

Direct Results Legal Service

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June 8, 2015

Texas Supreme Court
via facsimile

Re: Request for amendments to TRCP, Rules 107(e) & 501.3(e)

Dear Justices,

Please consider amending Rules 107 & 501 of the Texas Rules of Civil Procedure. This amendment is necessary to address concerns among private process servers regarding the inclusion of the server's date of birth and home address on returns of service. Texas process servers are concerned about their safety and possible retaliation.

Rules 107 & 501.3 were amended/created pursuant to Chapter 17.030 of the Civil Practice and Remedies Code. CP&RC Section 17.030(c) reads:

"A person certified by the supreme court as a process server or a person authorized outside of Texas to serve process **shall sign the return of service under penalty of perjury**. The return of service is not required to be verified." [Emphasis added.]

This section of the law does *not* require the use of an unsworn declaration; and it does not preclude the Court from including all persons who are authorized to serve process pursuant to TRCP Rules 103 & 501.2. Therefore, please consider amending TRCP, Rules 107(e) & 501.3(e) to read,

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 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)

"I declare under penalty of perjury that the foregoing is true."

According to a former Supreme Court Rules Attorney, Ms. Kennon Peterson, all forms of returns are subject to penalty of perjury no matter how they are executed. Please consider the return of service for a Texas subpoena which does not require verification or signature under penalty of perjury [TRCP Rule 176.5(b)(2)]. But, the moment it is filed with the court, the server becomes subject to penalty of perjury. The current wording in Rules 107 & 501, therefore, suggests a distinction that does not exist, to wit: "verified or under penalty of perjury." All returns by all private process servers, including those returns that are verified, are subject to the penalty of perjury.

Thank you very much for your consideration. This suggested amendment will simplify the execution of returns by all authorized persons while conforming to the statutory requirement.

Sincerely,

/s/

Tod E. Pendergrass
Director, The Civil Process Servers Association of Texas
Owner, Direct Results Legal Service

cc: JBCC, PSCAB, Sen. Carlos Uresti

From: Martha Newton <Martha.Newton@txcourts.gov>
To: "Direct Results (directresultslegal@yahoo.com)" <directresultslegal@yahoo.com>
Sent: Tuesday, June 9, 2015 11:24 AM
Subject: FW: comments to Supreme Court regarding returns of service

Dear Mr. Pendergrass

I am the Supreme Court staff attorney in charge of rules projects. Your letter requesting an amendment to Texas Rules of Civil Procedure 107 and 501.3 was forwarded to me. An attorney for another private process server recently raised the same safety concerns that you raise in your letter, so this is an issue that the Court is aware of.

The form jurat in those rules for an unsworn declaration signed under penalty of perjury comes straight from Civil Practice and Remedies Code section 132.001(d), so the requirement that an unsworn declaration include a person's address and birth date is imposed by the Legislature, not the Court. I recommend that you raise your concerns with your legislative representatives.

In the meantime, Rules 107 and 501.3 also give a process server the option of having the return notarized (verified). Verified returns need not include the server's birth date and home address.

Martha G. Newton
Rules Attorney
Supreme Court of Texas
512.463.1353 (Direct)
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From: Direct Results <directresultslegal@yahoo.com>
To: Martha Newton <Martha.Newton@txcourts.gov>
Sent: Wednesday, June 10, 2015 12:19 PM
Subject: Re: comments to Supreme Court regarding returns of service

Dear Ms. Newton,

Thank you for your response to my letter. I am grateful to be able to work with you on issues related to my occupation.

I understand that the wording in the rules comes from the unsworn declaration statute. However, the unsworn declaration statute, CPRC 132.001, makes no mention of returns of service, process servers, or process service. Neither does it command the Texas Supreme Court to adopt any rules relating to service. I believe the controlling statute is not the unsworn declaration statute, but, CPRC 17.030, titled "RETURN OF SERVICE."

I have provided the relevant sections below. Sec. 17.030(a) commands the court to adopt the rules (which are TRCP 107 & 501.3.) Most importantly, Sec. 17.030(c) requires only that the return be signed "under penalty of perjury."

I am asking the Court to consider dropping the reliance upon the unsworn declaration statute and, instead, rely solely upon the return of service statute. I am also asking the Court to consider allowing such a revision to apply to all authorized persons, not just those who are certified. I believe the wording in 17.030(c) does not preclude the court from doing so. TRCP Rules 103 & 501.2(a) provide three separate ways a private citizen can become authorized... by law, by written order of the court, or by being certified. There are at least six Texas laws that allow non-certified servers to serve process under certain circumstances. Therefore, rules relating to returns of service should apply to all those who are lawfully authorized to serve.

I believe the following allows the Court to adopt rules that create a unique form called a "return of service." There is no need to borrow from the unsworn declaration statute.

Sec. 17.030. RETURN OF SERVICE.

(a) The supreme court shall adopt rules of civil procedure requiring a person who serves process to complete a return of service.

(c) A person certified by the supreme court as a process server or a person authorized outside of Texas to serve process shall sign the return of service under penalty of perjury. The return of service is not required to be verified.

I also thought this might be an issue for the Rules Advisory Committee. Please let me know if I can provide any further clarification.

Thank you very much for your time.
Tod E. Pendergrass

From: Martha Newton <Martha.Newton@txcourts.gov>
To: 'Direct Results' <directresultslegal@yahoo.com>
Sent: Tuesday, June 23, 2015 4:02 PM
Subject: RE: comments to Supreme Court regarding returns of service

Tod,

I received your email and have discussed this issue with the Chief. The Court's view is that CPRC section 132.001 applies to an unverified return. As I stated in my initial email, I think your best course is to pursue this in the legislature.

Martha