

25 June 2023

Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington St., Suite 104
Phoenix, AZ 85007-3222

RE: Proposed changes to ACJA 7-204 submitted by AOC on 21 June 2023

This letter is being submitted by the undersigned on behalf of and with the consent of the Board of Directors of the Arizona Process Servers Association and on behalf of its members.

The Arizona Process Servers Association (APSA) originally submitted requested changes to ACJA §7-204 in November 2022. Although the instigator of some proposed changes, the AOC failed to notify APSA of its current, formal proposal. Our analysis of the current proposed changes by the AOC yields some undesirable results. We are concerned.

Our proposal addressed what we previously described as small, but significant issues facing process servers, as well as the clerks and courts. APSA believes some of our proposed language would help solve the issues we addressed. In this regard:

APSA endorses the language proposed by the AOC in subsection (G)(1)(b):

“If the presiding judge grants renewal of a certification, the effective date of the renewal is 12:01 a.m. of the first day following expiration of the prior certification regardless of any expiration date extensions provided in this code section. The renewed certificate expires at midnight, three years from the date of issuance.”

We also endorse the proposed changes to subsection (H)(1)(a), excerpted here:

The clerk ~~shall~~ must obtain records from the clerk of the county in which the process server is certified, as provided in subsection (D)(4)(a)(7), and forward those records and the complaint to the presiding judge.

1
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By: Goldman, B.R.



However, APSA must object to the proposed subsection (L)(2):

“Applicability. Pursuant to Under subsection (F), all certified private process servers ~~shall~~ must complete at least ten hours of approved continuing education every twelve months in an area relevant to the work of a certified private process server. The private process server ~~shall~~ must submit documentation of completion of the continuing education for the 3-year certification period in an approved format with the application for renewal of certification. Any hours completed after the filing of the renewal application do not apply to either the current certification or the renewed certification. Only hours completed after the renewed certification is effective will apply to the continuing education requirement for the renewed certificate’s 3-year certification period. Pursuant to ~~subsection G~~, a renewal period is for ~~three years from the date of issuance of the certificate.~~”

This proposed subsection is inconsistent with what APSA had desired and codifies a harmful policy which is detrimental to the process server. A process server whose certification lasts for a consistent three years under the proposal with a consistent expiration date, who submitted a timely and complete renewal application, not expecting any renewal to be questioned, delayed, or otherwise rejected, would, under the proposed language from the AOC, suffer economic and other hardship should he/she seek to take advantage of continuing education opportunities in the period immediately following his/her expiration date and but before the formal issuance of recertification.

As we stated in our initial letter requesting changes to ACJA §7-204, “...process servers have been informed by the clerks that not only has their (future) renewal date changed, but their continuing education classes taken and paid for between the expiration of their certification and issuance of renewal certification (an investment not only of their money but time), shall not be counted toward their (current) renewal period nor their past renewal period as there is no provision in the ACJA to recognize this issue. APSA is informed and believes there is a solution to not only the issue of inconsistent renewal dates and inconsistent renewal periods, but process servers unintentionally being shortchanged in their continuing education by modification to the language in ACJA §7-204(G).” The AOC’s proposal in this regard is inconsistent with that stated desire.

While the proposed language in (G)(1)(b) appears to solve the problem of inconsistent renewal dates, but the proposed (new) language in (L)(2) is inconsistent, at best, and will result in confusion in its administration.

In supporting APSA's objection to this paragraph, our board member Nathan Botsch, stated: "I oppose this proposed rule change. The paragraph is poorly worded (as to) clarity. Furthermore, It would serve no purpose to deprive a process server who is undergoing recertification the opportunity to satisfy any of their continuing education requirements during the first year of the new certification period for however long it takes for the recertification to become final. Additionally, I find no new language to (mandate) the courts to grant approval within a specified time frame...".

APSA proposes in place of such proposed language in (L)(2):

Applicability. Pursuant to Under subsection (F), all certified private process servers shall must complete at least ten hours of approved continuing education every twelve months in an area relevant to the work of a certified private process server. The private process server shall- must submit documentation of completion of the continuing education for the 3-year certification period in an approved format with the application for renewal of certification. Any hours completed after the filing of the renewal application do not apply to that certification period. Hours completed after the effective date of the renewal will apply to the continuing education requirement for the certificate's 3-year certification period. Pursuant to subsection G, a renewal period is for three years from the date of issuance of the certificate."

In this manner, where some of the courts are issuing renewal certificates on a delayed and inconsistent basis, many times as a result of delayed background checks or for other reason(s), the process server who filed a timely and complete renewal packet shall not suffer economic or other loss by having his/her education hours disqualified, many times years later.

APSA objects to the proposed new language from the AOC under (L)(4)(n):

- n. Process servers requesting CE credit for self study shall submit documentation of completion on an approved form. Self-Study. A process server may receive continuing education credit for self-study activities, including taking correspondence courses, reviewing procedure manuals, watching video presentations, listening to audio materials, attending online seminars, and other methods of independent learning. The maximum hours of continuing education credits earned in a self-study format may not exceed 50 percent of the total number of continuing education hours required during the certification period. The remaining hours must be obtained through live training, meaning training or education provided by one or more faculty or facilitators to an individual or a group using real-time interaction

While APSA could find no such restriction or mandate to attend in-person events for attorneys (ref. Mandatory Continuing Legal Education, Rule 45, Ariz. R. Sup. Ct.) or legal paraprofessionals (ACJA §7-210), our largest objection to this proposal comes from a health and economic perspective.

Many process servers still do not want to attend group settings due to their individual health concerns. While the pandemic is “over”, many process servers have suffered adverse effects due to immunizations or exposure to the virus. This proposed language is also economically burdensome to many process servers, especially those who work/live in remote areas of the state where travel, lodging and meals must be added expenses to attending in-person seminars. Online seminars and presentations address these issues. Process servers are for the most part self-employed or independent contractors, and do not have the wide-ranging budgetary discretion of government.

Mr. Botsch further commented, “...If this rule change is made, it should be made with no less than an additional year to take effect to allow process servers, professional organizations, and educational interests to prepare. The resources are not currently available to satisfy the 50% real-time requirement unless we are to have the slack taken up by persons and institutions who are neither legal professionals nor persons working in the field of process serving. I am fundamentally opposed to that possibility...”.

Again, APSA objects to this proposed language.

APSA hopes that the Supreme Court and the AOC will take our reservations constructively. We look forward to working with the AOC to resolve these conflicts.

Very truly yours,
ARIZONA PROCESS SERVERS ASSOCIATION

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