

RULE 103. OFFICER WHO MAY SERVE

at personal service

All process may be served by: (1) the sheriff or any constable of any county in which the party to be served is found, (2) any person authorized by the Court who is not less than eighteen years of age, or, if by mail, either of the county in which the case is pending or of the county in which the party to be served is found; provided that no officer or authorized person who is a party to or interested in the outcome of a suit shall serve any process therein. Service by registered or certified mail and citation by publication ~~may~~ *shall* be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order.

Evidence - Newell Blackwell

Evid. in Rules Process

~~1844~~ 176 - 185. *Should they be transferred &*

184 & 184a. *Rules Evidence*
referred, law of other states &
of Foreign Countries.

176, 177, 177a, 178, 179, 180 } *Unanimous recommendation & leave*
as is.

181, 182 } *4-2 vote & leave as is*

182a } *4-2 vote & leave as is*

183 } *4-2 vote & leave as is*

Committee recommended to make no changes.

*Adopted
amendment*

RULE 103

OFFICER WHO MAY SERVE

All process may be served by the sheriff or ^{any} constable, or ~~by~~ ^{by} any person who ~~is not a party and~~ ^{is not a party and} ~~is~~ ^{is} not less than eighteen years of age and is ^{authorized} appointed by ~~motion and order~~ ^{with court} of any county in which the party to be served is found, or, if by mail, either of the county in which the case is pending or of the county in which the party to be served is found; provided that ^{no person} ~~no~~ officer who is a party to or interested in the outcome of the suit shall serve any process ^{in addition to the above,} ~~therein.~~ Service by registered or certified mail and citation by publication [may] ^{shall, if requested,} be made by the clerk of the court in which the case is pending.]

COMMENT: Attorney Don Baker suggested that the district clerk's office be required to make service by mail, because many clerks' offices often decline to accomplish service by registered or certified mail and his proposed amendment is to remove from those clerks such discretion and to require the clerks to accomplish that service if requested.

Guillermo Vega, Jr., an attorney, and Edward S. Hubbard, attorney for the Texas Association of Civil Process Servers, suggested that Rule 103 be amended to allow such civil process servers to serve citations.

Unanimously approved

RULE 107. RETURN OF CITATION

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person.

g Citation → ~~Any return, by an authorized person shall be verified.~~ When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer must also contain the return receipt with the addressee's signature. When the officer has not served the citation, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain.

Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.

No default judgment shall be granted in any cause until the citation with proof of service as provided by this rule, or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

Delete current rule.

In lieu of filing security for costs in an original action or an appeal, a party who is unable to afford such costs shall file an affidavit of inability as described in this rule. A "party who is unable to afford costs" is defined as a person who is presently receiving a government entitlement based upon indigency or any other person who has no present ability to pay costs. Such affidavit, and the party's action or appeal, shall be processed by the clerk in the procedure described in this rule.

2. Procedure. Upon the filing of the affidavit, the clerk shall docket the action or appeal in accord such other typical services as are provided any party. After service of citation, the defendant may contest the pauper's affidavit by filing a written contest with the court and all parties, provided that temporary hearings will not be continued pending the filing of the contest. If the court shall find at the first regular hearing in the course of the action or appeal that the party (other than a party receiving a government entitlement) is able to afford costs, that party shall pay the costs of the action or appeal. Reasons for such ability shall be contained in the order. Except with leave of court, no further steps in the action or appeal may be taken by a party who is found able to

afford costs, until payment is made. If the party's action results in a monetary award, and the court finds sufficient monetary award to reimburse costs, the prevailing party shall pay the costs of the action or appeal. If the court finds that another party to the suit can pay the costs of the action or appeal, the other party shall pay the costs of such action or appeal.

3. The affidavit. The affidavit shall contain complete information as to the party's identity, nature and amount of government entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be acknowledged before a notary public.

4. Attorney Certification. If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency, such attorney may file an affidavit to that effect to assist the court in understanding the financial condition of the party.

6. The costs of all depositions shall be the responsibility of the attorneys requesting such depositions in the case unless such attorneys provide written notice to the court reporter, prior to the deposition, stating what person or entity will be responsible for the costs of such deposition.

COMMENT: Mr. Duke Weidmann, with Affiliated Reporters in Austin, requested the above addition to the rules relating to the taking of depositions, because he thought that attorneys on occasion leave collection of deposition costs to the court reporters. Mr. Weidmann believes that, because of attorneys' routine use of court reporter's services for depositions, such attorneys should be responsible for the court reporter's fees.

E., The non-stenographic recording [shall not dispense with the requirement of a stenographic transcription of the deposition unless the court shall so order on motion and notice before the deposition is taken, and such order shall also make such provision concerning the manner of taking, preserving and filing the nonstenographic recording as may be necessary to assure that the recorded testimony will be intelligible, accurate and trustworthy. Such order shall prevent any party from having a stenographic transcription made at his own expense.] may be made without the necessity of a stenographic transcription, without the need for a court order. In the event of an appeal, the non-stenographic recording shall be reduced to writing.

COMMENT: Attorney Jack Gullede submitted this recommendation because he feels that each law office has trained personnel who can competently reduce the non-stenographic recording to a stenographic transcript without having to pay a court reporter a fee to do the transcription.