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IN THE ARIZONA SUPREME COURT

In the Matter of)	Supreme Court No. R-11-0012
)	
PETITION TO AMEND RULES OF THE)	COMMENT TO PROPOSED
SUPREME COURT OF ARIZONA, RULE 124,)	RULE RELATED TO
ELECTRONIC FILING, DELIVERY AND)	ELECTRONIC FILING,
SERVICE OF DOCUMENTS)	DELIVERY AND SERVICE OF
		DOCUMENTS

The Arizona Association of Superior Court Clerks (AASCC) submits the following comments on the petition to amend Rule 124 of the Rules of the Supreme Court of Arizona.

The AASCC recommends changes to specific sections of the proposed rule in addition to calling out sections where the petitioner’s intent was unclear. Modifications to the language submitted in the original petition are set forth in the attached Appendix A for the reasons described below.

Rule 124(d)(2). The AASCC recommends removing the word “in” from this definition to clarify the intent of what is considered the official record in the Superior Court. With this deletion, the definition should convey that the Clerk can print a document from its electronic document management system (EDMS) and apply the Clerk’s seal to the physical hard copy to indicate the document’s authenticity. When the technology allows, the Clerks will be able to apply their seal to a document from the Clerk’s EDMS and electronically submit that document to an individual or agency, who

can verify the authenticity of the Clerk's seal on the electronic document. This amendment will conform the proposed language in Rule 124 to that already in Arizona Supreme Court Administrative Order 2010-117, which implemented AZTurboCourt mandatory e-filing of civil subsequent documents in the Superior Court in Maricopa County. Arizona Revised Statute 12-282(D) further supports this amendment:

...A state or local agency shall accept any of the records under this subsection as a registration of a record or a procedure if the agency receives the record from the clerk of the superior court through electronic transmission and the electronically reproduced document states that the copy received is a full, true and correct copy of the original on file with the clerk of the court.

Rule 124(f)(1). The AASCC recommends removing the word "all" from this definition to afford the flexibility required in the electronic filing environment, particularly until new cases can be initiated electronically. Requiring all filing fees to be paid through AZTurboCourt would prove extremely challenging in a number of situations. Removing the mandatory "all" from the definition leaves the directive in place to pay through AZTurboCourt but offers the flexibility to process a fee at a file counter or over the phone where required, such as a document e-filed under an incorrect document type where a required fee is not triggered within the AZTurboCourt system, but is identified by the deputy clerk reviewing the filing.

Rule 124(f)(3). From the original petition, it appears the rule is intended to direct filers to file an application for a fee deferral or waiver on paper, as AZTurboCourt is not currently designed to process the fee deferral or waiver forms electronically. However, the language in this section of the proposed rule appears to prohibit a party from electronically filing in the case as a result of requesting a fee deferral or waiver.

Amended language is suggested to clarify that the fee deferral or waiver form be filed on paper but that other documents can continue to be electronically filed through AZTurboCourt.

Rule 124(h)(5). The AASCC considers proposed Rule 124(h)(5) confusing as written and recommends removing this paragraph and renumbering the section. Courtroom exhibits and the manner in which they are handled do not appear to be relevant in the context of this rule addressing electronic filing through AZTurboCourt.

Rule 124(j). The process imposed by the proposed language appears to limit the judicial officer's discretion to review the circumstances of the filing and determine an appropriate remedy for filings delayed by service interruptions. The AASCC recommends replacing the originally-proposed language with that contained in Arizona Supreme Court Administrative Order 2010-117, which implemented AZTurboCourt mandatory e-filing of civil subsequent documents in the Superior Court in Maricopa County and addressed the issue of interruptions in service.

For the reasons stated above, the Arizona Association of Superior Court Clerks support the petition to update Supreme Court Rule 124 and recommend adopting the modifications contained below in Appendix A.

Note that recommendations for new text in the appendix below are indicated by ALL CAPS and deletion of language is indicated by ~~strike through~~.

DATED this 28th day of March, 2011.

/s/ Sue Hall
Hon. Sue Hall, President
Arizona Association of Superior Court Clerks

A copy of this comment has been mailed or delivered this
28th day of _March_, 2011, to:

David K. Byers, Director/Petitioner
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix, Arizona 85007
Via electronic filing of comment

Supreme Court R- 11-0012

APPENDIX A

RULES OF THE SUPREME COURT

RULE 124, ELECTRONIC FILING, DELIVERY AND SERVICE OF DOCUMENTS

(a) – (c) No Changes.

(d) Official Record.

(1) All electronically filed documents shall be considered original documents of record in and for the applicable court.

(2) An electronic submission **in** or print-out from the clerk's or court's EDMS that shows the clerk's or court's seal attesting to the document's authenticity shall be considered an official record or certified copy of the original.

(3) Any court rule requiring that a document be an original, be on paper or another tangible medium, or be in writing, is satisfied by the electronic image defined as the original document herein.

(e) No Changes.

(f) Electronic Payment of Filing Fees and Application Fees.

(1) Filers shall pay **all** filing fees and application fees through AZTurboCourt.

(2) A judge shall not waive or suspend the application fee; however, a judge may grant a party a waiver from compliance with a requirement of mandatory e-filing through AZTurboCourt, for good cause shown, thereby allowing the party to file documents on paper.

(3) Filers who need to request a fee deferral or waiver are required to file THE FEE DEFERRAL OR WAIVER FORM on paper, until the application for fee deferral or waiver can be filed through AZTurboCourt.

(g) No changes.

(h) Required Document Formats.

(1) All filers are responsible for ensuring that the documents they file through AZTurboCourt meet the AzTurboCourt Technical Standards published on the AzTurboCourt website.

(2) All attached documents submitted by the filer through AZTurboCourt shall be formatted in accordance with the applicable rules governing formatting of paper documents in the courts of this state.

(3) When establishing proof of service by U. S. Postal Service certified mail, a filer shall scan and electronically file both sides of the signed return receipt, in addition to complying with all other requirements of rule or law. When establishing proof of service by a national courier service, the filer shall scan and electronically file the documentation required by rule or statute, in addition to complying with all other requirements of rule or law.

(4) When an electronically notarized document is not available, a notary requirement may be satisfied by the filer's scanning and electronically filing the document that contains the notary's original signature and seal.

~~(5) Courtroom exhibits may be converted to electronic format at the discretion of the clerk.~~

~~(6)~~ (5) A filer may include a hyperlink only to static textual information or documents. Materials accessed via hyperlinks are not part of the official court record. A filer may include a bookmark to another page within the same document.

~~(7)~~ (6) Appellate Court Opinions shall have each paragraph of text numbered consecutively.

(i) No Changes.

~~**(j) Extensions of Time Due to Interruption in Service.** If a filer fails to meet a filing deadline imposed by rule or law solely as the result of a technical failure of AZTurboCourt in processing the document, the filer must file the document as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. The motion shall set forth the reason the deadline was not met by describing the technology failure. The document and motion shall be filed on paper at the proper courthouse no later than the second day on which the court is open for business following the deadline that was not met, unless the technology failure is alleviated and the motion and document are submitted using AZTurboCourt not later than the second day on which the court is open for business following the deadline that was not met. If the court grants the motion, the document shall be deemed timely filed nunc pro tunc, notwithstanding any rule or law to the contrary.~~

(j) Extensions of Time Due to Interruption in Service. IF A FILER FAILS TO MEET A FILING DEADLINE IMPOSED BY RULE OR LAW BECAUSE OF A FAILURE IN THE TRANSMISSION OF A DOCUMENT, AND THE MATTER CANNOT BE RESOLVED TO THE SATISFACTION OF THE FILER AND THE CLERK, THE FILER MAY FILE THE DOCUMENT AS SOON THEREAFTER AS PRACTICABLE AND ACCOMPANY THE FILING WITH A MOTION TO ACCEPT THE

DOCUMENT AS TIMELY FILED. IF APPROPRIATE, THE COURT MAY ENTER AN ORDER PERMITTING THE DOCUMENT TO BE FILED NUNC PRO TUNC TO THE DATE THE FILER ORIGINALLY SOUGHT TO TRANSMIT THE DOCUMENT ELECTRONICALLY.