

The Honorable Donna McQuality, President  
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

	)	Supreme Court No. R-22-0009
PETITION TO ADOPT RULE	)	
124 OF THE RULES OF THE	)	COMMENT IN SUPPORT OF
SUPREME COURT OF ARIZONA	)	AMENDED PETITION
_____	)	

**INTRODUCTION**

Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the Arizona Association of Superior Court Clerks (the Clerks Association) submits this Comment in support of the Amended Petition filed in this matter.

The Clerks Association values the endeavor of the Administrative Office of the Courts to form and lead a workgroup of practitioners and stakeholders, including representatives from the Clerk of Court for the Superior Court of Arizona in Mohave County, the Clerk of Court for the Superior Court of Arizona in Maricopa County, the Clerk of Court for the Superior Court in Coconino County, and the Clerk of Court for the Superior Court in Pima County, to address the issues raised in the Clerks Association April 27, 2022 Comment and the State Bar of Arizona May 2, 2022 Comment filed with respect to the original Petition.<sup>1</sup>

**PETITION AND AMENDED PETITION**

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<sup>1</sup> On Page 3 of the Amended Petition, Ms. Valerie Wyant is listed as the Clerk of Court for the Superior Court of Arizona in Yavapai County. Ms. Wyant is the Clerk of Court for the Superior Court in Coconino County.

The Clerks Association maintains that the Amended Petition adopts the workgroup's collective recommendations and resolves the concerns raised by the Clerks Association in its April 27, 2022 Comment.

The original Petition was filed, proposing a new Supreme Court Rules 124, to implement the changes to A.R.S. § 12-109 made by Senate Bill 1265 during the 2021 First Regular Session of the Fifty-fifth Legislature. Senate Bill 1265 provided a new subsection 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.” However, Senate Bill 1265 did not define “electronic signature.”

While the Clerks Association strongly supported the Petitioner's goal of expanding electronic filing options and permitting the use of an “electronic signature” on court filings, the Clerks Association concluded that the Petition's solution to the issue lacked sufficient clarity, specifically with regard to the proposed rule's definition of “electronic signature,” and the conflict between varying definitions of the term “electronic signature” set forth in statute and rule. Addressing the lack of clarity was especially important to the Clerks Association because often times it is the responsibility of clerks for ensuring that documents filed with the court are signed in accordance with Arizona law and rules of practice and procedure, whether the documents are filed electronically or in paper form. The Clerks Association also sought clarification with regard to legal sufficiency of the use of “/s/” with a typed signature.

In its Comment, the Clerks Association recommended that the Petition either be withdrawn or denied without prejudice and that the Administrative Office of the Courts form a workgroup to address the issues raised by the Clerks Association. In its Comment, the State Bar of Arizona also requested that a workgroup be formed to address the differing definitions of

“electronic signature” as well as the best location or locations within the various rules of procedure for any proposed changes.

The Petitioner requested and received an extension of time to April 1, 2023, to submit an Amended Petition. After receiving the extension of time, Petitioner formed a robust workgroup made up of diverse stakeholders that met multiple times over several months to analyze the issues raised in the original Petition and in the Comments. The workgroup, having to reach compromise on several issues, ultimately recommended changes and amendments to a number of rule sets with respect to electronic signatures.

On March 23, 2023, Petitioner filed an Amended Petition that adopted the workgroup’s consensus recommendations.

The Clerks Association supports that the proposed rule changes regarding electronic signatures and electronic notarizations set forth in the Amended Petition, specifically the changes that would not require clerks to determine whether an electronically signed or electronically notarized document is signed or notarized “in accordance with applicable law” before accepting the document for filing, and that if there is a dispute regarding the sufficiency or authenticity of an electronic signature or electronic notarization, the matter is to be determined by a judicial officer.

## **CONCLUSION**

The Clerks Association appreciates the Petitioner forming a workgroup to analyze the issues involved with implementation of A.R.S. § 12-109 and including on the workgroup a diverse representation of clerks from around the State. The Amended Petition contains a comprehensive explanation of the workgroup’s recommended rule changes and addresses the concerns set forth by the Clerks Association in its April 27, 2022 Comment.

For these reasons, the Clerks Association respectfully requests that the Court adopt the proposed rule amendments set forth in the Amended Petition.

DATED this 31st day of May, 2023.

/s/ Donna McQuality  
Hon. Donna McQuality  
Arizona Association of Superior Court Clerks,  
President

This Comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court's March 24, 2023 Order.

A copy of this Comment has been sent via e-mail to the Petitioner at the following:

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