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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:)
)
PETITION TO ADOPT RULE 124) Supreme Court No. 22-_____
OF THE RULES OF THE)
SUPREME COURT OF ARIZONA)
_____)

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, petitions this Court to adopt Rule 124 of the Rules of the Supreme Court of Arizona (“Supreme Court Rules”) in the attached Appendix. The proposed rule would implement the changes to A.R.S. § 12-109 made by Senate Bill (SB) 1265 during the 2021 First Regular Session of the Fifty-fifth Legislature and would create uniform provisions for the acceptance of electronic signatures on electronically filed (“e-filed”) documents as the e-filing project expands to additional case types.

I. Purpose of the Proposed Rule

A.R.S. § 12-109 requires the Arizona Supreme Court to regulate pleading, practice, and procedure in judicial proceedings in all Arizona courts to simplify the

same and promote speedy determination of litigation on its merits. Senate Bill 1265, which was part of the 2021 Judicial Branch Legislative Package approved by the Arizona Judicial Council, was signed by the governor on March 26, 2021 and provides a new subsection B that states, “[t]he court may allow documents that require a sworn written declaration, verification, certificate, statement, oath or affidavit to be signed with an electronic signature.”

The purpose of SB 1265 is to allow for the expansion of e-filing services to additional case types, such as small claims and civil cases in limited jurisdiction courts. E-filing is currently available in criminal, delinquency, probate, guardianship, family, civil, and appellate cases. Adoption of the proposed rule would allow digital, electronic signatures in place of manually applied, “wet” signatures. Currently, at least 74 Arizona statutes require some sort of declaration, verification, certificate, statement, oath, or affidavit, which some courts have interpreted to mean manual “wet” signatures. The proposed rule will assure that the necessary signatures can be affixed electronically, and the document does not need to be printed, signed, scanned, and then filed.

It is well established that “signatures” are not limited to manual, handwritten signatures. *Haywood Securities, Inc. v. Ehrlich*, 214 Ariz. 114, 149 P.3d 738 (2007). At issue in *Haywood* was whether the electronic affixation of a judge’s name to a judgment constituted a “signature” for purposes of rendering the judgment final and

appealable. The Court determined that the documents were indeed “signed,” reasoning that “the defining characteristic of the requirement that a judgment be ‘signed’ is that the document has affixed to it some form of the name that evidences an intention of authentication.” *Id.* at 117. The Court further noted that this reasoning is consistent with the wide and longstanding acceptance of electronic signatures for electronic filing and document management.

The Criminal Rules, Superior Court Civil Rules, Family Court Rules, and Rules of Civil Appellate Procedure currently contain provisions that allow for electronic signatures on electronic filings.¹ Adding the proposed rule to the Supreme Court Rules creates consistency among case types, simplifies pleading practice, and increases access to justice by reducing barriers that may otherwise impede a person’s ability to e-file documents with the court.

II. Contents of the Proposed Rules

The proposed rule tracks legislation and allows a person to sign an electronically filed document that requires a sworn written declaration, verification, certificate, statement, oath, or affidavit. The rule also specifies the method by which an e-filed document may be signed and clarifies that an electronic signature is equivalent to an ink signature on paper. Additionally, the rule contains a provision

¹ Criminal Rule 1.6(c)(5), Superior Court Civil Rule 11(a)(2), Family Court Rule 26(a)(2), and Civil Appellate Rule 4.2.

that addresses the method by which notarization requirements may be met when a document is e-filed. Lastly, the rule includes verbiage that is present in existing rules related to treating a document filed using a person's electronic filing registration information as a filing that was made or authorized by that person.

Petitioner proposes placement of the proposed rule in the Rules of the Supreme Court so that the rule is in one location for ease of reference and is applicable to all case types, allowing for consistent application.

III. Conclusion

Petitioner requests that the Court open this petition for public comment and that the Court consider the petition and comments in the regular course provided by Supreme Court Rule 28.

RESPECTFULLY SUBMITTED this 10th day of January 2022.

/s/ David K. Byers
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Appendix

(The entirety of this rule is new verbiage)

Rules of the Supreme Court of Arizona

Rule 124. Electronic Signatures on E-Filed Documents

Unless otherwise provided by a statewide court rule:

- (a) A document filed through an electronic portal must be signed. An individual may electronically sign a document filed through an electronic portal, including any document that requires a sworn written declaration, verification, certificate, statement, oath, or affidavit.
- (b) Except for documents that require notarization, an individual may electronically sign a document filed through an electronic portal by:
 - (1) Placing the person's signature in an electronic or digitized form on the signature line;
 - (2) Placing the symbol "/s/" on the signature line with the person's typed name immediately following the "/s/"; or
 - (3) Placing the symbol "/s/" on the signature line with the person's typed name appearing immediately under the signature line.
- (c) A notarization requirement is satisfied by an electronic notarization or by scanning and electronically filing the document that contains the notary's original signature and seal.
- (d) An electronic signature under this rule has the same effect as an ink signature on paper.
- (e) A document that was filed using a person's electronic filing registration information may be treated as a filing that was made or authorized by that person.