

APSA
ARIZONA PROCESS SERVERS ASSOCIATION

Board Meeting Minutes
April 16, 2016
Called to Order at 9:21 AM

THOSE IN ATTENDANCE:

Board Members: Patty Chlebanowski, Ron Ezell, Luis Figueroa, John Carpenter and Eric Sotelo.

PRESIDENT'S REPORT:

Ron Ezell welcomed the board members. He has other reports to discuss in their corrective section. He did report that we made a mistake when Barry Goldman had scheduled the Bullhead City class, it happened to be on Easter weekend. Patty Chlebanowski reported at this time there was no future replacement class and our next scheduled class will be in Flagstaff in June.

VICE PRESIDENT'S REPORT:

Barry Goldman sent in several written reports because he was unable to attend the board meeting. He sent in a Legislative Report and also a report on proposed changes to Arizona Civil Rules of Civil Procedure. He also provided us with a copy of the By Laws for easy review.

We approved Barry Goldman writing a brief to consider a gate guard substitute service to be approved prior to sending to Supreme Court.

SECRETARY'S REPORT:

Minutes presented to the board members for approval of January 23, 2016. John Carpenter noticed two mistakes to be corrected. In the first paragraph "Those in Attendance Via Video Conference" Patty needs to remove VIA VIDEO CONFERENCE. Second correction under Continuing Education, he would like the correction of "John Carpenter also volunteered to help Larry Ratcliff with the Flagstaff class if needed." A motion to approve the minutes as corrected by John Carpenter and seconded by Eric Sotelo. Motion approved.

Patty Chlebanowski confirmed that the Annual Corporation papers were corrected from the P.O. Box address to her office and address and were refilled on March 2, 2016. She does still need to update her as the statutory agent and add Barry Goldman as Vice President. Patty also reported that the current membership data base is completed and corrected for 2016. We are copying the 2015 & 2016 APSA files from her computer on to the new lap top for future use.

Ron Ezell asked about our taxes for 2015. I provided the confirmation letter from our CPA, Stephanie Irwin verifying the 990 was filed. He will contact her and update the current information, so she has the correct contact information.

TREASURER'S REPORT:

Luis Figueroa was present. He provided written Profit & Loss reports for the balancing of each of the three accounts, Checking, Legislative & Savings account. He has completed the 2015 entries into Quick Books and has also caught up the 2016 into Quick Books. The checking account has \$12,381. and Legislative has \$15,148., and Savings has \$11,840. There is still \$822., in the Pay Pal account that will be transferred to checking shortly. A motion to approve the Treasurer's Report made by John Carpenter and seconded by Patty Chlebanowski. Motion passed.

COMMITTEE REPORTS:

Membership Report:

Patty Chlebanowski reported that there is approximately 110 members for 2016. We have completed a current mailing list for our mass emails to our members for future use.

Website Report:

Patty Chlebanowski reported that the website information has been completed. We have updated all class schedules, put our board meetings listing on the website and the location for our Annual Conference. There is still one form on the website we need to ask Trent from Serve Now to help us remove.

Grievance Report:

John Carpenter reported there has been no Grievances filed or to be handled. Eric Sotelo is going to talk to Marquerite at Superior Court and try and get a number of Complaints in the Maricopa County area and what the complaints that are filed at Superior Court are involving for reporting to our membership.

Newsletter Report:

Barry Goldman printed out the By Laws that are currently posted on the website. A brief review of the By Laws, Patty only noticed that in Article V the word "First" Vice President needs to be removed..

Continuing Education:

John Carpenter did contact the Phoenix Public Library for their room to be rented in December. John had asked Patty to look at it also. Patty reported she was not able to get to the library and asked John Carpenter to physically look at their space and make sure it would fit our criteria so we can book that date for December in Phoenix. He will follow up next week with the library.

We reviewed some possible classes for the Annual Conference, ACPS 6 hours, Spanish for the Process Server by Judith Costello can either be a 4 hour class or a 2 hour class. We need to let her know, so she can plan accordingly, Ron Ezell saw a class taught at the Paralegals Association in Non Verbal Communication. They were going to confirm with the Instructor to verify if she could do a 2 or 4 hour class for the Conference. We also discussed if we would be able to do another K9 Unit presentation. We would need to verify with the hotel if they would allow it and then contact the Tucson K9 unit, since the conference is in their area. The hotel will be giving us room rates at \$129.00 for Friday and Saturday nights. We need a 40 room guarantee in order not to be charged for the class rooms during the conference.

Legislative Report:

Barry Goldman provided us with a written report. (See attached).

OLD BUSINESS:

The only old business to be discussed was the updating of our website. We will still be tabling this until our next meeting.

NEW BUSINESS:

Patty reported she had received a reminder of the Insurance Premium increasing but as of this week's mail, she had not received the itemized statement as yet.

A motion was made to adjourn the meeting by John Carpenter and seconded by Patty Chlebanowski.

Meeting was adjourned at 10:44 AM.

Submitted by: Patty Chlebanowski, Secretary

**LEGISLATIVE REPORT TO THE ARIZONA PROCESS SERVERS
ASSOCIATION**

The following bills pending before our state's legislature have been reviewed and analyzed for their impact on process servers. I have entered my personal comments in *italics* as appropriate.

As of this date, the legislative session has effectively ended. The following summarizes the bills and their status:

SB1088 (Senator Kavanagh), was sponsored by the AACPS as a trespass bill that would allow process servers to enter a gated community to serve papers. sponsored by the AACPS is a trespass bill that originally as proposed would allow process servers to enter a gated community to serve papers. The bill was subsequently killed on the Senate floor on 2016-02-19.

SB1061 (Senator Kavanagh), sponsored by the AACPS would have added process servers to the list of persons authorized to obtain MVD information and makes state law more in line with federal law. The bill was assigned to three committees and never made it out of the third committee (Rules).

HB2339 (Rep. Darin Mitchell) was a very long bill, but the bottom line is that it would have eliminated constables from the statutes, entirely. The bill died in committee without action.

HB2288 (Rep. Bowers) put forth the requirements that constables serve all criminal summonses and subpoenas presented to them; the bill also clarified disciplinary procedures. The bill passed both houses and there was no further action as of this date.

AMENDED AS OF 2016-04-27:

The bill was sent back to the House with amendments. The bill has numerous changes from the original provisions, summarized by the synopsis from the House (as of April 13th, not posted to the legislature's website until after the board meeting of 2016-04-16), following:

1. Modifies membership of the Constable Ethics Standards and Training Board, except that all current members may complete their terms, by:
 - a) removing one constable from a county of less than one million persons and one constable from a county with one million or more persons;
 - b) replacing the Governor appointed sheriff with the Director of the Arizona Peace Officer Standards and Training Board (AZPOST) or his designee; and
 - c) allowing a constables association to appoint the constable members of the board, instead of the Arizona Association of Counties.
 2. Allows the board to discipline a constable for inappropriate behavior by:
 - a) urging him to resign, instead of retire as currently prescribed;
 - b) placing him on probation for up to 30 days and extending that probation in 30-day increments up to 180 days if the constable is making progress; or
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c) if the constable has been placed on probation before, recommending to the Board of Supervisors that the constable be suspended without pay for a period of time up to the remainder of his term.

3. Allows the board to compel by subpoena the attendance of constables as witnesses in relation to any investigation or hearing.

4. Allows the Board of Supervisors to accept or modify a recommendation to suspend a constable without pay for a period of time up to the remainder of his term and makes the determination final except that a constable may seek judicial review of a final order for suspension.

5. Requires the board to refer an investigation to the County Attorney and submit its findings if determined that a constable has committed a criminal act and to adjudicate a complaint using allowable remedies for disciplining a constable if the County Attorney determines that a crime was not committed or does not file a criminal complaint.

6. Removes language allowing the board to submit a report to the County Attorney if the board is not satisfied with the allowable remedies for disciplining a constable.

7. Specifies that the section outlining the board's disciplinary process does not preclude a prosecuting agency from filing charges against a constable.

8. Requires the Board of Supervisors to withhold a constable's pay while he is suspended without pay.

Presiding Constable

9. Requires constables in counties with four or more constables to select a Presiding and Associate Presiding Constable by majority vote.

10. Requires the Presiding Constable to:

- a) serve as liaison between the constables, the County Manager and other departments;
- b) assign deputy constables;
- c) assign and manage clerical staff for constables; and
- d) reassign court orders to other constables when a constable is absent.

11. Allows the Associate Presiding Constable to perform the duties and exercise the powers of the Presiding Constable when the Presiding Constable is absent or unable to act.

12. Allows constables to remove and select a new Presiding or Associate Presiding Constable to complete the current term by majority vote at any time.

13. Establishes two-year terms for Presiding and Associate Presiding Constables.

14. Stipulates that the county is not required to pay any costs to support the Presiding or Associate Presiding Constable in the performance of their duties.

General

15. Specifies that constables must maintain a *standardized daily activity log* and that the original must be filed by the 10th day of each month with the clerk of the Board of Supervisors and removes the requirement that work logs be filed with the clerk of the Justice Court.

16. Requires the Board of Supervisors to adopt a *standardized daily activity log* that is approved by the Director of AZPOST and determine the manner in which the logs are to be filed.

17. Clarifies that constables must serve and return all processes, warrants and notices issued to them by a Justice of the Peace or another competent authority within their

county.

18. Adds to the definition of *constable*, a deputy constable who is appointed, employed or authorized by the County Board of Supervisors.

19. Makes technical and conforming changes.

20. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Modifies the membership of the Constable Ethics Standards and Training Board and the manner in which the ethics board may discipline a constable and what authority the Board of Supervisors has in relation to disciplinary action taken by the ethics board.

2. Adds all provisions relating to Presiding and Associate Presiding Constables.

3. Adds provisions relating to the use of *standardized daily activity logs*.

Amendments Adopt by Committee of the Whole

1. Allows a statewide constables association to appoint constable members to the Constables Ethics Standards and Training Board, instead of the Arizona Association of Counties.

2. Allows the ethics board to recommend that a constable be suspended without pay for a period of time that is less than the remainder of the constable's term.

3. Requires, instead of allows, constables to select a Presiding Constable and removes procedures for the County Board of Supervisors to appoint one if a vacancy exists.

4. Stipulates that the county is not required to pay any costs to support the Presiding or Associate Presiding Constable in the performance of their duties.

HB2287 (Rep. Bowers) required 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 bill passed the house and died in committee in the Senate.

AMENDED: This bill was superseded by HB2288, above.

HB2464 (Brophy McGee) specified 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. The bill died in the house before it could go to the Senate.

HB2258 (Brophy McGee: Pratt) would have amended the mobile home act (Title 33, Chapter 14) and did not appear to have any impact on process servers. The bill died in the House.

SB1018 (Senator Kavanagh) was sponsored by the AACPS and sought to change the language relating to commanding aid in the service of process (ARS 13-3802). The bill was amended from its original form to read:

13-3802. Right to command aid for execution of process; exception; punishment for resisting process

A. When a sheriff or other public officer authorized to execute process finds, or has reason to believe that resistance will be made to execution of the process, such the officer may command as many inhabitants of the county as the officer deems proper to assist in overcoming such the resistance, except that a person may refuse to assist if the commanded assistance would expose that person to physical injury.

B. The officer shall certify to the court from which the process issued the names of those persons resisting, and they may be proceeded against for contempt of court.

It passed both houses in this form.

In voicing my objections to SB1088, I sent a letter (attached) to the members of the other association. The feedback (including from one of their former board members) was essentially, "I didn't know anything about this". I suggested to that former board member that we bury the hatchet and attempt to work together on matters of legislation, else it looks that process servers are a disparate group of persons without direction. I have heard nothing back from the other association or its members.

My recommendation to the board is that we pursue a gate guard service rule change – essentially having the ability to serve a gate guard who refuses access to a gated community. As homeowners in an HOA give their consent to the HOA to operate and manage their community, the HOA similarly hires the gate guards as the agents for the homeowners to control access to their property. Otherwise, we will be stuck without the ability to make a sub-serve and our clients must seek alternate means of service, increasing their litigation time and costs.

2016-02-19

Arizona Association of Certified Process Servers
PO Box 73003
Phoenix, AZ 85050

RE: Senate Bill 1088

An open letter to the AACP Servers

Good morning. Some of you are familiar with me, and to those I hope I am welcome in your world. To others, let me introduce myself. I am an Arizona Certified Process Server, with over 28 years under my belt both in Arizona and California. I am also a qualified continuing education instructor.

I was once part of the founding of your organization. However, as I observed the direction it was going, decided to put my personal and professional efforts elsewhere. I have no regrets. I have since watched from afar at the legislative efforts your organization has put forth, and must commend you on the whole. However, currently there is one bill if I am not mistaken may have been sponsored by your organization, introduced by Sen. Kavanagh. I am referring to Senate Bill 1088, which I believe if passed will do more damage than good to our profession.

Originally, this bill had decent language and was of good intent. However, as the bill advanced through committee, it was amended from an anti-trespass measure to allow us entry to serve papers, to a restrictive compromise that sets the server up for failure. The failure I refer to are the statutory violations inherent in the language of the bill which, if passed, may put more servers on the hook for complaints through the Superior Court, lessening our overall credibility, effectiveness and general reputation.

The bill (as excerpted from the previously published Senate Fact Sheet) was to accomplish the following:

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

My concerns about the original language of the bill addressed the lack of inclusion of the constables and sheriffs, as they also have issues with guard gated communities, as well as the “registered mail” requirement (the correct language should actually be “certified mail, return receipt requested”). The mailing requirement is in and of itself quite cumbersome, and appears to be an administrative headache as well as a personal security issue in copying and mailing one’s identification card.

In its most recent incarnation, (after passage by the Senate Public Safety, Military and Technology Committee) the “registered mail” language, including sending a copy of the server’s ID card to the HOA remained and constables and sheriffs were not included in being granted access. However, there is more.

In reviewing the new version of the bill as passed by committee, it essentially eviscerates any effectiveness for servers and opens up a Pandora's Box of complaints which can flood the courts from HOA members:

“Prohibits a process server from going to a residence that is not listed on the service of process.”

-- With this language, servers are prohibited from contacting a neighbor to verify if the defendant or other person on the legal process lives next door, across the street, etc. or even if the premises are occupied. The language further implies a prohibition to contact the apartment building manager to verify tenancy.

“Allows associations or their agents to limit a process server’s access to common areas to 60 minutes.”

-- Process servers must engage in stakeouts of varying duration. As anyone who has had to wait out an evasive defendant knows, a one hour time limit from entry to exit is no way to run a stakeout.

“Requires process servers to attempt to use a bell or nonverbal notification system that is outside a gated or secured apartment community, if available, to confirm that a person is in the residence.”

-- If the defendant doesn't want to answer, or uses a video system at the mailbox or doorbell to screen visitors, the server does not have to be admitted and we cannot contact any other tenant or homeowner for information or access. If the doorbell, etc. doesn't work, we're stuck at the front gate/door without the ability to legally enter. If we enter without the occupant's consent, whether or not he/she is served, it opens up a complaint option through the Superior Court against the server's certification.

“Prohibits a process server from gaining access to a gated or secured apartment community if there is no response to a bell or nonverbal notification system.”

-- Cuts us off at the front gate – this opens up the server to having complaints filed against him or her for merely accessing the property. It also specifically targets process servers for trespass, even if invited into the property by another owner or occupant.

In my opinion, this bill needs to be stopped, period. The issues that could affect servers by passage of this bill could do our profession more harm than good, especially if passed, to servers who are not members of either process server association and ignorant of the legal mandates.

I would therefore urge you to review the language in the amended bill:

http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/52leg/2r/bills/sb1088s.htm&Session_ID=115

Please contact the legislative sponsor of the bill and urge the withdrawal of the bill in its current form. Again, I do not speak on behalf of any organization, but as an Arizona Certified Process Server concerned with the future of our profession. I believe we can all benefit from removing unforeseen consequences.

As always, please get in contact with me if you have any questions or comments.

Regards,

BARRY R. GOLDMAN

Arizona Certified Process Server

Arizona Certified Legal Document Preparer