



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-016014

09/30/2011

A fundamental requirement of due process in any proceeding which is to be accorded finality is that such notice must be reasonably calculated, under all the circumstances, to appraise a Defendant of the pendency of the action and afford that defendant an opportunity to present whatever legal objections he may have.

Ariz. R. Civ. P., Rule 4.1(m) provides an alternative means of service only if service by one of the means set forth in the rule proves "impractical". Although, the term is not synonymous with the term impossibility, it does require a showing that service is extremely difficult, and impractical. That is, caused by extreme or unreasonable difficulty or expense. The term impractical equates with the term futility.<sup>2</sup>

A Defendant has a right to receive notice of the pendency of an action against him. Process which is mere gesture and is not reasonably calculated to give Defendant notice of the pending proceedings is insufficient. Such notice does not comply with the requirements of due process.

The actual means employed to effectuate service upon a Defendant must be reasonably calculated to provide notice. The reasonableness and hence the constitutional validity of any chosen method must be capable of being defended on the ground that it is in itself reasonably certain to inform those affected.

The Court has reviewed and considered Plaintiff's Motion for Alternative Service. Under the circumstances described, the service proposed by Plaintiff would not be reasonably calculated to give defendant notice of these proceedings.

**IT IS ORDERED** denying Plaintiff's Motion for Alternative Service.

Dated: October 3, 2011

/ s / HONORABLE J. RICHARD GAMA

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JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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<sup>2</sup> Blair v. Burgener, 598 Ariz. Adv. Rep. 26.  
Docket Code 019