

STATE BAR OF TEXAS

COMMITTEE ON COURT RULES

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

**TRCP 759. JUDGMENT WHERE DEFENDANT SERVED BY PUBLICATION**

When the defendant has been duly cited by publication in accordance with the preceding rule, and no appearance is entered within the time prescribed for pleadings, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.

II. Proposed New Rule:

**TRCP 759. JUDGMENT WHERE DEFENDANT SERVED BY PUBLICATION**

**759.1 APPOINTMENT OF ATTORNEY.** When the defendant has been duly cited by publication in accordance with the preceding rule, and no appearance is entered within the time prescribed for pleadings, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all cases to see that its decree protects the rights of the unknown parties thereto. who, without acting as an attorney for any party, shall use reasonable diligence to identify or locate the defendant and assist the court in fulfilling its duty under Rule 758 to inquire into the sufficiency of the diligence exercised in attempting to identify or locate the defendant.

**759.2 REPORT OF ATTORNEY.** The appointed attorney shall make a report in open court or file a report with the court not later than the thirtieth day after the day of the appointment, or within such reasonable time as the court may allow. The report shall include the parties' attempts to identify or locate the defendant, the appointed attorney's attempts to identify or locate the defendant, and the defendant's identity or location, if discovered. If the defendant is identified and located, the court shall direct personal service. No judgment on service by publication shall be granted before the report is made and the court finds that the defendant cannot be identified or located, or personal service cannot be obtained.

**759.3 FEES AND EXPENSES.** ~~The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners~~ allow the attorney a reasonable fee for services provided and all reasonable expenses incurred by the attorney under the appointment, to be taxed as part of the costs in the judgment rendered by the court.

III. Brief statement of reasons for requested changes and advantages served by them:

The reasons for this proposed rule change are the same as the reason for the proposed change to Rule 244.