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7 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

9 **In the Matter of: PETITION TO**
10 **AMEND RULES OF SMALL**
11 **CLAIMS PROCEDURE, RULE**
12 **5(b)(2)**

SUPREME COURT No.:

PETITIONER'S INITIAL
SUBMISSION (Amended as to form)

14 The Arizona Process Servers Association (APSA) pursuant to Rule 28, Ariz. R.
15 Sup. Ct., submits the following proposed change to Rules of Small Claims Procedure,
16 (RSCP) Rule 5(b)(2).

17 **PROPOSED AMENDMENT**

18 Currently, Rules of Small Claims Procedure, (RSCP) Rule 5(b) states the
19 following:

20 RSCP Rule 5(b) -- **How to Serve the Defendant.** The plaintiff must serve each
21 defendant with the complaint, and the summons and Notice to the Plaintiff and
22 Defendant provided by the court by either:

23 (1) Registered or Certified Mail. The plaintiff may serve the defendant by
24 registered or certified mail, with a "return receipt requested." The
25 plaintiff must file the return receipt with the court within 45 days of the
26 complaint filing date to establish that the defendant was served. The
27 return receipt can be the card returned to the plaintiff by the postal or
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1 delivery service or the return receipt printed from the postal or delivery
2 service's website; or

3 (2) Constable, Sheriff, or Private Process Server. The plaintiff may
4 arrange for personal service on the defendant by a constable, sheriff, or
5 private process server. If personal service is used, an affidavit of service
6 must be filed with the court within 45 days of the complaint filing date.

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8 APSA proposes the following changes (~~removed~~, added) to the rule in
9 accordance with this Petition¹:

10 **RSCP Rule 5(b) -- How to Serve the Defendant.** The plaintiff must serve each
11 defendant with the complaint, and the summons and Notice to the Plaintiff and
12 Defendant provided by the court by either:

13 (1) Registered or Certified Mail. The plaintiff may serve the defendant by
14 registered or certified mail, with a “return receipt requested.” The
15 plaintiff must file the return receipt with the court within 45 days of the
16 complaint filing date to establish that the defendant was served. The
17 return receipt can be the card returned to the plaintiff by the postal or
18 delivery service or the return receipt printed from the postal or delivery
19 service's website; or

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21 (2) Constable, Sheriff, or Private Process Server. The plaintiff may
22 arrange for ~~personal~~ service on the defendant by a constable, sheriff, or
23 private process server. ~~If personal service is used, an~~ An affidavit of
24 service must be filed with the court within 45 days of the complaint filing
25 date.

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28 ¹ Amended as to form per Sup.Ct.Rules, Rule 28(a)(4)(iii)

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3 **BACKGROUND AND DISCUSSION OF PROPOSED AMENDMENT**

4 The Arizona Process Servers Association (APSA) provides continuing
5 education and advocacy for its members and others on the rules, regulations, statutes,
6 and case law affecting service of legal process within and outside of Arizona.

7 APSA has found no previous similar rule change proposal within the last five
8 years.

9 A small claims summons requires an Answer, not a mandated Appearance in
10 the small claims division of the justice courts. A summons is not a document which is
11 mandated either by law or by rule of court to be given personally (i.e.: face to face) so
12 as to effect actual notice² to the Defendant, allowing the use of a civil bench warrant,
13 or the threat of criminal prosecution for its enforcement.

14 Unfortunately, APSA members have reported a trend among certain Justices of
15 the Peace (JP's) who are refusing to accept proofs of service (affidavits of service)
16 wherein the defendant was served by substitute service (leaving a copy of each at that
17 individual's dwelling or usual place of abode with someone of suitable age and
18 discretion who resides there).

19 Service of summonses in civil and small claims matters by sheriffs, constables,
20 and process servers has been consistently performed throughout the state's history
21 where the service has been made by giving actual notice (by personal delivery), or
22 constructive notice³ (by leaving a copy of each at that individual's dwelling or usual
23 place of abode with someone of suitable age and discretion who resides there) to the
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27 ² actual notice. n. having been informed directly of something or having seen it occur, as distinguished from constructive
notice. [<https://dictionary.law.com/>]

28 ³ constructive notice. n. a fiction that a person got notice even though actual notice was not personally delivered to
him/her. [<https://dictionary.law.com/>]

1 defendant. Giving constructive notice by the serving officer or process server in
2 Arizona has historically been satisfactory in making service in these circumstances.

3 Most small claims cases filed by individuals are filed by persons with limited
4 means of disposable income. In most instances, we (process servers) find the
5 defendant already knows about the intent for the plaintiff to file, or the filing of the
6 summons and complaint itself. Many of those defendants will take active steps to
7 avoid service of process. Because of the nature of the circumstances, many small
8 claims litigants cannot afford additional costs for stake outs, skiptracing and the like
9 to have an evasive defendant served.

10 Even though statute gives the plaintiff the option of serving the defendant by
11 certified mail [ref. ARS §22-513(A)/(B); RSCP Rule 5(b)(1)] the option of
12 attempting to serve an evasive defendant by certified mail in a small claims matter is a
13 waste of resources. It is a foregone conclusion that an evasive defendant will not
14 accept service by certified mail. Additionally, many JP's will reject the return receipt
15 if the signature of the recipient is illegible or is that of a third party.

16 Thus the mandate for strict compliance in making personal (face to face)
17 service upon an evasive defendant in a small claims case conjugates an impracticable
18 situation. A motion for alternative means of service due to the impracticability of
19 directly, personally serving an evasive defendant is not allowed. [ref. ARS §22-
20 505(B)] A motion for alternative means of service would be allowed in a civil case
21 within the justice court.⁴

22 While a limited solution may be for the plaintiff to pay the court clerk an
23 additional fee and convert their case from a small claims to a civil case⁵, that option is
24 only available to the sophisticated plaintiff or the plaintiff who can afford the
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27 ⁴ See JCRCP Rule 113(c)(6)

28 ⁵ RSCP Rule 11. Transferring the Lawsuit to the Justice Court Civil Division (a) Requesting Transfer. Either party can file a request to transfer the lawsuit to the civil division of the justice court no later than 10 business days before the hearing date.

1 additional costs of litigation and navigate the civil practice rules associated with civil
2 cases in the justice courts.

3 Most self-represented small litigants are of limited financial means, resources
4 and knowledge.

5 A policy mandating strict compliance by giving actual notice by personal
6 delivery to the evasive small claims defendant creates a situation where service is not
7 only impracticable but may be impossible. This deprives the plaintiff in small claims
8 case their due process rights. It also works against the court’s own interests for
9 expedience and the statutory construction of “...a forum in justice courts in which
10 procedures shall allow the inexpensive, speedy and informal resolution of small
11 claims.” (ARS §22-501)⁶

12 Statute (ARS §22-513) provides, “In addition to any other available methods of
13 service...”, “...personal service by a process server or an authorized officer or *by any*
14 *other means pursuant to court rule may be used*”. (Emphasis added).

15 Interpreting and applying the foregoing “...*liberally and consistently*...”, and in
16 accordance with ARS §22-505(A), we find that service of a small claims summons by
17 “...leaving the papers at the Defendant’s dwelling with a person of suitable age and
18 discretion who lives there” applied within Arizona, is within reason, statute, rules of
19 court, and the bounds of common sense. We find that anything less than a liberal
20 interpretation of the applicable statute(s) and rule(s) creates an impracticable situation,
21 is unreasonably prohibitive, inconsistent with the legislative intent and nature of the
22 small claims process and causes impediment to the course of due process.
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26 ⁶ Additionally, RSCP Rule 1(b) states. “These rules and the Arizona Revised Statutes (“ARS”) Title 22, Chapter 5,
27 govern procedures for small claims lawsuits and provide a process for inexpensive, speedy, and informal resolutions.
28 Courts and parties should interpret these rules *liberally and consistently with this purpose*.” (Emphasis added). Further
noting, ARS §22-516(A), states, in part, “The justice of the peace or hearing officer shall conduct the trial in such a
manner to do justice between the parties and *shall not be bound by formal rules of procedure*...”. (Emphasis added).

1 Accordingly, APSA submits the instant Petition.

2 Respectfully submitted,

3 **Arizona Process Servers Association**

4 /S/

5 **BARRY R. GOLDMAN**

6 Administrator, Secretary/Treasurer

7 Larry J. Ratcliff, President

8 John Osborn, Vice President

9 Barry R. Goldman, Secretary/Treasurer, Administrator

10 Ronald R. Ezell, Immed. Past Pres.

11 Susie Baldwin (Director #1)

12 Kay Dean (Director #2)

13 Gregory Scott Hardy (Director #3)

14 Nathan Botsch (Director #4)

15 Matthew Uthe (Director #5)

16 Tracy Arnold (Director #6)

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