

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AUTHORIZING ELECTRONIC) Administrative Order
TRANSMISSION AND FILING OF THE) No. 2009 - 104
RECORD ON REVIEW IN ATTORNEY)
DISCIPLINE AND DISABILITY)
MATTERS)
_____)

Pursuant to the Arizona Constitution, the Supreme Court regulates the practice of law in Arizona and has adopted Rules 46 through 70, Rules of the Supreme Court, governing discipline and disability proceedings for attorneys. Electronic filing and transmission of documents between the offices of the Disciplinary Clerk (“Disciplinary Clerk”) as defined by Rule 46(f)(10), Rules of the Supreme Court, and the Clerk of the Supreme Court (“Supreme Court Clerk”) and the maintenance of electronic records by both of these offices will assist in the efficient and timely processing of these cases and is consistent with the Court’s goal of moving toward e-filing in all case types and courts.

Therefore, pursuant to Article VI, Section 3 of the Arizona Constitution,

IT IS ORDERED that the Disciplinary Clerk and the Supreme Court Clerk are authorized to electronically transmit and file the Record on Review and other documents in attorney discipline and disability matters. This authority applies only to documents transmitted or filed between the Disciplinary Clerk and the Supreme Court Clerk and does not apply to the filing of documents by the parties (State Bar of Arizona and Respondent) in an attorney discipline or disability proceeding. The following procedures shall apply:

1. Official Record. For the purposes of transmission and filing of records between the Disciplinary Clerk and the Supreme Court Clerk only:
 - a. All documents that are filed electronically with the Disciplinary Clerk and all scanned images of any documents filed in paper form with the Disciplinary Clerk that are maintained in the Disciplinary Clerk’s electronic document management system (EDMS) shall be considered the Disciplinary Clerk’s original documents. All of the Disciplinary Clerk’s original records that are electronically transmitted to and filed in the Supreme Court Clerk’s office shall be maintained in the Supreme Court Clerk’s EDMS and shall be considered copies of the original documents. All documents that are electronically transmitted to and filed with the Supreme Court Clerk that are not the Disciplinary Clerk’s original documents and any scanned images of any documents filed in paper form with the Supreme Court Clerk shall be

maintained in the Supreme Court Clerk's EDMS and shall be considered the original documents.

- b. A document printed from the Disciplinary Clerk's or the Supreme Court Clerk's EDMS, whichever is the custodian of the record, that is file-stamped by that office, shall be considered an official record. A document that is electronically transmitted from the custodian of the record's EDMS shall be considered an official record. A document printed from the custodian of the record's EDMS upon which that office has placed its seal attesting to the document's authenticity shall be considered a certified copy of the original.
 - c. A printout from the EDMS of the custodian of the record that indicates the date the document was filed shall be sufficient to prove authenticity.
2. Confidential and Sealed Documents. Rule 63 and Rule 70, Arizona Rules of the Supreme Court, govern the confidentiality and sealing of attorney discipline and disability records. Section 1-506(E)(4) of the Arizona Code of Judicial Administration prohibits the electronic filing of confidential and sealed documents. For the purposes of the electronic filing of attorney discipline and disability records between the Disciplinary Clerk and the Supreme Court Clerk, Section 1-506(E)(4) is suspended. Confidential and sealed documents may be listed on the Electronic Index of Record and shall be identified by using the designation "CONFIDENTIAL" or "SEALED" in the document title. The Disciplinary Clerk and the Supreme Court Clerk shall follow all other procedures and provisions of Rule 63 and Rule 70.
3. Document Format.
 - a. Any court rule requiring that a document be an original, be on paper or another tangible medium, or be in writing, is satisfied by the electronic image defined as the original document by this Order.
 - b. Those portions of Rules 59 and 65, Rules of the Supreme Court, that refer to the original record as a compilation of paper documents are suspended for the Arizona Supreme Court for this project, thus allowing the Disciplinary Clerk and the Supreme Court Clerk to provide original electronic records to other courts in electronic format and allowing other courts access to the electronic court records of the Arizona Supreme Court, if those courts are able to accept a record in electronic format.
 - c. The Supreme Court Clerk and the Disciplinary Clerk shall provide paper documents to other courts as needed, unless those courts are able and have made arrangements with the Supreme Court Clerk or the Disciplinary Clerk to receive electronic documents in lieu of paper.
4. Bindings. The requirement in Rules 59(d) and 59(f), Rules of the Supreme Court, and Rule 4, Arizona Rules of Civil Appellate Procedure, which refer to binding of documents, is modified so that all documents submitted for filing in paper format by the parties shall be

bound in the top margin by a two-pronged fastener. No adhesive bindings or bindings using numerous holes shall be used.

5. Copies. Those portions of Rule 59(e) and 59(f), Rules of the Supreme Court, and Rule 4(a), Arizona Rules of Civil Appellate Procedure, which refer to the number of copies to be submitted to the Supreme Court Clerk are suspended for documents that are transmitted electronically pursuant to this Order.
6. Certificate of No Petition for Review. The requirement in Rule 59(i), Rules of the Supreme Court, which refers to the Disciplinary Clerk's filing of a Certificate of No Petition for Review and the transmission of the certificate to the Arizona Supreme Court, is suspended. The Disciplinary Clerk shall state on the Electronic Index of Record whether a petition for review was filed for each case in which a petition for review could be filed. Only the Disciplinary Clerk or the Disciplinary Clerk's designee may make this statement on the Electronic Index of Record.
7. Filing of Commission Report in Reinstatement Proceedings. The portion of Rule 65(b), Rules of the Supreme Court, which directs the Disciplinary Commission to file its report regarding the reinstatement of an attorney with the Arizona Supreme Court is suspended. The Commission shall file its report with the Disciplinary Clerk. The Disciplinary Clerk may electronically transmit the report with the Record on Review.
8. Destruction of Paper Records. The restrictions on destruction of case records imposed by Rules 29(A), 29(B) and 70, Rules of the Supreme Court, are suspended for attorney discipline case records transmitted between the Disciplinary Clerk and the Supreme Court Clerk, thus allowing the Disciplinary Clerk and the Supreme Court Clerk to dispose of paper records that are converted to electronic records.
9. Signatures. Any court rule requiring that a document be signed by a hearing officer, Disciplinary Commission member, or the Disciplinary Clerk or designee is satisfied by inserting "/s/" on the document's signature line and typing the signatory's name and/or title under the line. The Disciplinary Clerk and the Clerk of the Supreme Court shall ensure that only authorized personnel have the ability to type "/s/" on the signature line.

IT IS FURTHER ORDERED that the Disciplinary Clerk and the Supreme Court Clerk shall maintain backups of any documents transmitted electronically between their offices and will provide electronic copies of these documents upon request by either office.

IT IS FURTHER ORDERED that the Administrative Office of the Courts shall comply with the following requirements:

1. Employ procedures that ensure the availability of at least one other copy of electronically filed or transmitted documents at all times;
2. Perform systems backups at least daily;

3. Maintain multiple backups, at least one of which will be off-site in an area that would not be affected should a catastrophic event impact the court's primary data center;
4. Use recording media for storing all electronic records transmitted or filed pursuant to this Order in a manner that will ensure their continuing integrity and availability;
5. Ensure that any electronic case file records which must be maintained permanently are maintained in a place and manner that will reasonably assure their permanent preservation, as required by Rule 29(B) and Rule 70(g), Rules of the Supreme Court.
6. Ensure that no electronic case file records are destroyed without the express approval of the Disciplinary Clerk or the Supreme Court Clerk, whoever is the custodian of the record.

Dated this 7th day of October, 2009.

FOR THE COURT:

REBECCA WHITE BERCH
Chief Justice