

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

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	SUPREME COURT NO.: R-24-0057 PETITIONER’S RESPONSE TO STATE BAR OF ARIZONA COMMENT; AMENDED PETITION
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1 The Arizona Process Servers Association (APSA) appreciates the comment
2 provided by the State Bar on this matter. We would be grateful and appreciative in
3 working out any language change modifications felt necessary and agreed to by
4 stakeholders.

5 In the State Bar’s Comment, the State Bar indicates, “The Petition suggests
6 disharmony exists between A.R.S. § 29-3119 and the rules of procedure related to
7 serving limited liability companies”. Evidence of the disharmonious relationship
8 between the current rules for service of process to LLC’s and superseding statute is
9 clear and unmistakable.

10 APSA and its members, as well as numerous attorneys and litigants have
11 observed and suffered from such disharmony, where evidence has shown that
12 various judicial officers have rejected, and presumably continue to reject, proofs of
13 service for properly served legal process upon Limited Liability Companies
14 (LLC’s) under ARS §29-3119.

15 Since passage of the Arizona Limited Liability Company Act in 2019, the
16 established rules of court for service to LLC’s have remained unchanged and have
17 been in conflict with ARS §29-3119, which specifically addresses service to
18 LLC’s. Unwarranted rejection by judicial officers of properly executed and
19 documented services under statute have caused unnecessary delays, additional
20 costs, and procedures to secure service under rules of court superseded by the
21 passage of ARS §29-3119. We believe this is a statewide problem of some
22 urgency.

23 APSA has reviewed the position of the State Bar as to their belief that more
24 investigation and study is necessary to bring a comprehensive solution. In this
25 regard, we have amended our Petition to include service to an LLC in
26 circumstances where the LLC is found to be out of the state or in a foreign country.

27 The Petitioner’s proposal only contemplates service upon LLCs. We take no
28 issue with corporations, partnerships, and other associations in that regard. Our
29 rule change Petition only addresses LLC’s for the simple reason that the
30 legislatively enacted ARS §29-3119 and its related sections also only address
31 LLC’s. Any contemplated revisions to the rules for service upon corporations,
32 partnerships, and other associations would be separate and unrelated to our
33 Petition.

34 The language of the rule change Petition submitted by APSA specifically
35 addresses only that which statute affects, seeking to preserve the due process rights
36 of litigants and the integrity of the judiciary. It is not meant to be an all-
37 encompassing revision to our rules for service of process; rather, it is a proposed
38 change in rules targeted at a specific type of entity, consistent with ARS §29-3119.

39 The State Bar indicates that “...a finding of due diligence or reasonable
40 efforts...” should be “...made first...” before any alternative means of service is
41 made. ARS §29-3119 does not negate that requirement, but actually addresses it.
42 The statute mandates that service be attempted or made as follows:

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44

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

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

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

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

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

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

65 C. If process, notice or demand cannot be served on a limited liability
66 company or registered foreign limited liability company pursuant to
67 subsection A or B of this section, service may be made by handing a copy to
68 the individual in charge of any regular place of business or activity of the
69 company or foreign company if the individual served is not a plaintiff in the
70 action.

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

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

75 Accordingly, statute (ARS §29-3119) has already addressed the issue of
76 “...a finding of due diligence or reasonable efforts ...” by means of the procedural
77 steps outlined in ARS §29-3119 (A), (B), and (C). Subsection (D) mandates the
78 specific efforts must be documented, which are by practice rendered either in a
79 written Proof of Service, or Declaration of Diligent Attempts by process servers. If
80 all diligent and reasonable attempts indicated in (A) through (C) have proven
81 impracticable or impossible for service, subsection (E) indicates the litigant may
82 seek other means of service allowed such as alternative means of service or service
83 by publication.

84 **Amended Proposed Language**

85 APSA, in taking the State Bar’s *Comment* to heart, has further researched
86 the issue. Accordingly, we present modified language to our original Petition to
87 include those situations where the LLC is found out of state or in a foreign country.
88 The Amendments do not seek to comprehensively rewrite those relevant rules, but
89 address only service to LLC’s.

90 **AMENDED PETITION**

91 **ARCP Rule 4.1(i): Serving a Corporation, Partnership, or Other**
92 **Unincorporated Association.** If a domestic or foreign corporation,
93 partnership, or other unincorporated association has the legal capacity to be
94 sued and has not waived service under Rule 4.1(c), it may be served by
95 delivering a copy of the summons and the pleading being served to a partner,
96 an officer, a managing or general agent, or any other agent authorized by
97 appointment or by law to receive service of process and--if the agent is one
98 authorized by statute and the statute so requires--by also mailing a copy of
99 each to the defendant. SERVICE UPON A LIMITED LIABILITY
100 COMPANY SHALL BE MADE IN COMPLIANCE WITH ARIZONA
101 REVISED STATUTES §29-3119. IN THE EVENT THAT SERVICE
102 CANNOT BE EFFECTED UNDER ARS §29-3119(A), (B), OR (C),
103 SERVICE MAY BE ORDERED ACCORDING TO RULE 4.1(k) OR 4.1(l)
104 PER ARS §29-3119(E).¹

¹ ARCP Rule 4.1(k): Alternative Means of Service; ARCP Rule 4.1(l): Service by Publication

105 **ARCP Rule 4.2(h): Serving a Corporation, Partnership or Other**
106 **Unincorporated Association Located Outside Arizona but Within the**
107 **United States.** If a corporation, partnership, or other unincorporated
108 association is located outside Arizona but within the United States, it may be
109 served by delivering a copy of the summons and the pleading being served
110 to a partner, an officer, a managing or general agent, or any other agent
111 authorized by appointment or by law to receive service of process and--if the
112 agent is one authorized by statute and the statute so requires--by also mailing
113 a copy of each to the defendant. SERVICE UPON A LIMITED LIABILITY
114 COMPANY SHALL BE MADE IN COMPLIANCE WITH ARIZONA
115 REVISED STATUTES §29-3119. IN THE EVENT THAT SERVICE
116 CANNOT BE EFFECTED UNDER ARS §29-3119(A), (B), OR (C),
117 SERVICE MAY BE ORDERED ACCORDING TO RULE 4.2(f) PER ARS
118 §29-3119(E).²

119 **ARCP Rule 4.2(k) Serving a Corporation, Partnership, or Other**
120 **Incorporated Association in a Foreign Country.** Unless federal law
121 provides otherwise or the defendant's waiver has been filed under Rule
122 4.2(d), a corporation, partnership, A LIMITED LIABILITY COMPANY, or
123 other unincorporated association that has the legal capacity to be sued may
124 be served at a place not within any judicial district of the United States by
125 delivering a copy of the summons and pleading being served in the manner
126 set forth in Rule 4.2(i) for serving an individual, except personal delivery
127 under Rule 4.2(i)(2)(C)(i).

128 **RFLP Rule 41(j): Serving a Corporation, Partnership, or Other**
129 **Unincorporated Association.** If a domestic or foreign corporation,
130 partnership, or other unincorporated association has the legal capacity to be
131 sued it may be served by delivering a copy of the summons and the pleading
132 to a partner, an officer, a managing or general agent, or any other agent
133 authorized by appointment or by law to receive service, and if required by
134 statute, by also mailing a copy to the party. SERVICE UPON A LIMITED
135 LIABILITY COMPANY SHALL BE MADE IN COMPLIANCE WITH

² ARCP Rule 4.2(f): Service by Publication

136 ARIZONA REVISED STATUTES §29-3119. IN THE EVENT THAT
137 SERVICE CANNOT BE EFFECTED UNDER ARS §29-3119(A), (B), OR
138 (C), SERVICE MAY BE ORDERED ACCORDING TO RULE 41(l) OR
139 41(m) PER ARS §29-3119(E). IF THE LIMITED LIABILITY COMPANY
140 IS LOCATED IN A FOREIGN COUNTRY, SERVICE SHALL PROCEED
141 ACCORDING TO RULE 41(h).³

142 **JCRCP Rule 113(b): Service on a corporation, partnership, limited**
143 **liability company, or association within the State of Arizona.** Service of a
144 summons and complaint within the State of Arizona upon a corporation, a
145 partnership, a ~~limited liability company~~, or an association must be made by
146 personally serving an officer, a partner, or a managing or general agent, or
147 by serving any other agent authorized by law to receive service on behalf of
148 the organization. The constable or certified private process server must
149 prepare an affidavit as proof that a corporation, a partnership, a limited
150 liability company, or an association was served, and the proof of service
151 must be filed with the court. SERVICE UPON A LIMITED LIABILITY
152 COMPANY IS TO BE MADE IN COMPLIANCE WITH ARIZONA
153 REVISED STATUTES §29-3119. IN THE EVENT THAT SERVICE
154 CANNOT BE EFFECTED UNDER ARS §29-3119(A), (B), OR (C),
155 SERVICE MAY BE ORDERED ACCORDING TO RULE 4.1(k) OR RULE
156 4.1(l), PER ARS §29-3119(E). IF THE LIMITED LIABILITY COMPANY
157 IS LOCATED OUTSIDE THE STATE OF ARIZONA AND SERVICE
158 CANNOT BE EFFECTED UNDER ARS §29-3119(A), (B), OR (C),
159 SERVICE MAY BE MADE ACCORDING TO RULE 4.2(h). IF THE
160 LIMITED LIABILITY COMPANY IS LOCATED IN A FOREIGN
161 COUNTRY, SERVICE SHALL PROCEED ACCORDING TO RULE
162 4.2(i).⁴

³ RFLP Rule 41(l): Alternative Means of Service; RFLP Rule 41(m): Service by Publication; RFLP Rule 41(h): Serving an Individual in a Foreign Country

⁴ ARCP Rule 4.1(k): Alternative Means of Service; ARCP Rule 4.1(l): Service by Publication; ARCP Rule 4.2(h): Serving a Corporation, Partnership or Other Unincorporated Association Located Outside Arizona but Within the United States; ARCP Rule 4.2(i): Serving an Individual in a Foreign Country.

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

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

172 (2) Constable, Sheriff, or Private Process Server. The plaintiff may arrange
173 for personal service on the defendant by a constable, sheriff, or private
174 process server. An affidavit of service must be filed with the court within 45
175 days of the complaint filing date. “Personal service” means that the
176 constable, sheriff, or private process server must deliver a copy of the
177 summons and pleading to the individual defendant personally, or leave
178 copies at the individual's residence abode with a person of suitable age and
179 discretion who lives there, or deliver copies to an authorized agent of the
180 defendant. Service on a corporation, partnership, or association within the
181 State of Arizona is to be made in accordance with Justice Court Rules of
182 Civil Procedure, Rule 113(b). SERVICE UPON A LIMITED LIABILITY
183 COMPANY IS TO BE MADE IN COMPLIANCE WITH ARIZONA
184 REVISED STATUTES §29-3119. SERVICE SHALL BE EFFECTED
185 UNDER ARS §29-3119(A), (B), OR (C).

186 APSA believes the language in our Petition is reasonable, specific, and
187 sufficiently precise in its language to address service of process on LLC’s, which is
188 the sole concern of our Petition. We ask that our Amended Petition be approved.
189

190 Respectfully submitted,
191 **Arizona Process Servers Association**
192 /S/
193 **BARRY R. GOLDMAN**
194 Administrator, Secretary/Treasurer

- 195
- 196 Susie Baldwin, President
- 197 John Osborn, Vice President
- 198 Barry R. Goldman, Secretary/Treasurer/Admin.
- 199 Larry J. Ratcliff, Immed. Past Pres.
- 200 Steve Butcher (Director #1) (2025)
- 201 Catherine Hess (Director #2) (2026)
- 202 Gregory Scott Hardy (Director #3) (2025)
- 203 Nathan Botsch (Director #4) (2026)
- 204 Matthew Uthe (Director #5) (2025)
- 205 Craig Podgurski (Director #6) (2026)