	PARADISE VALLEY POLICE GENERAL ORDER	Order Number
		41.90
	Gated Community Access to Process Servers	Date
		05-15-17

41.90   Gated Community Access to Process Servers

Private process servers duly appointed, or registered pursuant to rules established by the supreme court, *may* serve all process, writs, orders, pleadings or papers required or permitted by law to be served prior to, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service *officer* to sell, deliver or take into the *officer*'s custody persons or property, or as *may* otherwise be limited by rule established by the supreme court." (*A.R.S. § 11-445.H*)

Statutory law in this *state* implicitly recognizes the right and penalizes any interference with service of process. *A.R.S. § 13-2810* , makes it is a Class 1 Misdemeanor to interfere with a process server in carrying out service of process." *A.R.S. § 13-2810.A.2* says a person interferes with a judicial proceeding if that person knowingly "Disobeys or resists the lawful order, process or other mandate of a court."

Process servers are *officers* of the court and are allowed certain protections pursuant to *A.R.S. § 13-402*. That statute provides that an offense is justifiable when the person is engaged in the lawful execution of legal process. Serving a subpoena would qualify as the lawful execution of legal process. However, this justification defense would likely fail if a process server 'exceeded the bounds of his authority or engaged in outrageous conduct.'

In the context of process servers being allowed onto gated private property, *A.R.S. § 13-402* would likely serve as a protection for the process server in a prosecution for criminal trespass. However, due to the high probability of negative consequences resulting from a process server forcing entry into a gated community, the better approach would be to present the court ordered subpoena to the security personnel, have a copy of *A.R.S. § 13-402* available to show the guard, and then finally request a civil assist from the PD *should* entry still be denied.

A.   *Officers should* only take active enforcement action if there is a breach of the peace or other crime committed in their presence.

B.   *Officers should* explain to security personnel that process servers are *officers* of the court. As such, they cannot legally be denied access to the target of their service.

C.   To the extent that their actions do not constitute a breach of the peace, process servers can circumvent gates, barriers and security personnel to access the intended address.

D.   Process servers *CANNOT* use force to gain entry to any residence.

E.   If, after having the issues explained to them, security personnel persist in their denial of the process server's entry, the *officer should* advise the security guard that an INFORMATION *report will* be completed and forwarded to the Town Prosecutor for a determination as to whether the security guard *should* be charged with a violation of *A.R.S. § 13-2810* (Interference with a Judicial Proceeding) and/or *A.R.S. § 13-3802* (Contempt of Court).

F.   *Officers shall* not force security personnel to allow access by the process server, nor *should Knox* keys be used to open gates on gated communities or gated residences without the expressed authorization of a Command Staff member, who *will* confer with the *Town Attorney*, if possible, before making any decision.