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

8  
9 **In the Matter of: PETITION TO**  
10 **AMEND RULES OF SMALL**  
11 **CLAIMS PROCEDURE, RULE**  
12 **5(b)(2)**

SUPREME COURT No.: R-24-0001

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14 **PETITIONER'S REVISED**  
15 **AMENDED SUBMISSION**

16 The Arizona Process Servers Association (APSA) pursuant to Rule 28, Ariz. R.  
17 Sup. Ct., submits the following proposed amended change to Rules of Small Claims  
18 Procedure, (RSCP) Rule 5(b)(2) to its original petition filed on January 1, 2024.

19 **REVISION TO PROPOSED AMENDMENT**

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

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

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

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.  
7

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

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  
20

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. “Personal service” means that the constable, sheriff, or private  
26 process server must deliver a copy of the summons and pleading to the  
27 individual defendant personally, or leave copies at the individual's  
28

1 residence with a person of suitable age and discretion who lives there, or  
2 deliver copies to an authorized agent of the defendant.

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4 **BACKGROUND AND DISCUSSION OF THE REVISION TO THE**  
5 **PROPOSED AMENDMENT**  
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7 In response from comments filed, the Arizona Process Servers Association  
8 (APSA) files this revised (amended) petition. We believe this instant petition clarifies  
9 the definition of personal service and makes service of a small claims summons  
10 consistent with Justice Court Rules of Civil Procedure (JCRCP) Rule 113(a).

11 JCRCP Rule 113(a) states:

12 Personal service on individuals in the State of Arizona. A CASE OR CLAIM  
13 AGAINST A DEFENDANT CANNOT PROCEED WITHOUT PROPER  
14 SERVICE. Except as stated in other sections of this rule, each defendant who is  
15 found in the State of Arizona must be personally served with the summons and  
16 complaint by a constable or by a certified private process server who is certified  
17 under Arizona law. “Personally served” means that the constable or private  
18 process server must deliver a copy of the summons and pleading to the  
19 individual defendant personally, or leave copies at the individual's residence  
20 with a person of suitable age and discretion who lives there, or deliver copies to  
21 an authorized agent of the defendant. Promptly after service upon a defendant,  
22 the constable or certified private process server must prepare an affidavit as  
23 proof that the defendant was served, and the proof of service must be filed with  
24 the court. An affidavit of attempted service should be filed with the court only  
25 as an exhibit to a motion. [ARCP 4(d), (g), 4.1(b), (d)]

26 As stated in our previous submission, APSA provides continuing education and  
27 advocacy for its members and others on the rules, regulations, statutes, and case law  
28 affecting service of legal process within and outside of Arizona.

Excepting that filed by APSA, we have found no previous similar rule change  
proposal within the last five years.

1 A small claims summons requires an Answer, not a mandated Appearance in  
2 the small claims division of the justice courts. A summons is not a document which is  
3 mandated either by law or by rule of court to be given personally (i.e.: face to face) so  
4 as to effect actual notice<sup>1</sup> to the Defendant, allowing the use of a civil bench warrant,  
5 or the threat of criminal prosecution for its enforcement.

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

11 Service of summonses in civil and small claims matters by sheriffs, constables,  
12 and process servers has been consistently performed throughout the state's history  
13 where the service has been made by giving actual notice (by personal delivery), or  
14 constructive notice<sup>2</sup> (by leaving a copy of each at that individual's dwelling or usual  
15 place of abode with someone of suitable age and discretion who resides there) to the  
16 defendant. Giving constructive notice by the serving officer or process server in  
17 Arizona has historically been satisfactory in making service in these circumstances.

18 Most small claims cases filed by individuals are filed by persons with limited  
19 means of disposable income. In most instances, we (process servers) find the  
20 defendant already knows about the intent for the plaintiff to file, or the filing of the  
21 summons and complaint itself. Many of those defendants will take active steps to  
22 avoid service of process. Because of the nature of the circumstances, many small  
23 claims litigants cannot afford additional costs for stake outs, skiptracing and the like  
24 to have an evasive defendant served.  
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27 <sup>1</sup> actual notice. n. having been informed directly of something or having seen it occur, as distinguished from constructive  
28 notice. [<https://dictionary.law.com/>]

<sup>2</sup> 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 Even though statute gives the plaintiff the option of serving the defendant by  
2 certified mail [ref. ARS §22-513(A)/(B); RSCP Rule 5(b)(1)] the option of  
3 attempting to serve an evasive defendant by certified mail in a small claims matter is a  
4 waste of resources. It is a foregone conclusion that an evasive defendant will not  
5 accept service by certified mail. Additionally, many JP's will reject the return receipt  
6 if the signature of the recipient is illegible or is that of a third party.

7 Thus the mandate for strict compliance in making personal (face to face)  
8 service upon an evasive defendant in a small claims case conjugates an impracticable  
9 situation. A motion for alternative means of service due to the impracticability of  
10 directly, personally serving an evasive defendant is not allowed. [ref. ARS §22-  
11 505(B)] A motion for alternative means of service would be allowed in a civil case  
12 within the justice court.<sup>3</sup>

13 While a limited solution may be for the plaintiff to pay the court clerk an  
14 additional fee and convert their case from a small claims to a civil case<sup>4</sup>, that option is  
15 only available to the sophisticated plaintiff or the plaintiff who can afford the  
16 additional costs of litigation and navigate the civil practice rules associated with civil  
17 cases in the justice courts.

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

20 A policy mandating strict compliance by giving actual notice by personal  
21 delivery to the evasive small claims defendant creates a situation where service is not  
22 only impracticable but may be impossible. This deprives the plaintiff in small claims  
23 case their due process rights. It also works against the court's own interests for  
24 expedience and the statutory construction of "...a forum in justice courts in which  
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<sup>3</sup> See JCRCP Rule 113(c)(6)

27 <sup>4</sup> RSCP Rule 11. Transferring the Lawsuit to the Justice Court Civil Division (a) Requesting Transfer. Either party can  
28 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 procedures shall allow the inexpensive, speedy and informal resolution of small  
2 claims.” (ARS §22-501) <sup>5</sup>

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

6 Interpreting and applying the foregoing “...*liberally and consistently*...”, and in  
7 accordance with ARS §22-505(A), we find that service of a small claims summons by  
8 “...leaving the papers at the Defendant’s dwelling with a person of suitable age and  
9 discretion who lives there” applied within Arizona, is within reason, statute, rules of  
10 court, and the bounds of common sense. We find that anything less than a liberal  
11 interpretation of the applicable statute(s) and rule(s) creates an impracticable situation,  
12 is unreasonably prohibitive, inconsistent with the legislative intent and nature of the  
13 small claims process and causes impediment to the course of due process.

14 Accordingly, APSA submits the instant Petition.

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16 Respectfully submitted,

17 **Arizona Process Servers Association**

18 /S/

19 **BARRY R. GOLDMAN**  
20 Administrator, Secretary/Treasurer

21  
22 Larry J. Ratcliff, President

23 John Osborn, Vice President

24 Barry R. Goldman, Secretary/Treasurer, Administrator

25 Ronald R. Ezell, Immed. Past Pres.

26 <sup>5</sup> 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 Susie Baldwin (Director #1)
- 2 Kay Dean (Director #2)
- 3 Gregory Scott Hardy (Director #3)
- 4 Nathan Botsch (Director #4)
- 5 Matthew Uthe (Director #5)
- 6 Tracy Arnold (Director #6)

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