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

9 In the Matter of:

Supreme Court No. R-24-0002

10 **PETITION TO AMEND RULE**
11 **4.1(d) OF THE ARIZONA RULES**
12 **OF CIVIL PROCEDURE AND**
13 **RULE 41(c) OF THE ARIZONA**
14 **RULES OF FAMILY LAW**
15 **PROCEDURE**

STATE BAR OF ARIZONA
COMMENT

16 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
17 of Arizona (the “State Bar”) hereby submits the following as its comment to the
18 above-captioned Petition.

19 **I. THE RULES AND THE PETITION’S PROPOSED CHANGES**

20 The Rules govern the manner of service of an individual. Under each Rule,
21 an individual may be served by:

22 (1) delivering a copy of the summons and the pleading being
23 served to that individual personally;

24 (2) leaving a copy of each at that individual's dwelling or usual
25 place of abode with someone of suitable age and discretion who
resides there; or

(3) delivering a copy of each to an agent authorized by
appointment or by law to receive service.

1 See Ariz. R. Civ. P. 4.1(d); Ariz. R. Fam. L. P. 41(c).

2 The Petition proposes amending subsection (2) by requiring that the person of
3 “suitable age and discretion” residing at the “individual’s dwelling or usual place of
4 abode” be “at least 16 years of age.”

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6 **II. THE STATE BAR OPPOSES THE PETITION**

7 The State Bar opposes the amendments proposed in the Petition for four
8 reasons.

9 First, although Petitioner refers to “attorneys, self-represented litigants and
10 process servers who don’t really care about proper service” and thereby abuse the
11 current Rules, it does not provide any specific evidence of this, let alone any
12 evidence of a systemic problem. The Rules presently provide that the subsection (2)
13 person be “of suitable age and discretion,” a familiar term that has been in the Rules
14 for decades. Given this, there is little reason, even in the abstract, to provide a
15 minimum age requirement. Further, non-inclusion of a minimum age in the Rules
16 constitutes persuasive evidence that the question of whether a person is of “suitable
17 age and discretion” is intended to be a question of fact under the circumstances
18 presented in each case. *See [Holmen v. Miller, 296 Minn. 99, 206 N.W.2d 916](#) (1973).*

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22 Second, although not technically required by the proposed amendments, the
23 State Bar is concerned that the amendment would alter the practice of service by
24 having process servers ask the person to be served for identification to confirm age,
25

1 which could implicate of a number of privacy and other rights of that person. If the
2 amendment were adopted, it is unclear how a process server would verify that
3 someone is at least 16 years of age to confirm that substitute service was proper.
4
5 Would the sub-service recipient affirm, or must they present identification? Would
6 a method of age verification then need to be described in the affidavit of service?
7
8 And further, would false information provided by a sub-service recipient later
9 invalidate service? These interactions might also take place disproportionately in low-
10 income households, in which adults are less likely to have any childcare or have
11 childcare in out-of-home programs and settings.¹

12 Third, again, although not technically referred to by the proposed amendment,
13 the State Bar is concerned that the amendment could create the false impression that,
14 so long as the individual is at least sixteen years old, the “suitable age and discretion”
15 requirement is satisfied. This concern is heightened because, once made, proof of
16 service “can be impeached only by clear and convincing evidence.” *See General*
17
18 *Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 194 (App. 1992).

23 ¹ United States Census Bureau, “Most Parents Don’t Have Any Formal Child
24 Care Arrangements,” Figure 3, (November 29, 2023), available at
25 <https://www.census.gov/library/stories/2023/11/child-care.html> (last visited
February 16, 2024).

1 Fourth, the proposed amendments would render the Rules inconsistent with
2 their federal counterpart. *See* [Fed. R. Civ. P. 4\(e\)\(2\)](#). Although the state rules do
3 depart in some instances from their federal counterparts, in general, there should be
4 a good reason, at the very least, to justify the departure. The fact that the federal rules
5 have not been amended to add this minimum-age requirement is further evidence
6 that there is not a systemic problem that needs to be redressed.
7

8 **III. CONCLUSION**
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10 The State Bar opposes the Petition, and requests that the Court deny it.

11 RESPECTFULLY SUBMITTED this 1st day of May 2024.
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15 General Counsel
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18 Electronic copy filed with the
19 Clerk of the Supreme Court of Arizona
20 this 1st day of May 2024.

21 by: PSequin
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