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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of)	Supreme Court No. R-19-0031
)	
PETITION TO AMEND RULE 45(a)(2) and)	COMMENT TO PETITION TO
(b)(1) OF THE ARIZONA RULES OF CIVIL)	AMEND RULE 45(a)(2) AND
PROCEDURE)	(b)(1) ARIZONA RULES OF
)	CIVIL PROCEDURE
)	

The Arizona Association of Superior Court Clerks (Clerks) submits the following comment to the Petition to Amend Rule 45(a)(2) and (b)(1) of the Arizona Rules of Civil Procedure (“Petition”) submitted by Jeffrey A. Marks, P.C. The Petition seeks to allow attorneys licensed to practice law in Arizona to issue and sign subpoenas thereby bypassing the need to have a subpoena issued by the Clerk under current Rule 45(a)(2) or by the issuing superior court under current Rule 45(b)(1). As set forth in the Petition, the proposed amendments are to “allow parties to bypass the [C]lerk’s fee charged to issue a [s]ubpeona” and “to expedite the process of needing a [s]ubpoena signed and returned by the Clerk prior to service of process.” While the Clerks take a neutral position with regard to this Petition, the Clerks believe it is important to provide substantive information regarding the following to the Arizona Supreme Court for consideration.

ACCESS TO JUSTICE

As is confirmed by Mr. Marks in his April 19, 2019 submission, the intent behind the amendments is that the “fee would still need to be charged when a non-lawyer *pro se* party seeks to have a subpoena issued”

In Maricopa County alone, more than 50% of civil litigants represent themselves. It would seem that by allowing attorneys to issue their own subpoenas, such would create different rules and standards for those parties who retain counsel and those who chose to represent themselves or otherwise cannot afford legal representation. This would result in different rules and procedures for *pro per* or *pro se* civil litigants. In light of the Arizona Supreme Court’s Access to Justice Initiatives, these amendments seem contrary to those initiatives where the intent is to remove barriers in civil litigation to those who cannot afford or choose not to have legal representation. If the amendments are adopted, *pro per* and *pro se* litigants in civil cases would be held to different legal requirements than those parties that have retained legal representation and would be required to pay for the issuance of documents that will now be free to attorneys.

LOSS OF FUNDING

As noted by the County Supervisors Association of Arizona and the Administrative Office of the Courts in their respective Comments filed with this Court, the civil subpoena fees collected by the Clerks in accordance with A.R.S. § 12-384(E) are disbursed in accordance with A.R.S. § 12-284.03. These fees partially fund ten (10) different state and county programs ranging from the Department of Child Safety Child Abuse Prevention Fund, the Elected Officials Retirement Fund, County Law Libraries and the Arizona Criminal Justice Commission Drug and Gang Enforcement and

Resource Center Fund, just to name four (4) of the recipients of civil subpoena fees. The Clerks collected the following information regarding the estimated amount of fees collected by 13 of Arizona's 15¹ counties during FY2017 and FY2018 as relates to the issuance of civil subpoena fees. These estimated amounts are as follows:

MARICOPA:

FY2017:
\$770,715.05
FY2018:
\$841,559.93

PIMA:

FY2017:
\$150,042.50
FY2018:
\$152,726.00

MOHAVE:

FY2017:
\$13,847.00
FY2018:
\$14,918.00

YAVAPAI:

FY2017:
\$6,964.00
FY2018:
\$10,766.00

GILA:

FY2017:
\$4,500.00
FY2018:
\$6,750.00

¹ The Clerks were unable to obtain figures from Pinal and Cochise counties prior to submission of this Comment. However, the Clerks anticipate obtaining this information in due course, and the will supplement this Comment and provide the dollar amounts for Pinal and Cochise counties to this Court.

COCONINO:

FY2017:
\$3,284.00
FY2018:
\$4,902.00

YUMA:

FY2017:
\$2,186.00F
Y2018:
\$1,266.00

NAVAJO:

FY2017: \$2,106.00
FY2018: \$2,100.00

SANTA CRUZ:

FY2017: \$1,825.00
FY2018: \$2,500.00

GRAHAM

FY2017: \$516.00
FY2018: \$722.00

GREENLEE:

FY2017: \$326.00
FY2018: \$30.00

LA PAZ:

FY2017: \$150.00
FY2018: \$90.00

For FY2017, the total amount of revenue generated from subpoena fees for the 13 reported counties is estimated at over \$950,000.00 and for FY2018, the total amount of revenue generated by civil subpoena fees for those same 13 counties is estimated at over \$1,000,000.00. The majority of civil subpoenas are issued to attorneys. If these fees go away, it is not clear how the recipients of these monies will make up for the shortfall of funding.

EXPEDITED PROCESS

The Clerks are not aware of any formal or informal complaints received regarding the processing time for the issuance of civil subpoenas. Generally, civil subpoenas are issued the same day that the issuing party requests the subpoena to be issued and most are issued upon presentation at a Clerk's Office file counter. There should be none, if very little, delay associated with the issuance of a civil subpoena. However, as is noted by the County Supervisors Association of Arizona, the State Bar of Arizona, in conjunction with the Clerks, provides an online subpoena service for State Bar of Arizona members to use. It is the understanding of the Clerks that the ability of the State Bar of Arizona to issue civil subpoenas came into existence as a result of 2006 Rule Petition. Members of the State Bar of Arizona may use the State Bar's online subpoena service, but in doing so, they still pay the statutorily required \$30.00 subpoena issuance fee in addition to a nominal fee imposed by the State Bar of Arizona as a convenience fee.

CONCLUSION

While the Clerks are neutral with regard to whether this Court believes it is appropriate for attorneys who are members of the State Bar of Arizona to issue civil subpoenas and by pass having to pay a subpoena issuance fees, the Clerks intent in filing this Comment is to ensure that this Court is aware of additional information regarding the use and allocation of subpoena fees, the impact to *pro per* and *pro se* litigants and the fact that the Clerks are not aware of any unnecessary delays associated with their issuance of civil subpoenas.

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