

1 Honorable Paul J. McMurdie
2 Family Court Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 201 W. Jefferson St.
5 Phoenix, AZ 85003
6 (602) 372-0765

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8
9 PETITION TO AMEND RULES 41
10 AND 42 OF THE RULES OF
11 FAMILY LAW PROCEDURE
12 _____

}
} Supreme Court No. R-16-_____
}

13 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
14 Judge of the Family Court of the Superior Court of Arizona in Maricopa County
15 respectfully petitions this Court to adopt the attached proposed amendment to
16 Rules 41 and 42 of the Rules of Family Law Procedure.

17 Arizona Rules of Family Law Procedure Rules 41 and 42 allow for
18 service of process on individuals by mail or national courier service both within
19 Arizona (ARFLP 41(C)(2)) as well as outside of the state (ARFLP 42(C)). If
20 service is by mail, the rules require service to be effected by certified mail, with
21 a signed return receipt. If service is by courier service, the rules require a
22 signature confirmation that the documents have been received. Such return
23 receipt or signature confirmation must be included in the serving party's
24 affidavit of service. In both instances, the rules require that the return receipt or
25 signature confirmation must be "signed by the party to be served." *Id.*

26 Typically, incarcerated persons are unable to sign for certified mail or
27 courier service deliveries. For example, in Arizona Department of Corrections
28 prisons, such mail is received and signed for by mail room personnel, who

1 maintain a log of all incoming registered and certified mail. (*See Arizona*
2 *Department of Corrections Department Order 914.1.3.1.*) In light of the
3 requirements that the return receipt or signature confirmation actually contain
4 the signature of the person being served, this effectively prevents incarcerated
5 persons to be served by mail, thus leaving personal service as the only
6 alternative. This petition seeks to allow the signature of a jail or prison official
7 on a return receipt or signature confirmation to constitute sufficient evidence of
8 service of process when the party to be served is incarcerated.

9 When the Rules of Family Law Procedure were adopted in 2005, the
10 Rules specifically differed from the Arizona Rules of Civil Procedure by
11 allowing service of process by mail or courier service within Arizona. Allowing
12 parties to serve by mail saves the cost of paying a process server for personal
13 service, thereby decreasing the litigation costs in family law cases. This is
14 consistent with the Rules of Family Law Procedure in general, which simplify
15 the litigation process in family law cases and increase accessibility to the courts
16 for Arizona families. However, service by mail is not available for family law
17 cases when the party to be served is incarcerated.

18 Other states allow for service of process by mail upon incarcerated
19 persons who are unable to sign return receipts. The Indiana Rules of Trial
20 Procedure 4.3 allow for service upon an incarcerated person “by delivering or
21 mailing a copy of the summons and complaint to the official in charge of the
22 institution.” In Ohio, which allows for service of process by certified mail, the
23 courts “have specifically concluded that prison officials may sign in receipt of
24 the mailing and deliver or permit delivery of service of process to prisoners.” *In*
25 *re D.C. & G.C.*, Court of Appeals of Ohio, 9th Dist., 2007-Ohio-2344, 2007 WL
26 1427471, citing *Security Natl. Bank and Trust Co. v. Jones*, 2nd Dist. No.
27 C.A.2000-CA-59, 2001-Ohio-1534; *State v. Jones*, 12th Dist. No. CA2000-02-
28 015, 2000 WL 1534701 (Oct. 16, 2000).

Electronic copy filed with
the Clerk of the Supreme
Court of Arizona this 5th
day of January, 2016.

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Exhibit A
(new language is underlined)

Rules of Family Law Procedure

Rule 41. SERVICE OF PROCESS WITHIN ARIZONA.

A. Territorial Limits of Effective Service. All process may be served anywhere within the territorial limits of the state.

B. Summons; Service with Petition. The summons, pleading and other documents being served shall be served together. The party procuring service is responsible for service of a summons, the pleading and other documents being served within the time allowed under Rule 40(I) and shall furnish the person effecting service with the necessary copies of the pleading to be served.

C. Service of Summons upon Individuals.

1. *Personal Service.* Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs D, E, and F, shall be effected by delivering a copy of the summons, pleading and other documents being served to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, pleading and other documents being served to an agent authorized by appointment or by law to receive service of process, except as otherwise provided in subdivision C(2).

2. *Service by Mail or National Courier Service; Return.* When the location of a party is within the state, service may be made by depositing, with delivery charges prepaid, the summons and a copy of the pleading and other documents being served with the United States Postal Service or any other national courier service that provides delivery and signature confirmation or certified mail, signed return receipt, to be sent to the person to be served. Service under this rule and the return or confirmation of service may be made by the party procuring service or by that party's attorney. Service in this manner is only effective if the return receipt or

1 signature confirmation is signed by the party to be served. Upon receiving from
2 the U.S. Postal Service or other national courier service the signed return receipt,
3 or a copy of the signature confirmation and cash register receipt or package label
4 of the person being served, the serving party shall file an affidavit with the court
5 stating:

6 a. that the summons and a copy of the pleading and other document being served
7 were dispatched to the party being served;

8 b. that such papers were in fact received by the party as evidenced by the receipt,
9 or copy of the signature confirmation containing the signature of the party served
10 and cash register receipt or package label, a copy of which shall be attached to the
11 affidavit; and

12 c. the date of receipt by the party being served and the date of the return of the
13 receipt or signature confirmation to the sender.

14 This affidavit shall be *prima facie* evidence of personal service of the summons,
15 the pleading and other documents to be served. Service shall be deemed complete
16 and time shall begin to run for the purposes of Rule 32(A) from the date of receipt
17 by the party being served, provided that no default may be had on such service
18 until the required affidavit has been filed.

19 **D. Service of Summons upon Minors.** Service upon a minor under the age of
20 sixteen years shall be effected by service in the manner set forth in paragraph C
21 upon the minor and upon the minor's father, mother or guardian, within this state,
22 or if none is found therein, then upon any person having the care and control of
23 such minor, or with whom the minor resides.

24 **E. Service of Summons upon a Minor with Guardian or Conservator.** Service
25 upon a minor for whom a guardian or conservator has been appointed in this state
26 shall be effected by service in the manner set forth in paragraph C upon such
27 guardian or conservator and minor.

28 **F. Service of Summons upon Incompetent Persons.** Service upon a person who
has been judicially declared to be insane, gravely disabled, incapacitated or

1 mentally incompetent to manage that person's property and for whom a guardian
2 or conservator has been appointed in this state shall be effected by service in the
3 manner set forth in paragraph C upon such person and also upon that person's
4 guardian or conservator, or if no guardian or conservator has been appointed, upon
5 such person as the court designates.

6 **G. Service of Summons Upon Incarcerated Persons.** Service upon a person
7 who is incarcerated in a jail or prison of this state or political subdivision of this
8 state or a correctional facility located in this state shall be effected by service in
9 the manner set forth in paragraph C, except that if service is by mail or national
10 courier service, the return or confirmation of service may be made by an official
11 of the jail, prison or correctional facility, and the signature of an official of the jail,
12 prison or correctional facility on the return receipt or signature confirmation is
13 sufficient proof of service on the party being served.

14 **HG. Service of Summons upon the State.** Service upon the state shall be
15 effected by acceptance or waiver of service or by delivering to the attorney
16 general or any person designated by the attorney general a copy of the summons
17 and of the pleading in the manner set forth in Rule 41(C). Alternatively, in
18 counties that by administrative order of the presiding judge have authorized
19 electronic service upon the state in Title IV-D cases as provided in this rule, any
20 person required under these rules to personally serve documents upon the state
21 may serve the same by concurrently filing with the documents to be served a
22 written Notice of State Interest that: 1) requests electronic service of the
23 documents upon the state under this rule and the administrative order; 2)
24 separately lists the title or description of each document to be served; and 3)
25 indicates the State has or may have a right to be served with the documents. The
26 clerk shall promptly file, scan and electronically transmit true copies of the
27 documents and the Notice of State Interest to the electronic address that the state
28 designates in response to the administrative order implementing the procedure,
and service shall be deemed complete upon the clerk filing a Proof of Service By
Electronic Transmittal verifying the documents and Notice of State Interest were
transmitted and received by the state.

IH. Service of Summons upon a County, Municipal Corporation or Other
Governmental Subdivision. Service upon a county or a municipal corporation or

1 other governmental subdivision of the state subject to suit, and from which a
2 waiver has not been obtained and filed, shall be effected by delivering a copy of
3 the summons and of the pleading to the chief executive officer, the secretary,
4 clerk, or recording officer thereof.

5 **J. Service of Summons upon Other Governmental Entities.** Service upon any
6 governmental entity not listed above shall be effected by serving the person,
7 officer, group or body responsible for the administration of that entity or by
8 serving the appropriate legal officer, if any, representing the entity. Service upon
9 any person who is a member of the “group” or “body” responsible for the
10 administration of the entity shall be sufficient.

11 **K. Service of Summons upon Corporations, Partnerships or Other**
12 **Unincorporated Associations.** Service upon a domestic or foreign corporation or
13 upon a partnership or other unincorporated association which is subject to suit in a
14 common name, and from which a waiver has not been obtained and filed, shall be
15 effected by delivering a copy of the summons and of the pleading to a partner, an
16 officer, a managing or general agent, or to any other agent authorized by
17 appointment or by law to receive service of process and, if the agent is one
18 authorized by statute to receive service and the statute so requires, by also mailing
19 a copy to the party on whose behalf the agent accepted or received service.

20 **L. Service of Summons Upon a Domestic Corporation If Authorized Officer**
21 **or Agent Not Found Within the State.** When a domestic corporation does not
22 have an officer or agent in this state upon which legal service of process can be
23 made, service upon such domestic corporation shall be effected by depositing two
24 (2) copies of the summons and of the pleading being served in the office of the
25 Corporation Commission, which shall be deemed personal service on such
26 corporation. The return of the sheriff of the county in which the action or
27 proceeding is brought that after diligent search or inquiry the sheriff has been
28 unable to find any officer or agent of such corporation upon whom process may be
served, shall be *prima facie* evidence that the corporation does not have such an
officer or agent in this state. The Corporation Commission shall file one of the
copies in its office and immediately mail the other copy, postage prepaid, to the
office of the corporation, or to the president, secretary or any director or officer of

1 such corporation as appears or is ascertained by the Corporation Commission
2 from the articles of incorporation or other papers on file in its office, or otherwise.

3 **ML. Alternative or Substituted Service.** If service by one of the means set forth
4 in the preceding paragraphs of this rule proves impracticable, then service may be
5 accomplished in such manner, other than by publication, as the court, upon motion
6 and without notice, may direct. Whenever the court allows an alternative or
7 substitute form of service pursuant to this subpart, reasonable efforts shall be
8 undertaken by the party making service to assure that actual notice of the
9 commencement of the action is provided to the person to be served and, in any
10 event, the summons and the pleading to be served, as well as any order of the
11 court authorizing an alternative method of service, shall be mailed to the last
12 known business or residence address of the person to be served. Service by
13 publication may be employed only under the circumstances, and in accordance
14 with the procedures, specified in paragraph ML and Rule 42(~~DE~~).

15 **NM. Service by Publication; Return.** Service by publication is not sufficient to
16 confer jurisdiction upon the court to determine issues of paternity, child support,
17 spousal maintenance, division of marital property, or any other issue requiring
18 personal jurisdiction over a party. In actions involving dissolution of a marriage,
19 custody, or any other issue not requiring personal jurisdiction over a party, and
20 where the person to be served is one whose residence is unknown to the party
21 seeking service but whose last known residence address was within the state, or
22 has avoided service of process, and service by publication is the best means
23 practicable under the circumstances for providing notice of the institution of the
24 action, then service may be made by publication in accordance with the
25 requirements of this subpart. Such service shall be made by publication of the
26 summons, and of a statement as to the manner in which a copy of the pleading
27 being served may be obtained, at least once a week for four successive weeks (1)
28 in a newspaper published in the county where the action is pending, and (2) in a
newspaper published in the county of the last known residence of the person to be
served, if different from the county where the action is pending. If no newspaper
is published in any such county, then the required publications shall be made in a
newspaper published in an adjoining county. The service shall be complete thirty
days after the first publication. When the residence of the person to be served is
known, the party or officer making service shall also, on or before the date of the

1 first publication, mail the summons and a copy of the pleading and other
2 documents being served, postage prepaid, to that person at that person's place of
3 residence. Service by publication and the return thereof may be made by the party
4 procuring service or that party's attorney in the same manner as though made by
5 an officer. The party or officer making service shall file an affidavit showing the
6 manner and dates of the publication and mailing, and the circumstances
7 warranting the utilization of the procedure authorized by this subpart, which shall
8 be *prima facie* evidence of compliance herewith. A printed copy of the publication
9 shall accompany the affidavit. If the residence of the party being served is
10 unknown, and for that reason no mailing was made, the affidavit shall so state.
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Exhibit B
(new language is underlined)

Rules of Family Law Procedure

Rule 42. Service of Process Outside of State

A. Extraterritorial Jurisdiction; Personal Service Out of State. A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the constitution of this state and the Constitution of the United States. Service upon any such party located outside the state may be made as provided in this rule and when so made shall be of the same effect as personal service within the state.

B. Direct Service. Service of process may be made outside the state but within the United States in the same manner provided in Rule 41(C) through ~~(K)~~(L) by a person authorized to serve process under the law of the state where such service is made. Such service shall be complete when made, and time for purposes of paragraph ~~JK~~ shall begin to run at that time, provided that before any default may be had on such service, there shall be filed an affidavit of service showing the circumstances warranting the utilization of this procedure and attaching an affidavit of the process server showing the facts and circumstances of the service.

C. Service by Mail or National Courier Service; Return. When the location of a party outside the state is known, service may be made by depositing, with delivery charges prepaid, the summons and a copy of the pleading and other documents being served with the United States Postal Service or any other national courier service that provides delivery and signature confirmation or certified mail, signed return receipt, to be sent to the person to be served. Service under this rule and the return or confirmation of service may be made by the party procuring service or by that party's attorney. Service in this manner is only effective if the return receipt or signature confirmation is signed by the party to be served. Upon receiving from the U.S. Postal Service or other national courier service the signed return receipt, or a copy of the signature confirmation and cash

1 register receipt or package label of the person being served, the serving party shall
2 file an affidavit with the court stating:

- 3 1. that the party being served is known to be located outside the state;
- 4 2. that the summons and a copy of the pleading and other document being served
5 were dispatched to the party being served;
- 6 3. that such papers were in fact received by the party as evidenced by the receipt
7 or copy of the signature confirmation and cash register receipt or package label, a
8 copy of which shall be attached to the affidavit; and
- 9 4. the date of receipt by the party being served and the date of the return of the
10 receipt or signature confirmation to the sender.

11 This affidavit shall be *prima facie* evidence of personal service of the summons,
12 the pleading and other documents to be served. Service shall be deemed complete
13 and time shall begin to run for the purposes of paragraph J from the date of receipt
14 by the party being served, provided that no default may be had on such service
15 until the required affidavit has been filed.

16 **D. Service of Summons Upon Incarcerated Persons Located Outside Arizona**
17 **but Within the United States.** Service upon a person who is incarcerated in a jail,
18 prison, or correctional facility located outside of this state shall be effected by
19 service in the manner set forth in paragraph C, except that if service is by mail or
20 national courier service, the return or confirmation of service may be made by an
21 official of the jail, prison or correctional facility, and the signature of an official of
22 a jail, prison or correctional facility on the return receipt or signature confirmation
23 is sufficient proof of service on the party being served.

24 **ED. Service by Publication; Return.** Service by publication is not sufficient to
25 confer jurisdiction upon the court to determine issues of paternity, child support,
26 spousal maintenance, division of marital property, or any other issue requiring
27 personal jurisdiction over a party. In actions involving dissolution of a marriage,
28 custody or any other issue not requiring personal jurisdiction over a party, and
where the person to be served is one whose present residence is unknown but
whose last known residence was outside the state or has avoided service of
process, and service by publication is the best means practicable under the

1 circumstances for providing notice of institution of the action, then service may be
2 made by publication in accordance with the requirements of this subpart. Such
3 service shall be made by publication of the summons and of a statement as to the
4 manner in which a copy of the pleading and other documents being served may be
5 obtained at least once per week for four successive weeks in a newspaper
6 published in the county where the action is pending. If no newspaper is published
7 in any such county, then the required publications shall be made in a newspaper
8 published in an adjoining county. The service shall be complete thirty days after
9 the first publication. When the residence of the person to be served is known, the
10 party or officer making service shall also, on or before the date of the first
11 publication, mail the summons, a copy of the pleading and other documents being
12 served, postage prepaid, directed to that person at that person's place of residence.

13 Service by publication and the return thereof may be made by the party procuring
14 service or that party's attorney in the same manner as though made by an officer.
15 The party or officer making service shall file an affidavit showing the manner and
16 dates of publication and mailing and the circumstances warranting utilization of
17 the procedure authorized by this subpart, which shall be prima facie evidence of
18 compliance herewith. A printed copy of the publication shall accompany the
19 affidavit. If the residence of the person to be served is unknown, and for that
20 reason no mailing was made, the affidavit shall so state.

21 **FE. Service of Summons Upon Corporations, Partnerships or**
22 **Unincorporated Associations Located Outside Arizona but Within the United**
23 **States.** Where the corporation or partnership or unincorporated association to be
24 served is located outside the state but within the United States, service under this
25 rule shall be made on one of the persons specified in Rule 41(JK).

26 **GF. Service upon Individuals in a Foreign Country.** Unless otherwise provided
27 by federal law, service upon an individual from whom a waiver has not been
28 obtained and filed, other than a minor or an incompetent person, may be effected
in a place not within any judicial district of the United States:

1. by any internationally agreed means reasonably calculated to give notice, such
as those means authorized by the Hague Convention on the Service Abroad of
Judicial and Extrajudicial Documents; or

1 2. if there is no internationally agreed means of service or the applicable
2 international agreement allows other means of service, provided that service is
3 reasonably calculated to give notice:

4 a. in the manner prescribed by the law of the foreign country for service in that
5 country in an action in any of its courts of general jurisdiction; or

6 b. as directed by the foreign authority in response to a letter rogatory or letter of
7 request; or

8 c. unless prohibited by the law of the foreign country, by

9 1) delivery to the party to be served personally of a copy of the summons and of
10 the pleading; or

11 2) any form of mail requiring a signed receipt, to be addressed and dispatched by
12 the clerk of the court to the party to be served; or

13 3) by other means not prohibited by international agreement, as may be directed
14 by the court.

15 **HG. Service of Summons Upon Minors and Incompetent Persons in a**
16 **Foreign Country.** Service upon a minor, a minor with a guardian or an
17 incompetent person in a place not within any judicial district of the United States
18 shall be effected in the manner prescribed by subdivision (FG)(2)(a) or
19 (FG)(2)(b), or by such means as the court may direct.

20 **IH. Service of Summons Upon Corporation and Associations in a Foreign**
21 **Country.** Unless otherwise provided by federal law, service upon a corporation or
22 upon a partnership or other unincorporated association that is subject to suit under
23 a common name, and from which a waiver of service has not been obtained and
24 filed, shall be effected in a place not within any judicial district of the United
25 States in any manner prescribed for individuals by paragraph FG except personal
26 delivery as provided in subdivision (2)(c)(1) thereof.

27 **JH. Service of Summons upon a Foreign State or Political Subdivision**
28 **Thereof.** Service of a summons upon a foreign state or a political subdivision,
agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

KJ. Time for Appearance after Service Outside State. Where service of the summons and copy of a pleading and other documents required to be served is made outside the state by any means authorized by this rule, the person served shall appear and answer within thirty (30) days after completion thereof in the same manner and under the same penalties as if that person had been personally served with a summons within the county in which the action is pending.

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