

*Arizona Certified Process Server Study Guide
Published as a public service by the Arizona Process Servers Association*

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98 **Introduction to the Arizona Certified Process Server Study Guide published by APSA**

99 This Study Guide is published by the Arizona Process Servers Association as a public service to all
100 persons who have an interest in becoming a process server. This Study Guide was adapted from that
101 published by the Arizona Supreme Court. Rather than be a rote copy of information, our Study Guide
102 contains additional information (including case law and definitions of terms process servers must be
103 familiar with), as well as certain commentary provided by APSA staff to clarify and help the applicant
104 pass the examination required. To the left of each paragraph, you will find consecutive line numbers,
105 starting from the Table of Contents. This is to help you refer for any notes you may wish to take in
106 perusing through your Study Guide.

107 The full (over 300 pages) APSA Certified Process Server Training Manual is available through the APSA
108 website at: www.arizonaprocessservers.org. Our continuing education classes are available to all.

109 We hope you will find this Study Guide useful in helping you to pass the examination. As always, should
110 you have any questions or comments, we'd like to hear them. Our e-mail address is:
111 azserverassoc@gmail.com, or visit our website at: www.arizonaprocessservers.org.

112 **Becoming an Arizona Certified Process Server**

113 The Study Guide for process server applicants posted on the Judicial Branch website (www.azcourts.gov)
114 is posted, following. While the published Study Guide is suggested (highly suggested) reading, APSA
115 recommends that you educate yourself beyond the bare minimums.

116 **Study Guide for Private Process Server Certification Examination as originally published**

117 "It is strongly recommended you spend time with an attorney or at the law library to acquaint yourself
118 with state laws (Arizona Revised Statutes A.R.S.), Arizona Rules of Court, Rules of Civil Procedure
119 (RcP) and local (individual county) court rules. Information contained in this packet should be
120 considered a guide and is not intended to be a complete listing of all laws and rules a private process
121 server would need to know. Selected information, for example, the Administrative Order and Arizona
122 Code of Judicial Administration are posted on the Arizona Judicial Branch Website at
123 <http://www.azcourts.gov/orders/AdministrativeOrdersIndex.aspx> and the Arizona Rules of Court at
124 <http://www.azcourts.gov/rules/Home.aspx> "

125 **READ:**

- 126 • Administrative Order 2002-110
127 • Arizona Code of Judicial Administration §7-204: Private Process Server (*Appendix A*)
128 • The local court rules for each county where you intend to or may be employed to serve papers.
129 (*Not included*)
130 • A.R.S. §10-501 - Known Place of Business and Statutory Agent
131 • A.R.S. §10-504 - Service upon Corporation
132 • A.R.S. §11-447 - Service of Process Regular on its Face
133 • A.R.S. §11-448 - Duty to Show Process
134 • A.R.S. §12-303 - Witness Fees and Mileage
135 • Arizona Rules of Civil Procedure (RcP), Rule 45(d)(2), states that for service of a subpoena,
136 when the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of
137 the state or any of its officers or agencies, fees and mileage need not be tendered.

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- 138 • A.R.S. §12-1175(c) - Complaint and Answer; Service and Return
- 139 • A.R.S. §12-2294.01. Release of medical records or payment records to third parties pursuant to
- 140 subpoena
- 141 • A.R.S. §12-3301 - Fees Chargeable in Civil Actions by Private Process Servers, Authority of
- 142 Private Process Servers; Background Investigations
- 143 • A.R.S. §13-1501, §13-1502, §13-1503, and §13-1504 - Criminal Trespass
- 144 • A.R.S. §13-2810 - Interfering with Judicial Proceedings; Classification
- 145 • A.R.S. §13-2814 - Stimulating Legal Process; Classification
- 146 • A.R.S. §13-3802 - Right to Command Aid for Execution of Process; Punishment for Resisting
- 147 Process
- 148 • A.R.S. §13-4072 - Service of Subpoena
- 149 • A.R.S. §13-4093 - Witness from Another State Summoned to Testify in this State
- 150 • A.R.S. §13-4094 - Exemption from Arrest and Service of Process
- 151 • A.R.S. §33-1377 - Service of Special Detainer Actions
- 152 • A.R.S. §39-121 - Inspection of Public Records [useful in locating defendants for service]
- 153 • RCP, Rule 3 - Commencement of Action
- 154 • RCP, Rule 4 - Process
- 155 • RCP, Rule 4.1 - Service of Process Within Arizona
- 156 • RCP, Rule 5 - Service and Filing of Pleadings and Other Papers [entire rule, but especially 5(c)2]
- 157 • RCP, Rule 7 - Pleadings Allowed; Form of Motions and Other Documents; 7.3 Orders to Show[®]
- 158 Cause
- 159 • RCP, Rule 10 - Form of Pleading [sets out size of paper, margins and other technicalities for
- 160 preparing pleadings]
- 161 • RCP, Rule 45 – Subpoena
- 162

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

NAPPS
THE ONLY NAPPS CHARTERED STATE
ORGANIZATION IN ARIZONA

163 Case Law (*see Appendix*):

- 164 • *Tonelson v. Haines*, 2 Ariz.App. 127, 406 P.2d 845, Ariz. App. (1965)
- 165 • *Hatmaker v. Hatmaker*, 337 Ill.App. 175, 85 N.E. 2d 345 (1949)
- 166 • *In re Ball*, 2 Cal.App.2d 578, 38 P.2d 411 (1934)
- 167 • *Thorndyke v. Jenkins*, 61 Cal.App.2d 119, 142 P.2d 348 (1943)
- 168 • *Trujillo v. Trujillo*, 71 Cal.App.2d 257, 162 P.2d 640 (1945)
- 169 • *Lane v. Elco*, 134 Ariz. 361, 656 P.2d 650 (1982)
- 170 • *Endischiee v. Endischiee*, 141 Ariz. 77, 685 P.2d 142 (1984)
- 171 • *Enriquez v. State*, 115 Ariz. 342, 565 P.2d 522 (1997)
- 172 • *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976)
- 173 • *Marsh v. Hawkins*, 7 Ariz.App. 226, 437 P.2d 978, 31 A.L.R.3d 1383 (1968)

174

175 Administrative Order 2002-110

FILED
NOV 27 2002
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION §7-204:)	No. 2002- <u>110</u>
PRIVATE PROCESS SERVER)	(Replacing Administrative Order
)	No. 94-20)
)	

The above captioned provision having come before the Arizona Judicial Council on October 17, 2002, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, Arizona Revised Statutes §11-445(H), and Rule 4, Arizona Rules of Civil Procedure,

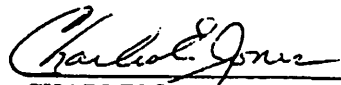
IT IS ORDERED that the above captioned provision, attached hereto, including Appendix A, the Code of Conduct, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 94-20, and the Policies and Procedures, Statewide Private Process Servers, Registration Process, as adopted by David K. Byers, Administrative Director of the Courts on March 22, 1994.

IT IS FURTHER ORDERED that this section of the Arizona Code of Judicial Administration is effective on January 1, 2003.

IT IS FURTHER ORDERED that, pursuant to subsection F(7) of this code section, all certified process servers shall begin to accrue the required ten hours of continuing education hours every twelve months from and after January 1, 2003. From and after January 1, 2004, certified process servers who submit an application for renewal of certification shall submit with the application, documentation of completion of continuing education hours in compliance with subsection F(7).

Dated this 27th day of November, 2002.

FOR THE COURT:



CHARLES E. JONES
Chief Justice

176 **Arizona Code of Judicial Administration, §7-204: Private Process Server**

177 *ACJA §7-204*

178 **A. Definitions.**

179 The following definitions apply:

180 “Accredited” means placement on a list of nationally recognized authorizing agencies the United States
181 Secretary of Education determines to be reliable authorities as to the quality of education or training
182 provided by the institutions of higher education, and the higher education programs they sanction.

183 “Active” means a valid and existing certificate to practice as a certified process server.

184 “Advisory letter” means written communication notifying a certificate holder that conduct, while not
185 warranting discipline, may result in future disciplinary action if not modified or eliminated. an advisory
186 letter is not a disciplinary action.

187 “Applicant” means a person who has submitted a completed application and all required application and
188 fingerprint processing fees.

189 “Censure” means a written formal discipline sanction, finding a certificate holder has violated one or
190 more provisions of the statutes, court rules, or this code section.

191 “Certificate holder” means any entity or individual granted and currently holding valid certification ®
192 pursuant to statutes, court rules, and this code section.

193 “Certification” means a certificate issued by the presiding judge once an applicant meets all the
194 requirements of a private process server, pursuant to statutes, court rules, and this code section.

195 “Clerk” means the elected clerk of the Arizona Superior Court in each county.

196 “Complainant” means a person or organization that initially files a complaint regarding the conduct of a
197 private process server. The complainant is not a party to the proceeding.

198 “Community college” means an accredited educational institution providing training in the arts, sciences,
199 and humanities beyond the twelfth grade of the public or private high school course of study or vocational
200 education, including terminal courses of a technical and vocational nature and basic education courses.

201 “Consent agreement” means a written statement resolving a certification or complaint matter, voluntarily
202 signed by the applicant or certificate holder.

203 “Director” means the administrative director of the courts, or the director’s designee. “Division director”
204 means the director of the certification and licensing division of the Administrative office of the Courts or
205 the division director’s designee.

206 “Division staff” means all members of the certification and licensing division of the Administrative office
207 of the Courts, including the division director.

208 “Disciplinary action” means either informal or formal proceedings against a certificate holder after a
209 finding of probable cause that the certificate holder has committed acts of misconduct or violations of
210 statutes, court rules, or this code section.

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- 211 “Dismissed with prejudice” means final disposition barring future action under this section on the same
212 issue, claim, or cause.
- 213 “Dismissed without prejudice” means final disposition with the right to bring future action under this
214 section on the same issue, claim, or cause.
- 215 “Expired” means the certificate has lapsed on a specified date.
- 216 “Filing” or “filed” means a document has been received and date-stamped by the clerk.
- 217 “Formal statement of charges” means the document setting forth specific acts of misconduct by a certified
218 private process server of statutes, court rules, or this code section, including any amendments approved by
219 the court, upon a determination of probable cause.
- 220 “Formal disciplinary proceedings” means the process initiated upon a determination of probable cause the
221 alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certified
222 process server that, if true, would warrant a censure, consent agreement, or other negotiated settlement,
223 restrictions, probation, additional training, a cease and desist order, suspension, or revocation of
224 certification pursuant to subsection (H).
- 225 “Government employee process server” means an individual who, in the normal scope of the individual’s
226 responsibilities as a government employee, serves process for the governmental agency that employs the
227 individual.
- 228 “Inactive” means a certified private process server who voluntarily decides not to practice in the specified
229 profession or occupation for a specified period of time and who is not the subject of any pending
230 disciplinary action.
- 231 “Informal disciplinary proceedings” means the process initiated upon a determination of probable cause
232 the alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certificate
233 holder that, if true, would warrant a letter of concern, pursuant to subsection (H).
- 234 “Injury” means harm to a client, customer, the public, judicial or legal system, or the profession or
235 occupation resulting from a certificate holder’s misconduct.
- 236 “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct, but
237 without the conscious objective or purpose to accomplish a particular result.
- 238 “Letter of concern” means a written informal discipline sanction finding a certificate holder has violated
239 one or more provisions of the statutes, court rules, or this code section.
- 240 “Minimum competencies” means having the required skills for an adequate level of performance.
- 241 “Presiding judge” means the presiding judge of the superior court in the county or the presiding judge’s
242 designee.
- 243 “Probable cause” means reasonable grounds for belief in the existence of facts concerning alleged acts of
244 misconduct or violations by a certificate holder that warrant informal or formal discipline against the
245 certificate holder.

246 “Probation” means a written formal discipline sanction finding a certificate holder has violated one or
247 more provisions of the statutes, court rules, or this code section, but allowing the certificate holder to
248 practice as a process server under specified conditions for a set period of time.

249 “Private process server” means a person, certified pursuant to the requirements in A.R.S. § 11-445(I), this
250 code section, and any other applicable statute or rule. As defined by A.R.S. § 11-445(I), a private process
251 server:

252 [M]ay serve all process, writs, orders, pleadings or papers required or permitted by law to be served
253 before, during or independently of a court action, including all such as are required or permitted to be
254 served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take
255 into the officer’s custody persons or property, or as may otherwise be limited by rule established by the
256 supreme court. A private process server is an Officer of the Court.

257 “Professional regulatory entity” means a government or private unit associated with and having authority
258 over a group of qualified and practiced individuals in a profession or occupation.

259 “Revoked” or “revocation” means a written formal discipline sanction, finding a certificate holder has
260 violated one or more provisions of the statutes, court rules, or this code section and the certificate to
261 practice as a process server is rescinded.

262 Sanction” means an explicit and official action resulting from an informal or formal disciplinary action
263 finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules,[®]
264 this code section, or court orders relevant to the certificate holder’s profession or occupation.

265 “Section” means the referenced provision of Arizona Code of Judicial Administration § 7-204.

266 “Suspended” or “suspension” means a written formal discipline sanction finding a certificate holder has
267 violated one or more provisions of the statutes, court rules, or this code section and the private process
268 server’s certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of
269 the certificate for a set period of time as the result of a final order of a disciplinary action.

270 “Valid” means a certificate issued by the presiding judge that is currently in effect and not expired,
271 surrendered, suspended, or revoked.

272 “Voluntary surrender” means a certificate holder decides to discontinue practice as a process server and
273 returns the certificate to the presiding judge for review and acceptance pursuant to subsection (E).

274 **B. Applicability.**

275 This code section applies to the certification of process servers pursuant to A.R.S. § 11-445(I)¹ and the
276 Arizona Rules of Civil Procedure. This code section applies to the application, certification, and
277 discipline of all private process servers in the State of Arizona. This code section governs private process
278 server certification separately and without reference to Arizona Code of Judicial Administration § 7-201:
279 General Provisions.

¹ Editor’s note: The ACJA needs to be updated to reflect ARS §11-445(I) is now ARS §12-3301.

280 **C. Purpose.**

281 For eligibility to act as a private process server in Arizona, a person shall obtain certification and comply
282 with the requirements of A.R.S. § 11-445(I), the Arizona Rules of Civil Procedure, administrative orders,
283 and this code section as adopted by the Arizona Supreme Court to govern private process servers.
284 Certified private process servers may serve all process, writs, orders, pleadings, or papers required or
285 permitted by law for service before, during, or independent of a court action, including all documents
286 required or permitted for service by a sheriff or constable, except writs or orders requiring the service
287 officer to sell, deliver, or take into custody persons or property, or as otherwise limited by this code
288 section. Pursuant to Arizona Rules of Civil Procedure 4(e), a certified “private process server” is “entitled
289 to serve in such capacity for any court of the state anywhere within the State.”

290 **D. Administration.**

291 1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 11- 445(I) and Rule
292 4(e), Arizona Rules of Civil Procedure, the supreme court is responsible for administration of the private
293 process server program and shall adopt rules for administration of the program.

294 2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art. 6 § 7 shall:
295 a. Approve or disapprove matters of administration of the Private Process Server Program that involve the
296 expenditure of program funds;
297 b. Appoint and supervise all division staff;
298 c. Adopt policies and procedures, including forms, for administration of the Private Process Server
299 Program; and
300 d. Ensure implementation of the applicable laws, court rules, and this code section.

301 3. Role and Responsibilities of Division Staff

302 a. The director shall designate the division director and other division staff to assist in the administration
303 of the Private Process Server Program in compliance with the law, Arizona Rules of Court, Arizona
304 Supreme Court administrative orders, and this code section. The division director may delegate any duties
305 and responsibilities to division staff.

306 b. Division staff shall:

- 307 (1) Perform tasks of administration of the Private Process Server Program to assist in the decentralized
308 administration of the program in each county in Arizona;
309 (2) Provide updates to the clerk;
310 (3) Make recommendations regarding matters pertaining to certification, complaints, and investigations;
311 and all other matters relevant to certified private process servers;
312 (4) Maintain a list of certified process servers and post this list on the judicial department website. The
313 judicial department website shall include each certificate holder’s name, certificate number, county of
314 certification, and any disciplinary action imposed against a certified process server. At a minimum,
315 division staff shall update this list each quarter;
316 (5) Refer any complaint received regarding the actions of a certified process server to the clerk of the
317 county where the alleged violation took place, pursuant to subsection H.

318 c. Division staff may:

- 319 (1) Charge for the costs of providing copies of the certification list or any other public records of the
320 program; and

- 321 (2) Refer complaints to another state agency or entity with jurisdiction, if the supreme court or superior
322 court does not have jurisdiction over the complaint.
- 323 4. Role and responsibilities of the clerks of the superior court.
- 324 A. The clerk shall:
- 325 (1) distribute application materials, using the application forms provided by the director, and accept
326 applications and fee payments for initial and renewal of certifications;
- 327 (2) administer and grade the examination for initial certification;
- 328 (3) process the application materials, including fee payments and fingerprints, and forward the application
329 materials to the presiding judge;
- 330 (4) issue initial and renewal certificates to qualified individuals, upon approval by the presiding judge;
- 331 (5) process photographs and issue an identification card to individuals granted certification by the
332 presiding judge;
- 333 (6) maintain records pertaining to applicants for certification and certified process servers, including:
- 334 (a) a current list or register of all certified process servers, in a format provided by the director, and as
335 required pursuant to rule 4(e), Arizona rules of civil procedure;
- 336 (b) certificates issued or denied;
- 337 (c) contact information on certified process servers, including address and phone number and any changes
338 to the contact information;
- 339 (d) renewal certificates granted or denied;
- 340 (e) complaints, investigations and final decisions regarding complaints;
- 341 (7) provide the following information to division staff:
- 342 (a) a report, at least each quarter, on all additions, deletions, and revisions to the certification list,
343 including certificates issued, certificates denied, and changes of address;
- 344 (b) a report, at least each quarter, listing all complaints, investigations pending completion, informal and
345 formal disciplinary proceedings, and final decisions regarding discipline. If a final decision regarding
346 discipline of a certified private process server results in suspension or revocation of a certificate, the clerk
347 shall provide the information to division staff within five days of the final order.
- 348 (c) an annual report naming the staff assigned responsibility for administering the private process server
349 program in the county along with a current address, phone number, and e-mail address of each staff
350 member.
- 351 B. The clerk may:
- 352 (1) assign any duties and responsibilities to staff; and
- 353 (2) Coordinate with clerks in other counties for the provisions of services pursuant to this code section,
354 including processing of identification cards and administration of the examination for initial certification.
- 355 5. Role and Responsibilities of the Presiding Judges of the Superior Court. The presiding judge:
- 356 a. Shall:
- 357 (1) Review all application materials, including criminal history information, and make all final decisions
358 regarding the granting or denial of applications for initial and renewal of certification in the county of
359 residence of the applicant;
- 360 (2) Review and make all final decisions regarding any other certification issues including granting or
361 denying reexamination for an applicant who has previously failed the initial certification examination;
362 and

- 363 (3) Receive complaints pursuant to subsection H and investigate, initiate, and adjudicate disciplinary
364 proceedings.
- 365 b. May vest in another judicial officer the authority to exercise or discharge any power, duty, or function
366 originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall
367 exercise these powers while acting in the presiding judge's name and by delegated authority.

368 **E. Initial Certification.**

369 1. Exemptions from Certification. The following persons are exempt from the certification requirements:

- 370 a. any person specially appointed by the court pursuant to Rule 4(d), Arizona Rules of Civil Procedure;
371 b. any party to an action or that party's attorney serving process pursuant to Rule 4(d), Arizona Rules of
372 Civil Procedure, and
373 c. any person serving a subpoena pursuant to Rule 45, Arizona Rules of Civil Procedure.

374 2. Application for Initial Certification. an applicant for initial certification shall apply for initial
375 certification on approved forms and meet the eligibility requirements and fulfill all the requirements of
376 subsection E(2)(a).

377 a. Eligibility for Initial Certification. The applicant shall:

- 378 (1) Be at least twenty-one years of age;
379 (2) Be a citizen or legal resident of the United States; and
380 (3) Possess a high school diploma or a general equivalency diploma evidencing the passing of the general
381 education development test;

382 b. Government Employee Process Servers.

383 (1) an individual who serves process entirely within the scope of the individual's responsibility as a
384 government employee shall apply for certification and demonstrate the ability to pass the examination and
385 meet certification criteria. As provided in A.R.S. § 11-445(I), a government employee shall submit a
386 completed fingerprint card and pay the applicable fees pursuant to subsection E(2)(c)(3). Government
387 employee process servers are not subject to any fees other than the fingerprint fee.

388 (2) A government employee process server may carry any employer-issued identification that accurately
389 identifies the employee as a government employee process server in addition to the identification card
390 issued by the clerk pursuant to subsection E(4)(a).

391 (3) Government employee process servers who serve process in any capacity outside the scope of
392 employment as a government employee process server shall obtain certification pursuant to this code
393 section and shall follow all policies that apply to private process servers when serving process outside the
394 scope of employment as a government employee process server.

395 c. Requirements for Initial Certification. an applicant shall:

396 (1) Provide a completed application for certification in an approved format obtained from and filed with
397 the clerk in the applicant's county of residence. Beginning January 1, 2013, a non Arizona resident may
398 apply for certification in any county. to comply with A.R.S. § 41-1080, the applicant shall submit
399 documentation of U.S. citizenship or alien status with the application.

400 (2) Pass an examination for initial certification, as prescribed in subsection E(3);

401 (3) Pursuant to A.R.S. § 11-445(I):

402 [F]urnish a full set of fingerprints to enable a criminal background investigation to be conducted to
403 determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted
404 with the fee prescribed in section § 41-1750 to the department of public safety. The applicant shall bear

405 the cost of obtaining the applicant's criminal history record information. The cost shall not exceed the
406 actual cost of obtaining the applicant's criminal history record information. Applicant criminal history
407 records checks shall be conducted pursuant to section § 41-1750 and Public Law 92-544.

408 (a) The applicant is responsible for providing the clerk with readable fingerprints. The applicant shall pay
409 all costs or fees attributable to any subsequent re-fingerprinting and resubmission of fingerprints due to
410 unreadable prints. A law-enforcement agency shall perform the fingerprinting;

411 (b) The clerk shall submit completed applicant fingerprints and the fees to the Arizona Department of
412 Public Safety (ADPS). Pursuant to A.R.S. § 11-445(I), "The department of public safety is authorized to
413 exchange the submitted applicant fingerprint card information with the federal bureau of investigation for
414 a federal criminal records check";

415 (c) If definitive fingerprints are not obtainable, the clerk shall require the
416 applicant to make a written statement, under oath, that the applicant has no prior arrests, charges,
417 indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the
418 applicant is unable to provide this statement, the clerk shall refuse to accept the application;

419 (4) Provide additional background information, upon the request of the presiding judge, clerk, or
420 designee;

421 (5) Pay all fees authorized by law to the clerk pursuant to A.R.S. § 12-284; and

422 (6) Provide photographs of a number and in the format prescribed in policies adopted by the director.

423 3. Examination.

424 a. Initial Certification State Examination. Each applicant for certification shall take and pass the initial
425 certification state examination provided by the director. The clerk shall administer the initial certification
426 state examination to each applicant.

427 b. The clerk shall communicate the applicant's passage or failure of the examination in writing to the
428 applicant not more than ten days from the date the applicant took the examination:

429 (1) The applicant will not receive the examination score.

430 (2) If the applicant fails the examination, the clerk shall inform the applicant that a reexamination is
431 required to meet all qualifications for initial certification and shall provide the applicant with information
432 on the procedures for reexamination.

433 (3) an applicant may, on written request, review the applicant's answer sheets and grades under the terms
434 and conditions prescribed by the director.

435 (4) The applicant shall not copy materials provided for the applicant's review.

436 (5) The applicant shall conduct the review during business hours in the presence of the clerk.

437 c. Reexamination. If the applicant fails the initial certification state examination on the first attempt, the
438 applicant may retake the examination one time under the following conditions:

439 (1) The applicant is not otherwise disqualified from retaking the examination;

440 (2) The applicant takes the reexamination within 90 days of the date of filing the application;

441 (3) The applicant is provided and shall take a different examination than the one the applicant took for the
442 initial reexamination;

443 (4) If the applicant fails the reexamination, the applicant shall wait 90 days from the date of
444 reexamination to submit a written request for an additional reexamination under the following conditions:

445 (a) The applicant may submit a request in writing addressed to the presiding judge requesting

446 consideration for an opportunity to reapply and sit for the initial certification state examination for a third
447 time;

- 448 (b) Proof of attendance and satisfactory completion for a course of study specific to the private process
449 server profession shall accompany the written request to assist in demonstrating the circumstances and
450 reasons for believing the applicant now possesses the knowledge of the minimum competencies as a
451 private process server to pass the examination; and
- 452 (c) If the presiding judge grants approval for the applicant to take the examination for a third time, the
453 entire application process begins again, including the payment of fees. A presiding judge's decision to
454 deny the applicant's request to sit for a third examination is final and there is no right to a hearing. If the
455 applicant's request to sit for a third examination is denied, the applicant may not file a new application
456 until twelve months after the presiding judge's decision to deny.
- 457 d. The director shall provide multiple versions of the initial certification state examination to the clerk and
458 the clerk may not use any other examinations. Applicants and the public may not obtain copies of the
459 examination or the answer sheet.
- 460 e. The director shall establish the passing score on the initial certification state examination.
- 461 f. an applicant is disqualified from taking any future examination if the presiding judge, based upon
462 information forwarded to the presiding judge by the clerk, determines the applicant engaged in fraud,
463 dishonesty, or corruption while taking the examination or any subsequent examination.

464 **4. Decision Granting Certification.**

- 465 a. If the presiding judge is satisfied that an applicant meets the qualifications for certification, the clerk,
466 upon order of the judge, shall promptly issue an identification card to an applicant qualified for
467 certification in accordance with this code section. Pursuant to Rule 4(e), Arizona Rules of Civil
468 Procedure:
469 [U]pon approval of the court or presiding judge thereof, in the County where the applicant is filed, be
470 registered with the clerk as a certified private process server until such certification is withdrawn by the
471 court. The clerk shall maintain a register for this purpose. Such certified private process server shall be
472 entitled to serve in such capacity for any court of the state anywhere within the State.
- 473 b. Certification. Upon receipt of the state and national criminal history records checks, pursuant to A.R.S.
474 §§ 41-1750 and -1758, and applicable federal laws, the presiding judge shall consider the information and
475 grant or deny certification. Before granting certification, the presiding judge may require additional
476 background information reasonably necessary to determine if the applicant meets the qualifications
477 specified in this code section. For good cause shown, the presiding judge may grant certification to an
478 applicant pending receipt of the national criminal history record checks, if there is a delay in the
479 processing of the criminal history checks that is beyond the control of the applicant or the court.
- 480 c. The presiding judge may transfer the certification of an individual to the county of residence or another
481 county if appropriate.
- 482 d. Certificate Status. All certificates are valid until expired, surrendered, suspended, or revoked.

483 **5. Denial of Initial Certification. The presiding judge:**

- 484 a. Shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility
485 requirements at the time of the application described in subsection (E) or has not submitted a complete
486 application with all deficiencies corrected, with the applicable documents and fees.
- 487 b. The presiding judge may refuse to certify an applicant if one or more of the following is found:

- 488 (1) Material misrepresentation, omission, fraud, dishonesty, or corruption on the part of the applicant in
489 the application for, or attempt to obtain, certification, including the examination;
- 490 (2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud
491 on the part of the applicant in business or financial matters;
- 492 (3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
- 493 (4) A record of conviction by final judgment of a misdemeanor or felony, if the crime has a reasonable
494 relationship to the practice of the private process server profession or occupation, regardless of whether
495 civil rights have been restored. Pursuant to A.R.S. § 13-904(E), if the person's civil rights have been
496 restored and there is no reasonable relationship to the practice of the private process server profession or
497 occupation, the presiding judge shall not deny certification solely based on the record of conviction;
- 498 (5) A record of denial, revocation, suspension, or any disciplinary action of any professional or
499 occupational license or certificate of the applicant by any federal, state, or local government or regulatory
500 entity thereof. The judge shall consider whether the underlying conduct in any other disciplinary action is
501 relevant to certification as a private process server;
- 502 (6) A record of a termination, suspension, probation, or any other disciplinary action regarding past
503 employment if the underlying conduct is relevant to certification as a private process server;
- 504 (7) The applicant has been found civilly liable by final judgment in an action involving fraud,
505 misrepresentation, material omission, misappropriation, theft, or conversion;
- 506 (8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
- 507 (9) The applicant has violated any Arizona law, Arizona Rules of Court, this code section, or court orders
508 governing private process servers;
- 509 (10) The applicant has violated any decision, order, or rule issued by a professional regulatory entity;
- 510 (11) The applicant has violated any order of a court, judicial officer, or administrative tribunal;
- 511 (12) The applicant has made a false or misleading statement or verification in support of an application
512 for a certificate filed by another person;
- 513 (13) The applicant has made a false or misleading oral or written statement to judicial officers, judicial
514 staff, or division staff;
- 515 (14) The applicant failed to disclose information on the certification application subsequently revealed
516 through the background check; or
- 517 (15) The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff
518 when the information is requested and is in the applicant's control or is reasonably available to the
519 applicant and pertains to certification or investigative inquiries.

520 c. The presiding judge shall consider any or all of the following criteria when reviewing the application
521 for certification of an applicant with a misdemeanor or felony conviction, pursuant to subsection
522 (E)(5)(b)(4):

- 523 (1) The applicant's age at the time of the conviction;
- 524 (2) The applicant's experience and general level of sophistication at the time of the pertinent conduct and
525 conviction;
- 526 (3) The degree of violence, injury, or property damage, and the cumulative effect of the conduct;
- 527 (4) The applicant's level of disregard of ethical or professional obligations;
- 528 (5) The reliability of the information regarding the conduct;
- 529 (6) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to
530 others;
- 531 (7) The recency of the conviction;

- 532 (8) any evidence of rehabilitation or positive social contributions since the conviction occurred as offered
533 by the applicant;
534 (9) The relationship of the conviction to the purpose of certification;
535 (10) The relationship of the conviction to the applicant's field of certification;
536 (11) The applicant's candor during the application process;
537 (12) The significance of any omissions or misrepresentation during the application process, and
538 (13) The applicant's overall qualifications for certification separate from the conviction.

539 d. The presiding judge shall promptly notify all applicants denied certification of the reasons for the
540 denial, and the applicant's right to a hearing.

541 e. an applicant is entitled to a hearing, pursuant to this subsection, on the decision to deny certification
542 upon written request received within fifteen days after receipt of notice of the denial. The applicant is the
543 moving party at the hearing and has the burden of proof.

544 f. Computation of Time. For the purposes of this section, the computation of days pursuant to Rule 6(a),
545 Rules of Civil Procedure is calculated as follows:

546 [T]he day of the act, event or default from which the designated period of time begins to run shall not be
547 included. When the period of time specified or allowed, exclusive of any additional time allowed under
548 subdivision (e) of this rule, is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall
549 not be included in the computation. When the period of time is 11 days or more, intermediate Saturdays,
550 Sundays and legal holidays shall be included in the computation. The last day of the period so computed
551 shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until
552 the end of the next day which is not a Saturday, a Sunday or a legal holiday.

553 **F. Role and Responsibilities of Certificate Holders.**

554 1. Code of Conduct. Each certified process server shall adhere to the code of conduct in subsection (J).

555 2. Conflict of Interest. Pursuant to Rule 4(d), Arizona Rules of Civil Procedure, a private process server
556 "shall not be a party, an attorney, or the employee of an attorney in the action whose process is being
557 served."

558 3. Identification Cards.

559 a. The identification card is the only official process server identification the court shall issue pursuant to
560 subsection E(4). A certified process server shall carry the identification card at all times when serving
561 process and promptly display it when requested by an interested party. This is the only form of
562 identification a certified process server may use except government employee process servers who may
563 use a government issued identification card in conjunction with the private process server identification
564 card.

565 b. Certified private process servers shall report lost or stolen identification cards to the issuing clerk
566 within three days of discovery of the loss. Upon filing an affidavit of loss with the clerk and payment of
567 any applicable fee, the clerk shall issue a replacement identification card.

568 c. Upon suspension or revocation of certification, the certificate holder shall surrender the issued
569 identification card to the clerk within three days.

570 4. Change of Name or Address. A certificate holder shall notify the clerk in the county of certification of
571 any change in the legal name, business address, mailing address, home address, email address, or phone
572 number of the certificate holder within 30 days of any change.

573 5. Assumed Name. A certificate holder shall not transact business in this state under an assumed name or
574 under any designation, name, or style, corporate or otherwise, other than the legal name of the individual.

575 6. Fees. The applicant shall pay all required fees for certification, examination, and renewal of
576 certification. The clerk shall collect in advance these fees, which are non-refundable. Pursuant to A.R.S. §
577 11-445(I), "A private process server may charge such fees for services as may be agreed upon between
578 the process server and the party engaging the process server."

579 7. Continuing Education. Certified private process servers shall complete ten hours of continuing
580 education each twelve months and shall submit documentation of completion of this continuing education
581 in a format approved by the director with the application for renewal of certification. Certified private
582 process servers shall complete continuing education classes that are relevant to the work of a process
583 server, pursuant to subsection L.

584 8. Employment Status of Private Process Servers.

585 a. Certified private process servers are not employees of the court, are not appointed by the court, and
586 may not, in any way, represent themselves as such.

587 b. Private process servers may not, in any way, represent themselves as "peace officers" unless they are
588 peace officers pursuant to Arizona or federal law. Approval as a certified private process server does not,
589 in itself, confer peace officer status on the holder.

590 **G. Renewal of Certification.**

591 1. Expiration Date. All certificates expire at midnight, three years from date of issuance. All certifications
592 shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended, or
593 revoked.

594 a. When a private process server has filed a timely and complete application for renewal of certification,
595 the existing certification does not expire until the administrative process for review of the renewal
596 application has been completed.

597 b. The presiding judge may request an informal interview with the applicant for renewal to establish if
598 additional information or an explanation of the information provided by the applicant is needed to
599 determine if the applicant continues to meet the qualifications for certification.

600 c. If the presiding judge denies the renewal application, the existing certification does not expire until the
601 last day for seeking a hearing on the decision to deny, pursuant to subsection H, or, if a hearing is
602 requested, until the final decision is made by the presiding judge pursuant to subsection H.

603 d. The certificate of a certificate holder who does not supply a complete and timely renewal application
604 and payment of the renewal fee shall expire as of the expiration date of the certificate. If the certificate
605 holder files an application within twelve months after the expiration of the certificate, the presiding judge
606 shall consider the length of time that has lapsed since the expiration of the certificate, the private process
607 server's stated reasons for failing to renew the certificate timely, and the process server's compliance with
608 all other provisions of this code section, including the completion of continuing education credits. The
609 presiding judge may require the private process server to submit additional information or complete
610 additional continuing education before renewing the certificate, or any other actions the judge deems

611 appropriate. The presiding judge shall not allow a certified private process server to retake the initial
612 certification examination as an alternative to completing continuing education credits.
613 e. The expiration provisions described in subsection G(1)(a) do not affect the authority of the presiding
614 judge to take disciplinary action, including suspension or revocation of the certification of a certificate
615 holder, if a complaint or investigation is pending prior to the expiration date.

616 2. Voluntary Surrender. A certificate holder in good standing may voluntarily surrender a certificate;
617 however, this surrender is not valid until accepted by the presiding judge. The presiding judge may
618 require additional information reasonably necessary to determine if the certificate holder has violated any
619 provision of the statutes, court rules, and this code section. The surrender does not prevent the
620 commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder
621 occurring prior to the surrender.

622 a. If the presiding judge accepts the voluntary surrender, the clerk shall designate the certificate of the
623 certificate holder as a “surrendered certificate holder in good standing.” The presiding judge shall notify
624 the certificate holder in writing within ten days after the acceptance of the surrender. The clerk shall
625 update the list of certified private process servers to reflect this change in status and shall notify division
626 staff.

627 b. The presiding judge shall not accept the surrender if there is a complaint pending against the certificate
628 holder. However, this does not preclude the presiding judge for entering into a consent agreement to
629 resolve the pending complaint, by terms including the voluntary surrender of the certificate, pursuant to
630 subsection H.

631 c. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either accept
632 the surrender or institute disciplinary proceedings pursuant to subsection H. If the presiding judge
633 subsequently imposes a sanction pursuant to subsection H upon the certificate of the surrendered
634 certificate holder, the clerk shall change the status of the certificate holder from “surrendered certificate
635 holder in good standing” to that of a person so disciplined.

636 3. Application. A certified private process server whose certificate is in good standing may renew by
637 filing a completed certification application for renewal, paying all fees, and submitting all required
638 documents, including documentation of completion of the required hours of continuing education
639 pursuant to subsection L. The applicant shall file the application with the clerk in the county of residence
640 of the applicant. After January 1, 2013, a non Arizona resident who has been granted certification as a
641 private process server, shall apply for renewal of certification in the county where the initial application
642 for certification was filed and certification was granted.

643 4. Additional Information. Before granting renewal of certification, the presiding judge may require
644 additional information reasonably necessary to determine if the applicant continues to meet the
645 qualifications specified in this code section. This may include fingerprinting, reexamination, background
646 information, and updated photographs.

647 5. Decision Regarding Renewal.

648 a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification,
649 as specified in subsection E(2), the presiding judge shall renew the certification of the applicant. The
650 presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in
651 subsection E. The presiding judge shall promptly notify all applicants granted renewal of certification.

652 b. The presiding judge shall promptly notify an applicant denied renewal of certification, of the reasons
653 for the denial and the applicant's right to a hearing.

654 c. an applicant is entitled to a hearing, pursuant to subsection H, on the decision to deny renewal of
655 certification upon written request received within fifteen days after receipt of notice of the denial. The
656 applicant is the moving party at the hearing and has the burden of proof. 17

657 6. Reinstatement after Suspension, Revocation, or Expiration of Certification.

658 a. A private process server whose certificate has been suspended or revoked by a final order of the
659 presiding judge, or whose certificate has expired, or been voluntarily surrendered, may apply for
660 reinstatement under the following conditions:

661 (1) an applicant for reinstatement shall file a written application for reinstatement with the clerk,
662 accompanied by the appropriate fees and the following documents:

663 (a) The reinstatement form and a copy of the final order of suspension or revocation, or date of voluntary
664 surrender or expiration of certification;

665 (b) A detailed description of the applicant's occupation and sources of income or earnings derived during
666 the period between the filing of the final order by the presiding judge or date of expiration or surrender of
667 the certificate; and the date of application for reinstatement;

668 (c) A statement of every civil or criminal action and a copy of the action, where the applicant was either
669 plaintiff or defendant, since the submission of the last renewal application or, if no renewal application
670 has been submitted, then since the initial application was submitted;

671 (d) A list of all criminal or civil final judgments since the submission of the last renewal application or, if
672 no renewal application has been submitted, then since the initial application was submitted;

673 (e) A list of all residences and business addresses since the submission of the last renewal application or,
674 if no renewal application has been submitted, then since the initial application for certification and the
675 date the clerk receives the application for reinstatement;

676 (f) A concise statement of facts showing how the applicant for reinstatement has maintained the minimum
677 competencies and knowledge during the period of time from the date of the final order of suspension until
678 the date the clerk receives the reinstatement application;

679 (g) A concise statement of facts showing how the applicant for recertification has maintained the
680 minimum competencies and knowledge during the time from the date of the order revoking the
681 applicant's certificate until the date the clerk receives the application for certification;

682 (h) A concise statement of facts showing how the applicant for recertification has maintained the
683 minimum competencies and knowledge during the time from the date of the expiration or voluntary
684 surrender of the certificate until the applicant reapplies;

685 (i) A statement of facts supporting reinstatement and recertification as a certified process server, and

686 (j) A statement of facts demonstrating the applicant's rehabilitation.

687 (2) The presiding judge may require additional information demonstrating that the applicant meets the
688 minimum competencies of the profession. The presiding judge may require the applicant sit for and pass
689 the initial certification examination in order to process the application or determine if the applicant meets
690 the minimum competencies of the profession. The applicant has the burden of proof to demonstrate, by
691 clear and convincing evidence, the applicant's rehabilitation, compliance with all discipline orders and
692 rules, and that the applicant meets the minimum competencies of the profession. an applicant denied
693 reinstatement by the presiding judge has the right to a hearing pursuant to subsection (H), except if the

694 applicant fails to provide the information within the requested time frame. Failure to provide the
695 information may result in automatic denial of reinstatement without the right to a hearing.

696 (3) Upon submission of all reinstatement requirements of subsection (G), the applicant shall meet all
697 requirements of initial certification pursuant to subsection (E). The applicant for reinstatement after a
698 suspension or revocation shall also pay the fee for reinstatement.

699 b. The presiding judge shall not issue any certification under this section to any person whose certification
700 has been suspended until:

701 (1) The person seeking reinstatement of a suspended certificate has demonstrated all the requirements of
702 the suspension order have been met, and

703 (2) The person qualifies in accordance with the applicable provisions of this section.

704 c. The presiding judge shall not issue any certification under this section to any person whose certification
705 has been revoked until:

706 (1) One year has passed from the date of the presiding judge's final order of revocation;

707 (2) The person seeking certification provides proof of satisfaction of any and all requirements in the order
708 of revocation, and

709 (3) The person again qualifies in accordance with the initial certification provisions of subsection (E).

710 **H. Complaints, Investigation, Hearings and Disciplinary Action.**

711 **1. Complaints. Filing and General Provisions.**

712 a. Filing of Complaint. All judicial officers, clerks of court, court employees, and certificate holders shall,
713 and any person may, notify the presiding judge if it appears that a certificate holder has violated
714 applicable statutes, court rules, or this code section. The complainant shall make the complaint in writing
715 with sufficient specificity to permit further investigation. The complaint shall include the name, telephone
716 number, and address of the complainant. The complainant shall file the complaint with the clerk in the
717 county where the alleged violation by the certified process server occurred. The clerk shall forward the
718 complaint to the presiding judge.

719 b. Complaints Initiated by the Presiding Judge. In accordance with subsection H, the presiding judge may
720 direct court staff to investigate allegations of misconduct or violations of statutes, court rules, or this code
721 section that may result in a complaint, if such investigation protects and serves the best interest of the
722 public. Investigation may be ordered even if the complainant does not wish to have his or her identity
723 disclosed to the certificate holder.

724 c. anonymous Complaints. The presiding judge shall not accept anonymous complaints.

725 d. Authority after Expiration. If a complaint or investigation is pending prior to the expiration date of a
726 certificate, the provisions of subsection G regarding the expiration of the certificate do not affect the
727 authority of the presiding judge to:

728 (1) Initiate a complaint;

729 (2) Investigate a complaint; or

730 (3) Take disciplinary action regarding the certificate of a certificate holder.

731 e. Standing of Complainant. A complainant does not have standing regarding any proceedings and is not a
732 party to any proceedings. The complainant may, upon request to the presiding judge, receive notice of any
733 public proceeding concerning the complaint or any consent agreements.

734 f. Non-abatement. Unwillingness or failure of the complainant to cooperate with judicial officers, judicial
735 staff, staff of the clerk of the court, or division staff; withdrawal of the complaint or a specific allegation
736 of misconduct or violation contained in the complaint; settlement or compromise between the
737 complainant and the certificate holder; or restitution by the certificate holder shall not abate the
738 processing of any complaint or disciplinary proceeding.

739 g. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk, director,
740 division staff, or court employees during an open investigation, or received in an initial report of
741 misconduct, are confidential except as mandated by court rules or this section.

742 (1) Confidential information may be disclosed during the course of an investigation:

743 (a) To judicial officers, court staff, the attorney general, county attorney, law enforcement, and other
744 regulatory officials;

745 (b) If the presiding judge makes a finding the disclosure is in the best interest of the public and the interest
746 is not outweighed by any other interests; or is not contrary to law.

747 (2) Upon a determination of probable cause, all information and documents are open for public inspection
748 unless:

749 (a) Confidential by law or public record rules adopted by the supreme court, or

750 (b) If the presiding judge determines further investigation is necessary, the information or documents and
751 those compiled in the further investigation shall remain confidential until probable cause is determined.

752 (3) The address and phone number of the complainant shall remain confidential.

753 2. Grounds for Discipline. A certificate holder is subject to disciplinary action if the presiding judge finds
754 the certificate holder has engaged in one or more of the following:

755 a. Failed to perform any duty or discharge any obligation in the course of the certificate holder's
756 responsibilities as required by law, court rules, or this code section;

757 b. Failed to cooperate or supply information to the presiding judge, clerk of the court, judicial staff, or
758 division staff by the specific time stated in any request;

759 c. Aided or assisted another person to provide services requiring certification if the other person does not
760 hold the required certification;

761 d. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;

762 e. Failed to provide information regarding a criminal conviction;

763 f. Exhibited gross negligence;

764 g. Exhibited incompetence in the performance of duties;

765 h. Evaded service of a subpoena or notice of the presiding judge;

766 i. The existence of any cause for which original certification or any renewal of the certification could have
767 warranted denial as described in subsection E or G.

768 j. Engaged in unprofessional conduct including:

769 (1) Assisted an applicant or certificate holder in the use of deception, dishonesty, or fraud to secure an
770 initial certificate or renewal of certificate;

771 (2) Failed to comply with any court order or other regulatory agency order relevant to private process
772 servers;

773 (3) Failed to comply with any federal, state or local law or rule governing the practice of the profession or
774 occupation;

775 (4) Failed to comply with terms of a consent agreement or restriction of a certificate;

- 776 (5) Failed to retain client or customer records for a period of three years unless law or rule allows for a
777 different retention period;
- 778 (6) Failed to practice competently by use of unsafe or unacceptable practices;
- 779 (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the
780 degree of care, skill, and proficiency commonly exercised by the ordinary skillful, careful, and prudent
781 professional certificate holder engaged in similar practice under the same or similar conditions regardless
782 of any level of harm or injury to the client or customer;
- 783 (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by
784 performing unsafe or unacceptable client or customer care or failed to conform to the essential standards
785 of acceptable and prevailing practice;
- 786 (9) Used advertising intended to or having a tendency to deceive the public;
- 787 (10) Used a court certification to deceive the public in level of skills or abilities;
- 788 (11) Willfully made or filed false reports or records in the practice of the profession or occupation;
- 789 (12) Failed to file required reports, records, or pleadings in the practice of the profession or occupation;
- 790 (13) Performed the responsibilities or duties of the profession or occupation when medically or
791 psychologically unfit to do so;
- 792 (14) Engaged in habitual substance abuse;
- 793 (15) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the
794 certificate holder or a third party; or
- 795 (16) Violated any statute, court rule, or this code section regarding a confidentiality requirement.

796 3. Initial Screening. The presiding judge shall determine if a complaint warrants further investigation and
797 evaluation. If the complaint is outside the jurisdiction of the Private Process Server Program, the
798 presiding judge shall dismiss the complaint. The presiding judge may refer the complaint to another state
799 agency or entity with jurisdiction.

800 4. Preliminary Investigation. If warranted, the presiding judge shall have a prompt, discreet, and
801 confidential investigation of the complaint made.

802 5. Request for Response from Certificate Holder. The presiding judge shall have the complaint sent to the
803 certificate holder within a reasonable period of time after commencement of the investigation and shall
804 require the certificate holder provide a written response. The presiding judge shall not proceed with
805 disciplinary action under this code section without providing this notice and the opportunity to respond.

806 6. Review of Complaint and Investigation. Upon completion of an investigation, the presiding judge may:
807 a. Determine that no violation exists and dismiss the complaint;
808 b. Order further investigation;
809 c. Determine that the complaint is appropriate for resolution without proceeding to formal disciplinary
810 proceedings, or
811 d. Determine that there is probable cause for belief in the existence of facts warranting formal disciplinary
812 proceedings.

813 7. Emergency Suspension. If the presiding judge finds the public health, safety or welfare requires
814 emergency action and incorporates a finding to that effect in the order, the presiding judge may order
815 emergency suspension of the certification of a certificate holder pending proceedings for revocation or
816 other action. The presiding judge shall institute these proceedings within 30 days of the issuance of the

817 emergency suspension order. Upon order of the presiding judge, the clerk shall immediately notify all
818 presiding judges, other clerks, and the division staff of any emergency suspension of a certificate holder.
819 Upon receipt of the notice of emergency suspension, division staff shall immediately update the website
820 listing of the private process server to designate the emergency suspension of the certificate.

821 **8. Formal Disciplinary Proceedings.**

822 a. Commencement. The presiding judge may commence formal proceedings if the judge finds probable
823 cause to believe the certificate holder has committed misconduct under this code section and the
824 complaint is not appropriate for resolution by informal discipline. The presiding judge may, upon
825 commencement of formal proceedings, select a hearing officer or other appropriate designee pursuant to
826 subsection H(10). For uniformity, consistency and ease of reading, the term "hearing officer" throughout
827 this code section refers to the presiding judge, the hearing officer, or other officer designated by the
828 presiding judge.

829 b. Notice to Certificate Holder. The presiding judge shall have the formal statement of charges served on
830 the certificate holder with a notice advising the certificate holder of the certificate holder's rights pursuant
831 to this code section. This notice shall comply with the provisions of subsection H(12).

832 **9. Request for Hearing. All demands for hearing shall specify:**

833 a. The section of this code section that entitles the person to a hearing;

834 b. The factual basis supporting the request for hearing, and

835 c. The relief demanded.

836 **10. Appointment of Hearing officer. The presiding judge may appoint a judge or a hearing officer to hold**
837 **a hearing when required to do so pursuant to this code section, or upon written demand by a person**
838 **entitled to a hearing, pursuant to this code section.**

839 **11. Time line for Hearing. The hearing officer shall ensure that the hearing is held within 45 days of**
840 **receipt of the request, if the request is made by a certificate holder, unless postponed by mutual consent**
841 **for good cause. If the request is from the presiding judge, the hearing officer shall hold the hearing as**
842 **soon as practical at the discretion of the hearing officer.**

843 **12. Notice of Hearing. The hearing officer shall prepare and give the parties notice of the hearing at least**
844 **fifteen days prior to the date set for the hearing. The notice shall include the following information:**

845 a. A statement of the time, place and nature of the hearing;

846 b. A statement of the legal authority and jurisdiction for conduct of the hearing;

847 c. A reference to the particular sections of the statutes, this code section, and policies involved;

848 d. A short and plain statement of the allegations or factual bases supporting the relief requested.

849 Amendments to the statement are permissible, and

850 e. If the hearing date has not previously been set, a statement indicating that, upon request, the certificate
851 holder will be afforded a hearing if the certificate holder makes the request in writing within ten days of
852 receipt of the notice.

853 f. Personal service or service by certified mail, return receipt requested to the last business address of
854 record with the clerk of the superior court, will accomplish service of the notice. For proof of service, a
855 verified statement service was completed shall be filed with the hearing officer. Service by mail is
856 complete upon deposit in the United States mail.

857 g. If a party is represented by an attorney, the attorney shall receive service.

858 13. Filings, answers and Pleadings. A party shall file answers to notices within ten days after the date the
859 notice is served, unless otherwise ordered by the hearing officer. answers shall comply with Rule 8 of the
860 Arizona Rules of Civil Procedure. If a party fails to file an answer within the time provided, the person is
861 in default and the hearing officer may determine the proceeding against the party and admit one or more
862 of the assertions contained in the notice. The hearing officer shall determine any defenses not raised in the
863 answer are waived.

864 a. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise
865 ordered by the hearing officer.

866 b. Parties shall file responses to motions within five days of the filing of the motion.

867 c. The hearing officer and all parties to the proceeding shall receive copies of all filings.

868 d. All filings shall comply with Rule 5(h), Arizona Rules of Civil Procedure.

869 14. Discovery.

870 a. No discovery is permitted, except as provided in this code section, unless agreed to by the parties or
871 permitted by the hearing officer.

872 b. The hearing officer, upon written request, shall order a party to allow the requesting party to have a
873 reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary
874 evidence or documents reasonably calculated to lead to admissible evidence prior to a hearing, unless the
875 evidence is privileged.

876 c. The hearing officer, on the hearing officer's motion or upon request, may require the parties, prior to
877 the hearing, to disclose documentary evidence intended for use at the hearing, provided the evidence is
878 not privileged.

879 d. Parties may take depositions for use as evidence of witnesses who cannot be subpoenaed or are
880 otherwise unable to attend the hearing. To take a deposition, a party shall file with the hearing officer a
881 written motion, with copies to all parties, setting forth the name and address of the witness, subject matter
882 of the deposition, documents, if any, the parties are seeking for production, time and place proposed for
883 the deposition, and justification for the deposition.

884 e. Parties shall file responses to requests for depositions, including motions to quash, within five days
885 after the filing of the request for deposition.

886 f. If a deposition is permitted, a subpoena and written order shall be issued. The subpoena and order shall
887 identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced, and
888 time and place of the deposition. The party requesting the deposition shall arrange for service of the
889 subpoena and order, with service on all parties five days before the time fixed for taking the deposition,
890 unless, for good cause shown, the time is shortened by the hearing officer.

891 15. Subpoenas. For the purposes of investigations, hearings, or other proceedings under this code section,
892 the hearing officer may subpoena witnesses or documentary evidence, administer oaths, and examine
893 under oath any individual concerning the subject of any hearing or investigation. Subpoenas shall be
894 issued, served, and enforced in compliance with the Arizona Rules of Civil Procedure. an employee of the
895 court or any other person as designated by the Arizona Rules of Civil Procedure may serve subpoenas.

896 16. Prehearing Conference. The hearing officer may order a prehearing conference at the request of any
897 party or on the hearing officer's own initiative. The purpose of the conference is to consider any or all of
898 the following actions:

899 a. To reduce or simplify the issues for adjudication;

900 b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;

- 901 c.To stipulate to the admission of uncontested evidence, facts and legal conclusions;
902 d.To identify witnesses, and
903 e.To consider any other matters that will aid in the expeditious conduct of the hearing.

904 17. Procedure at Hearings.

905 a. The hearing officer shall preside over the hearing. The hearing officer shall have the authority to decide
906 all motions, conduct prehearing conferences, determine the order of proof and manner of presentation of
907 other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe
908 and enforce general rules of conduct and decorum. Informal disposition may be made of any case by
909 stipulation, agreed settlement, consent order or default.

910 b. Rights of Parties. At a hearing:

911 (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses,
912 make arguments, and generally participate in the conduct of the proceeding; and

913 (2) any person may represent him- or herself or appear through counsel. an attorney who intends to appear
914 on behalf of a party shall promptly notify the hearing officer, providing the name, address and telephone
915 number of the party represented and the name, address and telephone number of the attorney.

916 (3) All persons appearing before the hearing officer in any proceeding shall conform to the conduct
917 expected in the Arizona Superior Court.

918 c. Conduct of Hearing.

919 (1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules
920 of pleading or evidence. The hearing officer shall require evidence supporting a decision is substantial,
921 reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no
922 right to a jury. All hearings are open to the public.

923 (2) The hearing officer shall require that all testimony considered is under oath or affirmation, except
924 matters of which judicial notice is taken or entered by stipulation. The hearing officer may administer
925 oaths and affirmations.

926 d. Record of Hearing.

927 (1) The hearing officer shall ensure that the oral proceedings or any part of the oral proceedings are
928 electronically recorded and transcribed on request of any party. The party making the request shall pay
929 the cost of the transcript.

930 (2) A competent reporter shall make a full stenographic record of the proceedings, if requested by a party,
931 within five days prior to a hearing. The cost of the transcript is the responsibility of the requesting party.
932 The hearing officer may require the prepayment or a monetary deposit to cover the cost of the transcript.
933 If transcribed, the record is a part of the court's record of the hearing and any other party with a direct
934 interest shall receive a copy of the stenographic record, at the request and expense of the party. If no
935 request is made for a stenographic record, the hearing officer shall ensure that the proceedings are
936 recorded as described in subsection H(17)(d)(1) of this code section.

937 18. Rehearing. The hearing officer may grant a rehearing or reargument of the matters involved in the
938 hearing upon written request of a party to a hearing filing the request with the hearing officer. The party
939 shall make the request within fifteen days after any order made pursuant to a hearing was mailed or
940 delivered to the person entitled to receive the order. The hearing officer shall decide to grant or deny the
941 request within 30 days of the date of filing of the request. A party shall base the request for rehearing or

942 review upon one or more of the grounds listed in Rule 59, Arizona Rules of Civil Procedure, which
943 materially affected the rights of a party and shall conform to the requirements of Rule 59. The hearing
944 officer shall permit any party served with a request for rehearing to file a response within fifteen days of
945 service.

946 19. Decisions and Orders. The hearing officer shall render the final decision within 30 days of the closing
947 of the record of a hearing. The hearing officer shall render the final decision in writing and shall include
948 findings of fact and conclusions of law, separately stated. A concise and explicit statement of the
949 underlying facts shall accompany findings of fact. Parties shall receive notice of any decision or order
950 either personally or by certified mail return receipt to the last known address.

951 20. Possible Actions for Resolution of a Complaint.

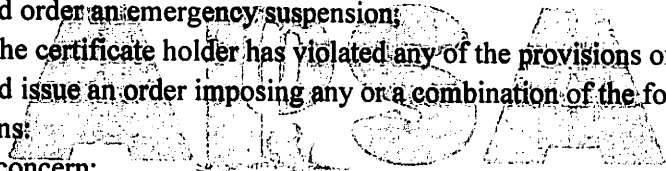
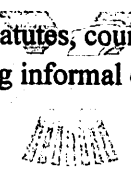
952 a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may
953 or may not include informal or formal disciplinary proceedings or a hearing, the hearing officer shall do
954 one or more of the following:

955 (1) Determine that no violation exists and dismiss the complaint with or without prejudice;
956 (2) Determine that no acts of misconduct or violation occurred and no discipline is warranted; however,
957 the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to
958 subsection (H);

959 (3) Determine that the certificate holder has violated any of the provisions of the statutes, court rules or
960 this code section and order an emergency suspension;

961 (4) Determine that the certificate holder has violated any of the provisions of the statutes, court rules, or
962 this code section and issue an order imposing any or a combination of the following informal or formal
963 disciplinary sanctions:

964 (a) Issue a letter of concern;

965 (b) Issue a censure;  
966 (c) Resolve any found acts or violations by consent order or other negotiated settlement;

967 (d) Place specific restrictions on a certificate;

968 (e) Place the certificate holder on probation for a set period of time under specified conditions;

969 (f) Mandate additional training for the certificate holder;

970 (g) Order suspension of a certificate for a set period of time not to exceed three years with specified
971 conditions for reinstatement;

972 (h) Revoke a certificate with specified conditions for reinstatement; or

973 (i) any other action the hearing officer determines appropriate, including return or refund of service fees
974 to a harmed person or entity. This shall not include imposition of a fine.

975 b. The hearing officer shall issue an order specifying in what manner and to what extent any failure or
976 violation is found and any sanctions pursuant to this code section. any disciplinary action shall have effect
977 statewide. The clerk shall, within five days of any such action, notify in writing division staff of the action
978 taken and of any subsequent changes in the status of the individual's approval to serve process. If the
979 hearing officer issues an emergency suspension of a certificate, the clerk shall immediately notify the
980 presiding judges, clerks and division staff of the action.

981 21. Procedure after Suspension or Revocation.

982 a. Upon suspension or revocation of any certification, the presiding judge shall have notice promptly
983 served on the certificate holder either in person or by certified mail, return receipt requested, addressed to

984 the last address of record with the clerk. Notice by mail is complete upon deposit in the United States
985 mail.

986 b. The presiding judge shall only issue certification to any person whose certification had previously been
987 revoked under this code section after the expiration of one year from the date of revocation, and after the
988 person again qualifies in accordance with the reinstatement provisions of this code section.

989 22. Filing of Special Action. Decisions of the presiding judge, hearing officer or other designee regarding
990 certification, renewal of certification, or disciplinary action pursuant to this code section are final. Parties
991 may seek judicial review through a petition for a special action within 35 days after entry of the final
992 order of the hearing officer. The petition for special action shall be pursuant to the Arizona Rules of
993 Procedure for Special Actions.

994 **I. Reserved.**

995 **J. Code of Conduct**

996 1. Preamble. The Arizona Supreme Court adopts the following Code of Conduct to apply to all private
997 process servers pursuant to A.R.S. § 11-445, the Arizona Rules of Court, and this code section. The
998 purpose of this Code of Conduct is to establish minimum standards for performance by private process
999 servers and to ensure they conduct the service of process in a professional manner.

1000 2. Rules and Applicable Laws. The private process server shall perform all services and discharge all
1001 obligations in accordance with current Arizona and federal law, Arizona Rules of Civil Procedure,
1002 administrative orders, and this code section.

1003 3. Skills and Knowledge. The private process server shall demonstrate adequate skills and knowledge to
1004 perform the work of a private process server and shall seek training opportunities to maintain professional
1005 competency and growth.

1006 a. The private process server shall possess sufficient verbal and written communication skills to perform
1007 the private process server role.

1008 b. The private process server shall manage service proficiently. Skills required include those necessary to
1009 perform the service, maintain records, and communicate with the client in a timely fashion.

1010 c. The private process server shall keep the client reasonably informed about the status of the service and
1011 promptly comply with reasonable requests.

1012 d. The process server shall ensure all affidavits and certificates prepared by the private process server are
1013 complete, accurate and understandable and are timely filed with the court.

1014 4. Professionalism. The private process server shall exercise the highest degree of professionalism in all
1015 interactions with clients, the party located, and others they come in contact with during the service. The
1016 private process server shall utilize professional judgment and discretion at all times.

1017 a. The private process server shall handle all legal documents with care and maintain required records in a
1018 professional manner.

1019 b. The private process server may act as a mentor to assist an inexperienced certified private process
1020 server for the purpose of increasing skill level and successful service of process.

1021 c. The private process server shall not provide or offer to provide legal advice.

1022 d. The private process server shall not violate any rules adopted by the Arizona Supreme Court or conduct
1023 him- or herself in a manner that would reflect adversely on the judiciary, the courts, or other agencies
1024 involved in the administration of justice.

- 1025 e. The private process server shall respect the confidentiality of information and shall preserve the clients'
1026 confidences; this duty outlasts the employment of the private process server.
- 1027 f. The private process server shall maintain a professional appearance at all times.
- 1028 g. The private process server shall be courteous and polite in all dealings.
- 1029 h. The private process server may explain the general nature of the served papers but shall never engage
1030 in any unnecessary discussions regarding the action being served, with the persons receiving service.
- 1031 i. The process server may provide general legal information to a client and persons receiving service but
1032 shall not represent that he or she is authorized to practice law in this state, nor shall the process server
1033 provide any kind of legal advice, opinion or recommendation about possible legal rights, remedies,
1034 defenses, options or strategies.
- 1035 j. The private process server shall know the protocol for service of process in a court building before
1036 proceeding with service and shall take appropriate steps to avoid impairing security or creating a security
1037 issue in a court building.
- 1038 k. The private process server shall only serve the legal documents and papers included in the civil action
1039 for which the process server has been retained to serve process. No additional papers, advertisements, or
1040 brochures may be included in the service of process.
- 1041 5. Ethics. The private process server shall perform services in a manner consistent with legal and ethical
1042 standards.
- 1043 a. The private process server, having located the sought-after party or persons receiving process for those
1044 persons intended for service, shall perform the service of process in a professional manner, utilizing
1045 sound judgment and avoid rudeness and unprofessional conduct.
- 1046 b. The private process server shall present service in a nonjudgmental manner.
- 1047 c. The private process server shall not misrepresent the private process server's qualifications, fees, or any
1048 other information relating to the role of the private process server.
- 1049 d. The private process server shall not utilize certification in any manner to gain access to information or
1050 services for purposes other than those of the Private Process Server Program.
- 1051 e. The private process server shall maintain the best interests of the client by maintaining a high standard
1052 of work and reporting to a client the full facts determined as a result of the work and effort expended
1053 whether they are advantageous or detrimental to the client.
- 1054 6. Candor.
- 1055 a. A private process server shall not knowingly:
- 1056 (1) Falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity;
- 1057 (2) Make a false statement of material fact or law to a tribunal; or
- 1058 (3) Fail to disclose a material fact to a tribunal, except as required by applicable law.
- 1059 b. A private process server shall notify the presiding judge within ten days of a misdemeanor or felony
1060 conviction. The private process server shall provide this notice to the presiding judge in the county of
1061 certification of the process server.
- 1062 c. A certified private process server may not wear a uniform, use a title, insignia, badge, or identification
1063 card or make any statement that would lead a person to believe the certificate holder is an employee of a
1064 federal government, state government, or any political subdivision of a state government unless the
1065 certificate holder is so authorized by proper authorities. No badge of any type may be used, shown or
1066 offered as identification in conjunction with the identification card or independently.

1067 **K. Reserved.**

1068 **L. Continuing Education Policies**

1069 1. Purpose.

1070 a. Service of process is integrally related to the prompt, effective, and impartial operation of the judicial
1071 system. Private process servers are required to demonstrate a basic level of competency to become
1072 certified and practice in Arizona. Ongoing, continuing education (CE) is one means to ensure a certified
1073 process server maintains continuing competence as a process server after certification is obtained. It also
1074 provides opportunities for process servers to keep abreast of changes relating to the service of process, the
1075 law, and the Arizona judicial system.

1076 b. These continuing education policies are intended to provide direction to certified private process
1077 servers, and to the presiding judges and clerks who administer the Private Process Server Program in each
1078 county; to ensure compliance with this code section regarding continuing education credits; and to
1079 provide for equitable statewide application and enforcement of the continuing education requirements.

1080 2. Applicability. Pursuant to subsection (F), all certified private process servers shall complete at least ten
1081 hours of approved continuing education every twelve months in an area relevant to the work of a certified
1082 private process server. The private process server shall submit documentation of completion of the
1083 continuing education in an approved format with the application for renewal of certification. Pursuant to
1084 subsection G, a renewal period is for three years from the date of issuance of the certificate.

1085 3. Responsibilities of Certified Private Process Servers.

1086 a. It is the responsibility of each certified private process server to ensure compliance with the CE
1087 requirements, maintain documentation of completion of CE and to submit this documentation with the
1088 renewal application.

1089 b. Upon request, each certified private process server shall provide any additional information required by
1090 the presiding judge when the judge is reviewing the renewal application and CE compliance and
1091 documentation.

1092 c. If a CE activity has not been pre-approved, the rejection of any activity completed by a private process
1093 server and submitted with the application for renewal does not diminish the responsibility of the process
1094 server to comply with the CE requirement.

1095 4. Authorized Continuing Education Activities.

1096 a. CE activity shall address the areas of proficiency, competency, and performance, and impart knowledge
1097 and understanding of the service of process, the Arizona judiciary, and the legal process, and shall
1098 increase the participants' understanding of the responsibilities of a certified private process server and the
1099 process server's impact on the judicial process. Acceptable topics for CE activities include:

1100 (1) Ethics for private process servers and court employees, including cooperation with lawyers, judges,
1101 and fellow private process servers, professional attire, courtesy and impartiality to all litigants,
1102 information vs. legal advice, and public relations;

1103 (2) The Arizona court system, including the state and federal constitution, branches of government,
1104 Arizona court jurisdiction and responsibilities, Arizona tribal court system, resource materials including
1105 Arizona Revised Statutes, Arizona Rules of Court, case law, and administrative orders; and current issues
1106 in the Arizona court system; and

1107 (3) Role and responsibilities of the certified private process server including this code section.

1108 b. Persons developing and presenting CE activities shall have expertise in the curriculum, knowledge of
1109 adult education principles, and the ability to prepare and present educational material effectively. The
1110 education faculty presenting a CE activity should consist primarily of individuals with experience and
1111 expertise in the service of process, legal, and judicial community; faculty from other disciplines is
1112 permissible when their expertise will contribute to the goals of a specific program. The CE activity shall
1113 specify for whom the program is primarily designed, the course objectives, course content, and teaching
1114 methods. All CE activity shall be conducted in an organized setting free from distractions.

1115 c. Pre-Approved Activities. Subject to the conditions specified in this policy, programs, seminars and
1116 courses of study offered or approved by the following entities are pre-approved and accredited:

- 1117 (1) Arizona Process Servers Association (APSA);
1118 (2) Arizona Supreme Court Committee on Judicial Education and Training (COJET);
1119 (3) United States Private Process Servers Association (USCRA);
1120 (4) Arizona Courts Association (ACA); and
1121 (5) National Association of Court Management (NACM).

1122 d. Sponsoring Entities. Unless a CE activity has been pre-approved, entities wishing to administer a CE
1123 activity shall submit the proposed CE activity on the approved form to the division staff of the Arizona
1124 Supreme Court, Administrative office of the Courts (AOC), for consideration prior to conducting the
1125 activity. Applications submitted by a sponsoring entity after the CE activity has been completed or
1126 conducted will be rejected.

1127 (1) At a minimum, the proposal shall meet all requirements of this policy and shall include the following:
1128 (a) location, date and time of the proposed activity, with an agenda that identifies the time allocated for
1129 each topic and the time allocated for breaks and other activities that do not qualify for CE credit;
1130 (b) proposed audience;
1131 (c) course content, objectives, teaching methods and the evaluation method;
1132 (d) names and qualifications of the faculty;
1133 (e) written materials for the participants (a copy of the materials shall be included with the proposal), and
1134 (f) number of CE credits the sponsoring entity is recommending the AOC grant for completion of the
1135 activity.

1136 (2) In addition, the proposal shall include a statement the sponsor agrees to verify attendance of the
1137 participants; provide a certificate of attendance for each participant who successfully completes the
1138 activity; and, upon request of the AOC, provide any additional information requested to assist the AOC in
1139 evaluating whether to approve the activity or to ensure compliance with this policy.

1140 e. Serving as Faculty. CE credit may be granted for serving as faculty, an instructor, speaker, or panel
1141 member of an approved CE seminar directly related to the service of process. CE credit will be granted
1142 for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation
1143 time. A maximum of five hours of CE credit will be granted for serving as faculty in any renewal period
1144 and a private process server may not receive credit for presenting a program repeatedly throughout the
1145 renewal period. A private process server may receive CE credit for actual presentation time for duplicate
1146 programs presented in subsequent renewals periods, but will not be granted CE credit for preparation time
1147 for those programs.

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1148 f. **Authoring or Coauthoring Articles.** CE credit may be granted for authoring or coauthoring an article
1149 directly related to the service of process, if the article is published in a state or nationally recognized
1150 professional journal relating to the service of process and if the article is a minimum of one thousand
1151 words in length. A maximum of one hour of CE credit may be earned for authoring an article or articles in
1152 any one renewal period. Credit shall not be granted for the same article published in more than one
1153 publication or republished in the same publication in later editions.

1154 g. **University, College, and Other Educational Institution Courses.** A certified private process server may
1155 receive CE credit for a course provided by a university, college, or other educational institution, if the
1156 private process server successfully completes the course with a grade of “C” or better or a “pass” on a
1157 pass/fail system. The private process server may receive CE credit upon documentation that the course is
1158 relevant to the service of process. If the course is approved, credit will be awarded by multiplying the
1159 number of credit hours awarded by the educational institution by two, however, the maximum total of CE
1160 credits for completion of courses pursuant to this subsection shall not exceed 50 percent of the total
1161 number of CE hours required for the renewal period.

1162 h. **Minimum Time.** Each CE activity shall consist of at least 30 minutes of “actual clock time” spent by a
1163 registrant in actual attendance at and completion of an approved CE activity. “Actual clock time” is the
1164 total hours attended, minus the time spent for introductory remarks, breaks, meals, and business meetings.
1165 After completion of the initial 30 minutes of CE activity, credit may be given in fifteen minute
1166 increments. A process server may not use additional earned CE credits for subsequent renewal periods.

1167 i. **Maximum Credit.** Unless a CE activity is directly related to the private process server profession, a
1168 private process server may not receive more than 50 per cent of the credit requirement for the renewal
1169 period through one activity.

1170 j. **Conferences.** CE credit may be requested for attendance at a conference relevant to the work of a
1171 process server. A process server may receive 100 per cent of the CE credits for attendance at the
1172 conference, if the conference is directly related to the work of a process server. The process server must
1173 provide documentation of the specific sessions of the conference attended, with documentation of the
1174 hours for each session of the conference the process server attended. Credit may be granted for attendance
1175 at general sessions of the conference.

1176 k. **Repeat of an Activity.** Generally, credit will not be granted for process servers who repeat an activity
1177 within the same renewal period. Exceptions may be granted if it is determined that the activity is directly
1178 related to the work of a process server profession and duplication of the continuing education activity will
1179 enhance the process server’s knowledge, skill, and competency.

1180 l. **Documentation of Attendance or Completion.** When attending or completing a CE activity, each
1181 process server shall obtain documentation of attendance or completion from the sponsoring entity. At a
1182 minimum, this documentation shall include the:

- 1183 (1) name of the sponsor;
1184 (2) name of the participant;
1185 (3) topic of the subject matter;
1186 (4) number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
1187 (5) date and place of the program;

- 1188 (6) signature of the sponsor, or the documentation shall be an official document of the sponsoring entity;
1189 for example, a college grade report, etc.,
1190 (7) signature of the process server, either in the space specifically provided on the form for this purpose,
1191 or the process server may sign across the documentation (for example, the college grade report) to
1192 indicate attendance and completion at the activity, and
1193 (8) if the CE activity comprises eight or more hours of credit within one day, the documentation shall
1194 include an agenda that specifies the time allocated to each topic and the time for breaks and a lunch break.

1195 m. A process server shall not request and credit shall not be granted if the process server attends part, but
1196 not all, of the provided activity. Notwithstanding the signature of the sponsoring entity regarding the CE
1197 credits for an activity, it is the responsibility of the process server to accurately calculate the number of
1198 hours attended, subtracting out any time for general introductions and other activities that do not qualify
1199 for CE credit.

1200 n. Process servers requesting CE credit for self study shall submit documentation of completion on an
1201 approved form.

1202 5. Non-Qualifying Activities. The following activities, regardless of whether or not the activity is
1203 approved for COJET credit, shall not qualify for CE credit for certified private process servers:

- 1204 a. Completion of the examination required for initial certification;
1205 b. Attendance or participation at professional or association business meetings, general sessions,
1206 elections, policymaking sessions or program orientation;
1207 c. Serving on committees or councils or as officers in a professional organization, and
1208 d. Activities completed as required by the presiding judge as part of a disciplinary action.

1209 6. Decision Regarding Continuing Education

1210 a. Upon a review of an application for renewal of certification and the required accompanying CE
1211 documentation, the presiding judge may:

- 1212 (1) Approve the CE credit;
1213 (2) Approve part but not all of the requested CE credit;
1214 (3) Require additional information from the requester before making a decision; or
1215 (4) Deny the CE credit.

1216 b. The private process server shall be notified of the decision regarding the CE credit.

1217 7. Compliance and Non-Compliance.

1218 a. an applicant for renewal of certification may be requested to supply additional information to verify
1219 compliance with the CE requirements. If the applicant fails to provide the requested information, the
1220 presiding judge may deny the CE credit.

1221 b. Pursuant to subsection (H)(1), a certified private process server who fails to meet the CE requirement,
1222 falsifies CE documents, willfully misrepresents CE activities and attendance at CE activities, or attempts
1223 to circumvent the CE requirement by submitting an initial application for certification within twelve
1224 months of the expiration of the original certificate, is subject to denial of renewal of certification,
1225 disciplinary action, or both.

1226 Adopted by Administrative Order 2002-110, effective January 1, 2003. Amended by Administrative
1227 Order 2004-95, effective November 24, 2004. Amended by Administrative Order 2013-48, effective May
1228 30, 2013.

1229 **Selected Arizona Revised Statute (ARS) Sections**

1230 ARS §10-501. Known place of business and statutory agent

1231 Each corporation shall continuously maintain in this state both:

1232 1. A known place of business that may be the address of its statutory agent.

1233 2. A statutory agent who may be either:

1234 (a) An individual who resides in this state.

1235 (b) A domestic corporation formed under this title.

1236 (c) A foreign corporation authorized to transact business in this state.

1237 (d) A limited liability company formed under title 29.

1238 (e) A limited liability company authorized to transact business in this state.

1239

1240 **ARS §10-504. Service on corporation**

1241 A. The statutory agent appointed by a corporation is an agent of the corporation on whom process, notice
1242 or demand that is required or permitted by law to be served on the corporation may be served and that,
1243 when so served, is lawful personal service on the corporation.

1244 B. If a corporation fails to appoint or maintain a statutory agent at the address shown on the records of the
1245 commission, the commission is an agent of the corporation on whom process, notice or demand may be
1246 served. Pursuant to the Arizona rules of civil procedure, service on the commission of any process, notice
1247 or demand for an entity that is registered pursuant to this title shall be made by delivering to and leaving
1248 with the commission duplicate copies of the process, notice or demand, and the commission shall
1249 immediately cause one of the copies of the process, notice or demand to be forwarded by mail, addressed
1250 to the corporation at its known place of business. Service made on the commission is returnable pursuant
1251 to applicable law relative to personal service on the corporation. If service is made on the commission,
1252 whether under this chapter or a rule of court, the corporation has thirty days to respond in addition to the
1253 time otherwise provided by law.

1254 C. The commission shall keep a permanent record of all processes, notices and demands served on it
1255 under this section and shall record in the record the time of the service and its action with reference to the
1256 service.

1257 D. Notice required to be served on a corporation pursuant to section 10-1421 or 10-1422 may be served:

1258 1. By mail addressed to the statutory agent of the corporation or, if the corporation fails to appoint and
1259 maintain a statutory agent, addressed to the known place of business required to be maintained pursuant
1260 to section 10-501.

1261 2. By electronic transmission to the statutory agent or to the corporation, or both.

1262 3. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

1263 **ARS §11-447 Service of process regular on its face**

1264 A sheriff or other ministerial officer is justified in the execution of, and shall execute all process and
1265 orders regular on their face and issued by competent authority, whatever may be the defect in the
1266 proceedings upon which they were issued.

1267

1268 **ARS §11-448 Duty to show process**

1269 The officer executing process shall then, and so long as he retains it, upon request, show a conformed
1270 copy of the process, with all papers attached, to any interested person.

1271

1272 **ARS §12-303 Witness fees and mileage**

1273 A material witness attending the trial of a civil action shall be paid twelve dollars for each day's
1274 attendance to and including the time it was necessary for him to leave his residence and go to the place of
1275 trial and his discharge as a witness. The witness shall also be paid mileage at the rate of twenty cents for
1276 each mile actually and necessarily traveled from his place of residence in the state of Arizona to the place
1277 of trial, to be computed one way only.

1278

1279 **ARCP Rule 45(d) - Subpoena**

1280 **(d) Service.**

1281 (1) *General Requirements; Tendering Fees.* A subpoena may be served by any person who is not a party
1282 and is at least 18 years old. Serving a subpoena requires delivering a copy to the named person and, if the
1283 subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and
1284 the mileage allowed by law.

1285 (2) *Exceptions to Tendering Fees.* Fees and mileage need not be tendered when the subpoena commands
1286 attendance at a trial or hearing or is issued on behalf of the State of Arizona or any of its officers or
1287 agencies.

1288 (3) *Notice to, and Service on Other Parties.* A copy of every subpoena and any proof of service must be
1289 served on every other party in accordance with Rule 5(c). If the subpoena commands the production of
1290 documents, electronically stored information, or tangible things, or the inspection of premises before trial,
1291 a notice and a copy of the subpoena must be served on each party at least 2 days before it is served on the
1292 person to whom it is directed.

1293 (4) *Service Within the State.* A subpoena may be served anywhere within the state.

1294 (5) *Proof of Service.* Proof of service may not be filed except as allowed by Rule 5.1(c)(2)(A). Any such
1295 filing must be with the court clerk for the county where the action is pending and must include the server's
1296 certificate stating the date and manner of service and the names of the persons served.

1297

1298 **ARS §12-1175. Complaint and answer; service and return; notice and pleading requirements**

1299 A. When a party aggrieved files a complaint of forcible entry or forcible detainer, in writing and under
1300 oath, with the clerk of the superior court or a justice of the peace, summons shall issue no later than the
1301 next judicial day.

1302 B. The complaint shall contain a description of the premises of which possession is claimed in sufficient
1303 detail to identify them and shall also state the facts that entitle the plaintiff to possession and authorize the
1304 action.

1305 C. The summons shall be served at least two days before the return day, and return made thereof on the
1306 day assigned for trial.

1307 D. Notwithstanding any other law, an agency of this state and an individual court may not adopt or
1308 enforce a rule or policy that requires a mandatory or technical form for providing notice or for pleadings
1309 in an action for forcible entry or forcible or special detainer. The form of any notice or pleading that
1310 meets statutory requirements for content and formatting of a notice or pleading is sufficient to provide
1311 notice and to pursue an action for forcible entry or forcible or special detainer.
1312

1313 **ARS §12-2294.01. Release of medical records or payment records to third parties pursuant to**
1314 **subpoena**

1315 A. A subpoena seeking medical records or payment records shall be served on the health care provider
1316 and any party to the proceedings at least ten days before the production date on the subpoena.

1317 B. A subpoena that seeks medical records or payments records must meet one of the following
1318 requirements:

1319 1. The subpoena is accompanied by a written authorization signed by the patient or the patient's health
1320 care decision maker.

1321 2. The subpoena is accompanied by a court or tribunal order that requires the release of the records to the
1322 party seeking the records or that meets the requirements for a qualified protective order under the health
1323 insurance portability and accountability act privacy standards (42 Code of Federal Regulations section
1324 164.512(e)).

1325 3. The subpoena is a grand jury subpoena issued in a criminal investigation.

1326 4. The subpoena is issued by a health profession regulatory board as defined in section 32-3201.

1327 5. The health care provider is required by another law to release the records to the party seeking the
1328 records.

1329 C. If a subpoena does not meet one of the requirements of subsection B of this section, a health care
1330 provider shall not produce the medical records or payment records to the party seeking the records, but
1331 may either file the records under seal pursuant to subsection D of this section, object to production under
1332 subsection E of this section or file a motion to quash or modify the subpoena under rule 45 of the Arizona
1333 rules of civil procedure.

1334 D. It is sufficient compliance with a subpoena issued in a court or tribunal proceeding if a health care
1335 provider delivers the medical records or payment records under seal as follows:

1336 1. The health care provider may deliver by certified mail or in person a copy of all the records described
1337 in the subpoena by the production date to the clerk of the court or tribunal or if there is no clerk then to
1338 the court or tribunal, together with the affidavit described in paragraph 4 of this subsection.

1339 2. The health care provider shall separately enclose and seal a copy of the records in an inner envelope or
1340 wrapper, with the title and number of the action, name of the health care provider and date of the
1341 subpoena clearly inscribed on the copy of the records. The health care provider shall enclose the sealed
1342 envelope or wrapper in an outer envelope or wrapper that is sealed and directed to the clerk of the court or
1343 tribunal or if there is no clerk then to the court or tribunal.

1344 3. The copy of the records shall remain sealed and shall be opened only on order of the court or tribunal
1345 conducting the proceeding.

1346 4. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in
1347 substance each of the following:

- 1348 (a) That the affiant is the duly authorized custodian of the records and has authority to certify the records.
1349 (b) That the copy is a true complete copy of the records described in the subpoena.
1350 (c) If applicable, that the health care provider is subject to the confidentiality requirements in 42 United
1351 States Code sections 290dd-3 and 290ee-3 and applicable regulations and that those confidentiality
1352 requirements may apply to the requested records. The affidavit shall request that the court make a
1353 determination, if required under applicable federal law and regulations, as to the confidentiality of the
1354 records submitted.
1355 (d) If applicable, that the health care provider has none of the records described or only part of the records
1356 described in the subpoena.
1357 5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of
1358 evidence. The affidavit is admissible as evidence of the matters stated in the affidavit and the matters
1359 stated are presumed true. If more than one person has knowledge of the facts, more than one affidavit
1360 may be made. The presumption established by this paragraph is a presumption affecting the burden of
1361 producing evidence.
1362 E. If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for
1363 objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with
1364 the court or tribunal an objection to the inspection or copying of any or all of the records as follows:
1365 1. On filing an objection, the health care provider shall send a copy of the objection to the patient at the
1366 patient's last known address, to the patient's attorney if known and to the party seeking the records, unless
1367 after reasonable inquiry the health care provider cannot determine the last known address of the patient.
1368 2. On filing the objection, the health care provider has no further obligation to assert a state or federal
1369 privilege pertaining to the records or to appear or respond to a motion to compel production of records,
1370 and may produce the records if ordered by a court or tribunal. If an objection is filed, the patient or the
1371 patient's attorney is responsible for asserting or waiving any state or federal privilege that pertains to the
1372 records.
1373 3. If an objection is filed, the party seeking production may request an order compelling production of the
1374 records. If the court or tribunal issues an order compelling production, a copy of the order shall be
1375 provided to the health care provider. On receipt of the order, the health care provider shall produce the
1376 records.
1377 4. If applicable, an objection shall state that the health care provider is subject to the confidentiality
1378 requirements in 42 United States Code sections 290dd-3 and 290ee-3, shall state that the records may be
1379 subject to those confidentiality requirements and shall request that the court make a determination, if
1380 required under applicable federal law and regulations, on whether the submitted records are subject to
1381 discovery.
1382 F. If a party seeking medical records or payment records wishes to examine the original records
1383 maintained by a health care provider, the health care provider may permit the party to examine the
1384 original records if the subpoena meets one of the requirements of subsection B of this section. The party
1385 seeking the records also may petition a court or tribunal for an order directing the health care provider to
1386 allow the party to examine the original records or to file the original records under seal with the court or
1387 tribunal under subsection D of this section.
1388

ARS §12-3301 Private process servers; background investigation; fees

- 1389 A. Private process servers who are duly appointed or certified pursuant to rules established by the
1390 supreme court may serve all process, writs, orders, pleadings or papers that are required or permitted by
1391

1392 law to be served before, during or independently of a court action, including all such as are required or
1393 permitted to be served by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6
1394 and 7, section 11-447 and section 11-448, except writs or orders requiring the service officer to sell,
1395 deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme
1396 court rule. A private process server is an officer of the court.
1397 B. As a condition of certification, the supreme court shall require each private process server applicant to
1398 furnish a full set of fingerprints to enable a criminal background investigation to be conducted to
1399 determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted
1400 with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the
1401 cost of obtaining the applicant's criminal history record information. The cost may not exceed the actual
1402 cost of obtaining the applicant's criminal history record information. Applicant criminal history records
1403 checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public
1404 safety may exchange the submitted applicant fingerprint card information with the federal bureau of
1405 investigation for a federal criminal records check.
1406 C. A private process server may charge such fees for services as may be agreed on between the process
1407 server and the party engaging the process server.

1408 **ARS §13-1501 Definitions (Trespass)**

1409 In this chapter, unless the context otherwise requires:

1410 1. "Critical public service facility" means:

1411 (a) A structure or fenced yard that is posted with signage indicating it is a felony to trespass or signage
1412 indicating high voltage or high pressure and is used by a rail, bus, air or other mass transit provider, a
1413 public or private utility, any municipal corporation, city, town or other political subdivision that is
1414 organized under state law and that generates, transmits, distributes or otherwise provides natural gas,
1415 liquefied petroleum gas, electricity or a combustible substance for a delivery system that is not a retail-
1416 only facility, a telecommunications carrier or telephone company, a municipal provider as defined in
1417 section 45-561, a law enforcement agency, a public or private fire department or an emergency medical
1418 service provider.

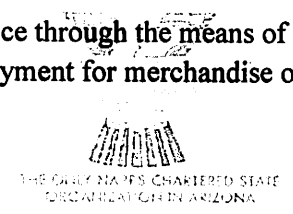
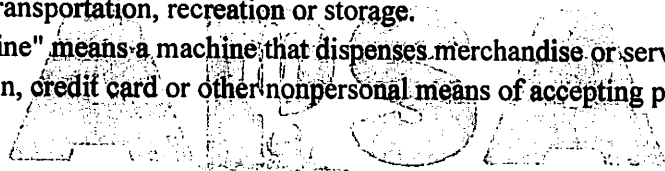
1419 (b) A structure or fenced yard or any equipment or apparatus that is posted with signage indicating it is a
1420 felony to trespass or signage indicating high voltage or high pressure and is used to manufacture, extract,
1421 transport, distribute or store gas, including natural gas or liquefied petroleum gas, oil, electricity, water or
1422 hazardous materials, unless it is a retail-only facility.

1423 2. "Enter or remain unlawfully" means an act of a person who enters or remains on premises when the
1424 person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except
1425 when the entry is to commit theft of merchandise displayed for sale during normal business hours, when
1426 the premises are open to the public and when the person does not enter any unauthorized areas of the
1427 premises.

1428 3. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the
1429 external boundaries of a structure or unit of real property.

1430 4. "Fenced commercial yard" means a unit of real property that is surrounded completely by fences, walls,
1431 buildings or similar barriers, or any combination of fences, walls, buildings or similar barriers, and that is
1432 zoned for business operations or where livestock, produce or other commercial items are located.

- 1433 5. "Fenced residential yard" means a unit of real property that immediately surrounds or is adjacent to a
1434 residential structure and that is enclosed by a fence, wall, building or similar barrier or any combination
1435 of fences, walls, buildings or similar barriers.
- 1436 6. "Fenced yard" means a unit of real property that is surrounded by fences, walls, buildings or similar
1437 barriers or any combination of fences, walls, buildings or similar barriers.
- 1438 7. "In the course of committing" means any acts that are performed by an intruder from the moment of
1439 entry to and including flight from the scene of a crime.
- 1440 8. "Manipulation key" means a key, device or instrument, other than a key that is designed to operate a
1441 specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or
1442 cylinder, including a wiggle key, jiggle key or rocker key.
- 1443 9. "Master key" means a key that operates all the keyed locks or cylinders in a similar type or group of
1444 locks.
- 1445 10. "Nonresidential structure" means any structure other than a residential structure and includes a retail
1446 establishment.
- 1447 11. "Residential structure" means any structure, movable or immovable, permanent or temporary, that is
1448 adapted for both human residence and lodging whether occupied or not.
- 1449 12. "Structure" means any device that accepts electronic or physical currency and that is used to conduct
1450 commercial transactions, any vending machine or any building, object, vehicle, railroad car or place with
1451 sides and a floor that is separately securable from any other structure attached to it and that is used for
1452 lodging, business, transportation, recreation or storage.
- 1453 13. "Vending machine" means a machine that dispenses merchandise or service through the means of
1454 currency, coin, token, credit card or other nonpersonal means of accepting payment for merchandise or
1455 service received.



1456 **ARS §13-1502 Criminal trespass in the third degree; classification**

1457 A. A person commits criminal trespass in the third degree by:

- 1458 1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by
1459 a law enforcement officer, the owner or any other person having lawful control over such property, or
1460 reasonable notice prohibiting entry.
- 1461 2. Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching
1462 yards or rolling stock of a railroad company.

1463 B. Pursuant to subsection A, paragraph 1 of this section, a request to leave by a law enforcement officer
1464 acting at the request of the owner of the property or any other person having lawful control over the
1465 property has the same legal effect as a request made by the property owner or other person having lawful
1466 control of the property.

1467 C. Criminal trespass in the third degree is a class 3 misdemeanor.

1469 **ARS §13-1503 Criminal trespass in the second degree; classification**

- 1470 A. A person commits criminal trespass in the second degree by knowingly entering or remaining
1471 unlawfully in or on any nonresidential structure or in any fenced commercial yard.
- 1472 B. Criminal trespass in the second degree is a class 2 misdemeanor.

1473 **ARS §13-1504. Criminal trespass in the first degree; classification**

1474 A. A person commits criminal trespass in the first degree by knowingly:

- 1475 1. Entering or remaining unlawfully in or on a residential structure.
1476 2. Entering or remaining unlawfully in a fenced residential yard.
1477 3. Entering any residential yard and, without lawful authority, looking into the residential structure
1478 thereon in reckless disregard of infringing on the inhabitant's right of privacy.
1479 4. Entering unlawfully on real property that is subject to a valid mineral claim or lease with the intent to
1480 hold, work, take or explore for minerals on the claim or lease.
1481 5. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or
1482 otherwise desecrating a religious symbol or other religious property of another without the express
1483 permission of the owner of the property.
1484 6. Entering or remaining unlawfully in or on a critical public service facility.
1485 B. Criminal trespass in the first degree under subsection A, paragraph 6 of this section is a class 5 felony.
1486 Criminal trespass in the first degree under subsection A, paragraph 1 or 5 of this section is a class 6
1487 felony. Criminal trespass in the first degree under subsection A, paragraph 2, 3 or 4 of this section is a
1488 class 1 misdemeanor.

1489 **ARS §13-2810. Interfering with judicial proceedings; classification**

- 1490 A. A person commits interfering with judicial proceedings if such person knowingly:
1491 1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly
1492 tends to interrupt its proceedings or impairs the respect due to its authority; or
1493 2. Disobeys or resists the lawful order, process or other mandate of a court; or
1494 3. Refuses to be sworn or affirmed as a witness in any court proceeding; or
1495 4. Publishes a false or grossly inaccurate report of a court proceeding; or
1496 5. Refuses to serve as a juror unless exempted by law; or
1497 6. Fails inexcusably to attend a trial at which he has been chosen to serve as a juror.
1498 B. Interfering with judicial proceedings is a class 1 misdemeanor.

1499 **ARS §13-2814. Simulating legal process; classification**

- 1500 A. A person commits simulating legal process if such person knowingly sends or delivers to another any
1501 document falsely purporting to be an order or other document that simulates civil or criminal process.
1502 B. Simulating legal process is a class 2 misdemeanor.

1503 **ARS §13-3802. Right to command aid for execution of process; exception; punishment for resisting**
1504 **process**

- 1505 A. When a sheriff or other public officer authorized to execute process finds or has reason to believe that
1506 resistance will be made to execution of the process, the officer may command as many inhabitants of the
1507 county as the officer deems proper to assist in overcoming the resistance, except that a person may refuse
1508 to assist if the commanded assistance would expose that person to physical injury.
1509 B. The officer shall certify to the court from which the process issued the names of those persons
1510 resisting, and they may be proceeded against for contempt of court.

1511 *(APSA believes that this statute relates to the formation of posses needed by sheriffs prior to modern day*
1512 *to search for and execute arrest of wanted fugitives. Process servers do not execute legal process – that*
1513 *is reserved for peace officers, only. Process servers may not command aid in the service of legal process.*
1514 *- Ed.)*

1515 **ARS §13-4072 13-4072. Service of subpoena (Relating to subpoenas in criminal matters, only)**

- 1516 A. A subpoena may be served by any person.
1517 B. A subpoena may be served by any of the following methods:

- 1518 1. Personal service.
1519 2. Certified mail.
1520 3. First class mail, if a certificate of service and return card is returned by the addressee.
1521 C. Personal service of a subpoena is made by showing the original to the witness personally, informing
1522 him of its contents and delivering a copy of the subpoena to such witness. Written return of service of a
1523 subpoena must be made without delay, stating the time and place of service.
1524 D. Subpoenas may be served by certified mail for delivery to addressee only. The subpoena shall be
1525 registered and mailed, postage and registry fee prepaid, to the addressee with a request endorsed on the
1526 envelope in the usual form for the return of the letter to the sender if not delivered within five days. The
1527 receipt of such certified letter by the addressee is deemed valid service upon him and the returned receipt
1528 signed by the addressee named in the subpoena is prima facie evidence of notification.
1529 E. Subpoenas may be served by first class mail if the addressee is supplied with a certificate of service
1530 and return card. The return of such card signifies and states that the addressee has received official notice
1531 to appear in court, that he waives all further service of subpoena and that he submits to the jurisdiction of
1532 the court for the purposes set forth in the subpoena. The return of the signed card is prima facie evidence
1533 of notification.
1534 F. A peace officer shall serve in his county any subpoena delivered to him for service, either on behalf of
1535 this state or the defendant.
1536 G. The methods described in this section also apply to out-of-county subpoenas as set forth in section 13-
1537 4076.

1538 **ARS §13-4093 Witness from another state summoned to testify in this state (*Relating to criminal***
1539 ***prosecutions, only*)**

- 1540 A. If a person in any state, which by its laws has made provision for commanding persons within its
1541 borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to
1542 commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or
1543 in a grand jury investigation which has commenced or is about to commence, a judge of such court may
1544 issue a certificate under the seal of the court stating these facts and specifying the number of days the
1545 witness will be required. This certificate shall be presented to a judge of a court of record in the county in
1546 which the witness is found.
1547 B. If the certificate recommends that the witness be taken into immediate custody and delivered to an
1548 officer of this state to assure his attendance in this state, such judge may direct that the witness be
1549 forthwith brought before him; and the judge being satisfied of the desirability of such custody and
1550 delivery, for which determination the certificate shall be prima facie proof, may order that the witness be
1551 forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient
1552 authority to the officer to take the witness into custody and hold him unless and until he may be released
1553 by bail, recognizance or order of the judge issuing the certificate.
1554 C. If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a
1555 mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending
1556 and five dollars for each day that he is required to travel and attend as a witness. A witness who has
1557 appeared in accordance with the provisions of the summons shall not be required to remain within this
1558 state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the
1559 court. If such witness, after coming into this state, fails without good cause to attend and testify as
1560 directed in the summons, he shall be punished in the manner provided for the punishment of any witness
1561 who disobeys a summons issued from a court of record in this state.

1562 **ARS §13-4094 Exemption from arrest and service of process (Relating to civil & criminal matters)**
1563 A. If a person comes into this state in obedience to a summons directing him to attend and testify in this
1564 state he shall not while in this state pursuant to such summons be subject to arrest or the service of
1565 process, civil or criminal, in connection with matters which arose before his entrance into this state under
1566 the summons.
1567 B. If a person passes through this state while going to another state in obedience to a summons to attend
1568 and testify in that state or while returning therefrom, he shall not while so passing through this state be
1569 subject to arrest or the service of process, civil or criminal, in connection with matters which arose before
1570 his entrance into this state under the summons.

1571 **ARS §33-1377 Special detainer actions; service; trial postponement**

1572 A. Special detainer actions shall be instituted for remedies prescribed in section 33-1368. Except as
1573 provided in this section, the procedure and appeal rights prescribed in title 12, chapter 8, article 4 apply to
1574 special detainer actions.

1575 B. The summons shall be issued on the day the complaint is filed and shall command the person against
1576 whom the complaint is made to appear and answer the complaint at the time and place named which shall
1577 be not more than six nor less than three days from the date of the summons. The tenant is deemed to have
1578 received the summons three days after the summons is mailed if personal service is attempted and within
1579 one day of issuance of the summons a copy of the summons is conspicuously posted on the main entrance
1580 of the tenant's residence and on the same day the summons is sent by certified mail, return receipt
1581 requested, to the tenant's last known address. The summons in a special detainer action shall be served at
1582 least two days before the return day and the return day made on the day assigned for trial. Service of
1583 process in this manner shall be deemed the equivalent of having served the tenant in person for the
1584 purposes of awarding a money judgment for all rent, damages, costs and attorney fees due.

1585 C. For good cause shown supported by an affidavit, the trial may be postponed for not more than three
1586 days in a justice court or five days in the superior court.

1587 D. In addition to determining the right to actual possession, the court may assess damages, attorney fees
1588 and costs as prescribed by law.

1589 E. If a complaint is filed alleging a material and irreparable breach pursuant to section 33-1368,
1590 subsection A, the summons shall be issued as provided in subsection B of this section, except that the trial
1591 date and return date shall be set no later than the third day following the filing of the complaint. If after
1592 the hearing the court finds by preponderance of the evidence that the material and irreparable breach did
1593 occur, the court shall order restitution in favor of the plaintiff not less than twelve nor more than twenty-
1594 four hours later.

1595 F. If the defendant is found guilty, the court shall give judgment for the plaintiff for restitution of the
1596 premises, for late charges stated in the rental agreement, for costs and, at the plaintiff's option, for all rent
1597 found to be due and unpaid through the periodic rental period provided for in the rental agreement as
1598 described in section 33-1314, subsection C and shall grant a writ of restitution.

1599 G. If the defendant is found not guilty, judgment shall be given for the defendant against the plaintiff for
1600 costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of
1601 the action, a writ of restitution shall issue in favor of the defendant.

1602 **ARS §39-121 39-121. Inspection of public records**

1603 Public records and other matters in the custody of any officer shall be open to inspection by any person at
1604 all times during office hours.

1605

1606 **Selected Rules of Court – Rules of Civil Procedure for the Superior Courts of Arizona (Arizona**
1607 **Rules of Civil Procedure or RcP/ARCP)**
1608 It should be noted that the following rules of court (a link can be found on the Judicial Branch website in
1609 a dropdown link under the AZ Supreme Court) are just a smattering of those which APSA recommends
1610 the process server have knowledge of.

1611 **ARCP Rule 3. Commencing an Action**

1612 A civil action is commenced by filing a complaint with the court.

1613 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. 16 A. R. S. Rules Civ. Proc., Rule 3, AZ ST RCP
1614 Rule 3. State Court Rules are current with amendments received through 4/15/21.

1615 **ARCP Rule 4. Summons**

1616 (a) Issuance; Service.

1617 (1) Pleading Defined. As used in this rule, Rule 4.1, and Rule 4.2, “pleading” means any of the pleadings
1618 authorized by Rule 7 that bring a party into an action--a complaint, third-party complaint, counterclaim,
1619 or crossclaim.

1620 (2) Issuance. On or after filing a pleading, the filing party may present a summons to the clerk for
1621 signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the
1622 filing party for service. A summons--or a copy of the summons if addressed to multiple parties--must be
1623 issued for each party to be served.

1624 (3) Service. A summons must be served with a copy of the pleading. Service must be completed as
1625 required by this rule, Rule 4.1, or 4.2, as applicable.

1626 (b) Contents; Replacement Summons.

1627 (1) Contents. A summons must:

1628 (A) name the court and the parties;

1629 (B) be directed to the party to be served;

1630 (C) state the name and address of the attorney of the party serving the summons or--if unrepresented--the
1631 party's name and address;

1632 (D) state the time within which the defendant must appear and defend;

1633 (E) notify the party to be served that a failure to appear and defend will result in a default judgment
1634 against that party for the relief demanded in the pleading;

1635 (F) state that “requests for reasonable accommodation for persons with disabilities must be made to the
1636 court by parties at least 3 working days in advance of a scheduled court proceeding”;

1637 (G) be signed by the clerk; and

1638 (H) bear the court's seal.

1639 (2) Replacement Summons. If a summons is returned without being served, or if it has been lost, a party
1640 may ask the clerk to issue a replacement summons in the same form as the original. A replacement
1641 summons must be issued and served within the time prescribed by Rule 4(i) for service of the original
1642 summons.

1643 (c) Fictitiously Named Parties; Return. If a pleading identifies a party by a fictitious name under Rule
1644 10(d), the summons may issue and be directed to a person with the fictitious name. The return of service
1645 of process on a person identified by a fictitious name must state the true name of the person who was
1646 served.

1647 (d) Who May Serve Process.

1648 (1) Generally. Service of process must be made by a sheriff, a sheriff's deputy, a constable, a constable's
1649 deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204 and
1650 Rule 4(e), or any other person specially appointed by the court. Service of process may also be made by a
1651 party or that party's attorney if expressly authorized by these rules.

1652 (2) Special Appointment.

- 1653 (A) Qualifications. A specially appointed person must be at least 21 years of age and must not be a party,
1654 an attorney, or an employee of an attorney in the action in which process is to be served.
- 1655 (B) Procedure for Appointment. A party may request a special appointment to serve process by filing a
1656 motion with the presiding superior court judge in the county where the action is pending. The motion
1657 must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue.
1658 Special appointments should be granted freely, are valid only for the cause specified in the motion, and do
1659 not constitute an appointment as a certified private process server.
- 1660 (e) Statewide Certification of Private Process Servers. A person seeking certification as a private process
1661 server must file with the clerk an application under Arizona Code of Judicial Administration § 7-204.
1662 Upon approval of the court or presiding judge of the county in which the application is filed, the clerk will
1663 register the person as a certified private process server, which will remain in effect unless and until the
1664 certification is withdrawn by the court. The clerk must maintain a register for this purpose. A certified
1665 private process server will be entitled to serve in that capacity for any state court within Arizona.
- 1666 (f) Accepting or Waiving Service; Voluntary Appearance. There are two ways to accomplish service with
1667 the assent of the served party--waiver and acceptance. A party also may voluntarily appear without being
1668 served.
- 1669 (1) Waiving Service. A party subject to service under Rule 4.1 or 4.2 may waive issuance or service. The
1670 waiver of service must be in writing, signed by that party or that party's authorized agent or attorney, and
1671 be filed in the action. A party who waives service receives additional time to serve a responsive pleading,
1672 as provided in Rule 12(a)(1)(A)(ii).
- 1673 (2) Accepting Service. A party subject to service under Rule 4.1 or 4.2 may accept service. The
1674 acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney,
1675 and be filed in the action. A party who accepts service does not receive the additional time to serve a
1676 responsive pleading under Rule 12(a)(1)(A)(ii).
- 1677 (3) Voluntary Appearance.
- 1678 (A) In Open Court. A party on whom service is required may, in person or by an attorney or authorized
1679 agent, enter an appearance in open court. The appearance must be noted by the clerk on the docket and
1680 entered in the minutes.
- 1681 (B) By Responsive Pleading. The filing of a pleading responsive to a pleading allowed under Rule 7
1682 constitutes an appearance by the party.
- 1683 (4) Effect. Waiver, acceptance, and appearance under (f)(1), (f)(2), and (f)(3) have the same force and
1684 effect as if a summons had been issued and served.
- 1685 (g) Return; Proof of Service.
- 1686 (1) Timing. If service is not accepted or waived, and no voluntary appearance is made, then the person
1687 effecting service must file proof of service with the court. Return of service should be made by no later
1688 than when the served party must respond to process.
- 1689 (2) Service by the Sheriff. If a summons is served by a sheriff or deputy sheriff, the return must be
1690 officially marked on or attached to the proof of service and promptly filed with the court.
- 1691 (3) Service by Others. If served by a person other than a sheriff or deputy sheriff, the return must be
1692 promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the
1693 server is a registered private process server, the affidavit must clearly identify the county in which the
1694 server is registered.
- 1695 (4) Service by Publication. If the summons is served by publication, the return of the person making such
1696 service must be made as provided in Rules 4.1(l) and 4.2(f).
- 1697 (5) Service Outside the United States. Service outside the United States must be proved as follows:
1698 (A) if effected under Rule 4.2(i)(1), as provided in the applicable treaty or convention; or
1699 (B) if effected under Rule 4.2(i)(2), by a receipt signed by the addressee, or other evidence satisfying the
1700 court that the summons and complaint were delivered to the addressee.
- 1701 (6) Validity of Service. Failure to make proof of service does not affect the validity of service.
- 1702 (h) Amending Process or Proof of Service. The court may permit process or proof of service to be
1703 amended.

1704 (i) Time Limit for Service. If a defendant is not served with process within 90 days after the complaint is
1705 filed, the court--on motion, or on its own after notice to the plaintiff--must dismiss the action without
1706 prejudice against that defendant or order that service be made within a specified time. But if the plaintiff
1707 shows good cause for the failure, the court must extend the time for service for an appropriate period.
1708 This Rule 4(i) does not apply to service in a foreign country under Rules 4.2(i), (j), (k), and (l).

1709 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. Amended Aug. 31, 2017, effective Jan. 1, 2018. 16
1710 A. R. S. Rules Civ. Proc., Rule 4, AZ ST RCP Rule 4. State Court Rules are current with amendments
1711 received through 4/15/21.

1712 **ARCP Rule 4.1. Service of Process Within Arizona**

1713 (a) Territorial Limits of Effective Service. All process--including a summons--may be served anywhere
1714 within Arizona.

1715 (b) Serving a Summons and Complaint or Other Pleading. The summons and the pleading being served
1716 must be served together within the time allowed under Rule 4(i). The serving party must furnish the
1717 necessary copies to the person who makes service. Service is complete when made.

1718 (c) Waiving Service.

1719 (1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule
1720 4.1(d), (h)(1)-(3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To
1721 avoid costs, the plaintiff may notify the defendant that an action has been commenced and request that the
1722 defendant waive service of a summons. The notice and request must:

1723 (A) be in writing and be addressed to the defendant and any other person required in this rule to be served
1724 with the summons and the pleading being served;

1725 (B) name the court where the pleading being served was filed;

1726 (C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in
1727 Rule 84, Form 2, and a prepaid means for returning the completed form;

1728 (D) inform the defendant, using text provided in Rule 84, Form 1, of the consequences of waiving and not
1729 waiving service;

1730 (E) state the date when the request is sent;

1731 (F) give the defendant a reasonable time to return the waiver, which must be at least 30 days after the
1732 request was sent; and

1733 (G) be sent by first-class mail or other reliable means.

1734 (2) Failure to Waive. If a defendant fails without good cause to sign and return a waiver requested by a
1735 plaintiff, the court must impose on the defendant:

1736 (A) the expenses later incurred in making service; and

1737 (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service
1738 expenses.

1739 (3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a
1740 waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the
1741 request was sent.

1742 (4) Results of Filing a Waiver. When the plaintiff files an executed waiver, proof of service is not
1743 required and, except for the additional time in which a defendant may answer or otherwise respond as
1744 provided in Rule 4.1(c)(3), these rules apply as if a summons and the pleading being served had been
1745 served at the time of filing the waiver.

1746 (5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to
1747 personal jurisdiction or venue.

1748 (d) Serving an Individual. Unless Rule 4.1(c), (e), (f), or (g) applies, an individual may be served by:

1749 (1) delivering a copy of the summons and the pleading being served to that individual personally;

1750 (2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable
1751 age and discretion who resides there; or

- 1752 (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of
1753 process.
- 1754 (e) Serving a Minor. Unless Rule 4.1(f) applies, a minor less than 16 years old may be served by
1755 delivering a copy of the summons and the pleading being served to the minor in the manner set forth in
1756 Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner:
1757 (1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or
1758 (2) if none of them resides or is found within Arizona, to any adult having the care and control of the
1759 minor, or any person of suitable age and discretion with whom the minor resides.
- 1760 (f) Serving a Minor Who Has a Guardian or Conservator. If a court has appointed a guardian or
1761 conservator for a minor, the minor must be served by serving the guardian or conservator in the manner
1762 set forth in Rule 4.1(d) for serving an individual, and separately serving the minor in that same manner.
- 1763 (g) Serving a Person Adjudicated Incompetent Who Has a Guardian or Conservator. If a court has
1764 declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that
1765 person's property and has appointed a guardian or conservator for the person, the person must be served
1766 by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual,
1767 and separately serving the person in that same manner.
- 1768 (h) Serving a Governmental Entity. If a governmental entity has the legal capacity to be sued and it has
1769 not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the
1770 pleading being served to the following individuals:
1771 (1) for service on the State of Arizona, the Attorney General;
1772 (2) for service on a county, the Board of Supervisors clerk for that county;
1773 (3) for service on a municipal corporation, the clerk of that municipal corporation; and
1774 (4) for service on any other governmental entity:
1775 (A) the individual designated by the entity, as required by statute, to receive service of process; or
1776 (B) if the entity has not designated a person to receive service of process, then the entity's chief executive
1777 officer(s), or, alternatively, its official secretary, clerk, or recording officer.
- 1778 (i) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign
1779 corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not
1780 waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading
1781 being served to a partner, an officer, a managing or general agent, or any other agent authorized by
1782 appointment or by law to receive service of process and--if the agent is one authorized by statute and the
1783 statute so requires--by also mailing a copy of each to the defendant.
- 1784 (j) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.
1785 (1) Generally. If a domestic corporation does not have an officer or an agent within Arizona on whom
1786 process can be served, the corporation may be served by depositing two copies of the summons and the
1787 pleading being served with the Arizona Corporation Commission. Following this procedure constitutes
1788 personal service on that corporation.
1789 (2) Evidence. If the sheriff of the county in which the action is pending states in the return that, after
1790 diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on
1791 whom process may be served, the statement constitutes prima facie evidence that the corporation does not
1792 have such an officer or agent in Arizona.
1793 (3) Commission's Responsibilities. The Arizona Corporation Commission must retain one of the copies of
1794 the summons and the pleading being served for its records and immediately mail the other copy, postage
1795 prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained
1796 from the corporation's articles of incorporation, other Corporation Commission records, or any other
1797 source.
- 1798 (k) Alternative Means of Service.
1799 (1) Generally. If a party shows that the means of service provided in Rule 4.1(c) through Rule 4.1(j) are
1800 impracticable, the court may--on motion and without notice to the person to be served--order that service
1801 may be accomplished in another manner.

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1802 (2) Notice and Mailing. If the court allows an alternative means of service, the serving party must make a
1803 reasonable effort to provide the person being served with actual notice of the action's commencement. In
1804 any event, the serving party must mail the summons, the pleading being served, and any court order
1805 authorizing an alternative means of service to the last-known business or residential address of the person
1806 being served.

1807 (3) Service by Publication. A party may serve by publication only if the requirements of Rule 4.1(l),
1808 4.1(m), 4.2(f), or 4.2(g) are met and the procedures provided in those rules are followed.

1809 (l) Service by Publication.

1810 (1) Generally. A party may serve a person by publication only if:

1811 (A) the last-known address of the person to be served is within Arizona but:

1812 (i) the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current
1813 address; or

1814 (ii) the person to be served has intentionally avoided service of process; and

1815 (B) service by publication is the best means practicable in the circumstances for providing the person with
1816 notice of the action's commencement.

1817 (2) Procedure.

1818 (A) Generally. Service by publication is accomplished by publishing the summons and a statement
1819 describing how a copy of the pleading being served may be obtained at least once a week for 4 successive
1820 weeks:

1821 (i) in a newspaper published in the county where the action is pending; and

1822 (ii) if the last-known address of the person to be served is in a different county, in a newspaper in that
1823 county.

1824 (B) Who May Serve. Service by publication may be made by the serving party, its counsel, or anyone
1825 authorized under Rule 4(d).

1826 (C) Alternative Newspapers. If no newspaper is published in a county where publication is required, the
1827 serving party must publish the summons and statement in a newspaper in an adjoining county.

1828 (D) Effective Date of Service. Service is complete 30 days after the summons and statement is first
1829 published in all newspapers where publication is required.

1830 (3) Mailing. If the serving party knows the address of the person being served, it must, on or before the
1831 date of first publication, mail to the person the summons and a copy of the pleading being served, postage
1832 prepaid.

1833 (4) Return.

1834 (A) Required Affidavit. The party or person making service must prepare, sign and file an affidavit stating
1835 the manner and dates of the publication and mailing, and the circumstances warranting service by
1836 publication. If no mailing was made because the serving party did not know the current address of the
1837 person being served, the affidavit must state that fact.

1838 (B) Accompanying Publication. A printed copy of the publication must accompany the affidavit.

1839 (C) Effect. An affidavit that complies with these requirements constitutes prima facie evidence of
1840 compliance with the requirements for service by publication.

1841 (m) Service by Publication on an Unknown Heir in a Real Property Action. An unknown heir of a
1842 decedent may be sued as an unknown heir and be served by publication in the county where the action is
1843 pending, using the procedures provided in Rule 4.1(l), if:

1844 (1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is
1845 some other type of action involving title to real property; and

1846 (2) the heir must be a party to the action to permit a complete determination of the action.

1847 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. 16 A. R. S. Rules Civ. Proc., Rule 4.1, AZ ST RCP
1848 Rule 4.1. State Court Rules are current with amendments received through 4/15/21.

1849 **ARCP Rule 5. Serving Pleadings and Other Documents**

1850 (a) Service Generally.

1851 (1) Scope. This rule governs service on other parties after service of the summons and complaint,
1852 counterclaim, or third-party complaint.

1853 (2) When Required. Unless these rules provide otherwise, each of the following documents must be
1854 served on every party by a method stated in Rule 5(c):

1855 (A) an order stating that service is required;

1856 (B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(d)
1857 because there are numerous defendants;

1858 (C) a discovery or disclosure document required to be served on a party, unless the court orders
1859 otherwise;

1860 (D) a written motion, except one that may be heard ex parte; and

1861 (E) a written notice, appearance, demand, or offer of judgment, or any similar document.

1862 (3) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear,
1863 except as provided in Rule 55. But a pleading that asserts a new claim for relief against such a party must
1864 be served on that party under Rule 4, 4.1, or 4.2, as applicable.

1865 (4) Seizing Property. If an action is begun by seizing property and no person is or need be named as a
1866 defendant, any service required before the filing of an appearance, answer, or claim must be made on the
1867 person who had custody or possession of the property when it was seized.

1868 (b) Service; Parties Served; Continuance. If there are several defendants, and some are served with
1869 process and others are not, the plaintiff may proceed against those who have been served or move to defer
1870 disclosure or other case-related activity until additional parties are served.

1871 (c) Service After Appearance; Service After Judgment; How Made.

1872 (1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on
1873 the attorney unless the court orders or a specific rule requires service on the party.

1874 (2) Service Generally. A document is served under this rule by any of the following:

1875 (A) handing it to the person;

1876 (B) leaving it:

1877 (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous
1878 place in the office; or

1879 (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with
1880 someone of suitable age and discretion who resides there;

1881 (C) mailing it by U.S. mail to the person's last-known address--in which event service is complete upon
1882 mailing;

1883 (D) delivering it by any other means, including electronic means other than that described in Rule
1884 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in
1885 that manner--in which event service is complete upon transmission; or

1886 (E) transmitting it through an electronic filing service provider approved by the Administrative Office of
1887 the Courts, if the recipient is an attorney of record in the action--in which event service is complete upon
1888 transmission.

1889 (3) Certificate of Service. The date and manner of service must be noted on the last page of the original of
1890 the served document or in a separate certificate, in a form substantially as follows:

1891 A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:

1892 [Name of opposing party or attorney]

1893 [Address of opposing party or attorney]

1894 If the precise manner in which service has actually been made is not so noted, it will be presumed that the
1895 document was served by mail. This presumption will only apply if service in some form has actually been
1896 made.

1897 (4) Service After Judgment. After the time for appeal from a judgment has expired or a judgment has
1898 become final after appeal, a motion, petition, complaint, or other pleading requesting modification,

1899 vacation, or enforcement of that judgment must be served in the same manner that a summons and
1900 pleading are served under Rule 4, 4.1, or 4.2, as applicable.
1901 (d) Serving Numerous Defendants.
1902 (1) Generally. If an action involves an unusually large number of defendants, the court may, on motion or
1903 on its own, order that:
1904 (A) defendants' pleadings and replies to them need not be served on other defendants;
1905 (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them
1906 will be treated as denied or avoided by all other parties; and
1907 (C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.
1908 (2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

1909 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. 16 A. R. S. Rules Civ. Proc., Rule 5, AZ ST RCP
1910 Rule 5. State Court Rules are current with amendments received through 4/15/21.

1911 **ARCP Rule 7. Pleadings Allowed**

1912 Only these pleadings are allowed: a complaint; an answer to a complaint; a counterclaim; an answer to a
1913 counterclaim designated as a counterclaim; an answer to a crossclaim; a third-party complaint; an answer
1914 to a third-party complaint; and, if the court orders one, a reply to an answer.

1915 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. Amended Aug. 26, 2020, effective Jan. 1, 2021. 16
1916 A. R. S. Rules Civ. Proc., Rule 7, AZ ST RCP Rule 7. State Court Rules are current with amendments
1917 received through 4/15/21.

1918 **ARCP Rule 7.3. Orders to Show Cause**

1919 (a) Generally. A court, on application supported by affidavit showing sufficient cause, may issue an order
1920 requiring a person to show cause why the party applying for the order should not have the relief it
1921 requests in its application. The court must designate a date by which the person must respond, and may
1922 set a hearing on the application.
1923 (b) Service. An order to show cause must be served in the same manner that a summons and pleading are
1924 served under Rule 4, 4.1, or 4.2, as applicable, or, if the person to whom the order is directed has entered
1925 an appearance in the action, in accordance with Rule 5. Service must be effected within such time as the
1926 court orders.

1927 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. 16 A. R. S. Rules Civ. Proc., Rule 7.3, AZ ST RCP
1928 Rule 7.3. State Court Rules are current with amendments received through 4/15/21.

1929 **ARCP Rule 10. Form of Pleadings**

1930 (a) Caption; Names of Parties. Every pleading must have a caption in the form prescribed by Rule 5.2(a),
1931 along with the pleading's designation under Rule 7. The title of the complaint must name all the parties;
1932 the title of other pleadings and documents, after naming the first party on each side, may refer generally to
1933 other parties by the designation "et al."
1934 (b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs,
1935 each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to
1936 a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate
1937 transaction or occurrence--and each defense other than a denial--must be stated in a separate count or
1938 defense.
1939 (c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in
1940 the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to
1941 a pleading is a part of the pleading for all purposes.

1942 (d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the
1943 plaintiff, the defendant may be designated in the pleadings or proceeding by any name. If the defendant's
1944 true name is discovered, the pleading or proceeding should be amended accordingly.

1945 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. 16 A. R. S. Rules Civ. Proc., Rule 10, AZ ST RCP
1946 Rule 10. State Court Rules are current with amendments received through 4/15/21.

1947 **ARCP Rule 45. Subpoena**

1948 <For applicability of amending Order No. R-17-0010, effective July 1, 2018, see the Application
1949 Provisions note at the beginning of the Arizona Rules of Civil Procedure.>

1950 (a) Generally.

1951 (1) Requirements--Generally. Every subpoena must:

1952 (A) state the name of the Arizona court from which it issued;

1953 (B) state the title of the action, the name of the court in which it is pending, and its civil action number;

1954 (C) command each person to whom it is directed to do the following at a specified time and place:

1955 (i) attend and testify at a deposition, hearing, or trial;

1956 (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically
1957 stored information, or tangible things in that person's possession, custody, or control; or

1958 (iii) permit the inspection of premises; and

1959 (D) be substantially in the form set forth in Rule 84, Form 9.

1960 (2) Issuance by Clerk. The clerk must issue a signed but otherwise blank subpoena to a party requesting it.
1961 That party must complete the subpoena before service. The State Bar of Arizona may also issue signed
1962 subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme
1963 Court.

1964 (b) Subpoena for Deposition, Hearing, or Trial; Duties; Objections.

1965 (1) Issuing Court. A subpoena commanding attendance at a hearing or trial must issue from the superior
1966 court in the county where the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a
1967 subpoena commanding attendance at a deposition must issue from the superior court in the county where
1968 the action is pending.

1969 (2) Combining or Separating a Command to Produce or to Permit Inspection. A command to produce
1970 documents, electronically stored information, or tangible things, or to permit the inspection of premises,
1971 may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out
1972 in a separate subpoena.

1973 (3) Place of Appearance.

1974 (A) Trial Subpoena. Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding attendance at a trial may
1975 require the subpoenaed person to travel from anywhere within the state.

1976 (B) Deposition or Hearing Subpoena. A subpoena commanding a person who is neither a party nor a
1977 party's officer to attend a deposition or hearing may not require the subpoenaed person to travel to a place
1978 other than:

1979 (i) the county where the person resides or transacts business in person;

1980 (ii) the county where the person is served with a subpoena, or within 40 miles from the place of service;
1981 or

1982 (iii) such other convenient place fixed by a court order.

1983 (4) Command to Attend a Deposition--Notice of Recording Method. A subpoena commanding attendance
1984 at a deposition must state the method for recording the testimony.

1985 (5) Objections; Appearance Required. Objections to a subpoena commanding attendance at a deposition,
1986 hearing, or trial, must be made by timely motion under Rule 45(e)(2). Unless excused from doing so by
1987 the party or attorney serving a subpoena, by a court order, or by any other provision of this Rule 45, a
1988 person who is properly served with a subpoena must attend and testify at the date, time, and place
1989 specified in the subpoena.

1990 (c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

- 1991 (1) Issuing Court. If separate from a subpoena commanding attendance at a deposition, hearing, or trial, a
1992 subpoena commanding a person to produce designated documents, electronically stored information, or
1993 tangible things, or to permit the inspection of premises, must issue from the superior court in the county
1994 where the production or inspection is to be made.
- 1995 (2) Electronically Stored Information.
- 1996 (A) Specifying the Form for Electronically Stored Information. A subpoena may specify the form or
1997 forms in which electronically stored information is to be produced.
- 1998 (B) Form for Electronically Stored Information Not Specified. If a subpoena does not specify a form for
1999 producing electronically stored information, the person responding may produce it in native form or in
2000 another reasonably usable form that will enable the receiving party to have the same ability to access,
2001 search, and display the information as the responding person.
- 2002 (C) Electronically Stored Information Produced in Only One Form. The person responding need not
2003 produce the same electronically stored information in more than one form.
- 2004 (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of
2005 electronically stored information from sources that the person identifies as not reasonably accessible
2006 because of undue burden or expense, including sources that are unduly burdensome or expensive to
2007 access because of the past good-faith operation of an electronic information system or good-faith and
2008 consistent application of a document retention policy. Any such objection must be made in the time and
2009 manner provided in Rule 45(c)(6). On motion to compel discovery or for a protective order, the person
2010 responding must show that the information is not reasonably accessible because of undue burden or
2011 expense. If that showing is made, the court may nonetheless order discovery from such sources if the
2012 requesting party shows good cause, considering the limitations of Rule 26(b)(1) and (b)(2). The court may
2013 specify conditions for the discovery. Rule 26(e) applies to any motion to quash, motion for protective
2014 order, or motion to compel concerning an objection that electronically stored information is not
2015 reasonably accessible.
- 2016 (3) Appearance Not Required. A person commanded to produce documents, electronically stored
2017 information, or tangible things, or to permit the inspection of premises, need not appear in person at the
2018 place of production or inspection unless the subpoena also commands attendance at a deposition, hearing,
2019 or trial.
- 2020 (4) Documents. A person responding to a subpoena to produce documents must produce them as they are
2021 kept in the usual course of business, or organize and label them to correspond with the categories in the
2022 demand.
- 2023 (5) Claiming Privilege or Protection.
- 2024 (A) A person withholding subpoenaed information under a claim that it is privileged or subject to
2025 protection as work-product material must promptly comply with Rule 26(b)(6)(A), unless a timely
2026 objection is made under Rule 45(c)(6)(A) that providing the information required by Rule 26(b)(6)(A)
2027 would impose an undue burden or expense. If such an objection is made, the procedures in Rule
2028 45(c)(6)(C) apply. On any such objection, unless the court orders otherwise for good cause, a
2029 subpoenaing party requesting a privilege log must pay the subpoenaed person's reasonable expenses in
2030 preparing the log.
- 2031 (B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as
2032 work-product material, the person making the claim and the receiving parties must comply with Rule
2033 26(b)(6)(A) or, if applicable, Rule 26(b)(6)(B).
- 2034 (6) Objection Procedures; Duty to Confer.
- 2035 (A) Form and Time for Objection.
- 2036 (i) A person commanded to produce documents, electronically stored information, or tangible things, or to
2037 permit inspection, may serve a written objection to producing, inspecting, copying, testing, or sampling
2038 any or all of the materials; to inspecting the premises; or to producing electronically stored information in
2039 the form or forms requested or from sources that are not reasonably accessible because of undue burden
2040 or expense, including sources that are unduly burdensome or expensive to access because of the past
2041 good-faith operation of an electronic information system or good-faith and consistent application of a

2042 document retention policy. The objection must state the basis for the objection, and must include the
2043 name, address, and telephone number of the person, or the person's attorney, serving the objection.
2044 (ii) The objection must be served on the party or attorney serving the subpoena before the time specified
2045 for compliance or within 14 days after the subpoena is served, whichever is earlier.
2046 (iii) A person served with a subpoena that combines a command to produce materials or to permit
2047 inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the
2048 subpoena. A person objecting to the part of a combined subpoena that commands attendance at a
2049 deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena,
2050 unless excused as provided in Rule 45(b)(5).

2051 **(B) Procedure After Objecting.**

2052 (i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with
2053 those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing
2054 court. The objecting person also may move for a protective order or to modify or quash the subpoena.
2055 (ii) The party serving the subpoena may move under Rule 37(a) to compel compliance with the subpoena.
2056 The motion must comply with Rule 37(a)(1), and must be served on the subpoenaed person and all other
2057 parties under Rule 5(c).
2058 (iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's
2059 officer from undue burden or expense resulting from compliance.

2060 **(C) Duty to Confer.** Before bringing any motion to compel, motion to quash, or motion for protective
2061 order regarding compliance with a subpoena, the movant must attempt to resolve the dispute by good
2062 faith consultation with the opposing party or person. Any motion regarding compliance with a subpoena
2063 must be accompanied by a good faith consultation certificate under Rule 7.1(h). Absent agreement of the
2064 subpoenaed person, the expedited procedures in Rule 26(d) do not apply to motions under this rule.

2065 **(7) Production to Other Parties.** Unless otherwise stipulated by the parties or ordered by the court, a party
2066 receiving documents, electronically stored information, or tangible things in response to a subpoena must
2067 promptly make such materials available to all other parties for inspection and copying, along with any
2068 other disclosures required by Rule 26.1.

2069 **(d) Service.**

2070 **(1) General Requirements; Tendering Fees.** A subpoena may be served by any person who is not a party
2071 and is at least 18 years old. Serving a subpoena requires delivering a copy to the named person and, if the
2072 subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and
2073 the mileage allowed by law.

2074 **(2) Exceptions to Tendering Fees.** Fees and mileage need not be tendered when the subpoena commands
2075 attendance at a trial or hearing or is issued on behalf of the State of Arizona or any of its officers or
2076 agencies.

2077 **(3) Notice to, and Service on Other Parties.** A copy of every subpoena and any proof of service must be
2078 served on every other party in accordance with Rule 5(c). If the subpoena commands the production of
2079 documents, electronically stored information, or tangible things, or the inspection of premises before trial,
2080 a notice and a copy of the subpoena must be served on each party at least 2 days before it is served on the
2081 person to whom it is directed.

2082 **(4) Service Within the State.** A subpoena may be served anywhere within the state.

2083 **(5) Proof of Service.** Proof of service may not be filed except as allowed by Rule 5.1(c)(2)(A). Any such
2084 filing must be with the court clerk for the county where the action is pending and must include the server's
2085 certificate stating the date and manner of service and the names of the persons served.

2086 **(e) Protecting a Person Subject to a Subpoena; Motion to Quash or Modify.**

2087 **(1) Avoiding Undue Burden or Expense; Sanctions.**

2088 **(A) Generally.** A party or an attorney responsible for serving a subpoena must take reasonable steps to
2089 avoid imposing undue burden or expense on a person subject to the subpoena. Absent good cause, a
2090 subpoena may not seek production of materials that have already been produced in the action or that are
2091 available from parties to the action.

2092 (B) Subpoena to Produce Materials or to Inspect Premises. Unless otherwise ordered by the court for
2093 good cause, the party seeking discovery must pay the reasonable expenses incurred by the subpoenaed
2094 person in responding to a subpoena seeking the production of documents, electronically stored
2095 information, tangible things, or an inspection of premises. A subpoenaed person seeking payment of
2096 expenses other than routine clerical and per-page copying costs as allowed by statute must object on the
2097 grounds that the expenses will cause an undue burden without payment by the subpoenaing party, and
2098 must provide an advance estimate of those expenses. The procedures in Rule 45(c)(6) govern any such
2099 objection. On any dispute, the court may quash or modify the subpoena or may, in the alternative, specify
2100 conditions that include the payment of such additional expenses by the subpoenaing party and the
2101 payment of expenses in advance. The issuing court must impose an appropriate sanction--which may
2102 include lost earnings and reasonable attorney's fees--on a party, attorney, or person who fails to comply
2103 with Rule 45(e)(1)(A) or (B).

2104 (2) Quashing or Modifying a Subpoena.

2105 (A) When Required. On timely motion, the court in the county where the case is pending or from which a
2106 subpoena was issued must quash or modify a subpoena if it:

2107 (i) fails to allow a reasonable time to comply;

2108 (ii) requires a person who is neither a party nor a party's officer to travel to a location other than the places
2109 specified in Rule 45(b)(3)(B);

2110 (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

2111 (iv) subjects a person to undue burden or expense.

2112 (B) When Permitted. On timely motion, the superior court in the county where the case is pending or from
2113 which a subpoena was issued may quash or modify a subpoena if:

2114 (i) it requires disclosing a trade secret or other confidential research, development, or commercial
2115 information;

2116 (ii) it requires disclosing an unretained expert's opinion or information that does not describe specific
2117 occurrences in dispute and results from the expert's study that was not requested by a party;

2118 (iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

2119 (iv) justice so requires.

2120 (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(e)(2)(B), the court
2121 may, instead of quashing or modifying a subpoena, order appearance or production under specified
2122 conditions, including any conditions and limits set forth in Rule 26(c), as the court deems appropriate:

2123 (i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that
2124 cannot otherwise be met without undue hardship; and

2125 (ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or
2126 attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated for
2127 those expenses.

2128 (D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for
2129 compliance or within 14 days after the subpoena is served, whichever is earlier.

2130 (E) Service of Motion. Any motion to quash or modify a subpoena must be served on the party or the
2131 attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any
2132 such motion on all other parties.

2133 (f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without
2134 adequate excuse to obey the subpoena or an order related to it. A failure to obey must be excused if the
2135 subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a
2136 location other than the places specified in Rule 45(b)(3)(B).

2137 Credits: Added Sept. 2, 2016, effective Jan. 1, 2017. Amended Aug. 31, 2017, effective July 1, 2018. 16
2138 A. R. S. Rules Civ. Proc., Rule 45, AZ ST RCP Rule 45. State Court Rules are current with amendments
2139 received through 4/15/21.

2140

2141 **Case Law with Notations**

2142 This section is not intended as legal advice, but as a guide to speed your own research or help you phrase
2143 the questions you put to the attorney who provides you with any necessary legal opinions.

2144 **Highlights of case law relating to proper service of process**

2145 Due process requires that summons be served in a manner reasonably calculated to bring the proceedings
2146 to the defendant's attention. *Moya v. Catholic Archdiocese*, (92 N.M. 278, 587 P.2d 425 (1978)).

2147 The service of writs, complaints, summonses, etc., signifies the delivering to or leaving them with the
2148 party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are
2149 then said to have been served. In the pleading stage of litigation, the delivery of the complaint to the
2150 defendant either to him personally, or in most jurisdictions, by leaving it with a responsible person at his
2151 place of residence. The service must furnish reasonable notice to defendant of proceedings to afford him
2152 opportunity to appear and be heard. *Chemical Specialties Sales Corp. Industrial Div. v. Basic Inc.*, (D.C.
2153 Conn, 296 F.Supp. 1106 @ 1107).

2154 In order for there to be a "leaving with" a person a copy of the summons and complaint as required by
2155 rule, such person must be aware of the leaving. *Tonelson v. Haines*, (2 Ariz.App. 127).

2156 When men are within easy speaking distance of each other, and facts occur that would convince
2157 reasonable men that personal service of legal document is being attempted, service cannot be avoided by
2158 denying service and moving away without consenting to take document in hand. *In Re Ball*, (2
2159 Cal.App.2d 578, 38 P.2d 411.).

2160 Service of process is not invalid merely because secured by deception on defendant, since persons within
2161 jurisdiction have unenforceable duty to submit to service. *Lackey v. Hurley*, (175 Ohio St. 483, 196
2162 N.E.2d 446).

2163 **John/Jane Doe Services -- *Lane v. Elco Industries, Inc.*, (134 Ariz. 361, 656 P.2d 650 (App. 1982))**

2164 Where suit is brought against a fictitious defendant, it must be made known to the defendant when he is
2165 served with process that he is a defendant and is being served as a fictitious defendant. If it is not made
2166 clear to the party being served that he is a defendant in a lawsuit, he may be able to successfully contest
2167 the service. *Lane v. Elco Industries, Inc.*, (134 Ariz. 361, 656 P.2d 650 (App. 1982)).

2168 **Time of day for service -- *Golden v. Dungan*, (20 Cal.App. 3d 295, 97 Cal.Rptr. 577 (1971))**

2169 In Arizona there appears to be no express limitation as to the day or hour when service of process may be
2170 made, but ordinarily it should be at reasonable times. A California case has held that an officer was not
2171 liable for abuse of process but was responsible for emotional distress where service was made by
2172 pounding on the door at midnight. *Golden v. Dungan*, (20 Cal.App. 3d 295, 97 Cal.Rptr. 577 (1971)).

2173 **Affidavit of due diligence -- *Wells v. Valley National Bank*, (109 Ariz. 345, 509 P.2d 615 (1973));**

2174 ***Llamas v. Superior Court*, (13 Ariz.App. 100, 474 P.2d 459 (1970)).**

2175 The affidavit must specify the probative facts of due diligence. *Wells v. Valley National Bank*, (109 Ariz.
2176 345, 509 P.2d 615 (1973)); *Llamas v. Superior Court*, (13 Ariz.App. 100, 474 P.2d 459 (1970)).

2177 **Affidavit of due diligence -- *Cooper v. Commonwealth Title of Ariz.*, (15 Ariz.App. 560, 489 P.2d 1262**
2178 **(1971))**

2179 More than one affidavit may be required, such as affidavits of the party, his or her attorney, and the
2180 process server; it has been suggested that a search be made of telephone listings, voters lists, assessor's
2181 records, utility records, and city directories, and that inquiry be made among the neighbors. *Cooper v.*
2182 *Commonwealth Title of Ariz.*, (15 Ariz.App. 560, 489 P.2d 1262 (1971)).

2183 **Court ordered substituted service -- *Rouzaud v. Marek*, (166 Ariz. 375, 802 P.2d 1074 (App. 1990))**
2184 Notice of an application to modify custody, visitation and support served on a party's attorney was
2185 insufficient to give the court in personam jurisdiction, but court-ordered substituted service was sufficient
2186 where the party had left the country and was attempting to evade service of process. *Rouzaud v. Marek*,
2187 (166 Ariz. 375, 802 P.2d 1074 (App. 1990)).

2188 **Simulating legal process -- *Schuster v. Merrill*, (56 Ariz. 114, 106 P.2d 192)**
2189 When lack of authority is apparent the officer is not only justified, but it is his duty, not to serve illegal
2190 process; and, if he does so, it is at his peril. The only ground, therefore, upon which an action can be
2191 predicated against an officer for executing process is where lack of authority for its issuance is apparent
2192 on its face. *Schuster v. Merrill*, (56 Ariz. 114, 106 P.2d 192).²

2193 **Managing or General Agent -- *Safeway Stores, Inc. v. Ramirez*, (1 Ariz.App. 117, 400 P.2d 125)**
2194 Test of whether employee is "managing or general agent" upon whom process against corporate
2195 defendant may be served is whether agent is of such character and rank that it is reasonably certain the
2196 defendant will receive actual notice of service of process. *Safeway Stores, Inc. v. Ramirez*, (1 Ariz.App.
2197 117, 400 P.2d 125).

2198 **Proper Service on Individual by Leaving With Another -- *Blanche Tonelson v. Ronald S. Haines*, (2**
2199 **Ariz. App. 127 (1965))**

2200 In order for there to be a "leaving with" a person a copy of summons and complaint as required by rule,
2201 such person must be aware of the leaving. 16 A.R.S. Ariz.R.Civ.P., 4(d). Generally, when personal
2202 service is attempted, person served must be apprised in some substantial form that service was intended
2203 to be made. 16 A.R.S. Ariz.R.Civ.P., rule 4(d). The phrase "leaving with", within rule allowing service to
2204 be made upon individual by leaving copy of summons and complaint at his dwelling place or usual place
2205 of abode with some person of suitable age and discretion, includes connotation that the person with whom
2206 papers are left must have knowledge that papers are so left.

2207 This is an appeal from a judgment of the lower court setting aside a default and a default judgment on the
2208 grounds that there was no valid service upon the defendant. The suit is one for malpractice against a
2209 surgeon. Service was attempted by a process server on the evening of February 6, 1962 at the defendant's
2210 home. The process server testified that he went to the door and was greeted by the defendant's wife.
2211 When she was informed of the purpose of the visit, according to the process server, he was informed that
2212 the defendant was not home "to you". The process server testified that as the door was being abruptly
2213 closed in his face, he stated in a normal tone of voice, "Lady, you have been served;" that he left the

² Also, see ARS §11-447. *Service of process regular on its face* "A sheriff or other ministerial officer is justified in the execution of, and shall execute 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."

2214 summons and complaint between the wooden door and the screen door of the home; and that thereafter he
2215 went on his way without noticing where the papers lay. He subsequently filed an affidavit of service in
2216 the action, indicating that service had been effectuated by "... leaving a copy of the summons and
2217 complaint with defendant's wife".

2218 The applicable rule of procedure pertaining to this service is Rule 4(d), Rules of Civil Procedure, 16
2219 A.R.S., the pertinent portions of which read as follows "Service shall be made as follows 1. Upon an
2220 individual ... by delivering a copy of the summons and of the complaint to him personally or by leaving
2221 copies thereof at his dwelling house or usual place of abode with some person of suitable age and
2222 discretion then residing therein ...". At the time of the hearing before the trial court on the motion to set
2223 aside default and default judgment, the defendant's wife testified to a substantially different version of the
2224 occasion in question than that given by the process server. She denied that he had told her he had a
2225 summons and complaint for her husband and denied that he had ever attempted to hand to her a summons
2226 and complaint. According to her, a strange man had come to the door on the evening in question and had
2227 asked for her husband. Her husband, who had been in surgery until 1 a.m. the night before that morning,
2228 and again until 640 p.m. in the evening in question, declined to see the stranger and she so informed him.
2229 She shut the door without ever hearing that service was being attempted and without ever knowing about
2230 the summons and complaint being left at the doorstep. The defendant and his wife both testified that the
2231 first they knew of the lawsuit in question was when a demand was made six months after the taking of
2232 judgment that the same be paid. They testified that there has been no previous demands from the plaintiff
2233 and no threats of a lawsuit.

2234 After hearing the evidence, the trial court found as follows "There is no dispute in the evidence in
2235 relation to the fact that the defendant was at his home at the time in question; as to the fact that Mr. Estein
2236 called at the defendant's home at the time in question; as to the fact that Mrs. Haines was then a member
2237 of the family of the defendant and that the same Mrs. Haines answered the door; and that the copy of the
2238 complaint and summons were not physically placed in the possession of Mrs. Haines at the time in
2239 question. The court need not decide the law point as to whether or not the leaving of a copy of the
2240 complaint and summons on the premises and in the vicinity of an individual following that individual's
2241 refusal to accept the same constitutes good service. The purpose of the visit of Mr. Estein was not
2242 presented to Mrs. Haines in such manner that she heard and understood that fact the Mr. Estein was there
2243 for the purpose of serving process upon the defendant. This being so, the fact of leaving the same
2244 between the screen door and the front door does not constitute service. There was no intentional act on
2245 the part of Mrs. Haines designed to knowingly attempt to defeat the service of process." Continuing, the
2246 court found "We hold that in order for there to be a '... leaving with' a person a copy of the summons and
2247 complaint, as required by Rule 4(d), supra, such person must be aware of the 'leaving'. We have not been
2248 cited a decision directly on point. Generally, when personal service is attempted, the person served must
2249 be appraised in some substantial form that service is attempted to be made. 72 C.J.S. Process §34a, p.
2250 1041. We hold there is included in the phrase 'leaving with' the connotation that the person 'with' whom
2251 the papers are left must have knowledge that the papers are so left. Otherwise service might be
2252 accomplished by surreptitiously placing papers in a person's pocket, or by other means not likely to bring
2253 about actual notice. In the case the evidence is 'clear' that Mrs. Haines did not have any knowledge of the
2254 leaving of this summons with her. Whether it is 'convincing' we feel should be left up to the trial court
2255 under the Jagger decision. It was the trial court's function, and not ours, to judge the credibility of the

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2256 witnesses and we hold that we are bound by its decision in this regard." *Blanche Tonelson v. Ronald S.*
2257 *Haines*, (2 Ariz. App. 127 (1965)).

2258 **Service Upon Defendant Who Is Unseen by Process Server – *Hatmaker et al v. Hatmaker et al*, (85**
2259 **N.E.2d 345 (1949))**

2260 Where bellboy knew that defendant was in his hotel room when he took deputy sheriff to the door thereof,
2261 defendant refused to open door, whereupon deputy sheriff stated that he was from the sheriff's office and
2262 had summonses for them, that, if defendant would not open the door, deputy sheriff would place
2263 summonses under the door, and that he did so, and defendant picked up the summons, read them, and
2264 understood their nature, service of summonses complied with the statute permitting service upon an
2265 individual defendant by leaving a copy thereof with defendant personally.

2266 Return of an officer, made in due course of his official duty and under sanction of his official oath
2267 respecting service of process, should not be set aside merely on uncorroborated testimony of person upon
2268 whom process has been served, but only upon clear and satisfactory evidence.

2269 Where defendant who occupied a hotel room, upon being informed that deputy sheriff was at the door
2270 with summonses, refused to open the door and, after deputy sheriff shoved the copy of summonses under
2271 the door, defendant decided to accept service, record established that defendant acquiesced in manner of
2272 service adopted by deputy sheriff and that his motion to quash for failure of the deputy sheriff to see the
2273 defendant personally was result of afterthought.

2274 Defendant swore in his affidavit, in pertinent part, as follows "Affiant further states that no copy of a
2275 summons ... was left with affiant on said date or on any other date. Affiant further states that two copies
2276 of said summons were placed under the closed door of affiant's hotel room on said date by a person or
2277 persons unknown to affiant. Affiant further states that on this date or on any other date, no person
2278 informed affiant that he was an officer authorized to serve any summons nor did any person inform
2279 affiant that such person had any summons to be served upon affiant, no did any person on said date or any
2280 other date inform affiant that he was attempting to serve summons upon affiant ... nor ... did any person
2281 inform affiant of the contents of any summons."

2282 The deputy sheriff swore in his affidavit as follows "... Mr. Hatmaker [defendant] replied 'Let him go
2283 downstairs on the house phone and talk to me, I will not open the door', that affiant thereupon stated to
2284 the said Hatmaker through the door that affiant was from the Sheriff's office and that he had two
2285 summonses for them, and that if he would not open the door he would serve them under the door and
2286 simultaneously pushed said summonses under the door; whereupon the said Hatmaker replied 'All right'."

2287 The bellboy swore in his affidavit as follows "... affiant having had acquaintance with the said Charles
2288 Frederick Hatmaker, knew his voice and knew him to be inside his rooms; that affiant told said Hatmaker
2289 that there was a gentleman outside who wished to talk to him and to please open the door; that Mr.
2290 Hatmaker refused to open the door, that thereupon Mr. Hill said that he would place the summonses under
2291 the door and did so, and Mr. Hatmaker said 'All right'."

2292 The court stated "Defendants cite no case in support of their argument that under the statute the sheriff
2293 must see the person he is serving at the time of service. They cite the old common law rule that every
2294 man's dwelling is looked upon by the law as his castle, but we are unable to see how that law has any
2295 application to the question before us. The statute provided that service of summons shall be made '(1) by

2296 leaving a copy thereof with the defendant personally'. We hold that under the particular facts of this case
2297 the service complied with the statute. ... A reasonable inference from the facts and circumstances
2298 surrounding the service is that while the defendant at first tried to evade service he finally concluded, after
2299 the deputy sheriff had shoved the copies of the summonses under the door, to accept the service, and that
2300 the motion to quash was the result of an afterthought. If defendants are right in their contention that the
2301 sheriff, under the Act, is always obliged to see the party when he serves a copy of the summons upon him,
2302 then, in the instant case, even if the defendant had requested the deputy sheriff to shove the copies of the
2303 summonses under the door such service would not be good under the act. The courts do not favor those
2304 who seek to evade service of summons ...". *Hatmaker et al v. Hatmaker et al*, (85 N.E.2d 345 (1949)).

2305 **Service upon Defendant by Dropping Papers Near Him -- *In Re Ball***, (88 P.2d, District Court of
2306 Appeal, Division 2, California (1934))

2307 Where process server, who had previously served petitioner [defendant], approached petitioner with
2308 process in hand similar to previously served, and stated while 12 feet away that he had another one of
2309 "those thing" for petitioner, and threw process at petitioner when petitioner began to walk away, and
2310 stated that petitioner was served, personal service was made on petitioner.

2311 When men are within easy speaking distance of each other, and facts occur that would convince
2312 reasonable man that personal service of legal documents is being attempted, service cannot be avoided by
2313 denying service and moving away without consenting to take document in hand.

2314 "Petitioner, an active businessman, had been in litigation before the [railroad] commission theretofore and
2315 had legal papers from the commission served upon him which were of similar appearance to the process
2316 in this proceeding. The process server, who had previously served petitioner, approached the petitioner at
2317 the same place he had formerly served him, and when within about twelve feet of him, and with the
2318 process in his hand, said: 'I have another one of those things for you.' Petitioner replied 'You have
2319 nothing for me' and started to walk away. While petitioner was moving away in a sidewise manner and
2320 looking at the server, the server handed or tossed the process toward petitioner, it falling a few feet away
2321 from him, at the same time saying, 'Now you are served'. Petitioner did not pick it up but continued to
2322 walk away from the premises. ... We take it that, when men are within easy speaking distance of each
2323 other and facts occur that would convince a reasonable man that personal service of a legal document is
2324 being attempted, service cannot be avoided by denying service and moving away without consenting to
2325 take the document in hand." *In Re Ball*, (88 P.2d, District Court of Appeal, Division 2, California
2326 (1934)).

2327 **Motions to Quash Service Denied Where Defendant Evaded Service -- *Thorndyke v. Jenkins***, (142
2328 P.2d 348 (Calif. C.A. 1943))

2329 In separate actions default judgments for damages were rendered against appellant R.B. Jenkins in favor
2330 of Maude Thorndyke and Edna D. McKenney. Defendant made a motion in each case, after judgment, to
2331 quash service of summons and to vacate the judgment on the grounds that no service had been made and,
2332 after denial of these motions, moved in each case before a judge of another department to vacate the
2333 defaults and judgements ... on the grounds of alleged mistake and excusable neglect. Proof as to service
2334 was the same in each case, the motions to quash were heard together and may be treated by us as a single
2335 motion. Affidavits were filed on behalf of plaintiffs by deputy sheriffs to the effect that they had made
2336 repeated unsuccessful efforts to make service upon defendant Jenkins before the process was placed in the
2337 hands of one Yetta Price for service. Yetta Price stated in her affidavit that, after several attempts to serve

2338 the papers, she stationed herself near defendant's residence, that the defendant emerged from his rear door
2339 and started toward his garage she entered the adjoining yard with the summonses, complaints and two
2340 subpoenas duces tecum in her hand; that when defendant saw her he exclaimed 'I won't take it, I won't
2341 take it; you're too smart but I won't take it,' and that affiant then threw the papers, which were folded
2342 together and had a rubber band around them, over an openwork wire fence between the two yards and that
2343 they landed at the feet of defendant, as she said to defendant 'It doesn't matter to me, Dr. Jenkins, whether
2344 you take them or not, they are court summonses'. ... Upon the motions to set aside the defaults and
2345 judgments, additional affidavits and counter affidavits were filed in support of and against defendant's
2346 contention. ... The [defendant] further stated that, after learning of the judgments, consulted his attorneys
2347 and told them that at no time had any person served or attempted to serve him with process. ... The facts
2348 we have stated, considered with the court's decision that defendant had been personally served on March
2349 3, 1942, show no abuse of discretion in the denial of the motions to vacate the defaults and judgments."
2350 *Thorndyke v. Jenkins*, (142 P.2d 348 (Calif. C.A. 1943)).

2351 **Service on Individual in Automobile -- *Trujillo v. Trujillo*, (102 P.2d (CA 1945))**

2352 Evidence that defendant in divorce case attempted to avoid service of process by locking himself in a
2353 parked automobile and rolling up the windows, that the process server, after reading order to show cause
2354 to defendant in a loud clear voice, placed summons, complaint and order to show cause under windshield
2355 wiper, and that defendant attempted to dislodge them by starting wiper and then drove off with documents
2356 still under wiper, supported by finding of due personal service of process and warranted denial of
2357 defendant's motion to vacate interlocutory judgment.

2358 "... The evidence regarding the due service of the summons, complaint and order to show cause is
2359 conflicting. The affidavit of [process server] avers that he was experienced in serving processes in legal
2360 actions, including divorce proceedings, having done so for a period of twenty years; that on October 10,
2361 1944, he personally served upon defendant, at his place of employment in Los Angeles, copies of the
2362 complaint, summons and order to show cause by reading to him the order to show cause and explaining
2363 the nature of the documents and the necessity of appearing and answering in the action, and by leaving
2364 with him the copies thereof. The affiant averred that the defendant attempted to avoid service of process
2365 by entering his automobile which was parked on a street near his place of business with the door of the
2366 car locked, but that the window adjacent to which the affiant stood was at first open; that the affiant
2367 explained to the defendant the nature of the documents which he attempted to serve and read to him the
2368 order to show cause 'in a loud and clear voice' but that the defendant rolled the window up and refused to
2369 accept the documents; that the affiant then placed them under the windshield wiper in plain view of the
2370 defendant, who first tried to dislodge the papers by starting the windshield wiper, but failed to do so until
2371 after he had driven away. The defendant's affidavits varied somewhat on the essential circumstances of
2372 that transaction. He admitted the presence of [the process server] at the time and place of the attempted
2373 service but insisted that he did not know what it was all about, or that any suit had been filed against him.
2374 He stated that, while [the process server] did talk to him, he failed to hear what he said because the
2375 window was closed. He admitted that the documents were placed under the windshield wiper, and that
2376 when he drove away they were dislodged and lost and that he never learned of their nature or contents.
2377 Upon the foregoing conflict of evidence, the court found that the defendant was duly served with the
2378 summons and complaint in the divorce action ...". *Trujillo v. Trujillo*, (102 P.2d (CA 1945)).

2379 **Service of Alias Summons -- *Lane v. Elco Industries, Inc.*, (134 Ariz. 361 (App. 1982))**
2380 Object of service of process is to give defendant notice of proceedings against him, and where suit is
2381 brought against fictitious defendant, it must be made known to defendant when he is served with process
2382 that he is defendant and is being served as fictitious defendant. Where copy of alias summons was served
2383 upon corporation in its corporate name, and indicated that it had been previously referred to as fictitious
2384 defendant, alias summons gave corporation notice that it was being served as defendant who had been
2385 previously designated by fictitious name, notwithstanding that copy of complaint served with summons
2386 had not been amended to change name of fictitious defendant to that of corporation.

2387 "It appears to be common practice in a few states, notably California and Arizona, to name "Doe"
2388 defendants in nearly every lawsuit filed. Known defendants are named, followed by a listing of "Does"
2389 one to ten, or whatever number is desired. ... This practice has been adopted for a number of good
2390 reasons, including that demonstrated in this case. In a highly specialized international technological and
2391 industrial community not only products themselves but a myriad of components may cause injury leading
2392 to a claim of liability. In this complex international community, economic, financial, legal, tax,
2393 insurance, public relations, potential liability and a host of other considerations unrelated to the function
2394 to be performed in creating products may dictate the form and relationship of national and multi-national
2395 corporations and other organizations, some of which do business under assumed names, which must first
2396 be identified through discovery before the appropriate parties-defendants can be named. The injured
2397 party may have no indication of the existence of additional parties-defendants who might be liable, and to
2398 anticipate this as a fact by naming fictitious defendants is only reasonable." *Lane v. Elco Industries, Inc.*,
2399 (134 Ariz. 361 (App. 1982)).

2400 **Service Upon Indian Lands (Indian Reservations)**
2401 **Arizona State Courts Have No Jurisdiction Over Actions Arising On An Indian Reservation**
2402 **Against An Indian Of That Tribe -- *Enriquez v. Sup. Ct.*, (115 Ariz. 342, 565 P.2d 522 (App. 1977));**
2403 According to the Arizona Court of Appeals, Arizona state courts have no jurisdiction over actions arising
2404 on an Indian reservation against an Indian of that tribe residing on the reservation. The facts in this case
2405 deal specifically with causes of action arising on reservation land. "The issue presented in this special
2406 action is whether or not the Arizona courts have jurisdiction of an action brought by non-Indians against
2407 Papago Indians, residing on the Papago Reservation, for injuries resulting from a motor vehicle accident
2408 which occurred on a state highway within the boundaries of the Papago Reservation." *Enriquez v. Sup.*
2409 *Ct.*, (115 Ariz. 342, 565 P.2d 522 (App. 1977)).

2410 **Arizona has no Authority to Extend Application of its Laws to an Indian Reservation -- *Francisco v.***
2411 ***State*, (113 Ariz. 427, 556 P.2d 1 (1976))**

2412 The Arizona Supreme Court has held that due to Arizona's failure to implement the Act of 1968, Arizona
2413 has no authority to extend the application of its laws to an Indian reservation. A deputy sheriff was ruled
2414 to be without authority to validly make services of process while within boundaries of Indian reservation.

2415 "Suit was brought in the Superior Court of Pima County ... in the name of Veronica Toro to determine the
2416 ... alleged paternity of Veronica's child ... The petitioner, Edmund Francisco, moved to dismiss, claiming
2417 lack of personal jurisdiction on the grounds that the Pima County deputy sheriff, who served the
2418 petitioner, was without authority to do so while on the Papago Indian Reservation. ... We accepted the
2419 Petition for Review to determine whether the trial court had properly acquired personal jurisdiction over
2420 the petitioners. ... We are of the opinion that the laws of the state applying to service by a sheriff could

2421 not be applied to an Indian while on the reservation and therefore find, the deputy sheriff being without
2422 the proper authority, that the service of process was invalid and ineffectual and thus that the trial court
2423 was without personal jurisdiction ... In the instant case it is ... implicit based on the fact that the
2424 reservation was set aside for the exclusive use and occupancy of the Papago Indian tribe, that ... would
2425 preclude the extension of state law to Indians on the reservation, including the laws which effectuate the
2426 authority in the Sheriff to serve process. ... Based on ... Arizona's failure to ... acquire jurisdiction it now
2427 seeks to assert, ... [w]e ... hold that the deputy sheriff was without authority to validly make the service of
2428 process while within the boundaries of the Indian reservation. ..." *Edmund Francisco v. The State of*
2429 *Arizona*, (556 P.2d 1 (1976))

2430 **Deputy Sheriff Without Authority to Serve Process While Within Boundaries Of Indian**

2431 **Reservation -- *Endischiee v. Endischiee*, (141 Ariz. 77, 685 P.2d 142 (1984))**

2432 State had no authority to extend application of its laws to Indian reservation ... therefore, deputy sheriff
2433 was without authority to validly make service of process while within boundaries of Indian reservation.

2434 The Arizona Court of Appeals has held that service of process attempted by the deputy sheriff when he
2435 delivered a copy of the summons and the petition for dissolution to the husband, a Navajo Indian, at his
2436 place of employment on the Navajo Reservation was ineffective to obtain personal jurisdiction over the
2437 husband and, hence, was not a basis for the trial court to enter a default judgment against the husband
2438 upon his failure to appear regardless of whether husband had actual notice of pending action. *Endischiee*
2439 *v. Endischiee*, (141 Ariz. 77, 685 P.2d 142 (1984)).

2440 Service of process attempted by the deputy sheriff when he delivered a copy of the summons and petition
2441 for dissolution to the husband, a Navajo Indian, at his place of employment on the Navajo reservation was
2442 ineffective to obtain personal jurisdiction over the husband and, hence, was not a basis for the trial court
2443 to enter a default judgment against the husband upon his failure to appear regardless of whether husband
2444 had actual notice of pending action. Rule ... that the failure to file an affidavit of service, does not render
2445 a default judgment void for lack of personal jurisdiction of facts appear in verified complaint and
2446 affidavits of process server does not authorize any manner of purporting service as long as party has
2447 actual knowledge of pendency of action. Proper service of process is essential for the court to obtain
2448 jurisdiction over a party; consequently, a judgment is void and subject to direct and collateral attack if the
2449 court rendered it without jurisdiction due to lack of proper service.

2450 "The sole issue presented in this appeal is whether the trial court erred in denying appellant's motion to set
2451 aside a default judgment for lack of personal jurisdiction. ... On May 12, 1983, a Coconino County
2452 deputy sheriff delivered a copy of the summons, petition for dissolution and injunction to appellant, a
2453 Navajo Indian, at his place of employment on the Navajo Reservation. The 'return of service' filed by the
2454 deputy sheriff on May 23, 1983 notes that the delivery was made 'on reservation'. On June 17, 1983, the
2455 court entered appellant's default for his failure to appear and a decree of dissolution was subsequently
2456 entered ... Appellant responded by filing a ... motion to set aside the default judgment for lack of personal
2457 jurisdiction. ... [a]ppellant first argues that the service of the summons was void because the deputy
2458 sheriff lacked the necessary authority to serve process on the Indian reservation. ... [o]ur Supreme Court
2459 held that a deputy sheriff is without authorization to serve process within the boundaries of a ...
2460 reservation. ... Appellee ... argues that service was nevertheless effective since appellant had actual notice
2461 of the pending action. ... 'Defendants had notice of plaintiff's complaint and an opportunity to defend.
2462 They do not claim that the trial court could not have obtained jurisdiction over them had an affidavit been

2463 filed. They claim only that failure to comply with a technicality prevented establishment of personal
2464 jurisdiction over them in this court. ... [w]e conclude that the trial court erred in denying appellant's
2465 motion to set aside the default judgment. Accordingly, the entry of default against appellant is vacated
2466 ..." *In re the Marriage of Marilyn Spencer Endischiee v. Andrew Endischiee*, (141 Ariz. 77 (App. 1984)).

2467 **Long-Arm Provisions of Service of Process -- *Dixon v. Picopa Const. Co.***, (160 Ariz. 251, 772 P.2d.
2468 1104)

2469 In 1989, the Arizona Supreme Court ruled that a driver who was injured in an accident involving a truck
2470 owned and operated by a construction company incorporated by an Indian tribe had complied with long-
2471 arm provisions of service of process rule and thereby obtained personal jurisdiction over the construction
2472 company in suit for damages by mailing copy of complaint and summons via certified mail, return receipt
2473 requested, to construction company. *Dixon v. Picopa Const. Co.*, (160 Ariz. 251, 772 P.2d. 1104).

2474 **Jurisdiction to Serve Process on Non-Indian on a Reservation -- *State of Arizona, Plaintiff-Appellee,***
2475 ***v. Akhtar Zaman (Tahirkhaili), Defendant-Appellant.*** Arizona Supreme Court (en banc) No. CV-98-
2476 0135-PR, Decided: June 18, 1999

2477 Stephen G. Udall, Apache County Attorney By Shad L. Brown, Deputy County Attorney, St. Johns,
2478 Attorneys for the State of Arizona. Trebon & Fine by John J. Trebon, Flagstaff, Attorneys for Akhtar
2479 Zaman (Tahirkhaili).

2480 **OPINION**

2481 ¶ 1 In *State v. Zaman*, 190 Ariz. 208, 946 P.2d 459 (1997), cert. denied, 522 U.S. 1148, 118 S.Ct. 1167,
2482 140 L.Ed.2d 177 (1998), we held that the superior court has jurisdiction over an action brought by the
2483 state against a non-Indian father to determine paternity, custody, and child support obligations. We
2484 vacated the contrary opinion of the court of appeals. On remand, the court of appeals held that a county
2485 sheriff could not serve process on a non-Indian within the boundaries of the reservation. *State v. Zaman*,
2486 261 Ariz. Adv. Rep. 28, No. 1 CA-CV 94-0259, 1998 WL 25559 (App. Jan. 27, 1998). We granted
2487 review and again vacate the opinion of the court of appeals.

2488 ¶ 2 In reaching its conclusion, the court of appeals relied upon *Francisco v. State*, 113 Ariz. 427, 556
2489 P.2d 1 (1976), and *Dixon v. Picopa Construction Co.*, 160 Ariz. 251, 772 P.2d 1104 (1989). But each of
2490 these cases held that a sheriff could not serve process on an Indian while the Indian was on his tribe's
2491 reservation. These cases have no application to the question of whether a sheriff may serve process on a
2492 non-Indian. For on-reservation activities, the status of the defendant as an Indian or non-Indian is the
2493 sine qua non of federal Indian law. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98
2494 S.Ct. 1011, 55 L.Ed.2d 209 (1978)(holding tribe does not have jurisdiction over crimes committed by
2495 non-Indians on the reservation); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 93 S.Ct.
2496 1257, 36 L.Ed.2d 129 (1973) (holding state has no power to tax income of Indian from on-reservation
2497 sources); *United States v. McBratney*, 104 U.S. 621, 26 L.Ed. 869 (1881) (holding state has jurisdiction
2498 over crimes committed by non-Indian against non-Indian on the reservation); 18 U.S.C. §§ 1152-53
2499 (GRANTING FEDERAL JURISDICTION OVER CRIMES COMMITTED BY Indians against non-
2500 Indians and by non-Indians against Indians on the reservation and over major crimes committed by
2501 Indians on the reservation). Indeed, were it not for this distinction, federal Indian law, as we know it,
2502 would not exist. See generally, Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.).

2503 ¶ 3 The Supreme Court of the United States held over 100 years ago that when a state has civil
2504 jurisdiction over a non-Indian, it has jurisdiction to serve process on that non-Indian on a reservation.
2505 Langford v. Monteith, 102 U.S. 145, 147, 26 L.Ed. 53, 54 (1880) (a reservation within a territory is
2506 “subject to [territorial] jurisdiction, so that process may run there, however the Indians themselves may be
2507 exempt from that jurisdiction”); see Organized Village of Kake v. Egan, 369 U.S. 60, 72, 82 S.Ct. 562,
2508 569, 7 L.Ed.2d 573 (1962); see also William C. Canby, Jr., American Indian Law 151 (2d ed. 1988)
2509 (“State courts have jurisdiction over suits by non-Indians against non-Indians, even though the claim
2510 arose in Indian country, so long as Indian interests are not affected. State court process may be served in
2511 Indian country in connection with such a suit.”).

2512 ¶ 4 We hold that service of process by the sheriff on a non-Indian within that part of the reservation
2513 within Arizona is valid. This would ordinarily conclude our opinion, but the theory advanced by the
2514 dissent warrants consideration.

2515 ¶ 5 The dissent argues that the rationale of Francisco can be extended to non-Indians, and goes so far as
2516 to claim that McClanahan v. State Tax Commission, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973),
2517 supports that extension. See post, at ¶ 21-22. On the contrary, the question in McClanahan was
2518 “whether the State may tax a reservation Indian for income earned exclusively on the reservation.”
2519 McClanahan, 411 U.S. at 168, 93 S.Ct. at 1260 (emphasis added). The Court went out of its way to state
2520 that it was not “concerned with exertions of state sovereignty over non-Indians who undertake activity on
2521 Indian reservations.” *Id.* (emphasis added). Indeed, the Court noted that actions by Indians against
2522 non-Indians in state courts have been sanctioned, that the Williams v. Lee infringement test applies to
2523 “situations involving non-Indians,” and that “[t]he problem posed by this case is completely different .
2524 [s]ince appellant is an Indian and since her income is derived wholly from reservation sources.” *Id.* at
2525 171, 179, 93 S.Ct. at 1262, 1266.

2526 ¶ 6 That the McClanahan bar to the assertion of state jurisdiction applied to Indians was acknowledged
2527 in Francisco. We noted that in McClanahan the Court found that “the ability of Arizona to impose an
2528 income tax on Indians” was preempted. Francisco, 113 Ariz. at 429, 556 P.2d at 3 (emphasis added).
2529 We applied preemption in Francisco so “the Executive Order would preclude the extension of state law to
2530 Indians on the reservation, including the laws which effectuate the authority in the Sheriff to serve
2531 process.” *Id.* at 430, 556 P.2d at 4 (emphasis added).

2532 ¶ 7 The dissent cites a student's law review note that suggests that the reservation may be out-of-state
2533 for service of process purposes. See post, at ¶ 22. But the argument was limited to “the extension of
2534 state law to reservation Indians,” not to non-Indians. Note, Service of Process on Indian Reservations:
2535 A Return to Pennoyer v. Neff, 18 Ariz. L.Rev. 741, 750 (1976) (emphasis added). Indeed, the note
2536 concludes by criticizing Francisco for not holding that the reservation was out-of-state as to Indians. *Id.*
2537 at 756.

2538 ¶ 8 Nor does the dissent's reference to Public Law 280, codified at 25 U.S.C. § 1322, advance its
2539 argument. See post, at ¶ 22. Public Law 280 has nothing to do with the state's assertion of power over
2540 a non-Indian. Public Law 280 is “a method whereby States may assume jurisdiction over reservation
2541 Indians.” McClanahan, 411 U.S. at 177, 93 S.Ct. at 1265 (emphasis added). Arizona does not need
2542 Public Law 280 to extend its laws to non-Indians within the boundaries of a reservation.

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2543 ¶9 The reference to Professor Laurence's piece is no more helpful to the dissent's position. See post,
2544 at ¶ 22. Professor Laurence's entire article was addressed to service of state process on an Indian on a
2545 reservation for off-reservation activity. That is why Professor Laurence referred to Public Law 280
2546 which, as explained, has no applicability here.

2547 ¶ 10 So, too, the dissent's reliance on *Dixon v. Picopa Construction Co.*, 160 Ariz. 251, 772 P.2d 1104
2548 (1989), is misplaced. See post, at ¶ 23. In *Dixon*, we said “[i]n Francisco, we held that a deputy sheriff
2549 had no authority to serve process on an Indian while the Indian is on his tribe's reservation.” 160 Ariz. at
2550 259, 772 P.2d at 1112 (emphasis added). And *Dixon*'s use of the “out-of-state” metaphor involved an
2551 attempt to serve process on an Indian for his off-reservation activities, not a non-Indian. *Id.* at 259-60,
2552 772 P.2d at 1112-13.

2553 ¶ 11 The dissent says that *Langford v. Monteith* is not dispositive. See post, at ¶ 24. But under the
2554 Supremacy Clause, *Langford v. Monteith* is “the supreme law of the land; and the judges in every state
2555 shall be bound thereby.” U.S. Const. art. VI; see, e.g., *Arizona Dep't of Revenue v. Blaze Constr. Co.*,
2556 526 U.S. 32, ---, 119 S.Ct. 957, 960, 143 L.Ed.2d 27 (1999) (“We have never employed this balancing
2557 test in a case such as this one where a State seeks to tax a transaction between the Federal Government
2558 and its non-Indian private contractor.” (emphasis added)), *rev'g State v. Blaze Constr. Co.*, 190 Ariz. 262,
2559 947 P.2d 836 (App.1997).

2560 ¶ 12 The argument that *Langford* can be distinguished because of language in the Navajo treaty is
2561 foreclosed by both *McClanahan* and *Francisco*. *McClanahan* limited the effect of the treaty language “to
2562 preclude extension of state law—including state tax law—to Indians on the Navajo Reservation.” 411 U.S.
2563 at 175, 93 S.Ct. at 1264. And in *Francisco* we said that similar language in Arizona's enabling act “in no
2564 way precludes the state from exercising its governmental interest by way of service of process on an
2565 Indian on a reservation.” 113 Ariz. at 430, 556 P.2d at 4. Indeed, we reaffirmed the holding of *Porter*
2566 *v. Hall*, 34 Ariz. 308, 321, 271 P. 411, 415 (1928), that our enabling act disclaimed “only the state's
2567 proprietary interest in Indian lands and not its governmental interest,” *id.*, and that “all Indian reservations
2568 in Arizona are within the political and governmental, as well as geographical, boundaries of the state.”
2569 *Id.* (quoting *Porter*, 34 Ariz. at 321, 271 P. at 415).

2570 ¶ 13 The expansive approach advanced by the dissent fails to acknowledge that the reservation is within
2571 Arizona—not outside it. Members of the tribe who reside on that part of the reservation in Arizona are
2572 citizens of Arizona, not New Mexico or Utah.

2573 ¶ 14 The dissent next suggests that the state could have used Rule 4(c) of the Navajo Rules of Civil
2574 Procedure, to serve process within the boundaries of the reservation. See post, at ¶ 25. But that rule
2575 applies only to proceedings in the Navajo tribal courts. Proceedings in the Superior Court of Arizona are
2576 governed by the Arizona Rules of Civil Procedure.

2577 ¶ 15 Finally, the dissent quotes Cohen's Handbook of Federal Indian Law to suggest that state service
2578 “generates needless friction with the tribes and is poor policy.” Post, at ¶ 27. But the Cohen quotation
2579 refers to service by a sheriff in an action in which “a state court has subject matter jurisdiction over a
2580 claim against an Indian.” Felix S. Cohen, Handbook of Federal Indian Law 361 (1982 ed.) (emphasis
2581 added). Service on an Indian within the boundaries of a reservation is one thing; service on a non-
2582 Indian is quite another. The distinction is central to federal Indian law.

2583 ¶ 16 We decided the question of comity against Zaman's position in our first opinion. Zaman, 190
2584 Ariz. at 212-13, 946 P.2d at 463-64. We explained why state court jurisdiction was certain and tribal
2585 court jurisdiction was uncertain at best. Comity is a doctrine that could have been considered if the
2586 tribal court had subject matter jurisdiction. But, absent an intergovernmental agreement of some kind,
2587 service of state court process by a tribal police officer would likely violate state law. In our first Zaman
2588 opinion, we said “we believe it would be unwise to hold that the state court should refrain from exercising
2589 certain state court jurisdiction in favor of uncertain tribal court jurisdiction.” Id. at 213, 946 P.2d at 464.
2590 The same is true of service of process. State service of process was valid here. This case affords us no
2591 opportunity to explore the limits of comity in other settings.

2592 ¶ 17 It is plain, therefore, that service of process by the sheriff on a non-Indian was both lawful and
2593 effective to allow the superior court to exercise in personam jurisdiction over Zaman.¹ We vacate the
2594 opinion of the court of appeals. Having resolved all issues raised on appeal, we affirm the judgment of
2595 the superior court.

2596 ¶ 18 I concur fully in the court's legal rationale and in the conclusion reached in today's opinion. I
2597 perceive value, however, in mentioning a further point.

2598 ¶ 19 It is not necessary in every case that civil litigants employ the county sheriff to serve process on
2599 non-Indians on tribal lands, though such service is legally valid under the Arizona Rules of Civil
2600 Procedure. The Rules provide alternative means by which to accomplish service without the need to
2601 send the sheriff or his deputies onto the reservation. These include service by private process server
2602 pursuant to Rules 4(d) and (e), or the issuance of notice by mail or other reliable means of notice and the
2603 procurement of a waiver of service under Rule 4.1(c). In the interest of the state's relationship with the
2604 tribes, litigants are encouraged to use such alternative methods whenever and wherever reasonably
2605 feasible in order to avoid the unnecessary presence of county law enforcement officers in Indian country
2606 and the potential for conflict which may arise from such presence. As a courtesy, the tribes deserve the
2607 cooperation of the state in these civil matters.

2608 ¶ 20 I respectfully dissent. There is some question about a state officer's authority to serve process on
2609 Indian reservations, but even if an Arizona sheriff has the power to serve process on Indian reservations,
2610 respect for the Navajo Nation and principles of comity suggest that we refrain from using it. Service of
2611 process can easily be accomplished under our long-arm rules, thus complying with both Arizona and
2612 Navajo law.

2613 A. State authority

2614 ¶ 21 In *Francisco v. State*, we said Arizona had “no authority to extend the application of its laws to an
2615 Indian Reservation.” 113 Ariz. 427, 431, 556 P.2d 1, 5 (1976). Consequently, we held that a state
2616 officer lacked power to serve an Indian residing in Indian country unless the process server complied with
2617 tribal law. Id. The present case has one important difference: the defendant is a non-Indian residing on
2618 the reservation. But our rationale in *Francisco*, as the court of appeals correctly noted, extends to non-
2619 Indians located on a reservation. *State v. Zaman*, 261 Ariz. Adv. Rep. 28, 1998 WL 25559, *1
2620 (App.1998).

2621 ¶ 22 *Francisco* relied on *McClanahan v. State Tax Commission*, in which the United States Supreme
2622 Court found that the Navajo treaty granted the Navajos exclusive sovereignty over their lands. 411 U.S.

2623 164, 174-75, 93 S.Ct. 1257, 1263-64, 36 L.Ed.2d 129 (1973). Thus, “state authority within the
2624 reservation is preempted, and the reservation may be out-of-state for service of process purposes.” Note,
2625 Service of Process on Indian Reservations: A Return to *Pennoyer v. Neff*, 18 Ariz. L.Rev. 741, 750
2626 (1976) (discussing *Francisco*). Moreover, Arizona has failed to adopt Public Law 280,¹ which would
2627 have allowed Arizona to assume civil and criminal jurisdiction over Indian country. See Robert
2628 Laurence, Service of Process and Execution of Judgment on Indian Reservations, 10 Am. Ind. L.Rev.
2629 257, 259 (1982).

2630 ¶ 23 *Dixon v. Picopa Constr. Co.* further supports the court of appeals' conclusion that a state officer is
2631 without authority to serve process in Indian country. 160 Ariz. 251, 259-60, 772 P.2d 1104, 1112-13
2632 (1989). *Dixon* treated Indian reservations as out-of-state for service of process purposes. *Id.* at 259,
2633 772 P.2d at 1112. Again, the defendant was an Indian while *Zaman* is not, but in *Dixon* we explained
2634 our holding in *Francisco* with the following words: “We merely held that a state officer could not
2635 officially serve process on an Indian reservation just as that state officer could not officially serve process
2636 in California or New Mexico.” *Id.* at 260, 772 P.2d at 1113; see also 2 Charles Marshall Smith, *Arizona*
2637 *Practice-Civil Trial Practice* § 226 (Supp.1998) (“[L]ong-arm provisions for service of process apply to
2638 Indian reservations located within Arizona.”). Treating Indian reservations as out-of-state for service of
2639 process purposes “does not unreasonably infringe on Indian sovereignty any more than out-of-state, long-
2640 arm service unreasonably violates our sister states' sovereignty.” *Dixon*, 160 Ariz. at 260, 772 P.2d at
2641 1113.

2642 ¶ 24 The majority cites *Langford v. Monteith* as having long ago decided the issue. 102 U.S. 145, 147,
2643 26 L.Ed. 53 (1880). *Langford*, however, was decided when a defendant could only be served within a
2644 state's territorial limits. See *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877). Those days are long
2645 gone, and thus the inquiry has changed. Today, when Arizona has in personam jurisdiction, it has the
2646 power to serve a defendant whether that defendant resides within or without the state. See Rules 4.1 and
2647 4.2, Ariz.R.Civ.P. But this does not mean that it may send a sheriff to another sovereign's territory to
2648 make personal service with process in hand and gun on hip. In any event, *Langford* is not dispositive for
2649 yet another reason. The treaty between the Nez Perce Indians and Idaho, which was relevant in
2650 *Langford*, did not contain a clause excluding the tribal lands from territorial or state jurisdiction. 102
2651 U.S. at 147. Thus, the Court held that the Indian lands were “part of the Territory and subject to its
2652 jurisdiction, so that process may run there.” *Id.* Conversely, the Supreme Court said in *McClanahan*
2653 that the Navajo treaty granted the Navajos exclusive sovereignty over their lands. 411 U.S. at 174-75, 93
2654 S.Ct. at 1263-64. Therefore, *Langford* may not be controlling. But we need not find out. The
2655 principles of comity urge that we respect the Navajo Nation's laws when serving process on its residents.

2656 B. Comity-respect for Navajo Nation

2657 ¶ 25 Arizona rules provide ample means for long-arm service without invading the territorial integrity
2658 of another sovereign. See Rule 4.2, Ariz.R.Civ.P.; see also *Dixon*, 160 Ariz. at 259, 772 P.2d at 1112
2659 (“We hold that the ‘long-arm’ provisions of Rule 4 apply to Indian reservations located within Arizona.”).
2660 Process may be served by certified mail or by a person authorized under Navajo law. See Rule 4.2(b) &
2661 (c), Ariz.R.Civ.P. (“Service of process may be made outside the state by a person authorized to serve
2662 process under the law of the state where such service is made.”).² The Navajo Rules of Civil Procedure
2663 allow service of process to be made by the following:

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2664 1. By Navajo police officers.

2665 2. By persons appointed by the presiding judge of a Navajo court.

2666 3. By private process servers registered with the Navajo Nation.

2667 See Rule 4(c), Navajo Rules of Civil Procedure. Thus, the deputy sheriff who made service in this case
2668 could have asked for appointment to serve process within the territorial limits of the Navajo Nation.
2669 Process could also have been served by a tribal officer, a registered private process server, or by certified
2670 mail under Arizona's long-arm statute. See *id.*; see also Rule 4.2, Ariz.R.Civ.P.

2671 ¶ 26 As the majority points out many times, Zaman is a non-Indian and the authorities cited deal with
2672 attempts to extend state jurisdiction over Indians. Obviously, the Indian / non-Indian distinction is
2673 critical for jurisdictional purposes as well as in other substantive areas of Indian law. The issue here,
2674 however, is not jurisdiction over this defendant-that was settled in Zaman I in which I concurred-but
2675 instead, whether we should recognize an Arizona sheriff's service of process in Indian territory. In that
2676 context, the critical factor is not the status of the person to be served, for I do not suggest Arizona may not
2677 exercise personal jurisdiction over this non-Indian defendant. I only suggest that it does not
2678 automatically follow that because the state has in personam jurisdiction over the defendant, it also has
2679 authority to send its officers into the reservation to personally serve the defendant. Recognition of state
2680 official personal service in Navajo territory does not turn only on the state's relationship with the litigant
2681 or even its power, but also on its relationship with the Navajo Nation.

2682 ¶ 27 In the final analysis, therefore, we need not solve the question of whether principles of Indian
2683 sovereignty prohibit a state officer from intruding on Navajo land to make personal service. Even if I
2684 were to assume the majority is correct, good judgment and respect dictate an easier and better resolution.
2685 A state sheriff's service on an Indian in Indian land "generates needless friction with the tribes and is a
2686 poor policy." Rennard Strickland et al., Felix S. Cohen's Handbook of Federal Indian Law 361 (1982
2687 ed.). Contrary to the majority's assertion, this principle is equally applicable to service on non-
2688 Indians.³ Under the principles of comity, due respect for Navajo tribal integrity and sovereignty should
2689 require us to recognize the Navajo Nation's laws, just as we would the laws of other jurisdictions. Our
2690 state officers would have no authority to serve process in Liechtenstein, Lithuania, or Luxembourg.
2691 Although the Navajo Nation is not a foreign country and is partly within the boundaries of our state,⁴ we
2692 should treat it with the same courtesy and respect.

2693 ¶ 28 The majority opinion addresses itself only to the question of the state's power and lectures the
2694 dissenters for their supposed failure to appreciate that the prohibition of state official service on the
2695 reservation applies only to Indians. But the majority misses our primary point: even if Arizona had the
2696 power to send its sheriff on the reservation to personally serve Zaman, comity dictates that it may-and
2697 should-refrain from using that power. Instead, service should be made in accordance with Arizona law
2698 and Navajo law, thus showing respect for tribal sovereignty. That is the main point of this dissent and,
2699 with due deference, I believe it is the point that the majority should not ignore.

2700 ¶ 29 One hopes that the days are gone when the sheriff's posse could enter Navajo lands, disregarding
2701 the laws and customs of the Navajo people. Even if, as the majority contends, the constitution permits
2702 us this power, it does not require us to exercise it. As a matter of state law we could and should show
2703 our respect for Navajo sovereignty.

2704 FOOTNOTES

2705 1. Having concluded that service of process was defective, the court of appeals said that it did not have
2706 to reach Zaman's separate argument that he had insufficient contacts with Arizona to allow Arizona to
2707 assert in personam jurisdiction over him. We have examined the briefs and conclude that this argument
2708 has insufficient merit to warrant discussion. To the extent that it has not already been resolved by our
2709 first opinion in this case, we summarily reject it.

2710 1. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, currently codified at 25 U.S.C. §§ 1321-26. Adopting
2711 the law would have required Arizona to appropriately amend its statutes or constitution, and now requires
2712 the consent of the Indian tribe. See *Francisco*, 113 Ariz. at 430, 556 P.2d at 4.

2713 2. In *Tracy v. Superior Court*, we stated that “the principles of comity militate in favor of interpreting
2714 the word territory to include the Navajo Nation.” 168 Ariz. 23, 34, 810 P.2d 1030, 1041 (1991). The
2715 same is true here. The word “state” can and certainly should be interpreted to include the Navajo
2716 Nation, whose treaty with the United States gives it territorial sovereignty within the geographical
2717 boundaries of our state.

2718 3. If a state court has subject matter jurisdiction over a claim against an Indian, service in Indian
2719 country by either tribal police or a private server should be valid. “Official” service by a sheriff certainly
2720 violates the spirit of state service schemes, which confines such service to a state's territorial authority.
2721 Such service also generates needless friction with the tribes and is a poor policy. But whether such
2722 service is actually preempted by the federal protection of tribal self-government is questionable.
2723 *Strickland*, supra at 361.

2724 4. The Navajo Nation encompasses portions of Arizona, New Mexico, and Utah.

2725 MARTONE, Justice.

2726 CONCURRING: RUTH V. MCGREGOR, Justice.

2727 **No Contractual Relationship Between Process Server and Persons Served -- *Marsh v Hawkins* (7**
2728 **Ariz.App. 226, 437 P.2d 978 (1968))**

2729 No contractual relationship exists between a process server and the person upon whom they serve process.
2730 Clyde William Marsh, Sr. and Anna Christine Marsh brought suit against the firm Hawkins and
2731 Campbell seeking damages for an alleged false return of service. The plaintiffs first count was based
2732 upon the theory that by reason of the duties imposed upon person who accept the license as private
2733 process servers, a contractual relationship exists between such process servers and the defendants whom
2734 they certify they have served process upon, and that such defendants are third party beneficiaries. The
2735 court found the theory unsound because the enabling statute, ARS §11-445, does not purport to create a
2736 contractual relationship between the process server and the individual served, further more the appellants
2737 cited no decision supporting the theory. *Marsh v Hawkins* (7 Ariz.App. 226, 437 P.2d 978 (1968))

2738

2739 Trespassing & Authority of a Process Server -- *State v. Star* LC 87-00135, Maricopa County Sup. Ct.
 2740 (Gerber, 06-11-1987)
 2741 (See captured images, following)

DISTRICT	NO.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CLERK OF THE COURT

SC01-31132 6-11-87 HON. RUDOLPH J. GERBER F. Hood
Code Date Judge or Commissioner Deputy

NO. LC 87-00135

Paradise Valley Town Prosec...
 by: Charles G. Ollinger

STATE OF ARIZONA
 Appellee

Kenneth D. Freedman

vs

DOUGLAS B. STAR
 Appellant

Douglas B. Star, #4101
 1856 E. Cherry Lynn
 Phoenix, AZ 85016

Ronald R. Ezell, Pres.
 Ariz. Process Servers Assn.
 60 West Alameda
 Tucson, AZ 85701

John H. Berry
 7050 N. 59th Place
 Paradise Valley, AZ

Town Magistrate
 Paradise Valley Court

Raymond M. Brown, #4115
 † Action Locators
 P.O. Box 56326
 Phoenix, AZ 85079

B. Michael Dann
 Presiding Judge

Town of Paradise Valley Appeal
 Charge 8-13-86: Criminal trespass, #58010

This appeal has been submitted to this Court without request for oral argument. The memoranda of the parties have been considered, as well as the transcript of proceedings in Paradise Valley Court on November 25, 1986.

The Court notes the unusual posture of this case. The Appellant, a Process Server, was convicted in Paradise Valley Court of trespass for entering the private property of Mrs. Berry in order to serve court documents. The homeowner, Mr. Berry, was acquitted of two weapons' related charges resulting from his firing a .357 revolver at Mr. Star while Mr. Star was attempting to serve court documents on Mr. Berry.

- I. The trespass charge... The transcript of the proceedings in the Town of Paradise Valley Court...

(Continued)

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2742

OFFICE DISTRIBUTION	
CHANGE OF VENUE	
JURY FEES	
REMARKS	

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

CLERK OF THE COURT

SC01-31132 **6-11-87** **HON. RUDOLPH J. GERBER** **F. Hood**
Code Date Judge or Commissioner Deputy

LC 87-00135

(Cont'd)

STATE vs DOUGLAS B. STAR

Valley Courts indicates that on August 13, 1986, at 8:30 p.m., this Appellant, Mr. Star, was in the process of attempting to serve a subpoena on Mr. Berry at the time of these incidents. Along with Mr. Luckenbill, Mr. Star announced his presence at the gate of Mr. Berry's residence and spoke through the intercom personally to Mr. Berry and indicated that he was a process server and had legal documents for Mr. Berry. Mr. Berry's response was "I don't think so," which this Court considers an acknowledgement of the identity of Mr. Star and a refusal to permit entry. Mr. Star then walked around the gate and up the driveway toward the residence. Mr. Berry appeared on the balcony of the residence with a revolver, which he pointed in the direction of Mr. Star and fired.

Mr. Star was convicted of trespass. Trespass under A.R.S. 13-1501 requires an entry which is "not licensed, authorized, or otherwise privileged." At all times in question, Mr. Star was a process server "licensed" by the Superior Court of Maricopa County to serve process. Accordingly, his presence on Mr. Berry's property was "authorized" by the Court to the extent necessary to serve process. His presence on the property was also "privileged" just as much as a police officer, fireman, mail carrier, or similar official. A process server is an arm of the court statutorily analogous to a sheriff. A process server in serving process has the same obligations and rights as a sheriff. See A.R.S. 11-445.

Like a sheriff, a process server may serve process "anywhere" in the State under Civil Procedure Rule 4(f). The only exception at present is service of process on Indian Reservations, where

(Continued)

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2743



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**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

CLERK OF THE COURT

SC01-31132
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HON. RUDOLPH J. GERBER
F. Hood
Cases Date Judge or Commissioner Deputy
 NO. LC 87-00135 (Cont'd)

STATE vs DOUGLAS B. STAR

process cannot be served because of this State's failure to enact appropriate legislation. See Francisco v State, 113 Ariz. 427, at 431. Had the State enacted appropriate legislation, process could have been served, and indeed still could be served under appropriate legislation, even on Indian Reservations by a licensed process server. In any event, process can be served by a process server "anywhere" else in the State. Process can be served by entry to any property except the actual dwelling house itself. See 62 Am Jur 2d 58.

Statutory law in this State implicitly recognizes this right and penalizes any interference with service of process. Thus, under A.R.S. 13-2810, the Criminal Code makes it a misdemeanor to interfere with a process server in carrying out service of process. Mr. Berry was somehow not charged with this offense. Similarly, A.R.S. 13-3802 makes it Contempt of Court to interfere with service of process. Mr. Berry somehow was also not charged with this offense.

In the course of his official duties and to the extent required to serve process, a process server is implicitly analogous to a police officer, fireman, mail carrier, and explicitly analogous to a sheriff and has authority delegated directly by the Court, specifically in this case by the Superior Court, to enter private property to the extent necessary to serve court documents. This right is not changed by posting or signing property, fencing, having a guard, or issuing a verbal command to leave property. Were it otherwise, an obstructive private property owner could force court proceedings to grind to a halt merely by refusing access to a process server so as to insulate himself from court proceedings.

(Continued)

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FORM 43-17 REV. 2-87

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CLERK OF THE COURT

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(Cont'd)

STATE vs DOUGLAS B. STAR

Such a bizarre result would paralyze the courts. Such behavior is not permitted by any of the applicable statutes dealing with process servers.

For the foregoing reasons, the conviction of Mr. Star for trespass is reversed, the charges are dismissed with prejudice, and the matter is remanded to the Town of Paradise Valley Court with instructions to refund any charges or fines levied against Mr. Star in this proceeding.

II. The weapons incident

As indicated above, Mr. Berry pointed and fired a loaded .357 revolver at Mr. Star as Mr. Star was entering his property to serve him with court documents. Mr. Berry knew Mr. Star was a process server (transcript of November 25, 1986 at 31). Mr. Berry was charged with two weapons-related misdemeanors and acquitted of both charges. On this Court's own motion, and pursuant to A.R.S. 13-3802, it is ordered setting an Order to Show Cause proceeding for possible Contempt of Court against Mr. Berry on Thursday, July 16, 1987 at 10:00 a.m. in this division. ✓
KH

Mr. Star may appear if he wishes. Mr. Berry is required to attend. Mr. Berry may, if he wishes, waive any further testimony and submit the contempt matter to this Court for decision based upon the proceedings in the Town of Paradise Valley Court on November 25, 1986. At his option, Mr. Berry may present further testimony. By this order, Mr. Berry is advised of his right to counsel, the presumption of innocence, and the other standard rights accorded

(Continued)

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criminal defendants. Mr. Berry is also advised that, in the event of a finding of guilt, the sentence will not exceed a fine of \$300.00 or six months imprisonment.

Note: The file in this matter will be retained in Superior Court until the Order to Show Cause hearing is completed, at which time it will be returned to Paradise Valley Court.

2746

2747

2748 **Use of Alternative Means of Service Mandated When Statutory Agent Evading Service -- Blair, et al**
2749 **v. Burgener, et al, Cited as: 245 P.3d 898 (2010); 226 Ariz. 213**
2750 **Court of Appeals of Arizona, Division 2, Department B.**

2751 **No. 2 CA-CV 2010-0028, Decided: December 29, 2010**

2752 **James E. BLAIR and Southern Ventures, Inc., Plaintiffs/Appellees, v. Clifton BURGNER and Jane Doe**
2753 **Burgener, husband and wife; Tigerlilly Investments, LLC; and Bonanza Realty Management, LLC,**
2754 **Defendants/Appellants.**

2755 **Peter A. Kelly, Palominas, Attorney for Plaintiffs/Appellees.**

2756 **Lawrence K. Lynde, Phoenix, Attorney for Defendants/Appellants.**

2757 **OPINION**

2758 ¶ 1 In this breach of contract action, appellants Clifton Burgener; Tigerlilly Investments, LLC; and
2759 Bonanza Realty Management, LLC (collectively, Appellants) appeal from the trial court's denial of their
2760 motion to set aside default judgment in favor of appellees, James Blair and Southern Ventures, Inc.
2761 (collectively, Blair). Appellants contend the court abused its discretion in permitting alternative means for
2762 service of process and, in any event, Blair failed to effect service properly under the terms of the court's
2763 order. For the reasons set forth below, we affirm.

2764 **Facts and Procedure**

2765 ¶ 2 “We view the facts in the light most favorable to upholding the trial court's ruling on a motion to set
2766 aside a default judgment.” *Ezell v. Quon*, 224 Ariz. 532, ¶ 2, 233 P.3d 645, 647 (App.2010); see also
2767 *Goglia v. Bodnar*, 156 Ariz. 12, 20, 749 P.2d 921, 929 (App.1987). In May 2007, Blair entered into a
2768 contract with Tigerlilly and Bonanza, which included the conveyance of Blair's residence to Tigerlilly.
2769 Pursuant to the contract, Tigerlilly was required to transfer the residence back to Blair upon his
2770 performance of additional terms in the contract. In May 2008, Blair filed a complaint in superior court,
2771 alleging breach of contract, civil conspiracy, and fraud against Appellants, arising from their failure to
2772 reconvey the residence to him. Blair also alleged Burgener controlled and operated Tigerlilly and
2773 Bonanza as his alter egos.¹

2774 ¶ 3 Blair made numerous attempts to serve Appellants by attempting to serve Burgener individually and
2775 as statutory agent for Tigerlilly and Bonanza, at Appellants' business address in Phoenix. On May 21,
2776 2008, the process server went to Appellants' office and was told Burgener “was not in.” Although it is
2777 unclear from the record, the process server either telephoned or visited the office seven times over the
2778 following two weeks, between 9:30 a.m. and 1:40 p.m., in an attempt to determine whether Burgener was
2779 there. Each time the process server was told Burgener was not in the office. Blair then authorized the
2780 process server to attempt to locate Burgener's home address and serve him there. The process server
2781 located Burgener's residence in Phoenix, confirming with a neighbor that Burgener indeed lived at that
2782 address, and attempted to serve him there five times over the next eight days, between 4:10 p.m. and 8:40
2783 p.m.

2784 ¶ 4 After the attempts at personal service were unsuccessful, Blair filed a motion for alternate service, in
2785 which he alleged Appellants were attempting to avoid service and requested permission to effect service
2786 “upon any person in charge of the office located at 40[2] W. Roosevelt, Suite E, Phoenix, AZ.”² He

2787 supported his motion with the process server's affidavit of non-service, describing the failed attempts to
2788 effect service. The trial court granted the motion and, in addition to allowing Blair to serve the person in
2789 charge of the office, it also ordered Blair to mail a copy of the process and the court's order "to the last
2790 known residence or business address of each party receiving alternate service."

2791 ¶ 5 The process server served Appellants at the business address by leaving copies of the required
2792 documents with a woman working at the front desk of the office. The woman gave her first name to the
2793 process server but refused to provide her last name or proof of identity. He also mailed copies of the
2794 process to the business address. After the time for responding had passed, Blair filed an application for
2795 entry of default judgment, and the trial court entered default judgment on November 12, 2008, in the
2796 amount of \$252,000.

2797 ¶ 6 On June 22, 2009, Appellants filed a motion to set aside the entry of default, asserting that they had
2798 not been properly served under the Arizona Rules of Civil Procedure and the judgment therefore was
2799 void. After oral argument, the trial court denied their motion. This appeal followed.

2800 Standard of Review

2801 ¶ 7 Although default judgments are not favored, *Harper v. Canyon Land Dev., L.L.C.*, 219 Ariz. 535, ¶ 4,
2802 200 P.3d 1032, 1033-34 (App.2008), we review a trial court's denial of a motion to set aside a default
2803 judgment for an abuse of discretion, *Daou v. Harris*, 139 Ariz. 353, 359, 678 P.2d 934, 940 (1984).
2804 Generally, a party will only be entitled to relief if it can demonstrate: "1) that its failure to file a timely
2805 answer was excusable under one of the subdivisions of Rule 60(c), 2) that it acted promptly in seeking
2806 relief and 3) that it had a substantial and meritorious defense to the action." *Alvarez v. Superior Court*,
2807 146 Ariz. 189, 190-91, 704 P.2d 830, 831-32 (App.1985). However, a trial court "must vacate . . . a [void]
2808 judgment[.], . . . [and] a party seeking relief from a void judgment need not show that their failure to file a
2809 timely answer was excusable, that they acted promptly . . . or that they had a meritorious defense." *Master*
2810 *Fin., Inc. v. Woodburn*, 208 Ariz. 70, ¶ 19, 90 P.3d 1236, 1240 (App.2004). Even where a judgment is
2811 challenged on voidness grounds, "[t]he movant generally bears the burden of demonstrating his
2812 entitlement to have a default judgment set aside." *Miller v. Nat'l Franchise Servs., Inc.*, 167 Ariz. 403,
2813 406, 807 P.2d 1139, 1142 (App.1991).

2814 Discussion

2815 ¶ 8 Appellants maintain the trial court abused its discretion by not setting aside the default judgment,
2816 arguing it was void for lack of personal jurisdiction over them. See Ariz. R. Civ. P. 60(c)(4) (party may be
2817 relieved from void final judgment); *Master Fin. Inc.*, 208 Ariz. 70, ¶ 19, 90 P.3d at 1240 (lack of personal
2818 jurisdiction over defendants renders judgment void). In particular, they contend service of process had not
2819 been made upon them. Although Appellants assign ten different issues on appeal, the essential questions
2820 raised are (1) whether the court erred in concluding Blair had demonstrated that personal service was
2821 impracticable under Rule 4.1(m), Ariz. R. Civ. P., such that alternate service was appropriate, (2) whether
2822 the means of alternate service authorized by the court violated Appellants' due process rights, and (3)
2823 whether Blair sufficiently complied with the court's order of alternate service. We address each of these
2824 issues in turn.

2825 ¶ 9 Preliminarily, we note that Appellants have not provided this court with a transcript of the hearing on
2826 their motion to set aside judgment. It is the appellant's burden to ensure that "the record on appeal

2827 contains all transcripts or other documents necessary for us to consider the issues raised.” Baker v. Baker,
2828 183 Ariz. 70, 73, 900 P.2d 764, 767 (App.1995); see also Ariz. R. Civ.App. P. 11(b)(1). And, in the
2829 absence of a transcript, we presume the evidence and arguments presented at the hearing support the trial
2830 court's ruling. Kohler v. Kohler, 211 Ariz. 106, n. 1, 118 P.3d 621, 623 n. 1 (App.2005); Chavarria v.
2831 State Farm Mut. Auto. Ins. Co., 165 Ariz. 334, 338, 798 P.2d 1343, 1347 (App.1990).

2832 A. Alternate service

2833 ¶ 10 Appellants first contend Blair failed to make the requisite showing under Rule 4.1(m) to establish
2834 service upon them was impracticable, such that he was entitled to effect service through alternate means.
2835 Appellants maintain, as to Tigerlilly and Bonanza, that personal service can never be impracticable.
2836 Relying on Rule 4.1(1), they contend that when service cannot be completed by serving the statutory
2837 agent of a corporation, the plaintiff is required to effect service through the Arizona Corporation
2838 Commission. But Rule 4.1(1) applies only “[w]hen a domestic corporation does not have an officer or
2839 agent in this state upon whom legal service of process can be made.”³ Here, Appellants do not dispute
2840 that Burgener is the statutory agent for both companies. Thus, Rule 4.1(1) does not apply.

2841 ¶ 11 Rule 4.1(m) provides, in pertinent part: “If service by one of the means set forth in the preceding
2842 paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other
2843 than by publication, as the court, upon motion and without notice, may direct.”

2844 ¶ 12 There are no Arizona cases interpreting the meaning of “impracticable” as that term is used in the
2845 rule. This court's “purpose is to interpret the statutes and rules according to the drafters' intent, and we
2846 will first look to the plain language of the statute or rule as the best evidence of that intent.” Hornbeck v.
2847 Lusk, 217 Ariz. 581, ¶ 6, 177 P.3d 323, 325 (App. 2008). When “the language is clear and unambiguous,
2848 we give effect to that language and do not employ other methods of statutory construction.” Fragoso v.
2849 Fell, 210 Ariz. 427, ¶ 7, 111 P.3d 1027, 1030 (App.2005).

2850 ¶ 13 Relying on Calabro v. Leiner, 464 F.Supp.2d 470, 472 (E.D.Penn.2006), Appellants contend service
2851 of process is only impracticable “when personal service absolutely cannot be made under the applicable
2852 rules of civil procedure.” And, they suggest that four attempts at service at Burgener's residence were
2853 insufficient as a matter of law to “warrant alternative service.”⁴ In Calabro, the court was interpreting
2854 Rule 430(a), Penn. R. Civ. P., to determine whether the plaintiff had made reasonable efforts to effect
2855 personal service on the defendant before resorting to alternative means. The rule provides:

2856 If service cannot be made under the applicable rule[,] the plaintiff may move the court for a special order
2857 directing the method of service. The motion shall be accompanied by an affidavit stating the nature and
2858 extent of the investigation which has been made to determine the whereabouts of the defendant and the
2859 reasons why service cannot be made.

2860 Based on its interpretation of the rule, the court determined that alternative service is only appropriate
2861 when the plaintiff has demonstrated a good faith effort to locate the defendant, has made “practical
2862 efforts” to effectuate service of process, and the proposed alternative means are “reasonably calculated to
2863 provide the defendant with notice of the proceedings against him.” 464 F.Supp.2d at 472-73. In applying
2864 the “practical efforts” requirement to the facts before it, the court concluded the plaintiff's three attempts
2865 at service, two of which were on the same day of the week, and occurred within the same ninety-minute

2866 period of time, were insufficient to “meet her burden of showing that she ha[d] undertaken practical
2867 efforts to serve the defendants under the circumstances.” Id. at 473.

2868 ¶ 14 Calabro is distinguishable from this case. Unlike our Rule 4.1(m), Rule 430, Perm. R. Civ. P.,
2869 permits alternative service only when “service cannot be made under the applicable rule” and also
2870 requires an affidavit detailing the plaintiff’s efforts to locate and serve the defendant. These requirements
2871 are more closely akin to the heightened “due diligence” showing necessary for service by publication in
2872 Arizona. See Ariz. R. Civ. P. 4.1(n) (“party or officer making service shall file an affidavit showing the
2873 manner and dates of the publication and mailing, and the circumstances warranting the utilization of the
2874 procedure); Sprang v. Petersen Lumber, Inc., 165 Ariz. 257, 261, 798 P.2d 395, 399 (App.1990) (before
2875 service by publication, party must file “affidavit setting forth facts indicating it made a due diligent effort
2876 to locate an opposing party to effect personal service”). Thus we do not find Calabro instructive.

2877 ¶ 15 Relying on Kelly v. Lewis, 632 N.Y.S.2d 186, 186 (App .Div.1995), Blair contends “the standard of
2878 impracticability is different from the more stringent one of ‘due diligence.’ “ The service of process rule
2879 at issue in that case gives trial courts “discretion to direct alternative service of process . when it has
2880 determined that the methods set forth [in the service of process statute] are ‘impracticable.’ “ 632
2881 N.Y.S.2d at 485. And in Kelly, the New York Appellate Division defined the standard of impracticability
2882 as “different from the more stringent one of ‘due diligence’ . That is, to meet the standard on
2883 impracticability does not require satisfying due diligence, or even showing that actual prior attempts to
2884 serve a party under each and every method provided in the statute have been undertaken[.]” Id. (citing
2885 cases). Applying this standard, the court concluded that three attempts at service on three different days
2886 constituted sufficient efforts to warrant alternative means of service. Id. at 486.

2887 ¶ 16 Like the rule in Kelly, Rule 4.1(m), Ariz. R. Civ. P., permits alternative service of process when
2888 traditional service is “impracticable” under the circumstances. And we agree this standard requires
2889 something less than the “due diligence” showing required before service by publication may be utilized. If
2890 the drafters of Rule 4.1(m) had intended plaintiffs to meet the same burden of establishing due diligence
2891 for alternative service as for service by publication, it would have used the same language and included
2892 the same requirements in both subsections. See Fragoso, 210 Ariz. 427, ¶ 12, 111 P.3d at 1031.

2893 ¶ 17 Other courts, in various contexts, have held the term “impracticable” “does not mean that .
2894 impossibility . must be established,” but rather requires a showing that the act to be performed “is
2895 extremely difficult or inconvenient.” Pac. Fire Ins. Co. v. Reiner, 45 F.Supp. 703, 708 (E.D.La.1942)
2896 (interpreting numerosity requirement for class certification under federal rules of procedure); see also
2897 Garner v. Ellingson, 18 Ariz.App. 181, 182, 501 P.2d 22, 23 (1972) (doctrine of commercial frustration
2898 “not necessarily limited to strict impossibility, but includes impracticability caused by extreme or
2899 unreasonable difficulty or expense”); Gen. Motors Corp. v. Superior Court, 416 P.2d 492, 496 (Cal.1966)
2900 (equating impracticability with futility, not impossibility, in addressing statute of limitations argument);
2901 Bldg. Indus. Ass’n of San Diego County v. State Water Res. Control Bd., 22 Cal.Rptr.3d 128, 138, 145
2902 (Cal.App.2004) (in discussing whether water permit requirements “impracticable or unreasonable,”
2903 noting “practicable” something more than “possible”; impracticability means difficulty or inconvenience,
2904 not impossibility). This interpretation of the word impracticable also is consonant with its use in Rule
2905 4.1(m), in that the showing for alternative service requires something less than a complete inability to
2906 serve the defendant because the defendant’s current address is unknown or the defendant completely has

2907 avoided service of process. See Rule 4.1(n) (describing conditions necessary to permit service by
2908 publication).

2909 ¶ 18 Here, Blair attempted service at both Appellants' place of business and Burgener's residence on five
2910 different days and at various times. In addition to these physical attempts, the process server attempted to
2911 ascertain over an additional seven days whether Burgener was present in the office so that service could
2912 be made. Each time he was told Burgener was not in the office.⁵ These circumstances demonstrate that
2913 service of process through the usual means would have been "extremely difficult or inconvenient." See
2914 Pac. Fire Ins. Co., 45 F.Supp. at 708. And, to the extent additional evidence and argument were presented
2915 at the hearing on Appellants' motion to set aside the default, we presume they support the trial court's
2916 ruling. Kohler, 211 Ariz. 106, n. 1, 118 P.3d at 623 n. 1. On this record, we therefore cannot say the court
2917 abused its discretion in permitting Blair to serve Appellants through alternate means.

2918 **B. Adequacy of service**

2919 ¶ 19 Appellants next argue that the means of alternative service authorized by the trial court and as
2920 effected by Blair-which they characterize as "[a]lternative process upon a receptionist in an eight office
2921 building"-did not comply with constitutional due process. Due process requires notice "reasonably
2922 calculated, under all the circumstances, to apprise interested parties of the pendency of the action and
2923 afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339
2924 U.S. 306, 314 (1950).⁶

2925 ¶ 20 Rule 4.1(m) provides that when alternate means of service of process are employed, "reasonable
2926 efforts shall be undertaken by the party making service to assure that actual notice of the commencement
2927 of the action is provided to the person to be served," and the service of process "shall be mailed to the last
2928 known business or residential address of the person to be served." These two requirements ensure that a
2929 defendant's due process rights have been satisfied. Appellants present no argument that the trial court's
2930 order authorizing service upon "any person in charge of the office" in which each of them conducted
2931 business, and by first-class mail to that address, was not reasonably calculated to inform them of the
2932 pending litigation.⁷ We conclude the court's order was consistent with the requirements of due process.

2933 ¶ 21 Appellants' primary jurisdictional challenge appears to be focused on whether Blair's actual means of
2934 service comported with due process. The trial court's order for alternative service authorized personal
2935 service on any person "in charge of the office." In denying Appellants' motion to set aside the default
2936 judgment, the court necessarily rejected their arguments that service by first-class mail and personal
2937 service upon "any person in charge of the office" were not reasonable measures to inform Appellants of
2938 the pending litigation.

2939 ¶ 22 Although Appellants describe the person served as a "receptionist," Blair described her in his
2940 opposition to the motion to set aside the default as "the 'front desk' woman at 402 Roosevelt, Suite E."
2941 Appellants do not dispute that "402 Roosevelt, Suite E" is their business address.

2942 ¶ 23 In denying Appellants' motion to set aside the default judgment, the trial court necessarily rejected
2943 their arguments that the service Blair employed was inconsistent with either the court's order or due
2944 process. "Service of process can be impeached only by clear and convincing evidence." Gen. Elec.
2945 Capital Corp. v. Osterkamp, 172 Ariz. 191, 194, 836 P.2d 404, 407 (App.1992); see also Hilgeman v.
2946 Am. Mortgage Secs., Inc., 196 Ariz. 215, ¶ 14, 994 P.2d 1030, 1034 (App.2000) (same). And this court

2947 will not “second-guess or substitute our judgment for that of the trial court” on questions of disputed fact.
2948 Gen. Elec. Capital Corp. v. Osterkamp, 172 Ariz. 185, 188, 836 P.2d 398, 401 (App.1992). Because
2949 Appellants have failed to provide a transcript of the hearing on their motion, we cannot say the court erred
2950 in concluding that Appellants failed to sustain their burden or that, under the circumstances, due process
2951 considerations had been satisfied and “service upon [Appellants] was adequate.” Kohler, 211 Ariz. 106, n.
2952 1, 118 P.3d at 623 n. 1.

2953 C. Compliance with order for service

2954 ¶ 24 Finally, Appellants contend that by not mailing a copy of the process to Burgener’s residential
2955 address and by not enumerating the documents re-mailed to the correct address of 402 W. Roosevelt in
2956 the affidavit of service, Blair did not comply strictly with the trial court’s order for alternate service and
2957 therefore did not “make a prima facie showing of compliance with the requirements of Rule 4.1(m).”
2958 However, the court’s order authorized Blair to serve each of the Appellants by “mail[ing the process] to
2959 the last known residence or business address of each party receiving alternate service.” (Emphasis added.)
2960 Blair mailed the process to 402 W. Roosevelt, Suite E, and Burgener has not disputed that this is his
2961 business address. Blair thus strictly complied with this term of the court’s order.

2962 ¶ 25 Additionally, the original affidavit of service specifically listed the documents served in person upon
2963 the woman at the front desk and stated a second copy of the process was mailed to the “above address.”
2964 The mailed copies apparently were returned due to an incorrect address, but the process server’s affidavit
2965 indicated “the documents” were “re-mailed” to the correct address and not returned. Viewed in this
2966 context, it is abundantly clear that the process server re-mailed the same documents listed in the original
2967 service of process. Blair therefore complied in full with the court’s order for alternate service.

2968 Disposition

2969 ¶ 26 Because the trial court did not abuse its discretion in permitting alternative service by the means
2970 employed, it had jurisdiction over Appellants. The entry of default judgment thus was not void, and
2971 Appellants made no other showing of excusable neglect that would entitle them to relief under Rule 60(c),
2972 Ariz. R. Civ. P. See Almarez v. Superior Court, 146 Ariz. 189, 190-91, 704 P.2d 830, 831-32 (App.1985).
2973 The court therefore did not abuse its discretion in denying Appellants’ motion to set aside the default
2974 judgment. The default judgment against Appellants is affirmed.

2975 FOOTNOTES

2976 1. Blair later filed an amended complaint adding additional defendants. However, they are not parties to
2977 this appeal.

2978 2. Blair’s motion and the trial court’s order list the business address as “400 W. Roosevelt, Suite E,
2979 Phoenix, AZ.” However, as Blair states in his brief, this appears to have been a clerical error, given that
2980 the process server had initially attempted service at 402 W. Roosevelt, and there is no dispute concerning
2981 the correct business address of Appellants. And, although the process server apparently initially mailed
2982 service to 400 W. Roosevelt, this mistake was rectified by re-mailing service to the correct address.

2983 3. And in any event, this means of completing service would have provided no greater due process
2984 protection than the manner of service authorized by the trial court and employed by Blair, who delivered
2985 process to the defendants’ office and mailed a copy to the business address. Under Rule 4.1(1), when

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2986 service is made by depositing the summons and pleadings with the Corporation Commission, it “shall file
2987 one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the
2988 corporation, or to the president, secretary or any director or officer of such corporation as appears or is
2989 ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its
2990 office, or otherwise.”

2991 4. Appellants also heavily rely on cases dealing with service by publication pursuant to Rule 4.1(n), and
2992 they apparently seek to import into the standard of impracticability the requirement of due diligence in
2993 locating a defendant before effecting service by publication. See, e.g., *Barlage v. Valentine*, 210 Ariz.
2994 270, ¶ 8, 110 P.3d 371, 374 (App.2005); *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 261-62, 798
2995 P.2d 395, 399-400 (App.1990). However, even assuming the reasoning of these cases applies outside the
2996 service-by-publication context, a proposition we doubt, the issue in this case is not Blair's ability to locate
2997 the defendants. Blair independently confirmed that Burgener actually resided at the residential address
2998 through a neighbor, and Blair was consistently told that Burgener was not present in the office at 402 W.
2999 Roosevelt-not that Burgener did not work there. Blair thus met any requirement for due diligence and
3000 indeed was successful in locating the defendants for the purpose of service of process.

3001 5. These efforts are far more substantial than the efforts found insufficient in the three out-of-state cases
3002 Appellants cite in support of their argument. See *Calabro*, 464 F.Supp.2d at 473 (three attempts
3003 insufficient); *Lombay v. Padilla*, 895 N.Y.S.2d 503, 505 (N.Y.App.Div.2010) (three attempts over four
3004 days and affixing notice to wrong door insufficient); *Austin v. Tri-County Mem'l Hosp.*, 834 N.Y.S.2d
3005 419, 420 (N.Y.App.Div.2007) (three attempts on consecutive weekday afternoons insufficient).

3006 6. Relying on a state bar committee note pertaining to service by publication, Appellants argue Blair was
3007 required to effect service by “the best means of notice practicable under the circumstances,” “Ariz. R.
3008 Civ. P. 4.1, committee note, citing *Mullane*, 339 U.S. 306 (1950). Not only is this comment limited to
3009 notice by publication, and inapplicable here, but this is not the standard promulgated in *Mullane*. *Mullane*
3010 held only that “notice by publication was constitutionally defective as to known persons whose
3011 whereabouts were also known” because such notice is not reasonably calculated to apprise them of
3012 pending litigation, while other, more effective methods of notice-notably “the mails”-are available.
3013 *Dusenbery v. United States*, 534 U.S. 161, 162, 162 n.4 (2002), citing *Mullane*, 339 U.S. at 314, 319.


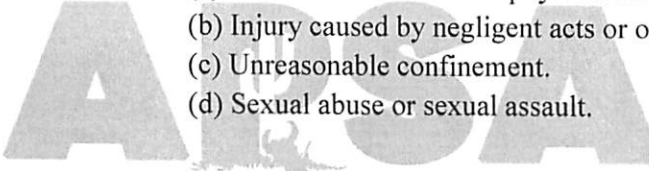

3014 7. To the extent Appellants argue service was deficient because it was not sent by certified mail, we
3015 observe that the trial court did not specify any particular manner of mailing, and Appellants do not argue
3016 certified mail was required pursuant to any other authority. And, contrary to their assertion that “there is
3017 no proof that any of the documents [Blair's] process server allegedly mailed to . 402 W. Roosevelt were
3018 actually received by any of the Defendants,” the process server's affidavit that he had mailed the process
3019 to the correct address constituted substantial evidence. See *Lee v. State*, 218 Ariz. 235, ¶ 11, 182 P.3d
3020 1169, 1171-72 (2008) (“[A]lthough a denial of receipt rebuts the legal presumption that a piece of mail
3021 was received, a factfinder may still infer from the fact of mailing that the mail did reach its destination.”).
3022 Thus, faced with the process server's affidavit of service and Appellants' affidavits denying receipt, it was
3023 for the trial court to determine which evidence was more credible. See *Reliable Elec. Co. v. Clinton*
3024 *Campbell Contractor, Inc.*, 10 Ariz.App. 371, 373, 459 P.2d 98, 100 (1969).

3025 VASQUEZ, Presiding Judge.

3026 CONCURRING: PETER J. ECKERSTROM, and VIRGINIA C. KELLY, Judges.

3027 Glossary of Terms

3028

- A.C.P.S. Arizona Certified Process Server. Professional designation as an Arizona process server who has successfully passed the APSA Arizona Certified Process Server Training Course.
- A.R.C.P. Arizona Rules of Civil Procedure. The set of rules approved by the Arizona Supreme Court which govern the procedures to be followed in a civil lawsuit.
- A.R.S. Arizona Revised Statutes. The laws of Arizona as passed by the state legislature.
- Abode One's home; habitation; place of dwelling; or residence. Ordinarily means "domicile." Living place impermanent in character. The place where a person dwells. Residence of a legal voter. Fixed place of residence for the time being. For Service of Process, one's fixed place of residence for the time being; his or her "usual place of abode."
- Abuse Per ARS §46-451, "Abuse" means:
(a) Intentional infliction of physical harm.
(b) Injury caused by negligent acts or omissions.
(c) Unreasonable confinement.
(d) Sexual abuse or sexual assault.
- Actual notice    Notice positively given a person. Entails personal service of process. ARIZONA PROCESS SERVERS ASSOCIATION
Certifying & Training Arizona's Professional Process Servers Since 1973 NAPPS
ORGANIZATION IN ARIZONA
- Affidavit A sworn statement. A statement of facts made under oath. Should always identify the state and county where it is signed and have the signature of a Notary Public or other person having authority to administer such oaths.
- Affidavit of Service An affidavit which provides the facts relating to the service of the process identified in it (or inability to serve it). Should identify the documents served and state the date, time, place and manner of service. According to Arizona Rules of Civil Procedure, Rule 4(g), if service is made by a person other than the sheriff or a deputy sheriff, the return must be by affidavit. This means that filling out the bottom of the standard Justice Court Summons form is not sufficient if the documents are served by a private process server because this form lacks elements of an affidavit.

Answer

n. in law, a written pleading filed by a defendant to respond to a complaint in a lawsuit filed and served upon that defendant. An answer generally responds to each allegation in the complaint by denying or admitting it or admitting in part and denying in part. The answer may also comprise "affirmative defenses" including allegations which contradict the complaint or contain legal theories (like "unclean hands," "contributory negligence" or "anticipatory breach") which are intended to derail the claims in the complaint. Sometimes the answer is in the form of a "general denial," denying everything. The answer must be in typed form, follow specific rules of pleading established by law and the courts, and be filed with the court and served on the defendant within a specific statutory time (e.g. 20 or 30 days after service of the complaint). If the complaint is verified as under penalty of perjury, the answer must be also. There is a fairly steep filing fee for each defendant filing an answer. In short, if served a complaint, one should see a lawyer as soon as possible to prevent a default judgment.

Attorney-client privilege



n. the requirement that an attorney may not reveal communications, conversations and letters between himself/ herself and his/her client, under the theory that a person should be able to speak freely and honestly with his/her attorney without fear of future revelation. In a trial, deposition, and written questions (interrogatories), the attorney is required and the client is entitled to refuse to answer any question or produce any document which was part of the attorney-client contact. The problem sometimes arises as to whether the conversation was in an attorney-client relationship. If a man tells his neighbor who happens to be an attorney that he embezzled funds, is he doing so while seeking legal advice or just chatting over the fence (which is the test)? If a document was prepared as part of the legal preparation for a client, it usually is a "work product" and is also privileged. Similar privileges exist between pastor and parishioner and doctor and patient. *also:* privileged communication; work product; attorney's work product

Candor

"...ethical obligation to disclose to the court or other party's material information relevant to the fair and efficient administration of the judicial system."
bluntness, directness, forthrightness, frankness, genuineness, guilelessness, honesty, ingenuousness, openness, reliability, sincerity, unaffectedness, uprightness
detachment, disinterestedness, dispassionateness, equitableness, equity, even-handedness, evenness, fair treatment, justness, liberality, neutrality, nonpartisanship, probity, unbiased, unprejudicedness

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Certificate of service A statement made under penalty of perjury, but not notarized, which provided the facts relating to the service of process identified therein.

Complaint Document which is filed with the court to begin a civil lawsuit. See discussion in the first chapter of the manual.

Complaint, amended n. what results when the party suing (plaintiff or petitioner) changes the complaint he/she has filed. It must be in writing, and can be done before the complaint is served on any defendant, by agreement between the parties (usually their lawyers), or upon order of the court. Complaints are amended to correct facts, add new causes of action (bases for the lawsuit), substitute discovered names for persons sued as "Does," or to properly plead a cause of action (the legal basis for suing) after the court has found the complaint inadequate.

Conformed copy An exact copy of a document on which has been written explanations of things that could not be or were not copied. A written signature might be replaced on conformed copy with a rubber stamp or notation (/s/) indicating that it was signed by the person whose signature appears on the original.

Constructive notice Notice presumed given a person by means of circumstance requiring adherence to a specific set of rules other than personal service.

Court An organ of the government, belonging to the branch, whose function it is to apply laws to controversies brought before it.

DBA (alt D.B.A.) "Doing Business As" The abbreviation usually precedes a person's or business' assumed name: i.e. John Smith dba Smith Lock and Key or Dr. John Smith, LLC dba Generic Medical Service.

Due diligence

- 1) The measure of activity or attention to duty as is properly expected from, and ordinarily exercised by, a reasonable and prudent man under the circumstances that exist. It is not measured by any absolute standard but depends on the relative facts of the case. This means that determining whether you have exercised "due diligence" in attempting to locate someone for service depends on each different set of facts you are faced with in attempting to effect service but you should take the steps that a judge believes a reasonable person would take under that set of facts.
- 2) n. reasonable care or attention to a matter, which is good enough to avoid a claim of negligence, or is a fair attempt (as in due diligence in a process server's attempt to locate someone).

- Earnings** Compensation paid or payable for personal services, whether these payments are called wages, salary, commission, bonus or otherwise. Earnings include periodic payments pursuant to a pension or retirement program.
- "Disposable earnings" means that amount remaining from the gross earnings for a pay period after the deductions required by state and federal law.
- "Exempt earnings" means those earnings or that portion of earnings which pursuant to state or federal law is not subject to judicial process including garnishment.
- "Nonexempt earnings" means those earnings or that portion of earnings which is subject to judicial process including garnishment.
- Entity** "Entity" includes a corporation, foreign corporation, not for profit corporation, business corporation, foreign business corporation, profit and not for profit unincorporated association, close corporation, corporation sole, limited liability company or registered limited liability partnership, a professional corporation, association or limited liability company or registered limited liability partnership, a business trust, estate, partnership, trust or joint venture, two or more persons having a joint or common economic interest, any person other than an individual and a state, the United States and a foreign government.
- Et al.** Latin abbr. meaning "and others".
- Et ux.** Latin abbr. meaning "and wife".
- Et vir.** Latin for "and husband".
- Eviction action** A specific type of lawsuit associated with removing persons from commercial or residential property. In residential evictions, they are known as "Forcible Detainer(s)" or "Special Detainer(s)". However, Special Detainers and Forcible Detainers are two distinct types of eviction actions. This is the only civil finding by the court where the defendant is found "guilty", rather than "liable" for damages.
- Exempt monies or property** Monies or property that, pursuant to a state or federal law, is not subject to judicial process, including execution, attachment, garnishment, replevin, sale or any final process issued from any court or any other judicial remedy provided for the collection of debts.

Faithfully	Truthfully, sincerely, accurately, without unnecessary delay. As used in referring to public and private officers, this term implies honesty and the careful and prompt discharge of all the duties of the office. It requires competence, diligence, and attention to duty.
Felony	<p>A felony is a crime punishable by sentencing the offender to the state prison, divided up into six "Classes", each requiring a minimum penalty.</p> <p>ARS §13-105(18). "Felony" means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.</p> <p>May include fines and restitution. Must be prosecuted within varied time limits per §13-107(A) & (B).</p>
Forcible detainer	A specific type of lawsuit associated with evictions. See discussion in first chapter of manual.
Found	A person is said to be "found" within a state for purposes of service of process when actually present therein. This only applies if a person is in a place voluntarily and not by reason of fraud, artifice, or trick for purposes of obtaining service.
Garnishment	A judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party.
Good faith	Honesty in fact in the conduct or transaction concerned.
Incapacitated person	Per ARS §14-5101, "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. In cases of limited guardianship only, a person is not deemed an incapacitated person for purposes of voting if the person files a petition and has a hearing and the judge determines by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote pursuant to section 14-5304.02.
Injunction	A court order commanding or preventing an action.

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Judgment creditor	A person or entity that has a money judgment or an order for support of a person that is due and unpaid or an order issued in his favor. (See ARS §1570(4))
Judgment debtor	A person or entity against which a money judgment has been awarded or against which an order for support of a person is due and unpaid. (See ARS §1570(5))
Lien	A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.
Minor ward	A minor for whom a guardian has been appointed solely because of minority (age).
Misdemeanor	<p>A misdemeanor is crime punishable by sentencing the offender to the county jail, divided up into three Classes of minimum punishment.</p> <p>ARS §13-105(25). "Misdemeanor" means an offense for which a sentence to a term of imprisonment other than to the custody of the state department of corrections is authorized by any law of this state.</p> <p>May include fines and restitution.</p> <p>ARS §13-105(31). "Petty offense" means an offense for which a sentence of a fine only is authorized by law.</p> <p>Must be prosecuted within 1 year (misdemeanor) or 6 months (petty offense) per ARS §13-107(B)(2) & (3).</p>
Motion	A written or oral application requesting a court to make a specified ruling or order.
Nonexempt monies or property	Monies or property which are not restricted by law from judicial process.
Order	A written direction or command delivered by a court or judge. The word generally embraces final decrees as well as interlocutory directions or commands.
Order to Appear/Order to Show Cause	An order from the court directing a person before the court to appear and show cause why certain relief should not be granted.
Order for Supplemental Proceedings/Judgment Debtor Examination	An order requiring a judgment debtor to appear and disclose assets so a judgment can be satisfied.
Personal property	All property and interests to which a security interest may be perfected, except real property (real estate).

- Perjury** ARS §13-2702. Perjury; classification
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.
B. Perjury is a class 4 felony.
- Petition** Word used instead of Complaint when beginning certain court actions. See full discussion in first chapter of manual.
- Pleading** n. 1) every legal document filed in a lawsuit, petition, motion and/or hearing, including complaint, petition, answer, demurrer, motion, declaration and memorandum of points and authorities (written argument citing precedents and statutes). Laypersons should be aware that, except possibly for petitions from prisoners, pleadings are required by state or federal statutes and/or court rules to be of a particular form and format: typed, signed, dated, with the name of the court, title and number of the case, name, address and telephone number of the attorney, or person acting for himself/herself (in pro per) included. 2) the act of preparing and presenting legal documents and arguments. Good pleading is an art: clear, logical, well-organized and comprehensive.
- Pleading, amended** n. a changed written pleading in a lawsuit, including complaint or answer to a complaint. Pleadings are amended for various reasons, including correcting facts, adding causes of action (legal bases for a suit), adding affirmative defenses, or responding to a court's finding that a pleading is inadequate as a matter of law. Amendments cannot be made willy-nilly, but only prior to being served, upon stipulation by the parties or order of the court.
- Prima facie** Latin. At first sight; on the first appearance; on the face of it. A fact presumed to be true unless disproved by some evidence to the contrary.
- Process** Process is an official document of the court which requires the person named in it to do some act in connection with the case. It is a means by which a court compels compliance with its demands.
- Process server** Commonly referred to as "Registered Process Server"
In Arizona, process servers must be certified and appointed under the applicable Rules of Court. In Arizona process servers are certified, and the certification is registered on the records of the clerk of the superior court. A "registered process server" is one who files an

application and bond with the county recorder and “registers” him/her self to serve process. (i.e.: California servers)

Pro per Latin abbreviation meaning to act in one's own behalf without a lawyer. Also seen as: *in propria persona*. Similarly used is the term, “Pro Se”, most often seen in Federal courts.

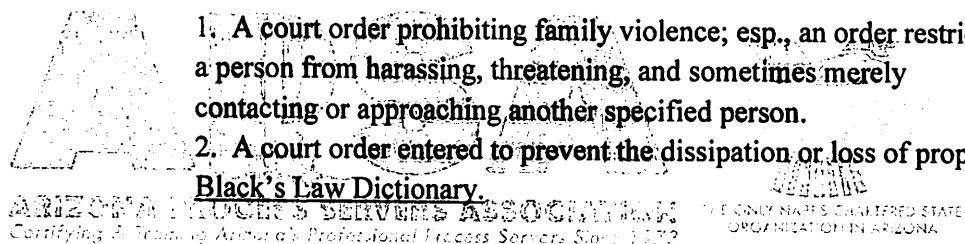
Public offense ARS §13-105(27). "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state. (felony or misdemeanor)

Real estate Property and appurtenances affixed to land.

Replevin Court ordered repossession.

Restraining order

1. A court order prohibiting family violence; esp., an order restricting a person from harassing, threatening, and sometimes merely contacting or approaching another specified person.
2. A court order entered to prevent the dissipation or loss of property.



Black's Law Dictionary.

A restraining order is one which also restricts certain action such as a Preliminary Injunction, or that which seeks specific relief, such as a Temporary Restraining Order (TRO). *See ARS §25-315, et seq.*

Return of Service The act of a sheriff, constable, marshal or other public officer (not a private process server), in delivering back to the court a writ or other paper which he was required to serve or execute, with a brief account of his doings. It provides information about the time and mode of service or execution, or his failure to accomplish it. Also refers to the notation made by the officer upon the writ or other paper, stating what he has done under it, the time and mode of service, etc.

Return day The day named in a writ or process, upon which the officer is required to return it. **Black's Law Dictionary.**

Rule of court A rule governing the practice or procedure in a given court. Local Rule – A rule by which an individual court supplements the procedural rules applying generally to all court within the jurisdiction. Local rules deal with a variety of matters, such as requiring extra

copies of motions to be filed with the court or prohibiting the reading of newspapers in the courtroom. Black's Law Dictionary.

Service of process

The delivery of a writ, summons and complaint, criminal summons, notice, order, etc., by an authorized person, to a person who is thus officially notified of some action or proceeding in which he is concerned, and by which he is advised or warned of some action or step which he is commanded to take or not to take.

Service of process,
personal

Personal service is accomplished by delivering a copy of the process to the named party personally. When service by this method is made out of state, it is often called direct service.

Service of process,
substitute

Substituted service refers to serving another person as an alternative to serving the defendant. Thus, the process may be served by leaving copies at the defendant's dwelling or usual place of abode with a person of suitable age and discretion. The purpose of these requirements is to provide the defendant with actual notice of the lawsuit or other action of the court. An attempted substituted service is not effective if the defendant did not live at the place where service was made.

Service of process,
alternative

Other methods of service, such as notice and acknowledgment [ARCP 4.1(c)], publication [ARCP 4.1(e)], or pursuant to the provisions of ARCP 4.1(d) which require prior approval of the court.

Skiptracing

Service which assists in locating delinquent debtors or persons who have fled to avoid prosecution. Also, such services may include the location of missing heirs, witnesses, or spouses or other family members.

Small claims

A civil procedure where the amount of the claim is not greater than \$3,500 adjudicated in the Justice Court. (ARS §22-503(A)) There is NO appeal procedure from a judgment in a small claims finding. Motions are not allowed (with certain exceptions per ARS 22-505). If a litigant wants to retain the right to an appeal, the person must file appropriate legal papers to elevate the case from a small claims to a civil action.

Special detainer

A forcible detainer (eviction) action which is only applicable to residential rentals where the landlord owns both the land and the dwelling unit (apartment, house, mobile home, etc.) located on it. Specific requirements relating to whether an eviction is properly a special detainer action are found in A.R.S. § 33-1368.

- Statute** A law passed by a legislative body; specif., legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts. Black's Law Dictionary.
- Statutory agent** (*also: agent for acceptance of service*)
n. states require that a corporation name an actual person (usually in the articles of incorporation or other filing with the Secretary of State) who is authorized to accept service of any lawsuit or claim against the corporation. Many larger corporations, particularly those which operate in several states, name a professional agent which represents many corporations.
- Subpoena** A document which requires a person to appear and give testimony as a witness. See discussion in first chapter of manual.
- Subpoena duces tecum** "Duces Tecum" is Latin for "with things in hand" and means that the person who is to appear as a witness must bring something, perhaps records, reports, or photos, along to the trial or deposition.
- Summons** The document that gives notice that a lawsuit has been filed and tells the opposing party when they should respond.
- Trespass** Any unauthorized intrusion or invasion of private premises or land of another. *Antkewiaz v. Motorists Mut. Ins. Co.*, (91 Mich.App. 389, 283 N.W.2d 749).
- Vulnerable adult** Per ARS §46-451, "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in section 14-5101.
- Ward** A person for whom a guardian has been appointed.
- Writ of execution** A court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtors property.
- Writ of garnishment** A summons directing the Garnishee to answer questions concerning the assets, receivables or stream of income about a Judgment Debtor.
- Writ of replevin** A court order directing the sheriff to execute by recovering personal property from the judgment debtor or other person in possession.

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Application to Become an Arizona Certified Process Server

3030

See following pages.





PRIVATE PROCESS SERVER CERTIFICATION INITIAL CERTIFICATION APPLICATION FORM

Any willful omission or misrepresentation of any fact required to be disclosed in this application or any accompanying statement is grounds for refusing to issue or renew a certificate or for revoking or suspending a certificate.

Instructions: 1. Application must be printed in black ink or typed. 2. Complete ALL SECTIONS of this application and fulfill all other requirements mentioned in the instructions. INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED. 3. Submit the completed application and application fee to: Clerk of the Superior Court, Attn: Private Process Server Certification Program in the county of your residence.

Section I.

Applicant Information

Legal Last Name:		Legal First Name		MI:
Mailing Address:		City:	State:	Zip:
Physical Address, if different (may not be a P.O. Box):		City:	State:	Zip:
Telephone Number:	Fax Number:	Cell Number:		
Email Address (Leave blank if not applicable):				
Date of Birth:	Social Security Number:	<input type="checkbox"/> Male	<input type="checkbox"/> Female	
Are you a U.S. citizen or legal resident? <input type="checkbox"/> Yes <input type="checkbox"/> No You MUST provide proof. See page 8 for a list of acceptable residency/citizenship documents.				
Do you have a high school diploma or GED? (If yes, provide a copy of diploma/transcripts/evidence of graduation with application.)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Name, as you wish it to appear on certification and identification card:

Section II.

Work Experience - List all positions held during the last five years. Use additional pages if necessary.

Company Name and Mailing Address:	
Supervisor's Name and Title:	Supervisor's Phone #:
Position Held:	From: Month Year
Telephone Number:	To: Month Year
Reason for Leaving:	

Company Name and Mailing Address:	
Supervisor's Name and Title:	Supervisor's Phone #:
Position Held:	From: Month Year
Telephone Number:	To: Month Year
Reason for Leaving:	

Company Name and Mailing Address:	
Supervisor's Name and Title:	Supervisor's Phone #:
Position Held:	From: Month Year
Telephone Number:	To: Month Year
Reason for Leaving:	

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 www.arizonaprocessservers.org



Company Name and Mailing Address:	
Supervisor's Name and Title:	Supervisor's Phone #:
Position Held:	From: Month Year
Telephone Number:	To: Month Year
Reason for Leaving:	

Section III: Background Information

If you answer "Yes" to any of the following questions, indicate the date of conviction or finding, nature and details of the case, including the case disposition, location, court and case number (attach additional sheet if necessary).

Have you ever committed material misrepresentation, omission, fraud, dishonesty, or corruption in applying for a certificate or on a certificate examination in this state or any other state?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you ever committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you ever had conduct showing incompetence or a source of injury and loss to the public?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you ever been convicted by final judgment of a felony, regardless of whether civil rights have been restored? <u>(The fact you entered into a plea bargain or pled "no contest" or your conviction has been vacated, pardoned, expunged, dismissed, or appealed, or your civil rights have been restored does not mean you can answer the question no. You must answer yes and provide details of the offense and explain. Do not answer yes if you have only minor civil traffic violations.)</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>Have you ever been convicted by final judgment of a misdemeanor, regardless of whether civil rights have been restored? <u>(The fact you entered into a plea bargain or pled "no contest" or your conviction has been vacated, pardoned, expunged, dismissed, or appealed, or your civil rights have been restored does not mean you can answer the question no. You must answer yes and provide details of the offense and explain. Do not answer yes if you have only minor civil traffic violations.)</u></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever had a professional or occupational license or certificate denied, revoked, suspended or any disciplinary action taken?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever had a professional or occupational license or certificate censured, placed on probation, or any disciplinary action taken?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever been terminated, suspended, placed on probation, or had other disciplinary action taken in past or present employment?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Are you currently on probation or parole or named in an outstanding arrest warrant?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever violated any decision, order, or rule issued by a professional regulatory entity?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever violated any order of a court, judicial officer, or administrative tribunal?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever made a false or misleading statement or verification in support of an application for a certificate filed by another person?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever made a false or misleading oral or written statement to court staff?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever failed to disclose information on the certification application subsequently revealed through a background check?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you ever failed to respond or furnish information to court staff when the information is legally requested and is in your control or is reasonably available to you and pertains to certification or investigative inquiries?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Have you ever been a party to or claimed an interest in any civil proceedings (including but not limited to orders of protection, dissolution of marriage/family matters, bankruptcy, law suits, debt collection, etc.)? If so, provide the details, including the case name and number, a copy of the original complaint, and a copy of the final disposition with your application.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Section IV: General Information

Have you ever served process in Arizona or another state? Yes No

If yes: State:	County:	Dates: From:	To:
If no, name of employer:			
Work Address:	City:	State:	Zip:

Have you taken a Private Process Server test in this state in the past? Yes No

If yes: County:	Date:
Test score: <input type="checkbox"/> Passed?	<input type="checkbox"/> Failed?
Explain:	

Current Employer Information

Will you be self-employed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, name of employer:	
Work Address:	City: State: Zip:
Telephone Number:	Fax Number:
Email Address:	

List other occupational or professional certificates or licenses issued by any federal, state or county government.

By checking this box I agree to the following:

I certify under penalty of perjury that all information contained in my application, including all supporting documents, is true and correct to the best of my knowledge and belief. I understand that any false statements, misrepresentations or failures to disclose (omissions) made in this application may be grounds for denial of certification, subsequent suspension or revocation of certification or other disciplinary action deemed appropriate by the Board.

Signature of Applicant

Date

Printed Name of Applicant

Date

Section V:

Authorization, Release, Oath and Affirmation

Having filed this application, I hereby consent to having an investigation made of my moral character, professional reputation, and fitness for process server certification. I agree to give any further information which may be required in reference to my past or current record.

I also authorize and request every person, firm, company, corporation, governmental agency, court, association, or institution having control of any documents, records, and other information including documents, records, charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, to permit the Private Process Server Program, or any of its agents or representatives to inspect and make copies of such documents, records, and other information.

I release, discharge, and exonerate the Private Process Server Program, the Clerk of the Superior Court, all agents and representatives, the Presiding Judge of the Superior Court or designee, the State of Arizona, and any person furnishing information pursuant to this Authorization and Release from all liability which may arise from the investigation made by the Private Process Server Program, the Presiding Judge or designee, the Clerk of the Superior Court, all agents and representatives.

I understand willful omission or misrepresentation of any fact required to be disclosed in this application or any accompanying statement is grounds for refusing to issue or renew a certificate or for revoking a certificate.

Pursuant to Rule 4(e), Arizona Rules of Procedure, “. . . I will well and faithfully serve process in accordance with the law. . .”. I understand that as a certified process server, I must be available to testify and that providing testimony regarding the service of process is a common and inherent duty of a certified process server.

Being duly sworn and under oath or affirmation, I acknowledge that I have read this application form and that all statements are true and complete to the best of my knowledge and belief and that my Authorization and Release are freely given.

I have received a copy of Arizona Code of Judicial Administration § 7-204, governing private process servers, as adopted by the Arizona Supreme Court.

State of: _____ County of: _____

Signature of Applicant

Subscribed and sworn before me this _____ day of _____, 20 ____

Notary Public

Date Notary Commission Expires



LIST OF ACCEPTABLE RESIDENCY/CITIZENSHIP DOCUMENTS

You must provide copies of:

One (1) document from List A

OR

Two (2) documents: one from List B and one from List C

List A (documents which establish both identity and employment eligibility)

1. U. S. Passport (*unexpired or expired*).
 2. Certificate of United States Citizenship [*U.S. Immigration and Naturalization Services (INS) Form N-560 or N-561*].
 3. Certificate of Naturalization (*INS Form N-550 or N-570*).
 4. Unexpired foreign passport which:
 - a. Contains an unexpired stamp which reads "Processed for I-551. Temporary Evidence of Lawful Admission for permanent residence. Valid until _____. Employment authorized;" or
 - b. Has attached to it a Form I-94 bearing the same name as the passport and containing an employment authorization stamp, so long as the period of endorsement has not yet expired, and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.
- NOTE: For more detailed information concerning the Form I-94, see page 23 of the "Handbook for Employers (M-274)."
5. Alien Registration Receipt Card (INS Form I-151 or I-551) provided it contains a photograph of the bearer.
 6. Unexpired Temporary Resident Card (INS Form I-688).
 7. Unexpired Employment Authorization Card (INS Form I-688A).
 8. Unexpired reentry permit (INS Form I-327).
 9. Unexpired Refugee Travel document (INS Form I-571).
 10. Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B).

List B (documents which establish identity only)

1. Driver license or ID card issued by a state or outlying possession of the United States (*provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address*).
2. ID card issued by federal, state or local government agencies or entities (*provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address*).
3. School ID card with photograph.
4. Voter's registration card.
5. U. S. Military card or draft record.
6. Military dependent's ID card.
7. U. S. Coast Guard Merchant Mariner Card.
8. Native American tribal document.
9. Driver license issued by a Canadian government authority.

List C (documents which establish employment eligibility only)

1. U. S. social security card issued by the Social Security Administration (*other than a card which has printed on its face "NOT VALID FOR EMPLOYMENT"*).

NOTE: This must be a card issued by the Social Security Administration; a facsimile (such as a metal or plastic reproduction) is not an acceptable document.

2. Certification of Birth Abroad issued by the Department of State (*Form FS-545 or Form DS-1350*).
3. Original of certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal.
4. Native American tribal document.
5. U. S. Citizen ID Card (*Form I-197*).
6. ID Card for use of Resident Citizen in the United States (*Form I-179*).

7. Unexpired employment authorization document issued by the INS.
Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274) provided by the Department of Homeland Security, U. S. Citizenship and Immigration Services at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>