

1 Honorable Barbara Rodriguez Mundell  
2 Presiding Judge  
3 Superior Court of Arizona, Maricopa County  
4 125 W. Washington St.  
Phoenix, AZ 85003  
(602) 506-6130

5 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 In the Matter of:

} Supreme Court No. R-08-0022

8 PETITION TO AMEND RULE 10.5  
9 OF THE ARIZONA RULES OF  
10 CRIMINAL PROCEDURE

} COMMENT OF THE SUPERIOR  
} COURT OF ARIZONA, MARICOPA  
} COUNTY IN OPPOSITION TO  
} THE PETITION TO AMEND  
} RULE 10.5

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13 The Presiding Judge of the Superior Court in Maricopa County files the  
14 following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in  
15 opposition of Petition R-08-0022, concerning the proposed amendment of Rule  
16 10.5, Arizona Rules of Criminal Procedure. The Superior Court in Maricopa  
17 County supports the right of victims to receive timely notice of court  
18 proceedings. That right currently is guaranteed by state statute and it should not  
19 be diminished or diluted by the proposed rule. Accordingly, the Superior Court  
20 in Maricopa County opposes the Petition to Amend Rule 10.5 for the following  
21 reasons:

22 1. The proposed rule contradicts the Victim's Rights Statute by removing  
23 the court's discretion to schedule a proceeding with less than five days' notice if  
24 it finds that it is not reasonable to provide such notice.

25 The Victim's Rights Statute relating to notice, A.R.S. § 13-4409, provides:

26 Notice of criminal proceedings

27 A. Except as provided in subsection B, the court shall provide notice  
28 of criminal proceedings, for criminal offenses filed by information,  
complaint or indictment, except initial appearances and arraignments,

1 to the prosecutor's office at least five days before a scheduled  
2 proceeding to allow the prosecutor's office to provide notice to the  
3 victim.

4 B. If the court finds that it is not reasonable to provide the five days'  
5 notice to the prosecutor's office under subsection A, the court shall  
6 state in the record why it was not reasonable to provide five days'  
7 notice.

8 C. On receiving the notice from the court, the prosecutor's office  
9 shall, on request, give notice to the victim in a timely manner of  
10 scheduled proceedings and any changes in that schedule, including  
11 any continuances.

12 The proposed rule directly conflicts with paragraph B. The statute gives the  
13 court the discretion, upon a finding that "it is not reasonable to provide the five  
14 days' notice," to proceed without giving such notice. The proposed rule requires  
15 the consent of the parties to proceed without the five days' notice. The proposed  
16 rule removes all of the court's discretion and allows the parties to decide  
17 whether and when a trial will proceed. To remove the trial court's discretion and  
18 place the decision in the hands of the parties is not only contrary to state law, but  
19 also contrary to good case management practices.

20 2. Removing the court's discretion will result in more case delay and  
21 negatively impact victims.

22 Consider this scenario: Trial is set for Monday in an aggravated assault  
23 (domestic violence) case, and the trial is expected to last two days. No judge is  
24 available to start the case on Monday. However, a judge is available to start the  
25 case on Wednesday. The victim does not object to starting on Wednesday.  
26 Applying the proposed rule, absent both parties' consent, the case could not be  
27 reset until after at least a five-day delay. If the case had started on Wednesday, it  
28 would have been resolved by Thursday, well before the trial could have been  
reset under the proposed rule. The victim would have received closure (except

1 for sentencing if a guilty verdict were returned) on Thursday and would not have  
2 had to experience another case delay. It is not unrealistic to think that the  
3 defendant would not consent to the two-day delay because by withholding the  
4 required consent, the defendant would have additional time to try to persuade  
5 witnesses not to appear for trial.

6 When a judicial officer decides that a case may proceed without the five  
7 days' notice, the judicial officer must state on the record why it is not reasonable  
8 to provide the five days' notice. However, nothing in the proposed rule prevents  
9 a party from withholding consent in bad faith or for an improper purpose, such  
10 as that described in the scenario above. Additionally, as can be seen from the  
11 aforementioned scenario, this proposed rule would significantly increase case  
12 delay, not reduce it.

13 3. The proposed rule is unnecessary because the Superior Court in  
14 Maricopa County's case transfer system that the proposed rule originally was  
15 offered to change will cease to exist no later than July 6, 2009.

16 The petition is highly critical of this Court's case transfer system.  
17 However, the petition overlooks the fact that the case transfer system described  
18 in the petition ceased to exist over two years ago. In addition, this Court has  
19 continued to make significant changes in its criminal case processing system  
20 since the *Taft* opinion in order to assure firm trial dates. In furtherance of this  
21 objective, this Court implemented a master calendar pilot program utilizing six  
22 trial divisions. The program has been so successful in assuring the trial date is a  
23 firm date, that beginning July 6, 2009, all criminal cases filed downtown will be  
24 on the master calendar system. Until such time as all criminal cases filed in the  
25 Southeast Judicial District are transferred downtown, any overflow trials will be  
26 handled through the master calendar trial assignment system. Accordingly, there  
27 will be no case transfer system as of July 6, 2009, and the proposed rule is not  
28 needed to address the problem discussed in the petition.

1 Conclusion

2 The proposed rule is not needed. The Victim's Rights Statute relating to  
3 notice, A.R.S. § 13-4409, applies and is all that is needed. Adoption of the  
4 proposed amendment would amount to judicial legislation and harm victims by  
5 causing trial delays.

6 Respectfully submitted this 20th day of May, 2009.

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Honorable Barbara Rodriguez Mundell  
Presiding Judge  
10 Superior Court of Arizona, Maricopa County

11 Original and six (6) copies delivered this  
12 20th day of May, 2009 to:

13 Clerk of the Arizona Supreme Court  
14 1501 W. Washington, Suite 402  
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16 Copy mailed this  
17 20th day of May, 2009 to:

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