

PROCESS SERVER STUDY GUIDE

PREPARED BY:
MARICOPA COUNTY
CLERK OF THE SUPERIOR COURT
<https://www.clerkofcourt.maricopa.gov>



It is strongly recommended you spend time with an attorney or at the law library to acquaint yourself with state laws (Arizona Revised Statutes A.R.S.), Arizona Rules of Court, Rules of Civil Procedure (RcP) and local (individual county) court rules. Information contained in this packet should be considered a guide and is not intended to be a complete listing of all laws and rules a private process server would need to know.

JULY 2024

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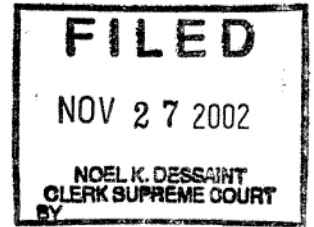
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Table of Contents

ADMINISTRATIVE ORDER 2002-110	1
ARIZONA CODE OF JUDICIAL ADMINISTRATION	2
Definitions.....	2
Applicability.....	4
Purpose	5
Administration	5
Initial Certification.....	7
Role and Responsibilities of Certificate Holders	12
Renewal of Certification.....	14
Complaints, Investigation, Hearings and Disciplinary Action.....	17
Reserved.....	25
Code of Conduct.....	25
Reserved.....	28
Continuing Education Policies.....	28
ARIZONA REVISED STATUTES	34
RULES OF CIVIL PROCEDURE	44
RULES OF FAMILY PROCEDURE	63
CASE LAW	74
Endischiee v. Endischiee, 141 Ariz. 77, 685 P.2d 142 (1984).....	74
Enriquez v. State, 115 Ariz. 342, 565 P.2d 522 (1997).....	77
Francisco v. State, 113 Ariz. 427, 556 P.2d 1 (1976).....	79
Hatmaker v. Hatmaker, 337 Ill.App. 175, 85 N.E. 2d 345 (1949).....	84
In re Ball, 2 Cal.App.2d 578, 38 P.2d 411 (1934)	88
Lane v. Elco, 134 Ariz. 361, 656 P.2d 650 (1982)	90
Marsh v. Hawkins, 7 Ariz.App. 226, 437 P.2d 978 (1968).....	96
Orosco v. Maricopa County Special Healthcare District, 241 Ariz. 529, 390 P.3d 375 (2017).....	102
Thorndyke v. Jenkins, 61 Cal.App.2d 119, 142 P.2d 348 (1943).....	106
Tonelson v. Haines, 2 Ariz.App. 127, 406 P.2d 845, Ariz. App. (1965).....	110
Trujillo v. Trujillo, 71 Cal.App.2d 257, 162 P.2d 640 (1945).....	113

IN THE SUPREME COURT OF THE STATE OF ARIZONA



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

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

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

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

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

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

Dated this 27th day of November, 2002.

FOR THE COURT:

CHARLES E. JONES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-204: Private Process Server

A. Definitions. The following definitions apply:

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

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

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

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

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

“Certificate holder” means any entity or individual granted and currently holding valid certification under statutes, court rules, and this section.

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

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

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

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

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

“Director” means the administrative director of the courts, or the director’s designee.

“Division director” means the director of the certification and licensing division of the Administrative Office of the Courts or the division director’s designee.

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

“Disciplinary action” means either informal or formal proceedings against a certificate holder

after a finding of probable cause that the certificate holder has committed acts of misconduct or violations of statutes, court rules, or this section.

“Dismissed with prejudice” means final disposition barring future action under this section on the same issue, claim, or cause.

“Dismissed without prejudice” means final disposition with the right to bring future action under this section on the same issue, claim, or cause.

“Expired” means the certificate has lapsed on a specified date.

“Filing” or “filed” means a document has been received and date-stamped by the clerk.

“Formal statement of charges” means the document issued by the presiding judge and served on the certified process server setting forth allegations of the certified process server’s specific acts of misconduct under statutes, court rules, or this section for which the presiding judge finds probable cause to believe the certificate holder has committed misconduct and finds the complaint is not appropriate for resolution by informal discipline.

“Formal disciplinary proceedings” means the process initiated with the issuance of a formal statement of charges to a certified process server that, if true, would warrant imposing formal discipline.

“Formal discipline” means one or more of the following: censure of a certified process server; suspension or revocation of a process server’s certification; and probation of a certified process server with terms that may include provisions such as restrictions on the certification or additional education or training. Formal discipline may be imposed by consent agreement or other negotiation settlement or following a disciplinary hearing.

“Government employee process server” means an individual who, in the normal scope of the individual’s responsibilities as a government employee, serves process for the governmental agency that employs the individual.

“Inactive” means a certified private process server who voluntarily decides not to practice in the specified profession or occupation for a specified period of time.

“Informal disciplinary proceedings” means the process initiated when the presiding judge finds probable cause to believe the certificate holder has committed misconduct under a statute, court, rule, or this section and finds the complaint is appropriate for resolution by informal discipline in the form of a letter of concern.

“Injury” means harm to a client, customer, the public, the judicial or legal system, or the profession or occupation of private process servers resulting from a certificate holder’s misconduct.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result.

“Letter of concern” means a written, informal disciplinary sanction finding a certificate holder has violated one or more statutes, court rules, or this section.

“Minimum competencies” means having the required skills for an adequate level of performance.

“Presiding judge” means the presiding judge of the Arizona Superior Court in each county or the presiding judge’s designee.

“Probable cause” means reasonable grounds for belief in the existence of facts concerning alleged acts of misconduct or violations by a certificate holder that, if true, would warrant informal or formal discipline against the certificate holder.

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

“Private process server” means an individual who is an officer of the court certified under this section to serve all process authorized under A.R.S. § 12-3301 except as may be limited by supreme court rule:

1. All writs, orders, pleadings, or papers that are required or permitted by law to be served before, during, or independently of a court action; and
2. Including process required or permitted to be served by a sheriff or constable under A.R.S. §§ 11-441(A)(6) and (7), -447, and -448, except writs or orders requiring the service officer to sell, deliver, or take into the officer’s custody persons or property.

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

“Revoked” or “revocation” means a written, formal disciplinary sanction against a process server resulting in the process server’s certificate to serve process being of no further effect without reinstatement.

“Sanction” means an explicit and official action resulting from an informal or formal disciplinary action finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules, or court orders applicable to a process server or this section.

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

“Suspended” or “suspension” means a written, formal disciplinary sanction against a process server resulting in the process server’s certificate having no effect for a specific period of time after which the certificate’s effect is restored automatically.

“Valid” means currently in effect and not expired, surrendered, suspended, or revoked.

“Voluntary surrender” means a certificate holder deciding to discontinue practicing as a process server and returning the certificate to the presiding judge for review and acceptance under subsection (E).

B. Applicability. This section applies to the certification of process servers under A.R.S. § 12-

3301 and the Arizona Rules of Civil Procedure. This section applies to the application, certification, and discipline of all private process servers in the State of Arizona. This section exclusively governs private process server certification without regard to Arizona Code of Judicial Administration § 7-201.

C. Purpose. To become eligible to act as a private process server in Arizona, an individual must obtain certification in compliance with A.R.S. § 12-3301 and this section. Under 4(e), Arizona Rules of Civil Procedure, a certified “private process server” is “entitled to serve in that capacity for any state court within Arizona.”

D. Administration.

1. Role and Responsibilities of the Supreme Court. Under A.R.S. § 12-3301 and Rule 4(e), Arizona Rules of Civil Procedure, the supreme court is responsible for administration of the private process server program and must adopt rules for administration of the program.
2. Role and Responsibilities of the Director. The director as designated by article 6, section 7 of the Arizona Constitution must:
 - a. Approve or disapprove matters of administration of the Private Process Server Program that involve the expenditure of program funds;
 - b. Appoint and supervise all division staff;
 - c. Adopt policies and procedures, including forms, for administration of the Private Process Server Program; and
 - d. Ensure implementation of the applicable laws, court rules, and this section.
3. Role and Responsibilities of Division Staff.
 - a. As designated or delegated by the director, division staff:
 - (1) Must assist in the decentralized administration of the Private Process Server Program in each county in Arizona in compliance with the applicable statutes, court rules, administrative orders, and this section.
 - (2) May perform any other of the director’s duties and responsibilities.
 - b. In assisting in administrating the Private Process Server Program, the division staff must:
 - (1) Perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona;
 - (2) Provide updates to the clerks;
 - (3) Make recommendations on matters relating to certification, complaints, investigations, and other matters relevant to certified private process servers;
 - (4) Maintain a list of certified process servers and post this list on the judicial department website which must include each certificate holder’s name, certificate

- number, county of certification, and any disciplinary action imposed;
- (5) Update the list if certified process servers at least quarterly;
- (6) Refer any complaint received regarding the actions of a certified process server to the clerk of the county where the alleged violation took place as provided in subsection (H).

c. Division staff may:

- (1) Charge for the costs of providing copies of the certification list or any other public records of the program; and
- (2) Refer complaints to another state agency or entity with jurisdiction if the supreme court or superior court does not have jurisdiction over the complaint.

4. Role and Responsibilities of the Clerks of the Superior Court.

a. Each clerk must:

- (1) Distribute application materials, using the application forms provided by the director, and accept applications and fee payments for initial and renewal of certifications;
- (2) Administer and grade the examination for initial certification;
- (3) Process the application materials, including fee payments and fingerprints, and forward the application materials to the presiding judge;
- (4) Issue initial and renewal certificates to qualified individuals on approval of the presiding judge;
- (5) Issue an identification card to individuals granted certification by the presiding judge;
- (6) Maintain records of applicants for certification and certified process servers, including:
 - (a) A current register of all private process servers whose application was filed with that clerk and approved by the presiding judge of that county under Rule 4(e), Arizona Rules of Civil Procedure, and in a format prescribed by the director;
 - (b) Records of applications filed and certificates issued or denied;
 - (c) Contact information for certified process servers, including addresses, phone numbers, and any changes to contact information;
 - (d) Renewal applications and renewal certificates granted or denied;
 - (e) Complaints, investigations, and final decisions regarding complaints;
- (7) Provide process server records maintained by the clerk to the clerk in another county, a presiding judge, or a presiding judge's designee as necessary to process a complaint or discipline under subsection (H); and
- (8) Provide the following information to division staff:
 - (a) At least quarterly, a report on all additions, deletions, and revisions to the certification list, including certificates issued, certificates denied, and changes of address;
 - (b) At least quarterly, a report listing all complaints, investigations pending completion, informal and formal disciplinary proceedings, and final

disciplinary decisions. If a final disciplinary decision results in suspension or revocation of a private process server's certificate, the clerk must provide the information to division staff within 5 days of the final order; and

- (c) An annual report naming the staff assigned responsibility for administering the private process server program in that county along with a current address, phone number, and e-mail address of each assigned staff member.

b. The clerk may:

- (1) Assign any duties and responsibilities to assigned staff; and
- (2) Coordinate with clerks in other counties for the provisions of services under this section, including processing identification cards and the administration of the examination for initial certification.

5. Role and Responsibilities of the Presiding Judges of the Superior Court. The presiding judge in the county of residence of an applicant for private process server certification:

a. Must:

- (1) Review all application materials, including criminal history information, and make all final decisions regarding the granting or denial of applications for initial and renewal of certification;
- (2) Make all final decisions regarding any other certification issues, including whether to grant or deny an applicant's request for reexamination under subsection (E)(3)(e)(4); and
- (3) Receive, investigate, initiate, and adjudicate complaints under subsection (H).

b. May vest in another judicial officer the authority to exercise or discharge any power, duty, or function originally vested in the presiding judge under the Private Process Server Program, whether ministerial or discretionary. The designated judicial officer must exercise these powers while acting in the presiding judge's name and by delegated authority.

E. Initial Certification.

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

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

2. Application for Initial Certification.

a. Eligibility for Initial Certification. The applicant must:

- (1) Be at least 21 years of age;
- (2) Be a citizen or legal resident of the United States; and
- (3) Possess a high school diploma or a general equivalency diploma evidencing the passing of the general education development test.

b. Government Employee Process Servers.

- (1) An individual who serves process entirely within the scope of the individual's responsibility as a government employee must be eligible for certification under subsection (E)(2)(a), apply for certification, pass the examination, submit a completed fingerprint card, and pay only the fingerprint fee.
- (2) A government employee process server may carry any employer-issued identification that accurately identifies the employee as a government employee process server in addition to the identification card issued by the clerk under subsection (E)(4)(b).
- (3) Government employee process servers who serve process in any capacity outside the scope of their government employment must follow all policies and pay all fees applicable to private process servers when serving process outside the scope of their government employment.

c. Requirements for Initial Certification. An applicant must:

- (1) File a completed application for certification in the prescribed format with the clerk in the applicant's county of residence. A non-Arizona resident may apply for certification in any county. Under A.R.S. § 41-1080, the applicant must submit documentation of U.S. citizenship or alien status with the application.
- (2) Pass the subsection (E)(3) examination for initial certification;
- (3) Submit a full set of fingerprints with the fee prescribed in A.R.S. § 41-1750 to the department of public safety for the purpose of obtaining a state and federal criminal records check under A.R.S. § 41-1750 and Public Law 92-544. If definitive fingerprints are not obtainable, the clerk must require the applicant to make a written statement, under oath, that the applicant has no prior arrests, charges, indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the applicant is unable to provide this statement, the clerk must refuse to accept the application.
- (4) Provide additional background information as requested by the presiding judge, clerk, or their designees;
- (5) Pay all fees authorized by law to the clerk under A.R.S. § 12-284(A); and
- (6) Together with the application, provide a full-face image of the applicant in a format established by the clerk. An application submitted without a full-face image of the applicant is deficient and will not be accepted.

3. Examination.

- a. Initial Certification State Examination. All applicants must pass the initial certification examination on Arizona court rules, statutes, and this section governing certified private process servers.
- b. The director must provide multiple versions of the initial certification examination to the clerk who may not use any other examinations. The examination questions and answer sheet are confidential records exempt from disclosure under Rule 123, Arizona Supreme Court.
- c. The director must establish the passing score on the initial certification state examination.
- d. The clerk must determine whether an applicant has achieved a passing score on the examination and then communicate whether the applicant passed or failed to the applicant in writing not more than 10 business days after the applicant took the examination:
 - (1) The applicant will not receive the examination score.
 - (2) If the applicant fails the examination, the clerk must provide the applicant with information on the procedures for reexamination.
 - (3) An applicant may, on written request, review the applicant's answer sheets and grades under the terms and conditions prescribed by the director and:
 - (a) The applicant must not copy materials provided for the applicant's review.
 - (b) The applicant must conduct the review during business hours in the presence of the clerk.
- e. Reexamination.
 - (1) Any applicant who fails to pass the initial certification examination on the first attempt may retake the examination one time under the following conditions:
 - (a) The applicant is not otherwise disqualified;
 - (b) The applicant must take the reexamination within 90 days of the application filing date;
 - (c) The applicant must take a different version of the initial state certification examination than the one administered to applicant in the initial examination;
 - (2) If the applicant fails the reexamination, the applicant may request approval from the presiding judge to take a third examination as follows:
 - (a) The applicant must submit a written request to the presiding judge for the opportunity to reapply and sit for the initial certification examination for a third time.
 - (b) The applicant must wait 90 days from the date of the failed reexamination to request this approval from the presiding judge.
 - (c) The applicant's request must be accompanied by proof of attendance and satisfactory completion of a course of study specific to the private process server profession together with a statement from the applicant of the reasons

- the applicant now possesses sufficient knowledge to pass the examination.
- (d) If the presiding judge grants approval for the applicant to take the examination for a third time, the applicant must begin the application process anew, including the payment of fees.
 - (e) A presiding judge's denial of an applicant's request to sit for a third examination must be in writing, is final without any right to a hearing or appeal. The applicant must wait at least 12 months from the presiding judge's denial before filing a new application.
- f. An applicant is disqualified from taking any future examination if the presiding judge, based on information provided to the presiding judge by the clerk, determines the applicant engaged in fraud, dishonesty, or corruption while taking any examination.

4. Certification.

a. Decision Granting Certification.

- (1) On receipt of the state and national criminal history records checks, under A.R.S. §§ 41-1750 and -1758, and applicable federal laws, the presiding judge must consider the criminal history information together with the full application and either:
 - (a) Require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this section.
 - (b) Grant or deny certification.
- (2) If there is a delay in the processing of the criminal history check that is beyond the control of the applicant or the court, the presiding judge may grant provisional certification to an applicant pending receipt of the national criminal history record check.

b. Order. If satisfied that an applicant meets the qualifications for certification, the presiding judge will issue an order that the clerk must promptly:

- (1) Issue an identification card to the applicant;
- (2) Register the applicant as a certified private process server approved by the presiding judge of that county in the register maintained by the clerk for this purpose.

c. Certification Status.

- (1) A certification issued under this section, that is not a provisional certification, is valid until expired, surrendered, suspended, or revoked. The clerk must record a change in certification status in the clerk's register of process servers.
- (2) Although an applicant goes through the certification process in the county of the applicant's residence, a certified process server is entitled to serve process for any state court in Arizona.
- (3) The presiding judge may transfer the certification of a process server to another county if appropriate, including if the process server's residence changes to a

different county. A process server's county of residence is determined under A.R.S. § 16-101(B).

5. Denial of Initial Certification.

- a. The presiding judge must deny certification if the applicant is not eligible for certification at the time of application under subsection (E)(2)(a) or has not satisfied the subsection (E)(2)(c) requirements for initial certification after being given 30 days to correct any deficiencies.
- b. The presiding judge may deny certification if an applicant:
 - (1) Has engaged in material misrepresentation, omission, fraud, or dishonesty, in the application or in connection with any other requirements of subsection (E)(2)(c), including the examination or engaged in any corrupt activities in an attempt to obtain certification;
 - (2) Has a record of committing any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud in business or financial matters;
 - (3) Has a record of conduct demonstrating incompetence or serving as a source of injury or loss to any member of the public;
 - (4) Has a record of conviction by final judgment of a misdemeanor or felony, regardless of whether civil rights have been restored, for conduct having a reasonable relationship to the practice of the private process server profession or occupation. Under A.R.S. § 13-904(E), if the applicant's civil rights have been restored and the conduct forming the basis for the conviction has no reasonable relationship to the practice of the private process server profession or occupation, the presiding judge may not deny certification solely based on the record of such conviction;
 - (5) Has a record of denial, revocation, or suspension of, or any disciplinary action in connection with, any professional or occupational license or certificate by any federal, state, or local entity. The judge must consider whether the underlying conduct is relevant to certification as a private process server;
 - (6) Has a record of termination, suspension, probation, or any other disciplinary action in connection with current or past employment if the underlying conduct is relevant to certification as a private process server;
 - (7) Has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
 - (8) Is currently on probation or parole or named in an outstanding arrest warrant;
 - (9) Has violated Arizona law, Arizona Rules of Court, this section, or any court order relating to conduct as a private process server;
 - (10) Has violated any decision, order, or rule issued by a professional regulatory entity;
 - (11) The applicant has violated any order of a court, administrative tribunal, or officer serving in a judicial capacity;
 - (12) Has made a false or misleading statement or verification in support of an application for licensing or certification filed by another person;
 - (13) Has made a false or misleading oral or written statement to any court, judicial

- officer, court staff, judicial staff, or division staff;
- (14) Failed to disclose information or provided false information on the application for certification; or
 - (15) Failed to respond or furnish information to the presiding judge, clerk, or judicial staff when the information is requested and is within the applicant's control or is reasonably available to the applicant.
- c. The presiding judge must consider the following criteria when reviewing the application for certification of an applicant with a misdemeanor or felony conviction, under subsection (E)(5)(b)(4):
- (1) The applicant's age at the time of the conviction;
 - (2) The applicant's experience and general level of sophistication at the time of the relevant conduct and conviction;
 - (3) The degree of any violence, injury, or property damage and the cumulative effect of the conduct;
 - (4) The applicant's level of disregard of ethical or professional obligations involved in the conduct;
 - (5) The reliability of the information regarding the conduct;
 - (6) If the offenses for which the applicant was convicted involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;
 - (7) The recency of any conviction;
 - (8) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
 - (9) The relationship of the conviction to the purpose of certification;
 - (10) The relationship of the conviction to the duties of a private process server;
 - (11) The applicant's candor during the application process;
 - (12) The significance of any omissions or misrepresentation by the applicant during the application process, and
 - (13) The applicant's overall qualifications for certification apart from the conviction.
- d. The presiding judge must promptly provide written notification of denial to all applicants denied certification together with the reasons for the denial and notice of the applicant's right to a hearing.
- e. An applicant is entitled to a hearing on the decision to deny certification by submitting a written request to the clerk no later than 15 days after receiving the notice of denial. The applicant is the moving party at the hearing and has the burden of proof.
- f. Computation of Time. For the purposes of this section, the computation of days is calculated under Rule 6(a), Rules of Civil Procedure.

F. Role and Responsibilities of Certificate Holders.

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

2. Conflict of Interest. A private process server must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.
3. Identification Cards.
 - a. The only form of identification a certified private process server, other than a government employee process server under subsection (E)(2)(b), may use when serving process is the identification card issued by the clerk under subsection (E)(4)(b)(1). A certified process server must carry the identification card at all times when serving process and promptly display it when requested by an interested party.
 - b. A certified private process server must report a lost or stolen identification card to the issuing clerk within 3 days of discovering the loss. The clerk must issue a replacement for a reported lost or stolen identification card on payment of any applicable fee.
 - c. If a certification is no longer valid due to suspension, revocation, voluntary surrender, or expiration, the presiding judge must give written notice to the certificate holder and the clerk of that fact. The certificate holder must surrender the issued identification card to the clerk within 3 days of receiving notice from the presiding judge. The clerk must record the change in the list of certified private process servers maintained under subsection (E)(4)(b)(2) and must notify division staff.
4. Change of Name or Address. A certificate holder must notify the clerk in the county of certification of any change in legal name, business address, mailing address, home address, email address, or phone number within 30 days of the change.
5. Assumed Name. A certificate holder must not transact business in this state as a private process server under an assumed name or under any designation, name, or style, corporate or otherwise, other than the legal name of the individual.
6. Fees.
 - a. Applicant fees. All applicant fees for certification, examination, and renewal of certification are paid to the clerk in advance. All applicant fees are non-refundable.
 - b. Process server fees. A private process server may charge fees for services as agreed between the process server and the party engaging the process server under A.R.S. § 12-3301(C).
7. Continuing Education. Certified private process servers must complete 10 hours of continuing education every 12 months and must submit documentation of completed continuing education in a format approved by the director when submitting application for renewal of certification. Certified private process servers must complete continuing education classes that are relevant to the work of a process server, under subsection (L).
8. Employment Status of Private Process Servers.

- a. Certified private process servers are not employees of the court, are not appointed by the court, and may not, in any way, represent themselves as such.
- b. Private process servers may not, in any way, represent themselves as “peace officers” unless they are peace officers under Arizona or federal law. Approval as a certified private process server does not, in itself, confer peace officer status on the holder.

G. Renewal of Certification.

1. Expiration Date. All certificates, whether initial or renewed, expire at midnight, 3 years after date of issuance.
 - a. If a private process server has filed a timely and complete application for renewal of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed.
 - b. If the presiding judge grants renewal of a certification, the effective date of the renewal is 12:01 a.m. of the first day following expiration of the existing certification regardless of any expiration date extensions under this section.
 - c. The presiding judge may request an informal interview with an applicant for renewal to determine if any additional information or explanation is required to supplement the renewal application to enable a determination of whether the applicant continues to meet the qualifications for certification.
 - d. If the presiding judge denies the renewal application, the existing certification does not expire until the last day provided in subsection (H) to request a hearing on the decision to deny or, if a hearing is requested, until the final decision is made by the presiding judge.
 - e. The certificate of a private process server who does not timely submit a complete renewal application and renewal fee expires as provided in subsection (G)(1).
 - (1) If the former certificate holder files an initial application within 12 months after expiration of the certificate, the presiding judge must consider:
 - (a) The length of time since expiration of the certificate;
 - (b) The stated reasons for not timely renewing the certificate; and
 - (c) The applicant’s compliance with all other provisions of this section, including the completion of continuing education credits.
 - (2) The presiding judge may require the applicant to submit additional information; complete additional continuing education; or satisfy other conditions the presiding judge deems appropriate, except that the applicant must not be allowed to retake the initial certification examination as an alternative to completing continuing education credits.

- f. The expiration of a certificate does not affect the presiding judge’s authority to take disciplinary action, including suspension or revocation, if a complaint or investigation is pending on or before the expiration date.
2. Voluntary Surrender. A certificate holder in good standing may voluntarily surrender a certificate. A surrender is not valid until accepted by the presiding judge.
 - a. In determining whether to accept a surrender, the presiding judge may require additional information about whether the certificate holder has violated any provision of the statutes, court rules, or this section.
 - b. The acceptance of a surrendered certificate does not prevent the commencement of subsequent discipline proceedings for any conduct occurring before the surrender.
 - c. If the presiding judge accepts the voluntary surrender, the clerk must update the list of private process servers to reflect the change in status as a “surrendered certificate holder in good standing” And must notify division staff.
 - d. Within 10 days after accepting the surrender, the presiding judge must notify the certificate holder of the acceptance. The clerk must update the list of certified private process servers to reflect this change in status and must notify division staff.
 - e. The presiding judge must not accept the surrender if a complaint is pending against the certificate holder. This does not preclude the presiding judge from entering into a consent agreement to resolve the pending complaint under terms that include the voluntary surrender of the certificate.
 - f. Within 120 days of a voluntary surrender, the presiding judge must, either accept the surrender or institute disciplinary proceedings under subsection (H). If the presiding judge accepts surrender and subsequently initiates disciplinary proceedings resulting in a sanction under subsection (G)(2)(b), the clerk must change the list of private process servers to reflect the status from “surrendered certificate holder in good standing” to that of a certificate holder disciplined in that manner.
3. Application. A certified private process server whose certificate is in good standing may apply for renewal by filing a completed certification application with the clerk of the county of the applicant’s certification under (E)(2)(c)(1), paying the fee required under (E)(2)(c)(5), and submitting documentation of compliance with the continuing education requirement for the 3-year certification period under (L).
4. Additional Information. Before granting renewal of certification, the presiding judge may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section. This may include fingerprinting, reexamination, background information, and an updated full-face image of the applicant under (E)(2)(c)(6).

5. Decision Regarding Renewal.

- a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification, the presiding judge must renew the applicant's certification. The presiding judge must promptly provide the applicant with written notice of the renewal.
- b. The presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in (E)(5). The presiding judge must promptly provide the applicant with written notice of the denial, the reasons for the denial, and the applicant's right to a hearing.
- c. An applicant is entitled to a hearing on the decision to deny renewal of certification by submitting a written request to the clerk no later than 15 days after receiving the notice of denial. The applicant is the moving party at the hearing and has the burden of proof.

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

- a. A private process server whose certificate has been suspended or revoked by a final order of the presiding judge, has expired, or has been voluntarily surrendered in good standing, may apply for reinstatement as follows:
 - (1) An applicant for reinstatement must file a written application with the clerk, accompanied by the fee required fee under (E)(2)(c)(5), and with the following documents:
 - (a) A reinstatement form together with a copy of the applicable final order of suspension or revocation, date of voluntary surrender acceptance, or date of expiration;
 - (b) A detailed description of the applicant's occupation and sources of income or earnings during the period between the end of the prior certification and the submission of the application for reinstatement;
 - (c) A statement describing the nature and status every civil or criminal action in which the applicant was either a plaintiff or defendant pending at any time during the period between the applicant's most recent application for initial or renewal certification and the submission of the application for reinstatement;
 - (d) A list of all residence and business addresses used by the applicant during the period between the applicant's most recent application for initial or renewal certification and the submission of the application for reinstatement;
 - (e) A concise statement of facts demonstrating how the applicant has maintained the minimum competencies and knowledge necessary for process servers during the period between the last date of the applicant's most recent certification and the submission of the application for reinstatement; and
 - (f) The applicant's statement of facts demonstrating the applicant's rehabilitation and supporting their reinstatement and recertification as a certified process server.
 - (2) A certificate holder whose certification has been revoked is not eligible for reinstatement for 1 year from the final order of revocation.

- (3) The presiding judge may require the applicant to provide additional information demonstrating that the applicant meets the minimum competencies necessary for process servers.
 - (4) The presiding judge may require the applicant sit for and pass the initial certification examination to establish that the applicant meets the minimum competencies necessary for process servers.
 - (5) The applicant has the burden of proof to demonstrate, by clear and convincing evidence, the applicant's rehabilitation, compliance with all disciplinary orders and rules and that the applicant meets the minimum competencies necessary for process servers.
 - (6) An applicant who has timely provided the presiding judge with all requested information but is denied reinstatement by the presiding judge has the right to a hearing.
- b. The presiding judge must not reinstate any certification that has been suspended until the individual seeking reinstatement of a suspended certificate has demonstrated that all requirements of the suspension order have been satisfied.
 - c. The presiding judge must not reinstate any certification that has been revoked until:
 - (1) One year has elapsed since the date of the presiding judge's final order of revocation; and
 - (2) The individual seeking reinstatement of any revoked certification has demonstrated satisfaction of all requirements of the order of revocation.

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

1. Complaints. Filing and General Provisions.

- a. **Filing of Complaint.** All judicial officers, clerks of court, court employees, and certificate holders must, and any individual may, notify the presiding judge in writing if it appears that a certificate holder has violated applicable statutes, court rules, or this section. The complainant must include sufficient facts to permit further investigation and the name, telephone number, and address of the complainant. The complainant must submit the complaint to the clerk in the county where the alleged violation by the certified process server occurred. The clerk must obtain records from the clerk of the county in which the process server is certified, as provided in (D)(4)(a)(7) and forward those records and the complaint to the presiding judge of the county where the violation occurred.
- b. **Complaints Initiated by the Presiding Judge.** If necessary to protect and serve the best interest of the public, the presiding judge may direct court staff to investigate allegations of misconduct or violations of statutes, court rules, or this section that could form the basis of a complaint.
- c. **Anonymous Complaints.** The presiding judge must not accept anonymous complaints. But a complaint may be accepted even if the complainant asks that their identity not be disclosed to the certificate holder.

- d. Standing of Complainant. A complainant does not have standing and is not a party to any proceedings concerning the complaint. If requested by the complainant and approved by the presiding judge, the complainant may receive notice of any public proceeding or any consent agreement concerning the complaint.
 - e. Non-abatement. The complainant's unwillingness or failure to cooperate with judicial officers, judicial or division staff, or staff of the clerk of the court; withdrawal of the complaint or a specific allegation in the complaint; settlement or compromise between the complainant and the certificate holder; or restitution by the certificate holder does not abate the processing of any complaint or disciplinary proceeding.
 - f. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk, director, division staff, or court employees during an investigation, or received in an initial report of misconduct, are confidential except as provided in Rule 123, Rules of the Supreme Court, or this section.
 - (1) Confidential information or documents may be disclosed during the course of an investigation:
 - (a) To judicial officers, court staff, the attorney general, county attorney, law enforcement, and other regulatory officials; or
 - (b) If the presiding judge makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interest or is not contrary to law.
 - (2) If the presiding judge determines there is probable cause for belief in the existence of facts warranting formal disciplinary proceedings, all information and documents are open for public inspection unless made confidential by law or Rule 123, Rules of the Supreme Court.
 - (3) If the presiding judge determines further investigation is necessary, all information or documents must remain confidential until probable cause is determined.
 - (4) The address and phone number of the complainant must remain confidential.
2. Grounds for Discipline. A certificate holder is subject to disciplinary action if the certificate holder has:
- a. Failed to perform any duty or discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, or this section;
 - b. Failed to cooperate or supply information to the presiding judge, clerk of the court, judicial staff, or division staff by the specific time stated in any request;
 - c. Aided or assisted another person in providing services requiring certification if the other person does not hold the required certification;
 - d. Been convicted by final judgment of a criminal offense relevant to certification;
 - e. Failed to provide information regarding a criminal conviction;

- f. Exhibited gross negligence;
 - g. Exhibited incompetence in the performance of duties;
 - h. Evaded service of a subpoena or notice of the presiding judge;
 - i. Engaged in any conduct that could have been grounds for denial of initial renewed certification.
 - j. Engaged in unprofessional conduct, including:
 - (1) Assisting an applicant or certificate holder in the use of deception, dishonesty, or fraud to secure an initial certificate or renewal of certification;
 - (2) Failing to comply with any court or regulatory agency order to the certificate holder or private process servers generally;
 - (3) Failing to comply with any federal, state, or local law or rule governing the practice of process servers;
 - (4) Failing to comply with terms of a consent agreement or any restriction imposed on a certificate;
 - (5) Failing to retain client or customer records for a period of 3 years unless a different retention period is provided by law, rule, or regulation;
 - (6) Failing to practice competently as evidenced by unsafe or unacceptable practices, including unacceptable client or customer care practices, on one or more occasions;
 - (7) During the performance of any responsibility or duty of a process server to use the degree of care, skill, and proficiency commonly exercised by the ordinary skillful, careful, and prudent certified process server engaged in the same or similar activity under the same or similar conditions, regardless of any level of harm or injury to the client or customer;
 - (8) Failing to conform to the accepted standards and prevailing practices of process servers;
 - (9) Using advertising intended to or having a tendency to deceive the public;
 - (10) Using a court certification to deceive the public about the process server's level of skills or abilities;
 - (11) Having willfully made or filed false reports or records;
 - (12) Failing to file required reports, records, or pleadings;
 - (13) Performing the responsibilities or duties of a process server when medically or psychologically unfit to do so;
 - (14) Engaging in habitual substance abuse;
 - (15) Engaging in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
 - (16) Violating a confidentiality requirement of any statute, court rule, or this section.
3. Initial Screening. The presiding judge must evaluate the complaint to determine if investigation is warranted. If the complaint alleges conduct outside the jurisdiction of the Private Process Server Program, the presiding judge must dismiss the complaint may refer the complaint to the appropriate jurisdiction.

4. Preliminary Investigation. If an investigation is warranted, the presiding judge must appoint anyone qualified to serve as a hearing officer under (H)(10) to conduct a prompt, discreet, and confidential investigation of the complaint. For purposes of conducting investigations, the appointed investigator may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual concerning the subject of the complaint. Subpoenas must be issued, served, and enforced in compliance with the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve subpoenas.
5. Response from Certificate Holder. If an investigation is warranted, the presiding judge must cause the complaint to be sent to the certificate holder and must direct the certificate holder to provide a written response by a specified date. The presiding judge may not proceed with disciplinary action under this section without first providing this notice and the opportunity to respond.
6. Review of Complaint and Investigation. On completion of an investigation, the presiding judge must determine whether there is probable cause concerning alleged acts of misconduct or violations and:
 - a. If the presiding judge does not find probable cause, the judge must dismiss the complaint;
 - b. If the presiding judge does not find probable cause and dismisses the complaint but finds the certificate holder's actions need correction, the judge may issue an advisory letter to the certificate holder;
 - c. May order further investigation conducted in the same manner as preliminary investigations;
 - d. May determine that the complaint is appropriate for resolution without formal disciplinary proceedings; or
 - e. If the presiding judge finds probable cause warranting formal disciplinary proceedings, the judge must prepare a formal statement of charges.
7. Emergency Suspension. The presiding judge may order emergency suspension of a certificate pending formal disciplinary proceedings on a finding that the public health, safety or welfare requires emergency action and the judge incorporates a finding to that effect in the order of emergency suspension. The presiding judge must institute formal disciplinary proceedings within 30 days of the issuance of the emergency suspension order. The clerk must immediately provide written notification to all presiding judges, other clerks, and division staff of any emergency suspension of a certificate. On receipt of the notice of emergency suspension, division staff must immediately update the website list of private process servers to reflect the emergency suspension of the certificate.
8. Formal Disciplinary Proceedings.
 - a. Commencement. The presiding judge commences formal proceedings with a formal

- statement of charges as provided in (H)(6)(d). On commencement of formal proceedings, the presiding judge must appoint a hearing officer under (H)(10).
- b. Notice to Certificate Holder. The hearing officer must cause the formal statement of charges to be served on the certificate holder together with the notice of hearing under (H)(12).
9. Request for Hearing. All requests for hearing must specify:
- a. The provision under this section that entitles the individual to a hearing;
 - b. The factual basis supporting the request for hearing, and
 - c. The relief demanded.
10. Appointment of Hearing Officer. The presiding judge may appoint a hearing officer to conduct a hearing when required under this section or on written demand by a person entitled to a hearing under this section. A hearing officer appointed by the presiding judge to investigate the matter resulting in a statement of charges may not be appointed to conduct the hearing. For purposes of this section, the term “hearing officer” means the presiding judge, an administrative hearing officer, or other judicial officer designated by the presiding judge.
11. Timeline for Hearing. If a certificate holder requests a hearing, the hearing officer must hold the hearing within 45 days of receiving the request unless postponed by mutual consent for good cause. If the request is from the presiding judge, the hearing officer must hold the hearing as soon as practicable as determined by the hearing officer.
12. Notice of Hearing. The hearing officer must prepare and give the parties written notice of the hearing at least 20 business days before the hearing date by a method documenting the date of delivery. The notice must include:
- a. A statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction for conduct of the hearing;
 - c. A reference to the particular sections of the statutes, this section, and any policies involved;
 - d. A short and plain statement of the allegations or factual bases supporting the relief requested. Amendments to the statement are permissible; and
 - e. If the hearing date has not been set, a statement indicating that the certificate holder will be afforded a hearing on a written request submitted within 10 days of receiving the notice.
 - f. Personal service; service by certified mail, return receipt requested; or by any method

that provides tracking and date of delivery sent to the last business address of record with the clerk of the superior court will accomplish service of the notice. The hearing officer must record the date on which service was received in the docket for the matter.

- g. If a party is represented by an attorney, the attorney must receive a copy of the notice served on the certificate holder.

13. Answers and Motions. The certificate holder must file an answer to the statement of charges within 10 business days after receiving service unless otherwise ordered by the hearing officer. Answers must comply with Rule 8, Arizona Rules of Civil Procedure. If the certificate holder fails to file an answer within the time provided, the certificate holder is in default and the statement of charges may be deemed admitted, in whole or in part, by the hearing officer. Defenses not asserted in the answer may be deemed waived by the hearing officer.

- a. Parties must file all motions at least 5 business days prior to the scheduled hearing date unless otherwise ordered by the hearing officer.
- b. Parties must file responses to motions no later than 48 hours before the time set for the hearing. Replies are not permitted.
- c. Copies of all answer, motions, and responses must be hand-delivered or e-mailed to the hearing officer and all other parties immediately upon filing.
- d. The date and manner of service must be noted on the last page of the original of the document being served.

14. Discovery.

- a. No discovery is permitted, except as provided in this code section, unless agreed to by the parties or granted by the hearing officer. The parties may not agree to discovery that would require a change in the hearing date unless approved by the hearing officer.
- b. On the written request of a party, the hearing officer may order a party to allow the requesting party to have a reasonable opportunity before the hearing to inspect and copy, at the requesting party's expense, admissible documentary evidence or non-privileged documents reasonably calculated to lead to admissible evidence.
- c. The hearing officer may require the parties, prior to the hearing, to disclose to each other before the hearing any non-privileged, documentary evidence intended for use at the hearing.
- d. Depositions are permitted only with approval of the hearing officer.
 - (1) Parties may depose witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing and introduce their deposition in lieu of live testimony.

- (2) Parties may take depositions for purposes of obtaining discovery. If approved by the hearing officer, the party must serve a deposition subpoena on the witness commanding the witness to appear at a deposition no sooner than 5 days after service of the subpoena unless the time is shortened by the hearing officer; stating the date, time, and location of the deposition; and listing any documents to be produced at the deposition. A copy of the hearing officer's order allowing the deposition must be attached to the subpoena.
 - (3) Before taking a deposition, a party must file a written motion stating the name and address of any witness the party seeks to depose, the substance of the witness's expected testimony, any documents the party intends to use in the deposition, the time and place proposed for the deposition, and the reason the party believes it necessary for the witness to testify by deposition or the reason the party requires this form of discovery.
 - e. Parties must file responses to motions for depositions and motions to quash subpoenas to witnesses within five days after the filing of the motion for deposition or the service of the subpoena.
15. Prehearing Conference. The hearing officer may order a prehearing conference at the request of any party or on the hearing officer's own initiative for any of the following purposes:
 - a. To reduce or simplify the issues for adjudication;
 - b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;
 - c. To stipulate to the admission of uncontested evidence, facts, and legal conclusions;
 - d. To finalize the list of witnesses who will be called to testify; and
 - e. To consider any other matters that will streamline the conduct of the hearing without prejudicing any party.
16. Procedure at Hearings.
 - a. Powers of Hearing Officers. A hearing officer must preside over the hearing. For purposes of hearings or other proceedings under this section, the hearing officer may administer oaths; examine under oath any individual concerning the subject of any hearing or proceeding; determine the order of proof and manner of presentation of evidence; recess, continue, or adjourn the hearing; and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation, agreed settlement, consent order, or default.
 - b. Rights of Parties
 - (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the

proceeding; and

- (2) Any individual may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party must promptly notify the hearing officer, providing the name, address and telephone number of the party represented and the attorney's name, address, telephone number, and e-mail address.

c. Conduct of Hearing.

- (1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules of pleading or evidence. But the hearing officer must exclude irrelevant, immaterial, or unduly repetitious evidence.
- (2) The hearing officer must require that all testimony is given under oath or affirmation, except matters of which judicial notice is taken or entered by stipulation.
- (3) All persons appearing at the hearing must conform to the conduct expected in the Arizona Superior Court.
- (4) All hearings are open to the public.
- (5) The hearing officer must ensure that the evidence supporting a decision is substantial, reliable, and probative.

d. Record of Hearing.

- (1) The hearing officer must ensure that all oral proceedings are electronically recorded if no party requests a court reporter. The recording may be transcribed on the request of any party. The party making the request must pay the cost of the transcription.
- (2) On the request of any party, a certified court reporter must make a full stenographic record of the proceedings. The request must be made no later than 5 days before the hearing. The cost of any transcript is the responsibility of the requesting party. The hearing officer may require the prepayment or a monetary deposit to cover the estimated cost of the transcript. If transcribed, the record is a part of the court's record of the hearing and any other party with a direct interest may receive a copy on request and at their own expense.

17. Rehearing. The hearing officer may grant a rehearing or re-argument on any matter on the written motion of a party conforming to, and based on one of the grounds listed in, Rule 59, Arizona Rules of Civil Procedure. The request must be filed within 15 days after issuance of the order deciding the matter the party seeks to have reargued or reheard was issued. A party desiring to respond must do so within 15 days after the motion is filed. The hearing officer must decide the motion within 30 days after the motion is filed.

18. Decisions and Orders. The hearing officer must issue a final decision within 30 days of the closing of the record of the hearing. The decision must be issued in writing and must include separate findings of fact and conclusions of law. The hearing officer must order one or more of the following:

- a. Determine that no violation exists and dismiss the statement of charges with or without prejudice;
- b. Determine that no acts of misconduct or violation occurred and no discipline is warranted but that the certificate holder's actions need correction and issue an advisory letter;
- c. Determine that the certificate holder has violated any of the provisions of the statutes, court rules, or this section and issue an order imposing any or a combination of the following informal or formal disciplinary sanctions:
 - (1) A letter of concern;
 - (2) A censure;
 - (3) Placing specific restrictions on certificate;
 - (4) Placing the certificate holder on probation for a set period of time under specified conditions;
 - (5) Mandating additional training for the certificate holder;
 - (6) Suspending a certificate for a set period of time not to exceed 3 years with specified conditions for reinstatement;
 - (7) Revoking a certificate with specified conditions for reinstatement; or
 - (8) Any other action the hearing officer determines appropriate, including return or refund of service fees to a person or entity harmed by the certificate holder's conduct. This may not include imposition of a fine.

19. Effect of sanction. Any disciplinary action has statewide effect. The clerk must, within 5 days of an order imposing any sanction, provide written notice to the division of the action taken and the individual's authority to serve process.

20. Filing of Special Action. A party, other than a complainant, aggrieved by a final decision of the presiding judge or hearing officer under this section may seek judicial review by filing a petition for a special action in the superior court within 35 days after entry of the final order. The petition for special action must be in compliance with the Arizona Rules of Procedure for Special Actions.

I. Reserved.

J. Code of Conduct

1. Preamble. The Arizona Supreme Court adopts the following Code of Conduct to apply to all private process servers under A.R.S. § 12-3301, the Arizona Rules of Court, and this section. The purpose of this Code of Conduct is to establish minimum standards for performance by private process servers and to ensure they conduct the service of process in a professional manner.
2. Rules and Applicable Laws. The private process server must perform all services and discharge all obligations in accordance with current Arizona and federal law, Arizona Rules of Civil Procedure, administrative orders, and this section.
3. Skills and Knowledge. The private process server must demonstrate adequate skills and

knowledge to perform the work of a private process server and must seek training opportunities to maintain professional competency and growth.

- a. The private process server must possess sufficient verbal and written communication skills to perform the private process server role.
 - b. The private process server must manage service proficiently. Skills required include those necessary to perform the service, maintain records, and communicate with the client in a timely fashion.
 - c. The private process server must keep the client reasonably informed about the status of the service and promptly comply with reasonable requests.
 - d. The process server must ensure all affidavits and certificates prepared by the private process server are complete, accurate and understandable, and timely filed with the court.
4. Professionalism. The private process server must exercise the highest degree of professionalism in all interactions with clients, the party located, and others they come in contact with during the service. The private process server must utilize professional judgment and discretion at all times.
- a. The private process server must handle all legal documents with care and maintain required records in a professional manner.
 - b. The private process server may act as a mentor to assist an inexperienced certified private process server for the purpose of increasing skill level and successful service of process.
 - c. The private process server must not provide or offer to provide legal advice.
 - d. Private process servers must not violate any rules adopted by the Arizona Supreme Court or conduct themselves in a manner that would reflect adversely on the judiciary, the courts, or other agencies involved in the administration of justice.
 - e. The private process server must respect the confidentiality of information and must preserve the clients' confidences; this duty outlasts the employment of the private process server.
 - f. The private process server must maintain a professional appearance at all times.
 - g. The private process server must be courteous and polite in all dealings.
 - h. The private process server may explain the general nature of the served papers but must never engage in any unnecessary discussions regarding the action being served with the persons receiving service.
 - i. The process server may provide general legal information to a client and persons

- receiving service but must not represent that he or she is authorized to practice law in this state, nor may the process server provide any kind of legal advice, opinion or recommendation about possible legal rights, remedies, defenses, options, or strategies.
- j. The private process server must know the protocol for service of process in a court building before proceeding with service and must take appropriate steps to avoid impairing security or creating a security issue in a court building.
 - k. The private process server must only serve the legal documents and papers included in the civil action for which the process server has been retained to serve process. No additional papers, advertisements, or brochures may be included in the service of process.
5. Ethics. The private process server must perform services in a manner consistent with legal and ethical standards.
- a. The private process server, having located the sought-after party or persons receiving process for those persons intended for service, must perform the service of process in a professional manner, utilizing sound judgment, and avoid rudeness and unprofessional conduct.
 - b. The private process server must present service in a nonjudgmental manner.
 - c. The private process server must not misrepresent the private process server's qualifications, fees, or any other information relating to the role of the private process server.
 - d. The private process server must not utilize certification in any manner to gain access to information or services for purposes other than those of the Private Process Server Program.
 - e. The private process server must act in the best interests of the client by maintaining a high standard of work and reporting to a client the full facts concerning the work and effort expended whether they are advantageous or detrimental to the client.
6. Candor.
- a. A private process server must not knowingly:
 - (1) Falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity;
 - (2) Make a false statement of material fact or law to a tribunal; or
 - (3) Fail to disclose a material fact to a tribunal, except as required by applicable law.
 - b. A private process server must notify the presiding judge within 10 days of a misdemeanor or felony conviction. The private process server must provide this notice to the presiding judge in the county of certification of the process server.

- c. A certified private process server may not wear a uniform, use a title, insignia, badge, or identification card, or make any statement that would lead a person to believe the certificate holder is an employee of a federal government, state government, or any political subdivision of a state government unless the certificate holder is so authorized by proper authorities. No badge of any type may be used, shown, or offered as identification in conjunction with the identification card or independently.

K. Reserved.

L. Continuing Education Policies.

1. Purpose.

- a. Service of process is integrally related to the prompt, effective, and impartial operation of the judicial system. Private process servers are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education (CE) is one means to ensure a certified process server maintains continuing competence as a process server after certification is obtained. It also provides opportunities for process servers to keep abreast of changes relating to the service of process, the law, and the Arizona judicial system.
- b. These continuing education policies are intended to provide direction to certified private process servers and to the presiding judges and clerks who administer the Private Process Server Program in each county; to ensure compliance with this section regarding continuing education credits; and to provide for equitable statewide application and enforcement of the continuing education requirements.

2. Applicability. Under (F), all certified private process servers must complete at least 10 hours of approved continuing education every 12 months in an area relevant to the work of a certified private process server, including subjects applicable to the Code of Conduct under (J) and the subject areas listed in (L)(4)(a). The private process server must submit documentation of completion of the continuing education for the 3-year certification period in an approved format with the application for renewal of certification. Any hours completed after the filing of the renewal application do not apply to that prior certification period. Hours completed after filing a renewal application will apply to the continuing education requirements for the certificate holder's current 3-year certification period.

3. Responsibilities of Certified Private Process Servers.

- a. It is the responsibility of each certified private process server to ensure compliance with the continuing education requirements, maintain documentation of completion of continuing education, and to submit this documentation with a renewal application.
- b. On request, each certified private process server must provide any additional information required by the presiding judge when the judge is reviewing the renewal application and documentation of continuing education compliance.

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

4. Authorized Continuing Education Activities.

- a. Continuing education activity must address the areas of proficiency, competency, and performance; impart knowledge and understanding of the service of process, the Arizona judiciary, and the legal process; and must increase the participants' understanding of the responsibilities of a certified private process server and the process server's impact on the judicial process. Acceptable topics for continuing education activities include:

- (1) Ethics for private process servers and court employees, including cooperation with lawyers, judges, and fellow private process servers; professional attire; courtesy and impartiality to all litigants; information vs. legal advice; and public relations;
- (2) The Arizona court system, including the state and federal constitution, branches of government, Arizona court jurisdiction and responsibilities, Arizona tribal court system; resource materials including Arizona Revised Statutes, Arizona Rules of Court, case law, and administrative orders; and current issues in the Arizona court system; and
- (3) Role and responsibilities of the certified private process server including this section.

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

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

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

- d. Sponsoring Entities. Unless a continuing education activity has been pre-approved, entities wishing to administer a continuing education activity must submit the proposed continuing education activity on the approved form to the division staff of the Arizona Supreme Court, Administrative Office of the Courts (AOC), for consideration prior to conducting the activity. Applications submitted by a sponsoring entity after the continuing education activity has been completed or conducted will be rejected.
 - (1) At a minimum, the proposal must meet all requirements of this policy and must include the following:
 - (a) location, date, and time of the proposed activity with an agenda that identifies the time allocated for each topic and the time allocated for breaks and other activities that do not qualify for continuing education credit;
 - (b) proposed audience;
 - (c) course content, objectives, teaching methods, and the evaluation method;
 - (d) names and qualifications of the faculty;
 - (e) written materials for the participants (a copy of the materials must be included with the proposal); and
 - (f) number of continuing education credits the sponsoring entity is recommending division staff grant for completion of the activity.
 - (2) In addition, the proposal must include the sponsor's agreement to verify attendance of the participants; provide a certificate of attendance to each participant who successfully completes the activity; and, on request of division staff, provide any additional information requested to assist the division in evaluating whether to approve the activity or to ensure compliance with this policy.
- e. Serving as Faculty. Continuing education credit may be granted for serving as faculty, an instructor, speaker, or panel member of an approved continuing education seminar directly related to the service of process. Continuing education credit will be granted for the actual presentation time, plus actual preparation time up to 2 hours for each hour of presentation time. A maximum of 5 hours of continuing education credit will be granted for serving as faculty in any renewal period and a private process server may not receive credit for presenting a program repeatedly throughout the renewal period. A private process server may receive continuing education credit for actual presentation time for duplicate programs presented in subsequent renewals periods but will not be granted continuing education credit for preparation time for those programs.
- f. Authoring or Coauthoring Articles. Continuing education credit may be granted for authoring or coauthoring an article directly related to the service of process if the article is published in a state or nationally recognized professional journal relating to the service of process and if the article is a minimum of one thousand words in length. A maximum of 1 hour of continuing education credit may be earned for authoring an article or articles in any one renewal period. Credit may not be granted for the same article published in more than one publication or republished in later editions of the same publication.
- g. University, College, and Other Educational Institution Courses. A certified private process server may receive continuing education credit for a course provided by a

university, college, or other educational institution, if the private process server successfully completes the course with a grade of “C” or better or a “pass” on a pass/fail system. The private process server may receive continuing education credit of up to two times the number of credit hours awarded by the educational institution if the course is relevant to the service of process. The maximum hours of credits earned from educational course work may not exceed 50 percent of the total number of continuing education hours required during the certification period.

- h. **Minimum Time.** Each continuing education activity must consist of at least 30 minutes of actual clock time spent in actual attendance at or completion of an approved continuing education activity. “Actual clock time” includes the total hours attended, minus the time spent for introductory remarks, breaks, meals, and business meetings. After completion of the initial 30 minutes of continuing education activity, credit may be given in 15-minute increments. A process server may not use additional earned continuing education credits for subsequent renewal periods.
- i. **Maximum Credit.** Unless a continuing education activity is directly related to the private process server profession, a private process server may not receive more than 50 percent of the credit requirement for the certification period through one activity.
- j. **Conferences.** Continuing education credit may be requested for attendance at a conference relevant to the work of a process server. A process server may receive 100 percent of the continuing education credits for attendance at the conference if the conference is directly related to the work of a process server. The process server must provide documentation of the specific sessions of the conference attended with documentation of the hours for each session of the conference the process server attended. Credit may be granted for attendance at general sessions of the conference.
- k. **Repeat of an Activity.** Generally, credit will not be granted for process servers who repeat an activity within the same renewal period. Exceptions maybe granted if it is determined that the activity is directly related to the work of a process server profession and duplication of the continuing education activity will enhance the process server’s knowledge, skill, and competency.
- l. **Documentation of Attendance or Completion.** When attending or completing a continuing education activity, each process server must obtain documentation of attendance or completion from the sponsoring entity. At minimum, this documentation must include the:
 - (1) name of the sponsor;
 - (2) name of the participant;
 - (3) topic of the subject matter;
 - (4) number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
 - (5) date and place of the program;
 - (6) signature of the sponsor or an official document of the sponsoring entity (for example, a college grade report, etc.); and
 - (7) signature of the process server, either in the space specifically provided on the form

for this purpose or across the documentation (for example, the college grade report) to indicate attendance and completion at the activity.

- m. A process server must not request and credit must not be granted if the process server attends part, but not all, of the provided activity. Notwithstanding the signature of the sponsoring entity regarding the continuing education credits for an activity, it is the responsibility of the process server to accurately calculate the number of hours attended, subtracting out any time for general introductions and other activities that do not qualify for credit.
 - n. Self-Study. A process server may receive all continuing education credits through self-study activities, including taking correspondence courses, reviewing procedure manuals, watching video presentations, listening to audio materials, attending online seminars, and other methods of independent learning.
5. Non-Qualifying Activities. The following activities, regardless of whether the activity is approved for COJET credit, do not qualify for continuing education credit for certified private process servers:
- a. Completion of the examination required for initial certification;
 - b. Attendance at or participation in professional or association business meetings, general sessions, elections, policymaking sessions, or program orientation;
 - c. Serving on committees or councils or as officers in a professional organization; and
 - d. Activities completed as required by the presiding judge as part of a disciplinary action.
6. Decision Regarding Continuing Education Credits.
- a. On review of an application for renewal of certification and the required accompanying continuing education documentation, the presiding judge may:
 - (1) Approve the continuing education credit;
 - (2) Approve part but not all of the requested continuing education credit;
 - (3) Require additional information before making a decision; or
 - (4) Deny the continuing education credit.
 - b. The private process server must be notified in writing of the decision regarding the continuing education credit.
7. Compliance and Non-Compliance.
- a. An applicant for renewal of certification may be requested to supply additional information to verify compliance with the continuing education requirements. If the applicant fails to provide the requested information, the presiding judge may deny the continuing education credit.

- b. Under (H)(1), a certified private process server who fails to meet the continuing education requirement; falsifies continuing education documents; willfully misrepresents continuing education activities or attendance at continuing education activities; or attempts to circumvent the continuing education requirements by submitting an initial application for certification within 12 months of the expiration of the original certificate, is subject to denial of renewal of certification, disciplinary action, or both.

Adopted by Administrative Order 2002-110, effective January 1, 2003. Amended by Administrative Order 2004-95, effective November 24, 2004. Amended by Administrative Order 2013-48, effective May 30, 2013. Technically Amended by Administrative Order 2021-140, effective August 25, 2021. Amended by Administrative Order 2023-227, effective December 29, 2023. Amended by Administrative Order 2024-71, effective May 1, 2024.

ARIZONA REVISED STATUTES

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

Each corporation shall continuously maintain in this state both:

1. A known place of business that may be the address of its statutory agent.
2. A statutory agent who may be either:
 - (a) An individual who resides in this state.
 - (b) A domestic corporation formed under this title.
 - (c) A foreign corporation authorized to transact business in this state.
 - (d) A limited liability company formed under title 29.
 - (e) A limited liability company authorized to transact business in this state.

§ 10-504. Service on corporation

A. The statutory agent appointed by a corporation is 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.

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

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

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

1. By mail addressed to the statutory agent of the corporation or, if the corporation fails to appoint and maintain a statutory agent, addressed to the known place of business required to be maintained pursuant to section 10-501.
2. By electronic transmission to the statutory agent or to the corporation, or both.
3. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

§ 11-445. Fees chargeable in civil actions by sheriffs and constables; constables' standardized daily activity logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.
2. For summoning each witness, sixteen dollars.
3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.
4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.
5. For endorsing the forfeiture of any bond required to be endorsed by the sheriff, twelve dollars.
6. For levying each execution, twenty-four dollars.
7. For returning each execution, sixteen dollars.
8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.
9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.
10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.
11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.
12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.
13. For services in designating a homestead or other exempt property, twelve dollars.
14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.
15. For serving and returning each writ of garnishment and related papers, forty dollars.
16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.
17. For every writ issued on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ. Monies collected from the writ fees shall be deposited in the constable ethics standards and training fund established by section 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.
2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.
3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services on process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. Notwithstanding subsection G of this section, in a county with a population of more than three million persons, if an office of a justice of the peace is located outside of the precinct boundaries, the mileage for a constable shall be calculated pursuant to subsection D of this section, except that the distance between the precinct boundaries and the office of the justice of the peace, as determined by the county and certified by the board of supervisors of that county, shall be subtracted from the mileage calculation. This certified mileage calculation shall be transmitted to the justice courts and the clerks of those courts shall calculate the mileage between the office of the justice of the peace and the location where the civil process, writ, order, pleading or paper was served and reduce the mileage used to calculate the mileage fee according to the certified mileage calculation for that respective jurisdiction.

I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.

§ 11-447. Service of process regular on its face

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

§ 11-448. Duty to show process

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.

§ 12-303. Witness fees and mileage

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

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

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

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

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

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

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

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

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

1. The subpoena is accompanied by a written authorization signed by the patient or the patient's health care decision maker.
2. The subpoena is accompanied by a court or tribunal order that requires the release of the records to the party seeking the records or that meets the requirements for a qualified protective order under the health insurance portability and accountability act privacy standards (42 Code of Federal Regulations section 164.512(e)).
3. The subpoena is a grand jury subpoena issued in a criminal investigation.
4. The subpoena is issued by a health profession regulatory board as defined in section 32-3201.
5. The health care provider is required by another law to release the records to the party seeking the records.

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

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

1. The health care provider may deliver by certified mail or in person a copy of all the records described in the subpoena by the production date to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal, together with the affidavit described in paragraph 4 of this subsection.
2. The health care provider shall separately enclose and seal a copy of the records in an inner envelope or wrapper, with the title and number of the action, name of the health care provider and date of the subpoena clearly inscribed on the copy of the records. The health care provider shall enclose the sealed envelope or wrapper in an outer envelope or wrapper that is sealed and directed to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal.

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

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

(a) That the affiant is the duly authorized custodian of the records and has authority to certify the records.

(b) That the copy is a true complete copy of the records described in the subpoena.

(c) If applicable, that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3 and applicable regulations and that those confidentiality requirements may apply to the requested records. The affidavit shall request that the court make a determination, if required under applicable federal law and regulations, as to the confidentiality of the records submitted.

(d) If applicable, that the health care provider has none of the records described or only part of the records described in the subpoena.

5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of evidence. The affidavit is admissible as evidence of the matters stated in the affidavit and the matters stated are presumed true. If more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this paragraph is a presumption affecting the burden of producing evidence.

E. If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with the court or tribunal an objection to the inspection or copying of any or all of the records as follows:

1. On filing an objection, the health care provider shall send a copy of the objection to the patient at the patient's last known address, to the patient's attorney if known and to the party seeking the records, unless after reasonable inquiry the health care provider cannot determine the last known address of the patient.

2. On filing the objection, the health care provider has no further obligation to assert a state or federal privilege pertaining to the records or to appear or respond to a motion to compel production of records, and may produce the records if ordered by a court or tribunal. If an objection is filed, the patient or the patient's attorney is responsible for asserting or waiving any state or federal privilege that pertains to the records.

3. If an objection is filed, the party seeking production may request an order compelling production of the records. If the court or tribunal issues an order compelling production, a copy of the order shall be provided to the health care provider. On receipt of the order, the health care provider shall produce the records.

4. If applicable, an objection shall state that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3, shall state that the records may be subject to those confidentiality requirements and shall request that the court make a determination, if required under applicable federal law and regulations, on whether the submitted records are subject to discovery.

F. If a party seeking medical records or payment records wishes to examine the original records maintained by a health care provider, the health care provider may permit the party to examine the original records if the subpoena meets one of the requirements of subsection B of this section. The party seeking the records also may petition a court or tribunal for an order directing the health care provider to allow the party to examine the original records or to file the original records under seal with the court or tribunal under subsection D of this section.

§ 12-3301. 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.

§ 13-1501. Definitions

In this chapter, unless the context otherwise requires:

1. "Critical public service facility" means:

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

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

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

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

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

5. "Fenced residential yard" means a unit of real property that immediately surrounds or is adjacent to a residential structure and that is enclosed by a fence, wall, building or similar barrier or any combination of fences, walls, buildings or similar barriers.

6. "Fenced yard" means a unit of real property that is surrounded by fences, walls, buildings or similar barriers or any combination of fences, walls, buildings or similar barriers.

7. "In the course of committing" means any acts that are performed by an intruder from the moment of entry to and including flight from the scene of a crime.
8. "Manipulation key" means a key, device or instrument, other than a key that is designed to operate a specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or cylinder, including a wiggle key, jiggle key or rocker key.
9. "Master key" means a key that operates all the keyed locks or cylinders in a similar type or group of locks.
10. "Nonresidential structure" means any structure other than a residential structure and includes a retail establishment.
11. "Residential structure" means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.
12. "Structure" means any device that accepts electronic or physical currency and that is used to conduct commercial transactions, any vending machine or any building, object, vehicle, railroad car or place with sides and a floor that is separately securable from any other structure attached to it and that is used for lodging, business, transportation, recreation or storage.
13. "Vending machine" means a machine that dispenses merchandise or service through the means of currency, coin, token, credit card or other nonpersonal means of accepting payment for merchandise or service received.

§ 13-1502. Criminal trespass in the third degree; classification

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

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

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

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

§ 13-1503. Criminal trespass in the second degree; classification

A. A person commits criminal trespass in the second degree by knowingly entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard.

B. Criminal trespass in the second degree is a class 2 misdemeanor.

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

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

1. Entering or remaining unlawfully in or on a residential structure.
2. Entering or remaining unlawfully in a fenced residential yard.

3. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
4. Entering unlawfully on real property that is subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on the claim or lease.
5. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
6. Entering or remaining unlawfully in or on a critical public service facility.

B. Criminal trespass in the first degree under subsection A, paragraph 6 of this section is a class 5 felony. Criminal trespass in the first degree under subsection A, paragraph 1 or 5 of this section is a class 6 felony. Criminal trespass in the first degree under subsection A, paragraph 2, 3 or 4 of this section is a class 1 misdemeanor.

§ 13-2810. Interfering with judicial proceedings; classification

A. A person commits interfering with judicial proceedings if such person knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority; or
2. Disobeys or resists the lawful order, process or other mandate of a court; or
3. Refuses to be sworn or affirmed as a witness in any court proceeding; or
4. Publishes a false or grossly inaccurate report of a court proceeding; or
5. Refuses to serve as a juror unless exempted by law; or
6. Fails inexcusably to attend a trial at which he has been chosen to serve as a juror.

B. Interfering with judicial proceedings is a class 1 misdemeanor.

§ 13-2814. Simulating legal process; classification

A. A person commits simulating legal process if such person knowingly sends or delivers to another any document falsely purporting to be an order or other document that simulates civil or criminal process.

B. Simulating legal process is a class 2 misdemeanor.

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

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

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

§ 13-4072. Service of subpoena

A. A subpoena may be served by any person.

B. A subpoena may be served by any of the following methods:

1. Personal service.
2. Certified mail.
3. First class mail, if a certificate of service and return card is returned by the addressee.

C. Personal service of a subpoena is made by showing the original to the witness personally, informing him of its contents and delivering a copy of the subpoena to such witness. Written return of service of a subpoena must be made without delay, stating the time and place of service.

D. Subpoenas may be served by certified mail for delivery to addressee only. The subpoena shall be registered and mailed, postage and registry fee prepaid, to the addressee with a request endorsed on the envelope in the usual form for the return of the letter to the sender if not delivered within five days. The receipt of such certified letter by the addressee is deemed valid service upon him and the returned receipt signed by the addressee named in the subpoena is prima facie evidence of notification.

E. Subpoenas may be served by first class mail if the addressee is supplied with a certificate of service and return card. The return of such card signifies and states that the addressee has received official notice to appear in court, that he waives all further service of subpoena and that he submits to the jurisdiction of the court for the purposes set forth in the subpoena. The return of the signed card is prima facie evidence of notification.

F. A peace officer shall serve in his county any subpoena delivered to him for service, either on behalf of this state or the defendant.

G. The methods described in this section also apply to out-of-county subpoenas as set forth in section 13-4076.

§ 13-4093. Witness from another state summoned to testify in this state

A. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

B. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that the witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof, may order that the witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to the officer to take the witness into custody and hold him unless and until he may be released by bail, recognizance or order of the judge issuing the certificate.

C. If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

§ 13-4094. Exemption from arrest and service of process

A. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

B. If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

§ 33-1377. Special detainer actions; service; trial postponement

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

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

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

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

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

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

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

§ 39-121. Inspection of public records

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

Rules of Civil Procedure for the Superior Courts of Arizona

Rule 3. Commencing an Action

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

Rule 4. Summons

(a) Issuance; Service.

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

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

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

(b) Contents; Replacement Summons.

(1) Contents. A summons must:

(A) name the court and the parties;

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

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

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

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

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

(G) be signed by the clerk; and

(H) bear the court's seal.

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

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

(d) Who May Serve Process.

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

(2) Special Appointment.

(A) Qualifications. A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) Procedure for Appointment. A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

(e) Statewide Certification of Private Process Servers. A person seeking certification as a private process server must file with the clerk an application under Arizona Code of Judicial Administration § 7-204. Upon approval of the court or presiding judge of the county in which the application is filed, the clerk will register the person as a certified private process server, which will remain in effect unless and until the certification is withdrawn by the court. The clerk must maintain a register for this purpose. A certified private process server will be entitled to serve in that capacity for any state court within Arizona.

(f) Accepting or Waiving Service; Voluntary Appearance. There are two ways to accomplish service with the assent of the served party--waiver and acceptance. A party also may voluntarily appear without being served.

(1) Waiving Service. A party subject to service under Rule 4.1 or 4.2 may waive issuance or service. The waiver of service must be in writing, signed by that party or that party's authorized agent or attorney, and be filed in the action. A party who waives service receives additional time to serve a responsive pleading, as provided in Rule 12(a)(1)(A)(ii).

(2) Accepting Service. A party subject to service under Rule 4.1 or 4.2 may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney, and be filed in the action. A party who accepts service does not receive the additional time to serve a responsive pleading under Rule 12(a)(1)(A)(ii).

(3) Voluntary Appearance.

(A) In Open Court. A party on whom service is required may, in person or by an attorney or authorized agent, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) By Responsive Pleading. The filing of a pleading responsive to a pleading allowed under Rule 7 constitutes an appearance by the party.

(4) Effect. Waiver, acceptance, and appearance under (f)(1), (f)(2), and (f)(3) have the same force and effect as if a summons had been issued and served.

(g) Return; Proof of Service.

(1) Timing. If service is not accepted or waived, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to process.

(2) Service by the Sheriff. If a summons is served by a sheriff or deputy sheriff, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) Service by Others. If served by a person other than a sheriff or deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) Service by Publication. If the summons is served by publication, the return of the person making such service must be made as provided in Rules 4.1(l) and 4.2(f).

(5) Service Outside the United States. Service outside the United States must be proved as follows:

(A) if effected under Rule 4.2(i)(1), as provided in the applicable treaty or convention; or

(B) if effected under Rule 4.2(i)(2), by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) Validity of Service. Failure to make proof of service does not affect the validity of service.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Time Limit for Service. 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This Rule 4(i) does not apply to service in a foreign country under Rules 4.2(i), (j), (k), and (l).

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.

(c) Waiving Service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(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 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.

(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.

(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.

(l) 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.

(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.

Rule 5. Serving Pleadings and Other Documents

(a) Service Generally.

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

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

(A) an order stating that service is required;

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

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

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

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

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

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

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

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

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

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

(A) handing it to the person;

(B) leaving it:

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

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

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

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

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

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

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

[Name of opposing party or attorney]

[Address of opposing party or attorney]

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

(4) Service After Judgment. After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

(d) Serving Numerous Defendants.

(1) Generally. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

Rule 5.1. Filing Pleadings and Other Documents

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Effective Date of Filing.

(1) Generally. Except for documents submitted directly to a judge under Rule 5.1(a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(2) Documents Submitted Directly to a Judge. If a document is submitted directly to a judge under Rule 5.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(3) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

(4) **Incarcerated Parties.** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

(c) Service with Filing and Documents to Be Filed.

(1) **Filing and Service.** After a complaint's filing, if a document must be filed within a specified time, it must be both filed and served within that time period.

(2) **Documents Not to Be Filed.** The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court.

(A) **Subpoenas.** Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for postjudgment proceedings;

(B) **Discovery and Disclosure Documents.** Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(C) **Proposed Pleadings.** Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) **Prior Filings.** Any document that has been previously filed in the action, which may be called to the court's attention by incorporating it by reference;

(E) **Authorities Cited in Memoranda.** Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(F) **Offers of Judgment.** Offers of judgment served under Rule 68.

(3) **Attachments to Judge.** Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 5.1(c)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

(4) **Sanctions.** If this rule is violated, the court may order removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerk's costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 16(h)

(d) Proposed Orders; Proposed Judgments.

(1) **Required Format.** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 5.2. On the signature page, there must be at least two lines of text above the signature.

(2) **Service and Filing.** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

(3) **Stipulations and Motions; Proposed Forms of Order.**

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

(e) Sensitive Data.

(1) Generally. A person must refrain from including the following sensitive data in any document the person files with the court, whether filed electronically or in paper, unless otherwise ordered by the court or as prescribed by law:

(A) Social Security Numbers. If an individual's social security number must be included in a document, only the last 4 digits of that number may be used.

(B) Financial Account Numbers. If financial account numbers are relevant or set forth in a document, only the last 4 digits of these numbers may be used.

(2) Responsibility with Filer. The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain sensitive data.

(3) Request for Relief. If a document is subject to availability by remote electronic access under Arizona Supreme Court Rule 123, any party or the party's attorney may ask the court to order, or the court may order on its own, that the document be sealed and/or replaced with an identical document with the sensitive data redacted or removed.

(4) Sanctions. If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.

Rule 5.2. Form of Documents

(a) Caption. Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

(1) to the left of the center of the page starting at line 1:

(A) the filing attorney's or self-represented litigant's name, address, telephone number, and email address; and

(B) if an attorney, the attorney's State Bar of Arizona attorney identification number; and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third-party plaintiff);

(2) centered on or below line 6 of the page, the title of the court;

(3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;

(4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;

(5) immediately below the case number, a brief description of the nature of the document; and

(6) below the document description, the judge to whom the case is assigned (if known).

(b) Document Format.

(1) Generally. Unless the court orders otherwise, all filed documents--other than a document submitted as an exhibit or attachment to a filing--must be prepared as follows:

(A) Text and Background. The text of every document must be black on a plain white background. All documents filed must be single-sided and should have line numbers at double-spaced intervals along the left side of the page.

(B) **Type Size and Font.** Notwithstanding any local rule, every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

(C) **Page Size.** Each page of a document must be 8 ½ by 11 inches.

(i) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(iii) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

(D) **Margins and Page Numbers.** Margins must be set as follows: a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1- ½ inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch; and a margin at the bottom of each page of not less than ½ inch. Except for the first page, the bottom margin must include a page number.

(E) **Handwritten Documents.** Handwritten documents are discouraged but if a document is handwritten, the text must be legibly printed and not include cursive writing or script.

(F) **Line Spacing.** Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) **Headings and Emphasis.** Headings must be underlined, or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.

(H) **Citations.** Case names and citation signals must be in italics or underlined.

(I) **Originals.** Unless filing electronically, only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

(J) **Court Forms.** Printed court forms may be single-spaced, but those requiring a judge's or commissioner's signature must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging.

(c) Electronically Filed Documents.

(1) **Format.**

(A) **File Type.** A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified, such as .odt or .docx or other format permitted by Administrative Order, and must not be password protected.

(B) **File Size.** A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

(2) Formats of Attachments.

(A) Generally. An exhibit and other attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) Official Records. A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

(C) Notarized Documents. A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

(D) Certified Mail, Return Receipt Card. When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

(E) National Courier Service. When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

(3) Bookmarks and Hyperlinks.

(A) Bookmarks. A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) Hyperlinks. A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become part of the official record merely because it is made accessible by a hyperlink. The use of hyperlinks is encouraged.

(4) Originals. An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

Rule 5.3. Duties of Counsel and Parties

(a) Attorney of Record; Withdrawal and Substitution of Counsel.

(1) Attorney of Record; Duties of Counsel.

(A) Appearance Required. An attorney may appear as attorney of record by filing a document--including a notice of appearance, complaint, answer, motion to quash, notice of association of counsel, or notice of substitution of counsel--that identifies the attorney as the attorney of record for a party. No attorney may file anything in any action or act on behalf of a party in open court without appearing as attorney of record.

(B) Duties. Once an attorney has appeared as an attorney of record in an action, the attorney will be deemed responsible as the party's attorney of record in all matters involving the action until the action ends or the attorney withdraws as the party's attorney or is substituted as the party's attorney by another attorney.

(2) Withdrawal and Substitution.

(A) Court Order Required. Except as otherwise provided in these rules, in any local rules pertaining to domestic relations actions, or if there is a change of counsel within the same law firm or governmental law office, an attorney may not withdraw, or be substituted, as attorney of record in any pending action unless authorized to do so by court order.

(B) **Application to Withdraw or Substitute Counsel.** An application to withdraw or be substituted as attorney of record for a party must be in writing, state the reasons for the withdrawal or substitution, and set forth the client's address and telephone number. Additionally:

(i) If the application bears the client's written approval, it must be accompanied by a proposed written order and may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of such order, together with the client's name and address, to all other parties.

(ii) If the application does not bear the client's written approval, it must be made by motion and must be served on the client and all other parties. The motion must be accompanied by a certificate of the moving attorney that the client has been notified in writing of the status of the action (including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions), or that the client cannot be located or cannot be notified of the motion's pendency and the case status.

(C) **Withdrawal After Trial Setting.** No attorney will be permitted to withdraw as attorney of record after a trial date is set, unless:

(i) the application includes the signed statement of a substituting attorney stating that the attorney is aware of the trial date and will be prepared for trial, or the client's signed statement stating that the client is aware of the trial date and has made suitable arrangements to be prepared for trial; or

(ii) the attorney seeking withdrawal shows good cause for allowing the attorney to withdraw even though the action has been set for trial.

(D) **Change of Counsel Within the Same Firm or Office.** If there is a change of counsel within the same law firm or governmental law office, an order of substitution or association is not required. Instead, the new attorney must file a notice of substitution or association. The notice must state the names of the attorneys who are the subjects of the substitution or association and the current address and email address of the attorney substituting or associating.

(b) Responsibility to Court. Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and court administrator, in each of the counties in which that attorney has actions that are pending, of the attorney's current office address and telephone number.

(c) Limited Scope Representation.

(1) **Scope.** In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake a limited scope representation of a person involved in any court proceeding, including vulnerable adult exploitation actions.

(2) **Notice.** An attorney undertaking a limited scope representation may appear by filing and serving a Notice of Limited Scope Representation in a form substantially as prescribed in Rule 84, Form 8.

(3) **Service.** Service on an attorney who has undertaken a limited scope representation on behalf of a party will constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but will not extend the attorney's responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

(4) **Withdrawal.** Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) **With Consent.** If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating:

(i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and

(ii) the last-known address and telephone number of the party who will no longer be represented.

The attorney must serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action will be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) Without Consent. If the client does not sign a Notice of Withdrawal with Consent, the attorney must file a motion to withdraw, which must be served on the client and all other parties, along with a proposed order.

(i) If no objection is filed within 10 days after the motion is served on the client, the court must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney must serve a copy of the order on the client. The withdrawing attorney also must promptly serve a written notice of the entry of such order, together with the client's name, last-known address, and telephone number, on all other parties.

(ii) If an objection is filed within 10 days after the motion is served, the court must conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

(d) Notice of Settlement. It is the duty of an attorney of record, or any party if unrepresented by counsel, to give prompt notice to the assigned judge or commissioner, the clerk, and court administrator of the settlement of any action or matter set for trial, hearing, or argument. If prompt notice is not afforded, the court may impose sanctions on the attorneys of record or the parties to ensure future compliance with this rule. Jury fees may be taxed as costs as provided in statute and local rule.

Rule 6. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.

(2) Exclusions if the Deadline Is Less Than 11 Days. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) Last Day. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) Next Day. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Extending Time.

(1) Generally. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

(A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E). When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the specified period would otherwise expire under Rule 6(a). This rule does not apply to the clerk's distribution of notices--including notice of entry of judgment under Rule 58(c)--minute entries, or other court-generated documents.

(d) Minute Entries, Orders, and Other Court-Generated Documents. Notices, minute entries, orders, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order or other court-generated document states that an act may or must be done within a specified time after the document is entered, the date the document is filed is "the day of the act, event or default" under Rule 6(a)(1).

Rule 7. Pleadings Allowed

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

Rule 7.3. Orders to Show Cause

(a) Generally. A court, on application supported by affidavit showing sufficient cause, may issue an order requiring a person to show cause why the party applying for the order should not have the relief it requests in its application. The court must designate a date by which the person must respond, and may set a hearing on the application.

(b) Service. An order to show cause must be served in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable, or, if the person to whom the order is directed has entered an appearance in the action, in accordance with Rule 5. Service must be effected within such time as the court orders.

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption in the form prescribed by Rule 5.2(a), along with the pleading's designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "et al."

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence--and each defense other than a denial--must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

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

Rule 45. Subpoena

(a) Generally.

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

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

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

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

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

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

(iii) permit the inspection of premises; and

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

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

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

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

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

(3) Place of Appearance.

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

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

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

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

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

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

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

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

(1) **Issuing Court.** If separate from a subpoena commanding attendance at a deposition, hearing, or trial, a subpoena commanding a person to produce designated documents, electronically stored information, or tangible things, or to permit the inspection of premises, must issue from the superior court in the county where the production or inspection is to be made.

(2) **Electronically Stored Information.**

(A) **Specifying the Form for Electronically Stored Information.** A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) **Form for Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good-faith and consistent application of a document retention policy. Any such objection must be made in the time and manner provided in Rule 45(c)(6). On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1) and (b)(2). The court may specify conditions for the discovery. Rule 26(e) applies to any motion to quash, motion for protective order, or motion to compel concerning an objection that electronically stored information is not reasonably accessible.

(3) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands attendance at a deposition, hearing, or trial.

(4) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business, or organize and label them to correspond with the categories in the demand.

(5) **Claiming Privilege or Protection.**

(A) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly comply with Rule 26(b)(6)(A), unless a timely objection is made under Rule 45(c)(6)(A) that providing the information required by Rule 26(b)(6)(A) would impose an undue burden or expense. If such an objection is made, the procedures in Rule 45(c)(6)(C) apply. On any such objection, unless the court orders otherwise for good cause, a subpoenaing party requesting a privilege log must pay the subpoenaed person's reasonable expenses in preparing the log.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must comply with Rule 26(b)(6)(A) or, if applicable, Rule 26(b)(6)(B).

(6) Objection Procedures; Duty to Confer.

(A) Form and Time for Objection.

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection, may serve a written objection to producing, inspecting, copying, testing, or sampling any or all of the materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good-faith and consistent application of a document retention policy. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused as provided in Rule 45(b)(5).

(B) Procedure After Objecting.

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court. The objecting person also may move for a protective order or to modify or quash the subpoena.

(ii) The party serving the subpoena may move under Rule 37(a) to compel compliance with the subpoena. The motion must comply with Rule 37(a)(1), and must be served on the subpoenaed person and all other parties under Rule 5(c).

(iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

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

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

(d) Service.

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

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

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

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

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

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

(1) Avoiding Undue Burden or Expense; Sanctions.

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

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

(2) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

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

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

(iv) justice so requires.

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

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

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

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

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

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

Rules of Family Procedure

Rule 40. Summons

(a) Issuance; Service.

(1) **Issuance.** The party filing one of the petitions described in Rule 23(b)(1) must present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the filing party for service. A summons, or a copy of the summons if addressed to multiple parties, must be issued for each party to be served.

(2) **Service.** A summons must be served with a copy of the petition. Service must be completed as required by this rule or Rule 41, as applicable.

(b) Contents.

(1) **What a Summons Must Include.** A summons must:

(A) name the court and the parties;

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

(C) state the name and address of the attorney of the party serving the summons or, if self-represented, the party's name and address;

(D) state the time within which the respondent must appear and respond;

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

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

(G) be signed by the clerk; and

(H) bear the court's seal.

(2) **Actions for Annulment, Dissolution of Marriage, or Legal Separation.** A summons in an action for annulment, dissolution, or legal separation that is filed in a county with an established conciliation court must also contain a statement that either spouse may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies.

(c) **Replacement Summons.** If a summons is returned without being served, or if it has been lost, a party may present a replacement summons for the clerk to issue in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 40(i) for service of the original summons.

(d) Who May Serve a Summons.

(1) **Generally.** Service of a summons must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under Arizona Code of Judicial Administration § 7-204, or another person specially appointed by the court under subpart (d)(2). Service may also be made as authorized under Rule 41.

(2) **Special Appointment.**

(A) **Qualifications.** A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) **Procedure for Appointment.** A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

(e) **Service of Summons in Title IV-D Cases.** If certified under Rule 40(d), a Field Locate Investigator employed by the Department of Economic Security may complete service in the manner set forth in Rule 41(c) in any action initiated by the State for the determination of paternity, or for the establishment, modification, or enforcement of an order of support.

(f) **Accepting Service; Voluntary Appearance.** A party may accept service. A party also may voluntarily appear without being served.

(1) **Accepting Service.** A party subject to service under this rule, Rule 41, or Rule 91 may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney and be filed in the action. A party who accepts service must file and serve a responsive pleading within the time provided in Rule 24.1.

(A) The petitioner must include with the documents provided to the respondent a form for acceptance of service. The form must list the documents that are provided with the acceptance.

(B) Petitioner must mail, including a self-addressed stamped envelope, or deliver the petition and other documents to the respondent. If the respondent agrees to sign an acceptance of service, the acceptance must be signed before a clerk of the court or a notary.

(C) The respondent may file the acceptance of service with the court or return it to the petitioner, who must file the acceptance with the clerk to complete service.

(D) The respondent's signature is not an admission of the allegations of the petition.

(2) Voluntary Appearance.

(A) In Open Court. A party on whom service is required may, in person or by an attorney, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) By Responsive Pleading. The filing of a response to a pleading allowed under Rule 23 constitutes an appearance by the party.

(3) Effect. Acceptance or appearance under subparts (f)(1) or (f)(2) have the same force and effect as if a summons had been issued and served.

(g) Proof of Service.

(1) Timing. If service is not accepted, and no voluntary appearance is made, then the person effecting service must file proof that the party was served. Proof of service should be made by the date that the served party must respond to the summons and petition.

(2) Service by the Sheriff. If a summons is served by a sheriff or deputy sheriff, the return of service must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) Service by Others. If served by a person other than a sheriff or deputy sheriff, the return of service must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) Service by Mail or National Courier Service. Proof of service by mail or by national courier service must be filed as provided in Rule 41(d).

(5) Service by Publication. If the summons is served by publication, the return of the person making such service must be made as provided in Rules 41(m)

(6) Service Outside the United States. Service outside the United States must be proved under Rule 41(h) as provided in the applicable treaty or convention; or by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(7) Validity of Service. Failure to file proof of service does not affect the validity of service.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Time Limit for Service. If a respondent is not served with process within 120 days after the petition is filed, the court--on motion, or on its own after notice to the petitioner--must dismiss the action without prejudice against that respondent or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for service for an appropriate period. Rule 40(i) does not apply to service in a foreign country under Rules 41(h), or to the service of a paternity action described in section (j).

(j) Time Limit for Service in Paternity Actions Involving Adoption. A potential father who has been served with notice of a planned adoption under A.R.S. § 8-106(G) must file with the court and serve on the mother--or an attorney or agency that is licensed in Arizona and is representing the mother--a copy of the verified petition to establish paternity and summons not later than 30 days after the notice of the planned adoption is served. The court must dismiss any proceeding that is barred under A.R.S. § 8-106(J).

Rule 41. Service Within and Outside Arizona

(a) Generally.

(1) Scope. This rule governs service of a summons, an order to appear, a pleading, and additional filings required under Rule 25 or Rule 91.

(2) Jurisdiction. An Arizona court may exercise personal jurisdiction over parties, whether found within or outside Arizona, to the maximum extent permitted by the United States and Arizona Constitutions.

(3) In State. A summons or order to appear may be served anywhere within Arizona.

(4) Out of State. A party may serve a summons or order to appear on any person located outside Arizona as provided in this rule, and proper service has the same effect as if personal service was accomplished within Arizona.

(5) Authority to Serve a Summons. Except as otherwise provided in this rule, a person who serves a summons in Arizona must be authorized to do so under Rule 40(d), and a person who serves a summons outside Arizona but within the United States must be authorized to serve process under the law of the state where service is made.

(b) Serving a Summons and Pleadings. The summons, together with the other documents being served, must be served together within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service.

(c) Serving an Individual. Unless Rule 41(e) or (f) 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.

(d) Service by Mail or National Courier Service.

(1) Generally. If a serving party knows the address of the person to be served and the address is within Arizona or another judicial district of the United States, the party may serve the person by mailing the summons and copies of the pleading and other documents being served to the person at that address by any form of postage-prepaid mail, including a national courier service, which requests restricted delivery to the person and requires a receipt signed by the addressee.

(2) Affidavit of Service. When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located inside Arizona or outside Arizona but within a judicial district of the United States,

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as described in Rule 41(d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and that confirms the designated person received the described documents; and

(D) the date of receipt by the person being served.

(3) **Incarcerated Person.** If the person being served is incarcerated, the affidavit must also include a statement that the serving party sent a copy of the documents to the person by first class mail.

(e) Serving a Minor. A minor under the age of 16 years 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 41(c) for serving an individual and 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 Person Who Has a Court-Appointed Guardian or Conservator. If a person has a court-appointed guardian or conservator, the guardian or conservator must also be served as required by Rule 41(c) for serving an individual, separately from serving the person.

(g) Serving an Incarcerated Person. A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service as provided by Rule 41(d), with the return or confirmation of service completed by an official of the jail, prison or correctional facility. The signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate by first class mail.

(h) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders.

(3) A minor or incompetent person in a foreign country may be served as provided by subparts (h)(2)(A) or (B), or as the court directs.

(i) Serving a Governmental Entity.

(1) Generally. A governmental entity having the legal capacity to be sued may be served by delivering a copy of the summons and the pleading:

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General;

(B) for service on a county, to the Board of Supervisors' clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation;

(D) for service on any other governmental entity:

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

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

(2) Alternative Procedure for Serving the State in a Title IV-D Case.

(A) Generally. If a county authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona by the following procedure.

(B) Procedure. A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) Clerk's Duties. On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit copies of the documents and the Notice of State Interest to the State designated electronic address.

(D) Effective Date of Service. Service is complete when the clerk files a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(j) 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 it may be served by delivering a copy of the summons and the pleading to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service, and if required by statute, by also mailing a copy to the party.

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

(1) Diligent Search. If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return an inability to find an officer or agent of the corporation to be served, the sheriff's statement is rebuttable evidence that the corporation does not have an officer or agent in Arizona.

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

(3) Commission's Responsibilities. The Arizona Corporation Commission will keep 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 Commission records, or another source.

(l) Alternative Means of Service.

(1) Generally. If a party shows the service provided in Rule 41(c) through Rule 41(i) is impracticable, the court may--on motion and without notice to the person to be served--order that service may be accomplished in another manner.

(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. The serving party must also 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 41(m) are met.

(m) Service by Publication.

(1) Generally. If a party shows that the service provided by Rule 41(c) through (l)--including an alternative means of service--is impracticable, the court may on motion, and without notice to the person to be served, order that service be accomplished by publication. The court may permit service by publication, in such manner and form as the court may direct, if:

(A) the serving party, despite reasonably diligent efforts, has been unable to determine the person's current address; or 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, also 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 40(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 last known 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 file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring service by publication. The affidavit must also state if no mailing was made because of lack of knowledge of the current address of the person being served.

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

(C) Effect. A properly filed affidavit is rebuttable evidence of compliance with the requirements for service by publication.

(n) Service in Other Circumstances. Service on a person or entity not described in Rule 41 may be made as provided in Civil Rules 4.1 or 4.2.

(o) Service; Parties Served; Continuance. When there are several respondents, and some are served with summons and others are not, the petitioner may proceed against those served or continue the action. The court may order the petitioner to proceed against those served.

Rule 43. Service of Other Documents After Service of the Summons, Petition, and Order to Appear

(a) Generally. This rule governs service after the summons, petition, or order to appear have been served. Rule 41 governs service of petitions for contempt.

(b) Service After Service of the Summons, Petition, and Response.

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

(2) Methods of Service. A document is served under this rule by:

(A) handing it to the person;

(B) leaving it:

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

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

(C) mailing it by U.S. mail or other national courier service to the person's last-known address, in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in Rule 43(b)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission; or

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

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

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

[Name of opposing party or attorney]

[Address of opposing party or attorney]

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

(c) Service After Judgment. After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, or other pleading requesting to modify, vacate, or enforce that judgment must be served in the same manner that a summons and pleading are served under Rules 40(f)(1) or 41, as applicable.

Rule 43.1. Filing Pleadings and Other Documents

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Effective Date of Filing.

(1) Generally. Except for documents submitted directly to a judge under Rule 43.1(a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid, or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(2) Documents Submitted Directly to a Judge. If a document is submitted directly to a judge under Rule 43.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(3) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

(4) Incarcerated Parties. If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

(c) Limits on Access to Filed Documents. If prohibited by local rule or an administrative order by the presiding judge, the clerk must not disclose to the general public any pleading filed under Rule 23, any petition for order of protection, or any petition for injunction against harassment--or any document or evidence that is filed relating to those filings--until 45 days after the pleading or petition is filed. Notwithstanding this rule, the clerk must allow access to the documents by judicial officers, court and clerk's office personnel, the parties and their associated counsel of record, and any other person authorized by court order. The clerk may determine the manner in which such access is provided.

(d) Service with Filing and Documents Not to Be Filed.

(1) Filing and Service. After a petition's filing, if a document must be filed within a specified time, it must be both filed and served within that time.

(2) Documents Not to Be Filed. The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court:

(A) Subpoenas. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;

(B) Discovery and Disclosure Documents. Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response, including notices of compliance with the provisions of Rules 49 or 91;

(C) Proposed Pleadings. Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) Prior Filings. Any document that has been previously filed in the action, which may be called to the court's attention by incorporating it by reference; and

(E) Authorities Cited in Memoranda. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal.

(3) Attachments to the Assigned Judge. Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 43.1(d)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge also must be provided to all other parties.

(4) Sanctions. If this rule is violated, the court may order removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerk's costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 71.

(e) Proposed Orders; Proposed Judgments.

(1) Service. Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court.

(2) Filing. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically submitted proposed orders and proposed judgments; however, these electronically submitted documents must not be included in the publicly displayed court record.

(3) Exception. If directed by the court, required by rule, or done to preserve the record on appeal, a party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing.

(4) Format. A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as a part of any other document. The proposed order or proposed judgment must have at least two lines of text above the signature.

(5) Stipulations and Motions; Proposed Forms of Order.

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

(f) Sensitive Data.

(1) Definition. For the purposes of this rule, "sensitive data" means social security numbers, driver's license numbers, bank account numbers, credit card numbers, and other financial account and personal identifying numbers.

(2) Filing Sensitive Data.

(A) Generally. Before filing any document containing sensitive data, the person making the filing must omit or otherwise redact the sensitive data unless the court orders otherwise. References to the data may be made using only the last 4 digits of the identifying number. The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain sensitive data.

(B) Court-Requested Data.

(i) If the court specifically requests sensitive data from a party, the party must record the requested information on a separate sensitive data form that is substantially in the form set forth in Form 3, Rule 97 ("Confidential Sensitive Data Form").

(ii) The clerk will maintain the form as a confidential record that is only available to the parties, the parties' attorneys, court personnel, and any other person or agency authorized by court order.

(iii) Unless the court orders otherwise, further written reference to sensitive data must be made by referring to a corresponding item number on the sensitive data form or other means, rather than inserting the actual data into a document that is filed with the court.

(iv) Whenever new information is needed to supplement the record in a case, the parties or their attorneys must file an updated sensitive data form that includes all previously disclosed sensitive data and any additional sensitive data required for the case.

(C) Exception. The provisions of Rule 43.1(f)(2)(A) and (B) do not pertain to orders or decrees, or to petitions and accompanying documents filed under the Uniform Interstate Family Support Act (UIFSA) as adopted by the State of Arizona.

(3) Income Withholding Orders and Orders to Stop Income Withholding Orders. Income withholding orders and orders to stop income withholding orders may contain sensitive data as required by law, but these orders are confidential and may be made available only to the parties, the parties' attorneys, the parties' employers, child support enforcement agencies, court personnel, and any other person or agency authorized by court order.

(4) Clerk's Authority. The clerk may maintain sensitive data forms, income withholding orders, and orders to stop income withholding orders, either in paper or electronic form. If these documents are maintained electronically, the clerk is authorized to destroy any paper versions.

(5) Requests for Relief. If a document containing sensitive information is filed with the court, any person may request a court order, or the court may order on its own, that the document be sealed or replaced with an identical document with the sensitive data redacted or removed.

(6) Sanctions. If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.

(g) Confidential Records. The clerk may treat as confidential any Affidavit of Financial Information, including attachments to the Affidavit of Financial Information, as well as any medical, mental health, or behavioral health records, reports, or evaluations filed with the court.



KeyCite Yellow Flag - Negative Treatment

Distinguished by [Dawood v. Dawood](#), Ariz.App. Div. 1, May 12, 2009

141 Ariz. 77

Court of Appeals of Arizona,
Division 1, Department D.In re the Marriage of Marilyn Spencer
ENDISCHEE, Petitioner-Appellee,

v.

Andrew ENDISCHEE,
Respondent-Appellant.

No. 1 CA-CIV 7428.

|
May 24, 1984.

West Headnotes (5)

- [1] **Divorce** 🔑 Personal service
Divorce 🔑 Requisites and validity

Service of process attempted by the deputy sheriff when he delivered a copy of the summons and the petition for dissolution to the husband, a Navajo Indian, at his place of employment on the Navajo Reservation was ineffective to obtain personal jurisdiction over the husband and, hence, was not a basis for the trial court to enter a default judgment against the husband upon his failure to appear regardless of whether husband had actual notice of pending action. 16 A.R.S. [Rules Civ.Proc., Rules 12\(h\), 60\(c\)](#).

[1 Cases that cite this headnote](#)

- [2] **Judgment** 🔑 Sufficiency of process or of service

Rule in *Cockerham* that the failure to file an affidavit of service, does not render a default judgment void for lack of personal jurisdiction if facts appear in verified complaint and affidavits of process server does not authorize any manner of purported service as long as party has actual knowledge of pendency of action. 16 A.R.S. [Rules Civ.Proc., Rules 12\(h\), 60\(c\)](#).

[2 Cases that cite this headnote](#)

- [3] **Judgment** 🔑 Necessity of process and of personal service in general
Judgment 🔑 Want of process, service, or notice

Proper service of process is essential for the court to obtain jurisdiction over a party; consequently, a judgment is void and subject to direct and collateral attack if the court rendered it without jurisdiction due to lack of proper service. 16 A.R.S. [Rules Civ.Proc., Rules 12\(h\), 60\(c\)](#).

[4 Cases that cite this headnote](#)

- [4] **Courts** 🔑 Waiver of Objections

Rule providing that a defense of lack of jurisdiction over the person is waived if omitted from a motion or if it is neither made by motion nor included in a responsive pleading or an amendment applies only when a party has entered a formal appearance in an action by the filing of an answer or a motion. 16 A.R.S. [Rules Civ.Proc., Rule 12\(i\)](#).

- [5] **Courts** 🔑 Waiver of Objections

Defense of lack of jurisdiction over the person was not waived by husband in dissolution proceeding where the trial court never acquired personal jurisdiction over the person of the husband so as to require him to enter an appearance either by motion or responsive pleading. 16 A.R.S. [Rules Civ.Proc., Rules 12\(i\), 60\(c\)](#).

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

*78 **143 Community Legal Services by Mary Jo O'Neill, Phoenix, for petitioner-appellee.

Gary L. Thomas, Phoenix, for respondent-appellant.

Synopsis

Proceeding was instituted on a petition by wife for dissolution of marriage. The Superior Court, Maricopa County, Cause No. DR-186790, B. Michael Dann, J., entered husband's default for his failure to appear as well as a decree of dissolution, and husband appealed. The Court of Appeals, Brooks, P.J., held that service of process attempted by the deputy sheriff when he delivered a copy of the summons and the petition for dissolution to the husband, a Navajo Indian, at his place of employment on the Navajo Reservation was ineffective to obtain personal jurisdiction over the husband and, hence, was not a basis for the trial court to enter a default judgment against the husband upon his failure to appear regardless of whether husband had actual notice of pending action.

Reversed and remanded.

OPINION

BROOKS, Presiding Judge.

The sole issue presented in this appeal is whether the trial court erred in denying appellant's motion to set aside a default judgment for lack of personal jurisdiction.

On April 27, 1983, appellee filed a petition for Dissolution of Marriage in Maricopa County Superior Court. As a result, the court issued a summons and a preliminary injunction which, together with the petition, were forwarded to the Sheriff of Coconino County for service.

On May 12, 1983, a Coconino County deputy sheriff delivered a copy of the summons, petition for dissolution and injunction to appellant, a Navajo Indian, at his place of employment on the Navajo reservation. The "return of service" filed by the deputy sheriff on May 23, 1983, notes that the delivery was made "on reservation".

Appellant consulted a "lay advocate"¹ who wrote a letter to the Maricopa County Superior Court setting forth appellant's objections to the proceedings and the court's personal jurisdiction. Appellant did not, however, enter a formal appearance by filing a motion or responsive pleading in the action. The letter from the lay advocate was not treated as an appearance by the court. Further, appellee does not argue that this correspondence constituted an appearance.

On June 17, 1983, the court entered appellant's default for his failure to appear and a decree of dissolution was subsequently entered on July 28, 1983. Appellant responded by filing a timely motion to set aside the default judgment for lack of personal jurisdiction pursuant to [Rule 60\(c\), Arizona Rules of Civil Procedure](#). In denying the motion, the court found that the "defense of lack of personal jurisdiction *79 **144 over the person is one that must be raised in accordance with [Rule 12\(i\), Arizona Rules of Civil Procedure](#)."

[1] On appeal, appellant first argues that the service of the summons was void because the deputy sheriff lacked the necessary authority to serve process on the Indian reservation. In [Francisco v. State](#), 113 Ariz. 427, 556 P.2d 1 (1976), our Supreme Court held that a deputy sheriff is without authorization to serve process within the boundaries of an Indian reservation. Appellee apparently concedes this issue but argues that service was nevertheless effective since appellant had actual notice of the pending action. In support of this argument, appellee relies on [Cockerham v. Zikratch](#), 127 Ariz. 230, 619 P.2d 739 (1980), and [Rule 12\(i\)](#). We find [Cockerham](#) to be readily distinguishable.

[Cockerham](#) involved the personal service of process on out-of-state defendants. When the defendants failed to file an answer plaintiff obtained a default judgment. The trial court vacated the default judgment presumably for lack of personal jurisdiction over the defendants because, while plaintiff had filed affidavits of the process server showing the *fact* of service, she failed to include an affidavit showing the circumstances warranting the use of out-of-state service as required by [Rule 4\(e\)\(2\)\(b\)](#). In reversing the trial court, the Supreme Court held:

Defendants had notice of plaintiff's complaint and an opportunity to defend. They do not claim that the trial court could not have obtained jurisdiction over them had an affidavit been filed. They claim only that failure to comply with a technicality prevented establishment of personal jurisdiction over them in the trial court. *We hold that the failure to file the affidavit of service required by Rule 4(e)(2)(b), although reversible error, did not render the default judgment void for lack of personal jurisdiction where the facts to be contained in that affidavit appear in the verified complaint and affidavits of the process server.*

619 P.2d at 743 (emphasis added).

The court went on to point out the well known distinction between a voidable judgment and one which is void for lack of jurisdiction:

It is important to remember that, at least with respect to jurisdiction, “void” is not synonymous with “wrong” or “erroneous.” While the defects to which defendants here refer may well make the default judgment erroneous, they fall short of undermining jurisdiction so as to render that judgment void and subject to vacation under 60(c)(4).

619 P.2d at 744.

[2] *Cockerham* does not support appellee's basic premise that *any* manner of purported service will suffice so long as it gives the party actual knowledge of the pendency of the action. In that case there was a technical violation of Rule 4 which the court found did not deprive the trial court of personal jurisdiction over the defendants. The facts set forth in the case at bench differ in that the defect in service *does* deprive the court of jurisdiction.

As our Supreme Court stated in *Francisco v. State*:

... [t]he deputy sheriff being without the proper authority, ... [t]he service of process was invalid and ineffectual *and thus the trial court was without personal jurisdiction over the petitioner.*

556 P.2d at 2 (emphasis added).

[3] Proper service of process is essential for the court to obtain jurisdiction over a party; consequently, a judgment is void and subject to direct and collateral attack if the court rendered it without jurisdiction due to the lack of proper service. *Koven v. Saberdyne Systems, Inc.*, 128 Ariz. 318, 625 P.2d 907 (App.1980).

Appellee's reliance on Rule 12(i) is also misplaced. Before analyzing that subsection, however, it is necessary to first set forth the pertinent portion of Rule 12(h) which provides as follows:

***80 **145 12(h) Consolidation of defenses in motion.**

A party who makes a motion under this rule may join with it any other motions herein provided for and then available

to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted....

Rule 12(i) then provides in pertinent part:

A party waives all defenses and objections which he does not present either by motion as hereinbefore provided, or, if he has made no motion, in his answer or reply, except

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (h), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment permitted by Rule 15(a) to be made as a matter of course.

[4] [5] The policy underlying this Rule is that of avoiding “piecemeal decisions”² and it applies only when a party has entered a formal appearance in an action by the filing of an answer or motion. In other words, *if* a party appears and participates in the action, the waiver provisions of Rule 12(i) become operative. In the instant case, the trial court never acquired personal jurisdiction over the person of the appellant and there was thus no requirement that appellant enter a Rule 12 appearance either by motion or responsive pleading. Further, no such appearance was made.

For the foregoing reasons, we conclude that the trial court erred in denying appellant's motion to set aside the default judgment. Accordingly, the entry of default against appellant is vacated, the default judgment is set aside and this matter is remanded to the trial court for proceedings consistent with this opinion.

EUBANK and KLEINSCHMIDT, JJ., concur.

All Citations

141 Ariz. 77, 685 P.2d 142

Footnotes

¹ A lay advocate is a person who is licensed to practice before the Navajo Tribal Courts.

² See State Bar Committee Note to Rule 12(i).

115 Ariz. 342

Court of Appeals of Arizona, Division 2.

Jose ENRIQUEZ and Celestine Enriquez, Petitioners,

v.

The SUPERIOR COURT of the State of Arizona, IN AND FOR the COUNTY OF PIMA, and the Hon. Robert O.

Royston, Judge thereof, Eugene JOYNER and Constance Joyner, Real Parties in Interest, Respondents.

No. 2 CA-CIV 2330.

Jan. 14, 1977.

Rehearing Denied March 29, 1977.

Review Denied May 10, 1977.

Synopsis

In a special action brought by Papago Indians, defendants in an underlying motor vehicle accident suit, seeking an order compelling dismissal of said suit for lack of subject matter and personal jurisdiction, the Court of Appeals, Howard, Chief Judge, held that the Arizona courts were without jurisdiction of the action brought by non-Indians against Papago Indians, residing on the Papago reservation, for injuries resulting from a motor vehicle accident which occurred on state highway within the boundaries of the reservation, since the granting of an easement for a highway running through a reservation does not alter the status of the highway as being "Indian country," and since assumption of jurisdiction by the state courts would infringe on the right of reservation Indians to make their own laws and be governed by them.

Relief granted.

West Headnotes (3)

[1] **Indians** 🔑 State Courts

Arizona courts were without jurisdiction of an action brought by non-Indians against Papago Indians, residing on the Papago reservation, for injuries resulting from a motor vehicle accident which occurred on state highway within the boundaries of the reservation, since the granting of an easement for a highway running through a reservation does not alter the status of the highway as being "Indian country," and since assumption of jurisdiction by the state courts would infringe on the right of reservation Indians to make their own laws and be governed by them.

[6 Cases that cite this headnote](#)

[2] **Indians** 🔑 State Courts

Indians 🔑 Jurisdiction

In litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts depends, absent a governing act of Congress, on whether the state action infringes on the right of reservation Indians to make their own laws and be ruled by them.

[3 Cases that cite this headnote](#)

[3] **Indians** 🔑 Government of Indian Country, Reservations, and Tribes in General

Papago Indians' right of self-government includes the right to decide what conduct on the Papago reservation will subject the Indians living there to civil liability in the tribal court.

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

*342 **522 Sandra K. Pharo, Papago Legal Services, Sells, for petitioners.

Gordon T. Alley, Tucson, for real parties in interest.

OPINION

HOWARD, Chief Judge.

[1] The issue presented in this special action is whether or not the Arizona courts have jurisdiction of an action brought by non-Indians against Papago Indians, residing on the Papago Reservation, for injuries resulting from a motor vehicle accident which occurred on a state highway within the boundaries of the Papago Reservation.

In 1973, Mr. and Mrs. Joyner filed a tort action in Pima County Superior Court against petitioners Enriquez. Petitioners filed a responsive pleading and moved to dismiss the action asserting lack of jurisdiction over the subject matter of the action and lack of jurisdiction over their persons. A hearing was duly held on the motion to dismiss at which petitioners were present and testified. Counsel stipulated that the *343 **523 accident occurred on State Highway 86 near Kitt Peak, on the Papago Indian Reservation, that the plaintiffs were non-Indians, and that the defendants were both Indians. The court, in denying the motion to dismiss, ruled that since the accident occurred on State Highway 86, the superior court had jurisdiction of the action.

Respondents analogize the circumstances here to the situation where an accident occurs in a foreign country or a sister state and jurisdiction is sought in the courts of another state. See, [Ray v. Sommer](#), 14 Ariz.App. 160, 481 P.2d 530 (1971) and [Moore v. Montes](#), 22 Ariz.App. 562, 529 P.2d 716 (1974). Thus respondents argue that since a tort action for damages arising out of an automobile accident is transitory and may be entertained wherever jurisdiction of the parties can be obtained, [Ray v. Sommer](#), supra, jurisdiction in the state court is proper. We do not agree. When dealing with accidents on an Indian reservation where relief is sought against an Indian living on the reservation, the analogy is imperfect.

[2] In litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts have depended, absent a governing act of Congress, on “whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.” [Williams v. Lee](#), 358 U.S. 217, 220, 79 S.Ct. 269, 271, 3 L.Ed.2d 251 (1959); [Fisher v. District Court of Sixteenth Judicial District](#), 424 U.S. 382, 96 S.Ct. 943, 47 L.Ed.2d 106 (1976).

We analyze the problem here by first looking at where the accident took place. State Highway 86 is an easement which was granted to the State of Arizona by the Tribe. In [Schantz](#)

[v. White Lightning](#), 231 N.W.2d 812 (N.D.1975), as in the instant case, an action was brought in the state court by a non-Indian against an Indian for injuries and damages resulting from a motor vehicle accident occurring on a state highway traversing Indian reservations. There, the court concluded that highways within an Indian reservation are considered Indian country in accordance with the federal definition set forth in 18 U.S.C.A. s 1151. Our Supreme Court in the case of [Application of Denetclaw](#), 83 Ariz. 299, 320 P.2d 697 (1958), also held that the granting of an easement for a highway running through the reservation did not alter the status of the highway as being “Indian country”. Although the definition of “Indian country” as set forth in 18 U.S.C.A. s 1151 is concerned only with criminal jurisdiction, the United States Supreme Court has recognized that it generally applies as well to questions of civil jurisdiction. [DeCoteau v. District Court for Tenth Judicial District](#), 420 U.S. 425, 95 S.Ct. 1082, 1084, fn. 2, 43 L.Ed.2d 300 (1975).

[3] The next consideration is the Indians' right of self-government. The Court in [Schantz v. White Lightning](#), supra, also found that assumption of jurisdiction by the state court would infringe upon the right of reservation Indians to make their own laws and be governed by them. We agree. Their right of self-government includes the right to decide what conduct on the reservation will subject the Indians living there to civil liability in the Tribal court. The fact that the record here does not disclose whether the Tribal court does in fact provide a forum for the recovery for personal injuries is of no moment since assumption of jurisdiction by the state court would be, in effect, a declaration by a state court that such conduct is tortious, a declaration that only the Papago Tribe can make.

The transitory nature of the claim for relief has no effect on the question of jurisdiction. Cf. [Williams v. Lee](#), supra.

The relief prayed for is granted and the respondent court is ordered to grant petitioner's motion to dismiss.

HATHAWAY, J., and JACK G. MARKS, Superior Court Judge, concur.

NOTE: JACK G. MARKS was called to sit and participate in the determination of this decision by order of the Chief Justice, Arizona Supreme Court.

All Citations

115 Ariz. 342, 565 P.2d 522



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Not Followed as Dicta [Nenna v. Moreno](#), Ariz.App. Div. 2, April 21, 1982

113 Ariz. 427

Supreme Court of Arizona, In Banc.

Edmund FRANCISCO, Petitioner,

v.

The STATE of Arizona, the Honorable
J. Richard Hannah, Judge of the Pima
County Superior Court, and the Pima
County Superior Court, Respondents.

No. 12444—PR.

|
Sept. 28, 1976.**Synopsis**

Indian petitioner brought special action to determine whether state court abused its discretion in denying petitioner's motion to dismiss, on grounds of lack of personal jurisdiction, an action brought against him by State in the name of Indian woman to determine petitioner's alleged paternity of the woman's child. The Court of Appeals, Howard, C.J., [25 Ariz.App. 164, 541 P.2d 955](#), denied petition, and petition for review was accepted. The Supreme Court, Hays, J., held that State had no authority to extend application of its laws to Indian reservation which had been set aside, by Executive Order, for exclusive use and occupancy of Indian tribe, in view of fact that State had neither amended its constitution nor passed appropriate legislation to confer upon itself jurisdiction over reservation pursuant to Civil Rights Act of 1968, nor had State acquired requisite consent of Indian tribe to do so; therefore, deputy sheriff was without authority to validly make services of process while within boundaries of Indian reservation.

Opinion of Court of Appeals vacated.

West Headnotes (6)

[1] Sheriffs and Constables [Nature and Extent of Authority in General](#)

When sheriff or his deputy acts in his official capacity, laws of State are necessarily given

effect. [A.R.S. § 11–441](#) et seq.; [A.R.S.Const. art. 12, §§ 3, 4](#).

[2] Indians [State Regulation](#)

States have been allowed to give effect to their laws as applied to Indians on reservations when laws did not infringe on tribal sovereignty and self-government, but then only if there were no governing act of Congress; when, however, such governing acts of Congress do exist, test to be applied is whether, in light of all relevant statutes and treaties, States have been allowed by Congress to assume jurisdiction over Indian lands in question.

[9 Cases that cite this headnote](#)**[3] Indians** [Process](#)**Indians** [State Regulation](#)

Where Executive Order set aside reservation for exclusive use and occupancy of Indian tribe, such Order intended to grant in such tribe exclusive sovereignty over their lands, and therefore, such Executive Order precluded extension of state law to Indians on reservation, including laws effectuating the authority in sheriff to serve process.

[8 Cases that cite this headnote](#)**[4] Indians** [Process](#)

State's Enabling Act in no way precludes State from exercising its governmental interest by way of service of process on an Indian on a reservation. [A.R.S.Const. art. 20, subd. 4](#).

[3 Cases that cite this headnote](#)**[5] Indians** [State Courts](#)

If State has failed to take requisite steps to confer upon itself jurisdiction over reservation Indians under the Civil Rights Act of 1968, then State must be held to be without jurisdiction. Civil Rights Act of 1968, §§ 401–406, [25 U.S.C.A. §§ 1321–1326](#).

3 Cases that cite this headnote

[6] **Indians** 🔑 Process

State had no authority to extend application of its laws to Indian reservation which had been set aside, by Executive Order, for exclusive use and occupancy of Indian tribe, in view of fact that State had neither amended its constitution nor passed appropriate legislation to confer upon itself jurisdiction over reservation pursuant to Civil Rights Act of 1968, nor had State acquired requisite consent of Indian tribe to do so; therefore, deputy sheriff was without authority to validly make service of process while within boundaries of Indian reservation. Civil Rights Act of 1968, §§ 401–406, [25 U.S.C.A. §§ 1321–1326](#).

12 Cases that cite this headnote

Attorneys and Law Firms

***428 **2** James J. Purcell, Sandra K. Pharo, Papago Legal Services, Sells, for petitioner.

Dennis DeConcini, Former Pima County Atty., David G. Dingeldine, Pima County Atty. by David R. Ostapuk, Deputy County Atty., Tucson, for respondents.

James T. Van Bergen, William E. Strickland, Tucson, for amicus curiae The Papago Tribe.

Opinion

HAYS, Justice.

Suit was brought in the Superior Court of Pima County by the State of Arizona in the name of Veronica Toro to determine the petitioner's alleged paternity of Veronica's child, Jonathan. The petitioner, Edmund Francisco, moved to dismiss, claiming lack of personal jurisdiction on the grounds that the Pima County Deputy Sheriff, who served the petitioner, was without authority to do so while on the Papago Indian Reservation. The motion was denied and a special action petition was filed in the Court of Appeals, Division Two, against the State of Arizona, the Honorable J. Richard Hannah, Judge of the Superior Court of Pima County, and the Pima County Superior Court. The Court

of Appeals upheld the trial court's denial of the motion to dismiss and denied the special action relief sought. [Francisco v. State of Arizona](#), 25 Ariz.App. 164, 541 P.2d 955 (1975). A motion for rehearing was denied. We accepted the Petition for Review to determine whether the trial court had properly acquired personal jurisdiction over the petitioner. We vacate the Court of Appeals decision and order the trial court to grant petitioner's motion to dismiss.

Petitioner and the mother of the child whose paternity is sought to be established are both Papago Indians. The child was born in Tucson, Arizona, and the mother and child have lived there since the child's birth. It was stipulated at trial that conception occurred in Tucson. The petitioner resides in Sells, Arizona, which is situated within the boundaries of the Papago Indian Reservation. The summons and complaint of the paternity proceeding below were served upon the petitioner by a Pima County Deputy Sheriff within the Papago Indian Reservation.

The issue presented for review is whether the Superior Court's assertion of in personam jurisdiction over the petitioner was proper.

[1] The answer to this question must lie in the resolution of the question of whether the Pima County Deputy Sheriff had authority to serve process on an Indian while on an Indian reservation. The sheriff derives his authority from the [Arizona Constitution, art. 12, ss 3 and 4](#), as amended, and from the [Arizona Revised Statutes, s 11—441](#), et seq. By virtue of this authority, when the sheriff or his deputy acts in his official capacity, the laws of Arizona are necessarily given effect. Thus, the deputy sheriff's authority while on a reservation must be defined by the state's ability to extend the application of its laws to an Indian residing on a reservation.

We are of the opinion that the laws of the state applying to service by a sheriff could not be applied to an Indian while on the reservation and therefore find, the deputy sheriff being without the proper authority, that the service of process was invalid and ineffectual and thus that the trial court was without personal jurisdiction over the petitioner.¹

[2] Our decision must be based on an examination of the extent to which the state's jurisdiction over Indian lands has been preempted by the federal government, ***429 **3** as defined by the appropriate treaties, executive orders and Acts of Congress. Although the Indians and their lands have been deemed by the United States Supreme Court to constitute a sovereign and semi-independent entity, [Worcester v. Georgia](#), 6 Pet. 515, 31 U.S. 515, 8 L.Ed. 483 (1832); [United States v.](#)

Kagama, 118 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228 (1886), the Court has consistently taken the position that the federal government retains jurisdiction and control over the ‘whole intercourse’ between the Indian tribes and our government. *Worcester v. Georgia*, supra; *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959). The states have been allowed to give effect to their laws as applied to Indians on reservations when the laws did not infringe on tribal sovereignty and self-government but then only if there were no ‘governing Acts of Congress.’ *Williams v. Lee*, supra. When, however, such ‘governing Acts of Congress’ do exist, the Court has made it clear that the test to be applied is whether, in light of all the relevant statutes and treaties, the states have been allowed by Congress to assume jurisdiction over the Indian lands in question. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973).

Based on the United States Supreme Court decision in *Kennerly v. District Court of Ninth Judicial District of Montana*, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971), it is apparent that the Civil Rights Act of 1968, 25 U.S.C. ss 1321—1326, the successor to the Act of 1953, 67 Stat. 590, Public Law 280, is just such a governing Act of Congress. Thus, the determination of the limits of the States’ jurisdictional powers must focus not on the extent of sovereignty the tribes possess but rather on the extent to which the states have been permitted by Congress to assert jurisdiction over Indians and their lands and, in effect, infringe on the sovereignty.

‘(T)he trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal preemption. (cite omitted) The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power.’ (citations and footnotes omitted). *McClanahan v. State Tax Commission*, supra, 411 U.S. at 172, 93 S.Ct. at 1262.

It is then the relevant statutes and, in this case, an executive order on which we must rely in determining the limits of Arizona’s jurisdictional power and to which we now turn our attention.

[3] There are no treaties between the Papago Indian tribe and the United States Government. Rather, the reservation was set aside by *Executive Order No. 2524* signed by President Wilson on February 1, 1917. The Order made no specific

guarantees exempting the Papagos from the State of Arizona’s jurisdiction. However, the guarantee of exclusive sovereignty must be implied in such an Order.

McClanahan v. State Tax Commission of Arizona, supra, is analogous in this respect. In *McClanahan*, the court, in considering the preemptive effect that the Navajo treaty had on the ability of Arizona to impose an income tax on Indians for income earned on the reservation, noted the absence of a provision exempting the Navajo tribe from falling within the ambit of the state’s taxing power. Nevertheless, the court reasoned, such an exemption must be implied in the treaty based on the fact that the treaty intended to grant the Indians exclusive sovereignty over their lands:

‘. . . it cannot be doubted that the reservation of certain lands for the exclusive use and occupancy of the Navajos and the exclusion of non-Navajos from the prescribed area was meant to establish the lands as within the exclusive sovereignty of the Navajos under general federal supervision. It is thus *430 **4 unsurprising that this Court has interpreted the Navajo treaty to preclude extension of state law—including state tax law—to Indians on the Navajo Reservation.’ 411 U.S. at 174—75, 93 S.Ct. at 1263—64.

In the instant case it is similarly implicit based on the fact that the reservation was set aside for the exclusive use and occupancy of the Papago Indian tribe, that the Executive Order intended to grant in the Papagos exclusive sovereignty over their lands. It would thus follow, based on the reasoning in *McClanahan*, that the Executive Order would preclude the extension of state law to Indians on the reservation, including the laws which effectuate the authority in the Sheriff to serve process.

We next consider the Arizona Enabling Act, 36 Stat. 569, the relevant language of which is also contained in our state constitution, article 20, paragraph fourth. The Enabling Act and article 20, fourth, disclaims

‘. . . all right and title . . . to all lands . . . owned or held by any Indian or Indian tribes . . . the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.’

The Arizona Supreme Court has construed the Act to disclaim only the state’s proprietary interest in Indian lands and not its governmental interest therein. *Porter v. Hall*, 34 Ariz. 308, 271 P. 411 (1928). In *Porter*, the court stated:

‘We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona.’ 34 Ariz. at 321, 271 P. at 415.

This holding of Porter has been repeatedly reaffirmed. *Kahn v. Arizona State Tax Comm'n*, 16 Ariz.App. 17, 490 P.2d 846 (1971); *Warren Trading Post Co. v. Moore*, 95 Ariz. 110, 387 P.2d 809 (1963); *Williams v. Lee*, 83 Ariz. 241, 319 P.2d 998 (1958), Rev'd on other grounds, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959); *Begay v. Miller*, 70 Ariz. 380, 222 P.2d 624 (1950); *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (1948).

Moreover, the United States Supreme Court in *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), in construing identical language in Alaska's Statehood Act, indicated that ‘absolute’ federal jurisdiction means undiminished, not exclusive jurisdiction.

[4] It is clear that the Arizona Enabling Act speaks only to the state's proprietary interest in Indian lands. Therefore, we find that it in no way precludes the state from exercising its governmental interest by way of service of process on an Indian on a reservation. At the same time, however, we note that the Act can not be read to sanction such an exercise of the state's jurisdiction in this case.

Finally, we consider the Civil Rights Act of 1968, 25 U.S.C. ss 1321—1326.² The Civil Rights Act provides a method whereby the states can assume civil or criminal jurisdiction over Indians and Indian lands by appropriately amending its statutes or constitution and by acquiring the consent of the Indian tribe over whom jurisdiction is to be assumed. As summarized in *McClanahan*, *supra*:

‘Title 25 U.S.C. s 1322(a) grants the consent of the United States to States *431 **5 wishing to assume criminal and civil jurisdiction over reservation Indians, and 25 U.S.C. s 1324 confers upon the States the right to disregard enabling acts which limit their authority over such Indians. But the Act expressly provides that the State must act ‘with the consent of the tribe occupying the particular Indian country,’ 25 U.S.C. s 1322(a), and must ‘appropriately (amend its) constitution or statutes.’ 25 U.S.C. s 1324.’ 411 U.S. at 177—78, 93 S.Ct. at 1265.

The United States Supreme Court in *Kennerly v. District Court of Ninth Judicial District of Montana*, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971), held that absent effective implementation of the Act of 1953, 67 Stat. 590 (also known as Public Law 280), which is the predecessor of the Civil Rights Act of 1968, a state is precluded from extending its jurisdiction to encompass Indians on the reservation. In *Kennerly*, Montana's exercise of civil jurisdiction over a Blackfeet Indian was held invalid in spite of the Indian tribe's consent to such jurisdiction because among other reasons, Montana has not taken the affirmative state action as was required by the Act of 1953. The Court noted that the requirement conditioning the assumption of state jurisdiction of ‘affirmative legislative action’ by the state ‘was intended to assure that state jurisdiction would not be extended until the jurisdiction to be responsible for the portion of Indian country concerned manifested by political action their willingness and ability to discharge their new responsibilities.’ 400 U.S. at 427, 91 S.Ct. at 482.

[5] For the purpose of delineating the extent of preemption, we can see no difference in the effect of non-implementation of the Act of 1953 and the Civil Rights Act of 1968. If the state has failed to take the requisite steps to confer upon itself jurisdiction under the Act, then, based on the holding in *Kennerly*, the state must be held to be without jurisdiction. Cf. *Poitra v. Demarrias*, 502 F.2d 23 (8th Cir. 1974); *Annis v. Dewey County Bank*, 335 F.Supp. 133 (D.S.D.1971); *State Securities, Inc. v. Anderson*, 84 N.M. 629, 506 P.2d 786 (1973) (dissenting opinion); *Blackwolf v. District Court of Sixteenth Judicial District*, 158 Mont. 523, 493 P.2d 1293 (1972); *Martin v. Denver Juvenile Court*, 177 Colo. 261, 493 P.2d 1093 (1972). As stated in *Annis v. Dewey County Bank*, *supra*, at 136, ‘only strict compliance with 25 U.S.C.A. Secs. 1322 (a and b), 1326, can grant jurisdiction to the states over Indian lands.’

[6] Arizona has neither amended its constitution nor passed such appropriate legislation as would confer upon its officers the power to make service of process to Indians on Indian lands. Nor has the state acquired the requisite consent of the Papago Indian tribe to do the same. It is therefore clear that Arizona has not displayed a desire to assume either jurisdiction over Indian lands or its concomitant responsibilities.

Based on the foregoing discussion of the Executive Order which vested in the Papago Indian tribe the the lands

which comprise their reservation, and , more importantly, Arizona's failure to implement the Act of 1968 to acquire the jurisdiction it now seeks to assert, it is our opinion that Arizona has no authority to extend the application of its laws to an Indian reservation. We therefore hold that the deputy sheriff was without authority to validly make the service of process while within the boundaries of the Indian reservation. The Superior Court was thereby without personal jurisdiction over the petitioner.

The opinion of the Court of Appeals is vacated and the trial court is ordered to grant the petitioner's motion to dismiss.

CAMERON, C.J., STRUCKMEYER, V.C.J., and HOLOHAN and GORDON, JJ., concur.

All Citations

113 Ariz. 427, 556 P.2d 1

Footnotes

- 1 In holding there was no personal jurisdiction over the petitioner due to an invalid service of process, we think it appropriate to point out that the trial court did indeed have subject matter jurisdiction. This has been conceded by the petitioner and is not here an issue. We further note that service of process could have validly been effected through the Papago Indian authorities who are vested with the power to serve process pursuant to tribal law.
- 2 The Civil Rights Act of 1968 repealed Section 7 of Public Law 280, the Act of 1953, 67 Stat. 588, which authorized the states to assume civil or criminal jurisdiction simply by 'affirmative legislative action.' The State of Arizona has provided in [A.R.S. ss 36—1801](#) and [36—1865](#), pursuant to Public Law 280, that its air and water pollution abatement laws will apply to all Indian lands and that the state will have civil and criminal jurisdiction to enforce the laws on the reservations.

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337 Ill.App. 175
Appellate Court of Illinois,
First District, Second Division.

HATMAKER et al.

v.

HATMAKER et al.

Gen. No. 44590.

|
March 1, 1949.

Synopsis

Appeal from Circuit Court, Cook County; Harry M. Fisher, Judge.

Action by Kathryn Clarkson Hatmaker and others against Charles Frederick Hatmaker and another. From an order quashing the service of summonses upon defendants, plaintiffs appeal.

Judgment order, insofar as it applies to defendant Charles Frederick Hatmaker, reversed and cause remanded with directions.

West Headnotes (3)

[1] **Process** 🔑 **Mode and sufficiency of service**

Where bellboy knew that defendant was in his hotel rooms when he took deputy sheriff to the door thereof, defendant refused to open the door, whereupon deputy sheriff stated that he was from the sheriff's office and had summonses for them, that, if defendant would not open the door, deputy sheriff would place summonses under the door, and that he did so, and defendant picked up the summonses, read them, and understood their nature, service of summonses complied with the statute permitting service upon an individual defendant by leaving a copy thereof with defendant personally. Smith-Hurd Stats. c. 110, § 137.

[5 Cases that cite this headnote](#)

[2] **Process** 🔑 **Weight and sufficiency**

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

[2 Cases that cite this headnote](#)

[3] **Process** 🔑 **Weight and sufficiency**

Where defendant who occupied a hotel room, upon being informed that deputy sheriff was at the door with summonses, refused to open the door and, after deputy sheriff had shoved the copy of summonses under the door, defendant decided to accept service, record established that defendant acquiesced in manner of service adopted by deputy sheriff and that his motion to quash for failure of the deputy sheriff to see the defendant personally was result of an afterthought. Smith-Hurd Stats. c. 110, § 137.

[7 Cases that cite this headnote](#)

Attorneys and Law Firms

*176 **345 Ehrlich & Cohn, of Chicago (Aaron H. Cohn, of Chicago, of counsel), for appellants.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago (William H. Symmes, David Jacker, and Charles M. Rush, all of Chicago, of counsel), for appellees.

Opinion

SCANLAN, Justice.

An appeal by plaintiffs from an order of the Circuit court of Cook county quashing the service of summonses upon defendants.

A summons was filed in the case which shows a return of the sheriff of Macon county, Illinois, that he had 'duly served the within summons on the defendant Charles Frederick Hatmaker by leaving a copy thereof personally with the said defendant the 18th day of September, 1947.' In view of the attitude of plaintiffs it is unnecessary to consider the return

made by the sheriff as to the defendant Jane MacDonald Hatmaker. Defendants filed a special and limited appearance for the sole and only purpose of objecting to the service upon them and to the jurisdiction of the court over them. Plaintiffs state that they 'seek to uphold the validity of the service of summons on the defendant Charles Frederick Hatmaker only, and *177 limit this appeal to the action of the lower court in quashing the service of summons as to him.' The motion to quash insofar as it relates to the service of summons upon defendant Charles Frederick Hatmaker alleges: 'A. C. Ammann, Sheriff of Macon County, did not serve the defendant, Charles Frederick Hatmaker by leaving a copy of the summons personally with said defendant and said defendant was not personally served with summons at any time.' In support of the motion to quash defendants filed affidavits of Jane MacDonald Hatmaker and Charles Frederick Hatmaker, but we need consider only the affidavit of Hatmaker, which is as follows:

****346** 'Charles Frederick Hatmaker, first being duly sworn deposes and says that he is and for more than 16 years last past has been continuously a resident of the City of New York, State of New York; that on September 18, 1947, affiant and his wife, Jane MacDonald Hatmaker, were temporarily in Decatur, Illinois, for the purpose of visiting affiant's wife's sister who was seriously ill. That affiant and his wife were stopping at the Hotel Orlando in Decatur, Illinois, on said date and were registered as regular guests of this hotel. Affiant further states that no copy of a summons in the case of 'Kathryn Clarkson Hatmaker, David Burgoyne Hatmaker, a minor, by Kathryn Clarkson Hatmaker, his mother and next friend, and Joyce Clarkson Hatmaker, a minor, by Kathryn Clarkson Hatmaker, her mother and next friend v. [Charles Frederick Hatmaker and Jane MacDonald Hatmaker](#), Number 47 C 11847 in the Circuit Court of Cook County, was left with affiant on said date or on any other date. Affiant further states that two copies of said summons were placed under the closed door of affiant's hotel room on said date by a person or persons unknown to affiant. Affiant further states that on said date or on any other date, no person informed affiant that he was an officer authorized to *178 serve any summons nor did any person inform affiant that such person had any summons to be served upon affiant, nor did any person on said date or any other date inform affiant that he was attempting to serve summons upon affiant. Affiant further states that neither on said date nor on any other date did any person inform affiant of the contents of any summons.'

Plaintiffs filed an answer to the motion to quash, which alleges, inter alia, that 'the court has jurisdiction over the

person of each of the defendants herein,' and that 'the Sheriff of Macon County, Illinois served the defendant Charles Frederick Hatmaker by leaving a copy of the summons herein personally with the said defendant on September 18, 1947.' The answer sets up the return of the sheriff. In support of the answer plaintiffs filed an affidavit of Charles B. Hill, which reads as follows:

'Charles B. Hill, being first duly sworn, on oath deposes and says that he resides at 1115 East Moore Street, Decatur, Illinois; that on September 18, 1947 he was and still is a deputy sheriff of Macon County, Illinois; that on September 18, 1947, he, in the company of one Veldon Turner, attempted to serve summons on Charles Frederick Hatmaker and Jane MacDonald Hatmaker, in the following manner:

'The said Veldon Turner, who was and is a bellboy at the Orlando Hotel, Decatur, Illinois, took affiant to the apartment in said hotel then occupied by Charles Frederick Hatmaker and Jane MacDonald Hatmaker, his wife; that the said Turner knocked upon the door and asked Mr. Hatmaker to open the door to allow a gentleman who was standing there to come in and talk with him; that said Hatmaker replied 'Let him go downstairs on the house telephone and talk to me, I will not open the door'; that affiant thereupon stated to the said Hatmaker through the door that affiant was from the Sheriff's office and that he had two summonses for them, and that if he would not open the door *179 he would serve them under the door and simultaneously pushed said summonses under the door; whereupon the said Hatmaker replied 'All right'; that thereafter affiant mailed copies of said summonses to the said Charles Frederick Hatmaker and Jane MacDonald Hatmaker, in addition to the two copies which he left under the door.'

Plaintiffs also filed in support of the answer the affidavit of Veldon Turner, which reads as follows:

'Veldon Turner, being first duly sworn, on oath deposes and says that he resides at 1429 East Vanderhoof Street, Decatur, Illinois; that he was employed as a bellboy by the Orlando Hotel, Decatur, Illinois, for some considerable time before September 18, 1947 and is still so employed; that on September 18, 1947 Charles B. Hill requested affiant to take him to the rooms of Charles Frederick Hatmaker and Jane MacDonald Hatmaker, which he did, and affiant having had acquaintance with the said Charles Frederick Hatmaker, knew his voice and knew him to be inside his rooms; that affiant told said Hatmaker that there **347 was a gentleman outside who wished to talk to him and to please open the door; that Mr. Hatmaker refused to open the door; that thereupon Mr.

Hill said that he would place the summonses under the door and did so, and Mr. Hatmaker said 'All right.' Whereupon, both affiant and Mr. Hill withdrew.'

[1] [2] [3] Section 13 of the Illinois Civil Practice Act (Ill.Rev.Stat.1947, ch. 110, par. 137), insofar as it applies to the instant case, provides:

'(Service on individuals.) Except as otherwise expressly provided herein, service of summons upon an individual defendant in any civil action shall be made (1) by leaving a copy thereof with the defendant personally * * *.'

Plaintiffs strenuously contend that under the particular facts of this case the service complied with *180 the statute, *especially in view of defendant's acquiescence in the procedure followed by the deputy sheriff*. Plaintiffs call our attention to the fact that the motion to quash insofar as it applied to defendant Charles Frederick Hatmaker was supported only by the affidavit of said defendant, and they insist that the motion amounted to no more than an attempt to overcome the return of the sheriff by the unsupported affidavit of said defendant. Defendants state that the rule is that the return of the sheriff on the summons is not conclusive evidence of the service and that an alleged service will be set aside where it is shown by clear and satisfactory evidence that the return is false; that in the instant case 'the sheriff's return of personal service is overcome by the affidavit of his own deputy.' The essential facts surrounding the alleged service are clear, and we have considered them all in passing upon this appeal. Counsel for both sides state that there is no decision in this State that squarely applies to the question before us. Plaintiffs cite a number of cases of the sister States in support of their position and while none of them is squarely in point they do show that the courts in passing upon questions of service of summonses attach importance of the fact that the party alleged to have been served was attempting to evade service at the time of the alleged service. Defendants state that 'the simple question presented in this case is whether a defendant can be served personally by placing a copy of a summons under a closed outer door.' If this statement contained all of the essential facts the question would, of course, be answered in the negative, but the determination of the question before us requires a consideration of all of the facts surrounding the alleged service. The facts, as we find them, are: Veldon Turner, a bellboy at the Orlando Hotel, in Decatur, Illinois, was requested by Charles B. Hill, a deputy sheriff, to take him to the rooms of defendants Charles Frederick Hatmaker and *181 his wife, and that Turner did so; that the latter was acquainted with defendant Hatmaker,

knew his voice, and knew that said defendant was in his rooms when he took the deputy sheriff to the door of the rooms; that Turner told the defendant that there was a gentleman outside who wished to talk to him and to please open the door, and that Hatmaker refused to open the door; that the deputy sheriff thereupon stated to the said defendant, 'through the door,' that he was from the sheriff's office and had two summonses for them and that if he would not open the door he 'would place the summonses under the door and did so, and Mr. Hatmaker said 'All right.'" Defendant admits in his affidavit that two copies of the summonses *in the case in question* were placed under the closed door of his hotel room on said date by a person or persons unknown to him. It is clear from his affidavit that he picked up the summonses, read them, and understood their nature. That he turned the summonses over to his lawyers is evident from the motion to quash service of summons. After plaintiffs filed the two affidavits in support of their answer to the motion to quash the said defendant filed no denial of the statement of the deputy sheriff that defendant stated that he would not open the door, and that the deputy sheriff thereupon stated to the defendant, through the door, that he was from the sheriff's office and that he had two summonses for them and that if he would not open the door he would serve them under the door, and that simultaneously he pushed said summonses under the door, **348 whereupon defendant replied, 'All right.' Defendants cite no case in support of their argument that under the statute the sheriff must see the person he is serving at the time of the service. They cite the old common law rule that every man's dwelling house is looked upon by the law as his castle, but we are unable to see how that law has any application to the question before us. The statute provides that *182 service of summons shall be made '(1) by leaving a copy thereof with the defendant personally.' We hold that under the particular facts of this case the service complied with the statute. But even if we were to hold that under a strict compliance with the Act the sheriff had to see the defendant when he left the copies of the summonses with him, we would further hold that the defendant acquiesced in the manner of service adopted by the deputy sheriff and in effect expressed his satisfaction with it. A reasonable inference from the facts and circumstances surrounding the service is that while the defendant at first tried to evade service he finally concluded, after the deputy sheriff had shoved the copies of the summonses under the door, to accept the service, and that the motion to quash was the result of an afterthought. If defendants are right in their contention that the sheriff, under the Act, is always obliged to see the party when he serves a copy of the summons upon him, then, in the instant case, even

if the defendant had *requested* the deputy sheriff to shove the copies of the summonses under the door such service would not be good under the Act. The courts do not favor those who seek to evade service of summons, and hence the settled rule that 'The stability of judicial proceedings, however, requires that the return of an officer, made in the due course of his official duty and under the sanction of his official oath, should not be set aside merely upon the uncorroborated testimony of the person on whom the process has been served, but only upon clear and satisfactory evidence. [Davis v. Dresback](#), 81 Ill. 393; [Kochman v. O'Neill](#), *supra* [202 Ill. 110, 66 N.E. 1047].' [Marnik v. Cusack](#), 317 Ill. 362, 364, 148 N.E. 42, 43. The able counsel for the defendant realize, apparently, that the claim of the defendant that the sheriff did not leave a copy of the summons with him personally sounds absurd, in view of the facts surrounding the service, and they seek to justify the defendant's claim by arguing that to sustain the service in the

instant *183 case would open the way to many questionable claims of service.

The judgment order of the Circuit court of Cook county insofar as it applies to defendant Charles Frederick Hatmaker is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Judgment order insofar as it applies to defendant Charles Frederick Hatmaker reversed and cause remanded with directions.


SULLIVAN, P. J., and FRIEND, J., concur.

All Citations

337 Ill.App. 175, 85 N.E.2d 345

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2 Cal.App.2d 578
District Court of Appeal, Second
District, Division 2, California.

Ex parte BALL.

Cr. 2640.

|
Dec. 4, 1934.

Synopsis

Petition of E. R. Ball for a writ of habeas corpus.

Writ discharged, and petitioner remanded.

West Headnotes (3)

[1] **Process** **Mode and Sufficiency of Service**

Where process server, who had previously served petitioner, approached petitioner with process in hand similar to that previously served, and stated while 12 feet away that he had another one of “those things” for petitioner, and threw process at petitioner when petitioner began to walk away, and stated that petitioner was served, personal service was made on petitioner.

[11 Cases that cite this headnote](#)

[2] **Public Utilities** **Notice and Appearance**

Railroad commission is its own judge as to service of its process, and District Court of Appeal will not interfere with its determination unless facts fail to show any substantial evidence of service.

[1 Cases that cite this headnote](#)

[3] **Process** **Mode and Sufficiency of Service**

When men are within easy speaking distance of each other, and facts occur that would convince reasonable man that personal service of legal document is being attempted, service cannot be

avoided by denying service and moving away without consenting to take document in hand.

[13 Cases that cite this headnote](#)

Attorneys and Law Firms

****411 *578** Leland S. Bower, of Los Angeles, for petitioner.

Roderick B. Cassidy, of San Francisco, and Rex Boston, of Los Angeles, for respondent.

Opinion

STEPHENS, Presiding Justice.

Petitioner was legally confined to the county jail unless personal service of process from the railroad commission had not been made.

[1] The facts are as follows: Petitioner, an active business man, had been in litigation before the commission theretofore and had had legal papers from the commission served upon him which were of similar appearance to the process in this proceeding. The process server, who had previously served petitioner, approached the petitioner at the same place he had formerly served him, and when within about ***579** twelve feet of him, and with the process in his hand, said: “I have here another one of those things for you.” Petitioner replied: “You have nothing for me,” and started to walk away. While petitioner was moving away in a sidewise manner and looking at the server, the server handed or tossed the process toward petitioner, it falling a few feet from him, at the same time saying, “Now you are served.” Petitioner did not pick it up, but continued to walk away from the premises.

[2] The commission assumed the jurisdiction sought to be obtained by personal service of the process, and we think rightfully so. In the first place the commission is its own judge as to the service of its process, and we cannot interfere with this power unless the ****412** facts should fail to show any substantial evidence of service.

[3] We take it that, when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand.

All Citations

The writ is discharged, and petitioner is remanded.

2 Cal.App.2d 578, 38 P.2d 411

We concur: CRAIL, J.; SCOTT, Justice pro tem.

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134 Ariz. 361
Court of Appeals of Arizona,
Division 1, Department A.

Paul LANE and Elfrieda Lane, husband
and wife, Plaintiffs-Appellants,

v.

ELCO INDUSTRIES, INC., an Illinois
corporation, Defendant-Appellee.

No. 1 CA-CIV 5435.

|
Dec. 16, 1982.

Synopsis

Plaintiffs brought product liability action against two named defendants as well as fictitious defendants described as entities and individuals “who participated in design, manufacture, assembly, distribution, and/or sale” of product. After discovering name of actual manufacturer of product, plaintiffs caused alias summons to be served upon such manufacturer within one year of filing suit, but after running of statute of limitations for product liability action. The Superior Court, Maricopa County, Cause No. C-384894, Howard F. Thompson, J., granted manufacturer's motion to dismiss, and plaintiffs appealed. The Court of Appeals, Froeb, J., held that: (1) alias summons gave manufacturer notice that it was being served as defendant previously designated by fictitious name; (2) manufacturer which failed to present issue of whether plaintiffs properly used fictitious defendant rule in motion to dismiss could not raise issue for first time on appeal; (3) where plaintiffs properly designated fictitious defendant, procedural rules concerning amendment of pleadings was inapplicable; and (4) manufacturer could be served with alias summons within one year of filing of complaint, notwithstanding that statute of limitations had run prior to such service.

Order of dismissal vacated, and case remanded.

Corcoran, J., specially concurred and filed opinion.

West Headnotes (6)

[1] **Process** 🔑 Mode and sufficiency of service

Object of service of process is to give defendant notice of proceedings against him, and where suit is brought against fictitious defendant, it must be made known to defendant when he is served with process that he is defendant and is being served as fictitious defendant. 16 A.R.S. Rules Civ.Proc., Rule 10(f).

[2] **Corporations and Business Organizations** 🔑 Name on form

Where copy of alias summons was served upon corporation in its corporate name, and indicated that it had been previously referred to as fictitious defendant, alias summons gave corporation notice that it was being served as defendant who had been previously designated by fictitious name, notwithstanding that copy of complaint served with summons had not been amended to change name of fictitious defendant to that of corporation. 16 A.R.S. Rules Civ.Proc., Rules 10(f), 15.

[2 Cases that cite this headnote](#)

[3] **Process** 🔑 Presumptions and burden of proof

Plaintiff who has named fictitious defendant pursuant to Rules of Civil Procedure must bear burden of showing propriety of doing so, but only after defendant raises issue by appropriate motion. 16 A.R.S. Rules Civ.Proc., Rule 10(f).

[4] **Appeal and Error** 🔑 Sufficiency and scope of motion

Corporate defendant's claim that plaintiffs failed to show propriety of originally naming corporation as fictitious defendant, not presented in its motion to dismiss, could not be raised for first time on appeal. 16 A.R.S. Rules Civ.Proc., Rule 10(f).

[1 Cases that cite this headnote](#)

[5] **Parties** 🔑 Amendment of Defects

Procedural rules covering use of fictitious defendants and providing for amendment of pleadings are derived from different sources

and are intended to cover different situations, and where plaintiff properly designates fictitious defendant originally, designation of actual defendant upon discovery of its identity is not “change” of parties, and thus, rule providing for amendment of pleadings is inapplicable; amendment of pleading rule may be implicated, however, where plaintiff’s use of fictitious defendant is improper. 16 A.R.S. Rules Civ.Proc., Rules 10(f), 15.

2 Cases that cite this headnote

[6] **Limitation of Actions** 🔑 Subsequent, alias, or pluries process

Where complaint properly alleging claim against fictitious defendant is filed within statute of limitations, such defendant may be served within one year of filing of complaint by use of alias summons in which true name is set forth, notwithstanding that service of alias summons may be after running of statute. 16 A.R.S. Rules of Civ.Proc., Rule 10(f); [A.R.S. § 12-542](#).

Attorneys and Law Firms

****651 *362** Langerman, Begam, Lewis & Marks by Elliot G. Wolfe, Frank Lewis, Phoenix, for plaintiffs-appellants.

****652 *363** O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears by Steven D. Smith, Scott A. Salmon, Phoenix, for defendant-appellee.

OPINION

FROEB, Judge.

In this case we review the practice of naming “fictitious” defendants under rule 10(f), Rules of Civil Procedure, and the extent to which rule 10(f) is interrelated with rule 15 regarding the amendment of pleadings. The appeal is from an order dismissing the product liability complaint filed by appellants Paul and Elfrieda Lane (the Lanes) against appellee Elco Industries, Inc. (Elco) on the ground that the claim was barred by the statute of limitations.

On March 22, 1977, Paul Lane was injured at work while using a power actuated stud driver, loaded with a drive pin and a .22 calibre powder charge. While Lane was driving a nail into the cement in order to affix a metal railing to a cement post, the head of the nail fractured and penetrated his left eye, causing injury and eventual enucleation.

Lane had purchased the stud driver from W.W. Grainger, Inc., in Miami, Florida. The name and address of the Dayton Electric Manufacturing Company appeared on the metal container for the stud driver and on the individual cardboard boxes in which the powder charges and drive pins were packaged and sold. The word “Dayton” was also engraved on the stud driver’s handle.

On March 21, 1979, within the two-year period of limitations prescribed by law,¹ the Lanes filed suit alleging that Paul Lane was injured as the result of defects in the manufacture and/or design of the stud driver, drive pins and/or powder charges, and specifically named Dayton Electric Manufacturing Company, Inc., and W.W. Grainger, Inc., as defendants in the action. Also named, as fictitious defendants, were Black Corporations I through V, White Partnerships I through V, and John Does and Jane Does I through X. These fictitious defendants were more particularly described in the complaint as “business entities and individuals who participated in the design, manufacture, assembly, distribution and/or sale of the stud driver, drive pins and .22 calibre powder loads which caused the plaintiff’s injury.”

Defendant Grainger, an Illinois corporation, was served with a copy of the summons and complaint on May 16, 1979. Grainger filed an answer and asserted a third-party claim for indemnification from Elco Industries, Inc., whom Grainger alleged to be the actual manufacturer of the stud driver. On August 3, 1979, after the two-year period of limitations had expired, the Lanes caused an alias summons to be issued, addressed to “BLACK CORPORATION I, whose true name is: ELCO INDUSTRIES, INC., a Delaware corporation.” A copy of the alias summons and copies of the original summons and complaint were served upon Elco on August 24, 1979. No attempt was made by the Lanes to amend the complaint.

Elco filed a motion to dismiss or to strike the service of process and underlying pleadings served upon it. The motion was granted and judgment of dismissal was entered on March 26, 1980. The Lanes appeal from the judgment of dismissal.

Elco urged the trial court to dismiss the complaint for the reason that failure to serve Elco with a copy of an amended complaint which actually named Elco Industries, Inc., as a named defendant rendered the service of process null and void. The same argument was made and rejected by this court in *Brennan v. Western Savings and Loan Association*, 22 Ariz.App. 293, 526 P.2d 1248 (1974). In that case, we stated:

Appellants' contention that Rule 10(f) of the Rules of Civil Procedure requires an amendment to the pleadings to show the true name of the defendant actually *364 **653 served is belied by the wording of the rule. It merely provides that "the pleading or proceeding *may* be amended.... [emphasis added]" There is no requirement that an amendment be made.

Id. at 297, 526 P.2d at 1252.

[1] [2] The object of service of process is to give the defendant notice of the proceedings against him. See *Safeway Stores, Inc. v. Ramirez*, 99 Ariz. 372, 409 P.2d 292 (1965). Where suit is brought against a fictitious defendant, it must be made known to the defendant when he is served with process that he is a defendant and is being served as a fictitious defendant. *Id.* That was done here. The alias summons clearly gave Elco notice that it was being served as a defendant who had been previously designated by a fictitious name.

Elco also urged the trial court to dismiss the complaint on the ground that it was barred by the two-year statute of limitations found in A.R.S. § 12-542. Although the Lanes filed their claim within the two-year period, they did not serve Elco with process until almost two-and-one-half years after the injury.

In support of their argument that their complaint was not barred by the statute of limitations, the Lanes urged the following: (1) a defendant whose true name is unknown to the plaintiff may be designated by any name in the pleadings, rule 10(f)²; (2) the statute of limitations is tolled by the commencement of an action, *Murphey v. Valenzuela*, 95 Ariz. 30, 386 P.2d 78 (1963), and a civil action is commenced by the filing of a complaint, rule 3; and (3) an action does not abate if the defendant is served within one year of the date of the filing, rule 6(f).³ Therefore, argue the Lanes, because they filed their complaint within the two-year statute of limitations and named Elco on that complaint as "Black Corporation" and served process on Elco within one year from the filing of the complaint, their complaint against Elco was not barred by the statute of limitations.

In response, Elco first argues that it was the Lanes' burden to prove to the trial court that the statute of limitations was tolled, relying on *Engle Brothers v. Superior Court*, 23 Ariz.App. 406, 533 P.2d 714 (1975). Elco contends that the Lanes cannot argue for the first time on appeal that they properly invoked the fictitious defendant procedure because they failed to prove their right to designate Elco by a fictitious name to the trial court. Elco goes on to argue that it was not a proper fictitious defendant under rule 10(f) because the Lanes made no showing that (1) they knew of the existence of Elco but merely lacked knowledge as to its name, see *Vocke v. City of Dayton*, 36 Ohio App.2d 139, 303 N.E.2d 892 (1972), or that (2) their ignorance of the true name of Elco could not have been removed by some inquiry or resort to information that was easily accessible, *Gonzalez v. Tidelands Motor Hotel Co., Inc.*, 123 Ariz. 217, 598 P.2d 1036 (App.1979).

Whether the statute of limitations was tolled in this instance is dependent upon whether the Lanes properly used the procedure of rule 10(f) to name Elco as a fictitious defendant. The threshold question then is whether at some point the Lanes must demonstrate the propriety of using rule 10(f) and, if so, when.

[3] [4] We hold that a plaintiff who has named a fictitious defendant under rule 10(f) must bear the burden of showing the propriety of doing so. The defendant must first raise the issue, however, by appropriate motion. Such was not the case here. While Elco filed its motion to dismiss the complaint on various grounds, the specific question now discussed was not presented. It may not be raised for the first time on appeal. *365 **654 *Pool v. Peil*, 22 Ariz.App. 417, 528 P.2d 168 (1974). We therefore proceed on the assumption that the Lanes properly named Elco as a fictitious defendant under rule 10(f).

Elco's second argument for dismissal of the complaint is that the Lanes failed to comply with rule 15(c) which would allow a subsequent amendment naming Elco to relate back to the original complaint. Rule 15(c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received

such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Elco argues that rule 15(c) is necessarily involved when a fictitious defendant is named in the complaint and the true name is later substituted, referring us to *Gardner v. Fithian*, 128 Ariz. 353, 625 P.2d 942 (App.1981); *Gould v. Tibshraeny*, 21 Ariz.App. 146, 517 P.2d 104 (1974); and *Hartford Insurance Group v. Beck*, 12 Ariz.App. 532, 472 P.2d 955 (1970). We discuss those cases later.

The Lanes point out that rule 15(c) applies to situations where the complaint is amended to *change* parties. *Hughes Air Corporation v. Maricopa County Superior Court*, 114 Ariz. 412, 561 P.2d 736 (1977).⁴ They argue that they did not file an amended complaint because they did not seek to *change* parties. Rather, they designated Elco by a fictitious name at the time of filing because Elco's true name was unknown to them. When they subsequently acquired knowledge of the defendant's true name, they caused an alias summons to be issued in which the defendant named fictitiously in the original complaint was designated by its true name. Therefore, argue the Lanes, rule 15(c) is inapplicable to this case and to complaints naming fictitious defendants in general.

[5] We agree with the Lanes that rules 10(f) and 15(c) are derived from different sources and are intended to cover different situations. Rule 10(f) was originally enacted as a statute and was later transformed into a rule of procedure. See Section 426, Revised Statutes of 1913, Civil Code. Rule 15(c), however, was adopted from the Federal Rules of Civil Procedure. The specific provision in rule 15(c) which deals with changing parties was added to both the federal and Arizona rules by amendment in 1966. It is also important to note that the federal rules do not have a provision comparable to rule 10(f)⁵ and federal practice in Arizona prohibits the designation of parties by fictitious names. Rule 10(d), Rules of Practice, United States District Court for the District of Arizona.

***366 **655** Rule 15(c) was amplified in 1966 to more clearly state when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall “relate back” to the date of the original pleading. 12 Wright & Miller, Federal Practice and Procedure,

Advisory Committee Note to the 1966 amendment to rule 15(c), Appendix C at 394 (1973). The words “changing parties” have been construed to include adding or deleting parties, as well as substituting them. 6 Wright & Miller, *Federal Practice and Procedure* § 1498 at 511 (1971); *Travelers Indemnity Co. v. United States*, 382 F.2d 103 (10th Cir.1967).

Rule 10(f) applies to a different situation, however, and has given rise to what is known as “Doe defendant practice.” See Hogan, *California's Unique Doe Defendant Practice: A Fiction Stranger Than Truth*, 30 Stan.L.Rev. 51 (1977). The wording of rule 10(f) implies that the plaintiff has at least some idea of the existence of a defendant, but is without knowledge of the *name*. There is no need to implicate rule 15(c) to provide for relation back since a party is not being changed or added.

A caveat is appropriate here. When a plaintiff uses rule 10(f) to plead a claim against unknown defendants in circumstances where he has no idea that there are such parties against whom a claim might be asserted (i.e., when he is merely using rule 10(f) as an exercise in precaution), he is in actuality adding a party rather than merely inserting the name of a party already identified in the original complaint. In such a situation rule 10(f) would not be applicable and the plaintiff would need to comply with rule 15(c) if the amendment of the new party is to relate back to the original complaint. Thus, rule 15(c) may be implicated where rule 10(f) is improperly used. Cf. *Gonzalez v. Tidelands Motor Hotel Co., Inc.*, *supra*. We previously pointed out that in this case Elco did not challenge the use of rule 10(f) in the trial court.

Elco relies upon several cases mentioned earlier. In *Gould v. Tibshraeny*, *supra*, the plaintiff filed an amended complaint and apparently urged the application of both rules 15(c) and 10(f) in order that the amendment substituting the defendants Tibshraeny for the previously designated fictitious defendants would relate back to the date of the original pleading. *Gould* did not present the clear issue of whether rule 15(c) was necessarily applicable in a situation such as that which is before us.

In *Hartford Insurance Group v. Beck*, *supra*, John Doe defendants were named originally in the complaint. Plaintiff filed an amended complaint after the statute of limitations had run, naming the defendants by their correct names. The trial court granted summary judgment in favor of these defendants on the ground that they had not received notice of suit prior

to the running of the limitation period. The court of appeals affirmed by holding that the amendment to the complaint did not relate back to the original complaint because rule 15(c) had not been complied with, i.e., there was no showing the defendants knew or should have known of the claim. *Hartford* appears to deal with the interrelationship of rules 10(f) and 15(c), but, as with *Gould*, the plaintiff had in fact filed an amended complaint and appears to have implicated both rules 10(f) and 15(c). In this posture, the court rejected reliance solely upon rule 10(f) to sustain the amended complaint. We do not think the precise question here was dealt with by the court in *Hartford*.

In *Gardner v. Fithian*, *supra*, plaintiffs amended their complaint pursuant to rule 15(c) to substitute a named defendant for a John Doe defendant. In opposition to a motion based on the statute of limitations plaintiffs argued the effect of the tolling statute, A.R.S. § 12-501, based on the defendant's absence from the state. The decision does not deal with rule 10(f) or its use and is therefore not relevant to this case.

Finally, our conclusion is supported by discussion in the Arizona Supreme Court decision, *Montano v. Scottsdale Baptist *367 **656 Hospital, Inc.*, 119 Ariz. 448, 581 P.2d 682 (1978). In *Montano*, the court found it unnecessary to decide whether a plaintiff who had timely filed a complaint and effectively served fictitiously named defendants after the statute of limitations had run, but within the one-year period for service as prescribed in rule 6(f), would find his claim barred.⁶ Nevertheless, the court suggested that had it reached that issue it might well have found that the plaintiff's claim against the fictitiously named defendants would not have been barred by the statute of limitations. The court said that to hold otherwise

would work a discrimination against a plaintiff who files against an unknown defendant. In that case, a plaintiff has only the remainder of the two-year period in which to serve the defendants with process, whereas in the case of known defendants there is concededly two years to file the complaint and a full year thereafter to "commence" the action by serving process. Such a discriminatory distinction ought not be found unless a different result could not reasonably be reached.

119 Ariz. at 451, 581 P.2d at 685.

We point out that in most cases it makes little difference, from the defendant's standpoint, whether he was named in

the complaint by his true name or by a fictitious name since he generally will not be on notice of the action until he is served with a summons and copy of the complaint. Thus, if the fictitiously named defendant is served within one year from the filing of the complaint, he normally will be at no greater disadvantage than the named defendant served within that time.

[6] In summary, we hold that where rule 10(f) is properly used to allege a claim against a fictitious defendant, it is not necessary for a plaintiff to comply with rule 15(c). Where so named in a complaint filed within the statute of limitations, such a defendant may be served within one year of the filing of the complaint by the use of an alias summons in which the true name is set forth.

For the foregoing reasons, the order of dismissal is vacated and the case is remanded for further proceedings.

OGG, P.J., concurs.

CORCORAN, Judge, specially concurring:

For years careful practitioners in an excess of caution have routinely added fictitious parties-defendants to their complaints.

It appears to be common practice in a few states, notably California and Arizona, to name "Doe" defendants in nearly ever lawsuit filed. Known defendants are named, followed by a listing of "Does" one to ten, or whatever number is desired.

Comment, *Unknown Parties: The John Doe Defendants*, 1970 Ariz.St.L.J. 256, 259 n. 22. This practice has been adopted for a number of good reasons, including that demonstrated in this case.

In a highly specialized international technological and industrial community not only products themselves but a myriad of components may cause injury leading to a claim of liability. In this complex international community, economic, financial, legal, tax, insurance, public relations, potential liability, and a host of other considerations unrelated to the function to be performed in creating products may dictate the form and relationship of national and multi-national corporations and other organizations, some of which do business under assumed names, which must first be identified through discovery before the appropriate parties-defendants can be named. The injured party may have no indication of

the *existence* of additional parties-defendants who might be *368 **657 liable and to anticipate this as a fact by naming fictitious defendants is only reasonable.

In my view, a fair interpretation of rules 10(f) and 15(c) and *Montano v. Scottsdale Baptist Hospital, Inc., supra*, would place a plaintiff in the same posture in filing his complaint against a fictitious defendant where he reasonably believes

there is such a defendant but does not have knowledge of his identity, as where reasonable speculation would lead the plaintiff to add fictitious parties-defendants because there *may* be such parties which later discovery will identify.

All Citations

134 Ariz. 361, 656 P.2d 650

Footnotes

- 1 [A.R.S. § 12-542](#) provides a two-year statute of limitations for actions “[f]or injuries done to the person of another.”
- 2 Rule 10(f) states:
When the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. When his true name is discovered the pleading or proceeding may be amended accordingly.
- 3 Rule 6(f) states: “An action shall abate if the summons is not issued and served, or the service by publication commenced within one year from the filing of the complaint.”
- 4 In *Hughes*, plaintiffs mistakenly named the defendant as Hughes Aircraft Company, a Delaware corporation having no direct connection with Hughes Air Corporation, the true defendant. After the statute of limitations had run, plaintiffs sought leave to amend the complaint and correctly name Hughes Air Corporation as the appropriate defendant. Hughes Air Corporation then moved to dismiss on the ground that the prerequisites for changing parties under rule 15(c) had not been met. Following a denial of its motion to dismiss by the trial court, the defendant filed a special action. The Arizona Supreme Court remanded with directions to grant the corporation's motion to dismiss.
- 5 This explains why the federal courts have ruled that replacing a “John Doe” caption with the party's real name amounts to “changing a party” within the meaning of rule 15(c), and the amendment thus relates back only if all three conditions specified in rule 15(c) have been satisfied. See, e.g., [Varlack v. SWC Caribbean, Inc., 550 F.2d 171 \(3rd Cir.1977\)](#); [Sassi v. Breier, 76 F.R.D. 487 \(E.D.Wis.1977\)](#), *aff'd*, [584 F.2d 234 \(7th Cir.1978\)](#); [Williams v. Avis Transport of Canada, Ltd., 57 F.R.D. 53 \(D.C.Nev.1972\)](#).
- 6 The defendants failed to assert the bar of the statute of limitations until two years after they had answered the complaint. Thus, they were deemed to have waived the statute of limitations defense.



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Declined to Follow by *Burroughs v. APS Intern., Ltd.*, Tex.App.-Hous. (14 Dist.), May 30, 2002

7 Ariz.App. 226

Court of Appeals of Arizona.

Clyde William MARSH, Sr., and Anna
Christine Marsh, his wife, Appellants,

v.

R. B. HAWKINS and E. M. Hawkins
also known as E. M. Campbell,
individually and as Partners of
Hawkins & Campbell and Hawkins and
Campbell, a partnership, Appellees.

No. 1 CA-CIV 517.

|
Feb. 28, 1968.|
Rehearing Denied April 1, 1968.|
Review Denied April 30, 1968.**Synopsis**

Plaintiffs brought action against licensed process servers for false return of service of summons. The Superior Court, Maricopa County, Cause No. 186814, Donald Daughton, J., entered judgment against plaintiffs and they appealed. The Court of Appeals, per McGuire, Superior Court Judge, with two judges concurring specially, held that allegation that process server's affidavit was erroneous, untrue and that he was mistaken in making the affidavit did not state a cause of action to permit recovery by plaintiffs whom server had intended to serve but allegation that process server knew affidavit to be false and to contain false statements did state a cause of action.

Judgment affirmed in part and reversed in part and case remanded.

West Headnotes (10)

[1] Contracts Agreement for Benefit of Third Person

No contractual relationship exists between persons accepting license as private process servers and the person whom they certify they have served process on, and the person is not third-party beneficiary and can not bring action against servers for false return of service of summons on the basis of contract. *A.R.S. § 11-445 and subsec. F.*

[1 Cases that cite this headnote](#)**[2] Courts** Ministerial officers in general

Private process server, as an officer of court, is subject to substantially the same liability as imposed by common law on sheriff or constable when performing similar functions. *A.R.S. § 11-445, and subsec. F.*

[2 Cases that cite this headnote](#)**[3] Courts** Ministerial officers in general

Process server is not an absolute insurer of truth of return. *A.R.S. § 11-445 and subsec. F.*

[1 Cases that cite this headnote](#)**[4] Courts** Ministerial officers in general

Allegation that process server's affidavit was untrue and that he was mistaken in making the affidavit did not state a cause of action to permit recovery by plaintiffs whom server had intended to serve but allegation that process server knew affidavit to be false and to contain false statements did state a cause of action. *A.R.S. § 11-445 and subsec. F.*

[1 Cases that cite this headnote](#)**[5] Limitation of Actions** Injuries to Property

Statute of limitations applying to action for false return of service of summons was one

governing trespass for injury done to estate or property of another permitting commencement and prosecution of action within two years after cause of action accrued. A.R.S. §§ 12-542, 12-543(3).

[1 Cases that cite this headnote](#)

[6] Limitation of Actions — Notice of repudiation

Statute of limitations for false return of service of summons did not run until party served discovered or was put on reasonable notice of the breach of the trust which process server owed to party served. A.R.S. §§ 12-542, 12-543(3).

[1 Cases that cite this headnote](#)

[7] Limitation of Actions — Nature of harm or damage, in general

Mere fact that person knows that an action has been filed against him does not impose on him any duty to search record at intervals to see whether a false return of service of summons has been made.

[1 Cases that cite this headnote](#)

[8] Res Judicata — Defects in Pleading

A minute entry dismissing complaint is an interlocutory order and does not operate as res judicata. 16 A.R.S. Rules of Civil Procedure, rule 58(a).

[9] Res Judicata — Particular Grounds or Defects, Determinations Premised on

Minute entry granting defendants' motion to dismiss complaint by party who was intended to be served and who alleged that process server did not serve him but made false return of service of summons did not operate as res judicata to bar subsequent action on amended complaint. 16 A.R.S. Rules of Civil Procedure, rule 58(a).

[1 Cases that cite this headnote](#)

[10] Appeal and Error — Abstract, hypothetical, or academic questions and issues

Where no attempt had been made to amend the complaint to state a cause of action in negligence, Court of Appeals should refrain from expressing opinion on what applicable law would be if such a claim were to be made.

Attorneys and Law Firms

*227 **979 Riddel & Riddel, by Harold Riddel, Phoenix, for appellants.

James E. Flynn, Phoenix, for appellees.

Opinion

McGUIRE, Superior Court Judge.

This is an action brought by Clyde William Marsh, Sr. and Anna Christine Marsh, his wife, against R. B. Hawkins and E. M. Hawkins, also known as E. M. Campbell, and the partnership known as Hawkins and Campbell. Defendants are licensed process servers under the provisions of A.R.S. s 11—445, as amended. It is alleged that defendants made a false return of service of summons upon the plaintiffs herein in Case No. 147716, Maricopa County, whereby they suffered damages.

Judgment was rendered against plaintiffs after motion to dismiss their amended complaint, in three counts, was granted. For the purposes of this appeal the allegations of the amended complaint must therefore be taken as true.

CONTRACT THEORY (COUNT I)

[1] The first count is based on the theory that by reason of the duties imposed upon persons who accept the license as private process servers, a contractual relationship exists between such process servers and the defendant whom they certify they have served process upon, and that such defendants are third-party beneficiaries. This theory is unsound because no contractual relationship exists. A.R.S. s 11—445, subsec. F provides as follows:

‘F. Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required

or permitted by law to be served prior to, during, or independently of, a court action, including all such as are required to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into his custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court. * * * As amended Laws 1962, Ch. 139, s 1; Laws 1963, Ch. 3, s 2.'

This statute does not purport to create a contractual relationship between the process server and the individual served. The appellants have cited no decision supporting this theory of their complaint and their arguments are not convincing. We hold that the trial court properly dismissed count one for failure to state a claim.

COUNTS TWO AND THREE

The second count alleges that the process server's affidavit was 'erroneous, untrue, and the said defendant was mistaken in making the said AFFIDAVIT.' It is to be noted that it is not charged that the process server was negligent in any respect; this count is predicated on a species of strict liability.

The third count alleges that the process server knew the affidavit 'to be false and contain false statements or she was ignorant of the validity of the said affidavit and the truth of the content (sic) thereof.' The appellants argue that this count sounds in 'fraud.'

It is alleged in both of these counts that an affidavit of personal service as to the plaintiffs was filed by the defendant in Case No. 147716 on or about March 15, 1963, but that in truth and in fact they were never served in the action and that the plaintiffs did not learn the truth regarding such false return of service until September of 1965. This action was filed on April 6, 1966, and the defendants raise the statute of limitations as a defense.

The original action in which the false return was allegedly filed went to default *228 **980 judgment against the plaintiffs herein, but on their motion, showing that they had never been served with summons, the judgment was vacated. Upon appeal to the Court of Appeals, the action of the trial court was upheld. Review by the Supreme Court was denied. *Occidental Life Ins. Co. v. Marsh*, 5 Ariz.App. 74, 423 P.2d 150 (1967) (review denied March 14, 1967).

TO WHAT STANDARD IS A PRIVATE PROCES SERVER HELD?

We first must consider whether counts two and/or three state a cause of action and in order to do so we must determine to what standard of liability a private process server is to be held.

[2] We agree with the appellee that we are not here concerned with the action of fraud, as that common law action has been structuralized in this state. *Moore v. Meyers*, 31 Ariz. 347, 253 P. 626 (1927). We are, however, concerned with a claim of false service of process, an action not unknown to the common law. While a private process server is a recent arrival on the scene, he is under our statute 'an officer of the court.' A.R.S. s 11—445, subsec. F. As such, we believe he is subject to substantially the same liability as imposed by the common law upon a sheriff or constable when performing similar functions.

At common law, we find a broad spectrum of case law, establishing a minimum standard for a process server ranging from strict liability to a requirement that the plaintiff must show that the server acted willfully. 80 C.J.S. *Sheriffs and Constables* s 114, at 322—324. An 'intention to defraud' has been held necessary to sustain an action of false return in the early case of *Sutherland v. Cunningham*, 1 Stew. 438 (Ala. 1828). *David v. Larochelle*, 296 Mass. 302, 5 N.E.2d 571 (1936) held the action proper where the return was unintentionally false in that only a blank form and not a true copy of summons had been served. *State ex rel Moore v. Morant*, 266 S.W.2d 723 (Mo.App.1954) establishes strict liability for a mistaken return. The court in *Morant* said:

'Appellants ask whether a constable in undertaking to make service of process under the usual place of abode provision of the statute, Section 506.150 RSMo 1949, V.A.M.S., must go armed with birth records and affidavits establishing the age and kinship of the members of the defendants' family. The answer is that a constable must ascertain at his peril the age of the person served and his membership in the family of the defendant before making a return showing service under this provision of the statute. The integrity of the whole judicial establishment depends upon the accuracy and reliability of returns of service of process. A constable's return, like that of a sheriff's, is conclusive upon the parties to the suit. Its truth cannot be controverted by parol evidence when the effect will be to set aside a judgment based thereon. *Majewski v. Bender*, Mo.App., 237 S.W.2d 235, and cases cited. The public is entitled to rely upon the faithful performance of

official duty and consequently The law is strict in holding officers to a high degree of accountability for the efficient and true service of process. [State ex rel. Polster v. Miles](#), *supra*, 149 Mo.App. 638, 129 S.W. 731, [State ex rel. Armour Packing Co. v. Dickmann](#), 146 Mo.App. 396, 124 S.W. 29, 80 C.J.S. Sheriffs and Constables s 52, page 227. See [State ex rel. Rice v. Harrington](#), 28 Mo.App. 287, for another instance in which we held that an officer acts at his peril in making a return of process.’ (Emphasis added) 266 S.W.2d at 726.

[3] The reason given by the Missouri court for holding a process server to such strict accountability, an erroneous return of process is conclusive on the parties, is not the law in Arizona. In this state, the return may be impeached by a party if clear and convincing evidence of the return's falsity is presented to the court. This was done in the instant case. *229 **981 [Occidental Life Ins. Co. of Calif. v. March](#), 5 Ariz.App. 74, 423 P.2d 150 (1967). We decline to hold a process server an absolute insurer of the truth of the return. The process server should be held to a degree of liability commensurate with his responsibility and he is liable for negligence in making a false return as well as for the willful making of such return.

[4] Therefore, Count 3 states sufficient facts to permit recovery but Count 2 as filed does not.

The rule in Arizona is that after the reversal of the judgment and remand of the case for further proceedings, either party may amend. [Harbel Oil Co. v. Steele](#), 1 Ariz.App. 315, 402 P.2d 436 (1965); and, see [Temp-Rite Engineering Co. v. Chesin Construction Co.](#), 3 Ariz.App. 229, 413 P.2d 288 (1966).

The scope of permissible amendment is set forth in Rule 15(c) of the Rules of Civil Procedure, 16 A.R.S.

WHICH STATUTE OF LIMITATIONS APPLIES?

The defendants argue that the applicable statute of limitations is A.R.S. s 12—542, which reads in pertinent part: ‘There shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions:

‘3. For trespass for injury done to the estate or the property of another.’ The plaintiffs contend that the applicable statute is A.R.S. s 12—543(3) reading:

‘There shall be commenced and prosecuted within three years after the cause of action accrues, and not afterward, the following actions:

‘3. For relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.’

[5] At common law, an action for false return was considered an action in trespass on the case [Whitaker v. Summer](#), 7 [Ackerling](#) 551, 19 Am.Dec. 298 (Mass.1929). Both our venue and limitation statutes have come to us from Texas. [Pride v. Superior Court](#), 87 Ariz. 157, 161, 348 P.2d 924 (1960); [Hagenauer v. Detroit Copper Mining Co.](#), 14 Ariz. 74, 92, 124 P. 803 (1912). In connection with our venue statute, we have followed Texas decisions which have held that the word ‘trespass’ includes action known at common law as trespass on the case. [Pride v. Superior Court](#), *supra*, at 161, 348 P.2d 924. By analogy we reach the same result here. We hold that A.R.S. s 12—542 is the pertinent statute.

WHEN DOES THE STATUTE COMMENCE TO RUN?

If the applicable statute of limitations commenced to run at the time of the filing of the alleged false return on or about March 15, 1963, this action was filed too late. If the statute commenced to run from date of discovery, a cause of action was stated.

The Arizona Supreme Court in the landmark case of [Tom Reed Gold Mines Co. v. United Eastern Mining Co.](#), 39 Ariz. 533, 8 P.2d 449 (1932), held that the limitation period for underground trespass intentional or inadvertent does not begin running until the plaintiff knows or has reasonable cause to know facts constituting the trespass. In [Tom Reed](#) the Supreme Court with approval quoted the case of [Spallholz v. Sheldon](#), 158 App.Div. 367, 143 N.Y.S. 417, which defined constructive fraud as:

‘Acts, statements, or omissions which operate as virtual frauds on individuals, or which, if generally permitted, would be prejudicial to the public welfare and yet have been unconnected with any selfish or evil design.’ [Spallholz v. Sheldon](#), 158 App.Div. 367, 143 N.Y.S. 417; *Id.*, 216 N.Y. 205, 110 N.E. 431, *Ann.Cas.* 1917C 1017,’ 39 Ariz. at 540, 8 P.2d at 451.

Tom Reed held that the removal of ore through underground trespass was actual 'fraud' when done intentionally and ****982 *230** 'constructive fraud' when done inadvertently. The court was able to find all of the traditional elements of fraud in an unintentional underground trespass, and applied the statute of limitation pertaining to 'fraud' to this action. This decision has never been repudiated by the Supreme Court, but subsequent decisions purportedly following it have taken a different turn.

In *Griffith v. State of Arizona*, 41 Ariz. 517, 20 P.2d 289 (1933), our Supreme Court held that a cause of action brought by the state against a county assessor and his bonding company for defalcation as to public monies was a 'liability created by statute' as to which the one year statute of limitations applied (41 Ariz. at 524, 20 P.2d 289). At the same time, the court, in applying the 'rule' of Tom Reed Gold Mines held that if the defalcation involved a 'fraudulent concealment by one occupying a position of trust,' the statute would not run until discovery or until the injured party 'is put upon reasonable notice of the breach of trust.' 41 Ariz. at 528, 20 P.2d at 293. The court explained the Tom Reed case: 'The test, therefore, is not whether the action is in form one of fraud, but whether it seeks relief on account of fraud in the original transaction. This in substance is our decision in Tom Reed Gold Mines Co. v. United Eastern Mining Co., supra.' 41 Ariz. at 528, 20 P.2d at 293.

In *Taylor v. Betts*, 59 Ariz. 172, 124 P.2d 764 (1942) our Supreme Court was concerned with a complaint that charged members of the State Corporation Commission with 'wilfully and unlawfully' issuing a certificate to an insurance company knowing, or having reason to know, that they had 'wilfully concealed from the legislature' the facts concerning the insolvency of the company (59 Ariz. at 174, 127 P.2d 764). Again the court held that the liability was one created by statute (59 Ariz. at 179, 124 P.2d 764) and: '* * * that no matter what the form of action is, if it is based on a fraudulent concealment by one occupying a position of trust, the statute does not begin to run until the other party discovers or is put upon reasonable notice of the breach of the trust.' 59 Ariz. at 180, 124 P.2d at 767.

[6] Taking these three cases together, we believe they are broad enough to cover the tort here alleged. As a public officer, a process server owes a duty not only to the party for whom he is serving process but also to the party served. The very nature of the act involved lends towards concealment.

Proliferation of litigation is one of the hallmarks of this day and age. Clerk's offices are typically inundated by filing of all sorts. From the mere filing alone, there is slim chance that the person who has never actually been served will have any notice of what has occurred. We regard this act to be analogous to an 'underground trespass,' and hold that the statute of limitations does not run until 'the other party discovers or is put upon reasonable notice of the breach of the trust.' *Taylor v. Betts*, supra. This rule applies to all actions for false return.

[7] The mere fact that a person knows that an action has been filed against him does not impose on him any duty to search the record at intervals to see whether a false return of service of summons has been made.

IS THE DOCTRINE OF RES JUDICATA APPLICABLE?

Defendants have raised a question of res judicata based upon the following facts. The original complaint was filed on April 6, 1966, motion to dismiss with prejudice was argued on July 6, 1966, and on July 8, the court made this minute entry: 'Defendants' Motion to Dismiss having been taken under advisement, and the Court being duly advised in the premises,

'IT IS ORDERED granting Defendants' Motion to Dismiss.'

***231 **983** On July 13, 1966, the court ex parte made a further minute entry: 'ORDERED Nunc Pro Tunc Add the following sentence to the minute entry dated July 8, 1966:

'IT IS FURTHER ORDERED granting Plaintiff fifteen (15) days from July 8, 1966, within which to file amended complaint.'

The amended complaint was filed July 20, 1966.

[8] [9] A minute entry dismissing a complaint is an interlocutory order and does not operate as res judicata. The matter remains pending before the court which may freely permit amendments until the court by a written and signed judgment dismisses the action. Rule 58(a), as amended, Rules of Civil Procedure, 16 A.R.S., requires all judgments to be in writing and signed by the judge.

The judgment of the Superior Court of Maricopa County is reversed and the case is remanded for further proceedings not inconsistent herewith.

NOTE: Judge HERBERT F. KRUCKER having requested that he be relieved from consideration of this matter, Judge JOHN A. McGUIRE was called to sit in his stead and participate in the determination of this decision.

NOTE: This cause was decided by the Judges of Division Two as authorized by [A.R.S. s 12—120](#), subsec. E.

HATHAWAY and MOLLOY, Judges (specially concurring).

[10] The undersigned judges, constituting a majority of the court, concur in the foregoing opinion of Judge McGuire

with the exception of that portion thereof dealing with the possibility of amending the complaint to state a cause of action in negligence. No attempt has been made as yet to amend the complaint and we believe this court should refrain from expressing an opinion on what the applicable law would be if such a claim were to be made. [Phoenix Metals Corp. v. Roth, 79 Ariz. 106, 284 P.2d 645 \(1955\)](#).

All Citations

7 Ariz.App. 226, 437 P.2d 978, 31 A.L.R.3d 1383

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241 Ariz. 529

Court of Appeals of Arizona, Division 1.

Brandon OROSCO and Jennifer Orosco, husband and wife, individually, and as parents and next friends of Kaylen Orosco, Marissa Orosco, and Silas Orosco, Plaintiffs/Appellees,

v.

MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT, a body politic for and dba Maricopa Integrated Health System, Defendant/Appellant.

No. 1 CA-CV 15-0580

FILED 2/2/2017

As Amended February 6, 2017

Synopsis

Background: Plaintiffs brought medical malpractice action against county special health care district. Plaintiffs served two offers of judgment. Following jury verdict in favor of family that exceeded both offers, the Superior Court, Maricopa County, No. CV2012-004724, [John Christian Rea, J.](#), awarded plaintiffs sanctions of prejudgment interest from the date of the first offer of judgment, expert witness fees, and double taxable costs incurred after the date of the first offer. District appealed.

Holdings: The Court of Appeals, [Diane M. Johnsen, P.J.](#), held that:

[1] as a matter of first impression, a subsequent offer of judgment does not extinguish the effect of an offeree's failure to accept a prior offer when the judgment is less favorable to the offeree than both offers, and

[2] plaintiffs' expense of using private process server to serve district was includable as taxable cost.

Affirmed in part, vacated in part, and remanded.

West Headnotes (5)

[1] **Appeal and Error** — Effect of offer of judgment or pretrial deposit or tender

The Court of Appeals reviews de novo legal issues arising under rule governing offers of judgment. [Ariz. R. Civ. P. 68.](#)

[2] **Courts** — Construction and application of rules in general

When interpreting a rule, the Court of Appeals begins with the plain language of the rule.

[3] **Costs** — Offer of judgment in general

The purpose of rule governing offers of judgment is to promote settlement and to avoid protracted litigation. [Ariz. R. Civ. P. 68.](#)

[4] **Costs** — Recovery less favorable than tender or offer

A subsequent offer of judgment does not extinguish the effect of an offeree's failure to accept a prior offer when the judgment is less favorable to the offeree than both offers. [Ariz. R. Civ. P. 68.](#)

[5] **Costs** — Writs and other process

Costs — Officers' Fees

Plaintiffs' expense of using private process server to serve county special health care district with notice of claim, summons, and complaint was includable as taxable cost in medical malpractice action; taxable costs were allowed for costs of officers of the court, private process servers were defined as officers of the court, and rule governing service of process did not prohibit taxing those costs. [Ariz. Rev. Stat. Ann. §§ 12-332\(A\)\(1\), 12-3301\(A\); Ariz. R. Civ. P. 4.1\(c\).](#)

Appeal from the Superior Court in Maricopa County, No. CV2012–004724, The Honorable [John Christian Rea](#), Judge.

AFFIRMED IN PART; VACATED AND REMANDED IN PART

Attorneys and Law Firms

Harris Powers & Cunningham PLLC, Phoenix, By [Frank I. Powers](#), Counsel for Plaintiffs/Appellees

Slattery Petersen PLLC, Phoenix, By [Elizabeth A. Petersen](#), Counsel for Defendant/Appellant

Presiding Judge [Diane M. Johnsen](#) delivered the opinion of the Court, in which Judge [Jon W. Thompson](#) and Chief Judge [Michael J. Brown](#) joined.

****376 OPINION**

[JOHNSEN](#), Judge:

***530** ¶ 1 Brandon Orosco and his family sued the Maricopa County Special Health Care District, alleging medical malpractice. They made two offers of judgment pursuant to [Arizona Rule of Civil Procedure 68](#). The jury's verdict in their favor exceeded both offers of judgment. We hold the superior court did not err in imposing sanctions calculated from the date of the first offer of judgment. We also affirm the court's order taxing the costs of service of process.¹

FACTS AND PROCEDURAL BACKGROUND

¶ 2 The Oroscos served an offer of judgment of \$3,950,000 on December 13, 2013. On September 27, 2014, they served another offer of judgment for \$3,949,999. The District did not accept or object to either offer. After the jury rendered a verdict of \$4.25 million and found the District 99% at fault, the Oroscos requested sanctions under [Rule 68\(g\)](#) calculated from the date of the first offer.² The superior court rejected the District's argument that sanctions were available under [Rule 68](#) only from the date of the second offer, and awarded sanctions of prejudgment interest from the date of the first offer of judgment and \$147,441.33 in expert witness fees and double taxable costs incurred after the date of the first offer.

¶ 3 We have jurisdiction over the District's timely appeal pursuant to [Arizona Revised Statutes](#) (“A.R.S.”) sections 12–2101(A)(1), (5)(a) (2017) and –2102(B) (2017).³

DISCUSSION

A. Sanctions Under [Rule 68\(g\)](#).

[1] [2] ¶ 4 We review *de novo* legal issues arising under [Rule 68](#). See [Levy v. Alfaro](#), 215 Ariz. 443, 444, ¶ 6, 160 P.3d 1201 (App. 2007). We begin with the plain language of the rule. See [Fragoso v. Fell](#), 210 Ariz. 427, 430, ¶ 7, 111 P.3d 1027 (App. 2005).

¶ 5 [Rule 68\(g\)](#) provides that if an offeree rejects an offer of judgment and “does not obtain a more favorable judgment,” the offeree must pay sanctions of reasonable expert witness fees and double taxable costs incurred after making the offer, and prejudgment interest on unliquidated claims accruing from the date of the offer. [Rule 68\(h\)\(2\)](#) provides that “[a] rejected offer does not preclude a later offer.” The effect of a subsequent offer on a previous offer, however, is an open question in Arizona.

¶ 6 The District argues this court should follow [Albios v. Horizon Communities, Inc.](#), 122 Nev. 409, 132 P.3d 1022, 1033 (2006), which held that a successive offer of judgment extinguishes the effect of an offeree's failure to accept a prior offer. The weight of the authorities construing similar state-court rules, however, is to the contrary, when, as here, the judgment finally obtained is less favorable to the offeree than both offers. See [Martinez v. Brownco Constr. Co.](#), 56 Cal.4th 1014, 157 Cal.Rptr.3d 558, 301 P.3d 1167, 1173–74 (2013); [Evans v. Sawtooth Partners](#), 111 Idaho 381, 723 P.2d 925, 931–32 (1986); [Palmer v. Kovacs](#), 385 N.J.Super. 419, 897 A.2d 429, 433–34 (N.J. Super. App. Div. 2006); [Hicks v. Lloyd's Gen. Ins. Agency](#), 763 P.2d 85, 86–87 (Okla. 1988); [Zahn v. Musick](#), 605 N.W.2d 823, 826, 828, 834–35 (S.D. 2000); cf. [Kaufman v. Smith](#), 693 So.2d 133, 133–34 (Fla. Dist. App. 1997) (when defendant made two offers of judgment and verdict was less than first but more than the second, defendant was entitled to sanctions from date of first offer).⁴ As the California supreme court ****377 *531** held in [Martinez](#), a contrary outcome might deter a plaintiff from making an early offer of judgment or from later adjusting an earlier demand: “Where, as here, a plaintiff serves two ... offers to compromise, and the defendant fails to obtain a judgment more favorable than either offer, recoverability of [sanctions] incurred from the date of the first offer is

consistent with [the provision's] language and best promotes the ... purpose to encourage the settlement of lawsuits before trial.” 157 Cal.Rptr.3d 558, 301 P.3d at 1175.

[3] [4] ¶ 7 As with the provisions at issue in the cases just cited, the purpose of Arizona's Rule 68 is to “promote settlement and to avoid protracted litigation.” *Arellano v. Primerica Life Ins. Co.*, 235 Ariz. 371, 381, ¶ 48, 332 P.3d 597 (App. 2014). Permitting an offeror to make additional offers of judgment encourages the parties to continue to evaluate their cases as the litigation proceeds and thereby generally fosters settlement. The District argues, however, that allowing sanctions from the date of the first offer under these circumstances effectively discourages an offeror from making a reasonable second offer as trial approaches. But in the same situation, an offeree has the power to make a reasonable offer of judgment of its own. We agree with the majority of other jurisdictions that have considered the issue that a subsequent offer of judgment does not extinguish the effect of an offeree's failure to accept a prior offer when the judgment is less favorable to the offeree than both offers.

¶ 8 Accordingly, because the District did not accept the Orosco's first offer of judgment, upon entry of a judgment less favorable to the District than that offer, the Orosco's were entitled to sanctions fixed to accrue from the date of that offer. Ariz. R. Civ. P. 68(g). The Orosco's second offer of judgment, just one dollar less than the first, did not extinguish the effects of the District's failure to accept the first.

B. Costs of Service of Process.

¶ 9 The District also challenges the superior court's order taxing the costs the Orosco's incurred in serving the District with a notice of claim and the summons and complaint. See A.R.S. §§ 12–332(A)(1) (2017), –821.01 (2017).

[5] ¶ 10 Under the cost statute, A.R.S. § 12–332(A)(1), “[f]ees of officers and witnesses” are taxable costs. The District argues there is no authority for treating costs of service as a taxable cost, but A.R.S. § 12–3301(A) (2017) expressly states that “[a] private process server is an officer of the court.” The parties debate the relevance of *Farm &*

Auto Supply v. Phoenix Fuel Co., 103 Ariz. 344, 345–46, 442 P.2d 88 (1968), in which the supreme court applied a since-repealed statute that expressly allowed a prevailing party to recover “costs of service made by a private process server.” Given that the current statute, § 12–332(A)(1), allows taxing of the costs of “officers,” and a private process server plainly is defined as an “officer of the court,” we see no reason why the costs of a process server are not taxable under § 12–332(A)(1).

¶ 11 The District, however, also argues that taxing the costs of service of process flies in the face of Arizona Rule of Civil Procedure 4.1(c), under which the court must impose costs of service on a defendant that fails to comply with a proper request for waiver of service of process.

¶ 12 We see no inconsistency. Rule 4.1(c) allows a plaintiff to seek to avoid the cost of service of process by requesting the defendant to waive service of a summons. If the defendant refuses a request that conforms with the rule, the rule allows the plaintiff to seek reimbursement of the expense subsequently incurred in effecting service. Ariz. R. Civ. P. 4.1(c)(2). Under the rule, the plaintiff need not prevail in the litigation to win reimbursement of the costs of service; the costs of service are shifted simply because the defendant has refused a proper request. Nothing in the rule prevents a plaintiff that has incurred the expense of effecting service from seeking to tax those costs under § 12–332(A)(1).

**378 *532 ¶ 13 The superior court thus properly included the expense of the private process server as a taxable cost.

CONCLUSION

¶ 14 For the foregoing reasons and those set forth in our separate memorandum decision, the judgment is affirmed in part and vacated and remanded in part.

All Citations

241 Ariz. 529, 390 P.3d 375, 757 Ariz. Adv. Rep. 11


Footnotes

1 On appeal, the District also argues the superior court erred by denying its motions for judgment as a matter of law and for new trial or remittitur. In a separate memorandum decision, we affirm the denial of the motions for judgment as a matter of law and for new trial or remittitur, but vacate and remand certain of the court's other rulings on taxation of costs and imposition of sanctions pursuant to Rule 68(g). See ARCAP 28(c).

- 2 [Rule 68](#) was restyled after entry of judgment in this case, but the change is not relevant to the issue we address in this opinion.
- 3 Absent material revision after the relevant date, we cite a statute's current version.
- 4 See also *Dickenson v. Regent of Albuquerque, Ltd.*, 112 N.M. 362, 815 P.2d 658, 659 (N.M. App. 1991) (citing advisory committee note to [Federal Rule of Civil Procedure 68](#), which allows a defendant to make offers of judgment: "In the case of successive offers not accepted, the offeror is saved the costs incurred after the making of the offer [that] was equal to or greater than the judgment ultimately obtained.").

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61 Cal.App.2d 119
District Court of Appeal, Second
District, Division 3, California.

THORNDYKE
v.
JENKINS.
MCKENNEY
v.
JENKINS, INC., ET AL.

Civ. 13928, 13929.

|
Oct. 25, 1943.

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Hearing Denied Dec. 20, 1943.

Synopsis

Appeals from Superior Court, Los Angeles County; Emmet H. Wilson, William J. Palmer, and Frank G. Swain, Judges.

Separate actions by Maude Thorndyke against R. B. Jenkins, doing business under the fictitious name of Angelus Hospital, and by Edna D. McKenney against R. B. Jenkins, Inc., and others, wherein default judgments were rendered against R. B. Jenkins. From orders denying motions to quash service of summonses and to vacate the default judgments, the defendant R. B. Jenkins appeals.

Affirmed.

West Headnotes (4)

[1] **Process** **Weight and sufficiency**

Process server's affidavit, that defendant attempted to evade service of summonses and that the summonses were thrown over the fence at defendant who was then told that the papers were court summonses, when considered with other affidavits of officers as to unsuccessful attempts to make service on defendant, furnished substantial evidence to support orders denying

motions to quash service on ground that no service had been made.

[1 Cases that cite this headnote](#)

[2] **Judgment** **Mistake as to process**

Where motions to quash service of summonses were denied on accepted showing that defendant had attempted to evade service and that service made was sufficient, defendant's subsequent motions to set aside default judgments on ground of mistake and excusable neglect were properly denied, where it was apparent that defendant's failure to appear was due solely to his denial that service had been made. Code Civ.Proc. § 473.

[1 Cases that cite this headnote](#)

[3] **Appeal and Error** **Motions, hearings, and orders in general**

Appeal and Error  **Abuse of discretion**

All intendments are in favor of the correctness of the orders appealed from which cannot be reversed except upon a showing of an abuse of discretion.

[4] **Appeal and Error** **Error affecting coparty or other related party**

Where defendant was correctly named in judgment entered against him, he could not complain that judgment was also entered against a clinic and a hospital under which he was allegedly doing business.

Attorneys and Law Firms

****348 *120** Hunter & Liljestrom and J. D. Willard, all of Los Angeles, for appellants.

Kimpton Ellis, of Los Angeles, for respondent Maude Thorndyke.

Benjamin Lewis, of Los Angeles, for respondent Edna D. McKenney.

Opinion

SHINN, Justice.

In separate actions default judgments for damages were rendered against appellant R. B. Jenkins in favor of Maude Thorndyke and Edna D. McKenney. Defendant made a motion in each case, after judgment, to quash service of summons and to vacate the judgment on the ground that no service had been made and, after denial of these motions, moved in each case before a judge of another department to vacate the defaults and judgments under section 473 of the Code of Civil Procedure, on the grounds of alleged mistake and excusable neglect. These motions also were denied. Appeals from the several orders have been consolidated and are presented upon a single set of briefs.

[1] The proof as to service was the same in each case, the motions to quash were heard together and may be treated by us as a single motion. Affidavits were filed on behalf of plaintiffs by deputy sheriffs to the effect that they had made repeated unsuccessful efforts to make service upon defendant *121 Jenkins before the process was placed in the hands of one Yetta Price for service. Yetta Price stated in her affidavit that, after several attempts to serve the papers, she stationed herself near defendant's residence, that as defendant emerged from the rear door and started toward his garage she entered the adjoining yard with the summonses, complaints, and two subpoenas duces tecum in her hand; that when defendant saw her he exclaimed, "I won't take it, I won't take it; you're too smart, but I won't take it," and that affiant then threw the papers, which were folded together and had a rubber band around them, over an openwork wire fence between the two yards and that they landed at the feet of defendant, as she said to defendant, "It doesn't make any difference to me, Dr. Jenkins, whether you take them or not, they are court summonses." **349 It is not contended by appellant that the acts of Yetta Price, as stated in her affidavit, were insufficient to constitute legal service. The contention is that the court, upon the motion to quash, should have rejected the foregoing averments in the affidavit of the process server because they were denied in the affidavit of defendant and contradicted as to the manner in which the papers were thrown over the fence, in an affidavit by a neighbor who witnessed the proceedings. There is little more than a token argument upon the point. Counsel for appellant in their opening brief state, "* * * appellant recognizes that when an order or judgment finds support in facts determined by the trial court upon any substantial evidence, such order or judgment will not be disturbed on appeal." The affidavit of the process

server, stating in unequivocal terms the facts we have recited, considered with other evidence which tended to prove that defendant had been evading service, furnished substantial evidence to support the orders denying the motions to quash, and the implied finding that the facts were as stated in the affidavit is conclusive upon appeal.

Upon the motions to set aside the defaults and judgments, additional affidavits and counter affidavits were filed in support of and against defendant's contention that his failure to appear in the action resulted from his mistake and excusable neglect. These motions were presented together and upon the records and files in both cases. In his affidavit on these motions defendant stated that he had received letters from counsel for the respective plaintiffs stating that summons *122 had been served on March 3, 1942, and notifying him that unless he made appearance within a stated time, which was in excess of that allowed by law, his default would be entered, that he had answered the letters, denying that the papers had been served, and had thereafter received other letters from the attorneys informing him that default judgments had been taken against him. The affidavit further stated that defendant, after learning of the judgments, consulted his attorneys and told them that at no time had any person served or attempted to serve him with process. By affidavit of one of defendant's counsel it was shown that defendant had told his attorneys that no papers of any sort relating to said actions had been served upon or received by him. (It was after they had been so informed that his counsel, relying upon his statement, moved to quash service of summons.) However, defendant did not make his motions under section 473 of the Code of Civil Procedure until four and a half months after service of summons and 44 days after the motions to quash had been denied. The motions to set aside the defaults and judgments were filed more than three months after the judgments were rendered.

[2] The facts we have stated, considered with the court's decision that defendant had been personally served on March 3, 1942, show no abuse of discretion in the denial of the motions to vacate the defaults and judgments. When the second motions were presented defendant was relying in part upon his affidavit that service had not been made and he did not admit the truth of the foregoing statements of the Yetta Price affidavit. Since the court, in denying the first motions, had accepted as true the facts stated in the Yetta Price affidavit, and as no application was made to vacate the first orders, the judge who heard the second motions properly concluded that defendant had not truly or fully informed his attorneys of the acts of the process server and of his own

remarks to her, which the court had held constituted valid service.

Upon the second motions the only question was whether defendant's failure to appear had resulted from his mistake or excusable neglect. It is insisted that the court should have found that defendant and his attorneys were acting under a mistake of law but there was no evidence that they were mistaken upon any point of law, and it does not appear that any question of law could have arisen under defendant's *123 version of the facts. We do not see how the court could have failed to hold, in passing upon the second motions, that defendant's failure to appear was due solely to his denial that service had been made. If he had given his attorneys a complete and accurate statement of the facts and if it had been shown that they had believed that under those facts there had not been valid service, an entirely different question would have been presented, for it would then have appeared that they had acted under a mistake of law. We also would have a different question to determine, and the case of [Waite v. Southern Pacific Co., 1923, 192 Cal. 467, 221 P. 204](#), relied upon by appellant, would be in point. **350 In that case defendant's counsel failed to appear in a state court after the action had been removed to the United States District Court and defendant's default had been entered while the matter was pending in the latter court, although it was later remanded to the state court. The court reversed an order denying a motion to vacate the default and judgment, but this was done upon the sole ground that defendant had acted under a mistake of law as to the jurisdiction of the state court, which the court held was a reasonable one and excusable under the circumstances. We have no such situation here. When defendant based his right to relief upon an issue of fact he could not, after the issue was decided against him, assert a mistake of law which, if meritorious, would have to be founded upon facts which were contrary to his sworn statements and necessarily contrary to his belief. He asserted no mistake of law whatever but persisted in his denial that he had been served at all. His predicament resulted from his failure to acquaint his attorneys with the true facts, and from their belief in his misstatements.

[3] The foregoing conclusions have been reached by the application of the familiar rules that all intendments are in favor of the correctness of the orders appealed from and that such orders cannot be reversed except upon a showing of an abuse of discretion. Since the motions to vacate were without merit, it is unnecessary to determine whether the orders denying the second motions should be affirmed upon the additional ground urged by respondents that the applications

were not made within a reasonable time, as required by section 473, Code of Civil Procedure.

The further point is made that the judgment in the Thorndyke *124 case was against defendant "R. B. Jenkins, doing business under the fictitious name of Angelus Hospital." It was alleged in the complaint that defendant conducted a hospital under the fictitious name of Angelus Hospital.

In the McKenney case the judgment was against "Dr. R. B. Jenkins, Dr. R. B. Jenkins Clinic, and Angelus Hospital, which is owned and operated by defendant R. B. Jenkins." The complaint in that case had named as defendants Dr. R. B. Jenkins, Dr. R. B. Jenkins Clinic, and Angelus Hospital Association of Los Angeles. By amendment the complaint named as a defendant "Angelus Hospital, which is owned and operated by defendant R. B. Jenkins." The amended affidavit of service of summons in this case stated that service had been made on "Dr. R. B. Jenkins Clinic, by serving Dr. R. B. Jenkins, owner, Angelus Hospital, sued herein as John Doe One, by serving Dr. R. B. Jenkins, owner."

[4] It is contended that the court had no jurisdiction to render judgment in the McKenney case against R. B. Jenkins Clinic or Angelus Hospital because the record does not show whether they were separate entities or merely names under which Dr. Jenkins was doing business. If either is a separate entity and if either judgment should be construed as being against them or either of them, and not simply against appellant Jenkins, neither the clinic nor the hospital moved to quash service of summons or to vacate the defaults and judgments, and neither of them appealed from any order that was made or from the judgments. Since these supposed entities are not before us, we refrain from expressing an opinion as to the construction which should be given the judgments. Upon the other hand, if the clinic and the hospital were only names used by Dr. Jenkins, the scope of the judgment against him is no greater because it names them also. Dr. Jenkins has not appealed from the judgment. He is correctly named in it and we cannot see how he could be aggrieved by the addition of unnecessary labels.

Defendant received fair and courteous treatment at the hands of counsel for the respective plaintiffs. In neither case was a default entered until after he had been given additional time for an appearance and counsel had received a letter from him denying that service had been made. He was notified that default judgments would be taken against him if he refused to

appear and he chose his course advisedly. We find no reason to disturb the orders complained of.

DESMOND, P. J., and BISHOP, Justice pro tem., concur.

*125 The respective orders appealed from in each case are affirmed.

All Citations

61 Cal.App.2d 119, 142 P.2d 348

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2 Ariz.App. 127
Court of Appeals of Arizona.

Blanche TONELSON, Appellant,

v.

Ronald S. HAINES, Appellee.*

No. 1 CA–CIV 61.

|

Oct. 28, 1965.

|

Rehearing Denied Nov. 12, 1965.

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Review Denied Dec. 1, 1965.

Synopsis

Malpractice suit, wherein motion to set aside default and default judgment was filed. The Superior Court of Maricopa County, Case No. 135258, Henry S. Stevens, J., set aside default and default judgment and plaintiff appealed. The Court of Appeals, Molloy, J., held that whether physician's wife with whom copy of summons and complaint had allegedly been left had knowledge of the leaving of the papers with her was question for trier of fact.

Affirmed.

West Headnotes (5)

[1] Process 🔑 Leaving copy with member of family or other person

In order for there to be a “leaving with” a person a copy of summons and complaint as required by rule, such person must be aware of the leaving. 16 A.R.S. Rules of Civil Procedure, rule 4(d).

[2] Process 🔑 Mode and sufficiency of service

Generally, when personal service is attempted, person served must be apprised in some substantial form that service was intended to be made. 16 A.R.S. Rules of Civil Procedure, rule 4(d).

[3 Cases that cite this headnote](#)

[3] Process 🔑 Leaving copy with member of family or other person

Phrase “leaving with”, within rule allowing service to be made upon individual by leaving copy of summons and complaint at his dwelling place or usual place of abode with some person of suitable age and discretion, includes connotation that the person with whom papers are left must have knowledge that papers are so left. 16 A.R.S. Rules of Civil Procedure, rule 4(d).

[2 Cases that cite this headnote](#)

[4] Appeal and Error 🔑 Process

Whether defendant's wife with whom copy of summons and complaint had allegedly been left had knowledge of the leaving of the papers with her was question for trier of fact.

[3 Cases that cite this headnote](#)

[5] Appeal and Error 🔑 Credibility and Number of Witnesses

It was trial court's function, and not that of reviewing court, to judge credibility of witnesses.

[3 Cases that cite this headnote](#)

Attorneys and Law Firms

*127 **845 Burton M. Bentley, Phoenix, for appellant.

Rawlins, Ellis, Burrus & Kiewit, by William H. Burrus, Phoenix, for appellee.

Opinion

MOLLOY, Judge.

This is an appeal from a judgment of the lower court setting aside a default and a default judgment on the grounds that there was no valid service upon the defendant.

The suit is one for malpractice against a surgeon. Service was attempted by a process server on the evening of February 6, 1962, at the defendant's home.

***128 **846** The process server testified that he went to the door and was greeted by the defendant's wife. When she was informed of the purpose of the visit, according to the process server, he was informed that the defendant was not home 'to you.' The process server testified that: as the door was being abruptly closed in his face, he stated in a normal tone of voice, 'Lady, you have been served;' that he left the summons and complaint between the wooden door and the screen door of the home; and that thereafter he went on his way without noticing where the papers lay. He subsequently filed an affidavit of service in the action, indicating that service had been effectuated by '* * * leaving a copy of the summons and complaint with defendant's wife.'

The applicable rule of procedure pertaining to this service is Rule 4(d) Rules of Civil Procedure, 16 A.R.S., the pertinent portions of which read as follows:

'Service shall be made as follows:

'1. Upon an individual * * * by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein * * *.'

Default judgment was taken on May 10, 1962, in the sum of \$35,000.00. No effort was made to execute in pursuance of the judgment until more than six months thereafter. At the time of oral argument in this court, plaintiff's counsel stated that the reason for failing to take out any execution on the judgment within six months was so that there would be no opportunity for the defendants to file a motion in pursuance of Rule 60(c) for mistake or excusable neglect.

At the time of the hearing before the trial court on the motion to set aside default and default judgment, the defendant's wife testified to a substantially different version of the occasion in question than that given by the process server. She denied that he had told her he had a summons and complaint for her husband and denied that he had ever attempted to hand to her a summons and complaint. According to her, a strange man had come to the door on the evening in question and had asked for her husband. Her husband, who had been in surgery until 1 a. m. the night before that morning, and again until 6:40 p. m. in the evening in question, declined to see the stranger and

she so informed him. She shut the door without ever hearing that service was being attempted and without ever knowing about the summons and complaint being left at the doorstep. The defendant and his wife both testified that the first they knew of the lawsuit in question was when a demand was made six months after the taking of judgment that the same be paid. They testified that there had been no previous demands from the plaintiff and no threats of a lawsuit.

After hearing the evidence, the trial court found as follows: 'There is no dispute in the evidence in relation to the fact that the defendant was at his home at the time in question; as to the fact that Mr. Estein called at the defendant's home at the time in question; as to the fact that Mrs. Haines was then a member of the family of the defendant and that the same Mrs. Haines answered the door; and that the copy of the complaint and summons were not physically placed in the possession of Mrs. Haines at the time in question. The court need not decide the law point as to whether or not the leaving of a copy of the complaint and summons on the premises and in the vicinity of an individual following that individual's refusal to accept the same constitutes good service.

'The purpose of the visit of Mr. Estein was not presented to Mrs. Haines in such manner that she heard and understood the fact that Mr. Estein was there for the purpose of serving process upon the defendant. This being so, the fact of leaving the same between the screen door and the front ***129 **847** door does not constitute service. There was no intentional act on the part of Mrs. Haines designed to knowingly attempt to defeat the service of process.'

On appeal, the contention is made that the undisputed facts constitute service as a matter of law and that the trial court neither had discretion, nor abused its discretion, in setting aside the default and default judgment.

In *Eldridge v. Jagger*, 83 Ariz. 150, 317 P.2d 942 (1957), our Supreme Court said:

'It is a well-established rule of law that the return of service of process can be impeached only by clear and convincing evidence.' 83 Ariz. 150, 152, 317 P.2d 942, 943.

In this same case, however, the court also said:

'However, the trial judge, in hearing the testimony and in observing the demeanor and manner of the witnesses in testifying as to conflicting facts, concluded that the defendant Jagger had not been served with summons and should be

given an opportunity to litigate a disputed obligation. We have repeatedly held an application to open, vacate or set aside a judgment is within the sound discretion of the trial court and its action will not be disturbed by this court except for a clear abuse of discretion.’ 83 Ariz. 150, 152, 317 P.2d 942, 944.

[1] [2] [3] We hold that in order for there to be a ‘* * * leaving * * * with * * *’ a person a copy of the summons and complaint, as required by Rule 4(d), supra, such person must be aware of the ‘leaving.’ We have not been cited a decision directly in point. Generally, when personal service is attempted, the person served must be apprised in some substantial form that service is intended to be made. 72 C.J.S. Process § 34 a, p. 1041. We hold there is included in the phrase ‘* * * leaving * * * with * * *’ the connotation that the person ‘with’ whom the papers are left must have knowledge that the papers are so left. Otherwise service might be accomplished by surreptitiously placing papers in a person's pocket, or by other means not likely to bring about actual notice.

[4] [5] In this case the evidence is ‘clear’ that Mrs. Haines did not have any knowledge of the leaving of this summons with her. Whether it is ‘convincing’ we feel should be left up to the trial court under the Jagger decision. It was the trial court's function, and not ours, to judge the credibility of the witnesses and we hold that we are bound by its decision in this regard.

Judgment affirmed.

KRUCKER, C. J., and HATHAWAY, J., concurring.

NOTE: This cause was decided by the Judges of Division Two as authorized by § 12–120, subsec. E.

All Citations

2 Ariz.App. 127, 406 P.2d 845

Footnotes

- * This appeal was filed with the Arizona Supreme Court and assigned that court's No. 7968. The matter was referred to this court pursuant to A.R.S. § 12–120.23.



KeyCite Yellow Flag - Negative Treatment

Distinguished by *Sylla v. Kataname Inc.*, Cal.App. 1 Dist., May 25, 2012

71 Cal.App.2d 257

District Court of Appeal, Third District, California.

TRUJILLO

v.

TRUJILLO.

Civ. 7161.

|

Oct. 23, 1945.

Synopsis

Appeal from Superior Court, Sacramento County; Malcolm C. Glenn, Judge.

Action by Frances Laura Trujillo against Manuel Trujillo for divorce. From an interlocutory decree for plaintiff, from an order awarding plaintiff custody of a child and maintenance, from the entry of default, and from an order denying defendant's motion to vacate interlocutory decree, defendant appeals.

Affirmed.

West Headnotes (4)

[1] Time 🔑 Appeal and Error and Other Proceedings for Review

Where Thanksgiving Day was included in the limitation period for perfecting an appeal, the time was extended one day, and, where last day of extended time fell on a Sunday, time was further extended to the following day, so that notice of appeal filed on that day was timely. Code Civ.Proc. § 12a(b), § 939 (repealed 1945).

[1 Cases that cite this headnote](#)

[2] Child Custody 🔑 Transfer of Cause and Proceedings in General

Where separate preliminary order awarding custody of minor child to plaintiff pending

divorce action was made October 20, and no appeal was perfected until the following January 22, appeal was too late. West's Ann.Code Civ.Proc. § 939 (repealed 1945).

[3] Divorce 🔑 Pleading and Evidence

Evidence that defendant in divorce case attempted to avoid service of process by locking himself in a parked automobile and rolling up the windows, that process server, after reading order to show cause to defendant in a loud clear voice, placed summons, complaint and order to show cause under windshield wiper, and that defendant attempted to dislodge them by starting wiper and then drove off with documents still under wiper, supported finding of due personal service of process and warranted denial of defendant's motion to vacate interlocutory judgment of divorce thereafter entered. West's Ann.Code Civ.Proc. §§ 473, 473a.

[12 Cases that cite this headnote](#)

[4] Divorce 🔑 Power and Authority

Divorce 🔑 Discretion of Court

Upon motion to set aside an interlocutory decree of divorce or a final judgment, where evidence is conflicting court has discretion to grant or deny the motion, and in absence of a clear showing of abuse of discretion, order will not be interfered with. West's Ann.Code Civ.Proc. §§ 473, 473a.

[12 Cases that cite this headnote](#)

Attorneys and Law Firms

****640 *258** Joseph Scott and G. L. McFarland, both of Los Angeles (R. B. Hibbitt, of Sacramento, and J. Howard Ziemann, of Los Angeles, of counsel), for appellant.

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Opinion

THOMPSON, Justice.

An interlocutory decree of divorce was entered November 21, 1944, against the defendant on the ground of extreme cruelty. An infant child was awarded to the custody of plaintiff. She was also granted \$140 per month for maintenance of the child, and attorney's fees. Upon notice the defendant on December 19, 1944, moved to set aside the interlocutory decree and his previous default, with leave to appear and answer the complaint, under Section 473 of the Code of Civil Procedure, on the ground of plaintiff's alleged failure to serve him with process. At the same time he also moved for a change of place of trial. The motions were heard on affidavits of the respective parties. The evidence was conflicting on the question of previous service of summons and complaint. January 18, 1945, the motions were denied. The defendant gave notice of appeal January 22, 1945, from the interlocutory decree, from the order awarding plaintiff custody of the child and maintenance, from the entry of default and from the order denying the motion to vacate the interlocutory decree.

[1] The appeal from the interlocutory decree was perfected within sixty days from the time of entry as required by Section 939 of the Code of Civil Procedure, estimated pursuant to Section 12a of the same Code. That decree was entered November 21, 1944. Thanksgiving Day, which was proclaimed by both the President and the Governor, was included in the period of limitation. That holiday had the effect of extending the time one day. Sec. 12a, subd. (b), C.C.P. The last day therefore fell on Sunday, January 21st, *259 which extended the time, under that section, **641 to the following day, upon which the notice of appeal was actually filed. The appeal from that decree was therefore not too late.

[2] The separate preliminary order, made October 20, 1944, awarding the custody of the minor child to plaintiff pending the action, was not appealed from within sixty days thereafter. Assuming, without so deciding, that an appeal lies from that order, no appeal was perfected until January 22, 1945, which was too late to become effectual.

The validity of the default of the defendant is involved on the appeal from the order denying the motion to set it and the interlocutory decree aside under Sections 473 and 473a of the Code of Civil Procedure for alleged failure to serve process of the action on the defendant as required by law. There is no appeal from the mere entry of default, but the validity of that proceeding will be determined by our disposition of the appeal from the order denying defendant's motion to set the

interlocutory decree aside for mistake, inadvertence and lack of notice of the pendency of the divorce suit.

The complaint for divorce was filed in Sacramento County, and summons was issued on October 6, 1944. Affidavit of service of process on the defendant was filed. The default of the defendant for failure to appear or answer the complaint was duly entered November 20, 1944. The interlocutory decree of divorce was entered the following day. The motion to set aside the default and the interlocutory decree was made on December 19, 1944, upon affidavits of the respective parties. The evidence regarding the due service of the summons, complaint and order to show cause, is conflicting. The affidavit of D. Giss avers that he was experienced in serving processes in legal actions, including divorce proceedings, having done so for a period of twenty years; that on October 10, 1944, he personally served upon the defendant, at his place of employment in Los Angeles, copies of the complaint, summons and an order to show cause, by reading to him the order to show cause and explaining the nature of the documents and the necessity of appearing and answering in the action, and by leaving with him the copies thereof. The affiant averred that the defendant attempted to avoid service of process by entering his automobile which was parked on a street near his place of business with the door of the car locked, but that the window adjacent to which the affiant stood was at first open; that the affiant explained to *260 the defendant the nature of the documents which he attempted to serve and read to him the order to show cause 'in a loud and clear voice,' but that the defendant rolled the window up and refused to accept the documents; that the affiant then placed them under the windshield wiper in plain view of the defendant, who first tried to dislodge the papers by starting the windshield wiper, but failed to do so until after he had driven away. The defendant's affidavits varied somewhat on the essential circumstances of that transaction. He admitted the presence of Mr. Giss at the time and place of the attempted service but insisted that he did not know what it was all about, or that any suit had been filed against him. He stated that, while Giss did talk to him, he failed to hear what he said because the window was closed. He admitted that the documents were placed under the windshield wiper, and that when he drove away they were dislodged and lost and that he never learned of their nature or contents.

[3] Upon the foregoing conflict of evidence, the court found that the defendant was duly served with the summons and complaint in the divorce action, in Los Angeles, on October 12, 1944, and that his default for failure to appear or answer the complaint was duly entered, and the court thereupon denied the motion on January 18, 1945, to set aside the

default or the interlocutory decree of divorce. The court was warranted in assuming the truth of the averments of Mr. Giss that he left the copies of the documents in the custody and control of the defendant with an explanation of the nature thereof, and that the defendant knew the nature of the documents and the purpose of leaving them with him, but deliberately attempted to avoid service by dislodging them from the windshield wiper. The evidence adequately supports the finding of due personal service of process, and warrants the denial of defendant's motion to vacate the interlocutory judgment.

[4] Upon motion, under Sections 473 and 473a of the Code of Civil Procedure, to set aside an interlocutory decree of divorce or a final judgment, where the evidence is conflicting, the court has a sound discretion to grant or deny the motion, **642 and in the absence of a clear showing of abuse of discretion, the order will not be interfered with on appeal

therefrom. *Beard v. Beard*, 16 Cal.2d 645, 107 P.2d 385; *Johnson v. Johnson*, 117 Cal.App. 145, 3 P.2d 587; *McDonald v. McDonald*, 173 Cal. 175, 159 P. 426; *Riskin v. Towers*, 24 Cal.2d 274, 280, 148 P.2d 611, 153 A.L.R. 442; *261 *Zuber v. General Development Co.*, 136 Cal.App. 411, 28 P.2d 939; 14 Cal.Jur. p. 1072, § 115.

The interlocutory decree of divorce, including the award of custody of the minor child and for maintenance contained therein, and the order denying relief under Sections 473 and 473a of the Code of Civil Procedure, are affirmed.

ADAMS, P. J., and PEEK, J., concur.

All Citations

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