

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85274

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-23-0049
REPLY TO OBJECTION)	
TO AMEND RULE 113)	Reply from the
of the JUSTICE COURT RULES)	Maricopa County
OF CIVIL PROCEDURE)	Justice Court Bench

This Reply to the objections made by the Respondent Arizona Process Servicers Association is filed on behalf of the Justice of the Peace Bench in Maricopa County. We agree with everything the Respondent said about the importance of personal service and note that all of the requirements for personal service would remain unchanged if our proposed amendment is adopted. In addition, every type of service would still need to be completed by someone currently authorized to serve process.¹

I.

THE RECOMMENDED CHANGE PROVIDES AN ALTERNATIVE TO SERVICE BY PUBLICATION, NOT TO PERSONAL SERVICE.

The opening sentence of this proposed rule states in part, *“In addition to any other available methods of alternative service, a plaintiff may file a*

¹ JCRCP 113.

motion to serve the summons and complaint by electronic means if that party can show other methods of service have been unsuccessful ...” That language is unambiguous and cannot reasonably interpreted to mean electronic service can be used in lieu of personal service.² It is completely clear that a plaintiff would be required to demonstrate that traditional methods of service were unsuccessful prior to requesting electronic service.

II.

JUSTICE COURTS ARE ALREADY CURRENTLY RECEIVING MOTIONS FOR ALTERNATIVE SERVICE BY E-MAIL FROM COLLECTION ATTORNEYS AND SOME TYPE OF UNIFORM STANDARD IS NEEDED.

Our civil court rules should be amended to “accept and encourage email as an effective and efficient method of service.”³ This is especially true for this request because the Petitioner is only requesting that electronic service be

² Clear and unequivocal language determines the meaning of a text, reading each word, phrase, clause, and sentence in such a way to ensure no part of a law is void or trivial. *Janson ex rel. Janson v. Christensen*, 808 P.2d 1222, 1223 (Ariz. 1991).

³ Jenna Karadbil, *Service by E-Mail*, 10 Nev. Lawyer 21 (Jul 2002); See also, Svetlana Gitman, *(Dis)service of Process: The Need to Amend Rule 4 to Comply with Modern Usage of Technology*, 45 J. Marshall L. Rev. 459 (Winter 2012); John Messing, *Two Methods of Electronic Service of Process*, 2 No. 3 ABA Sci Tch Lawyer 14 (Winter 2006). When the administrator of an estate filed a lawsuit in federal court against Osama bin Laden, al Qaeda, the Taliban, and the Islamic Emirate of Afghanistan alleging involvement in the September 11, 2001 terrorists attacks, service of process was allowed by publication and by television broadcasts. *Smith v. Islamic Emirate of Afghanistan* 2001 WL 1658211 (S.D.N.Y. 2001).

authorized in cases when traditional methods have been demonstrated failures.

In one recent case, a law firm from Pima County filed a 28-page Motion for Alternative Service in a Justice Court in Maricopa County requesting in part that service be accomplished through Facebook Messenger.⁴ The motion included an attachment showing the individual's Facebook profile and that she lived in and had friends in the local area.

While there may always be contrasting views on what is sufficient to constitute sufficient alternative service, to the extent possible, we need some level of standardization. The Maricopa County Justice Court Bench has a Best Practices Committee in order to foster judicial excellence; but also to promote consistency and efficiency. If a judge has not already received a motion seeking alternative service by e-mail, she or he will likely receive one soon. Established parameters, that still allow for judicial discretion, are needed.

⁴ Motion for Alternative Service, *Tramonto Parcel W-16 Condominium Ass'n v. Sithma Investments, LLC*, CC2023239787RC (North Valley Justice Court, April 5, 2024)(Facebook was one method requested to notify the manager of an LLC). The judge's decision to allow service through social media (and by regular mail) was based in part on the individual's very unique name. The Plaintiff alleged a failure to pay HOA assessments. The case involved unusual and unsuccessful attempts to serve the listed statutory agent.

CONCLUSION

For the reasons stated in our Petition and in this Reply, the Petitioners respectfully request that the proposed amendment to Rule 113(a) of the Justice Court Rules of Civil Procedure be adopted. Many, if not most modern defendants are more likely to check their e-mail each day than their regular mail.⁵

RESPECTFULLY SUBMITTED, this 10th day of May 2024.

/s/ Anna Huberman
ANNA HUBERMAN
Presiding Justice of the Peace
Maricopa County
Justice Court Administration
222 North Central Ave., Suite 210
Phoenix, AZ 85004

⁵ See generally Yvonne A. Tamayo, *Are You Being Served? E-Mail and (Due) Service of Process*, 51 S. C. L. Rev. 227 (2000).