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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of REPLY TO COMMENTS)
FILED IN RESPONSE TO AMENDED) Supreme Court No. R-08-0039
PETITION TO AMEND RULE 123, RULES)
OF THE SUPREME COURT OF ARIZONA,)
RULE 2.3 ARIZONA RULES OF CRIMINAL)
PROCEDURE and RULE 5, ARIZONA)
RULES OF CIVIL PROCEDURE)

**REPLY TO COMMENTS FILED IN RESPONSE TO AMENDED PETITION TO
AMEND VARIOUS RULES
RELATING TO ACCESS TO JUDICIAL RECORDS**

Pursuant to this court’s order of January 16, 2009, Petitioner Michael K. Jeanes, Chair of the Supreme Court Rule 123 and Data Dissemination Advisory Committee (“committee”), respectfully submits this Reply to Comments filed in response to the Amended Petition herein and requests this court adopt the amendments to Rule 123, Rules of the Supreme Court of Arizona, Rule 2.3 of the Arizona Rules of Criminal Procedure, and Rule 5 of the Arizona Rules of Civil Procedure attached to the Amended Petition as Appendix A.

COMMENTS AND REPLIES TO PROPOSED AMENDMENTS TO RULES

Several comments were filed in response to the Amended Petition. Petitioner replies to each comment as follows:

- 1. Comment:** The full date of birth of a defendant in civil and criminal proceedings should be released with bulk data requests in order to increase the ability of the requestor to secure an accurate record match.

Reply: This request was previously incorporated in section (j)(3)(C) of the proposed amendments attached to the Amended Petition.

- 2. Comment:** A custodian of records who contracts with an outside vendor to provide a specialized report in response to a bulk data request should prohibit the outside vendor from disseminating the data obtained by virtue of that role.

Reply: Draft Arizona Code of Judicial Administration (ACJA) § 1-604, which is intended to complement Rule 123, incorporates this request in subsection (E)(3) as follows:

A custodian of bulk data who contracts with a private company or public organization to provide specialized reports of bulk or compiled court data, as provided in Rule 123(j)(1)(B), shall require the private company or public organization to keep all data and reports generated from the data confidential. *The private company or public organization may not use or disseminate any information obtained under contract with the custodian of bulk data except as necessary to fulfill the purposes of the contract.* (Emphasis added.)

Revision of the proposed amendments attached to the Amended Petition is not necessary.

- 3. Comment:** Rule 123 should state that records will remain available for viewing at the courthouse free of charge.

Reply: This request was already addressed in the proposed amendments attached to the original Petition and to the Amended Petition, section (g)(8), which provides, “This section shall not limit the public’s right of access to records at a court designated facility, whether in

paper or electronic format.” The phrase “free of charge” should not be added, since some courts currently charge a fee to pull files for viewing, generally in circumstances where multiple files are requested.

- 4. Comment:** Federally regulated consumer reporting agencies, as defined under the Fair Credit Reporting Act in Section 603(f) should be provided full remote electronic access to case records.

Reply: Section (g)(1)(C) of the proposed amendments to Rule 123, attached to the Amended Petition, already provides: “Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee” Therefore an employee or independent contractor of a consumer reporting agency, who holds an Arizona driver license or nonoperating identification license can obtain remote electronic access to case records. The committee does not wish to expand access, generally, to consumer reporting agencies, since the committee wishes to initiate remote electronic access in a limited, controlled manner because of privacy concerns.

- 5. Comment:** A bulk data requestor should have 10 days to update data corrections sent by a court.

Reply: This issue does not appear in the provisions of the proposed rule amendments. Instead, it is addressed in ACJA § 1-604, which provides: “Upon notice from the custodian, recipient agrees to remove from its files within two business days any data that has been corrected, sealed, or otherwise restricted. The notice shall identify the cases that are to be corrected, removed, or otherwise restricted.” The ACJA workgroup believes that a bulk data

requestor should correct erroneous data as quickly as possible after the revised data has been sent by the court.

6. Comment: Audio recordings of court proceedings should be specifically excluded from Proposed Section 123(j), Bulk or Compiled Data Dissemination in Bulk.

Reply: The proposed amendments attached to the Amended Petition, at Rule 123(b)(1) already excludes audio recordings of court proceedings in the definition of bulk data.

Therefore, Petitioner requests this court adopt the proposed amendments to Rule 123 of the Rules of the Supreme Court of Arizona, Rule 2.3 of the Arizona Rules of Criminal Procedure, and Rule 5 of the Arizona Rules of Civil Procedure attached to his Amended Petition as Appendix A.

RESPECTFULLY SUBMITTED this 25th day of June, 2009:

By _____
Michael K. Jeanes, Clerk of Court