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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of ) Arizona Supreme Court No. R-24-0002  
 )  
PETITION TO AMEND RULE )  
4.1(d) OF THE ARIZONA RULES ) Comment of the Committee on  
OF CIVIL PROCEDURE FOR THE ) Family Court  
SUPERIOR COURTS OF ARIZONA )  
AND RULE 41(c) OF THE RULES )  
OF FAMILY LAW PROCEDURE )  
\_\_\_\_\_ )

Undersigned, on behalf of the Committee on Family Court (“COFC”), f.k.a. Family Court Improvement Committee, files this Comment in opposition to the Petition insofar as the Petition seeks to amend Rule 41(c)(2), Arizona Rules of Family Law Procedure (ARFLP).

The Petition seeks, in part, to amend Rule 41(c)(2) which currently provides that an individual can be served “leaving a copy . . . at that’s individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there[.]” Rule 41(c)(2), ARFLP. The proposed amendment would provide that for purposes of service, a person of suitable age and discretion must be at least 16 years of age.

At its February 15, 2024 meeting, COFC considered the pending Petition and its members voted unanimously to oppose the Petition. During the discussion, members raised various concerns about the proposed amendment including the following: (1) at least as to matters before the family court, a lack of any perceived problem with the current rule; (2) a recognition that a child under the age of 16 might be of suitable age and discretion and one over 16 may not be; (3) a practical concern of how are process servers to determine the age of a 16 year old, as opposed to slightly younger; and (4) the potential consequences of serving someone less than 16 years old but who is still of suitable age and discretion. Ultimately, the consensus was that the proposed amendment would create more problems for the family courts, and those that appear before them, than it would solve.

In addition, the Petition seems to argue that the “suitable age and discretion” standard requires the party receiving the papers to “possess the decision making capability of an adult.” Petition, p. 5. That appears to be too high a standard as courts interpreting similar rules have focused on whether the recipient understood the nature and importance of the served documents. *Veracity Research Co. v. Bateman*, 2008 WL 2951910, \*7 (N.D. Tex. 2008); *Yuga Labs, Inc. v. Hickman*, 2024 WL 1011121, \*3 (D. Nev. 2024); *Houston Cas. Co. v. Int’l Grand Tours, Inc.*, 2008 WL 4822545, \*4 (N.D. Cal. 2008).

Insofar as the Petition raises a concern about a lack of guidance in this area, there is persuasive guidance for those interested in service of process in Arizona under the “suitable age and discretion” standard. The language in the current Rule 41(c)(2) tracks Rule 4(e)(2)(B), Fed. R. Civ. P., and similar rules in other states. Courts have found that service on teenagers less than 16 years of age can be appropriate under the “suitable age and discretion” standard. *See, e.g.*, 91 A.L.R.3d 827 (2013) (collecting cases in which “individuals ranging in years from 13 to 20 were held to be within the purview of statutes or rules relating to substituted service by delivery of process to a person of suitable age and discretion); *Perkins v. Johnson*, 2008 WL 275768, \*3 (D. Colo. 2008) (collecting cases); *Trammel v. National Bank of Ga.*, 285 S.E.2d 590, 592 (Ga. App. 1981) (refusing “to hold as a matter of law that a twelve year old is not “a person of suitable age and discretion”); *United Servs. Auto Ass’n. v. Barger*, 910 F.2d 321, 324 (6th Cir. 1990) (holding service on thirteen-year-old son was suitable); *Holmen v. Miller*, 206 N.W.2d 916, 920 (Minn. 1973) (holding same); *Van Buren v. Glasco*, 217 S.E.2d 579, 583 (N.C. App. 1975) (holding same as to 15-year-old child); *Miebach v. Colasurdo*, 670 P.2d 276, 280 (Wash. App. 1983) (holding same); *Villegas-Rubi v. Dynamic Change, Inc.*, 2018 WL 706485, \*1 (D. Or. 2018) (holding service on a person “over the age of 14 year” was suitable); *G.W. Palmer & Co. v. Fla. Fresh*

*Produce Corp.*, 2018 WL 3860125 (M.D. Fla. 2018) (holding service on fifteen-year-old was proper service).

The cases cited above are consistent with COFC's views that a case-by-case approach is best.

For the foregoing reasons, COFC respectfully requests that the Court deny the Petition.

DATED this 30th day of April 2024.

Greg Sakall  
Chair, Committee on Family Court