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(FIRM STATE BAR NO. 00032000)**

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(STATE BAR NUMBER 005379 )**

**ARIZONA SUPREME COURT**

**PETITION TO AMEND Rule  
39(b)(12), ARIZONA RULES OF  
CRIMINAL PROCEDURE**

R-22-0045

MARICOPA COUNTY ATTORNEY'S OFFICE  
COMMENT IN OPPOSITION

The Maricopa County Attorney's Office (MCAO) opposes this Petition for the reasons set forth below.

This Petition is based on the premise that because the federal court found A.R.S. § 13-4433(B) unconstitutional, Rule 39(b)(12), Arizona Rules of Criminal Procedure, must also be found unconstitutional. That premise is incorrect. On November 2, 2022, Judge Steven Logan of the federal district court found §13-4433(B) unconstitutional. *Arizona Attorneys for Criminal Justice et al. v Brnovich et al.*, CV-17-01422-PHX-SPL (Nov. 2, 2022). The court's very narrow holding focused on the language of the statute that stated a defense representative must go through the prosecutor to *initiate* any contact with a victim. Indeed, much of the evidence presented in the district court by defense experts was the desire to *communicate* information to a victim--information such as mitigation or general information about the death penalty. It was in this vein that the Plaintiff argued and that the court held the language of the statute violated the First Amendment.

Rule 39(b)(12) is much more narrow than § 13-4433. Rather than mandating that *any* communication with a victim go through the prosecutor, the Rule requires only that requests to *interview* a victim go through the prosecutor. A question and answer session about the facts of a case—especially when the questions are being asked by what is in most cases an adverse party—is quite different than the one-sided sharing of information that the Plaintiffs in the federal case were presenting. In fact, the court specifically noted that:

[n]othing in this Order shall be construed to enjoin enforcement of any other provision of Arizona law, including a crime victim’s right to refuse an interview, deposition or other discovery request pursuant to Article II, § 2.1(A)(5) of the Arizona Constitution and the requirement under Arizona Rule of Criminal Procedure 39(b)(12) that the defense must communicate a request to interview a victim to the prosecutor rather than the victim.

*Arizona Attorneys for Criminal Justice et al. v Ducey et al*, CV-17-01422-PHX-SPL (Order Dec. 7, 2022). Despite this very clear language, Petitioners seek to apply the court’s ruling beyond its clear intent.

Petitioners are correct that the court’s holding led to confusion. Probably for that reason, Judge Logan issued an Amended Order on December 7, 2022. In the Amended Order, language was stricken from the Order that enjoined the State or their agents from requiring the defense to “initiate contact with a statutory crime victim through the prosecutor’s office” and other similar language and replaced it with language that instead enjoined compliance “with A.R.S. § 13-4433(B).” This was undoubtedly done to reinforce the court’s earlier language in the initial Order that the court’s ruling did not in any way enjoin enforcement of Rule 39(b)(12). These Orders are attached as Exhibits 1 and 2.

In addition, as of this writing, the federal court's decision is currently being appealed. Any consideration of changing Rule 39(b)(12) should at least wait until the appellate process has concluded.

Petitioners seek to take a district court case that is highly controversial even in its limited scope and apply it in a manner that even the court stated does not apply. Rule 39(b)(12) was added in the wake of a voter referendum that led to the Arizona Victims' Bill of Rights. While defense obligations to treat victims with dignity and respect remain regardless of the statutory or rule language, the reasons behind the constitutional amendment remain and are reflected in the language of Rule 39(b)(12). Nothing in the federal district court decision necessitates a change in that language.

For these reasons, the Maricopa County Attorney's Office opposes Petition R-22-0045.

Respectfully submitted this 19<sup>th</sup> of April, 2023.

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