

THE

BRIEF

Vol. 7, No. 1

An electronic update for the legal community providing a brief look at news in the Clerk of the Superior Court's Office



January 2011

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Supoena Format Reminder

Effective January 1, 2011, the Supreme Court approved a new format and rules related to subpoenas. Civil Rule 45 explains the subpoenas required for in-person testimony, subpoenas duces tecum and combined subpoenas. The new format and language appear in Civil Rule 84, Form 9. The Clerk's Office will issue subpoenas in the format in which they are presented, leaving the liability for accuracy with the attorney or submitting party. Time to update any older forms you may have relied on in the past!

Filing Under Seal?

Very few filings in Superior Court are ordered to be filed under seal. Particular confidential and sensitive documents are required to be filed in sealed envelopes pursuant to some court rules, such as the Probate rules of court. When the court orders a document to be filed under seal, please place the document in an envelope before delivering it to the Clerk's file counter and bring a copy of the order to file the document under seal. These additional precautions indicate to Clerk staff that special handling applies to the document and reduces any chance the document could get sorted with public-record filings. A document to be filed under seal that is one of many documents within a stack of daily filings given to a runner service increases the risk that a file counter clerk will not be able to identify the special handling required. Also, remember that the eFiling Guidelines and AZTurboCourt require that documents filed under seal must be on paper and are not to be electronically filed.

Sensitive But Not Sealed?

Few people appreciate the differences between the courts and other government agencies related to sensitive information and public records. Most state agencies are subject to the public access requirements in Title 39 of the Arizona Revised Statutes and have affirmative duties regarding redacting information from records before making them available to the public. The Clerk's Office operates under Supreme Court Rule 123 regarding access to public records, which is similar in many ways to the statutes, but with key differences. A primary difference is that the filing party is responsible for keeping sensitive or protected information out of documents before filing with the Clerk's Office. Once filed-in, the Clerk's Office requires a court order to modify, redact or replace a public case record. For example, attorneys have filed original court documents that contained each petitioner and respondent's social security number next to their name in the case caption. The Clerk's Office does not have the authority to reject a document on this basis and no independent authority to alter a document presented for filing with this information on it. More often the problem occurs when sensitive information appears several pages into a multi-page document. With tens of thousands of pages of paper filed each day, review clerks do a quick scan of documents, looking for obvious formatting, signature, appearance and payment issues. Clerks are unlikely to know that information contained in a document is either sensitive or restricted and do not second-guess the filing party's decision to include particular information in a filing. A document that contains social security numbers, financial account information, victim information, details ordered by the court to be left out of the public record and other sensitive information will be available in the public record unless and until an interested party takes specific action to correct the filing party's oversight. Several court rules have addressed special procedures for filing sensitive information that the judicial officer and parties require, but that are not available to the general public.