

Arizona Process Servers Association  
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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

<b>In the Matter of: Petition to Amend Rule 4.1(i) of the Rules of Civil Procedure for the Superior Courts of Arizona; Rule 41(j) of the Rules of Family Law Procedure; Rule 113(b) of the Justice Court Rules of Civil Procedure; Rule 5(b), Rules of Small Claims Procedure</b>	<b>SUPREME COURT NO.:</b>  <b>PETITIONER'S INITIAL SUBMISSION</b>
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1           The Arizona Process Servers Association (APSA), pursuant to Rules of the  
2 Supreme Court of Arizona, Rule 28, submits the following proposed changes to  
3 Rule 4.1(i) of the Rules of Civil Procedure for the Superior Courts of Arizona  
4 (ARCP); Rule 41(j) of the Rules of Family Law Procedure (RFLP); Rule 113(b) of  
5 the Justice Court Rules of Civil Procedure (JCRCP); and Rule 5(b) of the Rules of  
6 Small Claims Procedure (RSCP).

7           To the undersigned's knowledge, a similar petition has not been filed by  
8 anyone within the previous 5 years.

9           Per mandate from the Board of Directors and general membership of APSA  
10 at its Annual Meeting held on October 26, 2024, the following is submitted.

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12 **BACKGROUND AND DISCUSSION**

13 The Arizona Process Servers Association (APSA) provides continuing  
14 education and advocacy for its members and other process servers on the rules,  
15 regulations, statutes, and case law affecting service of legal process within and  
16 outside of Arizona.

17 Limited liability companies (LLC/LLC’s)<sup>1</sup>, professional limited liability  
18 companies (PLLC/PLLC’s)<sup>2</sup>, and foreign limited liability companies  
19 (FLLC/FLLC’s)<sup>3</sup> are unincorporated entities recognized by statute. Professional  
20 limited liability companies must be composed of those persons who practice under  
21 a professional license or certification (ref. ARS §29-4101). For purposes of our  
22 discussion, Petitioner will refer to all such entities as LLC (singular) or LLC’s  
23 (plural).

24 Courts have stated in one form or another that, "Proper service of process is  
25 essential for the court to have jurisdiction over the defendant." [*Koven v. Saberdyne*  
26 *Sys., Inc.*, 128 Ariz. 318, 321 (App. 1980)]. APSA has imbued that statement into  
27 its teachings of continuing educational programs.

28 Within the past year, especially, APSA has been informed by members that  
29 various courts have rejected service on limited liability companies which have  
30 been statutorily and properly performed by its member process servers under

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<sup>1</sup> ARS §29-3102(11): "Limited liability company", except when used in the phrase foreign limited liability company and in article 10 of this chapter: (a) Means an entity that is formed under this chapter or that becomes subject to this chapter under article 10 of this chapter or section 29-3110. (b) Includes a limited liability company with a single member.

<sup>2</sup> ARS §29-4101(4): "Professional limited liability company" means a limited liability company organized under this chapter for purposes that include rendering one or more categories of professional services.

<sup>3</sup> ARS §29-3102(7): "Foreign limited liability company" means an unincorporated entity that is formed under the law of a jurisdiction other than this state and that would be a limited liability company if the unincorporated entity were formed under the law of this state and includes a foreign series for the purposes of this article.

31 Arizona Revised Statutes (ARS) §29-3119 upon various LLC's. We now bring that  
32 to this body's attention.

33 APSA submits a sampling of rejections of proper service on LLC's by the  
34 various courts, in which the court rejected the proof of service made under ARS  
35 §29-3119 to the LLC defendant and either instructed plaintiff to file a motion for  
36 alternative means of service or took some other action adverse to the interests of  
37 justice in regard to service of process.

- 38 • *Broyles v. Richards, et al*, case no. CC2022082701, Hassayampa  
39 Justice Court (Maricopa County)
- 40 • *Act Security LLC v. The Green Keepers LLC*, case no.  
41 CC2024002823, El Centro Justice Court (Maricopa County)
- 42 • *Goldsand v. Precision Showers Floors and More LLC*, case no.  
43 CC2024120439, McDowell Mountain Justice Court (Maricopa  
44 County)
- 45 • *Donnell v. Ramirez Auto Mechanic Shop LLC*, case no.  
46 CC2023247080, South Mountain Justice Court (Maricopa County)
- 47 • *McFarlane v. Desert Fields Landscaping LLC*, case no.  
48 CC2023062091, South Mountain Justice Court (Maricopa County)
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50 These are but a sampling of the complaints received from process servers  
51 within APSA. We believe there are many more unreported instances of similar  
52 rulings.

53 In circumstances where defendants were not served per the letter of the  
54 various rules of court (discussed, following), but were done so consistent with ARS  
55 §29-3119, Petitioner believes these courts have wrongfully rejected such service of  
56 process.

57 A wrongful rejection by the court of service of process (the proof of service)  
58 not only affects the reputation of the process server, but the judiciary as a whole,  
59 the litigants and public interest, as well. The effect is self-evident in delays,  
60 dismissals and incorrect rulings, impeding access to justice.

61 The Arizona Limited Liability Company Act (LLC Act) (ARS §29-3101  
62 through ARS §29-4202) was enacted by the state legislature to be effective as to all  
63 LLC's as of September 1, 2020 [ref. ARS §29-3110(B)].<sup>4</sup> ARS §29-3119, as part  
64 of the LLC Act, is specific as to service of process on LLC's. Since the effective  
65 date of the LLC Act, the various rules of court pertaining to service of process to  
66 LLC's have not been revised, updated, or amended to correspond with ARS §29-  
67 3119.

68 Since the effective date of the LLC Act, APSA has taught process servers  
69 attending our continuing education programs that service on an LLC should be  
70 performed in compliance with ARS §29-3119. LLC's are not incorporated entities;  
71 consequently, statute (ARS §10-504) and other rules for service of process  
72 pertaining to corporations do not apply.

73 Where the statutory agent of an LLC is not found, process servers have also  
74 been taught that ARCP Rule 4.1(j), and RFLP Rule 41(k), and JCRC Rule  
75 113(c)(5) [Serving a Domestic Corporation if an Authorized Officer or Agent Is  
76 Not Found Within Arizona] do not apply, as delivering service of process to the  
77 Arizona Corporation Commission is improper.

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<sup>4</sup> ARS §29-3110(B): On and after September 1, 2020, this chapter applies to all limited liability companies and foreign limited liability companies.

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## Existing Rules for Service of Process

Under the current ARCP Rule 4.1(i), RFLP Rule 41(j), and JCRCP Rule 113(b), service of a summons to an unincorporated association is indicated to be made as follows:

**ARCP Rule 4.1(i): Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant.

**RFLP Rule 41(j): Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued it may be served by delivering a copy of the summons and the pleading to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service, and if required by statute, by also mailing a copy to the party.

**JCRCP Rule 113(b): Service on a corporation, partnership, limited liability company, or association within the State of Arizona.** Service of a summons and complaint within the State of Arizona upon a corporation, a partnership, a limited liability company, or an association must be made by personally serving an officer, a partner, or a managing or general agent, or by serving any other agent authorized by law to receive service on behalf of the organization. The constable or certified private process server must prepare an affidavit as proof that a corporation, a partnership, a limited liability company, or an association was served, and the proof of service must be filed with the court.

Within the Rules of Small Claims Procedure (RSCP), there is no specific provision to serve a corporation, partnership, limited liability company, or other unincorporated association. Petitioner addresses this issue, as well.

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**ARS §29-3119 as to Service Upon an LLC**

As part of the Arizona Limited Liability Company Act (ARS §29-3101 through §29-4202.), ARS §29-3119 was legislatively enacted to specifically address service of process to LLC’s.

APSA submits the methods of service within ARS §29-3119 are specific to LLC’s, and supersede the existing rules of court for service upon an LLC (which may be indicated within the rules as an unincorporated association). The current statute (ARS §29-3119) was legislatively enacted more recently than the rules of court now existing, is specific to LLC’s, and superseded the former Arizona Limited Liability Company Act (ARS §29-601, et seq., which expired on August 31, 2019).

Petitioner seeks to have this Court amend the various rules for service upon an LLC to be consistent with ARS §29-3119, stated here:

**ARS §29-3119. Service of process, notice or demand**

A. A limited liability company or registered foreign limited liability company may be served with any process, notice or demand required or permitted by law by serving its statutory agent.

B. If a limited liability company or registered foreign limited liability company ceases to have a statutory agent, or if its statutory agent cannot with reasonable diligence be served, the company or foreign company may be served by registered or certified mail, return receipt requested, or by a similar commercial delivery service, addressed to the company or foreign company at its principal address. The principal address must be as shown on the company's or foreign company's most recent filing with the commission. Service is effected under this subsection on the earliest of any of the following:

1. The date the company or foreign company receives the mail or delivery by the commercial delivery service.

140 2. The date shown on the return receipt, if signed by the company or  
141 foreign company.

142 3. Five days after the mail or delivery is deposited with the United  
143 States postal service or with the commercial delivery service, if  
144 correctly addressed and with sufficient postage or payment.

145 C. If process, notice or demand cannot be served on a limited liability  
146 company or registered foreign limited liability company pursuant to  
147 subsection A or B of this section, service may be made by handing a copy to  
148 the individual in charge of any regular place of business or activity of the  
149 company or foreign company if the individual served is not a plaintiff in the  
150 action.

151 D. Service of process, notice or demand on a statutory agent must be in a  
152 written record.

153 E. Service of process, notice or demand may be made by other means under  
154 law other than this chapter.

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156 Under ARS §29-3119, there are several avenues by which an LLC may be  
157 served, including:

- 158 • Service to the statutory agent,
- 159 • Service via certified mail,
- 160 • Service by using a commercial delivery service (i.e.: Federal Express,  
161 UPS, or other) delivering the documents to the principal address on  
162 record with the Arizona Corporation Commission,
- 163 • Service by delivery to the individual in charge of any regular place of  
164 business or activity of the company (i.e.: its managing member, or a  
165 member where the LLC is not managed by a manager, or other  
166 person in charge), or

167                   • By other means under law (i.e.: alternative means of service nor  
168                   service by publication).

169                   The current rules for service of process to an LLC are to serve “a managing  
170 or general agent, or by serving any other agent authorized by law to receive service  
171 on behalf of the organization”, which in and of itself constrains the sheriff,  
172 constable or process server to locate such person (i.e.: statutory agent) and  
173 personally serve such person. Under the current rules, if such person is not found,  
174 or evading service, the party seeking service must then motion the court for either  
175 alternative means of service or service by publication, which may result in  
176 unnecessary delay and additional burden for the party. The language under ARS  
177 §29-3119 cuts through such inefficiencies.

178                   Passage of ARS §29-3119 also negated service where the Arizona  
179 Corporation Commission accepted service for LLC’s if an authorized officer or  
180 agent was not found within Arizona under the (now expired) ARS §29-606(B) and  
181 any like rules of court found at that time.<sup>5</sup> It also negated the need for a motion for  
182 alternative means of service in most instances.

183                   **Proposed Amended Language**

184                   Petitioner believes that amending the existing rules for service of process  
185 upon an LLC is appropriate to eliminate any confusion or conflict between statute  
186 (ARS §29-3119) and the various rules of court, and to clarify the methods for  
187 proper service upon an LLC. Petitioner submits the following proposed

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<sup>5</sup> The Arizona Corporation Commission was erroneously accepting service of process upon LLC’s under ARCP Rule 4.1(j) and ARS §10-504 up to approximately July 26, 2022, but stopped doing so only after its general counsel was sent notice by APSA of its non-compliance with ARS §29-3119 on May 1, 2022.

188 amendments to the rules for service of process to comply with ARS §29-3119,  
189 below:

190 **ARCP Rule 4.1(i): Serving a Corporation, Partnership, or Other**  
191 **Unincorporated Association.** If a domestic or foreign corporation,  
192 partnership, or other unincorporated association has the legal capacity to be  
193 sued and has not waived service under Rule 4.1(c), it may be served by  
194 delivering a copy of the summons and the pleading being served to a partner,  
195 an officer, a managing or general agent, or any other agent authorized by  
196 appointment or by law to receive service of process and--if the agent is one  
197 authorized by statute and the statute so requires--by also mailing a copy of  
198 each to the defendant. Service upon a limited liability company is to be  
199 made in compliance with Arizona Revised Statutes §29-3119.

200 **RFLP Rule 41(j): Serving a Corporation, Partnership, or Other**  
201 **Unincorporated Association.** If a domestic or foreign corporation,  
202 partnership, or other unincorporated association has the legal capacity to be  
203 sued it may be served by delivering a copy of the summons and the pleading  
204 to a partner, an officer, a managing or general agent, or any other agent  
205 authorized by appointment or by law to receive service, and if required by  
206 statute, by also mailing a copy to the party. Service upon a limited liability  
207 company is to be made in compliance with Arizona Revised Statutes §29-  
208 3119.

209 **JCRCP Rule 113(b): Service on a corporation, partnership, limited**  
210 **liability company, or association within the State of Arizona.** Service of a  
211 summons and complaint within the State of Arizona upon a corporation, a  
212 partnership, ~~a limited liability company~~, or an association must be made by  
213 personally serving an officer, a partner, or a managing or general agent, or  
214 by serving any other agent authorized by law to receive service on behalf of  
215 the organization. The constable or certified private process server must  
216 prepare an affidavit as proof that a corporation, a partnership, a limited  
217 liability company, or an association was served, and the proof of service  
218 must be filed with the court. Service upon a limited liability company is to  
219 be made in compliance with Arizona Revised Statutes §29-3119.

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

223 (1) Registered or Certified Mail. The plaintiff may serve the defendant by  
224 registered or certified mail, with a “return receipt requested.” The plaintiff  
225 must file the return receipt with the court within 45 days of the complaint  
226 filing date to establish that the defendant was served. The return receipt can  
227 be the card returned to the plaintiff by the postal or delivery service or the  
228 return receipt printed from the postal or delivery service's website; or

229 (2) Constable, Sheriff, or Private Process Server. The plaintiff may arrange  
230 for personal service on the defendant by a constable, sheriff, or private  
231 process server. An affidavit of service must be filed with the court within 45  
232 days of the complaint filing date. “Personal service” means that the  
233 constable, sheriff, or private process server must deliver a copy of the  
234 summons and pleading to the individual defendant personally, or leave  
235 copies at the individual's ~~residence~~ abode with a person of suitable age and  
236 discretion who lives there, or deliver copies to an authorized agent of the  
237 defendant. Service on a corporation, partnership, or association within the  
238 State of Arizona is to be made in accordance with Justice Court Rules of  
239 Civil Procedure, Rule 113(b). Service upon a limited liability company is to  
240 be made in compliance with Arizona Revised Statutes §29-3119.

241 (Within the proposed rule change to RSCP Rule 5(b)(2) is a technical correction to  
242 change the word, “residence” to “abode” to be consistent with other rules for  
243 service of process.)

244 Accordingly, APSA submits the instant Petition.

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246 Respectfully submitted,

247 **Arizona Process Servers Association**

248 /S/

249 **BARRY R. GOLDMAN**

250 Administrator, Secretary/Treasurer

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252 Larry J. Ratcliff, President

253 Susie Baldwin, President-Elect

254 John Osborn, Vice President

- 255 Barry R. Goldman, Secretary/Treasurer, Administrator
- 256 Ronald R. Ezell, Immed. Past Pres.
- 257 [Vacant] (Director #1)
- 258 Kay Dean (Director #2)
- 259 Craig Podgurski (Director-Elect #2)
- 260 Gregory Scott Hardy (Director #3)
- 261 Nathan Botsch (Director #4)
- 262 Matthew Uthe (Director #5)
- 263 Tracy Arnold (Director #6)
- 264 Catherine Hess (Director-Elect #6)