

IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 20-9103

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**ORDER AMENDING TEXAS RULES OF CIVIL PROCEDURE 106 AND 108a**

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**ORDERED** that:

1. In accordance with the Act of May 27, 2019, 86th Leg., R.S., ch. 606 (SB 891), the Supreme Court approves the following amendments to Texas Rules of Civil Procedure 106 and 108a.
2. The amendments take effect December 31, 2020.
3. The amendments may be changed before December 31, 2020, in response to public comments. Written comments should be sent to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be sent by December 1, 2020.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

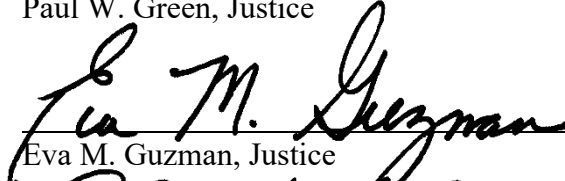
Dated: August 21, 2020



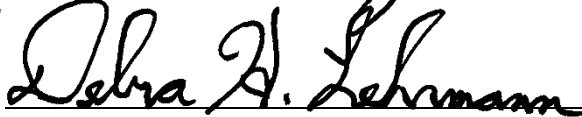
Nathan L. Hecht, Chief Justice



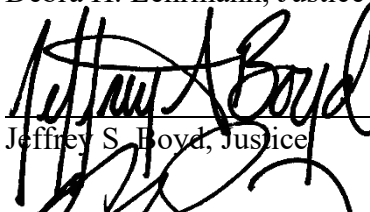
Paul W. Green, Justice



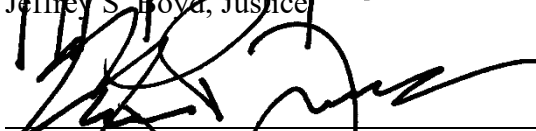
Eva M. Guzman, Justice



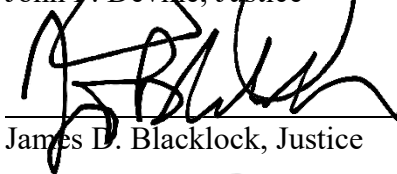
Debra H. Lehrmann, Justice



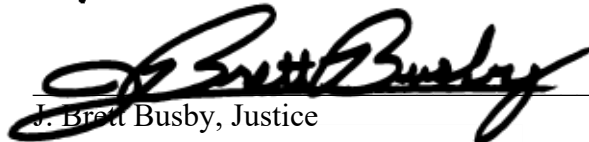
Jeffrey S. Boyd, Justice



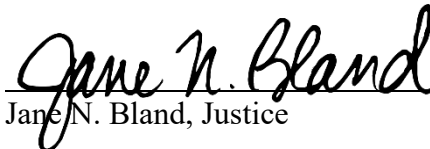
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

## RULE 106. METHOD OF SERVICE

- (a) Unless the citation or ~~an~~court order ~~of the court~~ otherwise directs, the citation ~~shall~~must be served ~~by any person authorized by Rule 103~~ by:
- (1) delivering to the defendant, in person, a ~~true~~ copy of the citation, with showing the delivery date, ~~of delivery endorsed thereon with a copy and~~ of the petition ~~attached thereto~~; or
  - (2) mailing to the defendant by registered or certified mail, return receipt requested, a ~~true~~ copy of the citation with a copy and of the petition ~~attached thereto~~.
- (b) Upon motion supported by ~~affidavit stating a statement—sworn to before a notary or made under penalty of perjury—listing the any~~ location ~~of the defendant's usual place of business or usual place of abode or other place~~ where the defendant can probably be found and stating specifically the facts showing that service has been attempted under ~~either~~ (a)(1) or (a)(2) at the location named in ~~such affidavit~~the statement but has not been successful, the court may authorize service:
- (1) by leaving a ~~true~~ copy of the citation, with a copy and of the petition ~~attached~~, with anyone ~~over~~older than sixteen ~~years of age~~ at the location specified in ~~such affidavit~~the statement; or
  - (2) in any other manner, including electronically by social media, email, or other technology, that the ~~affidavit~~statement or other evidence ~~before the court~~ shows will be reasonably effective to give the defendant notice of the suit.

Comment to 2020 Change: Rule 106 is revised in response to section 17.033 of the Civil Practice and Remedies Code, which calls for rules to provide for substituted service of citation by social media. Amended Rule 106(b)(2) clarifies that a court may, in proper circumstances, permit service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology. Other clarifying and stylistic changes have been made.

### RULE 108a. SERVICE OF PROCESS IN FOREIGN COUNTRIES

- (~~1a~~) Manner.Method. Service of process may be effected ~~up~~ upon a party in a foreign country if ~~service of~~ the citation and petition is made served:

- (a~~1~~) ~~in the manners~~ prescribed by the foreign country's law ~~of the foreign country~~ for service in that country in an action in ~~any of~~ its courts of general jurisdiction; ~~or~~
- (b~~2~~) as ~~directed by~~ the foreign authority directs in response to a letter rogatory or a letter of request; ~~or~~
- (c~~3~~) ~~in the manners~~ provided by Rule 106(a); ~~or~~
- (d~~4~~) pursuant to the terms and provisions of any applicable ~~treaty or convention~~international agreement; ~~or~~
- (e~~5~~) by diplomatic or consular officials when authorized by the United States Department of State; or
- (f~~6~~) by ~~any other means~~ ~~directed by the court that is not~~ prohibited by international agreement or the foreign country's law ~~of the country where service is to be made, as the court orders.~~

The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this rule ~~shall be required to~~must appear and answer in the same manner and time and under the same penalties as if the defendant had been personally served with citation within this state to the full extent that the defendant may be required to appear and answer under the Constitution of the United States or under any applicable ~~convention or treaty~~international agreement in an action either in rem or in personam.

- (2b) ~~Return.~~Return. Proof of service may be made as prescribed by the foreign country's law ~~of the foreign country~~, by court order ~~of the court~~, by Rule 107, or by a method provided in any applicable ~~treaty or convention~~international agreement.

Comment to 2020 Change: Rule 108a is revised to provide that "other means" of service ordered under (a)(6) must not be prohibited by international agreement. Other clarifying and stylistic changes have been made.