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Arizona Supreme Court
1501 W. Washington
Phoenix, AZ 85007

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Hon. Kenneth L. Gregory
Judge Pro Tempore
Mohave County Superior Court
2001 College Drive
Lake Havasu City, AZ 86403

RE: Rule Change Petition R-21-0021

Honorable Justices of the Supreme Court of Arizona, and all others:

The Arizona Process Servers Association (APSA), at its regular board meeting on 26 June 2021, discussed the subject rule change petition. Although the time has passed to submit comment to the rule changes forum, we feel compelled to bring some issues to light with this petition, from the perspective of the professional process server.

Firstly, APSA supports service by publication if permitted by the court, rather than at a litigant or counsel's discretion. However, while APSA agrees that the rule change



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petition deals with the issues raised in *Ruffino v. Lokosky*, 245 Ariz. 165 (App. 2018), it does not effectively address certain aspects of the concerns of process servers and our clients, whether represented or *in pro per*.

As process servers, we are also officers of the court, and have a responsibility to be candid to the court and our client. For purposes of effecting service, we are a neutral third party, and not an advocate for either side. The nature of our business is not to decide the merits of the case, but to deliver legal process so that each side in the litigation may have his or her “due process” – notice and opportunity to have their day in court.

Most of the time, we do not need to take extraordinary measures to effect service of process. But there are times when a defendant, respondent, or other person to be served chooses to take extraordinary measures to avoid service. In such instances, it is our accepted responsibility to report to our client the results of our efforts and render a declaration of non-service. Our client then must decide whether to pursue further efforts in locating and serving the other party.

The crux of the matter in *Ruffino* involved the “skiptracing” (or lack thereof) and the due and diligent efforts which the plaintiff failed to produce to effect personal service on a defendant who was not evading service. From the documentation rendered by the court in *Ruffino*, we conclude that such efforts to effect personal or substitute service on the defendant were shoddy.

The State Bar, in its petition, outlines the following procedures recommended to satisfy the courts’ requirement for skiptracing to satisfy due diligence:

- searching internet databases or other networking sites for the person;
- requesting an address by which the person may be served through the person’s known email and remitting the service documents through that known email;
- requesting an address by which the person may be served through a directed question to the person’s known social media accounts;
- inquiring with the person’s known acquaintances, friends, relatives, or employers as to the party’s whereabouts;
- investigating the real and personal property index in the applicable county assessor’s office;

- checking the websites of and telephoning the county jail, state prisons, and other detention facilities; or
- hiring a private detective or company that charged a fee to conduct a thorough search.¹

While many process servers are also licensed private investigators, those who are not generally have the knowledge, resources, and experience to conduct a full aspect skiptrace, or know someone who can. Statute allows process servers to conduct skiptracing without reservation for purposes of locating a party to be served. Process servers conducting skiptracing are exempt from having a private investigator's license.²

It is APSA's position that the serving party should not face undue burden when attempting to give the defendant notice of a legal proceeding, especially when it is apparent that the defendant(s) is/are taking active or passive measures to avoid personal service. Private investigators generally charge substantially more to conduct skiptracing than do process servers. Additionally, it would require the self-represented litigant, as well as those represented by counsel, to suffer delay in retaining, and quite possibly paying for such services.

The proposed mandate of the State Bar in its rule change petition, wherein it recommends "hiring a private detective or company that charged a fee to conduct a thorough search" places such an undue additional financial and logistical burden on the litigant. APSA believes if the Court mandates such a requirement for skiptracing, it would place unreasonable burden on certain litigants.

¹ <https://superiorcourt.maricopa.gov/llrc/>, with a detailed information paper explaining "reasonably diligent efforts" at <https://superiorcourt.maricopa.gov/media/4797/dr28hz.pdf>

² ARS §32-2409(9) [Exemptions], which states, "Private process servers who are duly registered and performing their duties pursuant to the Arizona rules of civil procedure."

Under ARCP Rule 4(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..."

And looking at ACJA §7-204(J)(5) [Ethics], we find: "The private process server shall perform services in a manner consistent with legal and ethical standards.

The private process server, having located the sought-after party or persons receiving process for those persons intended for service, shall perform the service of process in a professional manner, utilizing sound judgment and avoid rudeness and unprofessional conduct."

Accordingly, APSA objects to such a mandate.

Further, with regard to giving notice, contrasting what we see in the requirements for publication in ARCP Rule 4.1(l) and 4.2(f) with RFLP Rule 41(m), we find that service by publication under the family law rule requires that publication be done (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. This latter requirement, rather than only publishing the summons in the county where the action is pending, appears to be more likely to notice the defendant residing out of state.

With regard to juvenile matters, APSA supports DCS's recommended exception language, as well.³

Very truly yours,
Arizona Process Servers Association



Barry R. Goldman, Administrator
For the Board

³ In Juvenile Matters. In proceedings initiated under Title 8, chapter 4, Arizona Revised Statutes, the provisions for service by publication outlined above apply, except that a motion is not required prior to initiating service by publication. Before proceeding to adjudication on service by publication, the juvenile court must find that service by publication was the best means practicable under the circumstances based on review of documentation submitted by the serving party that shows such service was completed and one or more affidavits that set forth the serving party's reasonably diligent efforts to identify, locate, and serve the person.