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

9 **In the Matter of: PETITION TO**  
10 **AMEND RULE 4.1(d) OF THE**  
11 **RULES OF CIVIL PROCEDURE**  
12 **FOR THE SUPERIOR COURTS OF**  
13 **ARIZONA AND RULE 41(c) OF THE**  
14 **RULES OF FAMILY LAW**  
15 **PROCEDURE**

SUPREME COURT No.:

**PETITIONER'S INITIAL**  
**SUBMISSION**  
**(Amended as to form)**

17 The Arizona Process Servers Association (APSA) pursuant to Rule 28, Ariz. R.  
18 Sup. Ct., submits the following proposed change to Rule 4.1(d) of the Rules of Civil  
19 Procedure for the Superior Courts of Arizona (ARCP) and Rule 41(c) of the Rules of  
20 Family Law Procedure (RFLP).

21 **PROPOSED AMENDMENTS**

22 Currently, Rule 4.1(d) of the Rules of Civil Procedure for the Superior Courts  
23 of Arizona (ARCP) and Rule 41(c) of the Rules of Family Law Procedure (RFLP)  
24 state the following:

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

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

8 RFLP Rule 41(c): **Serving an Individual.** Unless Rule 41(e) or (f)  
9 applies, an individual may be served by:

- 10 (1) delivering a copy of the summons and the pleading being  
11 served to that individual personally;  
12 (2) leaving a copy of each at that individual's dwelling or usual  
13 place of abode with someone of suitable age and discretion who  
14 resides there; or  
15 (3) delivering a copy of each to an agent authorized by  
16 appointment or by law to receive service.  
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18  
19 APSA proposes the following rule changes (~~removed~~, added) in accordance  
20 with this Petition<sup>1</sup>:

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

- 23 (1) delivering a copy of the summons and the pleading being  
24 served to that individual personally;  
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28 <sup>1</sup> Amended as to form per Sup.Ct.Rules, Rule 28(a)(4)(iii)

- 1 (2) leaving a copy of each at that individual's dwelling or usual  
2 place of abode with someone of suitable age at least 16 years of  
3 age and discretion who resides there; or  
4 (3) delivering a copy of each to an agent authorized by  
5 appointment or by law to receive service of process.  
6

7 **RFLP Rule 41(c): Serving an Individual.** Unless Rule 41(e) or (f)  
8 applies, an individual may be served by:

- 9 (1) delivering a copy of the summons and the pleading being  
10 served to that individual personally;  
11 (2) leaving a copy of each at that individual's dwelling or usual  
12 place of abode with someone of suitable age at least 16 years of  
13 age and discretion who resides there; or  
14 (3) delivering a copy of each to an agent authorized by  
15 appointment or by law to receive service.  
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1                   **BACKGROUND AND DISCUSSION OF PROPOSED AMENDMENTS**

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

5                   APSA has found no previous similar rule change proposal within the last five  
6 years.

7                   Currently, under the Rules of Civil Procedure for the Superior Courts of  
8 Arizona (ARCP) Rule 4.1(d) and RFLP Rule 41(c), there are two means to effect  
9 service of a summons under these rules: to personally deliver the summons and  
10 accompanying documents directly to the defendant or respondent, thus giving actual  
11 notice; or by “leaving a copy of each at that individual's dwelling or usual place of  
12 abode with someone of suitable age and discretion who resides there...”, making  
13 substituted service (sub-service), resulting in the giving of constructive notice.

14                   In our continuing education classes, APSA teaches process servers that a person  
15 of “suitable age” to make substituted service at a residence should be considered at  
16 least 16 years of age [consistent with ARCP Rule 4.1(e) and RFLP Rule 41(e)].  
17 However, we find that many process servers, especially those not affiliated with  
18 APSA, do not hold 16 years of age to be the minimum “suitable age” when leaving  
19 papers for a defendant.  
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21                   Many of our members, as well as non-member process servers, in attempting to  
22 make personal service on an adult (defendant) occupant of the abode have  
23 encountered situations where a minor child under the age of 16 years is present and  
24 “in charge” of the residence while his/her parent or legal guardian are away. Some of  
25 these encounters have been with minors as young as six (6) or seven (7) years of age.

26                   Under the auspices of “...someone of suitable age and discretion...”, we find  
27 that some attorneys, self-represented litigants and process servers claim substituted  
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1 service of process is “justified” to these minors (children) because they are left home  
2 alone or with their younger siblings by their parent, so these minors must be of  
3 suitable age and have enough discretion to bear the responsibility of being in charge  
4 of the household. We disagree. A minor under the age of 16 years, especially a child,  
5 does not possess the decision making capability of an adult. Any reasonable parent  
6 knows this.

7 As an issue in service of process, APSA finds this problematic, as a minor  
8 under the age of 16 years, under ARCP Rule 4.1(e) and RFLP Rule 41(e), cannot be  
9 served without also serving the parent, guardian, or any adult having the care and  
10 control of the minor, or any person of suitable age and discretion with whom the  
11 minor resides. However, under ARCP Rule 4.1(d) and RFLP Rule 41(c), that  
12 “suitable age” is not defined and the inconsistency arises.

13 Under statute, a minor under the age of 16 years cannot:

- 14 • be issued a driver license [ref. ARS §28-3153(A)];
- 15 • fail to attend school [ARS §15-803];
- 16 • marry [ARS §25-102(B)];
- 17 • vote [ARS §16-101]

18 Consistency and defined parameters of a person of “suitable age and discretion”  
19 are needed. Within these rules, ARCP Rule 4.1(e) and RFLP Rule 41(e) have well-  
20 defined parameters for serving a minor, both stating:  
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22 “...a minor less than 16 years old may be served by delivering a copy of the  
23 summons and the pleading being served to the minor in the manner set forth in  
24 [Rule 4.1(d)/ Rule 41(c)] for serving an individual and [also] delivering a copy  
25 of each in the same manner:

- 26 (1) to the minor's parent or guardian, if any of them reside or may be  
27 found within Arizona; or

1 (2) if none of them resides or is found within Arizona, to any adult having  
2 the care and control of the minor, or any person of suitable age and  
3 discretion with whom the minor resides.

4 As professional process servers, APSA has found there are attorneys, self-  
5 represented litigants and process servers who really don't care about proper service  
6 and just want a "warm body" served. Because currently under ARCP Rule 4.1(d) and  
7 RFLP Rule 41(c) no such parameter of suitable age exists, the existing rules give a  
8 loophole to sub-serve a "warm body", no matter how young that recipient may be.

9 This negatively impacts service of legal process and casts a disparaging light on  
10 the legal system, as a whole. We find this troubling.

11 We believe sub-service to a minor child under 16 years of age, particularly  
12 when the documents are left with a child too young to understand the important nature  
13 of the legal process delivered does the justice system a disservice. These incidents  
14 "...reflect adversely on the judiciary, the courts, or other agencies involved in the  
15 administration of justice". [ref. ACJA §7-204(J)(4)(d)]

16 We, therefore, after much discussion and debate, concluded a rule change  
17 petition was in order.

18 Accordingly, APSA submits the instant Petition.

19 Respectfully submitted,

20 **Arizona Process Servers Association**

21 /S/

22 **BARRY R. GOLDMAN**  
23 Administrator, Secretary/Treasurer  
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- 1 Larry J. Ratcliff, President
- 2 John Osborn, Vice President
- 3 Barry R. Goldman, Secretary/Treasurer, Administrator
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- 6 Kay Dean (Director #2)
- 7 Gregory Scott Hardy (Director #3)
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- 9 Matthew Uthe (Director #5)
- 10 Tracy Arnold (Director #6)

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