

REPORT ON CITATION BY PUBLICATION

From the E-Filing Sub-Committee and
the Rule 15-165a Sub-Committee

September 12, 2019

1. Justice Hecht's 12-28-2018 letter of referral to the SCAC included the following:

Texas Rule of Civil Procedure 116. Rule 116 requires that citation served by publication be published in a newspaper. In the attached letter, Guy Choate and Hon. Sheri Woodfin suggest that notice might be more effective and economical if published on a website accessible to the public. The Committee has discussed this matter before-on March 25, 2011 and May 13, 2011-but the Court has received further inquiries since then and asks the Committee to consider the matter again.

2. Committee Chair Chip Babcock's 1-7-2019 letter of referral asked the Rule 16-165a Subcommittee to comment on Chief Justice Hecht's referral of the citation by publication issue.

3. The Texas 86th Legislature, 2019, passed and Governor Abbott signed, SB 891, "relating to the operation and administration of and practice in and grants provided by courts in the judicial branch of state government" The Conference Committee Report was adopted by the Texas House of Representatives by a vote of 144 yeas, 2 nays, The Speaker Present but not voting. The Conference Committee Report was adopted by the Texas Senate by a vote of 31 yeas, 0 nays. It can be seen that legislative support for the bill was near-unanimous.

4. The Bill Analysis for SB 891 said:

C.S.S.B. 891 requires OCA to develop, not later than June 1, 2020, and maintain a public information website that allows a person to easily publish public information on the website or OCA to post such information on the website on receipt from the person. The bill defines "public information" as citation, other related public or legal notice that a person is required to publish under a statute or rule, and any other information that the person submits for publication on the website to effectuate service of citation by publication. The bill requires the website to allow the public to easily

access, search, and sort the public information. The bill requires the supreme court by rule to establish procedures for the submission of public information to the website by a person who is required to publish the information. The bill requires the supreme court to adopt the rules necessary to implement these provisions not later than June 1, 2020.

5. Article 9 of SB 891 deals with the Office of Court Administration of the Texas Judicial System. Section 9.3 of the bill is pertinent to citation by publication:

SB 891, Section 9.03.

Subchapter C, Chapter 72, Government Code, is amended by adding Sections 72.033 and 72.034 to read as follows:

Sec. 72.033. LIST OF NEW OR AMENDED COURT COSTS AND FEES.

The office biennially shall prepare and publish a list of new or amended court costs and fees as required by Section 51.607.

Sec. 72.034. PUBLIC INFORMATION INTERNET WEBSITE.

(a) In this section:

(1) “Public information” means citation, other related public or legal notice that a person, including a party to a cause of action, is required to publish under a statute or rule, and any other information that the person submits for publication on the public information Internet website to effectuate service of citation by publication.

(2) “Public information Internet website” means the official statewide Internet website developed and maintained by the office under this section for the purpose of providing citation by publication.

(b) The office shall develop and maintain a public information Internet website that allows a person to easily publish public information on the Internet website or the office to post public

information on the Internet website on receipt from the person.

(c) The public information Internet website shall allow the public to easily access, search, and sort the public information.

(d) The supreme court by rule shall establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information.

SB 891, Section 9.04.

Section 9.04 provides:

(a) The Texas Supreme Court shall adopt the rules necessary to implement Section 72.034, Government Code, as added by this article, not later than June 1, 2020.

(b) The Office of Court Administration of the Texas Judicial System shall develop the public information Internet website for the purposes of providing citation by publication as required by Section 72.034, Government Code, as added by this article, not later than June 1, 2020.

6. Article 10 of SB 891 contains provisions that should be considered in connection with citation by publication. Article 10 is quite lengthy, so a copy of it has been printed and is attached to this Report. Among other things, Section 10 --

- requires citation by publication in newspapers and on OCA's website in certain cases; provide exceptions to citation by publication in newspapers when

- > the person seeking publication is indigent;
- > the cost of publication is greater than \$200, adjusted for inflation;
- or
- > there is no available newspaper in the county; and

- requires the Court to adopt rules for substituted service by social media.

7. Tex. R. Civ. P. 106 pertains to methods of service. The issues are complicated, and

the two subcommittees are still evaluating all the changes that may be necessary. For purposes of the September 13, 2019 meeting of the SCAC, here is the present rule, with additions proposed by the two subcommittees for discussion and analysis. The proposed new language is underlined and in blue:

RULE 106. METHOD OF SERVICE

(a) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto.

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit,

(2) by electronic communication sent to the defendant through a social media presence; or

(3) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

(c) The court may upon request direct that service may be accomplished by posting the citation at a privately run social media site, or other internet location where the defendant may learn of the citation.

(d) Upon motion supported by affidavit stating that after diligent inquiry

a party cannot be served with process under subsection (a) or (b) of this rule, service may be made

(i) by sending a copy of the citation to the defendant via email or text message or other electronic messaging system or

(ii) by posting notice of the citation on a privately maintained internet website or other internet location.

8. Tex. R. Civ. P. 109 - 117 relate to citation by publication. For purposes of the September 13, 2019 meeting of the SCAC, here are the present rules, with alterations proposed by the two subcommittees for discussion and analysis.

RULE 109. CITATION BY PUBLICATION

When a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of nonresident notice, as the case may be, before granting any judgment on such service.

RULE 109a. OTHER SUBSTITUTED SERVICE

Whenever citation by publication is authorized, the court may, on motion, prescribe a different method of substituted service, if the court finds, and so recites in its order, that the method so prescribed would be as likely as publication to give defendant actual notice. When such method of substituted service is authorized, the return of the officer executing the citation shall state particularly the manner in which service is accomplished, and shall attach any return receipt,

returned mail, or other evidence showing the result of such service. Failure of defendant to respond to such citation shall not render the service invalid. When such substituted service has been obtained and the defendant has not appeared, the provisions of Rules 244 and 329 shall apply as if citation had been served by publication.

RULE 110. EFFECT OF RULES ON OTHER STATUTES

Where by statute or these rules citation by publication is authorized and the statute or rules do not specify the requisites of such citation or the method of service thereof, or where they direct that such citation be issued or served as in other civil actions, the provisions of these rules shall govern. Where, however, the statute authorizing citation by publication provides expressly for requisites of such citation or service thereof, or both, differing from the provisions of Rules 114, 115, and 116, these rules shall not govern, but the special statutory procedure shall continue in force; provided, however, that Rule 117a shall control with respect to citation in tax suits.

RULE 111. CITATION BY PUBLICATION IN ACTION AGAINST UNKNOWN HEIRS OR STOCKHOLDERS OF DEFUNCT CORPORATIONS

If the plaintiff, his agent, or attorney, shall make oath that the names of the heirs or stockholders against whom an action is authorized by Section 17.004, Civil Practice and Remedies Code, are unknown to the affiant, the clerk shall issue a citation for service by publication. Such citation shall be addressed to the defendants by a concise description of their classification, as "the Unknown Heirs of A.B., deceased," or "Unknown Stockholders of _____ Corporation," as the case may be, and shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116.

RULE 112. PARTIES TO ACTIONS AGAINST UNKNOWN OWNERS OR CLAIMANTS OF INTEREST IN LAND

In suits authorized by Section 17.005, Civil Practice and Remedies Code, all persons claiming under such conveyance whose names are known to plaintiff shall be made parties by name and cited to appear, in the manner

now provided by law as in other suits; all other persons claiming any interest in such land under such conveyance may be made parties to the suit and cited by publication under the designation “all persons claiming any title or interest in land under deed heretofore given to _____ of _____ as grantee” (inserting in the blanks the name and residence of grantee as given in such conveyance). It shall be permissible to join in one suit all persons claiming under two or more conveyances affecting title to the same tract of land.

RULE 113. CITATION BY PUBLICATION IN ACTIONS AGAINST UNKNOWN OWNERS OR CLAIMANTS OF INTEREST IN LAND

In suits authorized by Section 17.005, Civil Practice and Remedies Code, plaintiff, his agent or attorney shall make and file with the clerk of the court an affidavit, stating (a) the name of the grantee as set out in the conveyance constituting source of title of defendants, and (b) stating that affiant does not know the names of any persons claiming title or interest under such conveyance other than as stated in plaintiff’s petition and (c) if the conveyance is to a company or association name as grantee, further stating whether grantee is incorporated or unincorporated, if such fact is known, and if such fact is unknown, so stating. Said clerk shall thereupon issue a citation for service upon all persons claiming any title or interest in such land under such conveyance. The citation in such cases shall contain the requisites and be served in the manner provided in Rules 114, 115 and 116.

RULE 114. CITATION BY PUBLICATION; REQUISITES

Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 15 and 99, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff’s petition shall accompany this citation, and the citation shall be styled “The State of Texas” and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown, or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the

nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet.

RULE 115. FORM OF PUBLISHED CITATION IN ACTIONS INVOLVING LAND

In citations by publication involving land, it shall be sufficient in making the brief statement of the claim in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit.

RULE 116. SERVICE OF CITATION BY PUBLICATION

(a) Print Publication. The citation, when issued, ~~shall~~ **may** 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.

(b) Electronic Publication. Whenever service of citation by publication is required or authorized by law, and unless print publication is required, service may be accomplished by any person by posting citation in the state's public information Internet website, in accordance with rules adopted for the operation of that website, for a period of twenty-eight (28) days.

RULE 117. RETURN OF CITATION BY PUBLICATION

The return of the person or officer ~~executing~~ servicing such citation shall show how and when the citation was ~~executed~~ published, specifying the dates of such publication, be signed by the person who caused publication to occur, and shall be accompanied by ~~a printed copy~~ an image of such publication.

9. Citation by Publication under the Texas Family Code. There are three provisions in the Texas Family Code that address citation by publication. Some cannot be affected by a rule change.

Section 3.305

Sec. 3.305. CITATION BY PUBLICATION.

(a) If the residence of the respondent, other than a respondent reported to be a prisoner of war or missing on public service, is unknown, citation shall be published in a newspaper of general circulation published in the county in which the petition was filed. If that county has no newspaper of general circulation, citation shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published.

(b) The notice shall be published once a week for two consecutive weeks before the hearing, but the first notice may not be published after the 20th day before the date set for the hearing.

Section 6.4090

Sec. 6.409. CITATION BY PUBLICATION.

(a) Citation in a suit for dissolution of a marriage may be by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

“STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

“You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the Court of _____ County, Texas, on the _____ day of _____, against _____, Respondent(s), numbered _____, and entitled ‘In the Matter of Marriage of _____ and _____. The suit requests _____ (statement of relief sought).’

“The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property that will be binding on you.

“Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, _____.

“.....

Clerk of the _____ Court of
_____ County, Texas

By _____, Deputy.”

(c) The form authorized in this section and the form authorized by Section 102.010 may be combined in appropriate situations.

(d) If the citation is for a suit in which a parent-child relationship does not exist, service by publication may be completed by posting the citation at the courthouse door for seven days in the county in which the suit is filed.

(e) If the petitioner or the petitioner's attorney of record makes an oath that no child presently under 18 years of age was born or adopted by the spouses and that no appreciable amount of property was accumulated by the spouses during the marriage, the court may dispense with the appointment of an attorney ad litem. In a case in which citation was by publication, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the suit as a part of the record.

Section 102.010

Sec. 102.010. SERVICE OF CITATION BY PUBLICATION.

(a) Citation may be served by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown.

(b) Citation by publication shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(c) Citation by publication shall be sufficient if given in substantially the following form:

To (names of persons to be served with citation) and to all whom it may concern (if the name of any person to be served with citation is unknown),
Respondent(s),

"STATE OF TEXAS

"You have been sued. You may employ an attorney. If you or your

attorney do (does) not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the Court of _____ County, Texas, on the ___ day of _____, _____, against _____, Respondent(s), numbered _____, and entitled 'In the interest of _____, a child (or children).' The suit requests (statement of relief requested, e.g., 'terminate the parent-child relationship'). The date and place of birth of the child (children) who is (are) the subject of the suit: _____.

"The court has authority in this suit to render an order in the child's (children's) interest that will be binding on you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's (children's) adoption.

"Issued and given under my hand and seal of the Court at _____, Texas, this the ___ day of _____, _____.

"....."

Clerk of the District Court of
_____ County, Texas.

By _____, Deputy."

(d) In any suit in which service of citation is by publication, a statement of the evidence of service, approved and signed by the court, must be filed with the papers of the suit as a part of the record.

(e) In a suit filed under Chapter 161 or 262 in which the last name of the respondent is unknown, the court may order substituted service of citation by publication, including publication by posting the citation at the courthouse door for a specified time, if the court finds and states in its order that the method of substituted service is as likely as citation by publication in a newspaper in the manner described by Subsection (b) to give the respondent actual notice of the suit. If the court orders that citation by

publication shall be completed by posting the citation at the courthouse door for a specified time, service must be completed on, and the answer date is computed from, the expiration date of the posting period. If the court orders another method of substituted service of citation by publication, service shall be completed as directed by the court.

Submitted by
Richard R. Orsinger
Committee Chair

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~~, newspaper or on the state's public information internet website, as permitted or required by law.

2. Citation by newspaper is accomplished by having the ~~same~~ citation 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.

3. Citation is served through the state's public information internet website by posting the citation in accordance with applicable procedures so that the citation is available for review by