

Page 2 of 11

Arizona Supreme Court No. R-16-0006

TO:

Rule 28 Distribution

Hon Paul J McMurdie

John A Furlong

ATTACHMENT¹

Arizona 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 signature confirmation is signed by the party to be served.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by strikeouts.

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

- a. that the summons and a copy of the pleading and other document being served were dispatched to the party being served;
- b. that such papers were in fact received by the party as evidenced by the receipt, or copy of the signature confirmation containing the signature of the party served and cash register receipt or package label, a copy of which shall be attached to the affidavit; and
- c. the date of receipt by the party being served and the date of the return of the receipt or signature confirmation to the sender.

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

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

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

F. Service of Summons upon Incompetent Persons. Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in

paragraph C upon such person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

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

HG. Service of Summons upon the State. Service upon the state shall be effected by acceptance or waiver of service or by delivering to the attorney general or any person designated by the attorney general a copy of the summons and of the pleading in the manner set forth in Rule 41(C). Alternatively, in counties that by administrative order of the presiding judge have authorized electronic service upon the state in Title IV-D cases as provided in this rule, any person required under these rules to personally serve documents upon the state may serve the same by concurrently filing with the documents to be served a written Notice of State Interest that: 1) requests electronic service of the documents upon the state under this rule and the administrative order; 2) separately lists the title or description of each document to be served; and 3) indicates the State has or may have a right to be served with the documents. The clerk shall promptly file, scan and electronically transmit true copies of the documents and the Notice of State Interest to the electronic address that the state 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 other governmental subdivision of the state subject to suit, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to the chief executive officer, the secretary, clerk, or recording officer thereof.

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

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

LK. Service of Summons Upon a Domestic Corporation If Authorized Officer or Agent Not Found Within the State. When a domestic corporation does not have an officer or agent in this state upon which legal service of process can be made, service upon such domestic corporation shall be effected by depositing two (2) copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been 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 such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.

ML. Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this rule proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternative or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making

service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in paragraph ML and Rule 42(~~DE~~).

NM. Service by Publication; Return. Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party. In actions involving dissolution of a marriage, custody, or any other issue not requiring personal jurisdiction over a party, and where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) 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 first publication, mail the summons and a copy of the pleading and other documents being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be *prima facie* evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

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

1. that the party being served is known to be located outside the state;
2. that the summons and a copy of the pleading and other document being served were dispatched to the party being served;

3. that such papers were in fact received by the party as evidenced by the receipt or copy of the signature confirmation and cash register receipt or package label, a copy of which shall be attached to the affidavit; and
4. the date of receipt by the party being served and the date of the return of the receipt or signature confirmation to the sender.

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

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

ED. Service by Publication; Return. Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party. In actions involving dissolution of a marriage, 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 circumstances for providing notice of institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons and of a statement as to the manner in which a copy of the pleading and other documents being served may be obtained at least once per week for four successive weeks in a newspaper published in 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 first publication, mail the summons, a copy of the pleading and other documents being served, postage prepaid, directed to that person at that person's place of residence.

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

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

GF. Service upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been 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
2. if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
 - a. in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
 - b. as directed by the foreign authority in response to a letter rogatory or letter of request; or
 - c. unless prohibited by the law of the foreign country, by

- 1) delivery to the party to be served personally of a copy of the summons and of the pleading; or
- 2) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or
- 3) by other means not prohibited by international agreement, as may be directed by the court.

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

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

JH. Service of Summons upon a Foreign State or Political Subdivision 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.