Code
 - Note: Some POAs in Harris County or an adjacent county (Galveston, Brazoria, Fort Bend, Waller, Montgomery, Liberty or Chambers County) are not subject to these provisions but instead to the Texas Public Information Act.

- **The HOA wants to counter-sue Courtney, because she isn't complying with a deed restriction (no commercial use of property), because she is running a business out of her home.**
 - Yes – lawsuits like this can be filed under Property Code Ch. 209
 - **Does it matter what they are asking for?**
 - Yes – there is no provision in this chapter allowing injunctive relief, the court may only assess civil damages in an amount not to exceed \$200 for each day of violation,
- Bob defaulted on his car loan from a local used car lot, Carrie's Cars. Now they want to foreclose on the loan and take the car back.
 - Yes – lien foreclosures on personal property can be filed in justice court provided the amount is within the jurisdictional limits.
 - **They also want to sue him for talking bad about their business on Facebook.**
 - They will have to file this suit in another court, if they even have a claim – it is libel (defamatory statement made in writing – slander is a defamatory statement that is spoken)
- Bob cleared up his car loan problems, but a few weeks later had to have some repairs done and can't pay the mechanic. The mechanic wants to foreclose his mechanic's lien and sell the car to pay for what he is owed.
 - This is also a personal property lien (car is personal property), but the mechanic doesn't need to file a court case to foreclose on the lien. They just comply with the property code – TxDMV has forms and instructions on their website:
 - https://www.txdmv.gov/sites/default/files/form_files/VTR-265-M.pdf;
 - https://www.txdmv.gov/sites/default/files/body-files/Mechanics_Lien_Chart_Before_09-01-2021.pdf