41.90 Gated Community Access to Process Servers

A. 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)

B. Statutory law in this state implicitly recognizes the right and penalizes any interference with service of process. A.R.S. § 13-2810, makes it 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."

C. 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.'

D. 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.

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

    2. 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.

    3. 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.

    4. Process servers CANNOT use force to gain entry to any residence.

    5. 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).

6. 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.