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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION)	Supreme Court
TO AMEND RULE 5(c)(1),)	No. R-_____
Arizona Rules of Civil Procedure)	
and Rule 43(C), Arizona Rules of)	Petition to Amend Rule
Family Law Procedure)	5(c)(1), ARCVp & Rule
_____)	43(C), ARFLP

INTRODUCTION

Pursuant to Rule 28 of the Rules of the Supreme Court, the Clerks of the Superior Courts in the State of Arizona respectfully petition the Arizona Supreme Court to amend Rule 5(c)(1) of the Arizona Rules of Civil Procedure and its equivalent, Rule 43(C), Arizona Rules of Family Law Procedure, to delete the option of serving a party by leaving documents with the Clerk of the Superior Court.

I. SUMMARY OF PROPOSED CHANGES

Rule 5(c)(1) of the Arizona Rules of Civil Procedure and its equivalent Rule 43(C) in the Arizona Rules of Family Law Procedure, currently contemplate serving a party or their attorney and provide options for service when the court orders serving the party directly. If the attorney or party's address is unknown,

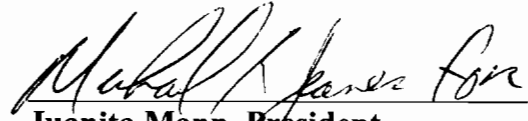
these rules allow leaving the documents with the Clerk of the Court for purposes of service.

In practice, the ability to serve a party by leaving documents with the Clerk is rarely exercised. On those occasions when service has been left with the Clerk, there is no practical way, and no resources available, to locate the party or notify them of the Clerk's receipt of the documents. Logically, the documents are left with the Clerk only when the party cannot be located. While the civil and family law rules allow service by leaving with the Clerk, there is no further procedure to make use or delivery of the documents. The documents are not filed-in by the Clerk, as the documents are meant for delivery to the party. There is, therefore, no efficient or unique way to maintain the documents in the Clerk's Office until such time as the party comes to claim them, if the party ever were to make such a request. Based on the rare use of this provision of court rule, and the paper "limbo" that results, the Clerk requests this provision be deleted from rule. Other rules of procedure account for other means of service, including service by publication when the party cannot be located, a copy of which is filed with the Clerk, should the party later investigate the existence of a case against them.

An equivalent amendment to Rule 43(C) of the Arizona Rules of Family Law Procedure is also being addressed in a separate petition by the Family Law Rules Committee as part of comprehensive amendments to the Family Law Rules.

The Clerks of the Superior Courts in the State of Arizona respectfully request that the Court amend Rule 5(c)(1) of the Arizona Rules of Civil Procedure and Rule 43(C) of the Arizona Rules of Family Law Procedure as detailed in the proposed amendments in section II.

DATED this 31st day of October, 2006.

A handwritten signature in black ink, appearing to read "Juanita Mann", written over a horizontal line.

**Juanita Mann, President
Arizona Association of Superior Court
Clerks**

November 2006 Rule 28 Petition: Civil Rule 5(c)(1), Family Law Rule 43(C)

II. TEXT OF PROPOSED RULE CHANGES

Civil Rule 5(c). Service After Appearance; Service After Judgment; How Made

1. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address, ~~or, if no address is known, by leaving it with the clerk of the court.~~ Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling-house or usual place of abode with some person of suitable age and discretion then residing therein. Absent a court order or agreement of the parties, delivery does not include transmission by facsimile. The date and manner of service shall be noted on the original of the paper served or in a separate certificate filed with the court. If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the filing was served by mail, and the provisions of Rule 6(e) of these Rules shall apply. This conclusive presumption shall only apply if service in some form has actually been made. Service by mail is complete upon mailing.

2. NO CHANGE

Family Law Rule 43(C). Service after Appearance; Service after Judgment; How Made.

1. *Serving an Attorney.* Except for petitions for contempt, orders of protection and injunctions against harassment, which must be served

pursuant to Rules 41 and 42, service under this rule must be made on the attorney unless the court orders service on the party.

2. *Service in General.* A paper is served under this rule by:

a. handing it to the person;

b. leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

c. mailing it via U.S. mail to the person's last know address--in which event service is complete upon mailing; or

~~d. leaving it with the court clerk if the person's address is unknown; or~~

~~e. delivering the paper by any other means, including electronic means, if the recipient consents in writing to that method of service or if the court orders service in that manner--in which event service is complete upon transmission.~~

3. - 4. NO CHANGE