ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE B. PROCEDURAL MATTERS

CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS IN GENERAL

SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

Sec. 51.001. ISSUANCE OF NOTICE OR PROCESS IN GENERAL. (a) Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice except in a situation in which this title expressly provides for citation or the giving of notice.

(b) If this title does not expressly provide for citation or the issuance or return of notice in a probate matter, the court may require that notice be given. A court that requires that notice be given may prescribe the form and manner of service of the notice and the return of service.

(c) Unless a court order is required by this title, the county clerk without a court order shall issue:

(1) necessary citations, writs, and other process in a probate matter; and

(2) all notices not required to be issued by a personal representative.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.002. DIRECTION OF WRIT OR OTHER PROCESS. (a) A writ or other process other than a citation or notice must be directed "To any sheriff or constable within the State of Texas."

(b) Notwithstanding Subsection (a), a writ or other process other than a citation or notice may not be held defective because the process is directed to the sheriff or a constable of a named county if the process is properly served within that county by the sheriff or constable.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.003. CONTENTS OF CITATION OR NOTICE. (a) A

citation or notice must:

(1) be directed to the person to be cited or notified;

(2) be dated;

(3) state the style and number of the proceeding;

(4) state the court in which the proceeding is pending;

(5) describe generally the nature of the proceeding or matter to which the citation or notice relates;

(6) direct the person being cited or notified to appear by filing a written contest or answer or to perform another required action; and

(7) state when and where the appearance or performance described by Subdivision (6) is required.

(b) A citation or notice issued by the county clerk must be styled "The State of Texas" and be signed by the clerk under the court's seal.

(c) A notice required to be given by a personal representative must be in writing and be signed by the representative in the representative's official capacity.

(d) A citation or notice is not required to contain a precept directed to an officer, but may not be held defective because the citation or notice contains a precept directed to an officer authorized to serve the citation or notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 521 (S.B. 626), Sec. 5, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 576 (S.B. 615), Sec. 5, eff. September 1, 2021.

SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS TO BE SERVED

Sec. 51.051. PERSONAL SERVICE. (a) Except as otherwise provided by Subsection (b), if personal service of citation or notice is required, the citation or notice must be served on the

attorney of record for the person to be cited or notified. Notwithstanding the requirement of personal service, service may be made on that attorney by any method specified by Section 51.055 for service on an attorney of record.

(b) If the person to be cited or notified does not have an attorney of record in the proceeding, or if an attempt to serve the person's attorney is unsuccessful:

(1) the sheriff or constable shall serve the citation or notice by delivering a copy of the citation or notice to the person to be cited or notified, in person, if the person to whom the citation or notice is directed is in this state; or

(2) any disinterested person competent to make an oath that the citation or notice was served may serve the citation or notice, if the person to be cited or notified is absent from or is not a resident of this state.

(c) The return day of the citation or notice served under Subsection (b) must be at least 10 days after the date of service, excluding the date of service.

(d) If citation or notice attempted to be served as provided by Subsection (b) is returned with the notation that the person sought to be served, whether inside or outside this state, cannot be found, the county clerk shall issue a new citation or notice. Service of the new citation or notice must be made by publication.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY. (a) The county clerk, or the personal representative if required by statute or court order, shall serve a citation or notice required or permitted to be served by regular mail by mailing the original citation or notice to the person to be cited or notified.

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served by a qualified delivery method and shall serve the citation or notice by sending the original citation or notice by a qualified delivery method.

(c) A personal representative shall issue a notice required to be given by the representative by a qualified delivery method and shall serve the notice by sending the original notice by a qualified delivery method.

(d) The county clerk or personal representative, as applicable, shall send a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt or other proof of delivery requested. The clerk or representative, as applicable, shall address the envelope containing the citation or notice to:

(1) the attorney of record in the proceeding for the person to be cited or notified; or

(2) the person to be cited or notified, if the citation or notice to the attorney is returned undelivered or the person to be cited or notified has no attorney of record in the proceeding.

(e) Service by a qualified delivery method shall be made at least 20 days before the return day of the service, excluding the date of service. The date of service is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable.

(f) A copy of a citation or notice served under Subsection (a), (b), or (c), together with a certificate of the person serving the citation or notice showing that the citation or notice was sent and the date of the mailing, date of deposit with a private delivery service, or date of delivery by courier, as applicable, shall be filed and recorded. A returned receipt or proof of delivery receipt for a citation or notice served under Subsection (b) or (c) shall be attached to the certificate.

(g) If a citation or notice served by a qualified delivery method is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 3, eff. September 1, 2023.

Sec. 51.053. SERVICE BY POSTING. (a) The county clerk shall deliver the original and a copy of a citation or notice required to be posted to the sheriff or a constable of the county in which the proceeding is pending. The sheriff or constable shall post the copy at the door of the county courthouse or the location in or near the courthouse where public notices are customarily posted.

(b) Citation or notice under this section must be posted for at least 10 days before the return day of the service, excluding the date of posting, except as provided by Section 51.102(b). The date of service of citation or notice by posting is the date of posting.

(c) A sheriff or constable who posts a citation or notice under this section shall return the original citation or notice to the county clerk and state the date and location of the posting in a written return on the citation or notice.

(d) The method of service prescribed by this section applies when a personal representative is required or permitted to post a notice. The notice must be:

(1) issued in the name of the representative;

(2) addressed and delivered to, and posted and returned by, the appropriate officer; and

(3) filed with the county clerk.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.054. SERVICE BY PUBLICATION.

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation or notice to a person to be served by publication shall be published one time on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the service, excluding the date of publication.

(b) The date of service of citation or notice by publication is the earlier of:

(1) the date the citation or notice is published on the public information Internet website under Subsection (a); or

(2) the date of publication printed on the newspaper in which the citation or notice is published.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 15.02(1), eff. September 1, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.05, eff. June 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 15.02(1), eff. September 1, 2019.

Sec. 51.055. SERVICE ON PARTY'S ATTORNEY OF RECORD. (a) If a party is represented by an attorney of record in a probate proceeding, each citation or notice required to be served on the party in that proceeding shall be served instead on that attorney. A notice under this subsection may be served by delivery to the attorney in person or by a qualified delivery method.

(b) A notice may be served on an attorney of record under this section by:

(1) another party to the proceeding;

(2) the attorney of record for another party to the proceeding;

(3) the appropriate sheriff or constable; or

(4) any other person competent to testify.

(c) Each of the following is prima facie evidence of the fact that service has been made under this section:

(1) the written statement of an attorney of record showing service;

(2) the return of the officer showing service; and

(3) the affidavit of any other person showing service.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 4, eff. September 1, 2023.

Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR RECEIVER. Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a personal representative or receiver shall serve the citation or notice by sending the original citation or notice by a qualified delivery method to:

(1) the representative's or receiver's attorney of record; or

(2) the representative or receiver, if the representative or receiver does not have an attorney of record.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 5, eff. September 1, 2023.

SUBCHAPTER C. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

Sec. 51.101. REQUIREMENTS FOR RETURN ON CITATION OR NOTICE SERVED BY PERSONAL SERVICE. The return of the person serving a citation or notice under Section 51.051 must:

(1) be endorsed on or attached to the citation or notice;

(2) state the date and place of service;

(3) certify that a copy of the citation or notice was delivered to the person directed to be served;

(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and

(5) be returned to the county clerk who issued the citation or notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.102. VALIDITY OF SERVICE AND RETURN ON CITATION OR NOTICE SERVED BY POSTING. (a) A citation or notice in a probate matter that is required to be served by posting and is issued in conformity with this title, and the service and return of service of the citation or notice, is valid if:

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and

(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

(b) The fact that a sheriff or constable, as applicable, makes the return of service on the citation or notice described by Subsection (a) and returns the citation or notice on which the return has been made to the court before the expiration of the period the citation or notice must be posted does not affect the validity of the citation or notice or the service or return of service. This subsection applies even if the sheriff or constable makes the return of service and returns the citation or notice on which the return is made to the court on the same day the citation or notice is issued.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.103. PROOF OF SERVICE. (a) Proof of service in each case requiring citation or notice must be filed before the hearing.

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by a qualified delivery method:

(A) the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the citation or

notice was mailed, deposited with a private delivery service, or delivered by courier, as applicable, and the date of the mailing or deposit with the delivery service or the date of the courier delivery, as applicable; and

(B) the return receipt or other proof of delivery receipt attached to the certificate or affidavit, as applicable, if the sending was by a qualified delivery method and a receipt is available; and

(4) if the service is made by publication:

(A) a statement:

(i) made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code; and

(B) an affidavit:

(i) made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication printed on the newspaper in which the citation or notice was published.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.06, eff. June 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 9.02, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 205 (S.B. 1373), Sec. 6, eff. September 1, 2023.

Sec. 51.104. RETURN TO COURT. A citation or notice issued by a county clerk must be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

Sec. 51.151. COURT-ORDERED ISSUANCE, SERVICE, AND RETURN UNDER CERTAIN CIRCUMSTANCES. (a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:

(1) an interested person requests that action;

(2) a specific method is not provided by this title for giving the citation or notice;

(3) a specific method is not provided by this title for the service and return of citation or notice; or

(4) a provision relating to a matter described by Subdivision (2) or (3) is inadequate.

(b) Citation or notice issued, served, and returned in the manner specified by a court order as provided by Subsection (a) has the same effect as if the manner of service and return had been specified by this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. ADDITIONAL NOTICE PROVISIONS

Sec. 51.201. WAIVER OF NOTICE OF HEARING. (a) A legally competent person who is interested in a hearing in a probate proceeding may waive notice of the hearing in writing either in person or through an attorney.

(b) A trustee of a trust may waive notice under Subsection (a) on behalf of a beneficiary of the trust as provided by that subsection.

(c) A consul or other representative of a foreign government whose appearance has been entered as provided by law on behalf of a person residing in a foreign country may waive notice under Subsection (a) on the person's behalf as provided by that subsection.

(d) A person who submits to the jurisdiction of the court in a hearing is considered to have waived notice of the hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.202. REQUEST FOR NOTICE OF FILING OF PLEADING. (a) At any time after an application is filed to commence a probate proceeding, including a proceeding for the probate of a will, the grant of letters testamentary or of administration, or a determination of heirship, a person interested in the estate may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by one or more persons specifically named in the request. A person filing a request under this section is responsible for payment of the fees and other costs of providing a requested notice, and the clerk may require a deposit to cover the estimated costs of providing the notice. Thereafter, the clerk shall send to the requestor by regular mail a copy of any requested document.

(b) A county clerk's failure to comply with a request under this section does not invalidate any proceeding.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 51.203. SERVICE OF NOTICE OF INTENTION TO TAKE DEPOSITIONS IN CERTAIN MATTERS. (a) If a will is to be probated, or in another probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 51.053 governing a posting of notice.

(b) When notice by posting under Subsection (a) is filed

with the county clerk, a copy of the interrogatories must also be filed.

(c) At the expiration of the 10-day period prescribed by Subsection (a):

(1) the depositions for which the notice was posted may be taken; and

(2) the judge may file cross-interrogatories if no person appears.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 4, eff. January 1, 2014.