

## Legal Notice – Service of Citation and Service of Documents

Every civil lawsuit has three basic steps:

1. Filing the Petition,
2. Giving **legal notice** to the other party or parties, and
3. Finalizing the matter in court.

This brochure explains how to give legal notice to the other parties in a lawsuit.

The person who files a lawsuit is called the **Petitioner**. The Petitioner is the person who asks the Court to do something. The other parties in the family law lawsuit are called the **Respondents**. If you file a divorce, the Respondent is your spouse. If you are a parent filing a custody lawsuit or Suit Affecting the Parent-Child Relationship, the Respondent usually includes the other parent or other adult caregiver who has lived with the child for at least six months.

All parties in a lawsuit must be given legal notice of the lawsuit. This means they must be informed that the Petitioner has asked the Court to do something that might affect the Respondent's legal rights. It is not enough for the Petitioner to tell the Respondent about the lawsuit. The Petitioner must follow the Texas Rules of Civil Procedure in giving legal notice. *Texas Rules of Civil Procedure 124.*

Generally, there are two ways to give legal notice:

- 1) The Respondent **waives** his or her right to service by signing a **Waiver of Citation** in front of a notary. *Texas Rules of Civil Procedure, 120.*

OR

- 2) The Respondent **served** with a copy of the Petition by some one who is authorized by the Court to give the Respondent the petition. This person is called a **Process Server**. It may be a private process server or a sheriff or constable. *The Petitioner is not authorized by the Court to serve the petition on the Respondent. Texas Rules of Civil Procedure, 103.*

A Respondent is served legal notice (also called citation) when he or she receives a copy of the Petition and a Citation, issued by the clerk's office. The clerk will issue a citation if the Petitioner requests one. The Petitioner will need to ask the clerk to issue a citation, and have it served, unless the Respondent agrees to sign a Waiver of Citation.

### The Citation

The Citation must **correctly** identify:

- the case by cause number;
- the name and location of the court;
- the Petitioner and his or her address;
- the Respondent or Defendant and his or her address; and
- the date the Petition was filed and the citation was issued.

The Citation must also tell the Respondent about the time period he or she has to answer the lawsuit, and warn that a judgment may be taken against the Respondent for failing to answer the lawsuit within the answer period. *Texas Rules of Civil Procedure, 99.*

### **Methods of Service**

There are four authorized *methods of serving citation* or ways that a process server may deliver the Petition and the citation to the Respondent: personal service, service by certified mail, substituted service, and publication.

- a) **Personal service** is the best choice for service. This means the process server hand delivers the petition to the Respondent. The Court knows for sure that the Respondent actually received notice of the lawsuit when personal service is accomplished. *Texas Rules of Civil Procedure, 106 (a)(1).*
- b) **Service by certified mail** may be used if you ask the clerk to issue citation and mail the petition to the Respondent instead of having the process server personally deliver it. Service by certified mail is only valid if the *Respondent's* signature appears on the return receipt that is returned. If someone else has signed for the letter (including a mail clerk), the Respondent was not actually served. The Court will require the Petitioner to serve the Respondent again, and the Petitioner may have to pay additional fees for service. *Texas Rules of Civil Procedure, 106(a) (2).*
- c) Sometimes, a court may allow **substituted or alternative service**. If the Petitioner files a sworn statement (affidavit) and motion convincing a court that a substitute or alternative method of service would be reasonably effective to give the Respondent notice, the court may allow a method of service other than personal service or certified mail. *Texas Rules of Civil Procedure, 106(b).*
- d) If a Respondent cannot be located, a Petitioner is still required to give him or her legal notice. The method used in these cases is called **publication**. With service by publication, the notice runs in a newspaper or other publication. In cases where service by publication is required, the court must appoint an attorney to represent the Respondent. The Petitioner usually has to pay the attorney's fees in such cases. The attorney's role is to conduct a diligent search, and show the court that the Respondent really cannot be located.

In a divorce proceeding, if the Petitioner cannot locate Respondent, and the parties have no children and limited property, the court may allow the legal notice to be posted at the courthouse. This is called service by **posting**. *Texas Rules of Civil Procedure, 109.*

### **Return of Citation**

Once the Respondent has been served with a copy of the petition, the process server must complete a **Return of Citation**. The **return** lets the judge know how and when the Respondent was served. The Return of Citation must be filed in the clerk's office with the rest of the court

papers. It has to be on file for at least ten days (not counting the day it is filed or the day the Petitioner appears before the judge) in order for the court to grant a [Default Judgment](#).

The Return of Citation must correctly identify:

- the date and time the process server received the citation;
- the Petition that was served on the Respondent;
- the person who was actually served;
- the manner or place in which the Respondent was served;
- the date the Respondent was served;
- the person who served the process; and
- the date the Return of Citation was filed.

*Texas Rules of Civil Procedure, 107.*

### **Waiver of Citation**

If a Respondent agrees to sign a Waiver of Citation, and waives his or her right to be served by a process server, you must be sure that the waiver is **valid**. For a Waiver of Citation to be valid, all of the following must be true:

The Waiver

- has been signed by Respondent, in front of a notary, after the Petition has been filed.
- expressly states that the Respondent waives his or her right to service, and has received a copy of the Petition.
- must be filed with the clerk's office.

In a divorce case, the Waiver must also include the Respondent's address. *Texas Rules of Civil Procedure, 120.*

### **Amended Petitions**

If a Petitioner has served the Respondent, and later must amend or change the Petition to ask for something more or different, and the Respondent has not **answered**, by filing a written response, and has not **appeared** in person at a court hearing in the case, then the Petitioner will have to request that the clerk issue another citation, and have the Respondent served with the Amended Petition. If the Respondent signed a Waiver of Citation, the Petitioner will need to give the Respondent a copy of the Amended Petition, and have the Respondent sign another Waiver of Citation, or have the Respondent served with the Amended Petition.

If the Respondent does file a written response or appears in court in the case, the Petitioner may follow the directions for serving documents to serve the Amended Petition, and need not have a new citation issued.

### **Serving Documents**

After a party has answered or appeared, all parties must give legal notice to the other parties of all documents filed in the lawsuit, and of all communications with the Court about the lawsuit. The parties, themselves, are allowed to serve the documents on the other parties. An attorney of record, a sheriff or constable, and any other person competent to testify are also allowed to serve documents in a lawsuit. *Texas Rules of Civil Procedure, 21.*

Documents are often served by certified mail, return receipt requested, sent to the other party at his or her last known address. Documents might also be served by personal delivery or delivery service, and may be served by fax. *Texas Rules of Civil Procedure, 21(a)*.

After the documents have been served, the party who served them (or the party's attorney) must file a [Certificate of Service](#) with the Court. The Certificate of Service must:

- Be signed by the party who served the documents (or the party's attorney),
- Describe how the document was served on the other party (mail, fax, or personal delivery),
- Be included as a paragraph in the document, itself, and
- State the address or fax number where the document was served.

*Texas Rules of Civil Procedure, 21.*

The Rules of serving citation and legal documents are really about the Court's attempt to keep the legal system fair. All parties in a lawsuit must receive adequate notice of all requests and of all communications with the Court. Without adequate notice, it is not possible for the Court to see all sides of a dispute, and justice is not served. If you are having difficulty making sure that the other parties in your case are receiving proper legal notice, seek the help of an attorney by contacting your local lawyer referral service.