

- SUBJECT:** Allowing service of citation at the courthouse door in DPRS suits
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 6 ayes — Dutton, Goodman, Baxter, Castro, Hodge, Reyna
0 nays
3 absent — Dunnam, J. Moreno, Morrison
- WITNESSES:** For — William S. Cox and Michael H. Schneider, Jr., Harris County Attorney's Office

Against — Wanda Garner Cash, Texas Daily Newspaper Association and Texas Press Association; Roy Getting, Texas Fathers Alliance; Robert L. Green, Jr., Texas Fathers Alliance, Lone Star Fatherhood Initiative, and Men and Fathers Resource Center; Richard Herrera, Commercial Recorder of Fort Worth; Milton Morin, Daily Court Review; G.K. Sprinkle, Daily Commercial Record

On — Cathy Morris, Texas Department of Protective and Regulatory Services
- BACKGROUND:** Family Code, sec. 102.010 allows citation to be served by publication in suits affecting the parent-child relationship to parties who cannot be notified by personal service or certified mail and to people whose names are unknown, in the same manner as in other civil cases. Citation by publication must be published once. If the name of the person entitled to service is unknown, notice must be addressed to "All Whom It May Concern." A notice may include one or more cases to be heard on the same day, and a hearing may be continued without further notice.

Sufficient citation by publication may include a statement that the person is being sued and that if the person does not file a written answer with the clerk by a certain time, a default judgment may be taken against the party. A sample notice includes the petitioner's name, the court in which the suit was filed, the filing date, the purpose of the suit, and the court's authority, which includes terminating the parent-child relationship and determining paternity.

Rule of Civil Procedure 109 authorizes the use of citation by publication when a party to a suit makes an oath that the residence of the other party is unknown or is a transient person, and, after due diligence, the party has failed to locate the defendant or the defendant is absent from or is a nonresident of Texas, and the party has attempted to obtain service of nonresident notice but has been unable to do so. Before ruling on the use of citation by publication, the court must inquire into the sufficiency of the diligence exercised in attempting to ascertain the defendant's residence or whereabouts or to obtain service of nonresident notice.

Rule of Civil Procedure 109a allows the court to authorize a different method of substituted service in a case where citation of publication is authorized, if the court finds that the method prescribed would be as likely as publication to give defendant actual notice.

Rule of Civil Procedure 114 requires the citation to contain the names of the parties, a brief statement of the nature of the suit, a description of any property involved and of the interest of the named or unknown defendant, and when the parties must appear. Rule 116 requires the citation to be published once a week for four consecutive weeks. In all suits that do not involve title to land or partition of real estate, the publication must be made in the county where the suit is pending, if a newspaper is published in that county, or if not, in an adjoining county where a newspaper is published.

DIGEST:

CSHB 518 would allow a court to order substituted service of citation, including publication by posting the citation at the courthouse door for a specific period of time, in a suit brought by the Department of Protective and Regulatory Services (DPRS) to protect a child's health and safety. The court could do so only if it found and stated in its order that the method of substituted service was as likely as publication in a newspaper to give the respondent actual notice of the suit. If the court ordered citation by publication to be completed by posting it at the courthouse door, service would have to be completed on, and the answer date computed from, the expiration date of the posting period.

The bill also would require that a statement of the evidence of service, approved and signed by the court, be filed in any suit in which service of citation was by publication.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 518 would clarify that a court could order substituted service of citation by publication, including posting at the courthouse door, in DPRS cases. The bill would not mandate or eliminate any options now available to courts but would ensure that courts could use, at their discretion, a tool effectively used in many types of civil cases. Courts have disagreed as to whether posting at the courthouse door is permissible in DPRS cases, leading to confusion and conflicts among jurisdictions. It is important to clarify the rules for citation by publication, because attacking the method of service prolongs DPRS cases while this issue is litigated, to the detriment of children.

CSHB 518 would save counties and the state money while maintaining the same level of notice for respondents. In urban settings, most citations are placed in specialty papers with few paid subscribers and a small readership. Counties spend a great deal of money, some of which the state reimburses, to publish ineffective notices in these specialty papers. These expenditures are unnecessary when posting at the courthouse door would be just as effective, especially when part of all of a respondent's name is unknown. Respondents, who often do not want to be found, are unlikely to check specialty papers to ascertain if a suit is being brought against them.

CSHB 518 would contain adequate procedural safeguards to ensure that respondents' due process rights were protected. The Rules of Civil Procedure require the court to consider whether sufficient diligence has been exercised to locate the respondent before the court may authorize service by publication. Substituted service by posting on the courthouse door would be discretionary with the court, and the court could authorize it only upon a finding that it would be as likely as citation by publication to give the respondent actual notice of the suit. Finally, the bill would add the requirement that in any suit in which service of citation was by publication, a statement of the evidence of service, approved and signed by the court, would have to be filed.

**OPPONENTS
SAY:**

Even though publishing notice in newspapers is not always effective, it is more likely to reach the respondent than posting notice on the courthouse door. While the readership of certain specialty publications may be limited, no one goes to the courthouse to check postings. Legal notices are one of the best read sections of newspapers. The Daily Commercial Record, a specialty paper in Harris County in which notices are published, is distributed in bookstores, libraries, at the courthouse, and on the Internet, places where an affected party would be likely to look. Because failure to appear can result in a default order and because DPRS cases can involve the termination of parental rights, the notice requirement is crucial to ensure the due process rights of respondents, and exhaustive efforts should be made to reach them. If current service by citation is ineffective, courts should require publication in newspapers with larger circulation, rather than moving in the opposite direction to limit the scope of notice.

NOTES:

The committee substitute added language specifying that the court must find that the method of substituted service is as likely as citation by publication “in a newspaper” to give the respondent actual notice of the suit.

A similar bill in the 77th Legislature, HB 1453 by Menendez, was reported favorably by the House Juvenile Justice and Family Issues Committee and was placed on the Local and Consent Calendar and later withdrawn. The bill was transferred to the House Calendars Committee but died there.