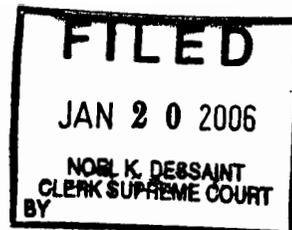


IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0012



ORDER AMENDING RULES 5(c) AND 6(e),
ARIZONA RULES OF CIVIL PROCEDURE;
RULES 4(b) AND 5(a),
ARIZONA RULES OF CIVIL APPELLATE PROCEDURE;
RULES 4(D) AND 43(C),
ARIZONA RULES OF FAMILY LAW PROCEDURE;
RULES 1.3 AND 35.5, ARIZONA RULES OF CRIMINAL PROCEDURE;
and
RULE 124, RULES OF THE SUPREME COURT

IT IS ORDERED that Rules 5(c) and 6(e), Arizona Rules of Civil Procedure; Rules 4(b) and 5(a), Arizona Rules of Civil Appellate Procedure; Rules 4(D) and 43(C), Arizona Rules of Family Law Procedure; Rules 1.3 and 35.5, Arizona Rules of Criminal Procedure; and Rule 124, Rules of the Supreme Court, be amended in accordance with the attachments hereto,* effective as of June 1, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 20th day of January, 2006.

For the Court:


RUTH V. MCGREGOR
Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

ARIZONA RULES OF CIVIL PROCEDURE

* * *

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.~~

(1) Serving an Attorney. If a party is represented by an attorney, 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;

(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) Certificate of Service. 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 paper~~ 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.~~

(4) Service After Judgment. ~~2.~~ After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgement, shall be served pursuant to Rules 4, 4.1 or 4.2, as applicable, of these rules as if serving a summons and complaint.

State Bar Committee Note

2006 Amendment

[Previous State Bar Committee Note is deleted.]

Rule 5(c) was amended: (i) to make the rule easier to understand, (ii) to transfer and slightly modify the electronic service provisions in Rule 124(e) and (g) of the Rules of the Supreme Court of Arizona to Rule 5(c); and (iii) to authorize service by other means if the recipient consents in writing or the court so orders.

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served paper must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by “other means.” The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

The amended rule also authorizes courts to order service by “any other means, including electronic means.” The prior rule already authorized courts to permit service by facsimile, and this authority has been extended to authorize a court to permit other methods of service. In some instances, it may be appropriate to authorize alternative service methods over a party’s objection because of the exigencies of the case, difficulties of hand-delivery or other factors. In deciding whether to authorize such methods, a court should consider whether: (i) an additional copy of the paper must be served by another method specifically authorized by Rule 5(c) (such as mailing or hand-delivery); (ii) whether page limitations should be imposed (such as in the case of facsimile service); and (iii) whether the recipient’s costs associated with an alternative service method (such as in the case of facsimile delivery) should be included as a taxable cost.

Service by electronic means or by “other means” is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the “send” command on a computer to transmit the paper to the recipient. Similarly, facsimile service is complete when transmission of the paper on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected.

The amended rule also eliminates the requirement that certificates of service must be filed with the court whenever service is effected under the rule. The amended rule, however, is not intended to modify the requirement that a certificate of service accompany any paper that is served on a party or is filed with a court.

* * *

Rule 6(e). Additional time after service by ~~mail~~ under Rule 5(c)(2)(C), (D) or (E)

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by ~~mail~~ a method authorized by

Rule 5(c)(2)(C), (D), or (E), five calendar days shall be added to the prescribed period. This rule has no application to the mailing-distribution of notice of entry of judgment required by Rule 58(e).

State Bar Committee Note

2006 Amendment

Rule 6(e) was amended (i) to transfer and slightly modify the computation of time provision for electronic service and delivery in Rule 124(g) of the Rules of the Supreme Court of Arizona to Rule 6(e); (ii) to adopt a similar rule for service made under the other methods authorized under amended Rule 5(c)(2)(D) and (E); and (iii) to clarify an ambiguity in the rule arising from a 2004 amendment to Rule 58(e).

As amended, the five-day "mailing rule" applies to service authorized by Rule 5(c)(2)(C), (D), or (E). Rule 6(e)'s reference to the "mailing" of a notice of entry of judgment under Rule 58(e) was changed to "distribution" to reflect that Rule 58(e) now allows a notice of entry of judgment to be "distributed" by the clerk by mail, electronic mail or delivery to an attorney drop-box.

Previously, Rule 124(g) provided a document that was served electronically after 5:00 p.m. was to be treated as if served or delivered the following day. Rather than have a time computation rule that applies only to electronic service, this provision was not incorporated into the amendments to Rule 6(e).

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ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

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Rule 4. Filings and Service

(a) [No change in text.]

(b) Service of All Papers Required; Notice by the Court; Manner of Service.

Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal. This rule shall not apply to the transcript filed pursuant to Rule 11(b). Service may be personal, ~~or~~ by mail, or by 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. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail includes every type of service except same day hand delivery and is complete on mailing. Service by other means is complete upon transmission. Service of copies of notices and papers that the clerk of the court must serve on parties to the appeal shall also be made in accordance with the foregoing.

(c)-(d) [No change in text.]

2006 Court Comment

Rule 4(b) was amended to transfer and slightly modify the electronic service provisions in Rule 124(e) and (g), Rules of the Supreme Court, to Rule 4(b), and to authorize service by other means if the recipient consents in writing or the court so orders.

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served paper must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by “other means.” The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

The amended rule also authorizes courts to order service by “any other means, including electronic means.” In some instances, it may be appropriate to authorize alternative service methods over a party’s objection because of the exigencies of the case, difficulties of hand-delivery or other factors. In deciding whether to authorize such methods, a court should consider whether: (i) an additional copy of the paper must be served by another method specifically authorized by Rule 4(b) (such as mailing or hand-delivery); (ii) whether page limitations should be imposed (such as in the case of facsimile service); and (iii) whether the recipient’s costs associated with an alternative service method (such as in the case of facsimile delivery) should be included as a taxable cost.

Service by electronic means or by “other means” is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the “send” command on a computer to transmit the paper to the recipient. Similarly, facsimile service is complete when transmission of the paper on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected.

Rule 5. Computation; Shortening or Extension of Time

(a) Computation of Time. In computing any period of time prescribed by these rules, or by an order of court, or by any applicable statute, the provisions of Ariz. Rules Civ. Proc. 6(a) and (e) shall apply.

(b)-(c) [No change in text.]

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ARIZONA RULES OF FAMILY LAW PROCEDURE

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Rule 4. Time

A.-C. [No change in text.]

D. Additional Time after Service by Mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by ~~mail~~ a method authorized by Rule 43(C)(2)(c), (d), or (e), five (5) calendar days shall be added to the prescribed period. This rule has no application to the ~~mailing~~ distribution of notice of entry of judgment required by Rule 81(D).

2006 Court Comment

Rule 4(D) was amended (i) to transfer and slightly modify the computation of time provision for electronic service and delivery in Rule 124(g) of the Rules of the Supreme Court of Arizona to Rule 4(D); (ii) to adopt a similar rule for service made under the other methods authorized under amended Rule 43(C)(2)(d) and (e); and (iii) to clarify an ambiguity in the rule relating to Rule 81(D).

As amended, the five-day “mailing rule” applies to service authorized by Rule 43(C)(2)(c), (d), or (e). Rule 4(D)’s reference to the “mailing” of a notice of entry of judgment under Rule 81(D) was changed to “distribution” to conform to Rule 81(D), which allows a notice of entry of judgment to be “distributed” by the clerk by mail, electronic mail or delivery to an attorney drop-box.

Previously, Rule 124(g) provided a document that was served electronically after 5:00 p.m. was to be treated as if served or delivered the following day. Rather than have a time computation rule that applies only to electronic service, this provision was not incorporated into the amendments to Rule 4(D).

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Rule 43. Service and Filing of Pleadings and Other Papers; Sensitive Data Form

A.-B. [No change in text.]

C. Service after Appearance; Service after Judgment; How Made.

1. *Serving an Attorney.* ~~Whenever 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, e~~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 upon the attorney unless the court orders service on the party 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; or by facsimile to a faesimile number provided by the attorney or party and by retaining a receipt documenting the date and time of the faesimile transmission.

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;

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. Certificate of Service. 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 paper was served by mail, ~~and the provisions of Rule 4(D) 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.~~

4. Service After Judgment. 2. After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, or other pleading required to be served and requests for modification, vacation, or enforcement of that judgment, shall be served pursuant to Rules 40, 41 and 42, as applicable, as if serving a summons and petition.

D.-G. [No change in text.]

2006 Court Comment

Rule 43(C) was amended: (i) to make the rule easier to understand, (ii) to transfer and slightly modify the electronic service provisions in Rule 124(e) and (g) of the Rules of the Supreme Court of Arizona to Rule 43(C); and (iii) to authorize service by other means if the recipient consents in writing or the court so orders.

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served paper must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by "other means." The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

The amended rule also authorizes courts to order service by "any other means, including electronic means." The prior rule already authorized courts to permit service by facsimile, and this authority has been extended to authorize a court to permit other methods of service. In some instances, it may be appropriate to authorize alternative service methods over a party's objection because of the exigencies of the case, difficulties of hand-delivery or other factors. In deciding whether to authorize such methods, a court should consider whether: (i) an additional copy of the paper must be served by another method specifically authorized by Rule 43(C) (such as mailing or hand-delivery); (ii)

whether page limitations should be imposed (such as in the case of facsimile service); and (iii) whether the recipient's costs associated with an alternative service method (such as in the case of facsimile delivery) should be included as a taxable cost.

Service by electronic means or by "other means" is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the "send" command on a computer to transmit the paper to the recipient. Similarly, facsimile service is complete when transmission of the paper on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected.

The amended rule also eliminates the requirement that certificates of service must be filed with the court whenever service is effected under the rule. The amended rule, however, is not intended to modify the requirement that a certificate of service accompany any paper that is served on a party or is filed with a court.

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ARIZONA RULES OF CRIMINAL PROCEDURE

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Rule 1.3. Computation of Time

a. General Time Computation. In computing any period of time of more than 24 hours prescribed by these rules, by order of court, or by an applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sunday, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to take some action within a prescribed period after service of a notice or other paper and the notice or paper is served by a method authorized by Rule 5(c)(2)(C), (D), or (E), Arizona Rules of Civil Procedure ~~such service is allowed and made by mail~~, five calendar days shall be added to the prescribed period. Mailing pursuant to Arizona Rule of Civil Procedure 5(c)(2)(C) includes every type of service except same day hand delivery.

b. [No change in text.]

Comment

See Rules 6(a) and (e), Arizona Rules of Civil Procedure.

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Rule 35.5 Service and Filing

Unless otherwise specified in these rules, the manner and sufficiency of service and filing of motions, requests, petitions, applications, and all other pleadings and documents shall be governed by Rule 5 of the Rules of Civil Procedure.

Comment

The former rules contained no standard governing service of motions, requests and other pleadings. The provisions of the civil rules are adequate.

To emphasize the adequacy of service by mail for most documents under these rules (but see Rules 3.4 and 31.5(a)(2)), the term “send” is used interchangeably with the term

“serve.” “Send” is used most often; however, “serve” has been retained in some cases for textual reasons only.

2006 Court Comment

Rule 5(c), Arizona Rules Civil Procedure, was amended in 2006 specifically to include service by electronic and other means if the recipient consents in writing or the court so orders. See State Bar Committee Note, 2006 Amendment, to Rule 5(c). These new provisions also apply, as appropriate, in criminal proceedings.

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RULES OF THE SUPREME COURT

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Rule 124. ~~Electronic Filing, and Delivery and Service~~

(a)- (b) [No change in text.]

(c) Date and Effect of Electronic Filing.

(1) An electronically filed document shall be deemed filed on the date and time that ~~the document is accepted. Acceptance shall be determined by the court and shall be deemed to occur (i) on the date the filing was transmitted if the transmission began during normal business hours of the clerk's office and (ii) on the next day the clerk's office is open for business if transmission began after normal business hours of the clerk's office.~~ it is received by the court (or by its designee), unless the court later rejects the document for filing. Promptly upon receipt, the court (or its designee) shall transmit to the filing party an acknowledgment indicating the date and time of receipt. If the court later does not accept the document for filing, it shall promptly notify the filing party electronically and set forth the grounds for rejection.

(2) [No change in text.]

(d) [No change in text.]

~~(e) Electronic Service of Documents by Parties. Any attorney or unrepresented party may consent to receive electronic service of documents from another party. Such consent shall be filed either traditionally or electronically and may be withdrawn at any time upon notice filed either traditionally or electronically. [Reserved.]~~

(f) [No change in text.]

(g) **Computation of Time.** The electronic delivery of documents by the court pursuant to paragraph (d) of this Rule ~~and the electronic service of documents by parties pursuant to paragraph (e) of this Rule~~ is complete upon transmission. ~~If the electronic delivery or service of documents is completed on any day after 5:00 p.m. [Mountain Standard Time], then such documents shall be deemed to have been transmitted on the next day that is not a Saturday, a Sunday or a legal holiday. Whenever a party has the right or is required to take some action within a prescribed period after service of a notice or other paper and such service is made electronically, such service shall be considered service by mail for the purpose of computing time under any rule of procedure.~~

[2002 and 2006] Court Comment to Sections (c) and (g)

Under section (g), a A-document is “transmitted” when the sender does the last act that must be performed by the sender. As with other modes of service, evidence that the intended recipient did not receive the transmitted document may defeat the presumption of receipt that arises from the provision that “~~service delivery~~ “is complete on transmission.” Although the electronic delivery of documents by the court ~~and the electronic service of documents by parties~~ is complete upon transmission, the “electronic filing” of a document is not complete upon transmission. As with traditionally filed documents, the court must receive and accept an electronically filed document before such document is considered filed.

The former provisions of this Rule authorizing parties to serve papers by electronic means have been deleted from this rule and transferred, as appropriate, to Rules 5(c) and 6(e), Ariz. R. Civ. P., Rule 4, Ariz. R. Civ. App. P., Rules 4(D) and 43(C), Ariz. R. Fam. Law P., and Rule 1.3, Ariz. R. Crim. P. Rule 124(g) also was amended to eliminate the provision, which was unique to service and delivery by electronic means, treating a document served or delivered after 5:00 p.m. as if served or delivered the following day.

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