Introduction to Evictions

Deputy John Porter
Denton County, Precinct 3
John.Porter@Dentoncounty.com

Topics

- General eviction process
- What is an eviction citation?
  - Definitions
  - Issuance of the citation
- Requirements of the eviction citation
- Dates & times for service
  - Expiration for service
- Who may serve the eviction citation
- Methods of service
- Duties and requirements of the officer
- Return duties and requirements of the officer

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Resources

- Texas Rules of Civil Procedure (TRCP)
  - www.txcourts.gov
- Texas Property Code
- Texas Civil Practices and Remedies Code
  - www.statutes.capitol.texas.gov
- TJCTC Deskbooks - www.tjctc.org
  - Texas Civil Process Field Guide
  - Civil Deskbook

General Eviction Process

General Eviction Process

1. Landlord gives tenant a notice to vacate.
2. Landlord files an eviction suit in justice court.
3. Court issues an eviction citation to be served on the tenant.
4. Eviction case goes to trial and the judge enters a judgment.
5. After the judgement is issued, the loser has five days to appeal to county court
6. If the landlord wins, a writ of possession can be issued.
7. Sheriff or constable posts 24-hour notice of the writ of possession on the property's front door.
8. Sheriff or constable executes the writ of possession, tenant is forced to move out, and landlord or tenant removes personal items from the property.

What is an Eviction Citation?

What is an Eviction Citation?

- It is the official process by which a tenant (defendant) is notified he or she is being evicted.
  - Issued after the landlord (plaintiff) provides a notice to vacate, files a petition and pays a fee.
  - Accompanied by a copy of the petition when it’s served.

- The eviction citation provides notice to the defendant(s) of the opportunity to:
  - Answer,
  - Appear, and
  - Defend the suit.

TRCP 510

Types of Eviction Citations

- **Forcible Entry and Detainer**
  - A person enters the real property of another without legal authority or by force and refuses to surrender possession on demand. *Property Code § 24.001*
- **Forcible Detainer**
  - A person who refuses to surrender possession of real property on demand

    Property Code § 24.002
- **Procedures are the same!**

The Players

- **Landlord**
  - the owner, lessor, or sublessor of a dwelling but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

  Property Code § 92.001(2)
- **Tenant**
  - a person who is authorized by a lease to occupy a dwelling to the exclusion of others and who is obligated under the lease to pay rent.

  Property Code § 92.001(6)

The Property

- **Premises**
  - a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

  Property Code 92.001(5)
- **Dwelling**
  - one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

  Property Code 92.001(1)

The Contract

- **Lease**
  - Any **written** or **oral** agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

Property Code 92.001(3)

Issuance of the Citation

- Eviction citations are issued by the justice court in the precinct where the property is located.
  - If filed in the wrong precinct, the court **MUST** dismiss. The case can't simply be transferred to the correct precinct.

- The judge and the court personnel **CAN** tell a landlord which precinct the property is located in.
  - **It is not legal advice – it is legal information!**
  - Precinct maps or an online resource can and should be made available to the public in each office.

Property Code § 24.004

Issuance of the Citation

- An eviction citation must be issued for **EACH** defendant.
  - The officer must serve an eviction citation and petition on each defendant.
  - A service fee will be charged for every eviction citation that has to be served.

Requirements of the Eviction Citation

Requirements of the Eviction Citation

- Styled “The State of Texas.”
- Identifies the person to whom the eviction citation is directed = Defendant/Tenant.
- Includes the name and county of the court where the case is filed.
- Includes the cause number.
- Identifies all parties in the case.
- Includes the date of issuance of the eviction citation.
- Includes the date the petition was filed.
- States the plaintiff’s cause of action and relief sought.
- Includes the name and address of the plaintiff’s attorney, or the address of the plaintiff.

TRCP 510.4

Requirements of the Eviction Citation

- States the date the defendant must appear for trial.
- Informs the defendant that a default judgment may be entered if the defendant fails to appear in person for trial.
- Informs the defendant that, upon timely request and payment of a jury fee, no later than 3 days before trial, the case will be heard by a jury.
- Contains all warnings required by Chapter 24 of the Texas Property Code.
- Include the statement: “For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed in the citation.”
- Identifies which court the eviction citation is returnable to.
- Is signed by the clerk of the court or the judge.
- Contains the court’s seal.

TRCP 510.4

Trial Date

- Trial on an eviction case **CAN'T** be set:
  - Less than 10 days, or
  - More than 21 days,
  - After the petition is filed.

  TRCP 510.4(a)(10)

Required Warnings

- The eviction citation **MUST** state:
  - "FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU."

- The following warning **MUST** be:
  - On the first page of the eviction citation,
  - In English and Spanish, and
  - In conspicuous bold print:

"SUIT TO EVICT.

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE."

Property Code § 24.0051

Eviction Citation

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

CITATION (EVICTION CASE)

THE STATE OF TEXAS
TO:_____, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on _____, 20_. In addition to possession of the property the Plaintiff is seeking the following relief in this case: ☐ back rent; ☐ attorney's fees; ☐ court costs; ☐ other (specify:_____). The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are: _____ _____. You must appear in this court, located at_____,_____, TX_____., on the date and time stated below.

YOU HAVE BEEN SUED FOR EVICTION FROM YOUR RESIDENCE. THE ABOVE-NAMED PLAINTIFF SEEKS POSSESSION OF THE PREMISES AND THE OTHER RELIEF STATED ABOVE. YOU MUST APPEAR IN PERSON FOR TRIAL IN COURT AT THE LOCATION STATED ABOVE AT _____ __.M. ON _____, 20__. YOU MAY, BUT ARE NOT REQUIRED TO, FILE A WRITTEN ANSWER WITH THE COURT ON OR BEFORE THE DAY SET FOR TRIAL. UPON TIMELY REQUEST AND PAYMENT OF A JURY FEE NO LATER THAN THREE (3) DAYS BEFORE THE DAY SET FOR TRIAL, THE CASE WILL BE HEARD BY A JURY. DO NOT IGNORE THESE PAPERS. FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V. OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL

TJCTC Forms Page at:
https://www.tjctc.org/tjctc-resources/forms.html

COVID-19 Issues

- The rules surrounding evictions are constantly changing due to the Texas Supreme Court Emergency Orders and other Emergency Orders (CDC, Governor's Orders, Etc.)
- Please check the TJCTC Coronavirus Page (https://www.tjctc.org/coronavirus.html) for up-to-date information and make sure that you are receiving the Coronavirus Updates (more information on the TJCTC Homepage).

COVID-19 Issues

- There are currently additional required notices that must be in eviction citations, so they might look a little bit different.
- For detailed information and forms, check the TJCTC Coronavirus Page.

Dates & Times for Service

Dates & Times for Service

- Eviction citations may be served Monday through Saturday, any time of the day.

TRCP 6

Expiration for Service

- Eviction citations must be served 6 days before trial.

- To compute time:
  - Exclude the day the petition is filed,
  - Count every day, including Saturdays, Sundays, and legal holidays, and
  - Include the last day of the period.
    - If the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday.
    - If the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.

- The court has discretion to extend the time period for service.

TRCP 4, 5, 500.5, & 510.4

Who May Serve the Eviction Citation

Who May Serve the Eviction Citation

- Eviction citations may be served by any:
  - Sheriff,
  - Constable,
  - Their deputies, or
  - Any person authorized by court order.

- The eviction citation may be served anywhere in the state.

TRCP 103, 501.2(a), & 510.4

Methods of Service

Methods of Service: Residential Evictions

- A residential eviction citation must be served by:
  - Personal service on the defendant at least 6 days before trial, **OR**
    - This is the preferred method.
    - Give defendant a copy of the citation **AND** the petition.

  - Leaving a copy of the eviction citation and petition with:
    - Any person, other than the plaintiff,
    - Who is 16 years old or older,
    - At the defendant's usual place of residence,
    - At least 6 days before trial.

- Available option **AFTER** the above options are unsuccessful:
  - Alternative/Substituted Service

  TRCP 510.4

Alternative/Substituted Service

- Alternative service = delivery of the citation to the premises.
  - **Must** be requested from and approved by the court.
  - Plaintiff or the serving officer can request alternative service.

- The eviction citation may be served by delivery to the premises **IF:**
  - The serving officer is unsuccessful in serving the citation on the defendant or a person age 16 or older at the defendant's residence,
  - The original petition includes all known addresses of the defendant, and
  - The serving officer files a sworn statement.

  TRCP 510.4

Alternative/Substituted Service: Request Requirements

- The original petition filed by the plaintiff must state:
  - All known home and work addresses of the defendant, and
  - That the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located.

- The sworn statement filed by the serving officer must:
  - State the officer has made diligent efforts to serve the citation on at least **TWO** occasions to **ALL** addresses of the defendant, and
  - Include the times and places where service was attempted.

  TRCP 510.4

Alternative/Substituted Service: Request Requirements

- Sample Request for Alternative Service (Eviction Case)
  - On the TJCTC website forms page under the **“Evictions and Landlord-Tenant”** category
    - https://www.tjctc.org/tjctc-resources/forms.html

Request for Alternative/Substituted Service

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

REQUEST FOR ALTERNATIVE SERVICE (EVICTION CASE)

TO THE COURT:
The undersigned requests that the Court authorize alternative service of process by delivery to the premises and in support would show as follows:
Attempts to serve the defendant by personal delivery or by leaving a copy of the citation with a person over the age of 16 years at the defendant's usual place of residence have been unsuccessful;
Diligent efforts to serve the citation on at least two occasions at all addresses of the defendant in this County were made as follows:

Date of Attempt	Address of Defendant	Attempt and Result

The plaintiff has listed in the petition all home and work addresses of the defendant known to the plaintiff and has stated in the petition that the plaintiff knows of no other home or work addresses of the defendant in this County.

The plaintiff therefore requests that the Court authorize service of the citation with a copy of the petition attached on the defendant by: (1) depositing it in the mail addressed to the defendant at the premises and sent by first class mail; **and** (2) delivering it to the premises by placing it through a door mail chute or slipping it under the front door; and if neither method is possible, then by securely affixing it to the front door or main entry to the premises.

SIGNED ON the __ day of_____, 20

_____
Signature
Printed Name: _____
Address: _____
_____
Telephone_____Fax: _____

TJCTC Forms Page at:
https://www.tjctc.org/tjctc-resources/forms.html

Alternative/Substituted Service

- If alternative service is authorized, the serving officer:
  - At least 6 days before trial,
  - Must deliver a copy of the citation and petition to the premises by placing it through a door mail chute or sliding it under the door, **AND**
  - Send copies by first class mail to the defendant at the premises.

- If service through a mail chute or under the door is not possible, the serving officer may:
  - Post the citation and petition to the front door or main entry, **AND**
  - Send copies by first class mail to the defendant at the premises.

  TRCP 510.4

Methods of Service

- The defendant is the **ONLY** person who can be served at a location other than the eviction address.

- Alternative service can **ONLY** be done at the designated address for eviction.

Methods of Service: Commercial & Manufactured Home Evictions

- The general procedures and time limits that apply to all residential eviction cases also apply to commercial and manufactured home evictions.
  - In general, Chapter 24 of the Property Code & TRCP 510 will apply,
  - **EXCEPT** where Property Code Chapter 93 or 94 says something different.

- There are **NO** differences regarding service of the eviction citation.
  - There are differences regarding the writ of possession (*covered in the next class*).

Service Duties & Requirements of the Officer

Service Duties & Requirements of Officer

- For eviction citations, “officer” means law enforcement.

- The officer’s **ONLY** responsibility is to hand the citation and petition to the person being served.
  - The officer **CAN’T** force a person to open the door or accept service.

Service Duties & Requirements of Officer

- When serving the eviction citation, the officer must:
  - Enter the citation into their record keeping system.
  - Write/stamp on the citation the date and time when the officer received it.
  - Write the date of delivery on the citation before giving it to the defendant.
  - Serve the citation on the defendant.
  - Proceed without delay.
  - Attempt service at all addresses provided.
  - Keep copies of all documents in accordance with established record retention schedules.

  TRCP 501.2

Attempting Service

- The officer must make diligent efforts to serve the citation on at least **TWO** occasions to **ALL** addresses of the defendant.
  - Two attempts at **EACH** address, **not two attempts total**.

- **Remember:** alternative service cannot be requested until attempts to serve the defendant, or a person age 16 or older at defendant's resident, by personal delivery are unsuccessful.

Record Retention Schedules

- Records must be retained and may be destroyed pursuant to established retention schedules.

- Retention of records relating to service of process:
  - Local Schedule PS – Retention Schedule for Records of Public Safety Agencies
  - www.tsl.state.tx.us/slrm/recordspubs/localretention
  - Officeholding Deskbook Chapter 4, Section F.

Fee Collection

- The officer is **NOT** entitled to demand his or her fee for service in advance of serving the process.
  - The officer's fee is to be taxed and collected as other costs in the case.

TRCP 126

Return Duties & Requirements of the Officer

Return Duties & Requirements of Officer

- Once the eviction citation is served, the officer must complete a return of service.
  - The return of service can be attached to the citation **OR** it can be a separate document.
  - The original citation does not have to be returned.

- The officer must sign the return and file it with the clerk of the proper court.
  - Return may be in person, electronically, or by fax.
  - The return **MUST** be filed at least one day before the trial date.

  TRCP 15, 16, 107, 501.3 & 510.4

Requirements of the Return of Service

- Include the cause number.
- Include the case name.
- Include the name and county of the court where the case is filed.
- Indicate the date and time the citation was received for service.
- Include the name of the person served.
- Indicate the address where the citation was served.
- Include the date(s) and time(s) of service and/or attempted service.

TRCP 107, 501.3, & 510.4

Requirements of the Return of Service

- Indicate the manner of delivery of service and/or attempted service.
- Description of what was served.
- Name of the person(s) who served and/or attempted service.
- If delivery was by alternative service, include the date the citation was delivered to the premises and the date the citation was placed in the mail.
- Any other information required by rule or law.
- Any additional information specific to the service that should be noted in the file.

TRCP 107, 117, 501.3, & 510.4

More is Better

- Don’t feel obligated to use, or limited to, the return section printed on the citation.
  - If you need more space, use a separate document.

- The more detail you provide, the better off you are.
  - If proper service becomes a contested issue in court, your return will protect you and help refresh your memory if you have to testify.

- Sample Return
  - On the TJCTC website forms page: https://www.tjctc.org/tjctc-resources/forms.html

Officer's Return

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

RETURN (EVICTION CASE)

Having received the Citation in the above-styled and numbered cause with the Eviction Petition attached on the ___ day of_____, 20__ at_____. M., I attempted service in the following manner:

DATES and MANNER OF ATTEMPTED SERVICE:

Date	Address	Manner of Service	Diligence and Cause of Failure to Serve

The Citation was **EXECUTED** on _____ day of _____, 20_____, at _____.M.,
☐ by delivering a copy of the Citation together with a copy of the Petition to: _____ _____, the Defendant, or
☐ by leaving a copy of the Citation together with a copy of the Petition with _____, a person over the age of 16 years, at Defendant's usual place of residence.

For Alternative Service authorized by Court order:

☐ By delivering a copy of the Citation with a copy of the Petition attached to the premises as follows:_____ (state manner of delivery to the premises) and also by depositing a copy of the Citation with a copy of the Petition attached in the mail addressed to the Defendant at the premises and sent by first class mail.

RETURNED on the ____ day of_____, 20_.

_____
Signature

Printed Name: _____

Title: _____

TJCTC Forms Page at:
https://www.tjctc.org/tjctc-resources/forms.html

Failure to Execute & Return

- If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to him or her, the constable **SHALL** be fined for contempt on the motion of the person injured by the failure or refusal.
  - Applies to deputy constables in the same way.

- Fine:
  - $10 - $100 plus costs.
  - Paid to the injured person.
  - Constable must be given 10 days' notice of the motion.

  Local Government Code § 86.024

Safety When Serving

Safety When Serving

- Citations are not the most dangerous thing to serve, but tempers can flare when a person finds out they are being sued or evicted from their home.

- Always a good idea to:
  - Wear your vest.
  - Be aware of your surroundings.
  - Do research on the people you will be evicting
  - Don’t get complacent.

- Just because the papers you’re serving are civil doesn’t mean the people you’re serving are.

Citation Review & Discussion

Question 1

You receive an eviction citation on Monday August 6th with a trial date of Tuesday August 21st.

What is the last date you can serve the tenant with the citation?

1. Monday August 13th
2. Wednesday August 15th
3. Monday August 20th
4. Tuesday August 21st

Question 2

Same information as the previous slide except you know the tenant, Doug will be at church on Sunday August 12th.

Can you serve him there?

1. Yes
2. No
3. Sure, if he'll accept service at church

Question 3

You go to Doug's house to try and serve him with the eviction citation and his wife answers the door. She says Doug isn't home, but she'll give him the papers.

Can you do this?

1. Yes
2. No
3. Only if she swears to you that she will give Doug the papers

Question 4

Same facts as the previous slide except that you're serving Doug with a citation for a small claims case.

Can you give the citation to Doug's wife?

1. Yes
2. No
3. Only if she swears to you that she will give Doug the papers

Question 5

It's Tuesday July 14th and you need to get Doug served with his eviction citation. The case has been assigned to you, but another deputy offers to go by and serve the citation since Doug's house is on his way home.

Is this ok?

1. Yes, any deputy in your office can serve the citation
2. No, you have to serve the citation since the case has been assigned to you.
3. Yes, so long as your supervisor doesn't find out
4. Yes, but only after the case is transferred to the other deputy

Question 6

You give the citation to Deputy Richards and he serves it to Doug at Doug's residence.

Who fills out the return and files it with the court?

1. You fill out the return and sign your name as the executing officer since the case is assigned to you
2. You fill out the return but have Deputy Richards sign it since he was the one that served it
3. Deputy Richards fills out and signs the return since he was the one that served the citation
4. Return? What's a return?

Question 7

The citation was served on August 13th and the trial is on August 21st.

What day does the return have to be filed by?

1. August 13th
2. August 15th
3. August 20th
4. August 21st

Question 8

Is there ever a time that scaling a 10ft barbed wire fence and posting a citation on a door could be considered proper service?

1. No, that’s never an option
2. Yes, so long as you document in the return that you served it that way because the defendant wouldn’t open the gate for you
3. Yes, so long as you request alternate service, it’s approved by the court, and you send a copy of the citation by registered mail

Class Discussion

What is the craziest alternative service you have ever done?

Class Discussion

What are some “creative” ways people have avoided being served by you?

Class Discussion

What are the common problems you run into when serving citations?

COVID-19 Questions

Please bring any questions related to the COVID-19 Pandemic and Evictions to the optional Q & A session this afternoon.

Remember, you can find up-to-date information on the TJCTC Coronavirus Page: https://www.tjctc.org/coronavirus.html

Questions?