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**Courthouse News Service's Comments On The Amended Petition (R-08-0039)
To Amend Arizona Supreme Court Rule 123**

On behalf of Courthouse News Service (“Courthouse News”), we are pleased to make this submission in response to the Supreme Court’s invitation for written comments on the further amendments to Supreme Court Rule 123. These comments address two issues with respect to the current version of the amended rule: (1) the outsourcing of requests for certain types of bulk data, a matter we previously raised in our April 1, 2009 comments; and (2) fees for access to electronic records at the courthouses themselves, a matter which we believe also warrants consideration for possible further amendment.

Outsourcing Requests For Certain Types of Bulk Data

As we explained in our April 1 comments, Courthouse News does not object to, and indeed welcomes, bulk dissemination of court records and data about court proceedings. However, Courthouse News becomes concerned whenever a court outsources that function to a private vendor who is also engaged in news reporting activities (including not only traditional news reporting, but also Internet-based products such as news alerts, summaries of new court filings, or other similar offerings). In such a situation, the vendor’s effective control over the court record gives them an enormous advantage, both in terms of cost and timing, over other news organizations in reporting about the courts.

As originally drafted, subsection (j)(1)(B) of the amendments to Rule 123 provided that “[a] custodian of bulk data may contract with a private company ... for the provision of bulk data and specialized reports of compiled data under this policy.” As noted in our April 1 comments, this language would have permitted the wholesale outsourcing to a private vendor of *all* dissemination of court records including (1) docket information; (2) full-text documents; (3) compilations of case records and data from multiple cases; and (4) “specialized reports.” However, Courthouse News had been informed that it was the intent of subsection (j)(1)(B) to authorize contacts with private vendors only with respect to the fourth category of “specialized reports.” Accordingly, our April 1 comments suggested that subsection (j)(1)(B) be amended as follows:

A custodian of bulk data may not contract with any private entity for the provision of bulk data to recipients, except that a custodian of bulk data may contract with a private entity for the sole purpose of providing specialized reports of compiled data under this policy. Any private vendor that contracts with a custodian of bulk data pursuant to this subsection may not use or

disseminate any information obtained under contract with the custodian of bulk data except as necessary fulfill the purposes of the contract.

We appreciate the consideration given to our April comments regarding subsection (j)(1)(B) and the changes that have been made to that subsection in the amended petition. As now drafted, subsection (j)(1)(B) provides that “[a] custodian may contract with a private company or public organization to provide specialized reports to those requesting them.” While this amendment clarifies what we understand to be the intent of this provision – to allow the state or court officials to outsource the compilation of certain customized data reports – we respectfully suggest that it does not go far enough to avoid the dangers articulated here and in our April 1 submission. In particular, we believe subsection (j)(1)(B) should be further amended to clarify (1) that a custodian may not outsource to a private vendor anything other than specialized reports, and (2) that the selected vendor shall not be permitted to use or disseminate any information obtained by virtue of that role except as may be necessary to fulfill the purposes of the contract.

Fees For Access To Electronic Records At A Courthouse

Subsection (g) of the proposed amendments to Rule 123 sets forth the rules governing remote electronic access to case records, and subsection (g)(C)(i) further provides that members of the public who hold an Arizona driver license may be provided with remote electronic access to documents filed in certain civil and criminal cases “upon registering and paying an established fee.”

Although it has been Courthouse News’ experience that some courts charge a fee for remote access to electronic versions of court records, those courts also ensure that members of the public who are willing to visit the courthouse can continue to review those records free of charge, either in paper or electronic form. As currently drafted, the proposed amendments do not address this issue. We therefore respectfully suggest that the Rule 123 be amended to provide that records will remain available for viewing free of charge at the courthouse, even if a fee is charged to review those same records on a remote electronic basis.

Courthouse News greatly appreciates your consideration of these comments. Should there be any questions, please do not hesitate to contact our offices.

Respectfully submitted,
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On behalf of Courthouse News Service