

Information or instructions: Motion Order Affidavit for substituted service package

1. Motions for Substituted Service must be accompanied by a sworn affidavit.
2. An unsworn Motion for Substituted Service stating only the Defendant's home address may be rejected by the court.
3. Furthermore, evidence must be stated in the Affidavit showing that the place for substituted service is the Defendant's usual place of abode or usual place of business.
4. Statutory Update

a. The practitioner should review the amended TRCP Rule 1.3 regarding who may be served. Note that service may now be performed by sheriff, constable, or other person authorized by law.

b. Service may also be performed by any person authorized by law or written order of the court who is not less than eighteen (18) years of age, except that no person who is a party to or interested in the outcome of the suit may serve process.

c. Service by registered mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

d. The order authorizing a person to serve process may be made without written motion, and no fees shall be imposed for the issuance of such an order. Note that sheriffs and constables are no longer restricted to service in their county and may no longer charge mileage as a part of their fees.

5. The practitioner should also see TRCP Rule 106, Method of Service. Note that the citation may be served by any person authorized by TRCP Rule 1.3, either by delivering to the defendant in person a true copy of the citation, or by mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached. Such service may be authorized on motion supported by affidavit stating:

- a. The location of defendant's usual place of business or usual place of abode; or
- b. Any other place where the defendant can probably be found; and
- c. The specific facts, showing that service has been attempted under TRCP Rule 106a(1) or (2) at the location named in the affidavit, but service has not been successful.

6. The court may then authorize alternate or substituted service as follows:

a. The party serving the process may leave a copy of the citation with the petition attached with anyone over sixteen (16) years of age at the location specified in the affidavit and court order, or

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b. The process may be served in any other manner that the affidavit or evidence before the court shows would reasonably be effective to give the defendant notice of the suit.

Form: Motion for substituted service

CAUSE NUMBER _____

**[Name],
PLAINTIFF**

IN THE [Type of Court] COURT

[Court number]

vs.

**[Name]
DEFENDANT**

OF [NAME], COUNTY, TEXAS

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MOTION FOR SUBSTITUTED SERVICE

Plaintiff requests the Court to allow Defendant [Name] to be served by substituted service and would show unto the Court the following in support of this motion:

1. It is impractical to secure personal service of process in this cause on Defendant, either by certified or registered mail or by delivery to Defendant in person because Defendant has refused and continues to refuse to accept any certified or registered mail, and for the purpose of evading service of process is no longer residing at [his or her] last known Address.

2. Plaintiff will further show that the constable has, on numerous occasions, attempted to perfect service upon Defendant at [Address] and, on each occasion, constable has been unable to serve Defendant. The affidavit of Constable [Name] is attached to this motion as Exhibit "A".

3. Further, the affidavit attached to this motion shows that Defendant can be given notice of this suit if the officer deliver a copy of the Citation with the Petition attached to Defendant's last known Address, Defendant's place of business, or Defendant's usual place of abode, or, in the alternative, a copy of the Citation and Petition are served on any person at Defendant's usual place of abode who is over sixteen (16) years of age.

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4. In addition, the affidavit attached to this Motion states that the Address is Defendant's usual place of business or usual place of abode.

5. This Motion is authorized by TEX. R. CIV. P 106.

PRAYER

Plaintiff requests that the Court order service on the Defendant by delivering a copy of the Citation with Petition attached to [Address of defendant's place of business] or to any one sixteen (16) years of age or older at [Address of defendant's usual place of abode], and that a true copy of the order for substituted service be attached to and included with the Citation and Petition so served, and that Plaintiff have such other relief to which Plaintiff may show [himself or herself] justly entitled.

Respectfully Submitted,

[Law Firm Name]
THIS DOCUMENT
By _____

[Attorney's Name]

Attorney for Plaintiff
[Attorney's Address]
[Telephone Number]
[Facsimile Number]
[Bar Card Number]

[Insert Certificate of Service] if there are parties already joined in the case
THANK YOU
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on _____.

Attorney for: [Other attorney's client's name]
Attorney's name: [Other attorney's name]
Attorney's address: [Other attorney's address]
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Type of Service:

PREVIEW

- ☐ U.S. Mail, Certified Return Receipt Request No. _____.
- ☐ U.S. Mail, First Class.
- ☐ Hand delivery by [name of delivery service]: _____.
- ☐ Facsimile transmission to _____ [fax number] before 5 p.m.

[Attorney's signature]

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THANK YOU

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CAUSE NUMBER **PREVIEW**

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.
[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

AFFIDAVIT IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE

State of Texas
County of

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BEFORE ME, the undersigned authority, on this day personally appeared [Name], known to me to be a credible person, competent in all respects to make this affidavit, and who, being by me duly sworn upon his oath, deposed and stated as follows:

1. My name is {Name}.
2. I have attempted to serve Defendant [Name] at [Address of Defendant's usual place of business or usual place of abode or other place where Defendant probably can be found]. on [number] occasions on the following date and at the following time [dates and times].

THIS DOCUMENT

3. I have attempted service by the following methods:
[State specifically the facts that service has been attempted either by delivering to the Defendant in person a true copy of this citation or mailing to the Defendant by registered, return receipt requested mail and that these attempts have been unsuccessful].

4. Despite my reasonable and diligent attempts to secure service on [Name], I have been unsuccessful.

THANK YOU

5. I further state that Defendant's usual place of abode or business Address is as stated above and I believe the same to be Defendant's correct business Address and/or residence Address."

[Include any other facts to support the affidavit]

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PREVIEW
[Name]

State of Texas
County of _____

Subscribed and sworn to before me on _____ by

_____.

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Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

THIS DOCUMENT

THANK YOU

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Form: Letter to constable to sign affidavit

PREVIEW
[Date]

Constable [Name]
[Address]

Regarding: Cause No. , vs.

Dear Officer :

I have enclosed an affidavit for your execution which will be included with my motion for substituted service in the above entitled and numbered cause. Please sign the affidavit before a Notary and return it to this office. I will include it with my Motion for Substituted Service.

Please contact me if you have any questions or need any further information in this regard. Thank you for your assistance in this matter.

Very truly yours,

[Attorney's name]

Attachments

THIS DOCUMENT

THANK YOU

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Form: Order granting motion for substituted services

PREVIEW
CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

ORDER FOR SUBSTITUTED SERVICE

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On _____, the court considered [Movant's name] Plaintiff's Motion for substituted service.

After considering the motion, the court decided the request should be granted because it is impractical to deliver citation to the Defendant in person.

The court has further decided that the manner of service herein ordered will be reasonably effective to give the Defendant [Name] notice of the suit.

It is ORDERED that service upon Defendant [Name] be effected by delivering a copy of the citation with a copy of the petition and this Order of Substituted Service attached, to [defendant's business address [or by serving them on any one at [Address of defendant's usual place of abode] who is sixteen (16) years of age or older.

Signed on _____.

THANK YOU
JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

[Law Firm's or Attorney's Name]

Attorney for Plaintiff

[Address]

[Telephone & facsimile numbers]

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Texas Bar no. [Number]

PREVIEW

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THIS DOCUMENT

THANK YOU

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