

E-Filing Policy Issue - # 8
(Judge vs. Clerk Seal in Small Claims)

Issue: (State the issue and whether it is specific to a certain level of court or case type.)

Should the judge's name and seal appear on a small claims summons or should the clerk's name and seal appear on the summons?

Discussion: (Provide the factual setting or context for the issue.)

Some courts around the state use a judge seal on a small claims summons, while others use a clerk seal on the summons. The statewide e-filing team cannot easily accommodate this variation in practice from court to court and would prefer standardization with regard to whether the name and seal on a small claims summons be that of the judge or the clerk. Statute and rule arguably conflict on whether the judge or the clerk seal controls. (See below)

Authorities: (Provide references to specific statutes, rules, codes or administrative orders you believe are pertinent to the issue.)

A.R.S. § 22-214. Summons; issuance; form

A. *When an action is commenced before a justice of the peace he shall issue forthwith a summons to defendant.*

Rules of Civil Procedure for the Superior Courts of Arizona

Rule 4(a). Summons; Issuance

When the complaint or any other pleading which requires service of a summons is filed, the clerk shall endorse thereon the day and hour on which it was filed and the number of the action, and shall forthwith issue a summons. The party filing the pleading may present a summons to the clerk for signature and seal. If in proper form, *the clerk shall sign and seal the summons* and issue it to the party for service or for delivery to a person authorized by Rule 4(d) to serve it. A summons, or a copy of the summons if addressed to multiple persons, shall be issued for each person to be served.

A.R.S. § 22-211. Procedure and practice

The law governing procedure and practice in the superior court so far as applicable and when not otherwise specially prescribed, shall govern procedure and practice in justice of the peace courts.

Alternative Solutions: (List all identified alternative solutions for the issue.)

- Standardize for all courts that the judge's name and seal appear on a small claims summons, perhaps by modifying Rule 4(a).
- Standardize for all courts that the clerk's name and seal appear on a small claims summons.
- Individualize among courts with their preference of the judge's or the clerk's name and seal appearing on the small claims summons.

Position/Recommendation: (Does the AOC E-filing team have a recommendation on this issue?)

The E-filing team would like to have all courts standardize on this issue, most likely by using the judge's name and seal on a small claims summons. This practice could ultimately be achieved by modification of Rule 4(a).

Decision:

Either the judge may sign or the clerk may sign on behalf of the judge. The summons form should be designed so that either possibility works. The text of the summons should say: "...by Justice of the Peace." The signature line at the bottom would say: "Justice of the Peace," but the clerk could sign on behalf of the JP, if that's his preference. Having a court seal rather than the seal of an individual judge or clerk would be beneficial from the perspective of promoting standardization, but not legally essential.