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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-22-0009

10 **PETITION TO ADOPT RULE 124**
11 **OF THE ARIZONA RULES OF**
12 **SUPREME COURT**

COMMENT

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby comments on Petition R-22-0009 (“the
15 Petition”) filed by the Administrative Office of the Courts (“AOC”).

16 Pursuant to Rule 28, *Rules of the Arizona Supreme Court*, the State Bar of
17 Arizona (the “State Bar”) hereby comments on Petition R-22-0009 (“the Petition”)
18 filed by the Administrative Office of the Courts (“AOC”).

19 The State Bar supports the AOC’s goal of facilitating expansion of electronic
20 filing in the Superior Court in light of recent statutory authority on this subject,
21 AR.S. § 12-109. Problematically, the Petition utilizes and reinforces a definition of
22 “electronic signatures” – typed signatures in an electronically-filed document – that
23 is different than the statutory definition of that term, which is unique to the person
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1 using the signature, and linked to the record to prevent alteration.

2 Also, the State Bar's Civil Practice and Procedure Committee has been
3 informed that Clerks' Offices have experienced problems with parties who seek to
4 used typed signatures on paper filings, believing that typed signatures are authorized
5 as "electronic signatures" for documents that are not e-filed.
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7 The State Bar, therefore, respectfully suggests that this Court continue the
8 Petition, without prejudice, to address the conflicting definitions of "electronic
9 signatures" as well as the submission of typed signatures on paper filings.
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11 **I. Background.**
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13 Last year, at the request of the AOC, the Legislature passed SB 1265. This
14 request was made in order to facilitate electronic filing and avoid potential conflicts
15 with existing statutes concerning electronic signatures.
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17 To accomplish this goal, SB 1265 enacted A.R.S. § 12-109(C), which provides:
18 "The court may allow documents that require a sworn written declaration,
19 verification, certificate, statement, oath or affidavit to be signed with an electronic
20 signature."
21

22 Petition R-22-0009 seeks to implement this new statute by establishing
23 "uniform provisions for the acceptance of electronic signatures on electronically-
24 filed ("e-filed") documents as the e-filing project expands to additional case types."
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1 But the Legislature and the AOC were not utilizing the same definition of the term
2 “electronic signature.”
3

4 In the Petition, the AOC proposes a rule that would allow an individual to
5 “electronically sign a document filed through an electronic portal” by simply
6 typing the individual’s name after “/s/”. *See* Appendix A (proposed rule). This is
7 consistent with Rule 11(a)(2), *Arizona Rules of Civil Procedure*, which permits the
8 use of a typed signature and refers to such a typed signature as “[a]n electronic
9 signature.”
10

11 By contrast, the Legislature’s use of the term “electronic signature” in
12 A.R.S. § 12-109(C) was a defined term of art. The fact sheet for SB 1265
13 (Appendix B) references A.R.S. § 18-106 to define an electronic signature, which
14 is not merely a typed signature, but instead a very specific type of verifiable
15 signature that is linked to the document to prevent unauthorized changes thereto.
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18 This conflict has led to difficulties for the Superior Court Clerks’ Offices. A
19 number of litigants submit paper documents (not e-filed) with typed signatures.
20 Those litigants may see A.R.S. § 12-109(C)’s reference to “electronic signatures”
21 as including the practice of *typed* signatures permitted by Rule 11(a)(2) for e-filed
22 documents. The Committee understands that such typed signatures are rejected on
23 documents filed in paper.
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1 The Rule change proposed by Petition R-22-0009 does not address this
2 growing problem. The proposed Rule 124, *Rules of the Supreme Court of Arizona*,
3 like Rule 11(a)(2), defines an “electronic signature” as a typed signature,
4 reinforcing the (likely incorrect) notion that SB 1265 authorized typed signatures
5 to be used on documents filed in paper.
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7 The Petition and SB 1265 both seek to accomplish a laudable goal, to
8 facilitate the expansion of electronic filing. But the use of different definitions of
9 the term “electronic signature” raises issues that should be addressed in discussions
10 with stakeholders, such as the Clerks’ Offices as well as practitioners.
11

12 The Committee therefore recommends that R-22-0009 be continued to
13 permit crafting a set of rule changes (which may include changes to Rule 11(a)(2))
14 to harmonize the differing statutory and rule definitions of the term “electronic
15 signature.” Additional background to the Petition follows.
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18 **II. The Petition.**

19 Petition R-22-0009 asks the Supreme Court to create a new rule, Ariz. R.
20 Supr. Ct. 124, entitled “Electronic Signatures on E-Filed Documents.” Proposed
21 Rule 124 would permit documents filed through a court’s electronic portal to be
22 “electronically” signed by placing “a person’s signature in an electronic or
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1 digitized form on the signature line,” Proposed Rule 124(b)(1), or typing “/s/” on
2 the signature line. Proposed Rule 124(b)(2) & (3), attached as Exhibit “A” hereto.
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4 The Petition recites that it would implement the changes made to A.R.S.
5 § 12-109 by Senate Bill (“SB”) 1265, and that the proposed rule would create
6 “uniform provisions for the acceptance of electronic signatures on electronically
7 filed documents.”
8

9 The Petition describes the purpose of SB 1265 was to allow for the
10 expansion of e-filing beyond its current application to some types of cases in
11 Superior Court, including filings in limited jurisdiction courts. The Petition states
12 that there are at least 74 Arizona statutes that require some type of “declaration,
13 verification, certificate, statement, oath, or affidavit,” and that some courts believe
14 such statutes require ink-on-paper signatures (also known as “wet” signatures).
15 The Petition states that Proposed Rule 124 would “assure that the necessary
16 signatures can be affixed electronically, and the document does not need to be
17 printed, signed, scanned, and then filed.”
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21 The Petition proposes that the suggested rule be placed in the Rules of the
22 Supreme Court so that it would be in one location and would apply consistently to
23 all case types.
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1 The text of Proposed Rule 124 is at the end of this Comment. It references
2 two types of “electronic” signatures – signatures that do not require notarization
3 (Proposed Rule 124(b)) and those that do. Proposed Rule 124(c).
4

5 For non-notarized signatures, as discussed above, Proposed Rule 124(b)
6 allows for either placing a signature “in an electronic or digitized form” on a
7 signature line, or typing the signer’s name with “/s/”.
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9 For notarized signatures, Proposed Rule 124(c) would permit “an electronic
10 notarization” or by scanning and filing a document with the notary’s original
11 signature and seal.
12

13 Proposed Rule 124(d) states, “An electronic signature under this rule has the
14 same effect as an ink signature on paper.”
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16 **III. Statutory provisions relating to electronic signatures and** 17 **notarizations.**

18 The Petition’s use of the phrase “electronic signature” for a typed signature
19 is not consistent with the statutory definition of that phrase.
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21 The legislative fact sheet for SB 1265 illustrates this conflict. It recites that
22 the bill is intended to allow “the court to accept sworn written declarations,
23 verifications, certificates, statements, oaths or affidavits that are **signed**
24 **electronically.**” (emphasis added).
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1 The fact sheet (Appendix B) then references how the Department of
2 Administration adopts rules for the use of electronic and digital signatures, and that
3 “electronic signatures may be used to sign a document that is filed with an agency,
4 board, or commission.” The fact sheet defines “electronic signature” as “an
5 electronic or digital method of identification which is used with the intent to be
6 bound by or authenticate a record (A.R.S. § 18-106).”
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9 The referenced statute establishes a number of criteria for electronic
10 signatures that would not be met by merely typing “/s/ John Doe” as would be
11 permitted by Proposed Rule 124(b)(2) or (3). For example, A.R.S. § 18-106(C)
12 states, “An electronic signature shall be unique to the person using it, shall be
13 capable of reliable verification and shall be linked to a record in a manner so that
14 if the record is changed the electronic signature is invalidated.”
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17 A.R.S. § 14-1201(20) also utilizes the same restrictive definition of
18 “electronic signature” that is not merely a typed signature.

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20 Arizona statutes also reference definitions of “electronic signatures” in
21 federal law. *E.g.*, A.R.S. § 12-3029 (stating that the provisions of the Arizona
22 Revised Uniform Arbitration Act with respect to electronic records and electronic
23 signatures conform to the requirements of 15 U.S.C. §§ 7001 & 7002).
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1 E-filing protocols also verify a signer’s identity, but not with an “electronic
2 signature.” A signer verifies his or her identity by utilizing the signer’s login and
3 password for the e-filing system, as recognized by proposed Rule 124(e): “A
4 document that was filed using a person’s electronic filing registration information
5 may be treated as a filing that was made or authorized by that person.”
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8 With respect to notarization, Proposed Rule 124(c) does use terminology
9 that is consistent with Arizona statutes. This proposed rule references “electronic
10 notarization,” which is the same term used in A.R.S. § 41-276 (effective July 1,
11 2022) refers to “electronic notarization,” a concept further defined in A.R.S. § 41-
12 268 (also effective July 1, 2022).
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14 **IV. Conflict between definitions of “electronic signatures.”**

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16 As explained above, the term “electronic signature” in Rule 11(a)(2) and
17 proposed Rule 124 includes a typed signature, but only for documents filed through
18 an electronic portal.
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20 Rule 11(a)(2) appears to permit a typed signature only by the filing party or
21 attorney. Proposed Rule 124 appears to permit a typed signature for individuals
22 other than the filing party, who sign such documents as a “sworn written
23 declaration, verification, certificate, statement, oath, or affidavit” that might be
24 attached to an electronically-filed document.
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1 **Proposed Rule Change in the Petition**

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3 Rule 124. Electronic Signatures on E-Filed Documents

4 Unless otherwise provided by a statewide court rule:

5 (a) A document filed through an electronic portal must be signed. An individual
6 may electronically sign a document filed through an electronic portal, including any
7 document that requires a sworn written declaration, verification, certificate,
statement, oath, or affidavit.

8 (b) Except for documents that require notarization, an individual may
9 electronically sign a document filed through an electronic portal by:

10 (1) Placing the person’s signature in an electronic or digitized form on the
11 signature line;

12 (2) Placing the symbol “/s/” on the signature line with the person’s typed
13 name immediately following the “/s/”; or

14 (3) Placing the symbol “/s/” on the signature line with the person’s typed
15 name appearing immediately under the signature line.

16 (c) A notarization requirement is satisfied by an electronic notarization or by
17 scanning and electronically filing the document that contains the notary’s original
signature and seal.

18 (d) An electronic signature under this rule has the same effect as an ink signature
19 on paper.

20 (e) A document that was filed using a person’s electronic filing registration
21 information may be treated as a filing that was made or authorized by that person.
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