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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND ARIZONA
SUPREME COURT RULE 124
(ELECTRONIC FILING,
DELIVERY, AND SERVICE OF
DOCUMENTS)

Supreme Court No. R-11-0012

**Comment of the State Bar of
Arizona on Amended Petition to
Amend Rule 124, Rules of the
Supreme Court of Arizona**

On January 7, 2011, the Administrative Office of the Courts (“AOC”) filed a petition to amend Rule 124 of the Rules of the Supreme Court of Arizona to facilitate statewide implementation of e-filing through AZTurboCourt. Comments to the petition were due by April 1, 2011, with AOC then having an opportunity to file an amended petition by May 9, 2011. Two comments were filed to the original petition, one by the State Bar of Arizona on March 31, 2011, and the other by the Arizona Association of Superior Court Clerks (“AASCC”) on March 28, 2011. On May 9, 2011, AOC filed an amended petition.

The amended petition revises AOC’s proposal for Rule 124. Some of the revisions are in response to the comments filed by the State Bar and AASCC. Other revisions proposed in the amended petition are for the stated purpose of increasing clarity in language and concepts, and are unrelated to any issues raised by the comments.

1 As set forth in its March 31, 2011, comment to the original petition, the
2 State Bar believes that amendments to Rule 124 are appropriate given the move to
3 statewide implementation of AZTurboCourt. That comment, however, raised a
4 number of issues with AOC's proposal that the State Bar believes should be
5 resolved in any amendment to Rule 124. While the amended petition resolves
6 some of those concerns, several of the revisions proposed by the State Bar have
7 not been adopted in the amended petition. The State Bar still believes that these
8 revisions will provide clearer guidance to lawyers, self-represented litigants, and
9 the courts; and thus the State Bar again proposes those revisions here. In addition,
10 some of the amended petition's revisions may have unintended adverse
11 consequences. This comment discusses those, as well.

12 Due to the number of issues involved, the State Bar believes that the
13 clearest manner for outlining its remaining concerns and suggestions is to walk
14 through the amended petition's proposed Rule 124 section by section. In addition,
15 attached as Appendix A hereto are the State Bar's suggested revisions to the
16 amended proposed Rule 124.

17 **1. Section (a) – “Definitions.”**

18 In its March 31, 2011, comment, the State Bar suggested changing the term
19 “Application Fee or User Fee” to “AZTurboCourt User Fee” in the list of
20 definitions in Section (a). The State Bar suggested this change because there are
21 no fees assessed for applying/registering with AZTurboCourt. Rather, fees are
22 assessed for using the system to file documents. In fact, the term “Application Fee
23 or User Fee” is defined to mean “the fee assessed when a filer performs various
24 functions using AZTurboCourt.”

25 The amended petition has not adopted the State Bar's proposal to change
26 the term “Application Fee or User Fee” to “AZTurboCourt User Fee.” The AOC

1 has informed the State Bar that the term “Application Fee” was used because that
2 is how the fees are referred to in the AZTurboCourt system itself when a user is
3 e-filing a document. If that terminology cannot be changed on the AZTurboCourt
4 system, then the State Bar is in agreement that consistent terminology (*i.e.*,
5 “Application Fee”) should be used in Rule 124, but would then suggest that the
6 reference to “User Fee” be deleted in the definition because there is no need for
7 two terms that mean the same thing. If that terminology can be changed in the
8 AZTurboCourt system to “AZTurboCourt User Fee,” however, the State Bar
9 continues to believe that such a change would help avoid confusion over the fees
10 assessed.

11 **2. Section (b) – “Electronic Filing Authorized.”**

12 In its March 31, 2011, comment, the State Bar proposed three revisions to
13 this section. First, the State Bar proposed adding the following sentence to clarify
14 that e-filing through AZTurboCourt is mandatory for attorneys in courts where
15 AZTurboCourt is available: “Unless otherwise ordered by the court or as provided
16 by this rule or the AZTurboCourt Technical Standards, attorneys shall file
17 documents electronically through AZTurboCourt in courts where AZTurboCourt
18 is available and for any case type available in that court, in accordance with this
19 rule.” Making e-filing mandatory for attorneys appears consistent with the Court’s
20 intent, as Administrative Order No. 2010-117 phases in mandatory e-filing
21 through AZTurboCourt for attorneys in the Superior Court in Maricopa County.
22 The amended petition has added the language suggested by the State Bar
23 clarifying the mandatory nature of e-filing through AZTurboCourt for attorneys,
24 but has revised it to state that e-filing is mandatory for attorneys in “courts where
25 AZTurboCourt is both available and required.” It is the State Bar’s understanding
26 that AOC added the phrase “and required” because AZTurboCourt may not be

1 required in all counties for some period of time and the requirement for e-filing
2 through AZTurboCourt will be brought on-line county by county pursuant to
3 Administrative Orders. If that is the case, the State Bar suggests adding the phrase
4 “by Administrative Order” after the word “required” to provide greater guidance
5 to attorneys in determining whether they are required to use AZTurboCourt.

6 Second, the State Bar proposed moving the provision that “a judge may
7 grant a party a waiver from compliance with a requirement of mandatory e-filing
8 through AZTurboCourt, for good cause shown” from Section (g) to Section (b)
9 because the provision allows for the complete waiver of the requirement of
10 electronic filing rather than simply a waiver of fees, which is what Section (g)
11 governs. The State Bar further suggested deleting the phrase “thereby allowing
12 the party to file documents on paper” as unnecessary and suggested adding the
13 word “represented” in front of the word “party” because self-represented litigants
14 are not required to register with AZTurboCourt in the first place and because, as
15 discussed in Section 3 below, the State Bar believes that a provision should be
16 added allowing self-represented litigants to withdraw their registration. The
17 amended petition adopts the suggested addition of the word “represented” to this
18 provision but has kept the provision in Section (g) and retained the language
19 “thereby allowing the [represented] party to file documents on paper.” The State
20 Bar believes that its other two proposed revisions should also be adopted.

21 Third, the State Bar proposed adding a sentence at the end of Section (b)
22 clarifying that documents e-filed through AZTurboCourt are to be filed in
23 accordance with both Rule 124 and the AZTurboCourt Technical Standards
24 referenced in Rule 124. The amended petition has adopted that proposed change.

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1 **3. Section (c) – “Registration.”**

2 The State Bar recommended in its March 31, 2011, comment that a
3 provision be added giving self-represented litigants the ability to withdraw their
4 registration with AZTurboCourt. While AOC’s proposed Rule 124 includes a
5 provision whereby self-represented litigants can withdraw their consent to service
6 of documents on themselves through AZTurboCourt, that provision does not
7 alleviate their obligation to electronically file and serve documents through
8 AZTurboCourt once they have chosen to register. The State Bar believes this
9 broader withdrawal option should be available to self-represented litigants
10 because they may discover after registering with AZTurboCourt that they cannot
11 properly use the system or may experience a change in circumstances (*e.g.*, the
12 loss of a computer or an e-mail account) that would make it difficult for them to
13 continue using AZTurboCourt.

14 The amended petition has not adopted the State Bar’s recommendation to
15 add a provision allowing self-represented litigants to withdraw their registration
16 with AZTurboCourt. For the reasons discussed in its March 31, 2011, comment,
17 the State Bar continues to believe that such a provision would be appropriate, and
18 again suggests adding the following two sentences at the end Section (c) of
19 proposed Rule 124:

20 A self-represented litigant who has registered with AZTurboCourt
21 may withdraw his or her registration at any time upon filing (either
22 electronically or in hard copy) a written notice with the clerk and
23 serving such notice on all other parties. The notice shall set forth a
mailing address where orders, notices and other papers may be
delivered or served.

24 **4. Section (d) – “AZTurboCourt Technical Standards.”**

25 To more clearly implement the use of the AZTurboCourt Technical
26 Standards, the State Bar, in its March 31, 2011, comment, suggested adding a

1 provision to Rule 124 specifically referencing the Technical Standards. The
2 amended petition has adopted that suggestion with the addition of Section (d),
3 entitled “AZTurboCourt Technical Standards.” The only change made by AOC
4 was to give the Supreme Court, rather than AOC, the authority to develop, publish
5 and implement the AZTurboCourt Technical Standards. The State Bar sees no
6 problem with that change.

7 While the State Bar will not repeat itself here, it notes that it offered
8 suggestions at page 13 of its March 31, 2011, comment for the contents of the
9 AZTurboCourt Technical Standards. For example, the State Bar suggested that
10 the Technical Standards include a list of document types that are not to be filed
11 electronically. Administrative Order No. 2010-117 already includes a listing of
12 document types that are not to be filed through AZTurboCourt (*e.g.*, case
13 initiation documents and documents filed under seal). Again, the State Bar
14 encourages employing the Technical Standards to provide such important
15 clarifications regarding AZTurboCourt’s use.

16 **5. Section (e) – “Official Record.”**

17 In its amended petition, AOC proposes three revisions to the prior version
18 of this section proposed in its original petition. Some of these revisions appear to
19 be in response to AASCC’s comment. First, AOC proposes changing the first
20 sentence of Subsection (e)(1) from: “All electronically filed documents shall be
21 considered original documents of record in and for the applicable court” to: “An
22 electronic document that resides within the clerk’s or court’s EDMS is the
23 original document and satisfies the requirements of Rule 1002, Arizona Rules of
24 Evidence.” Second, AOC proposes changing the phrase “submission in” to
25 “transmission in” in Subsection (e)(2). Third, AOC proposes changing the word
26 “herein” at the end of Subsection (e)(3) to “in paragraph (d)(1) of this Rule.” The

1 State Bar did not recommend any changes to the prior version of this section in its
2 March 31, 2011, comment. The State Bar, however, agrees with the three changes
3 proposed by AOC in its amended petition, except that the reference to
4 “paragraph (d)(1)” in Subsection (e)(3) should refer to Subsection (e)(1) instead.
5 This appears to have been a typographical error.

6 **6. Section (f) – “Date and Effect of Electronic Filing.”**

7 In its March 31, 2011, comment, the State Bar recommended retaining the
8 current provisions set forth in Rule 124(c)(1) regarding the date and effect of
9 electronic filing because the petition’s proposed new language was confusing
10 (*e.g.*, as to what was meant by the phrase “unless notification is declined by the
11 filer”) and provided no guidance as to the ability of clerks of the court to reject
12 electronically filed documents or the effect of such a rejection. The amended
13 petition has not adopted the State Bar’s recommendation.

14 The amended petition has made some changes to the originally proposed
15 language regarding the date and effect of electronic filing addressing some of the
16 concerns raised by the State Bar. First, the amended petition has deleted the
17 phrase “unless notification is declined by the filer.” Second, the amended petition
18 includes language in Subsection (f)(4) that now at least implicitly suggests the
19 court has the ability to reject an electronically filed document (*i.e.*, discussing
20 what happens once “an electronically filed document has been accepted by the
21 court”). The provision as proposed by the amended petition, however, still does
22 not provide guidance as to the effect of a clerk of the court rejecting an
23 electronically filed document.

24 Rule 124(c)(1) of the Rules of the Supreme Court already includes the
25 following provisions governing the date and effect of electronic filing:
26

1 An electronically filed document shall be deemed filed on the date
2 and time that it is received by the court (or by its designee), unless
3 the court later rejects the document for filing. Promptly upon receipt,
4 the court (or its designee) shall transmit to the filing party an
5 acknowledgment indicating the date and time of receipt. If the court
later does not accept the document for filing, it shall promptly notify
the filing party electronically and set forth the grounds for rejection.

6 This language provides guidance regarding both a clerk of the court's ability to
7 reject electronically filed documents and the effect of such rejection. Also, unlike
8 the proposed amendments, it guarantees that a filer will receive an electronic
9 notification of the receipt of an electronically filed document as well as a written
10 explanation from the clerk if a filing is rejected. The provisions set forth in the
11 rule seem to work well, and the State Bar believes that current Rule 124(c)(1)
12 should be retained in place of the new language proposed by the AOC in
13 Section (f).

14 **7. Section (g) – “Electronic Payment of Filing Fees and**
15 **Application Fees.”**

16 As discussed in Section 1 above, the State Bar suggested changing the term
17 “application fees” to “AZTurboCourt user fees” if that terminology can be made
18 consistent with the AZTurboCourt system's terminology. In addition, as discussed
19 in Section 2 above, the State Bar suggested: (a) moving to Section (b) the
20 provision allowing a judge to “grant a party a waiver from compliance with a
21 requirement of mandatory e-filing through AZTurboCourt, for good cause shown,
22 thereby allowing the party to file documents on paper”; and (b) deleting as
23 unnecessary the language “thereby allowing the party to file documents on
24 paper.” The amended petition has not adopted either suggestion. The State Bar
25 continues to believe that these changes should be made for purposes of clarity and
26 ease of reference for practitioners.

1 The amended petition has proposed three other changes to the original
2 petition's proposed section on electronic payment of fees. First, the amended
3 petition revises Subsection (g)(1) to read: "For filings submitted through
4 AZTurboCourt, filers shall pay all filing fees and application fees through
5 AZTurboCourt, unless otherwise directed by the clerk or court." The State Bar
6 agrees with the addition of the phrase "unless otherwise directed by the clerk or
7 court" because it appears to provide some discretion for waiving fees for indigent
8 litigants and for determining the best way to collect fees in any given situation.
9 The State Bar believes, however, that the phrase "filings submitted" is confusing
10 because it introduces the undefined term "submitted." As such, the State Bar
11 suggests further revising Subsection (g)(1) to read as follows: "For documents
12 filed through AZTurboCourt, filers shall pay all filing fees . . .".

13 Second, the amended petition changes the word "suspend" in
14 Subsection (g)(2) to "defer." The State Bar sees no problems with that word
15 change.

16 Third, the amended petition added the phrase "all documents" and changed
17 the word "application" to "request" in Subsection (g)(3). Again, the State Bar sees
18 no problems with those changes.

19 **8. Section (h) – "Signature."**

20 The original petition proposed a provision regarding the e-filing of
21 documents by more than one self-represented litigant. Under that proposal, "A
22 document filed by more than one self-represented litigant need only be signed by
23 one of the self-represented litigants. The signer of the document shall ensure that
24 all parties named in the document agree with the contents of the document." In its
25 March 31, 2011, comment, the State Bar proposed wholesale changes to this
26 provision so that it would more broadly apply to the filing of all documents

1 requiring multiple signatures, including documents filed by represented parties.
2 The amended petition, however, includes only a minor change to the language,
3 clarifying that it applies in situations involving documents filed by more than one
4 self-represented litigant “on the same side.”

5 The State Bar still believes that this provision should be revised to provide
6 more clarity and to include filings submitted by represented parties. Moreover, the
7 provision as written encompasses all documents, and thus suggests that one self-
8 represented litigant can sign and file, for example, a dispositive motion on behalf
9 of another self-represented litigant, which may transgress the rules against the
10 unauthorized practice of law. To provide more clarity and to remedy these
11 potential issues, the State Bar recommends revising Subsection (h)(4) to instead
12 provide as follows:

13 The filer of any document filed through AZTurboCourt requiring
14 more than one signature, such as a stipulation, must assure that the
15 content of the document is acceptable to all persons required to sign
16 the document. This may be accomplished by filing either a scanned
17 document containing the physical signatures, or by inserting “/s/
18 (name) with permission” as the electronic signatures of the non-
filing parties who are registered users of AZTurboCourt. Electronic
signatures of non-registered signatories are not permitted.

19 This language largely mirrors a provision in the ELECTRONIC CASE FILING AND
20 ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL IN THE UNITED STATES
21 DISTRICT COURT FOR THE DISTRICT OF ARIZONA governing the electronic filing of
22 documents requiring multiple signatures. The provision works well, and the State
23 Bar again urges its adoption here.

24 Aside from the minor change to Subsection (h)(4), the amended petition
25 includes substantial changes to Subsections (h)(1), (2) and (3) regarding the
26 signatures of attorneys, self-represented litigants, and judicial officers on e-filed

1 documents. With respect to attorneys, a sentence has been added to
2 Subsection (h)(1) permitting documents to be e-filed by attorneys through the
3 login ID and password of any person the attorney has authorized to do so. This
4 provision appears to be intended to allow staff members in a lawyer's office to
5 file documents on his or her behalf using their own login ID and password. If that
6 is the case, the provision appears unnecessary because a non-lawyer assistant, if
7 authorized to e-file for an attorney, should have access to the *attorney's* login ID
8 and password. In addition, the provision could cause problems in determining
9 whether somebody was in fact authorized by the attorney to e-file for that
10 attorney. In its place, the State Bar recommends that the Court adopt the
11 corresponding provision that appears in the original petition (reflected in
12 Appendix A hereto under Subsection (h)(1)).

13 With respect to self-represented litigants, the amended petition in
14 Subsection (h)(2) has deleted the requirement for including the symbol "/s/" with
15 the self-represented litigant's name on the e-filed document. The State Bar does
16 not know the rationale for this change and does not believe it is a good idea to
17 change what constitutes a signature on an e-filed document depending upon who
18 is filing the document, and would propose keeping the requirement that self-
19 represented litigants include the symbol "/s/" with the self-represented litigant's
20 name. Again, the State Bar recommends that the Court adopt the corresponding
21 provision that appears in the original petition (reflected in Appendix A hereto
22 under Subsection (h)(2)).

23 With respect to judicial officers, the amended petition in Subsection (h)(3)
24 has likewise deleted the requirement for including the symbol "/s/" with the
25 judicial officer's name on e-filed documents, and instead provides that:
26 "Documents filed in AZTurboCourt under a judicial officer's or clerk's registered

1 login ID and password shall be deemed signed by that judicial officer or clerk.”
2 The reason for this change is again unclear. Generally, the rules do not require
3 judicial officers or clerks to sign documents. For example, judges are not required
4 to sign minute entries. Failing to require the symbol “/s/” with the judicial
5 officer’s name when a signature is intended, however, is likely to cause confusion
6 over whether a document was in fact signed by the judicial officer.

7 For example, under Rule 58(a) of the Arizona Rules of Civil Procedure, a
8 judgment must “be in writing and signed by a judge or a court commissioner duly
9 authorized to do so.” This Court held in *Haywood Securities, Inc. v. Ehrlich*, 214
10 Ariz. 114, 115, 149 P.3d 738, 739 (2007), that for purposes of Rule 58(a), “a
11 typed signature of a judge in the ‘/s/ Name’ format on an electronically filed
12 judgment complies with the requirement of Rule 58(a) that judgments be
13 ‘signed.’” If, however, Rule 124 includes language that the mere e-filing of a
14 document under the judicial officer’s login ID and password is deemed a
15 signature, problems are likely to ensue over whether a document meets the
16 requirements of Rule 58(a) and whether the judicial officer intended the document
17 to constitute a signed judgment. *See also Mark Lighting Fixture Co. v. General*
18 *Elec. Supply Co.*, 155 Ariz. 27, 30, 745 P.2d 85, 88 (1987) (“a written minute
19 order, signed by a judge, and filed with the court clerk, constitutes a final
20 judgment pursuant to Rule 58(a)”).

21 Again, the State Bar recommends that the Court adopt the corresponding
22 provision that appeared in the original petition (reflected in Appendix A hereto
23 under Subsection (h)(3)).

24 **9. Section (i) – “Required Document Formats.”**

25 In its March 31, 2011, comment, the State Bar suggested removing
26 Subsections (i)(3) through (7) and placing them in the AZTurboCourt Technical

1 Standards. Those subsections relate to the technical details of electronically filed
2 documents, and there would be more flexibility for making any future revisions if
3 they were moved to the AZTurboCourt Technical Standards. In the amended
4 petition, the AOC removed Subsection (i)(5) but kept the other subsections. The
5 State Bar again suggests moving those subsections to the AZTurboCourt
6 Technical Standards.

7 In addition to deleting Subsection (i)(5), the amended petition also replaces
8 the word “law” with the word “statute” twice within Subsection (i)(3). If
9 Subsection (i)(3) remains within Rule 124, the State Bar agrees with that word
10 change.

11 **10. Section (j) – “Electronic Service and Delivery of Documents.”**

12 The amended petition has revised the first sentence of Subsection (j)(1) to
13 state that registration with AZTurboCourt constitutes consent to service not just
14 through AZTurboCourt, but also by email. Given the language in Rule 5(c)(2)(D)
15 of the Arizona Rules of Civil Procedure that service can be effected by “any other
16 means, including electronic means, if the recipient consents in writing to that
17 method of service,” the language proposed by the amended petition would mean
18 that service could be effected by email on anyone (either attorneys or self-
19 represented litigants) who registered with AZTurboCourt.

20 Although the State Bar has endorsed email service in a petition it filed with
21 the Court (No. R-11-0009), the State Bar’s proposed amendments include several
22 key protections not found in the AOC’s proposal, including: (a) specification of
23 the content to be included in the email’s subject line to facilitate ready
24 identification of the email as serving a document and preventing an email from
25 being caught in a spam filter; (b) specification of the email address(es) to be used,
26 including the email address of an opposing attorney’s docketing clerk if that email

1 is included on a prior filing; (c) commentary regarding the need to confer over
2 potential problems with email service; and (d) limitation of email service to
3 attorneys. Any change to allow for email service should take into account such
4 considerations. In addition, any change to permit email service is more
5 appropriately dealt with in Rule 5 of the Arizona Rules of Civil Procedure than in
6 Supreme Court Rule 124, especially given Rule 124's application in cases where
7 email service may be more problematic (e.g., family law cases).

8 Aside from the problems created by the authorization of email service, the
9 amended petition does not address many of the issues raised by the State Bar in its
10 comment of March 31, 2011. With respect to Subsection (j)(1) (Subsection (i)(1)
11 in the version proposed by the original petition), the State Bar suggested changes
12 to clarify: (a) that registration with AZTurboCourt constitutes consent to delivery
13 of documents by the clerk of the court through AZTurboCourt and not just to
14 service of documents by the other parties; (b) that a self-represented litigant, when
15 withdrawing consent to service through AZTurboCourt, also withdraws consent to
16 delivery of documents by the clerk of the court through AZTurboCourt; and
17 (c) that a self-represented litigant withdrawing consent to service and delivery of
18 documents through AZTurboCourt must file a notice of withdrawal and serve it
19 on the other parties. The State Bar also suggested moving the language “[a]n
20 attorney may not withdraw consent” to the end of the subsection after the
21 provisions relating solely to self-represented litigants instead of inserting it in the
22 middle of those provisions. The amended petition has not adopted any of these
23 proposed changes. The State Bar continues to believe that they would provide
24 greater clarity and guidance to practitioners, self-represented litigants, and the
25 courts.

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1 With respect to Subsection (j)(2) (which was Subsection (i)(2) in the
2 version proposed by the original petition), the State Bar proposed changes: (a) to
3 clarify that documents that are not filed with the court (*e.g.*, discovery requests
4 and responses and disclosure statements) are not to be served through
5 AZTurboCourt; (b) consistent with the State Bar's proposed revision to
6 Subsection (j)(1), to clarify that a self-represented litigant's withdrawal of consent
7 to service through AZTurboCourt also constitutes a withdrawal of consent to
8 delivery of documents by the clerk of the court through AZTurboCourt; and (c) to
9 clarify that a self-represented litigant's withdrawal of consent to electronic service
10 does not excuse the self-represented litigant from effecting service on the other
11 parties through AZTurboCourt. Subsection (j)(2) as revised by the amended
12 petition still seems to require service of documents through AZTurboCourt even if
13 the document is not filed with the court. The State Bar believes that language
14 needs to be added clarifying that this is not the case and also believes that its other
15 suggested changes should be adopted for purposes of providing greater clarity and
16 guidance.

17 With respect to Subsection (j)(3) (Subsection (i)(3) in the version proposed
18 by the original petition), the State Bar proposed changes clarifying that: (a) self-
19 represented litigants who do not register with AZTurboCourt are not required to
20 include a current email address on filed documents; and (b) consistent with the
21 State Bar's proposed revisions to Subsections (j)(1) and (j)(2), a self-represented
22 litigant's withdrawal of consent to service through AZTurboCourt also withdraws
23 consent to delivery of documents by the clerk of the court through AZTurboCourt.
24 The amended petition has not adopted these changes. The State Bar again urges
25 their adoption here.

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1 With respect to Subsection (j)(4) (Subsection (i)(4) in the version proposed
2 by the original petition), the State Bar proposed changes clarifying that if a self-
3 represented litigant has withdrawn consent to service and delivery of documents
4 through AZTurboCourt, the clerk of the court must deliver court-initiated
5 documents through the mail to the mailing address provided by the self-
6 represented litigant in his or her notice of withdrawal of consent. The amended
7 petition has not adopted these proposed changes. The State Bar believes that these
8 changes (along with the related proposed revisions to Subsections (j)(1)-(3))
9 should be adopted in any revised rule because if a self-represented litigant lacks
10 the ability to regularly monitor his or her email for service of documents by other
11 parties through AZTurboCourt, he or she will also lack the ability to do so with
12 respect to documents transmitted by the clerk. As such, the “withdrawal” should
13 encompass not only electronic service from other parties, but also electronic
14 delivery of court-initiated documents by the clerk.

15 **11. Section (k) – “Extensions of Time Due to Interruption in**
16 **Service.”**

17 The State Bar did not propose any changes to the prior version of this
18 section in its March 31, 2011, comment. The amended petition proposes revisions
19 to this section based on the comment filed by AASCC. The State Bar does not see
20 any problems with the revised language, except to note that the last sentence
21 added – “The court and clerk shall not be liable for malfunction or errors
22 occurring in electronic transmission or receipt of electronically filed documents”
23 – likely goes beyond the Court’s rulemaking authority. If the courts and clerks
24 want the protection sought by this sentence, they will need to ask the legislature to
25 adopt a statute affording such immunity.

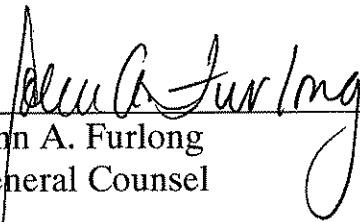
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Conclusion

The State Bar believes that amendments to Rule 124 of the Rules of the Supreme Court of Arizona are appropriate given the move in the near future to statewide implementation of e-filing through AZTurboCourt. The State Bar, however, believes that the proposed changes to Rule 124 can be improved upon in the ways discussed above and in the State Bar's comment of March 31, 2011. The State Bar's suggested revisions to the version of Rule 124 proposed by the amended petition are found in attached Appendix A.

RESPECTFULLY SUBMITTED this 16th day of June, 2011.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 20th day of June, 2011,

By: 

A copy was mailed to:

David K. Byers, Director
Administrative Office of the Court
1501 W. Washington, Suite 410
Phoenix, AZ 85007

this 20th day of June, 2011,

By: 

APPENDIX A

1 **Rule 124. Electronic Filing, Delivery and Service of Documents**

2 (a) **Definitions.**

3 (1) ~~“Application Fee”~~ or “AZTurboCourt User Fee” means the fee
4 assessed when a filer performs various functions using AZTurboCourt.

5 (2) “AZTurboCourt” means the supreme court approved Internet-
6 based system for filing and service of documents in the trial and appellate courts of
7 Arizona.

8 (3) “Attached Document” means a document prepared outside of
9 AZTurboCourt and then filed in AZTurboCourt.

10 (4) “Document” means any pleading, motion, exhibit, declaration,
11 affidavit, memorandum, paper, order, notice, and any other filing submitted by a filer or
12 by the court.

13 (5) “Electronic Document Management System (EDMS)” means a
14 collection of computer software application programs and hardware devices that
15 provide a means of organizing and controlling the creation, management and
16 retrieval of documents through their life cycle. It may include workflow software
17 which enables organizations to define routing and processing schemes to automate
18 the business processes for document handling. It may also include imaging and
19 optical character recognition (OCR) software and devices to support the capture,
20 storage, and retrieval of document images from paper.

21 (6) “Filer” means the individual under whose personal registration a
22 document is submitted through AZTurboCourt.

23 (b) **Electronic Filing ~~Authorized~~.** Unless otherwise ordered by the court or
24 as provided by this Rule or the AZTurboCourt Technical Standards, attorneys shall
25 file documents electronically through AZTurboCourt in courts where AZTurboCourt
26 is both available and required by Administrative Order, and for any case type

1 available in that court, in accordance with this Rule. A judge may grant a represented
2 party a waiver from compliance with a requirement of mandatory e-filing through
3 AZTurboCourt for good cause shown. Self-represented litigants, court personnel, and
4 persons appointed by the court are authorized to file documents electronically through
5 AZTurboCourt in courts where AZTurboCourt is available and for any case type
6 available in that court, in accordance with this Rule. AZTurboCourt is the supreme
7 court's authorized mechanism for submittal of electronic filings to the courts of this
8 state. Documents filed electronically through AZTurboCourt shall be filed in accordance
9 with this Rule and the AZTurboCourt Technical Standards.

10 (c) **Registration.** AZTurboCourt shall require registration to obtain an
11 individual login ID and password for access to the system. A self-represented litigant
12 who has registered with AZTurboCourt may withdraw his or her registration at any time
13 upon filing (either electronically or in hard copy) a written notice with the clerk and
14 -serving such notice on all other parties. The notice shall set forth a mailing address where
15 orders, notices and other papers may be delivered or served.

16 (d) **AZTurboCourt Technical Standards.** The supreme court is
17 authorized to develop, publish, and implement a set of technical standards for
18 electronic filing of documents through AZTurboCourt to be called the
19 "AZTurboCourt Technical Standards."

20 (e) **Official Record.**

21 (1) An electronic document that resides within the clerk's or court's
22 EDMS is the original document and satisfies the requirements of Rule 1002, Arizona
23 Rules of Evidence.

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

1 (3) Any court rule requiring that a document be an original, be on
2 paper or another tangible medium, or be in writing, is satisfied by the electronic image
3 defined as the original document in subsection paragraph (d)(e)(1) of this Rule.

4 **(f) Date and Effect of Electronic Filing.**

5 ~~(1) A person who files a document electronically shall have the same~~
6 ~~responsibility as a person who files a document on paper for ensuring that the~~
7 ~~document is properly filed and that a copy has been provided to the other parties in the~~
8 ~~case as required by rule or statute.~~

9 ~~(2) An electronically filed document shall be deemed submitted on the~~
10 ~~date and time it is received by AZTurboCourt as reflected on the subsequent email~~
11 ~~notification or the filing details displayed within AZTurboCourt.~~

12 ~~(3) The clerk shall record the date and time of receipt as provided by~~
13 ~~AZTurboCourt and the applicable court or office of the clerk where the document was~~
14 ~~received.~~

15 ~~(4) Once an electronically filed document has been accepted by the~~
16 ~~court, the date and time of the filing shall be the AZTurboCourt date and time of~~
17 ~~submittal. An electronically filed document shall be deemed filed on the date and~~
18 ~~time that it is received by the court (or by its designee), unless the court later rejects~~
19 ~~the document for filing. Promptly upon receipt, the court (or its designee) shall~~
20 ~~transmit to the filing party an acknowledgment indicating the date and time of~~
21 ~~receipt. If the court later does not accept the document for filing, it shall notify the~~
22 ~~filing party electronically and set forth the grounds for rejection.~~

23 **(g) Electronic Payment of Filing Fees and Application AZTurboCourt**
24 **User Fees.**

25 (1) For ~~filings submitted~~ documents filed through AZTurboCourt,
26 filers shall pay all filing fees and ~~application~~ AZTurboCourt user fees through

1 AZTurboCourt, unless otherwise directed by the clerk or court.

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

6 (3) Filers who need to request a fee deferral or waiver are required
7 to file all documents on paper, until the request for fee deferral or waiver can be filed
8 through AZTurboCourt.

9 (h) **Signature.**

10 (1) An attorney is responsible for all documents filed under the
11 attorney's registered login ID and password. Documents filed in AZTurboCourt
12 under an attorney's registered login ID and password, and that display the symbol
13 "/s/" with the attorney's printed name, shall be deemed signed by that attorney for
14 purposes of the rules governing practice and procedure in the courts of this state,
15 including Rule 11, Rules of Civil Procedure. ~~Documents filed under the registered~~
16 ~~login ID and password of any person the attorney has authorized, either directly or~~
17 ~~indirectly, to file in AZTurboCourt and that display the symbol "/s/" with the~~
18 ~~attorney's printed name, shall be deemed signed by that attorney for purposes of the~~
19 ~~rules governing practice and procedure in the courts of this state, including Rule 11,~~
20 ~~Rules of Civil Procedure.~~

21 (2) Documents filed in AZTurboCourt by a self-represented litigant shall
22 ~~be filed under the~~ a self-represented litigant's registered login ID and password, and
23 that display the symbol "/s/" with the self-represented litigant's printed name, shall be
24 deemed signed by that self-represented litigant for purposes of the rules governing
25 practice and procedure in the courts of this state, including Rule 11, Rules of Civil
26 Procedure.

1 (3) ~~Documents filed in AZTurboCourt under a judicial officer's~~
2 ~~or clerk's registered login ID and password shall be deemed signed by that~~
3 ~~judicial officer or clerk.~~ In the courts of this state, a judicial officer or clerk
4 may sign a document for filing in AZTurboCourt utilizing a facsimile signature or
5 by inserting the symbol "/s/" with the judicial officer's or clerk's printed name.

6 (4) ~~A document being filed by more than one self-represented~~
7 ~~litigant on the same side, need only be signed by one of the self-represented~~
8 ~~litigants. The signer of the document shall ensure that all parties named in the~~
9 ~~document agree with the contents of the document. The standing of all parties~~
10 ~~is subject to judicial determination during the proceedings.~~ The filer of any
11 document filed through AZTurboCourt requiring more than one signature, such as a
12 stipulation, must ensure that the content of the document is acceptable to all persons
13 required to sign the document. This may be accomplished by filing either a scanned
14 document containing the physical signatures, or by inserting "/s/ (name) with permission"
15 as the electronic signatures of the non-filing parties who are registered users of
16 AZTurboCourt. Electronic signatures of non-registered signatories are not permitted.

17 **(i) Required Document Formats.**

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

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

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

1 statute. When establishing proof of service by a national courier service, the filer
2 shall scan and electronically file the documentation required by rule or statute, in
3 addition to complying with all other requirements of rule or statute.

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

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

11 (67) Appellate Court Opinions shall have each paragraph of text
12 numbered consecutively.

13 (j) **Electronic Service and Delivery of Documents.**

14 (1) Registration in AZTurboCourt constitutes consent to electronic
15 service and delivery, through AZTurboCourt ~~or email~~, of documents under the rules
16 governing practice and procedure in the courts of this state. A self-represented litigant
17 may withdraw such consent at any time upon filing (either electronically or in hard
18 copy) a written notice to with the clerk and serving such notice on to all other
19 ~~attorneys and self-represented litigants parties in the~~ an action. The written notice
20 shall set forth a mailing address for service and delivery of documents. ~~An attorney~~
21 ~~may not withdraw consent~~. Such consent or withdrawal of consent to electronic
22 service and delivery by a self-represented litigant is effective only for the case in
23 which the consent or withdrawal has been submitted. An attorney may not withdraw
24 consent.

25 (2) Unless otherwise prohibited by rule or statute, service of post-
26 initiation documents that are filed with the court through AZTurboCourt shall be

1 completed through AZTurboCourt (if service through AZTurboCourt is available) on
2 attorneys as well as self-represented litigants who are registered with AZTurboCourt
3 and who have not withdrawn consent to electronic service and delivery pursuant to
4 subsection (j)(1) of this Rule. Service of post-initiation documents, if available
5 through AZTurboCourt, shall be completed through AZTurboCourt except when a
6 self-represented litigant has withdrawn consent to electronic service by filing a notice
7 of withdrawal of consent in a case, or when electronic service is otherwise prohibited
8 by rule or statute. If a self-represented litigant has withdrawn consent to electronic
9 service and delivery, a paper copy of the document shall be served on the self-
10 represented litigant at the mailing address provided in the written notice of
11 withdrawal of consent. Withdrawal of consent to electronic service and delivery by a
12 self-represented litigant does not relieve the litigant of his or her obligation to serve
13 documents, as required by rule or statute through AZTurboCourt.

14 (3) Attorneys shall provide a current e-mail address on all documents
15 submitted to the court, whether electronic or paper. Self-represented litigants who are
16 registered with AZTurboCourt and who have not withdrawn consent to electronic
17 service and delivery shall include a current e-mail address on all documents
18 submitted through AZTurboCourt.

19 (4) To the extent reasonably practicable, a clerk shall deliver
20 distribute through AZTurboCourt or by other electronic means, all communications
21 issued from the clerk, including orders, judgments, notices, minute entries, and any
22 other communication to attorneys and self-represented litigants; who are registered
23 with AZTurboCourt and who have not withdrawn consent to electronic service and
24 delivery pursuant to subsection (j)(1) of this Rule, whether the case in which the
25 document or communication is issued was initiated by paper or electronic means. If a
26 self-represented litigant has withdrawn consent to electronic service and delivery, a

1 paper copy of the communication shall be delivered to the self-represented litigant at
2 the mailing address provided in the written notice of withdrawal of consent.

3 (k) **Extensions of Time Due to Interruption in Service.** If a filer fails to meet
4 a filing deadline imposed by court order, rule or statute because of a failure in the
5 transmission of a document, and the matter cannot be resolved to the satisfaction of the
6 filer and the clerk, the filer may file the document as soon thereafter as practicable and
7 accompany the filing with a motion to accept the document as timely filed. For good
8 cause shown, the court may enter an order permitting the document to be filed nunc pro
9 tunc to the date the filer originally sought to transmit the document electronically. ~~The~~
10 ~~court and the clerk shall not be liable for malfunction or errors occurring in electronic~~
11 ~~transmission or receipt of electronically filed documents.~~

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