



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 19, 1988

Honorable A. J. Hartel  
County Attorney  
P. O. Box 9127  
Liberty, Texas 77575-9127

IO-88-17

Dear Mr. Hartel:

You ask whether the provision in Rule 107 Texas Rules of Civil Procedure that the return of citation by an authorized person shall be verified requires that return of citations shall be sworn to before a notary public. Rule 107 as amended by orders of July 15, 1987, effective January 1, 1988, provides:

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. 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. 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 ascertain. (Emphasis added.)

Throughout Rule 107 reference is made to execution of the citation by the officer or authorized person.

Rule 103 sets forth the persons who may serve citations by orders of July 15, 1987, effective January 1, 1988. Rule 103 provides:

Citation and other notices may be served anywhere by (1) any sheriff or constable or other person authorized by law or, (2) by any person authorized by law or by written order of the court who is not less than eighteen years of age. No person who is a party to or interested in the outcome of a suit shall serve any process. Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order.

In the Comment to 1988 Change following Rule 103 it is stated, "The amendment makes clear that the courts are permitted to authorize persons other than sheriffs or constables to serve citations."

Rule 103 designates sheriffs and constables as the officers who may serve citations. In addition, when service is "by registered or certified mail and by citation by publication by publication may be made by the clerk." These are the officials who may serve citations and notices without verifying the return. Other persons authorized by law or written order of the court come within the provision in Rule 107 requiring the return of a citation by an authorized person to be verified.

The Rules of Civil Procedure do not define "verified" or "verification," however, the definition given in the Non-Profit Corporation Act in article 1396-1.02, V.T.C.S., would appear to conform to the generally accepted meaning of the term. See cases collated in 44 Words and Phrases 223. Article 1396-1.02 (13) provides

'Verified' means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

By way of summation, sheriffs and constables are the officers designated by the rules who may serve citations and notices without verifying the return. The return may be made by the clerk in which the case is pending when service is by registered or certified mail and citation by publication without complying with the verification

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requirement. Other persons authorized by law or written order of the court to serve citations and notices are required by Rule 107 to make verified returns.

Yours very truly,



Rick Gilpin  
Chairman  
Opinion Committee

RG/TGD/bc

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