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**IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA**

In the matter of:

Petition to Amend [Rule 15.4\(b\), Arizona Rules of Criminal Procedure](#)

Arizona Supreme Court
No. R-22-0046

Pinal County Public Defender
Comment in Opposition to Petition
to Amend [Ariz. R. Crim. P. 15.4\(b\)](#)

Pursuant to [Rule 28\(e\) of the Arizona Supreme Court Rules](#), the Pinal County Public Defender respectfully submits this comment opposing the Petition to Amend [Rule 15.4\(b\) of the Arizona Rules of Criminal Procedure](#). The Petition fails to establish that the proposed amendment is necessary. More importantly, if adopted, the proposed amendments will only add procedural obstacles to the provision of constitutionally compliant criminal representation.

I. Pinal County Public Defender Interest Statement

The Pinal County Public Defender provides legal defense services to indigent adults and juveniles facing criminal charges and/or mental health commitments when appointed by the Pinal County Superior Court or a Justice Court within Pinal County. Our goal is to provide superior legal representation, safeguard fundamental individual rights, and ensure equal access to the protections afforded by the United States Constitution, the Arizona Constitution, and the laws of Arizona.

The Pinal County Public Defender opposes the proposed amendment because criminal defense attorneys need access to information that forms the basis of the charged offense. Existing procedures for protective orders and ethical limits on the use of information learned during the course of a case are sufficient to protect against the theoretical abuses outlined in the Petition.

II. The proposal will only increase unequal access to information and undermine fairness of the adversarial system.

The Pinal County Public Defender opposes the proposal outlined in the Petition because the problem alleged to exist in the proposal does not appear to be a prevalent or pervasive problem. Police reports are supposed to contain relevant information. If numbers associated with a witness's social security identity, driver's license, credit card, or bank account are recorded in a police report, it is generally because the numbers are relevant to the investigation of a criminal offense.

When disclosed, the numbers themselves often form the basis of the prosecution's case. Stolen numbers are inherently connected to the elements of fraud and theft crimes. The disclosure of credit card numbers and social security numbers has proven to be necessary to the defense investigation in a number of credit card, theft, and fraud offenses. At issue in such cases is whether the credit card and social security numbers possessed were fictitious, knowingly false, or whether the instruments were usable. See Ioana Vasiu & Lucian Vasiu, *Riders on the Storm: An Analysis of Credit Card Fraud Cases*, 20 Suffolk J. Trial & App. Advoc. 185, 192–208 (2015) (surveying cases where credit card numbers played a central issue in the defense of the case); Holly A. Pierson, *Mortgage Fraud Boot Camp; Basic Training on Defending Mortgage Fraud Case*, 31-OCT Champion 14, 15 (Sept. / Oct. 2007) (discussing use of fraudulent social security numbers as element of mortgage fraud); Sean C. H. Flood, *Of I.C.E. and Mens Rea: Illegal Immigration and the Knowledge Requirement of the Identity Theft Penalty Enhancement Act*, 58 Drake L. Rev. 323, 330 (2009) (discussing scenarios where proof of knowledge that a social security number was fraudulent was required to obtain a conviction).

The proposed amendment acknowledges that the information at issue may be “necessary to prove a charged offense” but imposes no requirement on the state to disclose it. See Proposed Amendment to [Rule 15.4\(b\)\(2\)\(A\)](#). Subjecting the defense

to establish why it needs the information will be cumbersome and lead to inequitable distribution of vital information.

If adopted, the proposed amendment will only further a “privacy asymmetry” wherein the prosecution will have access to evidence and the defense will not. See Rebecca Wexler, *Privacy Asymmetries: Access to Data in Criminal Defense Investigations*, 68 UCLA L. Rev. 212, 215 (2021) (discussing the prevalence of privacy asymmetries). The reality is that identifying information is often needed to dispel the state’s allegations of criminal conduct, and without it, criminal defense attorneys’ requests for the information could be mischaracterized as fishing expeditions or too tenuous to be granted by a court.

This Court should be concerned with reducing privacy asymmetries that already exist between the government and the defense. This is because “privacy asymmetries impose substantial harm on both individual criminal defendants and the adversarial system of criminal adjudication as a whole” by permitting “government self-dealing in the rules of proof” and undermining fairness in the system. *Id.* at 242, 263-64.

To support its request to expand privacy asymmetries, the Petition claims that the current rules are insufficient to give witness’s confidence that sharing the information at issue in the proposal. Petition at 2. Yet, the Petition has not identified any instances where disclosure has caused harm. *Id.* Conjecture that “criminal justice

associates” “cannot control who [the information] might be shared with or who might have access to it once it is passed on” is insufficient to establish the need for the solution proposed.

“The underlying principle of Rule 15 is adequate notification to the opposition of one's case-in-chief in return for reciprocal discovery so that undue delay and surprise may be avoided at trial by both sides. The rule, to be effective, must be applied with equal force to both the prosecution and the defendant.” *State v. Lawrence*, 112 Ariz. 20, 22 (1975). But if adopted, the proposal will only cause delay, more contested discovery litigation, and undermine the fairness of the adversarial system. This Court should reject it.

III. Conclusion

Criminal defense teams must have access to all information necessary to defend criminal charges. This includes access to witnesses’ social security, driver’s license, credit card, and bank account numbers when law enforcement deems it relevant enough to include in police reports. The existing rules and procedures are more than adequate to safeguard against unintended consequences occasioned by disclosure. The Petition has not established otherwise.

The Pinal County Public Defender respectfully recommends that the Court deny the Petition.

Respectfully submitted this 1st day of May, 2023

By: /s/ Kate Milewski

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Pinal County Public Defender