
Defendant Name

Street Address

City, State, Zip

Phone
DEFENDANT

IN THE _____ COURT

STATE OF ARIZONA, COUNTY OF MARICOPA

STATE OF ARIZONA,)
)
 Plaintiff,)
 vs.)
)
 _____,)
)
 Defendant.)
 _____)

Case No. _____

**LIMITED APPEARANCE ON
MOTION TO STRIKE DECLARATION
OF SERVICE AND TO CONTEST
JURISDICTION**

Defendant appears in court for the limited purpose of contesting the court’s jurisdiction to proceed in this matter for faulty service of process. The defendant requests that the court strike the Declaration of Service filed in this matter and enter its order declaring that the court has not yet obtained personal jurisdiction due to the failure of proper service in this matter.

Defendant has filed a Private Process Server Complaint Form with the Maricopa County Superior Court, a copy of which is attached to this pleading. The basis for the complaint and this challenge to jurisdiction is that the papers were not properly served in this matter. Notice that the court has set a court date is insufficient to confer jurisdiction as a

notice that is not properly served *confers no duty upon the recipient to respond*, any more than a mailed Summons and Complaint confers a duty to respond. The law in Arizona is clear that personal service is required. In ***Tonner v. Paradise Valley***, 171 Ariz. 449, 831 P.2d 448 (App. 1992) the court held: "To serve a civil traffic complaint, the State must comply with A.R.S. § 28-1073 (1989), which requires service "by delivering a copy of the uniform traffic complaint citation to the person charged with the violation." The court said: "Section 28-1076(D) provides that a 'person *served* with a civil traffic complaint' must appear at the time directed." A person who is not SERVED does not have to appear and the court lacks the power to enter a judgment in that case.

Our Superior Court recently emphasized that papers must be served in accordance with the law. In ***State v. Savoca***, LC2005-000926, the court held:

"Notice is satisfied once the service of summons is complete. Arizona Rule of Civil Procedure, Rule 4.1(d) states the service is effected by delivering a copy of the summons and pleading to the individual personally '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.' 'The purpose of process is [sic] give the party actual notice of the proceedings against him and that he is answerable to the claim.' ***Marks v. LaBerge***, 146 Ariz. 12, 15, 703 P.2d 559, 562 (1985)."

The Superior Court ordered dismissal of a photo radar case where service was not personally made in ***State v. Ager***, LC2005-000906, saying:

"The only description of the person at the residence is that she was a white female. There is no indication as to her approximate age or why the process server believed that she resided at the home. Moreover, even that individual was not served. The process server states that he affixed the papers in some unspecified fashion to the door of the home. This type of alternative service is not acceptable without pre-authorization by the court. See Rule 4.1(m), Ariz.R.Civ.P."

These Superior Court rulings are binding on all lower courts. The Rules of Civil Procedure are binding on all lower courts. Service was not properly made in this case.

The Declaration which says that the defendant was served is false as follows:

_____.

Due to the way the papers were discovered, and with knowledge that said faulty service created no duty to respond any more than a mailed ticket would have, I request that the court strike the affidavit filed in this matter. For the reasons as set forth herein, I request that the court enter the appropriate order confirming that service was not complete in this case.

RESPECTFULLY SUBMITTED this date:_____.

Defendant

Note:

Include in your reasons for the request, any of the following that are true, plus your own facts:

- The papers were left at the door and not handed or delivered to a person
- I was not home at the alleged time
- No one was home at the time
- My (brother, father, wife, husband, etc.) does not live at that address
- I do not live at that address
- I do not have a (wife, husband, brother, roommate, etc.)

Please fill out a process server complaint form and include it with your papers. File the Motion to Strike and Motion to Dismiss in court on or before your appearance date.