

Hon. Denise Lundin, President  
Arizona Association of Superior Court Clerks  
110 W. Congress, 1<sup>st</sup> Floor  
Tucson, Arizona 85701  
520-740-3201  
nasha@COSC.maricopa.gov

IN THE ARIZONA SUPREME COURT

In the Matter of	)	Supreme Court No. R-10-0018
	)	
PETITION TO AMEND RULE 91(e), RULES	)	COMMENT TO PROPOSED
OF THE SUPREME COURT OF ARIZONA OR	)	RULE RELATED TO SUPERIOR
OTHERWISE ADOPTING A NEW RULE	)	COURT CLERKS REPORTING
	)	JUDICIAL CONDUCT
_____	)	

The Arizona Association of Superior Court Clerks (AASCC) opposes the petition as unnecessary and as an inappropriate addition to the Clerks’ existing mandates.

The AASCC shares Petitioner’s interest in ensuring that courts operate efficiently in the interests of justice. To that end, court rules, statutes and the Code of Judicial Conduct direct judicial officers to promptly perform their judicial and administrative duties. There is every reason to believe this state’s judicial officers entered public service to promote justice. Due to ever-increasing caseloads, it is in every judicial officer’s best interests to function as efficiently as possible.

Petitioner’s stated need for a rule change is unsupported. Citing a single case, Petitioner paints a picture that hundreds of judicial officers and thousands of court employee support staff and attorneys are, or could be aware of intentional wrongdoing and suggests that the Clerks of the Superior Court are the appropriate policing authority of judicial conduct as it relates to superior court.

Petitioner proposes that every matter which has not been ruled on in sixty days be referred by the Clerks of Superior Court to the Commission on Judicial Conduct. For purposes of this comment, the Clerks assume that Supreme Court Rule 91(e) exists in part pursuant to the requirements in Article 6, Section 21 of the Arizona Constitution regarding speedy disposition of matters in superior court. The Clerks presume that Petitioner expects that any judge who has not ruled on a matter within sixty days of submission will be denied a paycheck and sanctioned. In reality, an Ethics Advisory Opinion indicates each judicial conduct referral to the Commission on Judicial Conduct will require a factual inquiry into the circumstances of each case, where a violation of Rule 91(e) may be relevant, but not determinative.<sup>1</sup> The ethics opinion addresses the complexity inherent in this area, including the responsibilities of staff both subject and not subject to a judicial officer's authority as well as the complexity of matters submitted to the judge. Having no control over those who must do their part to allow the judge to do his or her part and having no control over the complexity of the matters before them are two of many outside influences that could force a judicial officer to exceed the sixty day time limit. For example, the Opinion points out that taking as long as or more than sixty days to rule on a matter of urgent medical treatment might be unreasonable, but ruling within sixty days on a complex business contract might not be possible. *Id. at page 6.*

The Clerks' understanding is that the Commission on Judicial Conduct investigates questions of ethical violations. A violation of Rule 91(e) or the referenced statutes alone would not indicate an ethical violation for the reasons stated above. Rather, the Commission would be required to review the particular facts of each case to make a reasonableness determination and recommend an outcome as a result. As Petitioner's

---

<sup>1</sup> Arizona Supreme Court Judicial Ethics Advisory Committee Advisory Opinion 06-02 at page 7.

reference to a single judge's actions makes clear, Petitioner's rule change would presume all judicial officers who have at least one complex matter before them where a decision is taken under advisement for more than sixty days are guilty until proven innocent of willfully and intentionally violating the Constitution, court rules and statutes. The Petitioner's approach is unnecessary and inappropriate.

If there is abuse of the speedy decision requirements, a system is in place to hold accountable those who would willingly neglect their duty. The solution is not to add another level of bureaucratic oversight by the Clerks of the Superior Court to report, and the Judicial Conduct Commission to investigate, every matter that has not been ruled on within sixty days of submission. Without minimizing the Petitioner's perceived need to improve the court system, the proposal would require additional time from the Clerks, the Commission and the judicial officers to report, respond to, investigate and conclude judicial conduct referrals on an occurrence-by-occurrence factual basis. That time would necessarily come from time currently devoted to filing pleadings, holding hearings and otherwise trying to ensure speedy justice.

For the reasons stated above, the Arizona Association of Superior Court Clerks opposes the petition as unnecessary and inappropriate.

DATED this 28<sup>th</sup> day of April, 2010.

/s/ Denise Lundin  
Hon. Denise Lundin, President  
Arizona Association of Superior Court Clerks

A copy of this comment has been delivered this  
28<sup>th</sup> day of April, 2010, to:

Mike Palmer  
PO Box 5564  
Glendale, AZ 85312  
mikepalmer\_arizona@yahoo.com  
Via electronic filing of comment