

Supreme Court of Texas

Misc. Docket No. 24-9034

Preliminary Approval of Amendments to Texas Rules of Civil Procedure 103 and 107

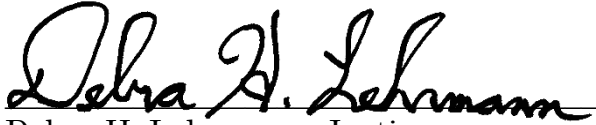
ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Civil Procedure 103 and 107.
2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by November 1, 2024.
3. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the rules in response to public comments. The Court expects the amendments to take effect on December 1, 2024.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

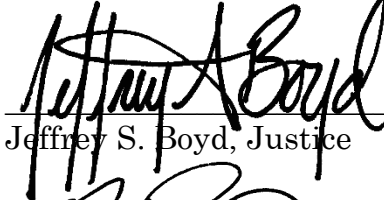
Dated: June 11, 2024.



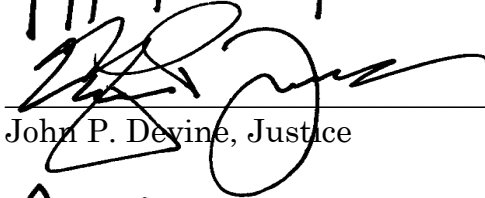
Nathan L. Hecht, Chief Justice



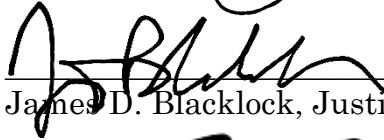
Debra H. Lehrmann, Justice



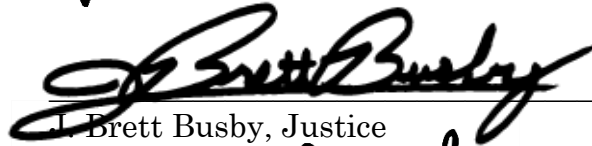
Jeffrey S. Boyd, Justice



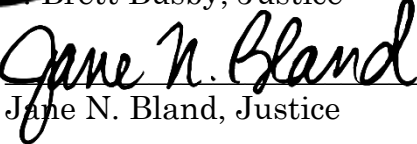
John P. Devine, Justice



James D. Blacklock, Justice



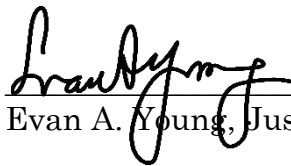
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 103. WHO MAY SERVE

Process including citation and other notices, writs, orders, and other papers issued by the court may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified ~~under order of the Supreme Court~~ by the Judicial Branch Certification Commission. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivery the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Notes and Comments

Comment to 1988 change: The amendment makes clear that the courts are permitted to authorize persons other than Sheriffs or Constables to serve Citation. Further, Sheriffs or Constables are not restricted to service in their county. The last sentence is added to avoid the necessity of motions and fees.

Comment- 2005: The rule is amended to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals from serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

RULE 107. RETURN OF SERVICE

- (a) The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.
- (b) The return, together with any documents to which it is attached, must include the following information:
 - (1) the cause number and case name;

- (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted to serve the process;
 - (10) if the person named in (9) is a process server certified ~~under order of the Supreme Court~~ by the Judicial Branch Certification Commission, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.
- (d) When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.
- (e) The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____, and
(First) (Middle) (Last)

“My name is _____, I am at least 18 years old, and
(First, Middle, Last)

my address is _____, _____, _____, _____, and
(Street) (City) (State) (Zip Code)

_____. I declare under penalty of perjury that the foregoing is true and correct.
(Country)

Executed in _____ County, State of _____, on the _____ day of _____,
(Month)
_____.
(Year)

_____.”
(Declarant)

- (f) 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.
- (g) The return and any document to which it is attached must be filed with the court and may be filed electronically or by facsimile, if those methods of filing are available.
- (h) No default judgment shall be granted in any cause until proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed by an alternative method 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.

Notes and Comments

Comment to 1988 change: Amendments are made to conform to changes in Rule 103.

Comment to 1990 change: To state more directly that a default judgment can be obtained when the defendant has been served with process in a foreign country pursuant to the provisions of Rules 108 or 108a.

2021 Comment: Certain default orders, like those in suits for protection from family violence, may be exempt by statute from the ten-day requirement in paragraph (h). *See, e.g.*, TEX. FAM. CODE § 85.006.