

Michael K. Jeanes
Clerk of the Superior Court
in and for Maricopa County
201 W. Jefferson St
Phoenix AZ 85003
602-506-3760

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION)	
TO AMEND RULE 28.1(b),)	Supreme Court
Arizona Rules of Criminal Procedure)	No. R-_____
& Rule 94(h), Arizona Supreme)	
Court Rules regarding destruction of)	
paper case file records and Rule)	
124(c)(2), Arizona Supreme Court)	
Rules regarding the electronic)	Petition to Amend Rule
original)	28.1(b), ARCrImP, Rule 94(h), ASCR
_____)	& Rule 124(c)(2), ASCR

INTRODUCTION

Pursuant to Rule 28 of the Rules of the Supreme Court, the Clerk of the Superior Court in and for Maricopa County respectfully petitions the Arizona Supreme Court to amend Rule 28.1(b) of the Arizona Rules of Criminal Procedure and Rules 94(h) and 124(c)(2) of the Arizona Supreme Court Rules to allow Superior Court Clerks to create an electronic image as the original and to dispose of the paper filings previously considered the original case file records and to clarify the electronic image is the only original document as between the image and a piece of paper in those counties where the Superior Court Clerk is operating an electronic court record authorized by the Administrative Office of the Courts.

It is envisioned that, before these rule changes can apply to a Clerk of the Superior Court in Arizona, the Clerk must meet the Administrative Office of the

Court's criteria for implementing an electronic court record in that county. A county seeking approval for an electronic court record after implementation of the rule changes in this amendment would seek such approval through Judicial Council by the Clerk of the Superior Court and Presiding Judge submitting a comprehensive electronic court record plan.

I. SUMMARY OF PROPOSED CHANGES

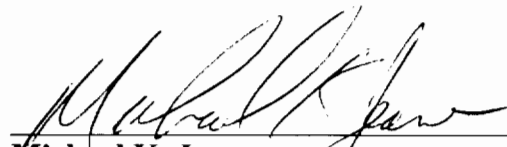
Rule 28.1(b) of the Arizona Rules of Criminal Procedure and Rule 94(h) of the Arizona Rules of the Supreme Court currently require that a particular action or proceeding must no longer be subject to modification before the original case file records may be destroyed. Amending Rule 28.1(b) of the Arizona Rules of Criminal Procedure and Rule 94(h) of the Arizona Rules of the Supreme Court will authorize clerks to dispose of paper soon after filing, once the electronic image of the document is verified.

Rule 124(c)(2) of the Arizona Rules of the Supreme Court currently appears to give "original document" status to both the electronically filed document as it resides on the court's computer and to paper print-outs of the same document. The intent of managing electronically filed documents was to have one original document, paper copies of which could be certified by the Clerk as copies of the electronic original. Amending Rule 124(c)(2) to delete the reference to print-outs will clarify that the electronic image is the original document of record.

Rule 29(c) of the Arizona Rules of the Supreme Court is not specifically addressed in this petition, as it currently refers to the rules cited in this petition for direction on maintaining Superior Court records and does not currently provide direction based specifically on the medium of the court record being paper or electronic.

The Clerk of the Superior Court in and for Maricopa County respectfully requests that the Court amend Rule 28.1(b) of the Arizona Rules of Criminal Procedure and Rules 94(h), and 124(c)(2) of the Arizona Rules of the Supreme Court as detailed in the proposed amendments in section II.

DATED this 31ST day of October, 2006.



Michael K. Jeanes
Clerk of the Superior Court in and for
Maricopa County

II. TEXT OF PROPOSED RULE CHANGES

Criminal Rule 28.1(b). Duties of the Clerk

Effective January 1, 2008 for counties maintaining an electronic court record authorized by the Administrative Office of the Courts

a. [NO CHANGE]

b. Destruction of Certain Records. Originals of documents, instruments, books, papers, depositions, and transcripts in any criminal case may be destroyed ~~when the particular action or proceeding is no longer subject to modification~~, provided that the Clerk shall maintain for public use an exact replica of these items after destruction and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record ~~an appropriately stored exact replica of these items~~ in a place and manner as will reasonably assure its permanent preservation. ~~For purposes of destruction of the above items by the clerk, a case will not be considered "subject to modification":~~

~~(1) After the defendant has been acquitted or the charges dismissed with prejudice;~~

~~(2) Sixty days after judgment and sentence have been entered, unless a notice of appeal or a post trial motion has been filed;~~

~~(3) Ninety days after denial of a post trial motion or receipt of the mandate of the appellate court affirming a conviction, unless a petition for writ of certiorari has been filed with the United States Supreme Court;~~

~~(4) Twenty five days after a denial of certiorari or the mandate of the United States Supreme Court affirming a conviction, unless a petition for rehearing has been filed;~~

~~(5) Receipt of a denial by the United States Supreme Court of a petition for~~

~~rehearing.~~

~~(6) One year after exhaustion of all state remedies if no petition for habeas corpus is filed or after the exhaustion of all federal remedies if a petition for a writ of habeas corpus has been filed.~~

c. - d. [NO CHANGE]

Supreme Court Rule 94(h). Superior Court Clerks

Effective January 1, 2008 for counties maintaining an electronic court record authorized by the Administrative Office of the Courts

(a) – (g) NO CHANGE

(h) Records Management. All records in custody of the Clerk will be maintained according to this rule, Rule 29, Rules of the Supreme Court, and purge lists and retention and disposition schedules adopted by the Supreme Court.

(1) *Destruction of Original Case File Records.* Original case file records may be destroyed ~~when the particular action or proceeding is no longer subject to modification~~ provided that the Clerk shall maintain for public use an exact replica of the record after purging and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record ~~an appropriately stored exact replica of the record~~ in a place and manner as will reasonably assure its permanent preservation. ~~An action or proceeding is considered no longer "subject to modification:"~~

~~(A) Forty five days after the action or proceeding was dismissed by stipulation or order, and no Notice of Appeal has been filed.~~

~~(B) Ninety days after the issuance of an order or judgment settling all issues between and among the parties; a stipulated judgment; an arbitration award; a decree of dissolution with no children; a satisfaction of court-ordered support payments (URESAs); an order of dismissal from court-ordered treatment; or a default judgment, and no Notice of Appeal has been filed.~~

~~(C) Thirty days after issuance of a decision, mandate or order, and the action or proceeding is no longer on appeal or the appeal time has lapsed and no appeal has been filed or is in process.~~

(2) [NO CHANGE]

Supreme Court Rule 124(c)(2). Electronic Filing, Delivery and Service of Documents

Effective January 1, 2008 for counties maintaining an electronic court record authorized by the Administrative Office of the Courts

(a) - (b) [NO CHANGE]

(c) Date and Effect of Electronic Filing.

(1) NO CHANGE

(2) An electronically filed document constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. The court may require the party to produce the original of an exhibit that has been filed electronically. An electronically filed document as it resides on the court's computer, ~~and print-outs of said document,~~ shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.

(d) - (g) [NO CHANGE]