

IN THE SUPREME COURT OF TEXAS

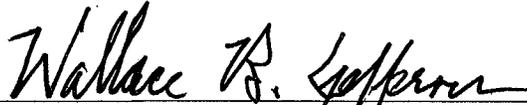
Misc. Docket No. 06-9141

ORDER PROMULGATING TEXAS RULE OF JUDICIAL ADMINISTRATION 14

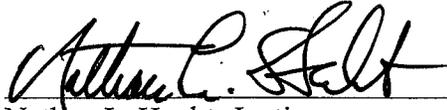
It is hereby ORDERED that:

1. Pursuant to the Texas Constitution, article V, section 31(a), and Texas Government Code § 74.024, the Texas Rules of Judicial Administration are amended by adding Rule 14, which addresses statewide certification to serve civil process, as follows.
2. Comments on these revisions may be submitted to the Court in writing on or before January 30, 2007. Comments should be directed to Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.
3. This rule, with any changes made after public comments are received, takes effect April 2, 2007.
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 before December 1; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

SIGNED AND ENTERED, this 19th day of October, 2006.



Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice

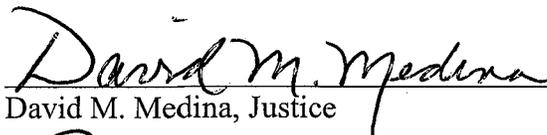
Harriet O'Neill, Justice



J. Dale Wainwright, Justice



Scott Brister, Justice



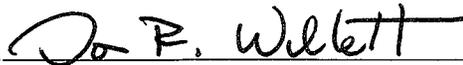
David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

Rule 14. Statewide Certification to Serve Civil Process

14.1 Purpose

Under Rules 103 and 536 of the Texas Rules of Civil Procedure, as amended effective July 1, 2005, civil process may be served by—in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court—“any person certified under order of the Supreme Court.” To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court—simultaneous with amending Rules 103 and 536—also issued companion orders creating the Process Service Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board’s actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 Definitions

- (a) *Board* means the Process Service Review Board.
- (b) *Chair* means the Chair of the Board, as appointed by the Supreme Court.

14.3 General Provisions

- (a) *Membership of Board.* Members of the Board are appointed by the Supreme Court of Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.
- (b) *General Procedure.*
 - (1) A majority of members of the Board shall constitute a quorum.
 - (2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.
 - (3) The Chair or his/her designee shall preside at Board meetings.
 - (4) The Board may, in its discretion, grant continuances with regard to hearings and other matters before the Board.
 - (5) The Office of Court Administration shall provide clerical assistance to the Board.
- (c) *Methods of Service.*
 - (1) Service of any written notice or other document required to be served under this Rule may be accomplished:
 - (A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person’s last known address; or
 - (B) by fax, to the person’s current fax number.

(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax shall be complete upon confirmation of receipt. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) *Counting Time.*

In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays, and legal holidays shall not be counted for any purpose.

14.4 Certification

(a) *Application.*

- (1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.
- (2) The application must contain a statement that the applicant has not been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. The applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude.
- (3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved for certification in every state court pursuant to Supreme Court order.

(b) *Review of Application; Rejection; Approval.*

- (1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on a conditional or probationary basis.

- (2) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on a conditional or probationary basis, the Board shall specify the good cause for its decision.
 - (3) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.
 - (4) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and an assigned identification number.
 - (5) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.
- (c) *Renewal of Certification.*
- (1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).
 - (2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4(b)(5), and no later than forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 Disciplinary Actions

- (a) *Conduct Subject to Disciplinary Action.* The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for:
- (1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or
 - (2) other good cause as determined by the Board.

A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.

- (b) *Filing of Complaint Against Certified Process Server.*
- (1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.
 - (2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.
 - (3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days prior to the meeting at which the complaint will be considered; and (3) that no live testimony regarding the complaint or presentation by the affected process server will be permitted at the meeting.
 - (4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.
- (c) *Investigation of Complaints.*
- (1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.
 - (2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.
- (d) *Hearing of Complaints.*
- (1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.
 - (2) No live testimony relating to the actions complained of will be permitted at the meeting.
 - (3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, the Board shall vote on the status of the complaint,

unless such determination is continued until another Board meeting for good cause.

- (4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action imposed. In its written statement, the Board must specify the good cause for disciplinary action.
- (5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.
- (6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.
- (7) Complaints determined by the Board to be unsubstantiated or unfounded shall be dismissed.
- (8) Nothing in this provision shall preclude negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

14.6 Reconsideration of Board Decisions

(a) *Request for Reconsideration.*

- (1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.
- (2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.
- (3) The request must identify the process server and the decision of the Board for which reconsideration is requested, and must succinctly state the reason for reconsideration.

(b) *Reconsideration Procedure.*

- (1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.
- (2) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.
- (3) The Board must send the process server written notice stating its decision on reconsideration.

- (c) *Request for Reconsideration Is Necessary Prerequisite for Appeal.* A request for reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

14.7 Appeal of Board Decisions

(a) *Procedure for Appealing.*

- (1) Any certified process server seeking to appeal a Board decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the date the written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the "Contact Information" page of OCA's website, currently located at <http://www.courts.state.tx.us/oca/contact.asp>.
- (2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, *see* Tex. Gov't Code §74.041. The committee shall be chosen on a basis predetermined by the Presiding Judges, but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board's decision.
- (3) The General Counsel shall notify the Board of the filing of an appeal and, upon request, shall make the appeal materials available to the Board or its legal representative.
- (4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board's decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board's decision; and (3) a copy of the Board's notice reflecting its decision on reconsideration.
- (5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative, or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding non-substantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.

(b) *Consideration of Appeal.*

- (1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process server; (3) notice of the Board's decision imposing disciplinary action; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)-(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
- (2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history from the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)-(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
- (3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.
- (4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7(b)(1)-(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise, only the written materials described under Rule 14.7(b)(1)-(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.
- (5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.

- (6) After consideration of the appeal, the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.