

Hon. Jeff Fine
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IN THE SUPREME COURT STATE OF ARIZONA

IN THE MATTER OF PETITION TO)
AMEND RULE 5.1 OF THE RULES)
OF CIVIL PROCEDURE AND RULE)
43.1 OF THE RULES OF) Supreme Court Rule No. R-23-____
FAMILY LAW)
PROCEDURE)
)

BACKGROUND AND PURPOSE OF AMENDMENT

Pursuant to Rule 28, Rules of Supreme Court of Arizona, Jeff Fine, Clerk of the Superior Court for Maricopa County, petitions this Court to amend Rule 5.1 of the Rules of Civil Procedure (“RCP”) and Rule 43.1 of the Rules of Family Law Procedure (“RFLP”) as set forth in the attached Appendix. Petitioner proposes amending RCP Rule 5.1 and RFLP Rule 43.1 to eliminate the prohibition of filing subpoenas in a case file.

Currently, the Clerk’s Office is limited in the manner within which it is able to issue a subpoena, and that is in paper form. Meaning that the subpoena needs to be presented to the Clerk’s Office in hard copy, paper form and subsequently issued by a deputy clerk. However, in exploring technological advancements available through eFile platforms such as the Arizona Administrative Office of the Courts’ (“AOC”) eFileAZ and AZTurboCourt, it appears likely that subpoenas could be issued electronically through those platforms.

Nothing in the current RCP or RFLP precludes the issuance of subpoenas by the Clerk’s Office via an electronic means. It is just that the Clerk’s Office has not had the technological

capabilities to do so, but because of significant advancements and developments made by the AOC to eFileAZ and AZTurboCourt, the Clerk's Office believes the electronic issuance of subpoenas is far closer to reality.

Both the RCP and RFLP currently provide that the State Bar of Arizona may issue signed subpoenas on behalf of the Clerk's Office through "an online subpoena issuance service approved by the Supreme Court." So, electronically issued subpoenas is not something new. And the Clerk's Office has no objection to the State Bar of Arizona continuing to issue online subpoenas on its behalf.

However, the Clerk's Office, together with the Maricopa County Superior Court and the AOC, have had conversations regarding the ability of a party to utilize the already existing AOC eFile platforms to obtain an issued subpoena, and while that ability likely exists, it would more than likely require that the subpoenas issued through such platforms to be filed into the case file, as such would be an automated process at the completion of issuance. And as currently written, RCP Rule 5.1(c)(2)(A) and RFLP Rule 43.1(d)(2)(A) preclude the filing in of subpoenas and subpoenas duces tecum, unless they are filed as attachments or exhibits to other documents and only if relevant to the determination of an issue before the court.

The Clerk's Office has no intention of requiring that subpoenas be filed into the case file in civil and family matters, but only requests that the blanket prohibition be removed from RCP Rule 5.1(c)(2)(A) and RFLP Rule 43.1(d)(2)(A), to allow for the filing of subpoenas so as to advance the technological capabilities of the AOC's own eFile platforms. Lastly, if the Clerk's Office, using already existing eFile platforms, can issue subpoenas electronically, even if they must be filed in, the significant convenience to parties seeking to obtain subpoenas from the Clerk's Office, i.e., not having to come in person to a Clerk's Office location for the Clerk's

Office to issue subpoenas, far outweighs any detriment to filing in the electronically issued subpoenas, as the process for filing will be primarily automated.

**RECOMMENDED CHANGES TO RULE 5.1, RULES OF CIVIL PROCEDURE AND
RULE 43.1, RULES OF FAMILY LAW PROCEDURE**

Petitioner respectfully requests that the language as set forth in the Appendix contained within RCP 5.1(c)(2)(a) and RFLP Rule 43.1(d)(2)(A) be removed from the Rules. With the removal of such language, the Clerk's Office would no longer be precluded from filing in subpoenas, and parties to a case and their attorneys, would not be required to file in subpoenas in the case. The filing in of subpoenas would be discretionary.

CONCLUSION

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

DATED this 10th day of January, 2023.

/s/ Jeff Fine
Clerk
Superior Court for Maricopa County

This comment has been filed via electronic filing of in accordance with deadlines set forth in Rule 28 of the Rules of Supreme Court of Arizona.

APPENDIX A

Modifications to the text are shown by **underscoring** in red font and deletions are show by ~~strikethrough~~ in red font.

Arizona Rules of Civil Procedure Rule 5.1. Filing Pleadings and Other Documents

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

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(c) Service with Filing and Documents to Be Filed.

(1) *Filing and Service.* After a complaint's filing, if a document must be filed within a specified time, it must be both filed and served within that time period.

(2) *Documents Not to Be Filed.* The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court.

~~(A) Subpoenas. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for postjudgment proceedings;~~

~~(B) (A) Discovery and Disclosure Documents.~~ Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

~~(C) (B) Proposed Pleadings.~~ Any proposed pleading, unless filing is necessary to preserve the record on appeal;

~~(D) (C) Prior Filings.~~ Any document that has been previously filed in the action, which may be called to the court's attention by incorporating it by reference;

~~(E) (D) Authorities Cited in Memoranda.~~ Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

~~(F) (E) Offers of Judgment.~~ Offers of judgment served under Rule 68.

(3) *Attachments to Judge.* Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 5.1(c)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

(4) *Sanctions.* If this rule is violated, the court may order removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerk's costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 16(h)

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Arizona Rules of Family Law
Rule 43.1. Filings, Pleadings, and Other Documents

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

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(d) Service with Filing and Documents Not to Be Filed.

(1) *Filing and Service.* After a petition's filing, if a document must be filed within a specified time, it must be both filed and served within that time.

(2) *Documents Not to Be Filed.* The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court:

~~(A) Subpoenas. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;~~

~~(B) (A) Discovery and Disclosure Documents.~~ Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response, including notices of compliance with the provisions of Rules 49 or 91;

~~(C) (B) Proposed Pleadings.~~ Any proposed pleading, unless filing is necessary to preserve the record on appeal;

~~(D) (C) Prior Filings.~~ Any document that has been previously filed in the action, which may be called to the court's attention by incorporating it by reference; and

~~(E) (D) Authorities Cited in Memoranda.~~ Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal.

(3) *Attachments to the Assigned Judge.* Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 43.1(d)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge also must be provided to all other parties.

(4) *Sanctions.* If this rule is violated, the court may order removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerk's costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 71.

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