

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



ARIZONA PROCESS SERVERS ASSOCIATION

## NEWSLETTER

4th Q 2016

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

**Ron Ezell, President** (2016)  
 520-798-2200 ext. 3501  
 rezell@firstlegalnetwork.com

**Barry R. Goldman, VP** (2016)

**Patty Chlebanowski,**  
**Secretary** (2016)  
 602-258-0022  
 phxcourtsvs@nationwideasap.com

**Luis Figueroa, Treasurer** (2016)  
 (928) 343-9071  
 luis@alssinc.com

**Tom LaVance**  
**Director, Immediate Past Pres.**

**John Carpenter Director** (2016)  
 602-579-0331  
 carpenterlegalservices@cox.net

**Eric Sotelo, Director** (2016)  
 (602) 424-3026  
 eric@integrityas.com

**Tracy Candelaria**  
**Director** (2016)  
 928-367-4766  
 tracy@ctcandelaria.com

**Tom Rankin, Director** (2016)  
 520-705-1039  
 tomjrankin@msn.com

Published by the  
**Arizona Process Servers Assn.**  
 PO Box 2233, Phoenix, AZ  
 85002 Phone: (602) 476-1737  
 Fax: (602) 256-9720  
 azserverassoc@gmail.com

Edited & Produced by:  
**Barry R. Goldman**  
 (877) 472-7431  
 service@rapidrps.com



### President's Message

*Ron Ezell*

We have completed our 2016 APSA Annual Conference with AALPI in Tucson and had amazing instructors and presenters. It has been over 20 years since an APSA Conference was held in Tucson. Our attendance was great as the Tucson and Phoenix Process Servers and others within the State supported the Conference. We continue to look for new classes that are both interesting and cover the subjects that apply to our Profession. We all appreciate those that continue to support APSA as Board Members and Committee Chairs.

Now it is time to get back to business. We will need to watch the Legislature and see what maybe on the horizon. We know that the Civil Rules Committee has come forward with new Rules of Civil Procedure for the Superior Courts of Arizona

and if approved will take effect on January 2017.

On December 3<sup>rd</sup> and 4<sup>th</sup>, in Phoenix, APSA will be offering 10 Hours and Continuing Education those that were not able to attend the Annual Conference.

We will keep you posted on our next Board Meeting which may be held at the December Continuing Education classes that will be held in Phoenix.

I would like to say "Thanks!" for the opportunity to serve APSA as President for 2017.

*Ron*

More C.E. Hours!

See  
 Inside



#### Inside this edition...

- President's Message
- Secretary's Corner;
- Editor's Column;
- Board meeting notes
- *The Brief* ;
- Of Interest
- Conference Information
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- Suspect Impales Self While Evading Capture—PCSO
- Dangers of Process Serving Hits Home in Texas
- **More!**

## APSA Board Meeting Minutes September 24, 2016 (Unofficial)



The annual meeting was held on Saturday, September 24, 2016, at the Hilton Tucson El Conquistador Resort located at 10000 North Oracle Road, Tucson, AZ. The meeting was called to order by the President, Ron Ezell at 12:40 P.M. and roll call of board members was taken. Ron Ezell, President, Barry Goldman, Vice President, Patty Chlebanowski, Secretary, Luis Figueroa, Treasurer, Board Members, John Carpenter, Eric Sotelo, Tom Rankin & Tracy Candelaria were all present. The 2016 Annual Conference Notebook was received by all members in attendance as they signed in at beginning of the conference.

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

Ron Ezell addressed the membership; ...briefly talked about legislative issues that came about this year. He would let Barry Goldman go more in depth about the issues. They were carefully watching what was happening because the other Association had a couple items up for review. Ron mentioned that if anyone was interested in writing an article for the newsletter, please forward to Barry Goldman the newsletter editor. You can receive Educational Hours for writing an article.

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

Barry Goldman spoke and explained to the membership that the attempted legislative items the other association had tried to do were listed in the last newsletter. They did not go anywhere or even make it to the floor for a vote. They tried to pass a Trespass Bill & an Assault Bill. We have written to this other Association and tried to join forces to no avail.

Barry also mentioned that Supreme Court had a formal task force this year, which consisted of Attorneys, Court Officers & Judges to try and make some rules of service changes. We thought they should have included Process Servers since we are the people on the streets with the experience but we were not asked to join the task force. The ...Supreme Court will be implementing changes in (rules in September).

Barry told the membership we might try and write a Rule Change rather than a statute change regarding gated communities. HOA's are employing the guards as (a gatekeeper) they should be able to sub serve the guard.

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

Patty Chlebanowski, told the membership, she has been keeping up with her duties as secretary. She has attended all the board meetings, been updating the web site and mail and the phones and of course preparing for today's conference.

Patty asked the membership to review the Last Annual Minutes that are posted in the Conference Booklet, pages 17 thru 19.

Motion was made to approve the minutes...

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

Luis Figueroa explained his written Report is printed

in the Annual Conference Booklet, pages 20 through 23. The balances for the Checking Account, Savings Account and the Money Market Legislative Accounts total \$41,340.88.

Motion was made to approve the Treasurer's Report.

### **MEMBERSHIP REPORT:**

Membership for 2017 is just around the corner. Some of the members paid at the conference for their annual membership dues for 2017.

### **WEBSITE REPORT:**

Patty Chlebanowski reported we are looking into updating the website...

### **GRIEVANCE REPORT:**

John Carpenter reported there was one Grievance filed this year and we are currently talking to the offender.

### **LEGISLATIVE REPORT:**

Barry Goldman stated we have no current legislative issues at this time...

### **EDUCATION COMMITTEE:**

Patty Chlebanowski reported we have several new classes at this year's conference. Our next APSA Training Class will be in December in Phoenix, AZ, possibly at the Phoenix Library.

**OLD BUSINESS:** None to be addressed.

**NOMINATIONS:** Were made... (see new board & officers, further)

### **ATTENTION MARICOPA COUNTY PRIVATE PROCESS SERVERS:**

**As of July 1, 2016, Maricopa County Private Process Servers are no longer required to obtain Certification and Licensing Division staff approval of continuing education activity documentation prior to submitting it to the Maricopa County Superior Court for approval.**

**The Certification and Licensing Division staff will no longer be signing requests for individual private process server continuing education activity approval.**

**All required C.E. documentation is to be submitted with your renewal application directly to the Superior Court Process Server Program staff**

## Editor's Column



*Barry R. Goldman*

I attended this year's conference in Tucson, and although the crowd was smaller than I expected, it was a great crowd just the same. AALPI and APSA officers and boards worked to put together one heck of a productive weekend. (It was for me!)

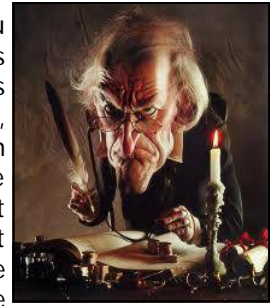
The conference facilities were great, and now that my wife and I have been there, we have a preferred hotel when we need to stay in the area. The food in the restaurant was an eclectic mixture of southwestern meets fu-fu (I

wanted carne asada, then the waitress told me it was mushroom asada — huh????!!!)

It was good to see some familiar (not old!) and new faces. Our board is taking on a new look. I've bowed out from serving this year, and I'm very happy that others have stepped up. You'll see some bios printed in the APSA Newsletter in coming editions.

Continuing education is a big focus of the conference, but it's not the sole purpose. Going to the conference gives our members the ability to mingle and interact with one another. Have you ever heard that in some circles, most of the business is done on the golf course? It is very often true!

So, if you didn't attend this year's conference, please plan on attending the conference next year. And if not that, then take advantage of the (usually quarterly) continuing education events sponsored by APSA. Of course, if you are unable to come to one of our events, there are some other means of getting your CE hours. The point is, please don't miss out on opportunity. — BRG



## I CANN PROCESS SERVICE

**LINDA M. COONTS, A.C.P.S.**

**OFFICE: (520) 249-5100**

P.O. Box 728  
Sierra Vista AZ 85636

Registered  
Officer of Superior Court  
State of Arizona  
County of Cochise

**Tommy Todd Tenney**

[www.cochisecountyserver.com](http://www.cochisecountyserver.com)

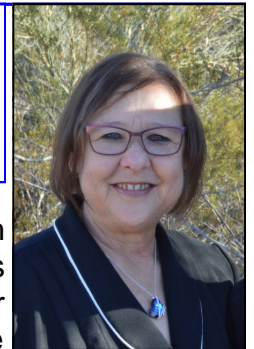
**704 N. Douglas Ave.  
Willcox, AZ 85643**

**520-384-4835 / 520-507-0078**

**email: [ccserver@vtc.net](mailto:ccserver@vtc.net)**

## Secretary's Corner

**Patty Chlebanowski, Secretary**



Hello fellow members:

Well the 2016 conference is now in the books. I want to thank you very much for attending the conference this year in Tucson. While we did have a smaller attendance this year, the hotel was beautiful and other than being too chilly in the main conference room everyone that talked to me mentioned they enjoyed themselves.

I want to thank the membership for taking

their Educational hours with APSA. There is other classes available but supporting your Association is important as we move into the future with our careers. We close this year with some cooler weather, enjoy your jobs at this time of year and stay safe.

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.*

**October, 2016**

**More Than Ten Years of Brief Updates**

*The Brief* debuted in October 2005. Since then, the Office went from receiving 30,000 pieces of paper each day to over 45,000 pieces (the equivalent of receiving 9 boxes of paper reams each day) and now, thanks to eFiling, back closer to 30,000 pieces of paper each day in 2016. Estimating from U.S. Census Bureau statistics, Maricopa County's population has increased by hundreds of thousands of residents during that time.

In 2005, *The Brief* was a single-page PDF attachment to an email. At the one-year anniversary, the office stated it this way: "The Clerk is committed to providing regular updates to the legal community. The Office has condensed important events, procedures, and operations into a single-page periodical intended to educate, inform, and generate dialogue between the Clerk, courts, and practitioners." That commitment continues today in much the same form. *The Brief* is sent directly to more than 1,300 subscribers who then distribute it within their law firms, businesses, associations, and other networks.

Thank you for reading *The Brief*, suggesting topics, and for supporting

the Clerk's Office. What was happening in October of 2005? Our main topic that month told practitioners how to apply for participation in the eFiling pilot in Judge Peter Swann's civil division. There was also a list of dates for attending the Clerk's one-hour demonstrations of the eFiling Online system the office built in-house.

Nostalgic for more? Back issues are available on the Clerk's website at [http://www.clerkofcourt.maricopa.gov/aty\\_news.asp](http://www.clerkofcourt.maricopa.gov/aty_news.asp). To give feedback on *The Brief*, contact the Clerk's Office at [COCCustomerRelations@mail.maricopa.gov](mailto:COCCustomerRelations@mail.maricopa.gov). To add an email address to the distribution list or to manage your subscription, click on the links at the bottom of the page.

**We're Easier to Find**

In addition to the monthly *Brief*, the Clerk's Office uses two social media outlets to post Clerk news in advance and as it happens. Find the Clerk on [@MaricopaClerk](http://www.twitter.com) and on Facebook at [www.facebook.com/MaricopaClerk](http://www.facebook.com/MaricopaClerk). You can also find links to these outlets on the Clerk's main webpage, [www.clerkofcourt.maricopa.gov](http://www.clerkofcourt.maricopa.gov).

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

**Assault on Process Server in New York Will Be a Class D Felony Starting Nov 1**

Process servers across the United States are celebrating another win, this time in New York, in the quest to protect process servers from assault. New York Bill S2991A, introduced in February 2015, was passed and signed into law by Governor Andrew Cuomo on August 19, 2016. It will go into effect this upcoming November. Although similar laws are in place in Illinois, California, and Florida, New York will be only the fourth state in the country to have legislation in place to protect process servers. *(From ServeNow.com)*



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



## OF INTEREST:

## *Dangers of Process Serving Hits Home in Texas*

**September 23, 2016 from ServeNow.com, by Stephanie Irvine**

In Texas, the process server community is still reeling from a June dog attack that left 36 year-old process server Erin McCleskey dead. McCleskey, a registered [Texas Supreme Court certified process server](#), worked as an independent contractor for [EZ Messenger](#), an Austin-based civil process service company, owned by her father, Michael Shapiro. McCleskey was attempting to deliver court documents to the property owner, Terry Swanson, at his residence, located outside Austin in the small town of Manor, which sits in northeast Travis County.

Casey Cox, Chief Operating Officer for EZ Messenger, explained, "The facts of the situation, as we know them, are that Erin arrived at the rural location in the late afternoon to make an attempt. Her card was left on the door in addition to a photo she took with a mobile application, so we know she made the attempt. Somewhere between the door and walking back to her car, which she parked on the road, she was attacked by several dogs. It's unclear how many dogs. Erin wasn't found for several hours, not until the caretaker who was caring for the dogs arrived and called police. Erin had made several prior attempts at the residence with no issue." He also told us that she had a broken arm that was in a large shoulder to wrist cast, which may have contributed to her inability to defend herself or evade the dogs.



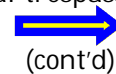
Process servers face dangers on the job every day, and what can seem like a typical day on the job can quickly change. In the wake of a tragedy, no matter how accidental it may be, we urge all process servers to acknowledge the dangers they face, and potentially reevaluate their processes to be more aware while on the job. Although accidents happen, which it appears unfortunately was the case for Erin McCleskey, it is never a mistake to take extra precaution.

*I definitely think it warrants a reminder that the profession can be a dangerous one and that no situation is worth putting yourself in danger for. As it turned out Erin's situation was, best we can tell, a truly unfortunate accident and in hindsight there was likely little, if anything, that a reasonable person would have done differently.* — Casey Cox, Chief Operating Officer for EZ Messenger

Although no-trespassing signs were posted along the fence as news photographs and [Google Maps Street View](#) show, it is evident through the Google images that the fence did not (at the time that the Google image was taken) completely surround the property and appeared in disrepair at parts. The property, which Google Maps also shows has several outbuildings and a manufactured home, is quite open, and the fence would not obstruct the process server's vision to see what was beyond the fence. Property records also show that the property sprawls over one acre of land.

In Texas, process servers are required to go through an oath to abide by a [Code of Ethics](#) and a stringent certification process, which includes training. Although many states, such as [California](#), [Florida](#), [Illinois](#), and [South Carolina](#), either have included provisions in legislation, have cited that process servers would not be held liable for violating trespass laws, or have begun the process of revising penal codes to allow immunity to process servers from trespass laws, the [Texas Penal Code](#) does not include a provision giving process servers immunity from trespass laws. It does, however, provide exclusions for peace officers, emergency services personnel, and utility workers, which certainly forces many to question whether or not process servers would ultimately be held liable if a case should arise.

The topic of whether or not process servers should be forced to abide no trespassing signs has been the fodder for debate among those within the process serving community, as well as members of the general public. Intense discussions have sprung up within online forums, such as [Reddit](#), and in the comments sections of news articles and other social media sites. One Reddit commenter who goes by the online handle LifeMedic asserted, "You are not allowed to trespass to serve papers. Cases can be thrown out due to improper service. In the particular jurisdiction of this city (Austin); A secure fence with no curtilage access and a sign that is reasonably likely to come to the attention of intruders is all it takes. This isn't the same in all states/counties/cities. I believe Hawaii and Michigan (off the top of my head) shield process servers from criminal trespass statutes, other states may as well, but not Texas."



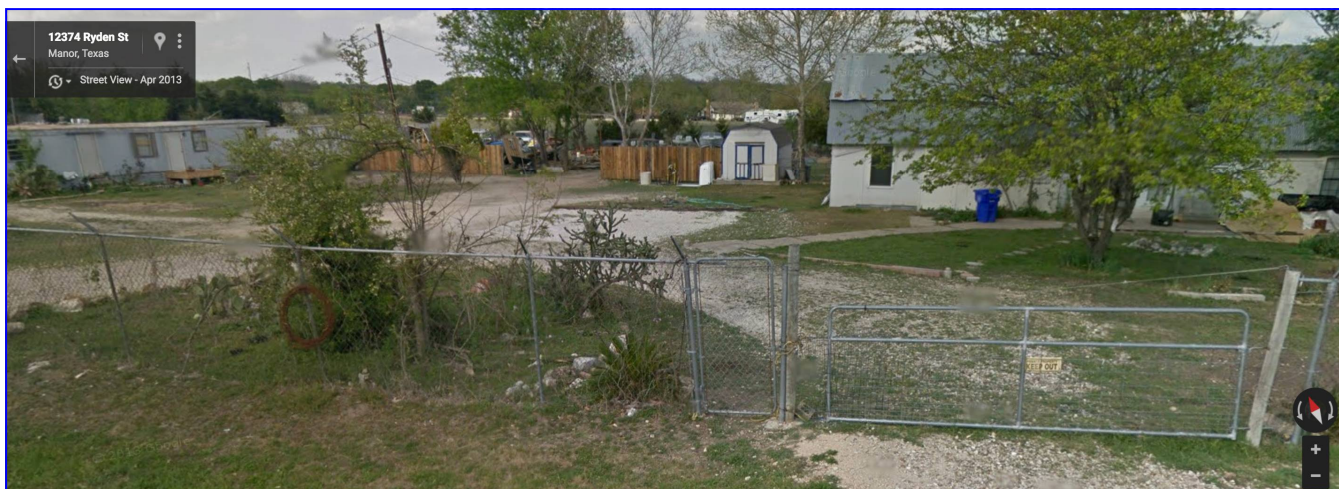
# APSA



## OF INTEREST: *Dangers of Process Serving (Continued)*

Another commented, "Without looking into it, I'd be flabbergasted if you can avoid service in Texas simply by putting up a fence and a no trespass sign." This tragic incident has fueled strong opinions on each side of the argument, and made it overtly apparent that the law is not clear to most citizens.

What further tragically complicates the situation is that no one was home at the residence at the time McCleskey attempted service. The individual she was attempting to serve, Terry Swanson, was out of town and had left Robert McCray and Marjorie Kalinec as caretakers for the dogs, but they were not at the residence when McCleskey was there. McCleskey's vehicle was reportedly still running, which alerted Kalinec, who had arrived to feed the dogs, that someone was on the property. According to news reports, immediately upon finding McCleskey, Kalinec called emergency services. Unfortunately, as related by Casey Cox of EZ Messenger and the coroner's report, she had been dead for at least five hours, and an autopsy report confirmed that she died as a result of the injuries sustained in the attack. McCleskey's [obituary](#) notes that she had a passion for animals, especially her cats, and the family dog, a Sheltie.



McCleskey's family released a statement (previously published on [KXAN Austin](#)):

*Our family is heart-broken over the tragic passing of our affectionate, fun-loving daughter, Erin. She was an adventurous woman who always lived her life to the fullest and never shied away from a challenge. Erin loved people and had a special affection for animals. Her infectious laughter will be missed by her family and friends. Life will never be the same without her.* — Statement from the McCleskey family

The Travis County Sheriff's department noted in a [press release](#) that there were 14 puppies along with six adult dogs, which were documented to be Lab/Great Pyrenees mixes and Husky/Australian Cattle Dog mixes. It is believed that the six adult dogs were responsible for the attack that took McCleskey's life. In a KXAN Austin TV news interview, Tawny Hammond of Austin Animal Services office advised that the dogs appeared to be healthy. She went on to say that it was very rare that dogs would attack a person, and the attack was clearly indicative of aberrant behavior.

Ultimately, no criminal charges were brought against the homeowner or the dogs' owners; however, the dogs were detained under a 10 day Rabies quarantine at the Austin Animal Center, and Justice of the Peace Precinct 5 Judge Herb Evans ruled that the six adult dogs would be euthanized. Swanson, along with the other two caretakers, under legal council of Attorney Erik Toberson, appealed the ruling. [Travis County Civil Case documents show that the latest update took place August 1, 2016](#), in which Toberson filed a request for disclosure and a request for production. The case is still pending.

This is a terrible turn of events, and an accident that hits home to process servers around the country. Every day, process servers face a multitude of safety hazards and barriers each time they attempt service. Although the simple act of delivering court documents may seem harmless to those outside the industry, there are serious dangers on the job at every turn. From encountering animals to being victims of assault by the recipients, it is imperative that process servers stay aware of their surroundings, take appropriate caution, and put safety measures in place to hopefully prevent incidents like this tragedy from happening in the future. — *Our thanks to ServeNow.com and condolences to the McCleskey family.*

# APSA

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

Changes in the rules pertaining to service of process, both stylistically and substantively are coming effective January 1, 2017. Following are excerpts from the changes submitted by the task force assembled by the state Supreme Court.

Excerpted changes to the rules affecting process servers are indicated, following. They include, but are not limited to renumbering rules for service under ARCP Rule 4.1 *et seq.*, 80(i) and others. Substantive changes include the insertion of a new rule pertaining to service of process on unknown heirs to real property. Some things remain the same, such as the assumption that a minor of the age 16 or older is of suitable age and discretion to be served a summons without serving his/her parent or legal guardian. Some changes were minor in appearance, but could have major impact if misinterpreted, such as the new language in ARCP Rule 4.1(a), which currently reads, "All process may be served anywhere within the territorial limits of the state", being changed to read, "All process including a summons may be served anywhere within Arizona". A major change to note is the time limit to get the complaint served — shortened from the current 120 days to 90 days.

Needless to say, APSA will have to make some adjustments in the 2017 and beyond class materials, and with the dedicated and enthusiastic crew of officers and board members we have, we can do it! — BRG

**Prefatory Comment to the 2017 Amendments**

The 2017 amendments make extensive changes to the Arizona Rules of Civil Procedure ("ARCP"). These amendments "restyle" the ARCP in a manner similar to the 2007 restyling of the Federal Rules of Civil Procedure. Informative titles and subheadings are added, which make rules and sections easier to locate. By using clearer language and, if possible, plain English, these rules should be easier to understand. The restyled rules avoid long sentences, ambiguous terminology (such as the word "shall"), and legal jargon. These rules also use consistent formatting conventions and terminology.

The amended rules also include substantive changes, including but not limited to the following:

**ARCP Rule 4(i): Time Limit for Service. (*Shortens time from 120 to 90 days- ed.*)**

If a defendant is not served with process within 90 days after the complaint is filed, the court — on motion, or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time...

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

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

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

**(d) Serving an Individual.** Unless Rule 4.1(c) (see *Waiving Service*), (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.

**(e) Serving a Minor.** Unless Rule 4.1(f) applies, a minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner: (1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or (2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

**(f) Serving a Minor Who Has a Guardian or Conservator.** If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the minor in that same manner.

**(g) Serving a Person Adjudicated Incompetent Who Has a Guardian or Conservator.** If a court has declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to



## Need More C.E. Hours???

APSA is hosting 10 MORE hours at the  
Ramada Hotel in Phoenix

212 West Osborn Road, Phoenix, AZ “Arizona  
Room”

**December 3, 2016 - 8:00 AM – 3:00 PM**

**6 hours ACPS Class**

**December 4, 2016 - 9:00 AM – 1:00 pm**

**4 hours Conflict Communications**



### Rule Changes (Continued)

## Rules of Civil Procedure for the Superior Courts of Arizona

manage that person's property and has appointed a guardian or conservator for the person, the person must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the person in that same manner.

**(h) Serving a Governmental Entity.** If a governmental entity has the legal capacity to be sued and it has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to the following individuals:

- (1) for service on the State of Arizona, the Attorney General;
- (2) for service on a county, the Board of Supervisors clerk for that county;
- (3) for service on a municipal corporation, the clerk of that municipal corporation; and
- (4) for service on any other governmental entity:

(A) the individual designated by the entity, as required by statute, to receive service of process; or

(B) if the entity has not designated a person to receive service of process, then the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

**(i) Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.

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

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

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

(3) Commission's Responsibilities. The Arizona Corporation Commission must retain one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation, other Corporation Commission records, or any other source.

**(k) Alternative Means of Service.** *(Substantive changes. — Ed.)*

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





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### **Rule Changes (Continued)**

## Rules of Civil Procedure for the Superior Courts of Arizona

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

business or residential address of the person being served.

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

#### **(I) Service by Publication.**

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

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

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

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

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

(2) Procedure.

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

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

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

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

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

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

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

(4) Return.

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

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



# APSA

## Need More C.E. Hours???

APSA is hosting 10 MORE hours at the  
Ramada Hotel in Phoenix

212 West Osborn Road, Phoenix, AZ “Arizona  
Room”

**December 3, 2016 - 8:00 AM – 3:00 PM**

**6 hours ACPS Class**

**December 4, 2016 - 9:00 AM – 1:00 pm**

**4 hours Conflict Communications**



### Rule Changes (Continued)

## Rules of Civil Procedure for the Superior Courts of Arizona

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

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

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

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

- (1) signed by the person as true under penalty of perjury;
- (2) dated; and
- (3) in substantially the following form:

“I declare [or certify, verify or state] under penalty of perjury that the foregoing is true and correct. Executed on [date].  
[Signature].”

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

*There are more changes which can be found in the rules forum of the Arizona Judicial Branch website. While we expect the foregoing changes to be enacted starting January 1, 2017, the changes are by no means complete and may still be subject to the Supreme Court approval or modification.*



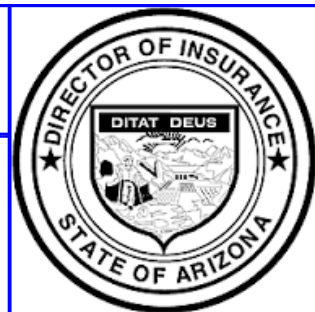
**Fat Man Squad**

**Process Server to Me:** Hey, you emailed me at 4:51 a.m. You're up early!  
**Me at 2pm to the Process Server:** Still up, too. Working my behind off in the office -- my business, handling the APSA Newsletter, and then taking the rest of the day off. (Yeah, right...) Gotta lose about 100 pounds. I'm scheduling myself to wake up earlier (0530) so I can hit the gym at 6 and be ready to work by 8. Will I do it? We'll see...

**APSA**

## Arizona Department of Insurance —

### Can A Statutory Agent Refuse to Accept Service?



When our state Constitution says, "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights", are we just giving ourselves lip service for the illusion that we limit the power the government, or is it truly a government by the people and for the people.

As process servers, we've all had to review certain case law for our certifications. This would include *In re Ball* (2 Cal.App.2d 578), *Thorndyke v. Jenkins* (61 Cal. App. 2d 119), *Trans Natl. Commun. Intl., Inc. v. Gould* (1 CA-CV 06-0616) and more. Serving corporations and other entities is a necessary part of our knowledge bank. For process servers, the rules are fairly simple — ARCP Rule 4.1(i) states, "Service of Summons Upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service."

For those so experienced, going to CT Corporation, CSC, a private attorney or other person on the record with the ACC and dropping papers on them is pretty much a no-brainer. However, when serving an insurance company in Arizona, the Director of the Dept. of Insurance is the statutory agent and it becomes an issue of the paper meeting the DOI's requirements (i.e.: do they *want* to accept the paper).

So that begs the question — *Can a statutory agent refuse to accept legal process when they are the bona fide statutory agent for the defendant?*

The Dept. of Insurance thinks so. Their justification for refusing to accept service of process recently is imparted in ARS 20-221(A): "Each authorized foreign or alien insurer shall appoint the director as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer and shall remain in effect as long as there is in force in this state any contract made by the insurer or obligations arising therefrom."

Notice the words in the first sentence, "...issued against it in this state". Does that mean that the insurer must be sued in an Arizona court, or does it mean that the legal process issued is served in this state? Does it mean that the insurer is *in this state*? The DOI believes that their interpretation *requires* that the legal process issued against the insurer must emanate from an Arizona court.

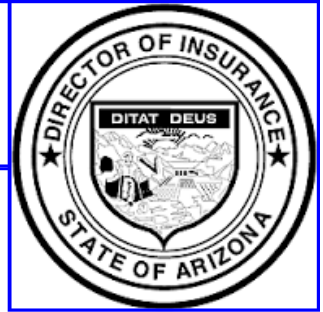
...But there is no mention about the Arizona courts in that or other related statutes.

So, by the reject slip that yours truly received, the legal process presented to the DOI does not meet their definition of *legal process*. If the DOI wishes to redefine the term "legal process", they have a long way to go. The U.S. Supreme Court and all inferior courts of the United States recognize that legal process is "...a writ, warrant, mandate, or other process issuing from a court of justice. The term



# APSA



**Arizona Department of Insurance —****Can A Statutory Agent Refuse to Accept Service?  
(Continued)**

includes subpoenas, citations, and complaints." (22 CFR 92.84)

Under the DOI's interpretation of what legal process is, a summons and complaint coming out of, let's say the U.S. District Court for the Central District of California wouldn't be considered legal process, because it's not an Arizona court. Tell that to the Feds.

*It's wrong...just plain wrong.*

ARS 10-3504 defines a statutory agent as "...an agent of the corporation on whom process, notice or demand that is required or permitted by law to be served on the corporation may be served and that, when so served, is lawful personal service on the corporation."

By refusing to accept the legal process, the department violates Article 2, Section 11 of the state Constitution in delaying the adjudication in the matter for which legal process was issued ("Justice in all cases shall be administered openly, and without unnecessary delay.")

Article IV, Sec. 1 of the United States Constitution states, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State..."

Sounds to me like some of the language in ARS 20-221(A) ("*...issued against it in this state*") is either misinterpreted, mistaken, misunderstood or just plain unconstitutional. A conspiracy theorist might assume that some numb nut wanted a protectionist clause for our states' insurers and slipped it in the language under the misguided notion of "state's rights" because some insurance bureaucrat figured that the Full Faith and Credit Clause of the Constitution wasn't worth the paper it was written on and said, "To hell with the Constitution, we'll do what we want!"

Unfortunately, the answer isn't going to be forthcoming from the DOI without some teeth pulling. When contacted, the DOI responded that their justification is ARS 20-221, and wouldn't otherwise comment. That's too bad.

Business Services Section  
Arizona Department of Insurance  
2910 North 44th Street, Suite 210, Phoenix, Arizona 85018-7266  
Web: <https://insurance.az.gov> | Phone: (802) 364-3100 | Fax: (802) 364-2400

Douglas A. Ducey, Governor  
Laelie R. Hess, Interim Director

October 26, 2016

To Whom It May Concern:

The Director of Insurance is the statutory agent for receipt of service of process on behalf of foreign and alien insurers and non-resident agents, brokers and adjusters operating in Arizona.<sup>1</sup> When the Director accepts service of process for an insurer, you must submit duplicate copies of the documents and a check for \$15.00.

On October 26, 2016, the Department received the following documents from your firm addressed To **SCOTTSDALE INSURANCE COMPANY**.

**CERTIFICATE OF SERVICE**

For the reason(s) checked below, the Department cannot accept service of the document(s) you sent to us:

The document(s) do(es) not constitute process within the meaning of applicable law.

The document was not filed with the applicable jurisdictional court in Arizona (if this matter was filed with a court in another state, you must comply with that state's service of process laws)

You did not include a duplicate copy of the documents.

You did not include a check for \$15.00.

The Director may not accept service for the entity you are attempting to serve with the documents.

We do not have any listing for the entity upon which you are attempting to serve the documents.

We cannot determine on whose behalf you are asking us to accept the enclosed documents.

We cannot accept process on behalf of domestic insurers who have not named the Director as their statutory agent or on behalf of resident licensees.

Thank you for your attention to this letter. If you require further information, please call me at 602-364-3100.

Sincerely yours,  
Yuliana Salinas

*Yuliana Salinas*

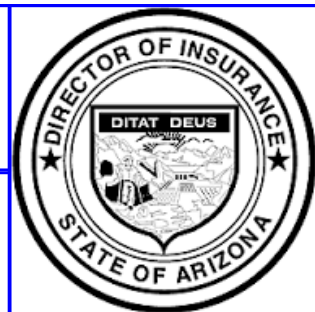
<sup>1</sup> ARS §§1-215(A)(29), 20-215, 20-221, 20-222, 20-291, 20-403, 20-419, 20-481.08 and 20-2115.



**APSA**

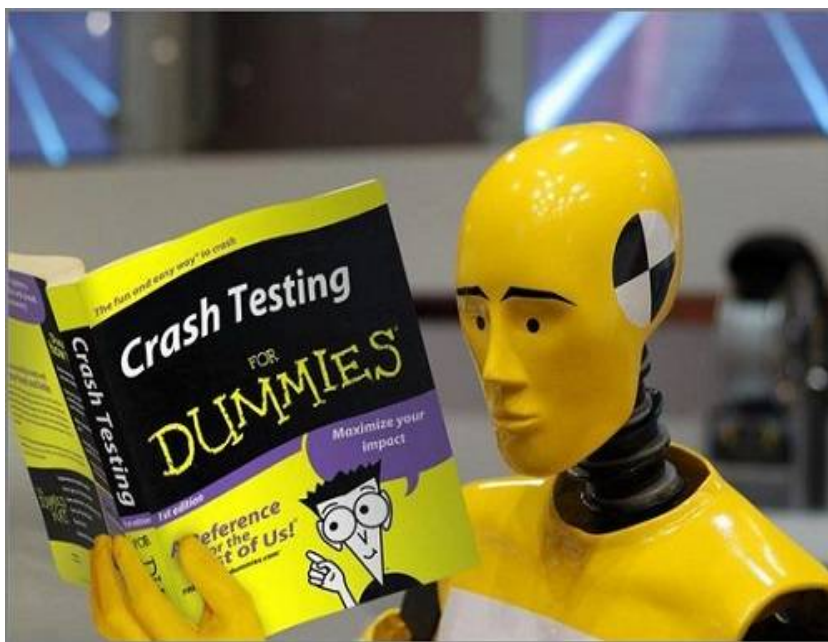
*Arizona Department of Insurance —*

## Can A Statutory Agent Refuse to Accept Service? (Continued)



In a 1999 press release, Charles R. Cohen, who was then the state insurance director, stated, "...every activity of the Insurance Department is geared toward consumer protection." (From *Press Release 1999-24 State Insurance Department Oversees Insurance Companies' Ability to Pay Your Claims*) If so, then why would the agency disallow service of legal process in violation of the Full Faith and Credit Clause of the Constitution? After all, consumer protection runs two ways -- protecting the public from insurance malfeasance, and protecting the public from incredible bureaucratic guffaws.

The Arizona Constitution is fairly comprehensive, encompassing several Articles and Sections. Defining a corporation, our own state Constitution (Article I, Sec. 14) says, under "Corporation" defined; right to sue and suability: "The term "corporation," as used in this article, shall be construed to include *all* associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and *all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.*



(Emphasis added.) So, if a corporation which is an insurance company is sued, it's statutory agent is the Director of the Dept. of Insurance (ARS 20-222, et seq.) and as such subject to the jurisdiction of the court which extends its arm by means of service of process.

Like the US Constitution, our state Constitution (Article 2, Sec. 4) says, "No person shall be deprived of life, liberty, or property without due process of law." It would therefore appear that a statutory agent to refusing acceptance of legal process is in effect denying due process to those so affected by the legal process. Similarly, in Article 2, Sec. 32, when the Arizona Constitution states, "The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise", does that mean that the state can violate its tenants? When the statutory agent (the DOI) unjustly refuses to accept service of process, he or she abridges the a) the right of due process, b) the obligation that a corporation shall be subject to suit "...in all courts", and c) causes potential adverse consequence to a litigant expecting that the State would honor the Full Faith and Credit Clause of our nation's founding document.

Consequently, knowing that the DOI is wrong for refusing to accept the legal process, what's a process server to do? Should APSA engage in moving for a legislative solution?

Let me know what your thoughts are. Inquiring minds really do want to know. In the meantime, I'll read a book. — Ed.



**APSA**





Our 2016 APSA-AALPI conference was held in Tucson at the Hilton Tucson El Conquistador Golf & Tennis Resort on September 24th and 25th. If you didn't attend, please plan on attending the 2017 event.



APSA would like to thank AALPI and the Hilton Tucson El Conquistador for this year's conference at a great location with great amenities.



A special thanks goes out to all of our instructors who put forth their time and efforts in providing our members with outstanding seminars.





## New Officers & Board Slated for 2017

As we have done each year, our bylaws mandate that elections for officers and board members of APSA are made. This coming year, our officers and board members are, in order:

### Officers:

President: Ron Ezell – First Legal Network – [rezell@firstlegalnetwork.com](mailto:rezell@firstlegalnetwork.com) – 520-798-2200

Vice President: Tom Rankin – Pinal Court Messenger – [tomjrankin@msn.com](mailto:tomjrankin@msn.com) – 520-705-1039

Treasurer: Luis Figueroa, Sr. – Accurate Legal Support Services – [luis@alssinc.com](mailto:luis@alssinc.com) – 928-343-9071

Sec'y: Patty Chlebanowski – Nationwide Legal Services – [phxcourtsvs@nationwideasap.com](mailto:phxcourtsvs@nationwideasap.com) - 602-254-7427

### Directors:

Larry Ratcliff – L.R. Investigations – [lrpi@frontiernet.net](mailto:lrpi@frontiernet.net) – 928-367-0510

Tracy Candelaria – Off the Beaten Path – [tracy@ctcandelaria.com](mailto:tracy@ctcandelaria.com) – 928-205-9386

Eric Sotelo – Integrity Attorney Service – [eric@integrityas.com](mailto:eric@integrityas.com) – 602-424-3026

John Carpenter - Carpenter Legal Services – [carpenterlegalservices@cox.net](mailto:carpenterlegalservices@cox.net) - 602-579-0331

Congratulations and best wishes to one and all!

## ¿Habla Español?

When confronted with a situation such as when the person answering the door doesn't speak English, what do you do? Are you confident that your second language skills can overcome the challenge? Do you have a second language? This year's Spanish language class gave students some options.

Process servers sometimes run into difficulties serving process when the person on the receiving end doesn't speak English. For that reason, it's good to have a familiarity with other languages, and in Arizona, the predominant second language is Spanish. Our 4-hour Spanish class was given this year, thanks to Judith Costello, who in this writer's opinion did a bang up job. Her handouts were very broad based, and for those not fluent

or who lack language skills other than English, a good reference to have for study and in the field.

One of the most important phrases learned in the class was, *más despacio, por favor* (slower, please). Just like in English, the word *please* or *por favor* shows respect and humility -- a little sugar, rather than vinegar.

Our instructor also covered the difference between the familiar *you*, or *tu*, and the more formal *you*, or *usted*. Many phrases are different due to their cultural or local dialect, (i.e.: *corte* and *juizado*) and some terms, such as *process server* don't literally exist in Spanish and need to be described slightly differently from their word for word translation.

Numbers can be a challenge, especially for those not fluent in Spanish. Erring on the side of caution, some students, rather than incorrectly understanding phrases such as a telephone number, prefer to use the universal sign language when asking for such information. (Handing a pen and paper to the other person to write - *escribe el numero aquí, por favor.*) Hey, if it works, why not?

I look forward to seeing this class offered in the future -- and while a second language cannot be taught to fluency in four hours, the opportunity to gain knowledge and brush up on linguistic skills is valuable, especially in a controlled environment, rather than trial by fire. Thanks, Judith -- ¡Muchas gracias, profesora!



¡Gracias!



**APSA**

## Training Corner: Are you comfortable with discomfort?



Barry R. Goldman

©2015 Barry R. Goldman



"Being uncomfortable with change is a universal experience...", and in serving legal process, it's all about change. Sometimes the discomfort is on the part of the person we are serving, sometimes it's on us. Sometimes it's the counsel for the party who is uncomfortable, and definitely at all times, on the individual party. "I'm just doing my job" some might say, but that job changes others' lives, and if we don't do our job right, it's not a job well done.

As officers of the court, we have an obligation to do our job, first and foremost, keeping the rules and statutes in mind so that the job is done right. When we are not sure about how to do a job, we need to get the answers before doing it wrong slaps us in the face, or worse.

I told you about a constable in the last edition who served a paper unnecessarily on a minor at school in front of his peers, and the discomfort caused to the student and his family. Over the conference weekend I ran into an experienced process server who said he has been routinely making sub-serves at businesses, including a paper for *in personam* jurisdiction on a sitting judge, served on his judicial assistant. (Yes, the judge was an *individual* named in a lawsuit, not in his official capacity, and his honor

should have been served at home.) Consequently, I counseled the server and advised him the repercussions of someone who might be served incorrectly. Yes, he was uncomfortable, but hopefully going forward, he'll do his job right and not have this issue anymore. (See *Motion to Vacate, following.*)

Having the knowledge and experience in doing things right can facilitate easy change for most people. Letting others know that you have that knowledge and experience can lead to success



and prosperity in your business dealings, as well. Some lawyers are known for their resistance to change, and it can make them uncomfortable. When taking on a new law firm or sole practitioner attorney, can you offer them any improvements or innovation in your service? What would entice them to change to your service? Professionals in our line of work, as well as attorneys cannot stick with the status quo. We have to be proactive in being able to get ahead of

the curve.

Obstacles causing discomfort to change must be embraced and worked out. To quote a former Marine, "...you either go over it, around it, or through it." Ignoring the obstacles or causes of discomfort do nothing but prolong procrastination. That leads to stagnation and failure - something none of us want.

Technology helps the practice of law and service of process evolve. There are several software vendors out that provide applications for computers and smart phones to track and retain locations, photos and data related to service of process. There are programs and applications that will produce reports and documents relating to service, as well. Skiptracing resources are abundant, but many times with the consolidation of the industry, there are fewer smaller vendors to go to.

Continuing education vendors are also using software in addition to in-class lectures.

Whatever you do, position yourself to be successful. Make the effort. Embrace change. Start out with small steps, but do things so that you are safe, well positioned and knowledgeable in all you do.

# APSA

***Alternate Means of Service:*****USDC Authorizes Service of Process to ISIS Fundraiser via Twitter**

On September 20, 2016, LAUREL BEELER, United States Magistrate Judge issued an order that defendant, Hajjaj al-Ajmi (an individual) to be served via the social media platform Twitter. The Order stated, "...plaintiff, St. Francis Assisi (a non-profit corporation), sued the defendants, Kuwait Finance House, Kuveyt-Turk Participation Bank Inc., and Hajjaj al-Ajmi (an individual) for damages and equitable relief arising from the defendants' financing of the terrorist organization known as the Islamic State of Iraq and Syria (ISIS), which resulted in the targeted murder of Assyrian Christians in Iraq and Syria." According to the pleadings from Plaintiff's counsel, Mogebe Weiss of Weiss Law in Alameda, CA, "Defendant Hajjaj Al Ajmi is a Kuwaiti national whose whereabouts is unknown but whose fundraising activities in the social media platform Twitter is unabashedly continuous and strong." In his motion, Counsel cited a finding by the 9th Circuit Court of Appeals that said, "We hold that Rule 4(f)(3) is an equal means of effecting service of process under the Federal Rules of Civil Procedure, and we commit to the sound discretion of the district court the task of determining when the particularities and necessities of a given case require alternate service of process under Rule 4(f)(3)." (Rio Properties, Inc. v. Rio International Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002))

Defendants Kuwait Finance House and Kuveyt-Turk Participation Bank Inc. were served through their local counsel, David Kiernan of Jones Day in San Francisco. In the Analysis before issuing the order, the Court found the following:

Federal Rule of Civil Procedure 4(f) establishes three mechanisms for serving an individual in a foreign country: 1) by an internationally agreed means of service that is reasonably calculated to give notice, such as those provided by the Hague Convention; 2) if there is no international means or no means specified then by means reasonably calculated to give notice; or 3) by other means not prohibited by international agreement, as the court orders. See Fed. R. Civ. P. 4(f).

Courts have applied Rule 4(f) to allow the order of any means of service as long as it comports with due process and: 1) it provides "notice reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action and afford[s] them an opportunity to present their objections"; and 2) it is not prohibited by international agreement. Rio Props., Inc v. Rio Int'l Interlink, 284 F.3d 1007, 1014, 1016 (9th Cir. 2002) (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

Courts have authorized service by social media in similar cases. For example, in WhosHere, Inc. v. Gokhan Orun, the district court authorized service on a defendant residing in and having his principal place of business in Turkey by email and the social-media platforms, Facebook and LinkedIn. 2014 WL 670817 (E.D. Va. Feb. 20, 2014). Defendant did business under the trade names "WhoNear" and "whonearme" in violation of the plaintiff's trademarked name, "WhosHere." ...Plaintiff Orun attempted to serve process through Turkey's Ministry of Justice in accordance with Rule 4(f)(1) and the Hague Convention; however, the summons and complaint were returned because the defendant could not be located with the address on record. ...The court granted service by email, Facebook, and LinkedIn because notice through these accounts was reasonably calculated to notify the defendant of the pendency of the action and was not prohibited by international agreement. ...The three accounts were under defendant Orun's name and contained information about his "WhoNear" business...

*Continued...*

**APSA**



**Alternate Means of Service (Continued):****USDC Authorizes Service of Process to ISIS Fundraiser via Twitter**

In *Federal Trade Commission v. PCCare Inc.*, the court also authorized service by email and Facebook to defendants located in India. 2013 WL 841037 (S.D.N.Y. March 7, 2013). According to the FTC, the five defendants employed a scheme tricking American consumers into spending money to fix alleged problems with their computers. ...The FTC attempted to serve the defendants through the Indian Central Authority in accordance with Rule 4(f)(1) and the Hague Convention. *Id.* The Indian Central Authority did not serve the defendants and did not respond to the FTC's status inquiries. *Id.* The court granted service by email and Facebook because these channels were reasonably calculated to notify the defendants and were not prohibited by international agreement. ...The email addresses and Facebook accounts were registered under the defendants' names and used frequently for communication...

As in *WhosHere* and *PCCare*, service by the social-media platform, Twitter, is reasonably calculated to give notice to and is the "method of service most likely to reach" al-Ajmi. See *Rio Properties*, 284 F.3d at 1017. Al-Ajmi has an active Twitter account and continues to use it to communicate with his audience. Service by Twitter is not prohibited by international agreement with Kuwait.

**CONCLUSION**

The court grants St. Francis's motion to serve of process by Twitter. St. Francis may use Twitter to serve process on al-Ajmi. **IT IS SO ORDERED.** Dated: September 30, 2016

**Garnishments: Review of Docs Required by Statute**

Garnishments come in two flavors: The Earnings and Non-Earnings kind. Sometimes, the judgment debtor (the party who owes the money) will get a double serving of garnishment (bank and wages). The docs are usually provided by the attorney, pro-per or other client, obtained from the court website or over the counter. There's a lot of them. Incorrect service might violate the rights of the judgment debtor, so in all cases, we should make sure that we are serving the proper type and number of forms.

I will share with you a quick checklist that I use to make sure everything is Kosher when serving garnishments.

**When serving an Earnings (Wage) Garnishment under ARS ARS §12-1598.04 (C) & (D), the documents required to be served on the employer (and employee) are, in order:**

2 copies of the Writ of Garnishment & Summons (Earnings)  
 2 copies of the Instructions to Garnishee (Earnings)  
 4 copies of the Garnishee's Answer (Earnings)  
 2 copies of the Request for Hearing on Garnishment (Earnings)  
 2 copies of the Notice of Hearing on Garnishment (Earnings)  
 2 copies of the Second Notice to Judgment Debtor of Garnishment (Earnings)

4 copies of Garnishee's Nonexempt Earnings Statement  
 1 copy of the Judgment

**Within 3 days of service to the employer, the Judgment Debtor is to be mailed one copy each of the following:**

Writ of Garnishment & Summons (Earnings)  
 Initial Notice to Judgment Debtor of Garnishment (Earnings)  
 Request for Hearing on Garnishment (Earnings)  
 Request for Hearing on Nonexempt Earnings Statement

**Under ARS §12-1574 (C) when serving a bank or other Non-Earnings Garnishment, serve the following to the institution:**

2 copies of the Writ Of Garnishment & Summons (Non-Earnings)  
 1 copy of the Instructions To Garnishee (Non-Earnings)  
 4 copies of the Garnishee's Answer (Non-Earnings)  
 2 copies of the Notice To Judgment Debtor Of Garnishment (Non-Earnings)  
 2 copies of the Request For Hearing On Garnishment (Non-Earnings)  
 1 copy of the Judgment  
*Optional:* A \$25 search fee check payable to the financial institution.



**ARCP Rule 60(c):****Introducing the Motion to Vacate**

When a defendant believes they were improperly served, or not served at all (see story, following), the defendant has the right to ask the court for review. The ultimate goal in most instances is to get a judgment reversed, thus the *Motion to Vacate*. Arizona, as several other states and the Federal courts, has established procedures by which a person contesting a judgment or finding by the court may introduce new evidence to prove that (in cases concerning process servers) they weren't served, or they were improperly served.

Let's go over some of the rule, here:

- 1) mistake, inadvertence, surprise or excusable neglect — *pretty much a catch-all for the party not having received notice, putting the wrong case number on pleadings, etc.*
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d) — *when information comes to light after the judgment that would shed a new light on the issues and which would have changed the outcome*
- 3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party — *when service of process is improperly or not performed (remember, the proof of service is signed under penalty of perjury), or there is some other hanky-panky going on with another party*
- 4) the judgment is void — *a judgment which has no force and effect*
- 5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application — *look up the term, "res judicata"; a discharged judgment would go away through bankruptcy*
- 6) or any other reason justifying relief from the operation of the judgment — *for any reason that the court would believe to be in the interest of justice.*

**Rule 60(c). Mistake; inadvertence; surprise; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment or order was entered or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant served by publication as provided by Rule 59(j) or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

The person who wishes to have his or her judgment vacated should file appropriate paperwork sooner, rather than later. Some motions must be filed within 6 months.



*From a story in the Tucson Star:*

## *Can Anyone Say, "Perjury"?*



An 18-year veteran of the Tucson Police Department resigned after internal affairs determined that he gave false testimony during a civil hearing, an AZPOST document obtained by the Star shows.

In November 2014, the officer's wife ran a red light and received a ticket from a red-light camera. A process server went to their home in February and gave the officer a summons for the violation, the document said.

In April, 2015, the officer's wife was notified her license had been suspended for failure to appear in court, and when she asked her husband, he said he didn't remember receiving any paperwork, the document states.

The officer was placed under oath at a June court hearing to contest his wife's suspension, and denied being served with the paperwork.

The process server appeared and produced a nearly four-minute recording of his conversation with the officer, after which his wife confirmed that it was her husband's voice. The suspension was upheld, and the judge contacted TPD's internal affairs division to alert them to the officer's false testimony, the document said.

During his internal affairs interview, the officer stated several times that he didn't remember being served with the paperwork, even after hearing the recording, the document said. He resigned in lieu of termination in November, 2015. — **Our thanks to Caitlin Schmidt, Tucson Star reporter** — *Ed*.

*From [www.sba.gov](http://www.sba.gov): 10 Ways to Keep Your Mobile Devices (and the Data on Them) More Secure*

It's important to protect your mobile devices and your company's data. Here are some essential mobile device and data security tips you can use to protect your small business.

1. Use a Secure Lock Screen
2. Enable Location Settings
3. Use a Remote Wipe Security Application
4. Use Encryption
5. Avoid Open Public Wi-Fi
6. Disable Automatic Wi-Fi Connect Features
7. Deploy a Virtual Private Network

8. Back Up Data
9. Research Apps Before Downloading
10. Use Anti-Virus and Security Protection

Don't let mobile devices out of your possession, or step away from them, even for a few minutes. When leaving planes, rental cars, taxi cabs, Uber rides, restaurants, security checkpoints at airports, trains and other places where things tend to get put down or fall out of tote bags or pockets - always check to make sure you have devices with you.

*For more and detailed information, go to [www.sba.gov](http://www.sba.gov) and look up the article by Anita Campbell. Thanks, SBA. - Ed*

***Tis the Season: Gift Giving*** For a guy who likes to read and write, one of the best gifts I got wasn't even around the holidays. A friend of mine turned me on to a really, really low cost way to get books. It's called BookBub ([www.bookbub.com](http://www.bookbub.com)). It's a free service that drops a daily email listing free (yes, free!) or low cost books (customized to my choice of genre) that can be downloaded to various reading applications on my computer, tablet and smart phone. It doesn't cost anything to sign up, and for the amount of books I have, it is well worth it! What type of reading app, you say? I personally use Amazon Kindle (our kids got us Kindles one year for X-Mas many seasons ago). Although we don't have the Kindles any longer, I downloaded the app on our smart phones and tablets, as well as our PC's. You can set up a Kindle account at Amazon.com without any cost or obligation. It makes reading digital very convenient. Do I miss holding a book in my hand? Yes. Do I miss the shelf space taken up by a personal library? No. Do I like the convenience of having 719 (as of today) virtual books on one device? You betcha! I may be taking a break at Starbucks or a local restaurant and it may look like I'm staring at my phone, but I'm actually reading a book! So, if you are of the mind that you want to give a gift that doesn't cost you anything, I wholeheartedly recommend BookBub and a virtual reader. — *Ed*



# APSA



**Protective Order Violated:****Suspect Violating O.P. Gets Arrested, Escapes, and Impales Self**

# NEWSRELEASE

Pinal County Sheriff's Office • 971 Jason Lopez Circle  
Florence, Arizona 85132

**FOR IMMEDIATE RELEASE**

Monday, October 3, 2016

CONTACT: Deputy Chief of Administration Tim Gaffney



Paul Babeu, Sheriff

**Suspect Impales Himself on Metal Stake while Running from Deputies**

On Friday, September 30<sup>th</sup>, 2016 at 12:58 a.m. the Pinal County Sheriff's, 9-1-1 Communications Center received a call regarding an argument between a female and her ex-boyfriend in the 30000 block of North Karen Avenue, San Tan Valley.

Deputies arrived at the residence a short time later and spoke with the male and female involved in the dispute. The male was identified as Michael Oliver (*age 23*). Oliver said that he came over to the residence to speak with the mother of his child. He also told deputies he knew he was not allowed to be at the residence.

Deputies then spoke with the female who said she had an "Order of Protection" against having any contact with Oliver but she found him in her backyard tonight. Oliver then came around to the front of the residence and she was speaking to him through a window. The female said she had already asked him to leave "800 times" but he refused.

Deputies confirmed the Order of Protection was valid and then took Michael Oliver into custody. He was handcuffed behind his back and placed in the rear seat of a patrol vehicle with metal bars on the windows. Oliver complained his wrists were hurting and asked the deputy to loosen the handcuffs. The deputy agreed and loosened the handcuffs slightly and placed Oliver back into the rear seat of the patrol vehicle.



Sheriff Paul Babeu stated, "Oliver was then able to force and slide the handcuff over his left hand. Once free of the handcuff, he slipped his left hand between the metal security bars and opened the rear door of the patrol vehicle and ran. Deputies chased after him as he climbed and jumped over several backyard fences. While Oliver was jumping over one of the fences, he didn't realize there was a metal stake in the ground. Oliver jumped down onto the stake which impaled the left side of his buttocks. He was able to free himself from the stake, and deputies were able to catch up to him. Deputies attempted to take him into custody but Oliver fought with them to get free. Eventually he was taken into custody. The deputies involved received minor injuries from the foot chase and subsequent struggle with Oliver."



Deputies could see Oliver was bleeding profusely from his injury. Medical personnel was called to the scene and Oliver had to be transported by air ambulance to Chandler Regional Hospital where he was later admitted for treatment.

Deputies have submitted a request to the County Attorney's Office asking that Michael Oliver be charged with Aggravated Assault, Escape, Resisting Arrest, Aggravated Harassment, Interfering with a Judicial Proceeding and Disorderly Conduct/Domestic Violence.

-30-



**"...I fought the law and law won..."**

**APSA**

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

### ADVERTISING RATES

All Payments for advertising must be paid in  
advance.

Please submit camera ready copy.

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

Size: 2.0 x 3.5 (Red border example)

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

4.75 x 3.75 (Blue border example)

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

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

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

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

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

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

### Tell Us What You Think...

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



**ARIZONA PROCESS SERVERS ASSOCIATION**

P.O. Box 2233, Phoenix, AZ 85002

(602) 476-1737

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



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

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

Associate/Out of state Process Server

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

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

NEW  RENEWAL

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

**Annual Dues: \$50**

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

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

**MEMBER I.D. CARDS:**

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

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

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

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

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



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

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

**Phoenix 10-Hour CE Classes**

December 3-4, 2016 (see ads)  
**APSA Board Meetings**  
**See website for details.**  
 Last APSA Board meeting is tentatively scheduled for December 3<sup>rd</sup> in Phoenix at the continuing education event. 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 20th of each year. Rules adopted September; effective January 1st of the following year.

See <b>SCORE's</b> website at <a href="http://greaterphoenix.score.org">greaterphoenix.score.org</a>			
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<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	Sharlette Wright	602-506-1909	See county clerk's website for testing dates
Mohave	Mim Quesenberry	928-753-0713x416	Call for details
Navajo	Marc Russell	928-524-4177	Call for details
Pima	Alan Walker	520-724-3282	Call for details—Check in at 8:30 a.m.
Pinal	Kira Jimenez	520-866-5307	By appointment
Santa Cruz	Karla Zuniga	520-375-7700	Call for details
Yavapai	Shaunna Kelbaugh	928-777-3030	Tuesdays and Thursdays at 8:30 a.m. and 3:00 p.m. by appointment
Yuma	Michelle Lackey	928-817-4241	Scheduled as needed

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

**Advertising Submission Policy:**

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



## The Last Word: Make Your Response Count!

## 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

For many of us, forwarding work that you can choose for a canned process server is an important part of what we do. Unfortunately, some of those who respond to requests directly or through such portals as the NAPPS website have a bad habit of not including their complete contact information. I have received numerous responses to requests for bids that say something akin to "\$65 for three attempts", without any contact information (except the respondent's email address). Needless to say, I don't know who the person is who responded to me as the request is sent out en masse.

It's worth the extra effort to shine against your competitors. After all, differentiating yourself from the competition is how you will stand out. Whether it's years of experience, education, pricing or other factors, you can help your own success by turning on your own light and shining. Stay safe and be successful. — BRG

If you want to do business with other servers, as well as individuals and law firms that use the web to get bids, be professional! If you use a smart phone to respond, be smart. Use a template for your signature or give complete contact information (not the standard "sent from my smartphone"). Working from your home or office computer? You can develop a template that covers your professional signature, as well as one

Hi Barry –

We can rush serve your paper in Montvale, NJ same day (any day). Our fee is \$195.00, and we'll make up to seventeen attempts. Email us the docs, and away we go. Thank you.

Sam Speedy  
Speedy's Paper Factory  
22 West 456th Street  
New York, NY 10036  
212-555-1212



\$75 1/2 days

75.00 first attempt tomorrow. Need documents tonight for attempt tomorrow.

\$85 sent from my i-phone



Arizona Process Servers Association  
PO Box 2233  
Phoenix, AZ 85002  
(602) 476-1737  
[apsaadmin@cox.net](mailto:apsaadmin@cox.net)

# APSA

Serving Arizona Process Servers Since 1973

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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!.