

David K. Byers, Director
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix, Arizona 85007
(602) 452-3307

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of REPLY TO COMMENTS)
FILED IN RESPONSE TO AMENDED) Supreme Court No. R-11-0012
PETITION TO AMEND RULE 124, RULES)
OF THE SUPREME COURT OF ARIZONA)
_____)

**REPLY TO COMMENTS FILED IN RESPONSE TO AMENDED PETITION TO
AMEND RULE 124,
RULES OF THE SUPREME COURT OF ARIZONA**

Pursuant to this court's order of January 13, 2011, Petitioner David K. Byers, Director of the Administrative Office of the Courts (AOC), respectfully submits this Reply to Comments filed in response to the Amended Petition herein and requests this court adopt the amendments to Rule 124, Rules of the Supreme Court of Arizona, attached to this Reply as Appendix A.

**COMMENTS AND REPLIES TO PROPOSED
AMENDMENTS**

Several comments were filed in response to the Amended Petition. Petitioner replies to salient comments as follows:

1. Comment: Since AZTurboCourt will be brought online county by county, the State Bar suggested providing clearer guidance to attorneys in determining whether attorneys are required to use AZTurboCourt for a particular jurisdiction or case type.

Reply: The phrase “by Administrative Order” was added to subsection (b) to clarify the authority that directs mandatory e-filing.

2. Comment: The State Bar preferred the current Rule 124 language regarding clerk rejection of documents and the guarantee that a filer will receive an electronic notification of the receipt of an electronically filed document as well as a written explanation from the clerk whenever a filing is rejected.

Reply: Language has been added to (f)(2) to specify that if a pleading is found to be deficient, the reason shall be communicated to the filer.

3. Comment: The State Bar requested that the multi-signature provision on an electronically filed document be revised to provide more clarity and to encompass filings submitted by represented parties.

Reply: Subsection (h)(4) was revised to read as follows: “A document filed for more than one self-represented litigant need only be signed by one of the self-represented litigants. The signer of the document shall ensure that all parties named in the document agree with the contents of the document. The parties’ actual participation in any filing is subject to judicial determination.” The rule remains silent regarding attorneys filing on behalf of other attorneys due to the rarity of the occurrence and associated complications with attorneys on opposing sides.

4. Comment: The addition of the requirement in subsection (h)(1) that attorneys use “/s/” to note signature is unnecessary because a non-lawyer assistant, if authorized to e-file for an attorney, should have access to the attorney’s login ID and password.

Reply: Not every law firm has the same policy regarding filing on behalf of an attorney. The additional requirement of using the symbol “/s/” accommodates flexibility in individual law firms’ implementation of AZTurboCourt as well as additional filing roles in the system beyond the attorney role.

5. Comment: The requirement for including the symbol “/s/” with the judicial officer’s name on e-filed documents should not have been removed. Current language specifying that the e-filing of a document under the judicial officer’s login ID and password is *deemed* a signature leads to a problem under Rule 58(a), Rules of Civil Procedure, because a signed Minute Entry is given the force of a judgment. The State Bar recommended that the Court return to the required use of a facsimile signature or the symbol “/s/” with the judicial officer’s printed name, as appeared in the original petition.

Reply: Rule 58(a) provides, in part “. . . all judgments shall be in writing and signed by a judge or a court commissioner duly authorized to do so.” In *Haywood Securities, Inc. v. Ehrlich*, 214 Ariz. 114, 149 P.3d 738 (2007), the Court held that for purposes of Rule 58(a), “a typed signature of a judge in the ‘/s/ Name’ format on an electronically filed judgment complies with the requirement of Rule 58(a) that judgments be ‘signed.’” *Id.* at 115 ¶ 2, 149 P.3d at 739. However, the symbol “/s/” is considered to be a withering convention, being replaced by user authentication on a trusted automation system of the court, making the symbol unnecessary over time. Cultural attitudes about the role of signature in an electronic age are changing, and it may now be desirable to allow other mechanisms to reflect signature

of a judicial officer. For purposes of this rule petition proceeding, alternative language has been included to address the problem under Rule 58(a) by clarifying that the effect of filing a document under the judicial officer's login ID and password is merely that the document is filed but is not deemed signed. The Court may consider modifying the language of Rule 58(a), as interpreted by Haywood Securities, Inc., to enable document authentication apart from the "/s/ Name" format.

- 6. Comment:** Although the State Bar has endorsed email service in a petition it filed with the Court (R-11-0009), the broad language describing electronic service in the proposed amendment fails to include key protections that have evolved for paper-based service of process. The State Bar requested equivalent protections be provided in Rule 124.

Reply: The section on service of process has largely been removed until the details of electronic service can be better established, however, the provisions regarding clerk distribution have been preserved, in keeping with Administrative Order 2009-43.

Therefore, Petitioner requests this court adopt the proposed amendments to Rule 124, Rules of the Supreme Court of Arizona attached to this Reply as Appendix A.

RESPECTFULLY SUBMITTED this 28th day of June, 2011:

By _____
David K. Byers, Director