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ARIZONA PROCESS SERVERS ASSOCIATION

# NEWSLETTER

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

1ST Q 2017

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## President's Message

*Ron Ezell*

I would like to thank all of those that help with the success of the Annual Conference in Tucson and appreciate those that have stepped up recently to locate and prepare for the 2017 Conference. We plan to have a combined Conference with the Investigators (AALPI)

We had our first Board Meeting in January and all but one of the Board Members that were elected for 2017 was formally sworn in for their position. All of the reports submitted for approval

were approved. The APSA Board Meetings are open and we welcome members to attend and share their thoughts with Board.

The Legislative Chair has been carefully watching the 3 known bills that are moving through the Legislature. Watch for the report on these Bills.

The month of March 2017 was a busy month. We had CE classes offering 10 hours presented in Phoenix on 3/11/2017. The quarterly Board of Directors meeting was also held that day.

As we move through this year, be safe and make sure to renew your Process Server certification before they expire.

*Ron*

**June 10 & 11, 2017**

**APSA will hold 10 hours of continuing education classes in Flagstaff, AZ at the Continental Country Club**

## APSA Board Meeting Minutes January 27, 2017 (Unofficial)

Called to Order at 9:25 AM

### THOSE IN ATTENDANCE:

Ron Ezell, Patty Chlebanowski, Luis Figueroa, Eric Sotelo, Tracy Candelaria, John Carpenter & Larry Ratcliff via phone.

### PRESIDENT'S REPORT:

Ron swore in Board of Directors. We are starting out the New Year, he has had positive feedback about our last Conference in Tucson and CJ and AALPI would like to join us again for this year's conference. Many of the speakers we had, he heard were well received and enjoyable

### VICE PRESIDENT'S REPORT:

Tom Rankin was not present for any current Vice President's report.

### SECRETARY'S REPORT:

Minutes presented to the board members via email. Motion made to approve the June 25, 2016 minutes by Tracy Candelaria and seconded by Luis Figueroa. Motion passed. All mail, phone calls are currently up to date as of this week.

### TREASURER'S REPORT:

Luis Figueroa provided written reports, Profit & Loss Detail for the last quarter September through December 2016, a Profit & Loss Detail from January through December 2016 & Profit & Loss Year Comparison January through December 2016. Balances as of December 31, 2016, Checking Account \$5,896.94, Savings Account \$11,842.04, Legislative Account \$15,384.70 & Pay Pal Account \$4,107.30. The board asked Luis to transfer the Pay Pal account monies to the Checking Account, only leave \$1.00 in the account. Luis needs to contact our accountant Stephanie to make sure the 1099's are sent out by the end of the month. The only ones that need to be sent are to Barry Goldman & Patty Chlebanowski. Ron mentioned to make sure you tell her to file a Non Profit Form 990 and we need to forward a copy of that to NAPPS. Per the Report we show there were some bank charges and he was going to contact Bank of America and find out why, we are being charged fees. A Motion was made to approve the Treasurers Report by Patty Chlebanowski and seconded by Tracy Candelaria. Motion passed.

### COMMITTEE REPORTS:

#### Membership Report:

All renewal notices have been sent out and have been coming in and correcting or verifying their website information

#### Website Report:

Patty Chlebanowski reported that the website information is current and complete. Discussion made to obtain bids from Trent & one more web designed to see if we could update our system. Eric Sotelo suggested a name; Anthony from Terbush Creative. Patty will contact him for an appointment and consultation.

#### Grievance Report:

John Carpenter reported there were only 2 Complaints. Both complaints have been discussed between the Member and the Complainant.

### Newsletter Report:

Barry Goldman sent in a written report. The next edition of the APSA Newsletter is due no later than March 31<sup>st</sup>. I plan on putting the next edition to bed by mid-February at the latest. All APSA officers and board members are requested to submit a biographical sketch to me January 31<sup>st</sup> for editing and publication. Please include a photo for publication. Documents may be sent directly to me at: [service@rapidrps.com](mailto:service@rapidrps.com). Standing columns are due from the President and Secretary. Please submit by January 31<sup>st</sup>.

Legislative and rule changes pending will be covered in this edition, including those applicable to process servers effective January 1, 2017. As information is received or developed, it will be drafted for publication in this and further editions.

A resolution to keep Barry Goldman as the Editor with a \$500.00 fee was made by John Carpenter and seconded by Ron Ezell. Motion passed.

### Continuing Education:

We need to prepare an Insert for corrections to the printed Manuals that we still have. Example (number of days to serve an Issued Document.) There are about 20 manuals. Patty will reach out to Barry Goldman and see if he could possibly take this project on. Patty will also ask Barry if he could update the presentation for the ACPS Class.

Discussion was made about future dates for classes. Tentative dates were March 11th in Kingman, June 10th in Flagstaff, September 16<sup>th</sup> in Mesa for the Conference and December ?? In Tucson Patty will follow through with the scheduling of these classes and reserving the locations.

We have two possible locations for the Annual Conference, Hilton in Mesa and the Arizona Golf Resort in Mesa. Patty will contact both locals and obtain a bid for approval at the next board meeting.

### Legislative Report:

Barry Goldman sent in a written report and copies were passed out. We filed a rule change with Supreme Court on January 10, 2017. He provided copies to the board and Patty had a few printed out to pass out to the board. Referenced the SB1018, adding Process Servers, SB 1075 Aggravated Assault, SB 1050 Write on served documents and Rule 3 C and D.

### OLD BUSINESS:

Ron Ezell was going to reach out to Tom Rankin to see if the By Laws have been reviewed and if any corrections need to be made.

### NEW BUSINESS:

A motion was made to adjourn the meeting by John Carpenter and seconded by Patty Chlebanowski. Meeting was adjourned at 10:35 AM. Submitted by: Patty Chlebanowski, Secretary



of

# APSA

## APSA Board Meeting Minutes March 11, 2017 (Unofficial)

Called to Order at 9:05 AM

### THOSE IN ATTENDANCE:

Ron Ezell, Patty Chlebanowski, Larry Ratcliff, Tracy Candelaria via phone and Tom Rankin via phone. Member present Candy Ratcliff.

### PRESIDENT'S REPORT:

Ron swore in Tom Rankin as a new Board of Director. Ron Ezell heard from a member that the other school was using some of our book for teaching in their class. Our APSA Manual is copywrited and no one should be taking parts of it and re producing it. We need to have Barry when he is creating the new manual add "DO NOT COPY or use an APSA WATERMARK on the pages".

### VICE PRESIDENT'S REPORT:

Tom Rankin reported he has reviewed the By Laws and did not see any corrections that really need to be amended or corrected. Ron Ezell had Tom Rankin contact a process server Tom, who had some problems serving inmates at the jail. Tom Rankin did contact this person and told him, every county is different. In his Pinal County, the jail employee takes the papers on behalf of the inmates and that is how you serve inmates. Larry Ratcliff mentioned it is the same procedure in Navajo & Apache County. Patty mentioned they will bring an inmate out for service in Maricopa County.

### SECRETARY'S REPORT:

Minutes presented to the board members via email for prior review. Motion made to approve the January 27, 2017 minutes by Tom Rankin and seconded by Larry Ratcliff. Motion passed. All mail, phone calls are currently up to date as of Thursday March 9, 2017.

### TREASURER'S REPORT:

Luis Figueroa provided written reports, Profit & Loss Detail for January 1 through February 2016, a Profit & Loss Detail from January through February 2017. Balances as of February 28, 2017, Checking Account \$7,306.20, Savings Account \$11,842.04, Legislative Account \$15,465.20 & Pay Pal Account \$4,729.98. Luis did transfer \$4,000.00 from the Pay Pal account to the Checking Account in early March. The balances do not reflect this as yet because it was through February 2017. Ron Ezell asked if Luis sent the 990 form to NAPPS. Patty did not know for sure, and provided a copy, so will make sure they have one from APSA. A Motion was made to approve the Treasurers Report by Larry Ratcliff and seconded by Patty Chlebanowski. Motion passed.



### COMMITTEE REPORTS:

#### Membership Report:

Patty Chlebanowski reported, all renewal notices have been sent out in January and the second week in February, I started updating the website and removing unpaid members. A mass email was sent to the old membership "to review your listing for any corrections and if you do not see your name that means you did not pay your 2017 membership fee and please send in". I received a couple more renewals after that email message. I did not verify for the exact number prior to the meeting but estimated we had 90 + members listed at this time.

#### Website Report:

Patty Chlebanowski reported that the website information is current and complete. We have a Phoenix class scheduled this weekend that is being taught by Barry Goldman and had four pre paid registrants. A couple more were attending Sunday's classes. I talked to Anthony from Terbush Creative regarding a bid for a new website. He spent a couple hours at my house, reviewing the website and making suggestions. He suggested that the majority of our website was currently working and to try and contact our current website manager just to make the few changes we needed. Patty also contacted Trent Carlyle from Serve Now to obtain his bid about updating the website. He thought it would need to be re created and his bid was about \$3,000.00. The board felt this price was too expensive and I should contact Anthony one more time to see if he would send us a bid.

#### Grievance Report:

John Carpenter was not present, but did not report any complaints back to Patty nor did Patty answer any phone calls to transfer to John to handle.

#### Newsletter Report:

Barry Goldman's previous report was that the newsletter is due at the end of March. Patty reminded Ron Ezell to send in his President's report and Ron mentioned, he had already sent it to Barry. Patty had not sent her written report in as yet and will make sure this is complete this week. We need to remind Barry about the listing for the NAPPS Conference coming up in May in New Orleans and to also list our Annual Conference in September in this newsletter.



## **APSA Board Meeting Minutes March 11, 2017 (Continued)**

### **Legislative Report:**

Ron Ezell reported SB 1050 did make it out of the Senate. Ron Ezell attended the hearing and was able to voice our opinion of the board. Ron was not sure how the other two bills turned out. Ron mentioned that there are now four other states that now have Assault Bills on the books and 3 states have trespass bills. We have still been unable to pass here in Arizona.

### **OLD BUSINESS:**

Tom Rankin reported on the By Laws previously. Patty Chlebanowski reported with the help of Larry Ratcliff and Dana Young from AALPI, we have settled on a hotel "The Hilton in Mesa, AZ. We have reviewed the menu and Patty needs to meet with them and see if they can reduce the price just a little bit more in line with the Hilton prices last year. Patty was able to get the hotel rates reduced this week to \$99.00 rather than the \$130.00 that was quoted in the bid.

### **NEW BUSINESS:**

NONE

A motion was made to adjourn the meeting by Larry Ratcliff and seconded by Ron Ezell.

Meeting was adjourned at 10:00 AM.

Submitted by: Patty Chlebanowski, Secretary



## **Our Next Continuing Education Event!**

**Continental Country Club**

**2380 N. Oakmont Dr.  
Flagstaff, AZ 86004**

**June 10 & 11, 2017**

**APSA will hold 10 hours  
of continuing education  
classes in Flagstaff, AZ at  
the Continental Country  
Club**

**APSA**

## Editor's Column



**Barry R. Goldman**

Things have been pretty busy around our house. In between personal and business events, planned and unplanned, the title of the Rolling Stones song, "Time Waits for No One" comes to mind. It is so true. Once we thought of ourselves as invincible, but as we get older, reality sets in. I wouldn't trade the things I know now for yesteryear. It's been good.

I had a great time teaching at our Phoenix educational event. It was a small group, but well versed. We discussed the new court rules, some

statute changes and common sense things to keep us safe.

Our APSA ACPS manual is currently being rewritten. It should be ready to go at the June event in Flagstaff. We'll see a couple of other classes there, also. I hope those who can will join us. The June board meeting will also be held that weekend. See the ads in this edition.

Your board has been watching legislative changes, taking note of three bills that affect process servers. You can find more about them in this issue by reading the minutes of the board meetings and other articles. One bill in particular, SB1050, was signed by the Governor. This issue has the text of the new law (eff. Aug., 2017), as

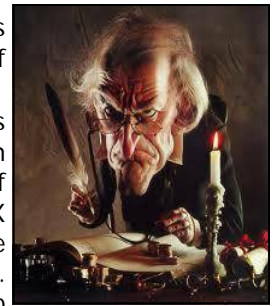
well as analysis and opinion of yours truly.

Process server Stephen Hartman of Beaumont, TX has been in the news recently. He had papers to

serve on a sitting judge who was evading personal (required in Texas) service. He got arrested for his efforts and the Texas Appeals Court upheld his suit against the judge.

You can see the case information by checking out the ABAJournal.com website.

Stay knowledgeable, be safe. -BRG



## I CANN PROCESS SERVICE

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## Secretary's Corner

**Patty Chlebanowski, Secretary**



Hello fellow members:

Spring is here, while it comes and goes so fast in Arizona, it is nice to see the beautiful flowers all in bloom while driving around the city. We just completed updating the membership on the website and THANK YOU for renewing your membership with the Arizona Private Process Servers Association again this year. We work better as a team and our voices can be heard louder as a group. We always appreciate your support. It is

important to belong to an Organization for a couple reasons; networking and reliability. If you belong to your state Association, you care about keeping up to date with all aspects of your business after all is your livelihood. Our next Continuing Education Classes will be held in June up in Flagstaff.

Patty Chlebanowski  
(602) 476-1737



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

THE



BRIEF



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

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

### January 2017

#### New Civil Rules

A reminder that the civil rules of procedure were restyled, updated, and in some instances, moved. The new rules took effect January 1 and apply to new cases and pending cases, unless the court makes individual determinations that the older version of a rule or rules are needed. Make sure boilerplate citations are still accurate or updated to reflect the new version. Some rules, such as formatting documents, moved to other sections with similar rules.

If using a rule book, make sure it is the latest version or double-check citations online. The Supreme Court posts rule information online at <http://www.azcourts.gov/Rules/>, or do an internet search for "Arizona Court Rules," or go directly to [https://govt.westlaw.com/azrules/index?\\_lrTS=20161215173029596&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/index?_lrTS=20161215173029596&transitionType=Default&contextData=(sc.Default)). Court forms provided by the Clerk's Office, the Superior Court, and the Administrative Office of the Courts should be updated or will be in the near future.

### February 2017

#### **Veterans Stand Down**

For the sixth year in a row, the Clerk's Office will participate in the Veterans Stand Down event, held Thursday, February 9 - Saturday, February 11, 2017 at the Veterans Memorial Coliseum in Phoenix. .

#### **Restyling of Family Law Rules Begins**

An Arizona Supreme Court Task Force begins its year-long work this month restyling the Family Law Rules of Procedure. This effort follows earlier revisions of the civil, criminal, and Justice Court rules, among other related projects. The current set of the Family Law Rules took effect January 1, 2006 and this revision will reflect modern usage as well as simplify language. Like revisions in other case types, plain English will replace legalese where possible. This is especially valuable in family law cases where the highest percentage of self-represented litigants file documents and appear in court. Representation on the Task Force currently includes trial and appellate judicial officers, clerks, court administration, legal practitioners, and the Attorney General's office. For more information on the Task Force, see the Arizona Judicial Branch website at <http://www.azcourts.gov/cscommittees/Family-Law-Rules-Task-Force>.

#### **Law Library Resource Center**

The Maricopa County Superior Court's

pioneering Self Service Center is expanding in February. The Court's online and valley-wide services now enjoy a new and expansive physical location in downtown Phoenix. The combined virtual and physical resources have been renamed the Law Library Resource Center (LLRC). Attorneys, legal support staff, and self-represented litigants will continue enjoying a wide array of forms and instructions across case types. Additionally, the LLRC houses the court's Protective Order Center, law library, and computer terminals for research and assistance with forms. The LLRC has conference rooms and space for reading, writing, researching, and drafting documents.

The Clerk's Office staffs a single filing counter within the LLRC, allowing parties to obtain, draft, and file documents at one location. In addition to Superior Court staff, the court received an AmeriCorps grant to supplement the LLRC with trained college students who assist customers with answering questions and navigating the court system. The LLRC is located in the former Change of Venue, between the Central and East Court Buildings in downtown Phoenix. Customers enter through security in the

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



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

PATRICIA CHLEBANOWSKI  
Agent

FRONTIER INSURANCE AGENCY, INC.  
Surety Bonds

(602) 254-7427  
3150 North 24th Street #D104  
Phoenix, AZ 85016

**APSA**

**JOIN US AT THE  
NAPPS 35<sup>TH</sup> ANNUAL CONFERENCE  
& EDUCATIONAL SEMINAR - NEW ORLEANS, LA  
MAY 18-20, 2017**



**INCENTIVES FOR CONFERENCE ATTENDEES!!**

- 50% discount on first year of NAPPS membership to anyone who applies at a NAPPS or State Association conference\*
- \$50 discount to any NAPPS Member who renews their membership onsite at the 2017 NAPPS Conference in New Orleans

**New Orleans Marriott  
555 N. Canal St.  
New Orleans, LA 70130  
Ph: (504) 581-1000**

*mention you are with NAPPS and receive the negotiated room rate of \$199 +tax/night  
More details can be found at [www.napps.org](http://www.napps.org)*

*\*pending membership screening*

**APSA**

**Rule Changes****APSA Proposed Rule Change Submitted to the Arizona Supreme Court**

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

The proposed rule change is seen by the APSA Board of Directors and those present at the Annual Conference to be the best way to approach securing service at an HOA where entry by the Process Server, Sheriff or Constable is prevented. It seeks to provide a means to effect due process for property owners who are within such gated communities, and thus living in a service free zone.

See the text below for the gist of the proposed changes, or go to the Supreme Court's Rules Forum to view all of the text of the filing. The Rules Forum can be found at: <http://www.azcourts.gov/Rules-Forum>.— BRG

**TEXT OF THE PROPOSED AMENDED RULE 4.1(d):**

The proposed rule under ARCP Rule 4.1(d), would state as follows (proposed changes in *italics*):

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

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

***(4) If the dwelling house or usual place of abode lies within a planned community or other such location where access or entry to such planned community or other such location must be granted or is controlled by a guard this section shall apply. If after having identified himself or herself to the guard as a Certified Process Server, Constable or Deputy Sheriff having lawful business in serving legal process upon a person reasonably believed to be residing or located in such planned community or other such location, and entry to such planned community or other such location is denied, service of a copy of the summons, pleading and other documents being served may be performed by leaving a copy of the legal process with the guard, who shall be informed of the general nature of the legal process, and thereafter mailing a copy of the legal process by first-class mail, postage prepaid thereon to the person served at the individual's dwelling house or usual place of abode. Service of legal process in this manner is deemed complete on the 10th day after the mailing. This Rule shall not affect any alternate means of service which may be ordered by the court under Rule 4.1(k).***



**Rule Changes****Rules of Civil Procedure for the Superior Courts****Changes are here... APSA wants you to know!**

APSA's educational programs are being tweaked to keep up with changes in the rules pertaining to service of process. The APSA ACPS manual is being examined for changes needed pertaining to statute, rule and case law changes.

The changes to the manual are expected to be completed prior to our annual conference, and, as usual will be distributed to conference attendees.

In the meantime, if you are not going to be able to attend the conference, but are interested in getting a copy of the ACPS manual, please contact the APSA administrator. — BRG

**Computer Tech****Keep Your System Current**

Computer slow? Don't know if you are up to date? There are two sides to the solution. The first is the physical side — your PC or laptop, modem, router and peripherals (battery backup/surge protector, printer, scanner, backup drive), and the second is software.

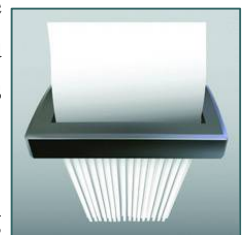
First, make sure that your computer is well ventilated and clean — dust is deadly to hardware. Your computer may be clean on the outside, but what about on the inside? If it's over a year old and you haven't had it cleaned (or if you are a DIY person), blowing the dust off of components can be rather easy. Keeping the air flowing over your interior components to prevent heat buildup will keep your computer going longer.

Make sure your computer equipment is away from carpets, metal tables, liquids and other things that either hold or can discharge static electricity. Liquids are *really* bad for electronic components...just ask anyone who has dropped their cell phone in a puddle of water.

There's all types of recommendations as far as software goes. First and foremost, keep your operating system up to date. Regularly clean your cache, clear your browser history and backup your data on a separate drive. I recommend using a separate physical drive *and* backing it up in the "cloud" (i.e. Carbonite. Mozy or one of the other services).

Install an anti-virus such as McAfee or Kaspersky (I didn't have good experience with Norton/Symantec). Use an anti-malware program such as MalwareBytes. If you use Microsoft Internet Explorer, consider using Mozilla Firefox or Google Chrome as your browser. Most websites are compatible.

Windows has a software firewall, as does McAfee and Kaspersky. Turn them on, in addition to your router's firewall. We'll talk more on computer tech in coming editions.

**APSA**

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

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

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



*From the ABA Journal...*

### **Upload to file-sharing site was like leaving legal file on a bench, judge says; privilege is waived** By Debra Cassens Weiss Posted Feb 27, 2017 07:30 am CST

An insurance company has waived any claim of privilege to materials uploaded to an unprotected file-sharing site, a federal magistrate judge in Virginia ruled earlier this month.

U.S. Magistrate Judge Pamela Meade Sargent said in a Feb. 9 decision that the Harleysville Insurance Co. waived its privilege in documents uploaded to a site where they were accessible to anyone who had the hyperlink, according to the [ABA BNA Lawyers' Manual on Professional Conduct](#).

"In essence," Sargent wrote, "Harleysville has conceded that its actions were the cyber world equivalent of leaving its claims file on a bench in the public square and telling its counsel where they could find it. It is hard to imagine an act that would be more contrary to protecting the confidentiality of information than to post that information to the world wide web."

According to the Lawyers' Manual, the decision "should make lawyers think twice before putting confidential documents in a file-sharing site without password protection."

Harleysville was not the only litigant criticized in the opinion. Its opponent also acted improperly, Sargent said, by accessing the drop-box materials and using them without notifying lawyers for Harleysville.



# APSA

## Training Corner: Actual Notice vs. Constructive Notice



**Barry R. Goldman**

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The difference between serving someone personally or by substitute service comprises the manner of notice the defendant or person to be served receives. Witnesses under subpoena and certain other persons must be served personally, therefore, actual notice is required. In most instances when serving a summons, substitute service is allowed, and constructive notice is given.

But what is notice? We look to Black's Law Dictionary and other sources (namely Cornell Law School) for some online research. Black's Law Dictionary defines "notice" as, "A legal notification or warning that is delivered in a written format or through a formal announcement. An individual or party is considered liable if the party (1) has knowledge of the notice, (2) received the notice, (3) knows it through experience, (4) has knowledge with regards to an associate fact and (5) could have gained knowledge had an enquiry been undertaken."

Cornell writes, "... notice must be reasonably calculated, under the circumstances, to inform all interested parties that a lawsuit is pending and that it could adversely affect their interests."

In matters that require actual notice for the court to

exercise in personam jurisdiction, personal service is the accepted standard. This is because the action or matter affects the personal rights of the individual. When matters



do not necessarily require personal service, such as that involving property, constructive notice may be acceptable to the court. Thus, jurisdiction over a person (in personam) differs from jurisdiction over a thing (in rem).

Giving notice to a party is part of the requirements imposed by the Due Process clause of the U.S. Constitution. A court cannot hear and adjudicate a case until the party has been given proper notice. Depending on the type of matter, the court will require personal service or may allow substituted or alternative (including publication) service.

In the U.S. Supreme Court ruling, *Jones v. Flowers*, the court ruled that notice is not merely a formality, but a requirement. In the majority opinion, the court found that,

"... when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so."

Because of the constitutional importance of insuring proper notice, courts will not forgive improper notice even where a party receives actual notice. Therefore, service must be performed in a manner not only most reasonably calculated to give notice, but within the letter and color of rules of court and law. Process servers have a duty and obligation to follow certain procedures and requirements to make service.

Separating the fact (actual notice) from the legal fiction (constructive notice) may find that the person actually but improperly served by personal service may have their case dismissed. But a person served by substitute or publication service who never received the actual legal process may be deemed served in the eyes of the court because procedure was followed.

*This article is reprinted from the upcoming 2017 ACPS Manual. — Ed.*

**APSA**

**Courthouse Consolidation —****Justice Courts on the Move**

Process servers please note: the following courts have moved into new, common facilities at 10420 W. Van Buren St., Avondale, AZ 85323

**Agua Fria****Judge:** Joe "Pep" Guzman**Phone:** (602) 372-8001**Fax:** (602) 372-8201**Maryvale****Judge:** Andrew Gastelum**Phone:** (602) 372-8002**Fax:** (602) 372-8203**Country Meadows****Judge:** Anna Huberman**Phone:** (602) 372-8000**Fax:** (602) 372-8024**White Tank****Judge:** David Osterfeld**Phone:** (602) 372-8003**Fax:** (602) 372-8205

## *Senate Bill 1050 Passed into Law Effective August 5, 2017*

Effective August 5, 2017, ARS §12-3301 is amended to read:

Private process servers; background investigation; fees

A. Private process servers who are duly appointed or certified pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6 and 7, section 11-447 and section 11-448, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme court rule. A private process server is an officer of the court.

B. As a condition of certification, the supreme court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant's criminal history record information. The cost may not exceed the actual cost of obtaining the applicant's criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check.

C. A private process server may charge such fees for services as may be agreed on between the process server and the party engaging the process server.



**Analysis & Commentary:****Effect of SB1050 and Amended ARS §12-3301**

Existing statute in ARS §12-3301 states simply that process servers "...may serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-445, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme court rule...". That's pretty clear.

Effective August 5, 2017, however, that same section will be amended to read that process servers "...may serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6 and 7, section 11-447 and section 11-448, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme court rule...".

While your editor applauds some changes in statute which may benefit process servers, the courts and the public, the changes passed into statute with the above simply don't make a heck of a lot of sense. Let's take ARS §11-445: that statute specified the types of papers the sheriff may serve and the fees applicable for that service. Implied and referenced, the current statute is clear that process servers may serve the same types of papers (summons, complaint, writ of garnishment), but may not execute certain court orders (i.e.: writs of execution, writs of replevin, writs of restitution, etc.).

Removing the reference from ARS §11-445 and replacing with ARS §11-441(A)(6)&(7), ARS §11-447 and ARS §11-448 essentially rewords existing statute for interpretation that process servers "...may serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6 and 7 (wherein ARS §11-441(A)(6)&(7) state: "6. Endorse upon all process and notices the year, month, day, hour and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception. 7. Serve process and notices in the manner prescribed by law and certify under the sheriff's hand upon the process or notices the manner and time of service, or if the sheriff fails to make service, the reasons for failure, and return them without delay. When returnable to another county, the sheriff may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit it postage prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return"), section 11-447 (which reads, "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,



**Analysis & Commentary:****Effect of SB1050 and Amended ARS §12-3301**

whatever may be the defect in the proceedings upon which they were issued.”) and section 11-448 (which reads: “The officer executing process shall then, and so long as he retains it, upon request, show a conformed copy of the process, with all papers attached, to any interested person.”), except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme court rule...”.

First off, your editor has no issue with clocking in his papers. I believe the issuance of a receipt may be resolved by the closing documents (i.e.: proof of service and invoice). Where I believe this statute is going leans more toward noting the date and time the paper was received from the client, and noting same on the proof of service or other non-service document.

The applicability of ARS §11-441(A)(7) is questioned, with the exception of, “Serve process and notices in the manner prescribed by law and certify...the manner and time of service, or if (failure) to make service, the reasons for failure, and return them without delay” and “...The (declaration by the process server) is prima facie evidence of the facts stated in the (document)”. But the revised statute to be enacted does not state that. Rather than enunciate the responsibility of the process server (which, coincidentally may be found in ACJA §7-204 and other rules of court), the legislature has referenced entire sections of statute applicable to sheriffs, only.

With the reference to ARS §11-447 and ARS §11-448, the legislature is seemingly under the impression that process servers *execute* legal process. We do not. Process servers in Arizona *serve* legal process. We give notice to persons; we do not take persons or property away.

Perhaps if the legislature truly wanted to clarify the duties of a process server, it might have made changes to ARS §12-3301 to read something like: “A. Private process servers who are duly appointed or certified pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-445, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by supreme court rule. *A process server shall endorse upon all process and notices received the date and time received, as well as the date and time served. A process server shall document the date and time received and served on proof of service or other declaration to be filed with the court or otherwise returned to the client, which shall be prima facie evidence of the facts stated. A private process server is an officer of the court.*”

Sometimes less is more. A wheel that's not broken doesn't need fixing. Politicians who pass laws they don't understand tend to believe that more is good. Some things are better left alone.



From *ServeNow.com*

## Arizona Process Servers Association Pursues Rule Change

March 27, 2017  
by Stephanie Irvine



Like many other states, Arizona is active in pursuing changes in both legislation and with the Supreme Court to make it easier and safer for process servers to do their job. One of the most promising efforts is before the Supreme Court, which would give process servers a way to serve those currently shielded by private gated communities.

### **Proposed Rule Change for Gated Residences - Arizona Rules of Civil Procedure**

Gated communities often present a roadblock for process servers. Process servers who are given an address located within a gated community are typically faced with either the potential of violating trespass rules (rendering them unable to complete the service) or they are forced to deal with an evasive intended recipient who refuses to accept service. Because these gated communities are often guarded by a security officer who refuses access, these citizens are not able to be served. Justice, for those seeking it, is blocked by the gatekeeper, especially in situations where the service is time-sensitive. Citizens not residing in a gated community are not afforded this same ability to dodge service, and in effect, are given impunity. As the ARCP is currently worded, there is no special exemption for service of process, which in turn ignores the citizens right to due process and prevents those attempting service from doing their jobs.

The proposed Rule change would essentially treat the security guard or gatekeeper as a representative of the homeowner, which would allow substitute service. This would create an opportunity for civil process servers, as well as constables or sheriffs and their deputies, to effectuate service on the gatekeeper who is restricting access to the individual to be served while still respecting the citizen's right to privacy.

Barry Goldman, Arizona Process Server Association's Legislative Chair and (former) Vice President, stated in an interview that "Because they are the gatekeeper to the home, what we're proposing is that if we go ahead and can't get in through the gatekeeper [that the gatekeeper be served]. They're acting as the agent for the homeowner in refusing to let us in."

The proposed ARCP Rule change cites neighboring states California and Nevada for having statutes that address this issue. The pending Rule change is in progress.

When asked why APSA was pursuing this ARCP Rule change and not other legislative changes, Goldman explained, "We spent a considerable amount of the association's money. And we didn't get the bang for the buck. So, we just don't feel that as an association that we can truly be a good steward of our members' funds if we were to spend that money again on a futile attempt." He went on to explain that "As far as our legislative efforts go, as long as it doesn't have to go to the House Judiciary Committee and doesn't have process server in [the language], it could move forward. But unfortunately, there's one member of the House of Representatives that's basically sinking our efforts to get an assault bill passed."

### **Proposed Legislative Changes - Process Server Assault Bill**

There has been an ongoing effort to get a process server assault Bill passed in legislation; however, previous attempts have been thwarted by non-supporters in legislation.

In 2012, SB1140, was presented and failed.

In January 2013, SB1053, was presented to the Senate and failed. Senator Steve Yarbrough, in that first reading stated "I will simply tell you, and I'll explain my vote in a moment, but I have serious reservations about the appropriateness of making what would otherwise be a simple assault become an aggravated assault simply because the person is a process server. I'm really having a tough time with that." His vote was no. (video 23:47-24:07)

In 2014, SB 1198 was presented and failed.

The current 2017 assault Bill SB1075 is sponsored by Senator Kavanaugh but is currently stalled in the Senate.

All of the aforementioned Bills were written so as to meet the needs of both process servers and legislators; however, it is often met with opposition in the Senate, with many senators asking for data on the prevalence of assault and others voicing hesitation to give process servers the same protections as peace officers. Unfortunately, the mindset that process servers are just regular people making deliveries prevents protective legislation from moving forward. As more bills have progressed and more becoming law, most recently, in New York, there is hope that process servers will be given the respect under the law that they deserve. Arizona process servers have exhibited relentless perseverance in pursuing this legislative change. Hopefully, they will succeed as other states make changes to further protect process servers under the law.

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 guest article submission is as follows:

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

### Tell Us What You Think...

We've received comments from  
 members and non-members alike,  
 thanking APSA for the Newsletter  
 and educational opportunities. We'd  
 like to thank our readers for sharing  
 and making this publication better.  
 Thank you, dear reader! From the  
 bottom of our  
 hearts.





**ARIZONA PROCESS SERVERS ASSOCIATION**

P.O. Box 2233, Phoenix, AZ 85002  
(602) 476-1737

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



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

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

Associate/Out of state Process Server

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

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

NEW  RENEWAL  
Member since: \_\_\_\_\_

**Annual Dues: \$50**

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

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

**MEMBER I.D. CARDS:**

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

Annual Dues: \$50.00
Voluntary Legislative Fund Donation: \$ _____
Total Enclosed: \$ _____

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

Date: \_\_\_\_\_ Signature \_\_\_\_\_

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

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

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

**Flagstaff 10-Hour CE Classes**

June 10-11, 2017

**APSA Board Meetings**  
**See website for details.**

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

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

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



<b>PRIVATE PROCESS SERVER TESTING BY COUNTY (UPDATED FALL, 2015)</b>			
<b>County</b>	<b>Contact person</b>	<b>Telephone</b>	<b>Testing dates/times/detail</b>
Apache	Deena Mattice	928-337-7551	By appointment
Coconino	Jeff Mangus	928-679-7600	By appointment at 928-679-7646
Cochise	Martha Rivera	520-432-8581	Call for details
Gila	Vickie Aguilar	928-402-8559	By appointment only
Graham	Rebecca Ornelas	928-428-3100	Call for details
Greenlee	Pam Pollock	928-865-4242	Call for appointment
La Paz	Jackie Kummerle	928-669-6131	Call for details
Maricopa			See county clerk's website for testing dates
Mohave	Mim Quesenberry	928-753-0713x416	Call for details
Navajo	Marc Russell	928-524-4177	Call for details
Pima	Alan Walker	520-724-3282	Call for details—Check in at 8:30 a.m.
Pinal	Kira Jimenez	520-866-5307	By appointment
Santa Cruz	Karla Zuniga	520-375-7700	Call for details
Yavapai	Shaunna Kelbaugh	928-777-3030	Tuesdays and Thursdays at 8:30 a.m. and 3:00 p.m. by appointment
Yuma	Michelle Lackey	928-817-4241	Scheduled as needed

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

**Advertising Submission Policy:**

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



## The Last Word: It May Look Real, But...Beware!

Hello next victim,

I've just sent you an important document via Dropbox.

[Link here and sign-on](#)

Sincerely,

### Protect yourself from phishing emails.

We will never ask you for your password in an email. If you don't trust a link in an email, go directly to the normal login page. [Learn more about phishing and malware](#)

### Fishing, Ransomware, Hacking, Phishing, Malware, Trojans, Colds, Viruses and the Flu...

Things some folks like to do, and other things us normal folks don't want.

Ever get an unsolicited email from a "new" client that you think might bring you some added revenue? We all have. Experts say that we should think before we open such gifts from the ether world.

My resident expert finds on average that our computers are targeted anywhere from five to 40 or so times a day with emails coming from bad characters. Many of them are in a foreign language that I don't speak, or offering to sell me things that I, didn't request, don't want or need.

Don't become a victim to these types of scams. Most fit into the identity theft category,

### APSA Newsletter Quarterly Publishing Schedule

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

but the ransomware going about is just plain electronic extortion.



Ransomware causes computer content to be encrypted and unreadable. For hospitals, colleges, public services, law firms and other technologically dependent organizations (including process servers, LDP's and attorney services), the results can be devastating. One report suggested that "...criminals behind Cryptolocker have made \$30 million from the ransomware."

For more information, Google "ransomware attacks, law firm, university, Arizona" and you'll see what I mean.

Stay safe and watch your fingers. — BRG

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# APSA

Serving Arizona Process Servers Since 1973

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

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

## You are wanted!

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