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

8
9 (EXPEDITED) PETITION TO
10 AMEND ARIZONA RULES OF
11 CIVIL PROCEDURE (ARCP)
12 RULE 4(d) (Process; By Whom
13 Served)

14
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1. The Arizona Constables Association (ACA) represents the elected officials known as Constables within Arizona. There are 78 constables in Arizona, each of whom is a member of the ACA.
 2. The Arizona Constables Association exists to support and promote the office of Constable in the state of Arizona, and to provide professional training to its members.
 3. The ACA is governed by a Board of Directors. The undersigned is the President of the ACA, and has been given authority by the Board of Directors to retain the services of its Legal Document Preparer to write and cause this Petition to be filed.
- 5

1 4. The Constable in Arizona is an elected peace officer, whose duties are to
2 serve the Justice Court.

3 5. Each Constable services a Justice Court precinct, in accordance with
4 Arizona Revised Statutes (ARS) §22-131, which states, in part:

5 "A. Constables shall attend the courts of justices of the peace within
6 their precincts when required, and within their counties execute,
7 serve and return all processes, warrants and notices directed or
8 delivered to them by a justice of the peace of the county or by
9 competent authority. In addition to any other provision of law these
10 duties may be enforced by the presiding judge of the superior court in
11 the county, including the use of the power of contempt."
12

13 And:

14 "D. The provisions of law relating to sheriffs, as far as applicable,
15 shall govern the powers, duties and liabilities of constables."
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17 6. In reviewing certain statutes and Rules of Court with ACA personnel and
18 advisors, it was found that Arizona Rules of Civil Procedure (ARCP) Rule
19 4(d) (Process; By Whom Served) indicates that, "Service of process shall be
20 by a sheriff, a sheriff's deputy, a private process server..." but does not
21 indicate Constables.

22 7. ARS 22-131(D) states, "The provisions of law relating to sheriffs, as far as
23 applicable, shall govern the powers, duties and liabilities of constables".

24 8. Accordingly, Constables have traditionally served legal process under the
25 authority of ARS 11-441(A)(7), which states the Sheriff shall: "Serve
26 process and notices in the manner prescribed by law...".

27 9. However, while statute (ARS §11-445, et seq., and §22-131(D)) have
28 indicated that Constables have the same duties and powers of the Sheriff,

1 there is lacking an authority granted by the Supreme Court for the
2 Constable to serve civil process in Rule 4(d) of the Arizona Rules of Civil
3 Procedure as set forth by the Supreme Court.

4 10. As the Constable is the attending officer of the Justice Court, under
5 Rule 4(d), the Constable should not be subject to a special appointment, but
6 should be included with those persons granted authority (sheriff, sheriff's
7 deputy, private process server) to serve legal process by the Supreme Court.

8 11. The ACA believes this deficiency is an immediate statewide concern and
9 urgent in nature.

10 12. Under Article 6, Section 5 of the Arizona State Constitution, the Supreme
11 Court shall have "Power to make rules relative to all procedural matters in
12 any court". Accordingly, the ACA believes that the jurisdiction for this
13 immediate statewide concern lies with the Supreme Court.

14 13. As the number and frequency of the civil legal processes served by the
15 Constables vary from jurisdiction to jurisdiction, a very real concern of the
16 ACA is that as the Constable is not mentioned as an authorized party to
17 serve legal process in ARCP Rule 4(d), are the number and frequency of
18 challenges to support and defend service of civil process by the Constable
19 throughout the state may be significant. Defending such challenges by
20 persons who were served by the Constable, if such challenges occurred, are
21 projected to be a significant expenditure of time and resources.

22 14. Because of this deficiency, the ACA believes that the change to ARCP Rule
23 4(d) requested qualifies as an "Emergency or Expedited Adoption of Rule"
24 under Supreme Court Rule 28(G) so that the ARCP may be aligned with
25 statute, and any challenge to service would be rendered moot.
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1 15. Accordingly, noting this deficiency, the ACA submits the attached
2 proposed amendment to ARCP Rule 4(d), and requests the Court grant the
3 rule change under Supreme Court Rule 28(G), which states:

4 **(G) Emergency or Expedited Adoption of Rule.**

5 (1) If a rule change petition presents an urgent matter for which
6 compelling circumstances render the annual rule processing cycle
7 inadequate, a request to consider a rule change petition on an
8 expedited basis may be filed with the petition.

9 (2) If the court determines that immediate action is necessary for the
10 adoption or amendment of a rule, the court shall take the action
11 required by the circumstances. Any rule adopted by the court pursuant
12 to this section shall be opened for public comment in the manner
13 provided in Rule 28(C), and comment may be made in the manner
14 provided in Rule 28(D).

15 16. Petitioner believes the issues presented here in this Petition are necessary
16 and vital to correct the deficiency in ARCP Rule 4(d) so that the duties and
17 powers of the Constable are clarified and explicitly stated in the ARCP.

18 17. Further, Petitioner has reviewed the existing Petition to Amend Rules 4(d)
19 and 4(e), Ariz. R. Civ. P. (R-12-0021), filed by David K. Byers,
20 Administrative Director of the Courts, and adopted the language proposed
21 in that Petition herewith, which the ACA supports.

22 18. Accordingly, for good cause, the Petitioner prays that the Court will adopt
23 the proposed rule changes.

1 19. I declare under penalty of perjury that the foregoing is true and correct.
2 (ARCP R. 80(i)).
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4 Date: 4-5-2012

Signed: 

5 Philip Hazlett,
6 President, Arizona Constables Association
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APPENDIX A:
DRAFT OF THE PROPOSED AMENDED RULES

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