

# You're in a Pickle!

## Now What!?

Bronson Tucker, Director of Curriculum, TJCTC

&

Carl Herbst, Chief Deputy Constable

Brazoria County Pct. 1 Constable's Office

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## Scenario 1

- On Thursday the 9<sup>th</sup>, you serve a Writ of Execution on defendant, and make demand for \$4,813. The defendant tells you she will have to borrow the money from her 401k account, but she will pay the full amount due next Wednesday, the 15<sup>th</sup>. While double-checking your calculations, on Tuesday the 14<sup>th</sup>, you learn that you mistakenly omitted \$800 in attorney fees from the initial demand amount.
- What do you do?

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## Considerations:

### ✓ Failure to Levy:

- ✓ CPRC 34.065? Failure To Levy Or Sell
- ✓ TRCP 638? Property Not To Be Designated
- ✓ TRCP 651? When Execution Is Not Satisfied

Alternative collection methods/actions?

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## Considerations:

- CPRC 36.045 (a): Failure to Levy or Sell

If an officer fails or refuses to levy on or sell property subject to execution and the levy or sale could have taken place, the officer and the officer's sureties are liable to the party entitled to receive the money collected on execution only for actual damages suffered.

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- CPRC 36.045 (a): Failure to Levy or Sell

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- TRCP 638: Property Not to be Designated

A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

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## Considerations:

TRCP 651: When Execution is Not Satisfied

When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

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## Scenario 2

- The plaintiff owns a 5-acre tract of land, where his house is located. For extra income, he decides to extend his driveway past his house, and place a rental mobile home back there. The plaintiff evicted his tenant, and had to get a Writ of Possession to get her out of the mobile home. After you post the writ, the tenant still refuses to vacate. When you arrive to execute the Writ, you direct the crew to place all of tenant's personal property in the front yard, beside the driveway. You also explain to the tenant that she is free to reclaim her property *after* the execution has been completed. The tenant then leaves to go rent a U-Haul truck.

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## SCENARIO 2

- The following day, the tenant returns to reclaim her personal property, but much of it has been taken. She sees pieces of it in the plaintiff's barn and on his screened-in porch. A disturbance ensues. The local police department is called, and officers end up issuing a criminal trespass warning to defendant, who is no longer allowed to reclaim her property because she cannot access it.
- What do you do?

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## Considerations:

- Property Code 24.0061? Writ of Possession
- Best practices for executing Writs of Possession?

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## Considerations:

- Property Code 24.0061 (d)(2)(D): Writ of Possession  
... place, or have an authorized person place the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1).

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## Considerations:

- Property Code 24.0061 (g): Writ of Possession

The writ of possession shall contain notice to the officer that under Section 7.003, CPRC, the officer is not liable for damages resulting from the execution if the officer executes the writ in good faith and with reasonable diligence.

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## Scenario 3

- You received an Eviction citation to be served on defendant. On your first attempt, you are unable to contact anyone at the residence, so you leave a door hanger on the front door.
- Defendant calls you that afternoon, letting you know he will be working out of town for few more weeks. You explain the circumstances of the case to him. He says you can email the citation to him; so you do, returning the served citation to the court.

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## SCENARIO 3

- Back at the office, you bring the service up to co-workers in conversation. You then learn that, without the court approving email as an acceptable form of alternate or substitute service, your service was not properly effected.
- What now?

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## Considerations:

- TRCP 21a? Method of Service
- TRCP 510.4? Issuance, Service, and Return of Service

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## Considerations:

- TRCP 21a: Method of Service

Methods of Service. Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, *other than the citation* to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record in the manner specified below: ...

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## Considerations:

- TRCP 510.4: Issuance, Service, and Return of Citation

The constable... *must* execute it (the citation) by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

A citation in an eviction case *must* be served in accordance with Rule 510.4.

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## Considerations:

A citation in an eviction case must be served in accordance with Rule 510.4. That rule provides for a primary method of service by delivery to the defendant in person or by leaving the citation at the premises with a person who is 16 years of age or older.

If the constable is unable to serve the citation using one of those two methods, then they may request alternative service by delivering the citation to the premises and also mailing a copy by first class mail. *See the Evictions Deskbook at pages 29 – 31.*

Even alternative service does not include emailing the citation to the defendant but the court might reasonably allow this **in addition to** posting and mailing by first class mail. So the judge is correct that it could only be used as an alternative method and even then only if the methods in Rule 510.4 are also followed

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## Scenario 4

- The JP Clerk calls you at 4:40 p.m. on Friday and tells you the Judge wants you to serve a Writ of Re-entry on El Lago Apartments before 5:00. While you are picking the writ up from the court, the Judge tells you that if the manager refuses to allow the tenant access to the apartment, you are to call a locksmith, and the locksmith costs will be billed to the complex. You serve the landlord right at 5:00, and they tell you they are not allowing the tenant to have access to the apartment.
- What do you do?

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## Considerations:

- Property Code 92.09 (i):

### Residential Tenant's Right of Reentry After Unlawful Lockout

If the landlord or person on whom the writ of reentry is served fails to immediately comply or later disobeys the writ, the failure is *grounds for contempt* of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the *tenant or the tenant's attorney* may file in the court in which the reentry action is pending an affidavit stating the name of the person who disobeyed the writ and describing the acts or omissions constituting the disobedience.

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## Scenario 5:

- You Have a Writ of Sequestration for a 2020 Chevy Silverado at 1741 Henderson Road. You go to that address in attempt to locate the vehicle. You notice that the driveway is about 100 yards long, and the truck isn't there. However, the truck appears to be at the mobile home next door. From the roadway, you noticed that there was no marked address on the mobile home, which had its own separate driveway. You knock at the door of the house at 1741 Henderson Road. The male who answers says you have the correct address, and his rental mobile homes, next door to him, also use that same address. He tells you the defendant is renting the mobile home next door from him, and for you to walk over to defendant's home with him. He then walks you through the yard and straight over to defendant's front door.

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## Scenario 5

- You identify the truck as the one you are to seize, then you knock on the door and contact the defendant. After you explain the writ to him, he gets irate. The defendant becomes uncooperative, telling you you're on his property illegally, because he has No Trespassing signs posted at the end of his driveway, down by the road.
- Are you in a pickle?
- What are your options?

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## Considerations:

- Penal Code 30.05? Criminal Trespass
- TRCP 21a? Method of Service
- TRCP 700? Service of Writ on Defendant

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## Considerations:

- Penal Code 30.05 (i): Criminal Trespass

A person commits an offense if the person enters or remains on or in the property of another, including residential land, agricultural land, ... without effective consent and the person:

- 1) had notice the entry was forbidden, or;
- 2) received notice to depart but failed to do so.

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## Considerations:

- TRCP 21a: Methods of Service

Every notice required by these rules, and every pleading, plea, motion, or every other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record in the manner specified below.

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## Considerations:

- TRCP 700 (a): Service of Writ on Defendant

The defendant shall be served *in any manner* provided for service of citation or as provided in Rule 21a, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ.

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## How to Avoid a Pickle in the First Place?

- Communication
- Pre-Planning
- Education
- Take a Breath, You Don't Have to Act This Second
- Use Your Resources
  
- Do These Eliminate All Pickles?

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# When You Find Yourself In A Pickle



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# Questions?

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