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February 24, 1955
Letter Opinion
No. 55-32-1

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ARIZONA ATTORNEY GENERAL

Dr. Samuel Wick, Director
Arizona State Hospital
2500 East Van Buren
Phoenix, Arizona

Re: Civil action against mentally
incompetent patient in Arizona
State Hospital

Dear Dr. Wick:

In answer to your letter of January 18, 1955, wherein you requested an opinion of this office regarding the service of divorce papers on an individual who is a patient at the Arizona State Hospital.

Section 21-305 A.C.A. 1939, as amended, reads as follows:

"21-305. Summons--Personal Service.--
* * * * * Service shall be made as follows:
(1) Upon an individual other than those specified in subdivision (2) of this rule, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.
(2) * * * * * (C) Upon a person who has been judicially declared to be insane or mentally incompetent to manage his property and for whom a guardian has been appointed in this state, by service in the manner set forth in subdivision (1) of this rule upon such person and also upon his guardian, or if no guardian has been appointed, upon such person as the court may designate.
* * * * *"

Ordinarily, "usual place of abode" if applied to the service

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of process, is a much more restricted term than "residence" and means the place where the defendant is actually living when service is made. Accordingly, if the defendant is confined in jail, then his usual place of abode is within that place although his residence there was compulsory. 43 WORDS AND PHRASES, 550. In what is sometimes referred to as its popular sense, the word "reside" means the personal, actual or physical habitation of a person; actual residence or place of abode; and it signifies being physically present and actually staying there. 77 C.J.S. 286. In its ordinary sense, by approved use and as frequently employed in common speech, "reside" means to abide; to abide continuously; to sojourn; to lodge; to live in a place; to dwell; to dwell permanently or for a length of time; to dwell permanently or for a considerable time; to dwell permanently or for any length of time; to inhabit. 77 C.J.S. 287.

A discussion of the problem involved here is to be found in 44 C.J.S. 317 under Section 147 (b). In general, this section states that in the absence of a statute providing otherwise, service of process on an insane defendant must be made in the same manner as all other persons. If the insane defendant is in an asylum, service should be made on him personally in presence of the superintendent, keeper or physician of the asylum but substituted service may be made upon such superintendent, keeper or physician where he refuses to permit service upon the patient, or where such physician having him in charge feels that a personal service would be injurious to the health of the patient. Where a statute provides the manner of service in actions against insane persons it must be followed, and generally, a failure to follow the statutory manner of service is a jurisdictional defect.

It is therefore, the opinion of this office that in any civil action against a mentally incompetent patient of the State Hospital, service upon the patient should be allowed as long as such service is made within the presence of the superintendent, keeper or physician of the hospital. However, in cases where the superintendent, keeper or physician feels that to allow such personal service upon the patient would be injurious to the health of such patient, then substituted service would be allowable. Substituted service, according to our statute as above quoted, Section 21-305, A.C.A. 1939, as amended, in this case would have to be a service upon some person of suitable age and discretion then residing within the State Hospital. This would be allowable in that, according to the statute, the defendant's usual place of abode would at the time of suit, be the State Hospital. We wish to caution you, however, that in the case of substituted service upon a person residing within the State Hospital, the word "reside" is to be used in its most limited sense as above set out and

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would undoubtedly mean a person who actually lives upon the premises of the State Hospital.

If we can be of any further assistance to you in this or any other matter, please feel free to call upon us at any time.

Yours very truly,

ROBERT MORRISON
The Attorney General

By:
NORMAN E. GREEN
Assistant to the
Attorney General

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