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BLOG

Discretion on Display: The Varying Approaches to Alternative Service Under Rule 4(f) in the Eastern District of Texas

MARCH 4, 2025

Proper service of process that notifies a party litigant (or even a third-party) of a court summons is a critical part of the U.S. legal system. Service of process in federal district court proceedings must be made on domestic and foreign parties alike. Defects in either the process itself or its service may lead to an uninformed defendant's failure to appear and could result in the final default judgment being overturned.

Rule 4 of the Federal Rules of Civil Procedure governs the formatting and service of the summons generally. Rule 4(h)(2) provides that a foreign corporation may be served "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." In turn, Rule 4(f) allows for service on an individual in a foreign country:

1. by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
2. if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
    a. as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
    b. as the foreign authority directs in response to a letter rogatory or letter of request; or
    c. unless prohibited by the foreign country's law, by:
        i. (i) delivering a copy of the summons and of the complaint to the individual personally; or
        ii. (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
3. by other means not prohibited by international agreement, as the court orders.

The Eastern District of Texas (EDTX), the nation's leading hub for patent litigation, takes differing approaches to motions for alternative service (sometimes referred to as "electronic service") on foreign defendants. As noted above, subparagraph (3) of Rule 4(f) permits for service of process by any court-ordered "means not prohibited by international agreement." The Hague Convention, an international agreement, governs service of process for

signatories, such as the People's Republic of China. Whether an EDTX court will allow for alternative service (whose method typically observes fewer formalities than conventional methods of service) depends on the circumstances of the case, the identity of the defendant, and the discretion of the judge.

For Schedule A-type cases that simultaneously charge numerous sellers on e-commerce platforms with infringement—granted, few such cases have been filed in EDTX, because the majority are filed in the Northern District of Illinois or the Southern District of Florida—this district court will require a showing that plaintiffs are unable to identify the defendants' addresses after due diligence before granting alternative service. Judges rely on precedent set in *RPost Holdings, Inc. v. Kagan*, Case No. 2:11-cv-238, 2012 WL 194388, at *1 (E.D. Tex. Jan. 23, 2012), reasoning that the Hague Convention does not apply "where the address of the person to be served with the document is not known." For example, the court in *Whirlpool Corporation v. Schedule A Defendants*, No. 2:21-CV-00398-JRG (ECF No. 7) (Feb. 2, 2022), permitted alternative service when the plaintiff was able to demonstrate that it had "expended material efforts to comply with the Hague Convention" by having visited the alleged addresses of defendants and determining that they were not located there.

However, in non-Schedule A cases where the identity of the defendant is known, alternative service hinges on whether the defendant is a citizen of a signatory to the Hague Convention and how the specific judge interprets the requirements of Rule 4(f)(3). For example, in *ElectricProtect Corp. v. Zhongshan Kaper Electric Co*., No. 2:24-CV-00547-JRG, 2025 WL 28002, at *3 (E.D. Tex. Jan. 3, 2025), Chief Judge Gilstrap denied alternative service of process under Rule 4(f)(3) where the plaintiff had not first attempted service under the Hague Convention and the defendant was a Chinese corporation. Similarly, in the *MyChoice, LLC* case, No. 2:23-CV-507-JRG-RSP, 2024 WL 69063, at *2 (E.D. Tex. Jan. 4, 2024), Magistrate Judge Payne denied alternative service upon a defendant based in Canada, another Hague Convention signatory, "where no significant steps or attempts have already been taken by Plaintiff," and required "a showing of more than mere convenience."

In contrast, in *Orange Electric Co. v. Autel Intelligent Technology Corp.*, 2022 WL 4125075, at *3 (E.D. Tex. Sept. 9, 2022), Judge Gilstrap permitted alternative service of process on a mainland Chinese company by emailing its U.S. counsel of record, where the case had been pending for over a year and service under the Hague Convention would cause undue delay. Even less stringently, Judge Mazzant allowed for alternative service on a Chinese entity via its official company email address, interpreting the Hague Convention to not proscribe such service, in *Sino Star Global Ltd. v. Shenzhen Haoqing Technology Co.*, No. 4:22-CV-00980, 2023 WL 2759765, at *2 (E.D. Tex. Apr. 3, 2023). And Magistrate Judge Baxter undertook a "special circumstances" analysis in *Monument Peak Ventures, LLC v. TCL Electronics Holdings Ltd.*, No. 5:24CV11-RWS-JBB, 2024 WL 3426771, at *6 (E.D. Tex. June 11, 2024) before granting alternative service of process on defendants located in the PRC via their U.S. counsel. These procedures are distinct from some other districts whose courts do not require an unsuccessful attempt under the Hague Convention, substantive notice, or proof of special circumstances as a prerequisite to granting alternative service.

Finally, if the defendant is from a jurisdiction that is ***not*** a signatory to the Hague Convention, the result may be more streamlined (but nonetheless jurisdiction-dependent). Such was the case of the Taiwan-based unwitting third-party participant Realtek Semiconductor Corp. in the *Universal Connectivity Technologies Inc.* case, No. 2:23-CV-00449-JRG (ECF No. 97) (E.D. Tex. Feb. 14, 2025), once again confirming that EDTX courts routinely grant motions for alternative service on parties in Taiwan so long as the service method comports with notions of due process (e.g., e-mailing U.S. counsel of record for defendant in an unrelated pending federal litigation, or having the clerk of court mail out the documents via FedEx to company headquarters and requiring a signed receipt). If the method of alternative service is reasonably calculated to apprise the foreign party of the action, then this district court is likely to permit service in the proposed manner.

TAKEAWAYS

A plaintiff should account for the district court's practices before seeking alternative service of process under Rule 4(f)(3) in the Eastern District of Texas. A plaintiff may be required to demonstrate by due diligence that a defendant's address is unknown before requesting alternative service. Once the identity of a defendant and its address within a Hague Convention signatory's territory have been confirmed, a court may withhold grant of alternative service if the plaintiff did not first attempt service via the Convention, provide substantive notice through other means, or

demonstrate special circumstances. Conversely, if the foreign defendant's domicile is not a signatory to the Hague Convention (e.g., Taiwan), then a plaintiff may expect less resistance to its request for alternative service.
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