

Hon. Valerie Wyant, President
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of)	Supreme Court No. R-19-0003
)	
PETITION TO AMEND RULE 5.4 OF THE)	COMMENT IN SUPPORT OF
ARIZONA RULES OF CIVIL PROCEDURE)	PETITION TO AMEND RULE
)	5.4 OF THE ARIZONA RULES
)	OF CIVIL PROCEDURE
)	
_____)	

The Arizona Association of Superior Court Clerks (Clerks) submits the following comment in support of the Petition to Amend Rule 5.4 of the Arizona Rules of Civil Procedure (“Petition”) proposed by the Honorable Sara J. Agne and the Rule 5.4 Working Group. The Clerks were represented on the Rule 5.4 Working Group. The Petition seeks to add a new definition to current Rule 5.4 as well as a new subsection (i) to govern the procedures for lodging and filing case-initiating documents under seal.

The Clerks are in support of amending Rule 5.4 as proposed by the Rule 5.4 Work Group because the Rule as currently written does not explicitly or implicitly address parties attempting to lodge and then file case-initiating documents under seal, which has been a growing trend among parties, both *pro per* or *pro se* and those represented by legal counsel.

The Clerks strongly recommend that the filing party be required to file a publically-accessible version of a case-initiating document, so as to facilitate the number of tasks the superior court clerks must undertake when commencing an action, such as,

but not limited to, assigning the matter a case number, docketing related documents, as well as assuring that the matter is appropriately assigned to a judicial officer or division of a superior court for review and consideration. As noted in the Petition, absent a publically accessible version of a case-initiating document having been filed in and docketed, superior court clerks as well as court administration encounter issues that may not only delay the administrative processing of a case, but may cause duplicates of documents to be languishing in a document queue or other format by which lodged documents are held. The Clerks also believe that absent a publically accessible case initiating document having been filed in and docketed, many times the parties believe that the courtesy copies provide to the assigned judicial officer are to be filed in, when in fact they are not, as the documents have already been lodged with the Clerk.

As a result, the Clerks maintains that the proposed amendments to Rule 5.4 are a critical necessity to ensure there is a viable and feasible process for the lodging of case-initiating documents that may then be filed under seal.

It has come to the attention of the Clerks that the State Bar of Arizona will be filing a Comment in supported of the Petition, but with a proposed revisions to remove the verbiage in proposed Rule 5.4(i)(2)(C) “no later than 7 days after the order’s entry” and instead replace it with “the submitting party must **promptly** file a notice of, or stipulation or motion for, dismissal under Rule 41.” (emphasis added).

The Clerks recommend that the Supreme Court not adopt the State Bar of Arizona’s recommend revision, and retain the “no later than 7 days after the order’s entry” language because “promptly” is a vague term, and the Clerks believe that an affirmative deadline along with a reference to Rule 41 better allows Clerks to manage the

lodged documents and proceed with the options set forth in Rule 5.4(f). Further, the 7 day time frame corresponds with the time frames set forth in current Rule 5.4(f).

DATED this 1st day of May, 2019.

 /s/_Valerie Wyant_____
Hon. Valerie Wyant, President
Arizona Association of Superior Court Clerks

A copy of this comment has been delivered this
1st day of May, 2019 to:

Clerk of the Supreme Court
1501 West Washington Street, Room 402
Phoenix, AZ 85007

Via email to mmeltzer@courts.az.gov and electronic filing of comment in accordance
with In the Matter of Opening Rules for Public Comment