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IN THE ARIZONA SUPREME COURT

In the Matter of)	Supreme Court No. R-14-0013
)	
PETITION TO AMEND RULE 94, RULES OF)	COMMENT TO PROPOSED
FAMILY LAW PROCEDURE, AND RULE)	RULES RELATED TO
64.1(C), RULES OF CIVIL PROCEDURE)	ISSUANCE OF ARREST
_____)	WARRANTS

The Arizona Association of Superior Court Clerks (Clerks) submits the following comments opposing the petition to amend Rule 94 of the Arizona Rules of Family Law Procedure and Rule 64.1(C) of the Rules of Civil Procedure.

The petition suggests that its proposal is to conform the language in court rule. The Clerks' assertion is that existing statutes and rules comingle the meaning of "issuing" warrants and other documents to the extent that the changes would not be helpful or meaningful. Further, the Clerks have serious concerns that the Superior Court in Maricopa County, where the petition originated, would view the "alignment" in language as authority for usurping a Clerk function to the detriment of the public.

The language that has been in Civil Procedure Rule 64.1 for over 25 years also appears in statute. The internal references in A.R.S. § 25-681 conflict regarding what "issuing" a warrant means and which agency is appointed that task: In subsection (A), the statute states, "*the court may issue* a child support arrest warrant." In subsection (B), the statute states, "*[t]he judicial officer shall order* the child support arrest warrant *and the*

clerk shall issue the warrant.” Subsection (D) states that a child support arrest warrant is “*an order that is issued by a judicial officer.*” (emphasis added). Despite any apparent inconsistencies within the statute and rule that have been in place for nearly 20 and 30 years respectively, the Clerk in each county is responsible for issuing and quashing the documents related to arrest warrants and updating the court record and case management system accordingly. Operationally, the court speaks through its orders but the Clerks issue and maintain the documents that are the record of the official business of the court. The Clerks oppose an approach that would modify this sensible and long-standing practice and believe that the proposed change not only would not “clarify the issuance of arrest warrants” but would create tension between courts and Clerks regarding the efficient and accurate handling of arrest warrants.

Arizona’s court rules and statutes have numerous examples of language like that in the petition where the court and Clerk are referenced interchangeably or are named to a duty that is in fact carried out by the other. The Clerks recognize that the court issues findings of fact and conclusions of law and issues orders for a broad range of criminal and non-criminal matters. For illustrative purposes, although parties are directed to “file with the court”¹ the actual operations for receiving and distributing documents occurs through the clerk’s office. The court rules clarify that judicial officers may directly accept filings and transmit them to the clerk’s office. This exception allows for judicial efficiency while maintaining accuracy in processing. Even when the judicial officer accepts a document directly for filing, that action is memorialized by delivering the document to a courtroom clerk to apply the file stamp. Civil Procedure Rule 5(h)

¹ *E.g.*: A.R.S. §§ 12-996(I), 12-1566(D), 12-2294.01(E), 12-2903(B), 13-4236(A); Probate Rule 7(D); Criminal Procedure Rule 32.9(c); Family Law Rule 43(G).

addresses this by stating, “[t]he filing of pleadings and other papers with the court as required by these Rules shall be made by filing them with the clerk of the court...” This court/clerk structure and division of duties is by design in Arizona. *See* AZ Const. Art. 6, §§ 11 and 23 and Arizona Supreme Court Rules 91, 92, 93, and 94.

The petition states that Arizona makes it clear that a judge or the court issues warrants except that these two rules allow the Clerks to issue certain arrest warrants. Simply put, no clerk’s office views its authority to include the ability to command the arrest of an individual. If there were a doubt, the State Bar Committee Note preceding Civil Procedure Rule 64.1 includes a purpose statement: “The purpose of this Rule is to codify the mechanism by which the court exercises its inherent power to command the attendance of persons who disobey an order to appear.” The Clerks’ comment to the petition is intended to address the difference between the term of art “issue” meaning the authority to command, and the ministerial act of “issuing” documents reflective of the court’s commands.

The Clerks assert that judicial officers or court staff personally duplicating or supplanting the Clerks’ ministerial operations of creating, distributing, and quashing arrest warrants would have a negative impact on the efficiency and accuracy of court operations. Through local discussions, the overwhelming majority of counties indicate the existing division of labor and responsibility for processing arrest warrants is appropriate where the court orders the warrant and the Clerk “issues” it by creating, distributing, and managing the related documents, including subsequent quashes.

The Clerks support innovation and partnering that can improve operations while maintaining public safety. If a county operating with one case management system

wanted to pursue such improvements, the court and Clerk would be welcome to develop a plan for a system of shared responsibility for performing these functions that takes into account the constant communication and seamless technology between both agencies and law enforcement that would be required to ensure accuracy, efficiency, and public safety. The Clerks oppose modifications to court rules that could result in far-reaching and cost-prohibitive changes to the multiple case management systems in place throughout the state.

The Arizona Association of Superior Court Clerks opposes the petition to amend the court rules for the reasons stated above and asserts that the existing division of labor between the court and Clerks' responsibilities is appropriate and will continue.

DATED this 8th day of May, 2014.

/s/ Virlynn Tinnell
Hon. Virlynn Tinnell, President
Arizona Association of Superior Court Clerks

A copy of this comment has been delivered this
8th day of May, 2014, to:

Hon. Norman Davis
Presiding Judge
Superior Court of Arizona, Maricopa County
125 W. Washington St.
Phoenix, AZ 85003
Via electronic filing of comment