IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9250

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, AND 742a

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with the Act of May 19, 2011, 82nd Leg., R.S., ch. 345 (HB 962), Rules of Civil Procedure 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, and 742a, are amended as follows.

2. By Order dated October 17, 2011, in Misc. Docket No. 11-9214, the Court proposed amendments to Rules 99, 107, 108, 117, 239, 536a, 688, 689, 737.4, 742, and 742a of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made additional revisions to the rules. This Order contains the final version of amended Rules of Civil Procedure 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, and 742a that take effect January 1, 2012.

3. The provisions allowing a return of service to be filed electronically or by facsimile when those methods of filing are available supersede any contradictory local rules or court orders.

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 the Order for publication in the *Texas Register*.

Dated: December 12th, 2011.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

RULE 99. ISSUANCE AND FORM OF CITATION

a. **Issuance.** Upon the filing of the petition, the clerk, when requested, shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition. Upon request, separate or additional citations shall be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

. . .

RULE 107. RETURN OF SERVICE

(a) The ~~return of the~~ officer or authorized person executing the citation must complete a return of service. The return may, but need not, ~~shall~~ be endorsed on or attached to the citation. ~~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. The return of citation by an authorized person shall be verified.~~

(b) The return, together with any document 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, 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 ~~he can~~ 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
(First) (Middle) (Last)

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

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

true and correct.

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 ~~the citation, or process under Rules 108 or 108a, with~~ 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.

RULE 108. ~~DEFENDANT WITHOUT~~ SERVICE IN ANOTHER STATE

Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person who is not less than eighteen years of age, ~~competent to make oath of the fact~~ in the same manner as provided in Rule 106 hereof. The return of service in such cases ~~shall be endorsed on or attached to the original notice, and~~ shall be completed in accordance with ~~the form provided in~~ Rule 107~~, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer~~. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State to the full extent that he may be required to appear and answer under the Constitution of the United States in an action either in rem or in personam.

RULE 117. RETURN OF CITATION BY PUBLICATION

The return of the officer executing such citation shall ~~be indorsed or attached to the same, and~~ show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

RULE 239. JUDGMENT BY DEFAULT

Upon such call of the docket, or at any time after a defendant is required to answer, the plaintiff may in term time take judgment by default against such defendant if he has not previously filed an answer, and provided that the ~~citation with the officer's return thereon~~ return of service shall have been on file with the clerk for the length of time required by Rule 107.

RULE 534. ISSUANCE AND FORM OF CITATION

(a) **Issuance.** When a claim or demand is lodged with a justice for suit, the clerk when requested shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition if any is filed. Upon request, separate or additional citations shall be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

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RULE 536a. DUTY OF OFFICER OR PERSON RECEIVING AND RETURN OF CITATION

(a) The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

(b) The ~~return of the~~ officer or authorized person executing the citation must complete a return of service. The return may, but need not~~, shall~~ be endorsed on or attached to the ~~same~~ citation. ~~; 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. The return of citation by an authorized person shall be verified~~.

(c) The return, together with any document 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, his or her identification number and the expiration date of his or her certification; and

(11) any other information required by rule or law.

(d) When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(e) 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 ~~he can~~ ascertainable.

(f) 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
(First) (Middle) (Last)

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

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

true and correct.

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

_____

Declarant"

(g) Where citation is executed by an alternative method as authorized by Rule 536, proof of service shall be made in the manner ordered by the court.

(h) 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.

(i) 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 by an alternative method under Rule 536, shall have been on file with the clerk of the court three (3) days, exclusive of the day of filing and the day of judgment.

RULE 688. CLERK TO ISSUE WRIT

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant. The clerk must retain a copy of the temporary restraining order or temporary injunction in the court's file.

RULE 689. SERVICE AND RETURN

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. ~~The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.~~ The officer must complete and file a return in accordance with Rule 107.

RULE 737.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 536 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least six days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of

service with the court that ~~return the citation, with the action written on the citation, to the justice who~~ issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

RULE 742. SERVICE OF CITATION

The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he must complete and file a return of service in accordance with Rule 536a with the court that ~~shall return such citation, with his action written thereon, to the justice who~~ issued the citation ~~same~~.

RULE 742a. SERVICE BY DELIVERY TO PREMISES

. . .

(d) Such delivery and mailing to the premises shall occur at least six days before the return day of the citation; and on or before the day assigned for trial he must complete and file a return of service in accordance with Rule 536a with the court that ~~shall return such citation, with his action written thereon, to the justice who~~ issued the citation ~~same~~.