



ARIZONA PROCESS SERVERS ASSOCIATION
 Certifying & Training Arizona's Professional Process Servers Since 1973



ARIZONA PROCESS SERVERS ASSOCIATION

NEWSLETTER

1ST Q 2016

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President's Message

Ron Ezell

I would like to share something with you that you probably don't know about me. I only tell you this because I would like to make a point about being available to others. Before I grew up to be a Process Server, I was a member of the Operating Engineers. My job was running very large backhoes. While operating a backhoe, there must be another person on the ground to check the grade of the trench being dug. This individual hangs around waiting to check the depth of the trench so that a move can be made. I learned a valuable lesson when I let the grade checker sit in the seat of the backhoe; he began to understand that he had the ability to someday run these large machines.

In 2005 I was awarded from CAPPSS (now known as CALSPRO) the Bert Rosenthal Award. I began to ponder who this Bert Rosenthal was and why in his honor is this award

given. I had the opportunity to speak to some of the CAPPSS

members to help me better understand my question. Our conversations led to answers that did not surprise me. Bert was a founding member of CAPPSS. He recognized talent; even to those he listened to he would call "kid".

This was an individual who made himself available to help and to teach. With a question asked, Bert would give an answer that would be long r e m e m b e r e d and appreciated. To Bert, who had a successful life before Process Serving, he knew the importance of those around him. He never thought of himself as being better than the next, but only as a peer to all.



CLE classes coming up in Bullhead City!
 March 26-27, 2016 — See inside & APSA website

Inside this edition...

- Bullhead City CE details;
- Secretary's Corner;
- Editor's Column;
- New Board Seated;
- The Brief ;
- Legislative Beat;

- Ways to Get Involved ;
- When is an elected constable a peace officer?
- Who should be held accountable?
- Training Corner: Rule Changes
- The Last Word: *Avoiding a Complaint* (reprised)

President's Message

(continued...)

He also was thoughtful in giving of his time, even though he had a business to run himself, to help those that needed his assistance while in his town. For those that were his friends and for those that had the opportunity to be taught through his kindness and understanding, I'm sure you will always remember him for the quality of life he led.

I've heard about the process serving "industry". Industry? What about "Profession"? I have a friend who has spoken about the Profession. I truly believe Professional is what we strive to be. Why? The knowledge of those who are Professional Process Servers is far greater than those who would be in a non-professional industry. There are scholars amongst us who know the rules and statutes better than many of our clients. I think I will leave it just like that. Bert understood what a Professional stood for.

ARE YOU A PROFESSIONAL?

How you look, talk, write, act and work determine whether you are a professional or an amateur. Society does not emphasize the importance of professionalism, so people tend to believe that amateur work is normal. Many businesses accept less-than-good results.

Schools graduate students who cannot read. You can miss 15% of the driving test answers and still get a driver license. "Just getting by" is an attitude many people accept. But it is the attitude of amateurs.

L. Ron Hubbard said, "Don't ever do anything as though you were an amateur. Anything you do, do it as a Professional to Professional standards. If you have the idea about anything you do that you just dabble in it, you will wind up with a dabble life. There'll be no satisfaction in it because there will be no real production you can be proud of. Develop the frame of mind that whatever you do, you are doing it as a professional and move up to professional standards in it. Never let it be said of you that you lived an amateur life. Professionals see situations and they handle what they see. They are not amateur dabblers. So learn this as a first

lesson about life. The only successful beings in any field, including living itself, are those who have a professional viewpoint and make themselves and ARE professionals".

I would like to compare Professional to Amateur:

- A professional learns every aspect of the job. An amateur skips the learning process whenever possible.
- A professional carefully discovers what is needed and wanted. An amateur assumes what others need and want.
- A professional looks, speaks and dresses like a professional. An amateur is sloppy in appearance and speech.
- A professional keeps his or her work area clean and orderly. An amateur has a messy, confused or dirty work area.
- A professional is focused and clear-headed. An amateur is confused and distracted.
- A professional does not let mistakes slide by. An amateur ignores or hides mistakes.
- A professional jumps into difficult assignments. An amateur tries to get out of difficult work.
- A professional completes projects as soon as possible. An amateur is surrounded by unfinished work piled on unfinished work.
- A professional remains level-headed and optimistic. An amateur gets upset and assumes the worst.
- A professional handles money and accounts very carefully. An amateur is sloppy with money and accounts.
- A professional faces up to other people's upsets and problems. An amateur avoids others' problems.
- A professional uses higher emotional tones: Enthusiasm, Cheerfulness, Interest, and Contentment. An amateur uses lower emotional tones: Anger, Hostility, Resentment, Fear, and Victim.
- A professional persists until the objective is achieved. An amateur gives up at the first opportunity.



APSA

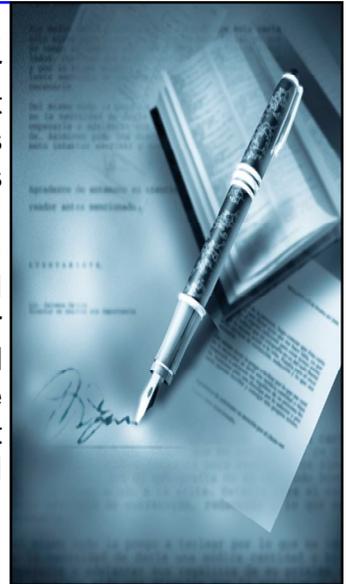
President's Message *(continued...)*

- A professional produces more than expected. An amateur produces just enough to get by.
- A professional produces a high-quality product or service. An amateur produces medium-to-low quality product or service.
- A professional earns high pay. An amateur earns low pay and feels it's unfair.
- A professional has a promising future. An amateur has an uncertain future.
- The first step to making yourself a professional is to decide you ARE a professional.

Again I believe the Process Serving *Industry* is a word of the past and I associate my name with the Process Serving *Profession*. I know that when one believes in themselves, those we are

around, like our clients, will clearly see the larger picture. I believe Bert felt that serving his peers would raise the standards with Process Servers. I truly understand the reasons why this award was named in the honor of Bert Rosenthal and hope that I live up to the expectations of those that have placed this award on me.

— Ron Ezell



Bullhead City APSA Upcoming Continuing Education Event

Continuing Education: 6-Hour ACPS Class + More!

Process Servers are needed in litigation support to accomplish an assortment of tasks such as filing court papers, serving legal documents and document retrieval.

The Process Server's principal job is to deliver or "serve" legal process to a person involved in a court case as per the laws of the state where (a) service is done, and (b) per the state exercising jurisdiction.

Learn the details needed to be a successful Process Server in Arizona. The ACPS course sponsored by the Arizona Process Servers Association is a six-hour comprehensive course and is the only course which may be repeated for continuing legal education credit each year.

Secretary's Corner

Patty Chlebanowski, Secretary



Well it is a new year and the new board has been sworn in and we almost have a complete board. I am currently working on updating all the members listings in the database. I want to THANK YOU for being supportive of the Arizona Process Servers Association. It takes all our efforts as one cohesive body to make changes in our Industry. Please be sure

to check out your listing on the website to make sure everything is correct. Have a great 2016 and wishing you all the best health and prosperity.

— Patty
(602) 476-1737



Set the date...

Saturday, March 26, 2016 from 8 a.m. to 4 p.m.;

Sunday, March 27, 2016 from 8 a.m. to 12 noon

Application on APSA website or call Patty for details

Best Western Hotel
1126 Highway 95
Bullhead City, AZ



New Board Seated

With the new year comes a new set of officers and directors. Larry Ratcliff swore in the new board members for 2016. He then presented his letter of resignation to the board, as separately mentioned, due to family obligations. Ron Ezell (V.P.) was thereafter elevated to President. Larry will continue to stay as a member of the association and attend the Annual Conference. Ron took charge of the meeting as President of the Association. No Vice President was appointed by the Board at this time.

Discussion took place for Luis Figueroa as the treasurer; he will eventually take the Association computer and will learn QuickBooks to keep up with this current year's accounting. Currently Ron Ezell & Patty Chlebanowski will try to get last year's accounting caught up to move forward. Larry Ratcliff suggested proceeding forward with Quick Books On-Line. This way the President and the Secretary could have access to the books if needed. It would require a

new laptop, because the current laptop will not allow any more updates from Quick Books, and the storage space is not acceptable. Discussion to follow.

We do not currently have an administrator. It was previously Bert Young and he resigned early in 2015. Barry Goldman then took over and he had to take a leave of absence. Patty Chlebanowski has been catching up and completing the majority of the jobs of the Administrator; updating the website, checking mail, handling phone calls, emailing the membership and depositing all monies with a record of such for the Treasurer.

Dear APSA members & readers:
At the first board meeting of the year, Larry submitted his resignation due to family obligations. Accordingly, as Vice President, Ron Ezell took the reins and with the board's approval conducted the meeting. Our best wishes are extended to Larry and his family, as well as to Ron and the rest of our officers and board. Readers are always welcome to contact an officer or board member with any concerns they may have. If you have concerns about the newsletter or contents in it, you are also welcome to contact me, directly. Best to one and all. - Ed.



Editor's Column



Barry R. Goldman

WOW! Another year gone! 2015 passed (thank the Great Architect) and we are into 2016.

This year promises to be a little different than last year. Some of us will be retiring, some coming into the business, and others looking to continue to make an honest buck.

As the curmudgeon of crazy, I would like to propose that we do something radical: GET INVOLVED! Your Association needs you. This Newsletter goes out to all of our members, as well as non-member process servers, court clerks, judges, sheriffs, constables and the public.

As process servers, most of us are knocking on doors introducing ourselves to people who really don't want us there. Speaking out on issues, either through blogs, websites or newsletter publications can be much the same — some people just don't want to read what (I) write or hear what (we) say. I have always believed that the power of the pen is mightier than the sword — so long as the writer has freedom of speech. Fortunately, in this country, we still have that

freedom, but rarely is it used by the individual to speak out and render an opinion.

I want to hear your opinion. That's what this Newsletter is all about — news and information that is pertinent to process servers in Arizona, as well as items of interest to other concerned persons. Anyone who has read my columns knows that I have no issue in expressing my opinion, whether it be in this Newsletter or other publications. I would like to hear from you, too!

So, SPEAK UP! You have a new set of Officers and Board Members that need your input about how this Association is run and if there are issues you are concerned with, LET THEM KNOW!

There are several bills before the state legislature affecting process servers and constables. One of the most notable is HB (House Bill) 2339, which eliminates constables from the Arizona Revised Statutes, altogether. This bill would do away with constables in Arizona. Constables and Marshals were eliminated in California when their courts began the consolidation process. (Yes, CA used to have Justice and Municipal courts,

now unified under one statewide Superior Court.)

Two other bills were introduced by Sen. Kavanagh, sponsored by the AACPS. These would add process servers to the persons authorized to obtain MVD information (bringing that statute in line with Federal law), and a trespass bill, allowing servers to get into gated communities. The first bill (SB1061) is a no brainer and should be supported. The second bill (SB1088) falls short and doesn't mention constables or sheriffs who are similarly turned away from gated communities while serving civil process. There is a third bill (SB1018) which is an attempt to alter the language in ARS 13-3802 (commanding aid in execution of process), which I have argued does not apply to process servers.

In this issue, there's also an article from Sen. Steve Smith on getting involved in legislative activities. Getting involved is the key. We'd like to see more of you.



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New Board Seated *(continued...)*

Patty Chlebanowski sent 2016 Membership Renewals out in January. Patty has been working with Wayne Chlebanowski to prepare a new list of members from the old membership logs and the current membership listed on the website and has currently made a new emailing list. We corrected the bad email addresses of members.

Patty Chlebanowski with the help of Trent Carlyle from Serve Now and Wayne Chlebanowski, has learned how to maintain the website. This includes, but is not limited to; posting newsletters, posting upcoming events, server database maintenance and document uploads.

John Carpenter stated that he did notice that the Membership Application that is currently on the website read (2014). Patty will look into this and get the 2016 Application posted.

Patty Chlebanowski talked about updating the current website. We cannot access a member by name at this time only by city. This does need to be discussed and moving forward with the creating of an updated website in the very near future.

Patty Chlebanowski reported there have not been any current phone calls relating to complaints. She did ask for a volunteer to handle this position. John Carpenter volunteered and will be the new committee chair person for Grievance Committee.

Barry Goldman, the Editor, reported that he has completed all 4 newsletters for the year 2015. He forwarded the completed pdf. format in color to Patty Chlebanowski and then she posted the newsletters on the website and emailed the membership a copy of the newsletter.

Barry Goldman asked each board member to send something of interest in to him for publication. Barry informed the new Board that there is a standing column for the President and the Secretary to always send a report in to the Editor for publication. Patty asked Barry if he has published all the new board members biographies and he has completed their bios in the past newsletters. Barry asked Ron Ezell as the President to write an article and send him an updated profile picture for the next publication.

Barry would like to have the completed Newsletter by February 1st, or the latest by mid February.

Patty Chlebanowski reported that we need to schedule some tentative updates of Continuing Education classes for 2016.

Patty also received two phone calls from AALPI; Pat Nichols and their current President Matt Brooks, regarding our association and their association doing a joint Annual Conference again. They were currently looking at September 24th & 25th at The Conquistador in Tucson. After a brief discussion with the board and members present, pros and cons about the conference and a possible location, it was decided that Ron & Patty will meet with Matt & Pat to have this discussion and to finalize details for the Conference. Patty mentioned that she already has Judith Costello on board to instruct a Spanish speaking class again for the association and our ACPS 6 hour class.

The tentative dates to be posted and published for CLE classes will be March in the Kingman/Bullhead area. Barry Goldman volunteered to instruct and will check into this location.

June will be in Flagstaff, possibly June 25th if Continental

Country Club is available on that date. Patty will follow up with confirmation of this location for Flagstaff. Larry Ratcliff & John Carpenter volunteered to instruct for this class schedule.

September will possibly be in Tucson on the 24th & 25th with our Annual Conference.

December in the Phoenix area, possibly the 3rd. John Carpenter will look into the Conference Room at the Library in Phoenix for December.

Barry Goldman prepared written reports of rule changes to the Arizona Rules of Civil Procedure and a Legislative Report about possible Process Server related changes to the following: SB1088, SB1061, HB2339, HB2288, HB2287, HB2464, HB2258 & SB1018. The reports were passed out to all the board members in attendance and will also be published in the upcoming newsletter to notify the membership. Discussion about each point was held by the board.

Ron Ezell will update with the Secretary of State the lobbyist list and speakers available for the Association. At this time they are still listed as Larry Ratcliff & Tom LaVance. Comments for the Rules changes can be submitted by April to the Supreme Court regarding the rule changes.

Discussion amongst the complete board was had about purchasing a new laptop for the Association. Patty pointed out that in the past we would then use our old laptop as the newer instructor's laptop.

Motion made to purchase a new laptop for the Association by John Carpenter and seconded by Patty Chlebanowski. Motion passed. Ron Ezell will contact Dell Computers to purchase one.

Discussion amongst the complete board was had about a Resolution for Barry Goldman as the Newsletter Editor.

Motion made to have Barry Goldman, publish 4 newsletters, approximately quarterly at \$500.00 an issue. If any special newsletter publications are necessary it would be by board approvals proposed by John Carpenter and seconded by Patty Chlebanowski. Motion passed.

Traci Candelaria brought up the issue of why we currently do not have an Administrator's Position. A discussion followed in regards to this position.

Ron Ezell asked the board to print out our current By Laws and each of us review them for discussion and or changes to any Laws for the next upcoming board meeting.

Dates for the next board meetings are: April 16 at 9:00 AM, location to be announced later; June 25th after the ACPS Class in Flagstaff at 4:30 PM ; December 3rd in Phoenix

John Carpenter told Larry Ratcliff, he appreciated everything he has done over the years for the Association and wishes him all the best with his situations that he needs to tend to.

Motion made by John Carpenter to adjourn & seconded by Luis Figueroa. Motioned to adjourn meeting at 11:45 AM.

From information submitted by Patty Chlebanowski, Secretary
(— Ed.)



APSA

Michael K. Jeanes, Clerk of the Superior Court for Maricopa County

THE



BRIEF



An electronic update for the legal community providing a brief look at news in the Clerk of the Superior Court's Office

The following are excerpts from "The Brief", published by the Maricopa County Clerk of the Superior Court. You can obtain complete copies of "The Brief" through the clerk's website.

Clerk's Office 2016 (Jan. 2016)

Happy New Year! The Clerk's Office implemented physical space improvements and operational shifts in 2015 and there is more to come in 2016. Much of the Clerk's focus has been improving coverage, cross-training, and staffing of the courtroom clerk position. Courtroom clerks are among the most visible representatives of the Clerk's office and have a demanding schedule, including staffing hearings, drafting minute entries, and marking and handling exhibits. Efforts are underway to improve the structure of courtroom services to provide optimal coverage, oversight, and response to the court and litigants.

Courtroom clerks tend to have paralegal and other legal support backgrounds and regularly transition between the private and government sectors. This relationship helps distribute knowledge of the practice and procedure of superior court and allows matching skill sets to the court, clerk, and customers' needs. Further improvements will take place throughout the year in all areas served by the courtroom clerks.

Criminal Rules Rewrite (Jan. 2016)

The Supreme Court recently created a task force to review and update the rules of criminal procedure, with the goal of submitting proposed changes in a rule petition by January 2017. This follows earlier task forces that have tackled the rules of civil appellate procedure, justice courts,

civil procedure, and others. These groups of volunteers are charged with reviewing existing rules and finding ways to restyle, simplify, and clarify them.

Thank You (Jan. 2016)

Thank you for your ideas, feedback, suggestions, and recommendations. The Clerk's Office strives for professionalism, innovation, and excellence in maintaining an accurate, reliable court record and providing efficient, friendly customer service throughout the year. We look forward to continuous improvement in 2016 and beyond.

Civil Coversheet Updated (Feb. 2016)

The civil filing coversheet is now available online and is the version that must be submitted with civil filings. Space for the plaintiff's contact information has been added to the sheet and a line for the attorney/plaintiff signature was removed. The latest form is available now at <http://www.superiorcourt.maricopa.gov/sscDocs/pdf/cv10fz.pdf>.

Parent Information Program Certificates Must be E-Filed (Feb. 2016)

Attorneys who historically used runners to file their clients' parenting information program certificates with the Clerk will need to update their practice. The Superior Court entered Administrative Order 2016-006 directing the Clerk's Office to reject these documents at the filing counters effective January 15, 2016. The Superior Court

(APSA would like to thank Mr. Jeanes and his staff for this valuable information we can pass on to our membership and readers. — Ed.)

contracts with three vendors who provide the statutorily-required parenting information program classes. The Clerk's Office and Court Administration worked with the vendors to promote electronically filing the certificates through the Clerk's eFiling Online website. The administrative order requires the vendors to electronically file the certificates of completion within five business days of the parent completing the class.

E-Filing the certificates benefits the parties, the Clerk's Office, the Family Court bench and the vendors. The steady transition from paper to electronic filings increases customer satisfaction and improves the timeliness and accuracy of documents maintained in the court record. The new process saves the parties and vendors the time and expense of delivering paper to a filing counter. The Clerk's Office estimates at least 300 certificates of completion will be E-Filed each month under the new process.

Maricopa County Court Clerk / Process Server Quarterly Meeting @ 12 Noon!

Downtown Justice Center

620 West Jackson

Rooms 1 & 2

Phoenix, AZ 85003



Attention:
PROCESS SERVERS
Quarterly Information
Exchange Meeting
With the
Clerk of the Court
and Court Staff
January 15, 2016

**NEXT QUARTERLY MEETING
is TUESDAY, APRIL 12, 2016.
All process Servers Invited!**



Hi, I'm Patty Chlebanowski, long-time Secretary of APSA. Frontier Insurance Agency, Inc. has been in business for 48 years. I have run this business side by side with my Process Serving business since 1989. Our process serving business was sold in 2013, but we kept our insurance agency. Frontier Insurance Agency, Inc. wants to help members and friends of APSA and AALPI to write your Notary Bonds, Court Bonds (Appeal and Cost Bonds), and Probate Bonds (Personal Representative, Conservatorship & Guardianships). We also write MVD (Lost Title Bonds). If you know an attorney who handles Probate matters, please drop my name to them. If you have any needs, please give us a call. Frontier can usually get a bond written in about 24 hours.

PATRICIA CHLEBANOWSKI
Agent

FRONTIER INSURANCE AGENCY, INC.

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Phoenix, AZ 85016

APSA

Legislative Beat

As our legislative season heats up, your editor reported to the APSA Board on the following items before the Arizona House and Senate. (*Opinions in italic.* - Ed.)

SB1088 (Senator Kavanagh), sponsored by the AACPS is a trespass bill that would allow process servers to enter a gated community to serve papers. The bill addresses guard gated communities and those without a guard. The bill amends ARS 33-1819

& 33-1908, and is summarized (from the senate fact sheet) as follows:

1. Requires an owner, managing agent or owners association of a gated or secured apartment, condominium or planned community to allow a process server access to common areas by:
 - a) allowing a process server to enter common areas through any open gate;
 - b) allowing a process server to enter common areas through a secured gate after showing identification and the service of process to the security guard

or other agent of the association or community; and

- c) allowing a process server to enter a locked, unattended gate after mailing a copy of their identification and the service of process to the association or community or its agent.

2. Prohibits a security guard or other agent of an association or community from notifying any resident that a process server is attempting to serve them.

3. Allows the Attorney General (AG) or county attorney to issue a compliance order and assess a penalty of no more than \$250 for a violation of any section.

4. Defines apartment community as any real property that has one or more structures and contains five or more dwelling units for rent or lease.

This bill was sponsored by a separate process server organization. Analysis indicates that the bill may pass on the first committee reading, but appears to need the inclusion of the constables and sheriffs.

Additionally, the "registered mail" requirement (the correct language should actually be "certified mail, return receipt requested") in and of itself is quite cumbersome, and appears to be an administrative headache as well as a personal security issue in copying and mailing one's identification card. - Ed.

SB1061 (Senator Kavanagh), sponsored by the AACPS adds process servers to the list of persons authorized to obtain MVD information and makes state law more in line with federal law.

I recommend we support this as is. — Ed.

HB2339 (Rep. Darin Mitchell) is a very long bill, but the bottom line is that it eliminates constables from the statutes, entirely.

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Legislative Beat

(continued...)

HB2339 (continued) It repeals Article 3 of Title 22 of the ARS relating to constables and all other references in related statutes. The language appears to leave statutes relating to process servers unaffected.

HB2288 (Rep. Bowers) puts forth the requirements that constables serve all criminal summonses and subpoenas presented to them; the bill also clarifies disciplinary procedures. The bill appears to further professionalize the constables.

According to a telephone conversation I had with retired Constable Phil Hazlett, the bill was sponsored by the Arizona Constables Association.—Ed.

HB2287 (Rep. Bowers) requires that a presiding and deputy presiding constable be elected by the other constables (or appointed by the presiding superior court judge) when there are 4 or more constables within a county. The presiding constable's duties include: 1. Serving as the

liaison between the constables within the county and the county manager



and other county departments; 2. Assigning deputy constables within the county; 3. Assigning and managing clerical staff for constables within the county; 4. In a constable's absence, assigning court orders that need service to other constables within the county.

Per my conversation with retired Constable Phil Hazlett, he indicated that although the ACA was the original sponsor of the bill, he stated that the

ACA will not support the bill any further.—Ed.

HB2464 (Brophy McGee) specifies that subpoenas for health care professionals be served at least 14 days before appearance and accommodation must be made for patient care and treatment schedule.

There does not appear to be any process server impact except the service timeline.—Ed.

HB2258 (Brophy McGee: Pratt), amends the mobile home act (Title 33, Chapter 14).

The bill does not appear to have any impact on process servers.—Ed.

SB1018 (Senator Kavanagh) seeks to change the language relating to commanding aid in the service of process (ARS 13-3802).

In training, your editor has consistently (and I believe correctly) argued that this section does not apply to process servers as we do not execute legal process, but serve legal process. I believe this is a misguided attempt to amend existing statute.—Ed.

Ways to get involved in state legislation

By State Sen. Steve Smith



Now that the 2016 Legislative Session has just begun, as I do each year I want to provide you ways on how to be involved with what is happening at the Capitol. First though, let me start by saying what an honor it is to continue to serve our District in the Senate, I am truly humbled and honored and will continue to work as hard as I can for 'We the People'.

That being said, I often would hear from constituents that they did not know what or when legislation was being considered, so when I was first elected I started a weekly newsletter that details every Senate committee meeting along with what bills are scheduled to be heard in those committees that particular week.

This newsletter of course allows you to be plugged in to what is happening so that you will be able to comment, come to the Capitol to speak, or be involved any way to allow your voice to be heard on your support or opposition of legislation BEFORE it has been considered or voted on. Far too often I would hear from constituents that had they known a certain bill was being considered they would have weighed in on it, so this has been a way to mitigate that and allow more participation in the legislative process.

If you would like to receive these updates, simply call my office at 602-926-5685 or email me at stsmith@azleg.gov and request to be added. Additionally, feel free to contact me to share any ideas you may have for future legislation (many of my bills that that the Governor signed last year were constituent driven). Finally, if you or a group/organization would ever like to spend time at the Capitol for a tour or to watch the process, contact me and we would be happy to arrange it.

Remember, you're my boss, I work for you, so please take advantage of these opportunities to get involved to help make continue to make Arizona great.

Steve Smith is represents District 11 in the Arizona Senate. He lives in Maricopa.

In Maricopa Feb 1, 2016 (Reprinted with permission)

APSA

Legislative Beat

(continued...)

ARIZONA STATE SENATE Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR S.B. 1257 misconduct involving weapons; public places

Purpose

Establishes specified exemptions for violations of misconduct involving weapons related to carrying concealed weapons into public establishments or public events.

Background

Statute outlines multiple acts that are designated as *misconduct involving weapons*. A person who knowingly enters any public establishment or attends any public event while carrying a deadly weapon, unless authorized by law, commits misconduct involving weapons if that person does not remove the weapon and place it in temporary secure storage upon a reasonable request by the operator of the establishment or sponsor of the event. This misconduct is classified as a class 1 misdemeanor (A.R.S. § 13-3102).

According to statute, if an operator of a public establishment or a sponsor of a public event requests that a person carrying a deadly weapon remove their weapon, the operator or sponsor is required to provide temporary and secure storage (A.R.S. § 31-3102). As stipulated, the weapon storage must be readily accessible on entry and allow for immediate retrieval on exit from the establishment or event.

Public establishment means a structure, vehicle or craft that is owned, leased or operated by the state or political subdivision of the state. *Public event* means a specifically named or sponsored event of limited duration that is either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity (A.R.S. § 13-3102).

The Department of Public Safety is responsible for issuing permits for carry

concealed weapons (CCW) to qualified individuals. A qualified individual for a CCW permit must: 1) be a resident of Arizona or a U.S. citizen; 2) be at least 21 years old or 19 years old in specified circumstances; 3) be free of felony convictions and indictments, unless an individual's rights have been restored; 4) does not suffer from mental illness, as outlined; 5) is not unlawfully present in the U.S.; and 6) provides adequate documentation of completing a training program or demonstrated competence with a firearm (A.R.S. § 13-3112).

There may be a fiscal impact for any agency or local government entity that chooses to ban firearms on their premises, since the agency or local government entity would be required to add security personnel and screening devices.

Permits by County:	
Apache	991
Cochise	6605
Coconino	3537
Gila	2309
Graham	690
Greenlee	180
La Paz	825
Maricopa	93606
Mohave	11490
Navajo	2765
Pima	25569
Pinal	9771
Santa Cruz	697
Yavapai	11739
Yuma	4341

**Current Arizona
Concealed Weapon
Permits — DPS 1/31/2016**

Provisions

1. Exempts from *misconduct involving weapons* a person who possesses a valid CCW permit and carries a deadly weapon into a public establishment, other than a vehicle or craft, or at a public event.
2. Excludes the following locations from the exemption:
 - a) any public establishment or public event that is a secured facility;
 - b) any licensed premises of a public establishment or public event with a liquor license;
 - c) any state, county or municipal judicial department, law enforcement agency or correctional facility;

d) any area where a firearm is prohibited by federal law;

e) any university, college, community college, high school or common school; or

f) any community college district in this state or a university under the jurisdiction of the Arizona Board of Regents.

3. Stipulates that the exemption for individuals with a concealed weapon permit does not:

a) relieve or limit an operator of a public establishment or a sponsor of a public event from current requirements for providing secure storage for weapons; or

b) limit, restrict or prohibit the rights of a private property owner, private tenant, private employer or private business entity.

4. Defines *secured facility* as:

a) a public establishment or public event that has security personnel and electronic weapons screening devices at each entrance to the public establishment or event;

b) a public establishment or public event that has security personnel who electronically screen each person who enters the public establishment or public event to determine if the person is carrying a deadly weapon and the security personnel require each person who is carrying a deadly weapon to leave the weapon in possession of security personnel who must provide temporary and secure storage while the person is in the establishment or at the event; or

c) the area of the public establishment or public event that is not accessible to the public and has security personnel or biometric, coded or employee restricted entry or a similar means of limiting access to the area that is not accessible to the public.

5. Makes a technical change.

6. Becomes effective on the general effective date.

Prepared by Senate Research

January 29, 2016

RH/JO/rf



ANALYSIS & OPINION:***When is an elected constable a peace officer?***

This issue came to light from my observations over the last couple of years at our local city council meetings. State law allows any property owner to make his property a place where firearms are prohibited. In certain instances, there is no moral or common sense argument — hospitals, schools, and certain government buildings including courthouses come to mind. In the city where I live, our local city hall has been posted a “No Firearms Allowed” zone. The exceptions to such a restriction under the law would be to most peace officers and Federal law enforcement personnel.

Since posting the no firearms allowed sign, the city installed lockers outside of the premises where firearm holders (myself included) might place their weapons. Currently, there is discussion about expanding the no firearms postings to the other city facilities, including the library. As children are in the library, and as it is similar to a school environment, there should be no argument about the inclusion of that facility.

There is also discussion about modifying the prohibition to exempt CCW permit holders (see piece about SB 1257 for further).

Aside from our city police officers who may at times enter the building for various reasons, our local constable regularly attends and has been observed to wear a uniform and sit in the audience armed (including his pistol and two magazines on his belt). The constable is an elected county official, not a city employee, and not a member of our local police department.

So, my curiosity got aroused and I wondered why, if I cannot carry my firearm into that and other posted buildings, our mayor and council people and other members of the public also cannot, what exempts our

elected county constable from that prohibition?

Research into statute shows the Constable, by statute, is a part-time peace officer and only a peace officer when he is in the act of performing his official duties, which are limited to attending the Justice Court and serving or executing legal process from that court.



The former constable, in addition to his (then) duties as constable is a retired full-time law enforcement officer. The current constable is not. Any claim of a precedent contrary to existing law is non-sequitur and should not apply to this situation.

The Constable’s limited peace officer status is clearly spelled out in ARS §22-131(E), which states, “A constable who is duly elected or who is appointed by the board of supervisors has the authority of a peace officer only in the performance of the constable’s official duties.” (emphasis added)

Should the Constable be serving or executing legal process, going directly from point A to point B, he is acting within the scope of his duties at such stops. However, when diverting by city hall to watch the council proceedings in between (or before or after) such points, he is no longer in

the performance of his official duties, but on his own personal time. He is therefore, as an elected county official, not acting within the scope of his official duties at city hall.

This would apply not only when he diverts to attend a session of the city council as an observer, but similarly when in the grocery store doing his personal shopping or doing other things unrelated to his limited and well defined duties of serving or executing legal process, or otherwise attending the Justice of the Peace Court.

While ARS §13-105(29) makes the constable a peace officer, his limitations are clearly defined by ARS §22-131(E), wherein the constable has the “...authority of a peace officer only in the performance of the constable’s official duties”. Other provisions of ARS §22-131 (notably subsection A) clearly define the constables’ duties (“Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority...”). Although subsection (D) states, “The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables”, subsection (E) clearly limits those powers and duties when the constable is actively in the performance of such duties.

Consequently, your editor is of the opinion that the Constable is only a peace officer when performing his official duties in serving or executing legal process. Needless to say, my opinion will ruffle some feathers, but statute is very plain, and clear as mud. I welcome your opinion and opposing viewpoints.

— Ed.

APSA

OF INTEREST: *Who should be held accountable?*

Is trust the assumption of the absence of malfasant intent or ignorance of that intent?

First, let us assume the following is a hypothetical situation. A process server recently brought me a question that I believe was worthy of further thought and analysis. This server has been a process server for several years, now, working for law offices, pro-per's and as a subcontractor for several agencies. (Coincidentally, I've had my own experiences recently with one particular agency that dovetails into this situation.) The server appears to be worthy of one's trust and willing to do the right thing in serving legal process. He also appears to be a very optimistic person and one who enjoys what he does.



The server was concerned about a client he believes gives him a weekly volume of about 100 or so serves, on top of his other accounts. Not an unimpressive volume for a single server. The server believes that some of the documents he has been signing for this client (an agency) could be questionable. He disclosed the suspect affidavits (served/non-served) presented by the agency were most likely not inspected by him for accuracy against his field reports.

This server assumes the best in people, and in giving trust to other people, one might assume they were on the same team. He assumed that his agency client would transcribe information from his reports to affidavits accurately. Based on his experience with other clients, he had no reason to suspect that this particular agency's motives were less than honest.

Trust but not verify?

How it started was a few days prior to his call, he received an order to post for an alternate service matter. He was the original server on the summons and complaint. His recollection on this paper was that it was a bad address, so he read through the motion and accompanying papers. In this he found what he believes is a "smoking gun".

Pulling records from this and other court cases, he said he belatedly found that the agency client has been a) falsifying his reports (inserting "incorrect" information on affidavits), b) preparing falsely worded motions for alternate means of service based on fairy tale and canned falsehoods for their clients (the agency owner is a Legal Document Preparer) and, c) notarizing jurats even though he has never appeared before the agency notary.

ARS §13-2702. Perjury

A. A person commits perjury by making either:

- 1. A false sworn statement in regard to a material issue, believing it to be false.**
- 2. A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.**

ARS §41-313. Duties

A. Notaries public shall...

- 2. Administer oaths and affirmations.**
- 3. Perform jurats...**

B. Notaries public shall perform the notarial acts...only if:

- 1. The signer is in the presence of the notary at the time of notarization.**

Surmising, without comparing drafted affidavits against field reports, the server may have engaged in "robo-signing". (Sometime back, the mortgage industry got hit with a scandal because foreclosures were being processed without the banks' signers inspecting them to verify their accuracy.)

Having had my own experiences with another agency that prepared incorrect affidavits, I can empathize with this server. However, unlike him, I know from early experience in a former life to verify what other people want me to sign.

It is a necessary inconvenience to verify documentation from the field reports against prepared affidavits. I have bounced back numerous incorrectly prepared affidavits. Needless to say, I take the phrase, "trust, but verify" very seriously. (As an aside, this other agency and I are currently locked in a dispute not only over monies owed to me but their demonstrated lack of reasonable and prudent document management.)

Who should be held accountable? (continued)



Is trust the assumption of the absence of malfeasant intent or ignorance of that intent?

Issues of concern

I see four potential issues concerning the activities from the plaintiff's side of the fence: 1) that the process server failed to use reasonable and prudent care to assure that the documents he signed were true and correct. Failure to do so may violate the ACJA §7-204(H)(2)(j), et seq. – principally in that he failed to use a reasonable and prudent standard of care, as well as perjury statutes. 2) The agency owner, a Legal Document Preparer, based on the server's research and notes, prepared motions, affidavits and other documents for clients to be filed in court based on false information generated by his own office. This may be a violation of ACJA §7-2078(J), et seq. as well as the perjury statutes. 3) The notary falsely performed notarial services when the constituent (process server) has not been present (ARS §41-313(B)(1) and §41-319, et seq.) and in doing so may have caused perjured information to be submitted to the courts. 4) The plaintiff or plaintiff's attorney may have obtained judgments against defendants based on false and misleading information filed with the court, either with or without their foreknowledge and acquiescence, which may violate State Bar regulations and other rules of court, as well as perjury statutes.

As to the defendant/judgment debtor, he/she/they may have one or more causes of action against all of the foregoing parties for having one or more judgments rendered against (them) under the guise of due process, when it may be that an abuse of process has occurred. Further, if property was seized or garnishments levied, the judgment debtor may have cause to get their property back or other just compensation.

If the attorney or plaintiff in the judgments were duped, they may have causes of action against the server, the LDP and the notary, as well.

We have already seen what havoc to the system sewer serves have caused in New York and other areas; we can imagine what a string of other perjured statements made and documents submitted to the courts might also do, here.

Aside from the civil liability from the defendants/judgment debtors in this scenario, there may be more. Consideration of the administrative and regulatory investigations and penalties which may be assessed should be given. If the Presiding Judge chooses to proceed with disciplinary procedures against the process server, the server may at the very least may be hit with an informal disciplinary penalty (I think worse). The Board of Legal Document Preparers may investigate and proceed against the agency owner (an LDP) for violating the applicable section(s) of the ACJA. The Secretary of State may also decide to proceed against the notary through their office, as well. Any or one may be referred to the Attorney General, as well.

Referred or not, the Attorney General may conduct a separate investigation of the misconduct as a criminal or civil matter. The State Bar may proceed against attorneys involved, and if the papers were processed for financial institutions or collection agencies, investigations and other procedures may occur at the Dept. of Financial Institutions, as well.

Needless to say, any process server in this situation should obtain legal representation from a competent attorney. The self reporting process of the "inaccuracies" may allow the server to mitigate damages and penalties. **Or, he could just bury his head in the sand and hope that this matter never sees the light of day.** (Not recommended.)



Oath of Admission

"I...will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor; I will never seek to mislead the judge or jury by any misstatement or false statement of fact or law..."



APSA

Who should be held accountable? (continued)

In light of the foregoing, let us ask another question: It is the ACJA which regulates the individual servers, but what regulates the agencies which hire or subcontract to the servers?

The answer: *Nothing.*

No statute, rule or regulation is set forth to regulate agencies which hire or subcontract process servers. A convicted felon might one day own a process serving agency, but so long as he or she doesn't serve papers, the owner hasn't subjected him or herself to the same administrative regulation governing servers. The felon owner probably hasn't broken any laws regulating ownership or management of a service of legal process enterprise, either.

What about preparing the documents for the server to sign, you may ask. That may be argued to be an administrative function, in support of moving documents from point A to Z, not in practicing law nor acting as a legal document preparer. Or could it be?

It is the server who must inspect the documents for inaccuracies and it is the server who is held accountable for errors, misstatements or perjury. The entity owner might claim no responsibility over the server's actions, and may further defend him/her/itself in claiming clerical errors for the "misstatement".

The problem (one of them), my dear readers, is that other people depend on those documents — whether served or non-served — to be correct and concise: the courts, the client, and even the defendant. Fortunes are made or lost on words — accuracies and inaccuracies. We are also expected, as Officers of the Court to conduct ourselves accordingly with *candor* — truth and full disclosure.

Is it right that the axe falls on the server but not the agency? Maybe yes, maybe no. While suborning perjury may be a crime, the preparation

of inaccurate documents, strictly speaking, is not. It may be defensible as "excusable neglect". However, when documents are used in a court of law, the court depends on them to be accurate and truthful. It is the person who signs the document who certifies before the court that the document is truthful.

In our scenario, finding an agency has a serial history of "inaccuracies" in its document preparation facilities may lead one to question if there exist unwritten some policy or conspiracy to assist the agency's clients in expediting judgments, no matter the cost, and "excusable neglect" goes out the window.

So, again, the question is asked: *Who holds agencies and entity owners accountable for their actions?*

The answer, dear readers has already been given.

— Barry R. Goldman



From the *National Notary Association*: **5 Common Mistakes That Can Lead To Legal Problems**

- Failing to require the signer to appear
- Failing to properly record notarial acts
- Failing to obtain satisfactory proof of identity from a signer
- Making mistakes on the notarial certificates
- Losing track of your seal

Greetings,

Please advise your members who are applying for certification or recertification as a Private Process Server that it is now taking the Arizona Department of Public Safety approximately four (4) weeks to return Criminal History Records Information (CHRI) reports.

Sincerely,

Alan A. Walker

Pima County Private Process Server Program
Administrator [520-724-3282](tel:520-724-3282)



APSA

Training Corner: Rule Changes Proposed



Barry R. Goldman

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This edition's Training Corner is a mix of the new and the old. The Task Force on revamping the ARCP has submitted its work and the Supreme Court by posting the proposed changes on the Rules Forum (www.azcourts.gov/Rules-Forum).

I've gone through all 256 pages of the proposed changes and submitted a report to the APSA Board for its latest meeting. The report is reprinted, here.

Also, you may have noticed a few pages back that there are legislative proposals considered by the Arizona House and Senate. This year, the APSA Board has elected not to have a dog in the fight in either the legislature or with the rule changes before the Supreme Court. Personally, I would like to see some minor changes, but don't have any serious objections to date.

So, following please note some of the rule changes and their contrast (in *italics*) to the existing rules. In particular, ARCP Rule 5.2 (proposed) takes the existing language from current ARCP Rule 10 and moves it. It should be noted that in both rules (proposed and current), many servers are placing their name or company name on the top left corner — this is and has been incorrect. The attorney or party without attorney is supposed to be placed there. Although there may be a local rule somewhere that conflicts with the state rule, the state rule supersedes the local rule by virtue of authority.

ARCP RULE 4 (d) Who May Serve Process.

(1) Generally. Service of process must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204 and Rule 4(e), or any other person specially appointed by the court. Service of process may also be made by a party or that party's attorney if expressly authorized by these rules.

(2) Special Appointment.

(A) Qualifications. A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) Procedure for Appointment. A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion

must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

EXISTING RULE: Service of process shall be by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified pursuant to the Arizona Code of Judicial Administration § 7-204: Private Process Server and subpart (e) of this Rule, or any other person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Service of process may also be made by a party or that party's attorney where expressly authorized by these Rules. A specially appointed person shall be not less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Special appointments to serve process shall be requested by motion to the presiding Superior Court judge and the motion shall be accompanied by a proposed form of order. The party submitting the proposed form of order shall comply with Rule 5(j)(2) under which the filing party includes the appropriate number of copies to be addressed to each party who has entered an appearance in the case and stamped, addressed envelopes for distribution of the resulting order, unless otherwise provided by the Presiding Judge. If the proposed form of order is signed, no minute entry shall issue. Special appointments shall be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

ARCP RULE 4 (g) Return; Proof of Service.

(1) Timing. If service is not accepted or waived, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to process.

EXISTING LANGUAGE: "...return and proof of service shall be made promptly..."

ARCP RULE 4 (h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

EXISTING LANGUAGE: At any time in its discretion and upon such terms as it

deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

ARCP RULE 4.1 (a) Territorial Limits of Effective Service. All process—including a summons—may be served anywhere within Arizona.

EXISTING LANGUAGE: All process may be served anywhere within the territorial limits of the state.

ARCP RULE 4.1 (d) Serving an Individual. Unless Rule 4.1(c), (e), (f), or (g) applies, an individual may be served by:

- (1) delivering a copy of the summons and the pleading being served to that individual personally;
- (2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

EXISTING LANGUAGE: (d) Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

ARCP RULE 4.1 (e) Serving a Minor.

Unless Rule 4.1(f) applies, a minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner:

- (1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or
- (2) if none of them resides or is found within Arizona, to any

ARCP RULE 4.1 (e) Serving a Minor.
(continued...)

adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides. *EXISTING LANGUAGE: (e) Service of Summons Upon Minors. Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.*

ARCP RULE 4.1 (j) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

ARIZONA CORPORATION COMMISSION
NOTICE TO PROCESS SERVERS

The Arizona Corporation Commission ("ACC") procedure for accepting service of process is being simplified. The procedure is outlined below.

The following is required to serve an entity through the ACC:

- Two (2) copies of each document being served (e.g., 2 copies of the summons and complaint, or 2 copies of a motion);
- A check for \$25.00 for each instance of service (e.g., one check for a summons and complaint, or one check for each motion being served);
- A written statement, affidavit, or declaration, certifying under the penalty of perjury that, upon the signer's information, knowledge, and belief, the entity has either failed to appoint a statutory agent or failed to maintain a statutory agent at the statutory agent address shown on the records of the ACC.
 - The ACC has a form for this written statement, available at the Records Section counter or online at this link: <http://www.azcc.gov/Business/Corporations/Statement-for-Service-of-Process.pdf>
 - Use of the ACC form is not required – any written statement that contains the required information is sufficient.
 - A declaration or affidavit from a registered process server that documents the attempted service upon the statutory agent at the statutory agent's address shown on the records of the ACC will fulfill the requirement of the written statement.

Pursuant to its statutory obligation, the ACC will mail the documents served to the entity at the entity's last known place of business address on file. The ACC will prepare a Certificate of Mailing in connection with the received service of process. Upon request and payment of the copying charge and, if applicable, a certification charge, the ACC will provide a copy of a certified copy of the Certificate of Mailing.

IMPORTANT:
By receiving service, the ACC does not represent or guarantee that the service is legally valid. The legal validity of service of process in connection with a lawsuit is determined by the court, not by the ACC.

100 WEST WASHINGTON, PHOENIX, ARIZONA 85003-4000 • 480-502-2000 • 100 WEST WASHINGTON STREET, SUITE 300, TUCSON, ARIZONA 85701-0000 • 520-622-2000

(1) Generally. If a domestic corporation does not have an officer or an agent within Arizona on whom process can be served, the corporation may be served by depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2) Evidence. If the sheriff of the county in which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on whom process may be served, the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in Arizona.

(3) Commission's Responsibilities. The Arizona Corporation Commission must retain one of the copies of the summons and

the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation, other Corporation Commission records, or any other source. *EXISTING LANGUAGE: (j) Service of Summons Upon a Domestic Corporation If Authorized Officer or Agent Not Found Within the State. When a domestic corporation does not have an officer or agent in this state upon whom legal service of process can be made, service upon such domestic corporation shall be effected by depositing two copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be prima facie evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.*

ARCP RULE 4.1 (k) Alternative Means of Service.

(1) Generally. If a party shows that the means of service provided in Rule 4.1(c) through Rule 4.1(j) are impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) Notice and Mailing. If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. In any event, the serving party must mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) Service by Publication. A party may serve by publication only if the requirements of Rule 4.1(l), 4.1(m), 4.2(f), or 4.2(g) are met and the procedures provided in those rules are followed.

EXISTING LANGUAGE: (k) Alternative or

Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(l), 4.1(m), 4.2(f) and 4.2(g) of these Rules.

ARCP RULE 4.1 (l) Service by Publication.

(1) Generally. A party may serve a person by publication only if:

- (A) the last-known address of the person to be served is within Arizona but:
- the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address; or
 - the person to be served has intentionally avoided service of process; and
- (B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

(2) Procedure.

(A) Generally. Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks:

- in a newspaper published in the county where the action is pending; and
- if the last-known address of the person to be served is in a different county, in a newspaper in that county.

(B) Who May Serve. Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 4(d).

(C) Alternative Newspapers. If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.



APSA

ARCP RULE 4.1 (l) Service by Publication. (continued...)

(D) Effective Date of Service. Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(3) Mailing. If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(4) Return.

(A) Required Affidavit. The party or person making service must prepare, sign and file an affidavit stating the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) Accompanying Publication. A printed copy of the publication must accompany the affidavit.

(C) Effect. An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication. *EXISTING LANGUAGE: (l) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail*

the summons and a copy of the pleading being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

ARCP RULE 4.1 (m) Service by Publication on an Unknown Heir in a Real Property Action.

An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.1(l), if:

- (1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and
- (2) the heir must be a party to the action to permit a complete determination of the action.

EXISTING LANGUAGE: (m) Service by Publication; Unknown Heirs in Real Property Actions. When in an action for the foreclosure of a mortgage on real property or in any action involving title to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (l) of this Rule 4.1.

ARCP RULE 5 (a) Service Generally.

(1) Scope. This rule governs service on other parties after service of the summons and complaint, counterclaim, or third-party complaint.

(2) When Required. Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in Rule 5(c):

- (A) an order stating that service is required;
- (B) a pleading filed after the original complaint, unless the court orders otherwise

under Rule 5(d) because there are numerous defendants;

(C) a discovery or disclosure document required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document.

(3) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear, except as provided in Rule 55. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4, 4.1, or 4.2, as applicable.

(4) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

EXISTING LANGUAGE: Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4, Rule 4.1, or Rule 4.2 as applicable.

ARCP RULE 5 (c) Service After Appearance; Service After Judgment; How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party.

(2) Service Generally. A document is served under this rule by:

- (A) handing it to the person;
- (B) leaving it:

- (i) at the person's office with a clerk or other person in charge or, if no one is in charge,



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ARCP RULE 5 (c) Service After Appearance; Service After Judgment; How Made. *(continued...)*

in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in Rule 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(3) **Certificate of Service.** The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:

[Name of opposing party or attorney]

[Address of opposing party or attorney]

If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the document was served by mail. This conclusive presumption will only apply if service in some form has actually been made.

(4) **Service After Judgment.** After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

EXISTING LANGUAGE: (1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in

a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) Mailing it via U.S. mail to the person's last known address--in which event service is complete upon mailing;

(D) Delivering the paper by any other means, including electronic means other than that described in subsection (E), if the recipient consents in writing to that method of service or if the court orders service in that manner--in which event service is complete upon transmission; or

(E) Transmitting the paper through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action--in which event service is complete upon transmission.

(3) Certificate of Service. The date and manner of service shall be noted on the original of the paper served or in a separate certificate. If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the paper was served by mail. This conclusive presumption shall only apply if service in some form has actually been made.

(4) Service After Judgment. After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgement, shall be served pursuant to Rules 4, 4.1 or 4.2, as applicable, of these rules as if serving a summons and complaint.

ARCP RULE 5 (d) Serving Numerous Defendants.

(1) Generally. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) **Notifying Parties.** A copy of every such order must be served on the parties as the court directs.

EXISTING LANGUAGE: In any action in

which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

ARCP RULE 5.1 (a) Filing with the Court Defined.

The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(EXISTING LANGUAGE IN ARCP RULE 5 (h)): The filing of pleadings and other papers with the court as required by these Rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge and in that event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Arizona Supreme Court Rule 28 Excerpts

Following are excerpts from Supreme Court Rule 28 which covers how new rules are put into effect:

(A) Petition for Adoption, Amendment, or Repeal of Rule; Deadline for Filing.

(1) **Deadline for and Method of Filing.** Any person, association or public agency interested in the adoption, amendment, or repeal of a court rule may file a petition to adopt, amend, or repeal a rule. Such petition shall be filed on or before January 10 in any given year in order to be considered and acted upon by the court at its annual rules conference the following September. (a) **Paper Filing.** A written paper petition shall be filed with the Clerk of the Supreme Court and shall consist of an original and one (1) copy, in addition to one copy of the

(continued on 15)

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ARCP RULE 5.1 (b) Effective Date of Filing.

(1) Generally. Except for documents submitted directly to a judge under Rule 5.1 (a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(2) Documents Submitted Directly to a Judge. If a document is submitted directly to a judge under Rule 5.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(3) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, and the matter cannot be resolved by the person and the clerk, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

EXISTING LANGUAGE: Rule 5(g). Filing; attachments

(1) *Filing. All papers after the complaint required to be served upon a party or to be filed with the Court within a specified time shall be both filed with the Court and served within that specified time;*

(2) *Papers Not to Be Filed. The following papers shall not be filed separately and may be filed as attachments or exhibits to other documents only when relevant to the determination of an issue before the Court:*

(A) *Subpoena Papers. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;* (B) *Discovery Papers. Notices of deposition; depositions, interrogatories and answers; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;* (C) *Proposed Pleadings. Any proposed pleading,*

except such pleading may be filed after ruling by the Court if necessary to preserve the record on appeal; (D) *Prior Filings. Any paper which previously has been filed in the case. If a party desires to call the Court's attention to anything contained in a previously filed paper, the party shall do so by incorporation by reference;* (E) *Authorities Cited In Memoranda. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal;* and (F) *Offers of Judgment Under Rule 68. (3) Attachments to Judge. Except for proposed orders and proposed judgments, a party may attach copies of papers not otherwise to be filed under this rule to a copy of a motion or memorandum of points and authorities delivered to the judge to whom the case has been assigned. Any such papers provided to the judge must also be provided to all other parties.*

(4) *Sanctions. For violation of this Rule, the Court may order the removal of the offending document and charge the offending party or counsel such costs or fees as may be necessary to cover the Clerk's costs of filing, preservation, or storage, and the Court may impose any additional sanctions provided in Rule 16(i).*

ARCP RULE 5.2. Forms of Documents (NEW)

(a) Caption. Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

(1) To the left of the center of the page starting at line 1, the filing attorney's name, address, telephone number, email address, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third-party plaintiff). If the document is being presented by a litigant representing himself or herself, all of this information must be included except the email address and the State Bar of Arizona identification numbers;

(2) Centered on or below line 6 of the page, the title of the court;

(3) Below the title of the court and to the left of the center of the page, the title of the action or proceeding;

(4) Opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding; and

(5) Immediately below the case number, a brief description of the nature of the document.

(b) Document Format.

(1) Generally. Unless the court orders otherwise on its own or at the request of a party, all documents filed—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:

(A) Text and Background. The text of every document must be black on a plain white background. All documents filed must be single-sided and must have line numbers at double-spaced intervals along the left side of the page.

(B) Type Size and Font. Every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

(C) Page Size. Each page of a document must be 8 ½ by 11 inches.

(i) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(iii) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

(D) Margins and Page Numbers. Margins must be set as follows: a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of each page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

(E) Handwritten Documents. The court strongly encourages the filing of documents that are typed and prepared on a computer. If a document is handwritten, the text must be



ARCP RULE 5.2. Forms of Documents (NEW) (continued...)

legible, and be printed and not include cur- sive writing or script.

(F) Line Spacing. Text must be double -spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quo- tation must be indented on the left and right sides.

(G) Headings and Emphasis. Headings must be underlined, or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.

(H) Citations. Case names and citation signals must be in italics or underlined.

(I) Originals. Unless filing electroni- cally, only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be pho- tocopies or computer generated duplicates.

(J) Court Forms. Printed court forms may be single-spaced, but those requiring a judge's or commissioner's signature must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilm- ing, or imaging.

(c) Electronically Filed Documents.

(1) Format.

(A) File Type. A document filed elec- tronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text- searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in .odt or .docx for- mat or other format permitted by Adminis- trative Order. It also must be in a form that permits it to be modified, and must not be password protected.

(B) File Size. A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommo- date such a limit.

(2) Formats of Attachments.

(A) Generally. An exhibit and other attachment to an electronically filed docu- ment also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) Official Records. A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

(C) Notarized Documents. A scanned copy of a notarized document may be filed electronically if it contains the notary's sig- nature and stamp or seal.

(D) Certified Mail, Return Receipt Card. When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

(E) National Courier Service. When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

(3) Bookmarks and Hyperlinks.

(A) Bookmarks. A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A docu- ment that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) Hyperlinks. A hyperlink is an elec- tronic link in a document to another docu- ment or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become part of the official record merely because it is made accessible by a hyperlink. The use of hyperlinks is encouraged.

(4) Originals. An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

ARCP RULE 10 Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption in the form prescribed by Rule 5.2(a), along with the pleading's designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and docu- ments, after naming the first party on each side, may refer generally to other parties by the designation "et al."

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a

pleading is a part of the pleading for all pur- poses.

(d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. If the defendant's true name is discovered, the pleading or proceeding should be amended accordingly.

EXISTING LANGUAGE: ARCP RULE 10(a) - (f) replaced by the above. Note body of rule moved to proposed rule 5.2, above.

ARCP RULE Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

(1) depositions by oral examination or written questions under Rules 30 and 31, respectively;

(2) written interrogatories under Rule 33;

(3) requests for production of docu- ments or things or permission to enter onto land or other property for inspection and other purposes, under Rule 34;

(4) physical and mental examinations under Rule 35;

(5) requests for admission under Rule 36; and

(6) subpoenas for production of docu- mentary evidence or for inspection of prem- ises under Rule 45(c).

EXISTING RULE: Parties may obtain dis- covery by one or more of the following meth- ods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or per- mission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

ARCP RULE 45 Subpoenas

(d) Service.

(1) General Requirements; Tendering Fees. A subpoena may be served by any person who is not a party and is at least 18 years old. Serving a subpoena requires deliv- ering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) Exceptions to Tendering Fees. Fees and mileage need not be tendered when the subpoena commands attendance at a trial or hearing or is issued on behalf of the State of



ARCP RULE 45 Subpoenas *(continued...)*

Arizona or any of its officers or agencies.

(3) **Service on Other Parties.** A copy of every subpoena and any proof of service must be served on every other party in accordance with Rule 5(c).

(4) **Service Within the State.** A subpoena may be served anywhere within the state.

(5) **Proof of Service.** Proof of service may not be filed except as allowed by Rule 5.1(c)(2)(A). Any such filing must be with the court clerk for the county where the action is pending and must include the server's certificate stating the date and manner of service and the names of the persons served.

EXISTING LANGUAGE: (d) Service.

(1) **General Requirements; Tendering Fees.** A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) **Exceptions to Tendering Fees.** When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) **Service on Other Parties.** A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) **Service within the State.** A subpoena may be served anywhere within the state.

(5) **Proof of Service.** Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

ARCP RULE 69 Execution

(a) **Generally.** A money judgment is enforced by a writ of execution, unless the court orders otherwise. A party may execute on a judgment—and seek relief in proceedings supplementary to and in aid of judgment or execution—as provided in these rules, statutory remedies, and other applicable law.

(b) **Special Writ.** If a judgment is for personal property and the court finds that the property has a special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and

delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.

(c) **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears from the record may obtain discovery from any person—including the judgment debtor—as provided in these rules and other applicable law.

EXISTING LANGUAGE: Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these Rules or otherwise by law.

ARCP RULE 80 (c) Unsworn Declarations Under Penalty of Perjury. When these rules require or allow a matter to be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, statement, oath, or affidavit, the same may be unsworn—and have the same force and effect—if it is:

- (1) signed by the person as true under penalty of perjury;
- (2) dated; and
- (3) in substantially the following form: "I declare [or certify, verify or state] under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]."

This rule does not apply to a deposition, oath of office, or an oath required to be taken before a specified official other than a notary public.

EXISTING LANGUAGE: Rule 80(i). Unsworn declarations under penalty of perjury. Wherever, under any of these rules, or under any rule, regulation, order, or requirement made pursuant to these rules, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn written declaration, verification, certificate, statement, oath, or affidavit of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn written declaration,

certificate, verification, or statement, subscribed by such person as true under penalty of perjury, and dated, in substantially the following form: "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

Arizona Supreme Court Rule 28 Excerpts

(Continued)

petition and supporting documentation in Microsoft Word format on a CD, disk, or other compatible electronic medium. (b) **Electronic Filing.** A petition may be filed electronically by registering at the Court Rules Forum website, accessible at <http://www.supreme.state.az.us>, and submitting the petition as attachments in both PDF and Microsoft Word format. (2) **Form and Contents of Petition.** The petition shall state the grounds for the adoption, amendment or repeal of the rule, include a draft of the proposed new or amended rule, and may be accompanied by supporting documentation. (3) **Court Review of Petition.** After the filing of a petition, the court shall review the petition and any supporting documentation and determine whether to open the matter for public...or reject it for lack of need, merit, or substance. (4) **Notice to Petitioner.** (T)he clerk shall promptly notify the petitioner of the decision of the court...

(B) Proposed Rule Changes by the Supreme Court. The court, on its own motion, may propose the adoption, amendment, or repeal of a rule.

(C) Opening the Rule Change Petition for Comment. (T)he clerk shall prepare a request for comment stating that the court invites written comment on the merits of the petition...

(D) Comment on Proposed Rule Changes. (1) **Deadline for and Method of Filing; Form.** ...Comments shall be filed...on or before May 20 of each year, unless a different date is specified in the request for comments...

(continued last page...)



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spelling, and appropriate language.
3. A business card size advertisement of the
Guest Writer may be placed in the edition in
which the guest article is published, or at the
discretion of the Editor, may be published in a
later edition.
4. No advertising charge shall be made in
conjunction with the publication of a guest
article.
5. Guest article submissions become the sole
property of APSA.

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members and non-members alike,
thanking APSA for the Newsletter
and educational opportunities. We'd
like to thank our readers for sharing
and making this publication better.
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bottom of our
hearts.



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Voluntary Legislative Fund Donation: \$ _____
Total Enclosed: \$ _____

I hereby apply for membership (or membership renewal) in the Arizona Process Servers Association. I agree to abide by its bylaws and maintain the highest ethical standards in carrying out the duties of my profession. I authorize the Arizona Process Servers Association to investigate the statements made on this application and my qualifications for membership. I have no felony convictions and my certification (if applicable) as an Arizona Process Server is current. Membership is not transferrable. I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE IN THIS APPLICATION ARE TRUE AND CORRECT.

Date: _____ Signature _____

Please make check payable to APSA mail it with this completed form to the APSA address, above.

Court Closures	APSA Events Calendar
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Holiday Court Closures

Courts are closed on:
 New Year's Day, Martin Luther King Jr./Civil Rights Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day

Bullhead City ACPS Class

March 26-27, See page 2.
APSA Board Meetings
See website for details.
 April 16, location to be announced later; June 25th after the ACPS Class in Flagstaff at 4:30 PM; December 3rd in Phoenix

Rule changes with the Supreme Court per Rule 28:

File by January 10th of each year. Comments are due no later than May 20th of each year. Rules adopted September; effective January 1st of the following year.

See **SCORE's** website at greaterphoenix.score.org



PRIVATE PROCESS SERVER TESTING BY COUNTY (UPDATED FALL, 2015)

County	Contact person	Telephone	Testing dates/times/detail
Apache	Deena Mattice	928-337-7551	By appointment
Coconino	Jeff Mangus	928-679-7600	By appointment at 928-679-7646
Cochise	Martha Rivera	520-432-8581	Call for details
Gila	Vickie Aguilar	928-402-8559	By appointment only
Graham	Rebecca Ornelas	928-428-3100	Call for details
Greenlee	Pam Pollock	928-865-4242	Call for appointment
La Paz	Jackie Kummerle	928-669-6131	Call for details
Maricopa	Sharlette Wright	602-506-1909	See county clerk's website for testing dates
Mohave	Mim Quesenberry	928-753-0713x416	Call for details
Navajo	Marc Russell	928-524-4177	Call for details
Pima	Alan Walker	520-724-3282	Call for details—Check in at 8:30 a.m.
Pinal	Kira Jimenez	520-866-5307	By appointment
Santa Cruz	Karla Zuniga	520-375-7700	Call for details
Yavapai	Shaunna Kelbaugh	928-777-3030	Tuesdays and Thursdays at 8:30 a.m. and 3:00 p.m. by appointment
Yuma	Michelle Lackey	928-817-4241	Scheduled as needed

All Process Server testing starts promptly. Late admission is not allowed. All testing requires pre-registration through the court clerk's office. Please make arrangements well in advance of the test date.

Advertising Submission Policy:

1. The APSA Newsletter is published in March, June, September and December of each year.
2. All advertising must be paid for in advance. Payment should be made to the Arizona Process Servers Association. A 15% discount is available for advertisers who pay for a full year in advance.
3. Advertising rates are quoted for full-color camera-ready copy in electronic submission in an approved format.
4. Advertiser is responsible for preparing & submitting ad copy. Copy must be submitted no later than the last day of the month preceding publication
5. Acceptance, placement and publication of advertising is subject to the sole approval and discretion of the Editor.
6. Inappropriate advertising content will not be accepted. Editor reserves the right to decline any advertisement.
7. In the event that an item of advertising is rejected, a refund shall be made to the advertiser.
8. Advertisement size quoted is approximate. Actual size may vary depending on page availability.
9. Advertorials may be written by APSANews.com staff or outside writer at cost to advertiser. Publication of advertorials is charged by the column inch.
10. Advertorials must be clearly marked in the header, "Advertisement". All advertisements may be bordered to distinguish their content.



The Last Word: Avoid a Complaint (Reprised)

Good professional practices can go a long way toward good client service. The courts provided the list of common complains they receive about process servers. Learning from other peoples' mistakes can help you to avoid complaints and work toward your success!

AVOIDING COMMON COMPLAINTS

Most complaints filed against private process servers fall into three major areas:

- Poor business practices;
- Failure to abide by the applicable rules and statutes; and
- Unacceptable behavior for an officer of the court.

The last area frequently results in disciplinary action by the court. You are encouraged to know and develop good business practices to avoid problems and to know the legal requirements of serving process.

Problems identified include:

- Failure to return client phone calls.
- Failure to promptly serve documents.
- Failure to acknowledge receipt of documents.
- Slow filing or failure to file an affidavit of service or failure to return the unserved documents.
- Fee disputes resulting from failing to make the client aware, before accepting a job, of the server's complete fee schedule, how charges are computed and when services are charged. Charges for repeated, unsuccessful trips are the most frequent area of disagreement and could be avoided or reduced by making the client aware beforehand of this possibility.
- Rudeness to defendant(s), bystanders or to those receiving process for the person being served.
- Failure to provide written response to a complaint within the specified time period.

Arizona Supreme Court Rule 28 Excerpts

(Continued)

(E) **Request for Public Hearing.** At any time prior to the expiration of the time allowed for comment on a petition for rule change, the court, ...may order that a public hearing be held on the proposed rule change...

(F) **Consideration of Rule Change by the Court; Effective Date of Rules; Notice.** ... (2) Unless another effective date is set forth in the court's order, all new rules and amendments that the court adopts in September shall be effective as of January 1 following the date of the court's action.

***Mackay's Moral:** Optimists are people who make the best of it when they get the worst of it. - Harvey Mackay, Author*

Maricopa County Court Clerk /
Process Server Quarterly Meeting

Next Meeting April 16, 2016 @ 12 PM

***All process servers
are invited.***

Arizona Process Servers Association
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(602) 476-1737
apsaadmin@cox.net

APSA

Serving Arizona Process Servers Since 1973

www.arizonaprocessservers.org

Opinions expressed in the APSA Newsletter are not necessarily those of the Board, individual Board members or officers, nor each member. The APSA Newsletter is published to promote a source of news and information for APSA members, affiliates and interested persons and organizations. Contact APSA for further information about membership and advertising. Editorial opinions are that of the editor, and do not represent the official opinion of APSA.

You are wanted!

- Join a committee— Be an active member!
- APSA is here to work for all of us, to be our voice and to better our livelihoods.
- APSA is the only recognized NAPPS affiliate organization in Arizona
- APSA members work together to make improvements to our profession.
- Use your knowledge and experience to help others.
- Get involved!.