

The Honorable Jeff Fine
Clerk of the Superior Court in and for Maricopa County
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

	)	Supreme Court No. R-23-0055
PETITION TO AMEND THE RULES	)	
OF PROCEDURE FOR SPECIAL	)	COMMENT
ACTIONS	)	
_____	)	

The Clerk of the Superior Court in and for Maricopa County (“Clerk for Maricopa County” or “the Clerk”) files the following comment pursuant to Rule 28(a)(2), Arizona Rules of the Supreme Court, in support of the Petition to Amend the Rules of Procedure for Special Actions, but with the recommended addition of a rule addressing filing fees, filing of documents and the clerk’s distribution of court-generated documents for original special actions filed with the Superior Court.

INTRODUCTION

The Clerk joins with others in commending the Supreme Court for establishing this Task Force to review and update the Rules of Procedure for Special Actions, and specifically to establish rules that provide guidance for the filing of original special actions with the Superior Court. The proposed changes provide important clarity to assist filing parties, including self-represented litigants, with plain language direction not only as to the types of matters subject to special action review, but who can initiate the original special action, and where and how an original special action is to be filed.

Jessica J. Fotinos, General Counsel and Public Information Officer for the Office of the Clerk of the Superior Court in and for Maricopa County, attended most, if not all, of the meetings of the Task Force as a member of the public, and was acknowledged by the Task Force for her contributions in the work of Task Force in its Petition. Based on her observations of the Task Force's work as well having a greater understanding of the intent of the proposed amendments, having attended the meetings, she advised that it may be prudent to incorporate into the new Rules, an additional rule related to original special actions that provides for information regarding filing fees and the filing of documents and pleadings and the distribution of court-generated documents.

INCLUSION OF PROPOSED NEW RULE

A.R.S. § 12-284 sets forth the fees that the Clerk shall receive and includes fees for an initial case filing as well as fees for the filing of a complaint, a notice of appeal under A.R.S. § 12-094 or a petition. Title 12, Article 2, Chapter 3 of the Arizona Revised Statutes addresses fees to be paid in the Superior Court.¹ And while filing fees are generally not addressed in case-type specific rules of procedure, they are addressed in what is Rule 14 of the proposed Rules as set forth in the petition, as relates to appellate special actions, including those filed with the Superior Court. And if one of the goals of the Task Force was to restyle the Rules to provide more information to filing parties regarding the procedures for filing an original special action, then it would seem to be valuable to include a rule that addresses filing fees for original special actions.

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¹ In addition to the fees set forth in A.R.S. § 12-284, additional fees may be imposed pursuant to Arizona Code of Judicial Administration § 3-404, Supreme Court Administrative Order 2017-44, and board of supervisor's resolution. County boards of supervisors may add local fees pursuant to § A.R.S. 11-251.08.

In addition, the Clerk maintains it is likely prudent to address the filing of documents and pleadings and the distribution obligations of the clerk in original special actions.² Service of documents in original special actions is addressed in Rule 7 of these Rules and does not need to be addressed again, and oral arguments in the sense contemplated and described in proposed Rule 14 would not apply in original special actions filed with the Superior Court.

CONCLUSION

Based on the foregoing. The Clerk for Maricopa County respectfully recommends that proposed new Rule XX be included among the Rules governing original special actions.

DATED this 17th day of May, 2024.

/s/ Jeff Fine
Hon. Jeff Fine, Clerk
Superior Court in and for Maricopa County

This Comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court's [February 26, 2024 Order](#).

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

Task Force on Rules of Procedure for Special Actions
1501 W. Washington St., Suite 410
Phoenix, AZ 85007
mmeltzer@courts.az.gov

² Pursuant to Arizona Code of Judicial Administration § 1-901, special actions may not be initiated using any Administrative Office of the Courts (“AOC”) approved eFile or electronic filing system or portal, and they must be initiated in paper form. However, it is the understanding of the Clerk that some attorneys, as well as judicial officers, have inquired about reasons for the current prohibition and would prefer to have special actions permissibly initiated via eFile. This prohibition could be lifted, given the growth and expansion of eFile capabilities, and the Clerk does not intend to address or include the current prohibition in any proposed rule. Subsequently filed documents currently may be submitted through an AOC approved eFile system or portal.

ATTACHMENT

Modifications to the text are shown by underscoring in red font and deletions are shown by ~~strike through~~ in red font.

Rule XX. Filing Fees; Filing of Documents; Clerk's Distribution of Documents

(a) **Payment of Filing Fee.** A complaint for original special action and answer or other appropriate response must be accompanied by the statutorily required filing fee or an application for a fee waiver or deferral unless the filing party is exempt.

(b) **Provisions Regarding Filing Documents.**

(1) Generally. Except for documents submitted directly to a judge under Rule 5.1(a) of the Rules of Civil Procedure, a document is deemed filed on the date the clerk receives and accepts it for filing.

(2) Documents Submitted Directly to a Judge. If a document is submitted directly to a judge under Rule 5.1(a) of the Rules of Civil Procedure and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(3) Electronically Filed Documents. If a document is either permitted or required to be filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid, or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(3) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

(4) *Incarcerated Parties.* If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

- (c) **Distribution.** The court's clerk must distribute all minute entries, notices, or other court-generated documents to all parties either by U.S. mail or electronic mail. Electronic mail distribution is complete when the clerk transmits the document to the email address that the party or attorney has provided to the clerk.