



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



THE ONLY NAPPS CHARTERED STATE ORGANIZATION IN ARIZONA

ARIZONA PROCESS SERVERS ASSOCIATION

# NEWSLETTER

[www.arizonaprocessservers.org](http://www.arizonaprocessservers.org)

2ND Q 2017

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## President's Message *Ron Ezell*



I'm looking forward to attending the APSA Conference in Mesa this year and being able to reconnect with old friends. I also enjoy meeting new members too. While it is wonderful to renew our relationships with those who have a great knowledge base of our past, it is equally important for us to wrap our arms around the fresh perspectives that these new members bring to our ranks.

I was elected as President of the Arizona Process Servers (APSA) last year in Tucson. Having served in many positions of APSA, I agreed to serve as President until the next conference. Arizona has a very strong association. We are able to maintain that strength by all working together in making things happen. This teamwork is especially effective when we focus our efforts in the Legislature. I am pleased to share with you that Arizona currently has 69 members and 16 associate members that are outside of the State of Arizona. New members continue to join our ranks.

We always welcome new members from out of state. This encourages our current members to become acquainted with The NAPPS members. As their relationship with one another builds, they are more inclined to forward work to each other when they have an out of state service

The 2017 APSA Conference will be held in Mesa, Arizona at the Hilton Hotel 1011 W. Holmes Ave on September 16 and 17. Process Servers in Arizona must have 10 hours of continuing education per year for a total of 30 hours for renewal of their license (licenses are renewed every three years). Our door and support is always open and available for you.

**SIGN UP EARLY AND COME AND JOIN US.**

Warmest Regards, **Ron**

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- **APSA Board Meeting Minutes**
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## Bylaws & Ethics

- **Effect of SB1050**
- **The New APSA ACPS Manual is ready!**

**In Arizona,**  
 we have 2 types of weather...



**Changes & Corrections** If you have changes or corrections to your contact information, please let us know. APSA was originally founded in 1973. It is the sole state-chartered association of process servers recognized by NAPPS—the National Association of Professional Process Servers in Arizona.

## Editor's Column



**Barry R. Goldman**

I love gadgets. Computers and kitchen stuff mainly. I'm no expert on either, but I know what I like when I see it. Sometimes enough that when it is used up it's not trashed but put away. I recently found four (yes 4!) perfectly good laptops that for the life of me I cannot remember why I stopped using.

So, having some downtime on my hands, I decided to clean them up. Spending a few days (not hours, but *days*) uninstalling programs from them that had nothing to do with my business or interests, I freed up a lot of memory. Updating Windows, downloading the

latest virus and malware checkers, and patiently awaiting the outcome. Some of the documents and photos I transferred to my central storage drive — a NAS — others I simply said goodbye to.

One of these older computers is faster than my desktop. But I can't remember why I dumped it! So I'm going to put it back in service.

Another I'm giving to my grandkids — one is starting his first semester in college (he got a new computer) and the others need something to stop from arguing over who gets to watch Netflix.

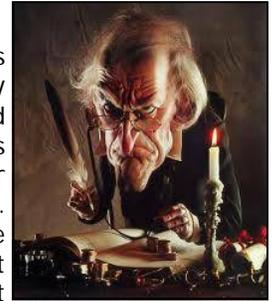
That will give me some peace of mind — putting the old back in service, recycling another so it is hopefully appreciated, and keeping the others for

a rainy day.

The point is this — not every new fangled thing that comes along is better than the old. Some things are better left unchanged, but well maintained. Like a classic car.

As time goes on, that's what some of us might begin to feel like — classic cars that are worth the look. We know more. We've learned from our mistakes. And we're ready to share.

The older we get, the more valuable we are. — BRG



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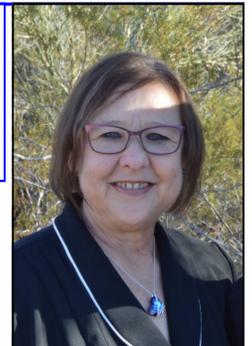
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## Secretary's Corner

**Patty Chlebanowski, Secretary**



Hello members,

I attended the National Process Servers Convention this year in New Orleans in May. It was the first time since I sold my company that I attended the conference. I went as the Arizona Process Servers Association representative. Between Ron Ezell & me, Arizona did have a couple attendees. It was nice to see those familiar faces and we came back to Arizona with 6 new Out of State memberships.

We had a small class in Flagstaff but as always it was fun. Something about visiting the cool mountain air. It just feels right.

Our next scheduled classes will be our Annual Conference on September 16<sup>th</sup> & 17<sup>th</sup> at the Hilton in Mesa. Arizona Association of Licensed Investigators will

once again be joining us and a new group; Arizona Private Security Professionals Association. We have included a Registration form but it is not totally complete as of this printing. Be sure to book your hotel room early by AUGUST 16, 2017. We have locked in a \$99.00 rate, so reserve them soon. We will be having an FBI representative, police officers, legislators and a drone demonstration. We hope to see many of you there, it sounds like it is going to a great conference this year.

Have a safe summer from your Secretary,  
Patty Chlebanowski  
(602) 476-1737



## APSA Board Meeting Minutes June 10, 2017 (Unofficial)

*Held at Continental Country Club at 2380 North Oakmont Drive, Flagstaff, AZ*

### **THOSE IN ATTENDANCE:**

Ron Ezell, Patty Chlebanowski, Larry Ratcliff, Tracy Candelaria and member present Candy Ratcliff.

### **PRESIDENT'S REPORT:**

Ron stated were not able to hold an official meeting because we needed 5 board members present to continuing with any approval of minutes or to make any motions. We went down the list on the Agenda and Patty will complete the minutes for this meeting and send for confirmation and approval of reports via email to the complete board.

### **VICE PRESIDENT'S REPORT:**

Tom Rankin was not present. No written report received.

### **SECRETARY'S REPORT:**

Minutes presented to the board members for the March 11, 2017. The present board members did not see any corrections that needed to be made. I will confirm approval via email to the rest of the board.

### **TREASURER'S REPORT:**

Luis Figueroa provided written reports which he emailed to the board on Friday, 6-9-17, Profit & Loss Detail for March through May 2016, a Profit & Loss Detail from March through May 2017. Balances as of May 31, 2017, Checking Account \$7,091.58, Savings Account \$11,843.01, Legislative Account \$15,465.97 & Pay Pal Account \$1,290.43. The present board had no correction of Luis's report. Patty will confirm approval via email from the rest of the board.

### **COMMITTEE REPORTS:**

#### **Membership Report:**

Patty Chlebanowski reported everything is currently up to date. Ron Ezell gave Patty several Out of State membership applications which he received at the NAPPS Conference.

#### **Website Report:**

Patty Chlebanowski reported that the website information is current and complete. She had not heard from Trent Carlyle from Serve Now since May and will reach out to him to see when they are starting



on the new website.

### **Grievance Report:**

John Carpenter was not present, but did not report there have not been any complaints. Patty Chlebanowski did read a written email complaint to the board. Patty will respond to this complainant and talk to the process server.

### **Newsletter Report:**

Barry Goldman completed the last newsletter in April and was posted and email sent to membership via Patty.

### **Continuing Education:**

Patty Chlebanowski has a scheduled meeting with AALPI & AAPSPA on June 13<sup>th</sup> where we will finalize the details and speakers for the Annual Conference.

### **Legislative Report:**

A brief discussion was held regarding what the SB1050 means. Patty Chlebanowski asked if Barry did respond back to the Supreme Court regarding our proposal about the rule change. Ron Ezell will follow up with Barry Goldman.

### **OLD BUSINESS:**

None.

### **NEW BUSINESS:**

We have scheduled a meeting with the ACPSA about them joining our Association and dissolving their association.

Meeting was adjourned at 5:45 PM.

Submitted by: Patty Chlebanowski, Secretary

# 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.*

#### April 2017

##### External Filing Depository Box in Mesa

The external filing depository box located on the north side of the Southeast Adult Court building in Mesa will soon move to a more convenient location for the public — the main entrance on the south side of the building. The filing box is one of four external filing depository boxes that are available 24 hours-a-day, seven days-a-week around the Valley. The filing boxes can be used any time, but are particularly helpful on weekends, holidays, when there are long lines at the internal file counters, and when filings do not require a fee. The 24-hour filing depository boxes are available for Criminal, Family Court, Tax, and Probate filings and for some Civil filings. They are not for any Juvenile filings or for Civil filings that must be eFiled. Last fiscal year, the Clerk's office received 36,690 filings through the external filing depository boxes. Find the box locations online at [http://www.clerkofcourt.maricopa.gov/alternative\\_filing.asp](http://www.clerkofcourt.maricopa.gov/alternative_filing.asp).

#### May 2017

##### Stamp Out Document Preparation Errors

As the restyling of the criminal rules of court reaches the final round of comments in the rules cycle, the Clerks' Association pointed out the importance of leaving space for the Clerk's file stamp. Litigants have many filing options, depending on the case type: paper over a file counter, using an interior or exterior filing depository box, eFiling, and filing by mail. Making sure your documents have a 2-inch-by-2-inch blank square at the top-right corner of the first page of every filing is one way to prevent filing problems and to ensure a legible file stamp. The Clerk's office posted document preparation guidelines on its website to address the most frequent document preparation errors. The website includes helpful resources like local rules and traps to avoid in our system of scanning paper into digital images. See the guidelines on the Clerk's website at [http://www.clerkofcourt.maricopa.gov/document\\_preparation\\_guidelines.asp](http://www.clerkofcourt.maricopa.gov/document_preparation_guidelines.asp).

#### June 2017

##### Statutory Fees Going Up August 9

The legislature passed a budget allowing Arizona's Supreme Court to increase the base fees in A.R.S. § 12-284. The Supreme Court has increased the fees by 2%, effective on the legislation's general effective date, Wednesday, August 9, 2017. The increased portion of the fees will be deposited in a courthouse security fund that the Administrative Office of the Courts (AOC) will distribute as needed. Because a 2% increase does not always result in round numbers, the AOC provided Arizona's Superior Court Clerks with a list of the new base fee amounts. In addition to the base fee, each county is statutorily authorized to approve additional fees. No new local fees have been approved at this time, limiting the increase in the Superior Court in Maricopa County to only the statutory base fees. Before the fee change, the Clerk's office will post the current fees and the fees effective August 9 on its website at <http://www.clerkofcourt.maricopa.gov/fees.asp>. Mark your calendars and spread the word now to avoid fee-based filing problems and delays on and after August 9, 2017, the effective date.

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



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.  
Surety Bonds

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**APSA**

**Rule Changes****Final Comments on APSA Proposed Rule Change Submitted to the AZ Supreme Court**

*On January 7, 2017, APSA submitted a proposed change to the Arizona Rules of Civil Procedure (R-17-0001 Rule 4.1(d), Rules of CV Procedure), amending Rule 4.1(d) (applicable to service within Arizona). The rule change proposed seeks to expedite service of process at guard-gated HOA properties.*

*The proposed rule change was opposed by the Arizona State Bar. The APSA Board of Directors authorized a response to the State Bar's objection.*

RECEIVED JUN 19 2017 CIVIL PROCEDURE		FILED JUN 19 2017
1 Arizona Process Servers Association 2 PO BOX 2231 3 Phoenix, AZ 85002 4 Phone: (602) 476-1737 5 Fax: (602) 256-9720		
IN THE SUPREME COURT STATE OF ARIZONA		
8 In the Matter of: 9 PETITION TO AMEND RULE 10 ALIQUOT OF THE ARIZONA RULES 11 OF CIVIL PROCEDURE	12 Supreme Court No. R-17-0001 13 RESPONSE BY PETITIONER TO 14 COMMENT OF 15 THE STATE BAR OF ARIZONA	
16 The Arizona Process Servers Association (APSA) responds to comments of 17 the State Bar of Arizona ("State Bar") regarding Petitioner's Petition, R-17-0001, 18 Pursuant to Rule 28, Ariz. R. Sup. Ct. 19 Petitioner, while appreciating that the State Bar expresses it understands 20 that service on individuals in gated communities may sometimes be difficult.		

**TEXT OF APSA'S RESPONSE TO THE STATE BAR'S OBJECTION:**

The Arizona Process Servers Association (APSA) responds to comments of the State Bar of Arizona ("State Bar") regarding Petitioner's Petition, R-17-0001, Pursuant to Rule 28, Ariz. R. Sup. Ct.

Petitioner, while appreciating that the State Bar expresses it understands that service on individuals in gated communities may sometimes be difficult, believes that opposition by the State Bar does a disservice to its members, litigants and the courts in their hopes for expeditious service of legal process. APSA believes the reasons cited by the State Bar in its opposition to the proposed rule change are misperceptions and flawed assumptions.

**DISCUSSION & RESPONSE****An Expeditious, Consistent Solution is Needed**

"Litigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access." (1) Unfortunately, in many areas of Arizona, planned communities, based on their policies of denial of access to process servers, sheriffs and constables attempting to serve legal process provide islands of "service free zones". Petitioner believes that service of legal process should be made so that an interested party is given "...notice of the proceedings and an opportunity to be heard...[in order that] the traditional notions of fair play and substantial justice implicit in due process are satisfied" (2) in an expeditious and as much of a low cost manner possible.

Arizona utilizes the Rules of Civil Procedure for governance of service of process in civil matters, and other rules and statute, when appropriate for other matters (i.e.: small claims, family law, etc.). Statutes from California, Florida, Georgia, and Nevada either: (a) require guards of gated communities to allow access for service of process (California, Florida, and Georgia); or (b) allow service on the guards (Nevada) if access is denied ("...access is not reasonably available...") (3) were cited in the petition. Other states cited which utilize statutes (i.e.: CA Code of Civil Procedure, etc.) do so when authorizing *any* method of service. This is especially true (and appropriate) when community associations are *compelled* to open their gates to allow entry for service of process. Petitioner does not seek to compel entry unto private property, but to have an appropriate and expeditious means consistent with ARCP Rule 4.1(c)(1), wherein a "... duty to avoid unnecessary expense in serving the summons..." is stated.

Case law in several states supports service on a gate guard, as noted in the following pages. Statute allowing service on a gate guard is consistent with recognized case law. The guard, as an agent of the residents within the gated community, controls entry and admittance past the point of arrested delivery (the guard gate).

In one noted case, the guard gate was determined to be an extension of the abode: "...(T)he outer bounds of the actual dwelling place must be deemed to extend to the location at which the process server's progress is arrested." (F.I. duPont, Glore Forgan & Co. v. Chen, supra, 41 N.Y.2d 794, 797 [364 N.E.2d 1115, 1117])

Petitioner submits that within Arizona, delivery to the gate guard is, indeed upon "...an agent authorized by appointment..." (4) and should also be



## Final Comments on APSA Proposed Rule Change Submitted to the AZ Supreme Court...*Continued*

recognized as appropriate service.

### **State Bar's Argument Citing Prior Submission(s) is Irrelevant.**

The State Bar brings its first argument against the current proposed rule change amendment by citing a 2012 effort by the petitioner. Plainly, this is an irrelevant argument in that the instant petition addresses only one method of service, and is not a re-visitation of a prior petition. We ask that the Court disregard State Bar's argument referencing any prior efforts.

### **Existing Alternative Service Rules are Insufficient to Address Many Litigants' Needs.**

While the State Bar, with substantial resources, is in a position to assume that the rules are sufficient, Petitioner, based upon collective experience of its practicing professionals, disagrees.

State Bar notes, "...if a party shows specific facts that demonstrate that delivery to a gate guard is likely to provide notice to a person to be served under the circumstances, then such delivery *might be* permitted alternative service" (emphasis added). It is the "...*might be*..." which is most concerning to Petitioner, especially when the litigant is a party without an attorney.

When the majority of litigants in propria personam do not have access to resources such as McAuliffe, et al, (5) (quoted by the State Bar) and have not attended law school, reference to such a work is irrelevant for them. Process servers in Arizona are prohibited from dispensing legal advice and preparing legal documents. Courts are prohibited from dispensing legal advice. Free legal aid is overburdened, understaffed and inadequate for many inquiries. Consequently, most individual litigants are left to their own resources and knowledge to navigate the legal waters. Those who can afford an attorney may consult one, but in many circumstances, the affordability of private legal counsel is out of reach. Similarly, many attorneys do not have sufficient experience and knowledge about the rules and methods of service of legal process, and rely upon their process server for guidance.

Petitioner does not believe that all means of alternative *service* are necessarily time-consuming or expensive. It is the *process of obtaining the order* and having it issued which may be time-consuming or expensive. This is especially true if the court hits delays, or requires that the movant appear for personal testimony about their motion for alternate means of service. Petitioner knows from business practice that the actual service of legal process in the field may be expeditious, but any delay in obtaining an order from the courts may hamper service within the appropriate time limits. (6)

While rules provide for the prevailing party in civil litigation to recover costs, Petitioner believes its assertion that "the cost and time factors involved in securing such [a]lternate [m]eans are many times out of the means of the litigant" holds true.

Expenses, such as attorney fees, may have to be immediately expended, and the result may be a diminution of assets harmful to the well-being of the litigant pursuing their claim and damages, especially to those with meager means.

Where legal process requiring personal service (i.e.: actual notice of subpoenas, Injunctions Against Harassment, Orders of Protection and other legal process with contempt attached) is concerned, petitioner understands and makes no claim that a change in the subject rule would alleviate such a requirement.

### **Petition is Not a Demand for Entry or Trespass.**

Arizona trespass laws are structured that a denial of permission to enter is akin to a decline of license, privilege and authorization to be present on property. Petitioner agrees that decisions as to mandated entry should be left to the legislature. Petitioner does not seek a means to enter or remain unlawfully on premises, but simply to serve legal process in the most expeditious, reasonable means necessary so that the defendant or other interested person is given notice and costs are kept low. (7)

State Bar notes that in three of the four jurisdictions cited, those states' Legislatures have required gated communities to allow access to residents for



## Final Comments on APSA Proposed Rule Change Submitted to the AZ Supreme Court...*Continued*

service of legal documents. Phrases in Arizona trespass statutes such as "entering and remaining unlawfully", or "...without the express permission of the owner of the property"(8), or "...entering or remaining unlawfully on any real property after a reasonable request to leave by...the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry"(9) are used to distinguish between lawful entry and those there without permission. Petitioner seeks no demand for entry. Rather, Petitioner seeks to have a rule change consistent with best practices, respect for private property, and case law recognized by other courts. Petitioner does not seek a means to circumvent statute.

While a lower court ruled(10) that a process server is privileged to enter and remain on private property when serving legal process (11), Petitioner believes that most process servers are respectful when encountering posted "no trespassing" areas. That court further commented, "Process can be served by entry to any property except the actual dwelling house itself", citing 62 Am Jur 2d 58. This appears on its face to be consistent with ARCP Rule 4.1(a), wherein, "All process - including a summons - may be served anywhere within Arizona".

However, where some persons have established "service free zones" in accordance with their community association policies and procedures, Petitioner believes it is incumbent to make service upon a person whose "...relationship with the person to be served makes it more likely than not that they will deliver process to the named party."(12) That person is the gate guard, the appointed agent and person in charge of access to the abode. Petitioner seeks have the means to effect service of process upon making a good faith attempt at a gated community when other persons are denying physical access.

### **Petition is Supported by Case Law**

When State Bar responded that, "...in only one state – Nevada – was service on a gate guard permitted...", it failed to note that service on the gate guard is supported in the phrase used in its statute, "...access is not reasonably available..." and not mandated on the gate guard. Case law in which substituted service is allowed upon a gate guard is substantial as follows. (13)

In *Bein v. Brechtel-Jockim Group*, the court found that a "...gate guard...must be considered a competent member of the household and the person apparently in charge. Appellants authorized the guard to control access to them and their residence. We therefore assume the relationship between appellants and the guard ensures delivery of process." (*Bein v. Brechtel-Jockim Group* 6 Cal.App.4th 1387 (1992); 8 Cal. Rptr.2d 351)

The *Bein* court wrote (quoting *50 Court St. Assoc. v. Mendelson et al*)(14), that service on the gate guard is consistent in that it is "...made upon a person whose 'relationship with the person to be served makes it more likely than not that they will deliver process to the named party.' "

Further, "While the defendant may control the acceptance of mail by his [or her] household, he [or she] may not thereby negate the effectiveness of service otherwise effective under the law." (*Bossuk v. Steinberg* (1982) 88 A.D.2d 358 [453 N.Y.S.2d 687, 689-690].)

Similarly, in *Khourie*, the court wrote that a "defendant will not be permitted to defeat service by rendering physical service impossible."(15) Substitute service upon a gate guard who denies entry to a planned community is a means to overcome those who seek to circumvent and thwart jurisdiction of the courts.

The *Bein* court, noting that the guard gate constitutes part of the dwelling, quoted F.I. duPont: "In our analysis if a process server is not permitted to proceed to the actual [residence by the gate guard or some other employee] the outer bounds of the actual dwelling(16)



## Final Comments on APSA Proposed Rule Change Submitted to the AZ Supreme Court...*Continued*

place must be deemed to extend to the location at which the process server's progress is arrested." (F.I. duPont, Glore Forgan & Co. v. Chen, supra, 41 N.Y.2d 794, 797 [364 N.E.2d 1115, 1117].)

Accordingly, in Bein, the court found that because "...the gate guard denied access. Substitute service was appropriate."(17)

### **CONCLUSION**

Petitioner, for the foregoing reasons seeks to have an available means for service of process upon a gatekeeper (the gate guard), while respecting the ownership boundaries of the planned community. Many times gated communities deny access to process servers, sheriffs and constables to the detriment of litigants and the courts, unfairly and unnecessarily increasing the burden of expenses and costs to all parties for attempted service, resultant motions and other procedures to effect service on a party within their boundaries. Such denial of entry also causes delay and increases the workload of court staff and judges in managing documents, motions and hearings related to delayed service.

Petitioner believes that the proposed rule change is consistent with other rules, statutes and case law, in that the gate guard at a planned community is appointed as the person who allows or disallows access to the premises, and thus a person of suitable age and discretion at the extension of the abode.

### **Footnotes**

- (1) Bein v. Brechtel-Jockim Group 6 Cal.App.4th 1387 (1992); 8 Cal. Rptr.2d 351
- (2) Excerpted from Zirbes v. Stratton, 187 Cal. App. 3d 1407
- (3) Nevada Revised Statutes §14.090 Service of process at residence accessible only through gate
- (4) ARCP Rule 4.1(d)(3)
- (5) Nor is it believed that the majority of litigants would pay or have the capacity to pay the \$386 purchase price charged by the publisher for this one book. (ref. <http://legalsolutions.thomsonreuters.com/law-products/Practice-Materials/Arizona-Civil-Rules-Handbook-2017-ed-Vol-2B-Arizona-Practice-Series/p/104631898>)
- (6) Ref. ARCP Rule 4(i)
- (7) ARCP Rule 4.1.(c)(1)
- (8) ARS §13-1504(5)
- (9) ARS §13-1502(A)(1)
- (10) State v. Star LC 87-00135, Maricopa County Superior Court (06-11-1987, Gerber)
- (11) ARS §13-1501(2): "Enter or remain unlawfully" means an act of a person who enters or remains on premises when the person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the public and when the person does not enter any unauthorized areas of the premises.
- (12) 50 Court St. Assoc. v. Mendelson et al. (1991) 151 Misc.2d 87 [572 N.Y.S.2d 997, 999]
- (13) See Bein v. Brechtel-Jockim Group 6 Cal.App.4th 1387 (1992); 8 Cal. Rptr.2d 351; F.I. duPont, Glore Forgan & Co. v. Chen (1977) 41 N.Y.2d 794 [396 N.Y.S.2d 343, 364 N.E.2d 1115];
- (14) 50 Court St. Assoc. v. Mendelson et al. (1991) 151 Misc.2d 87 [572 N.Y.S.2d 997, 999]
- (15) Khourie, Crew & Jaeger v. Sabek, Inc. (1990) 220 Cal. App.3d 1009 [269 Cal. Rptr. 687]
- (16) Bein, footnote 7
- (17) Bein at 1392



**Training Corner:**  
**Different Levels of the Courts**



**Barry R. Goldman**  
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Authority of the courts within Arizona originate from the Arizona Constitution, which established the judicial branch. The courts within the state are "...vested in an integrated judicial department consisting of a supreme court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts."

Most process servers will most likely interface on matters filed in the superior or justice courts.

As the justice courts are not courts of record and their jurisdiction "...shall not encroach upon the jurisdiction of courts of record but may

be...concurrent..." on certain issues, the justice courts are *limited jurisdiction* courts. The jurisdiction of the superior court covers matters of exclusive jurisdiction, equity, title or possession of real property, taxes, assessments, probate, family law and special cases and proceedings not otherwise provided for, and such other jurisdiction as may be provided by law. The sole concurrent jurisdictional matter covered by both courts may be evictions.

Small claims, evictions and civil matters claiming damages under \$10,000 are filed in the justice courts; other, matters are filed in the superior courts. Protective orders may be issued by the

municipal, justice or superior courts.

In accordance with SB1050, amending ARS §12-3301, please note the stamp pictured below. All papers going out of our office will be stamped with a date received stamp and the service stamp. All servers are required to fill in the blanks indicated on the "SERVED" stamp at the time of service. You may wish to fill in your server ID and initials prior to getting the papers out in the field.

**SERVED**

Date: \_\_\_\_\_  
 Time: \_\_\_\_\_  
 PROCESS SERVER  
 Initials: \_\_\_\_\_  
 ID#: \_\_\_\_\_

**The APSA 2017 Conference Schedule**

<u>Saturday, September 16, 2017 Seminars:</u>		
7:30 a.m. – 8:00 a.m.	Registration-Applicable for all Registrants	10 Hrs CE Available
8:00 a.m. – 8:30 a.m.	Welcome to Conference	
8:30 a.m. – 11:45 a.m.	A.C.P.S. Full Course (1 <sup>st</sup> Half)	6 Hrs (Must attend both)
8:30 a.m. – 10:00 a.m.	Internet Fraud	1.5 Hrs
10:15 a.m. – 11:45 a.m.	Legislative Panel	1.5 Hrs
12:00 p.m. - 1:30 p.m.	Lunch, Annual Meeting & Award Ceremony	<i>Included w/ Registration</i>
1:45 p.m. – 4:45 p.m.	A.C.P.S. Full Course (2 <sup>nd</sup> Half)	
1:45 p.m. – 2:45 p.m.	Drone Use In Your Business w/ Demonstration	1 Hr
2:45 p.m. – 4:45 p.m.	Safety Awareness in your Surroundings	2 Hrs
<u>Sunday, September 17, 2017 Seminars:</u>		
7:30 a.m. – 8:15 a.m.	<b>Registration/Breakfast</b>	
8:30 a.m. – 10:30 a.m	Due Diligence	2 Hrs
8:30 a.m. – 10:30 a.m.	TBD	2 Hrs
10:45 a.m. – 1:00 p.m.	Optimizing Search Engines	2 Hrs



## **ANNUAL PUBLICATION OF APSA BYLAWS**

### **Article I – NAME**

This Association shall be known as the Arizona Process Servers Association, hereinafter referred to as APSA.

### **Article II – PURPOSE**

To promote and upgrade the process serving industry through the following objectives:

Section 1. Promoting any legislation and rule changes which will help the industry.

Section 2. Combating legislation which may harm the industry.

Section 3. Creating and maintaining a moral and ethical standard for the industry.

Section 4. Improving relations between the industry and the legal community – attorneys, judges, clerks and officers of the court – and the general public, statewide and nationally.

### **Article III – MEMBERSHIP**

Section 1. Membership in the Association shall be open to all persons who have been directly or indirectly affiliated with the profession of process serving.

Membership is approved on an individual basis and is not transferable.

Section 2. All applications for membership must be completed in full on a form approved and provided by the Association. Each application must be accompanied by one year's annual dues plus a non-

refundable application fee as prescribed by the Board of Directors.

Section 3. Classes of membership and requirements for membership shall be defined by the Board.

Section 4. Membership shall not be granted to any person who has been convicted of a felony unless such conviction was officially pardoned or the record of same has been expunged, or their civil rights restored. In addition, membership shall not be granted to any applicant who has had their license, permit or right to serve process revoked by any issuing authority unless said revocation has been pardoned or expunged, or had their civil rights restored.

Section 5. No person shall be denied membership because of their race, color, sex, or ethnic origin.

Section 6. Membership may be suspended or terminated by the Board for violations of these Bylaws, Policy Manual and/or the Code of Ethics.

Section 7. Termination of membership shall be effective thirty (30) days past the due date for annual dues.

### **Article IV – DUES**

Section 1. The annual dues shall be determined by majority vote of the Board of Directors and shall remain in effect until changed.

Section 2. The fiscal year covering the payment of dues shall be Jan 1 to Dec 31 each

year.

### **Article V – ELECTION of OFFICERS and DIRECTORS**

Section 1. The officers shall consist of a President, Vice-president, Secretary and Treasurer. Term of each officer shall be one (1) year from January 1st to December 31st of each year. The election of officers and directors shall be made at the annual conference, at which time the incoming officers and directors shall be sworn and take office on January 1st of the following year.

Section 2. No member shall be eligible to be an officer until they have been a member for two years.

Section 3. No member shall be eligible to be a director until they have been a member for one year.

Section 4. The immediate past president shall serve one year on the Board of Directors.

Section 5. Three (3) directors shall be elected unless the current president is re-elected, in which event four (4) directors shall be elected.

Section 6. Officers shall be elected by majority vote of members present at the annual conference. Directors shall be elected in a single ballot with each member casting one vote for each seat to be filled. Nominees receiving the highest plurality of votes will fill all seats in order of total votes received.



# **APSA**

## ANNUAL PUBLICATION OF APSA BYLAWS

(Continued)

Majority vote shall not be required. No proxies shall be allowed.

Section 7. No member shall hold the office of President for more than three (3) consecutive terms.

Section 8. A vacancy in any office or directorship shall be filled by the Board of Directors.

### Article VI – DUTIES of OFFICERS

Section 1. The administration and management of the association shall be controlled by the Board of Directors consisting of the officers and directors. They shall have the authority to do any and all things necessary for the administration of APSA. Decisions shall be reached by majority vote of the Board of Directors members present. No proxy voting shall be allowed.

Section 2. The President shall preside at all meetings, shall make all appointments that are deemed necessary to run the association, and shall submit at the annual conference an annual report describing programs and Board actions.

Section 3. The Vice-president shall perform the duties of the office of president whenever the President is unable to do so.

Section 4. The Secretary shall cause to be recorded the minutes of all Board meetings

and the annual conference.

Section 5. The Treasurer shall be responsible for carrying out all fiscal policies and procedures adopted by the Board; shall be responsible for preparation of financial statements and presentation of these to the Board at each meeting; and shall submit a written annual report to the annual conference.

Section 6. A petition, signed by signatures representing fifteen (15) percent of the total votes eligible to vote at that time in the Association requesting the holding of an election for the purpose of recalling a member of the Board or any officer, may be filed at any time with the Secretary. If recall is for the Secretary, the petition shall be filed with the President. After verification of signatures, the President shall certify the petition and immediately direct a ballot be mailed to each member. The ballot shall read as follows:

shall –name of director — be recalled?

yes\_\_\_\_\_no\_\_\_\_\_

A “yes” vote shall be counted as for the recall and a “no” vote shall be counted as against the recall. Only members in good standing shall be entitled to vote at such elections. Such a recall shall require two-thirds affirmative vote of executed ballots received by the Secretary or President within fifteen (15) days. If the recall is successful the Board may fill the vacancy at its next meeting.

Section 7. The Board shall

adopt procedures for arbitration and grievance. All members are bound by the arbitration and grievance procedures as adopted by the Board.

### Article VII – MEETINGS

Section 1. An annual conference shall be held. Officers’ reports, committee reports and any new or old business as the membership sees fit will be discussed at the meeting.

Section 2. Board meetings shall be called by the President. A board meeting must be called within thirty (30) days if requested by three (3) members of the Board, or if petitioned for by a majority of the members. The membership may be notified of all regular Board meetings.

Section 3. Meetings of the Board may be held by mail or telecommunications.

Section 4. Members shall be admitted to all meetings and conferences except executive sessions. Non-members may be admitted to all meetings and conferences unless disapproved by a majority of the members present. Only meetings involving the personal affairs of any individual may be held in executive session.

Section 5. The latest edition of Robert’s Rules of Order shall govern the conduct of all meetings.



# APSA

## ANNUAL PUBLICATION OF APSA BYLAWS

(Continued)

### Article VIII – BYLAW AMENDMENTS

Section 1. Proposed bylaw amendments must be submitted to the Secretary sixty (60) days prior to the date of the annual conference and published to the membership not less than thirty (30) days prior to the annual conference.

Section 2. The bylaws may be amended or revised by an affirmative two-thirds vote of the membership present at the annual conference.

Section 3. Bylaw amendments or revisions may be acted upon only at the time published in the conference agenda unless a majority of the membership present at that time agree to a later time for further action on them.

Section 4. The bylaws may also be amended or revised by unanimous vote of the Board of Directors.

## ANNUAL PUBLICATION OF APSA CODE OF ETHICS

### Code of Ethics

Each member agrees to abide by the revisions and principles set forth herein when dealing with clients, general public, associate members and associates in business as follows:

#### 1. Duties to Clients, General Public, Legal Entities

All work shall be performed in a professional and ethical manner. Nothing shall be done which would impugn the position or name of this Association or its members or the process serving industry. Everything possible shall be done to protect the rights, interest and confidentiality of clients, entities being served and the legal profession as a whole.

#### 2. Licenses, Permits, Bonds, Other Requirements

Each member agrees to comply with and keep current during the tenure of his membership all necessary business licenses, bonds, permits and any other

requirements mandated by the city, county, and/or state in which the member conducts business.

#### 3. Exchange Work

Each member agrees to handle work sent to him by another member in a professional and ethical manner.

#### 4. Proofs of Service, Not Found Returns, Other Reports

All documents shall be returned timely upon completing the work order. Each member shall comply with all instructions given by the forwarding agency. If a proof of service is provided by the sending party, it is mandatory that the serving party use that proof and fill it out in the manner requested.

#### 5. Financial Responsibility

Each member agrees to promptly pay for services rendered by another member unless other specific arrangements have been made. A member, who is not an owner of the firm for which they work, is responsible for the ethical conduct of the firm for which they work.

Rev. 11/13

*Look What's Coming to a  
Conference Near You!*

**APSA & AALPI are again throwing their hats in the ring to come up with a slam dunk program on September 16 & 17, 2017 at the Hilton in Mesa.**

**Look for more information in your email and on the APSA website!**



**APSA**

**Analysis & Commentary:****Effect of SB1050**

Colleagues:

There has been some question about the new law that will go into effect amending ARS §12-3301. I have been asked to write a letter in this regard. Please remember that the opinions expressed herein, as in the APSA Newsletter, are those of the writer, only, and do not reflect the opinions of the Board of Directors unless expressly stated.

Firstly. SB1050 is a very poorly written bill. Even I, a cynic as to government efficiency, am left somewhat aghast. It is evident by the passage of this bill that none of our elected representatives -- the Senate (which unanimously passed it), nor the House (which passed it less non-voting member) paid attention to details.

I will be kind in saying the Senate legislative analysis was "misleading". I will go so far as to say that the crux of the analysis, which stated, "In 2015, the private process server requirements were transferred from Title 11 to Title 12. In that modification, an internal reference was misapplied. This legislation corrects the internal reference by specifying private process servers are subject to the same requirements regarding process, orders and notice as sheriffs and constables (Laws 2015, Chapter 138)" was so misleading as to cause our legislators to believe that this particular piece of legislation was meaningful. It was not. What is clear from my perspective is that none of the legislators read the bill, analyzed it or understood it.

So, with that being said, the upshot of this piece of legislation is that process servers will still be process servers, but each paper received must be marked with the date and time received ("...Endorse upon all process and notices the year, month, day, hour and minute of reception..."), and clients submitting papers for service must be issued a receipt showing the process information on payment of fees. (Which is indicated to my clients on the invoice, as well as the proof of service or other declaration.)

The server must serve "...process and notices in the manner prescribed by law and certify under the sheriff's (process server's) hand upon the process or notices the manner and time of service...". It looks like the legislature wants us to indicate who we are serving (i.e.: marking the summons) and write the date and time of the service on the paper served.

Process servers must also render declarations of non-service, as well ("...if the sheriff (server) fails to make service, the reasons for failure, and return (papers) without delay").

Where evidentiary issues as to the veracity of service are concerned, the court is to accept the facts stated on the declaration as proof unless rebutted ("The return of the sheriff (server) is prima facie evidence of the facts stated in the return").

As to serving process regular on its face, again, while the process server does not execute process, by the legislature including reference to this statute, it appears the process server may be "...justified in the execution (service) of, and (...continued on back page)



# Big Savings

for APSA members

Call us today!  
**(877) 737-8366**

As a benefit to APSA members,  
save on ServeNow & ServeManager products.

For more details, visit:  
[serve-now.com/resources/member-benefits-for-associations](http://serve-now.com/resources/member-benefits-for-associations)



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ServeNow.com get the 2nd month free!



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New ServeManager subscribers get a \$50  
subscription credit, and ServeManager will donate  
\$50 to the APSA association.



## \$100 Off

Your own mobile-friendly website.

Receive \$100 off the set-up fee for a custom web  
site, designed specifically for process servers.

Believe in yourself. Strive for success.  
Be The Success.  
Sign up for your CE hours today.

### ADVERTISING RATES

All Payments for advertising must be paid in  
advance.

Please submit camera ready copy.

**Business Card**..... \$50.00

Size: 2.0 x 3.5 (Red border example)

**1/4 Page**.....\$100.00

4.75 x 3.75 (Blue border example)

**1/2 Page**.....\$250.00

Size: 4.75 h x 7.5 w, or 9.5 h x 3.75 w

**Full Page**.....\$375.00

**Advertorials/Banners**.....\$25/col. in. 3  
in. min.

**Guest Article Submissions** — The policy on  
guest article submission is as follows:

1. Publication of the article will be at the sole  
discretion of the Editor.
2. The article may be edited for content, length,  
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.

### Tell Us What You Think...

We've received comments from  
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.  
Thank you, dear reader! From the  
bottom of our  
hearts.



**ARIZONA PROCESS SERVERS ASSOCIATION**

P.O. Box 2233, Phoenix, AZ 85002

(602) 476-1737

[www.arizonaprocessservers.org](http://www.arizonaprocessservers.org)



Membership Application/Renewal for year: \_\_\_\_\_

Arizona Certified Process Server (Attach copy of your Arizona Process Server ID)

Associate/Out of state Process Server

Member ID Card Requested?  Y  N (Digital or passport photo required)

*Please list your information exactly as you want it to appear in the directory:*

NEW  RENEWAL

Member since: \_\_\_\_\_

**Annual Dues: \$50**

NAME:		
FIRM:		
ADDRESS:		
CITY, STATE, ZIP:		
TELEPHONE(S):	OFFICE:	FAX:
EMAIL ADDRESS(ES)	PERSONAL:	BUSINESS:
WEBSITE ADDRESS:		
COUNTIES/AREAS SERVICED:		
LIST IN THE ROSTER UNDER CITY OF:		
ADDITIONAL CITIES TO BE LISTED (\$15 EACH)		

<u>Services you provide (YES or NO):</u>	<u>YES</u>	<u>NO</u>
Process Server (Arizona or other state):		
ACPS Certified?		
Legal Messenger Service		
Skip Tracing		
Record Searches		
Full Investigative Services		
<i>If an Arizona Private Investigator, complete the following:</i>		
License #:	Expiration:	

**MEMBER I.D. CARDS:**

*The Member Identification Card is a member benefit issued by APSA and is not intended to replace your Process Server identification card as required by statute. Your APSA Member Identification Card should be displayed at all APSA functions. By applying for or renewing membership, the applicant understands and agrees that the Member Identification Card is not intended to be, nor shall be used in violation of any statute or regulation.*

Annual Dues: \$50.00
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.*

<b>Court Closures</b>	<b>APSA Events Calendar</b>
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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

**Phoenix Area 10-Hour CE Classes**

September, 2017  
**Tucson Area 10-Hour CE Classes**  
 December, 2017  
**APSA Board Meetings**  
**See website for details.**

**Rule changes with the Supreme Court per Rule 28:**

File by January 10th of each year. Comments are due no later than May 22nd this year. Rules adopted September; effective January 1st of the following year.

See SCORE's website at [greaterphoenix.score.org](http://greaterphoenix.score.org)



<b>PRIVATE PROCESS SERVER TESTING BY COUNTY (UPDATED FALL, 2015)</b>			
<b>County</b>	<b>Contact person</b>	<b>Telephone</b>	<b>Testing dates/times/detail</b>
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			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.



*Analysis & Commentary: SB1050...continued*

**APSA Newsletter  
Quarterly Publishing  
Schedule**

1st Quarter: Jan. 1-March 31  
2nd Quarter: April 1-June 30  
3rd Quarter: July 1-Sept. 30  
4th Quarter: Oct. 1-Dec. 31

shall execute (serve) all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued".

As I said in the previous edition of the APSA Newsletter, "Rather than enunciate the responsibility of the process server (which, coincidentally may be found in ACJA §7-204 and other rules of court), the legislature has referenced entire sections of statute applicable to sheriffs, only." I stand by this statement. Process servers in Arizona serve legal process. We give notice to persons; we do not take persons or property away. Our job is significantly different from sheriffs and constables in that and more respects.

Perhaps if the board feels it is a justified cause, efforts might be made to help educate our legislators on what we do so this poorly written bill may be repealed and replaced with something that makes sense. But the membership must drive that effort.

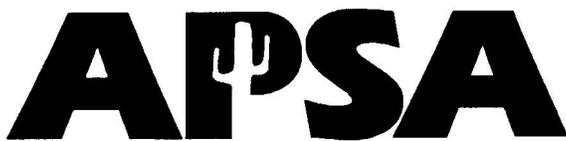
**The Last Word: E-Filing for Process Servers**

**Self-represented litigants are exempt from any mandatory e-filing requirements. If a document is conventionally filed on a case designated for mandatory e-filing, then the document must indicate "EFILE CASE" just below the case number on the first page.**

**Other Case Participants: A person who participates in a court case who is neither a party in the case nor an attorney representing a party in the case. An example might be a probation officer, an intervenor or a process server.**

**Process Servers may file proofs of service through TurboCourt in Superior Court cases held in Maricopa and Pima counties for a small fee per transaction.**

Arizona Process Servers Association  
PO Box 2233  
Phoenix, AZ 85002  
(602) 476-1737  
azserverassoc@gmail.com



*Serving Arizona Process Servers Since 1973*

[www.arizonaprocessservers.org](http://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!**