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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-23-0003

10 **PETITION TO AMEND RULE 615**  
11 **OF THE ARIZONA RULES OF**  
12 **EVIDENCE**

**COMMENT**

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar  
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the  
15 above-captioned Petition. The State Bar supports the proposed amendment.

16 **I. RULE 615 AND THE PETITION’S PROPOSED CHANGES**

17 Arizona Rule of Evidence 615 (known colloquially as “the Rule”) addresses  
18 the exclusion of witnesses from trial when not testifying so that they may not hear  
19 the testimony of other witnesses. When a party invokes “the Rule,” the court may  
20 exclude witnesses from being present in the courtroom except when they are  
21 testifying.  
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24 On June 7, 2022, the U.S. Judicial Conference Committee on Rules of Practice  
25 and Procedure approved a proposed change to Federal Rule of Evidence 106, the

1 counterpart of the Arizona Rule. If it becomes effective, the proposed change to  
2 Federal Rule 615 will resolve apparent interpretative problems in the federal courts  
3 regarding whether “the Rule” operates solely to physically exclude witnesses from  
4 the courtroom or if it prevents witnesses from learning and having access to what  
5 happens inside the courtroom. Proposed amended Federal Rule of Evidence 615  
6 does so by clarifying the title of the rule, headings, and subsections of the text. The  
7 proposed rule further clarifies, in subsection (a)(2), the scope of the Rule as it applies  
8 to entity representatives. In proposed subsection (b), the proposed rule clarifies the  
9 ability of the court to restrict access by witnesses to courtroom testimony.  
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12 The Petition recommends adoption of the proposed changes to the federal  
13 rule, while retaining Arizona’s right of crime victims to be present in the courtroom  
14 for proceedings against the defendant (subsection (a)(5) below). In particular, the  
15 proposed changes to the Arizona rule are as follows (with deletions in ~~striketrough~~  
16 and additions in underline):  
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19 **Rule 615. Excluding Witnesses from the Courtroom; Preventing an**  
20 **Excluded Witness’s Access to Trial Testimony**

21 **(a) Excluding Witnesses.** At a party’s request, the court must order  
22 witnesses excluded from the courtroom so that they cannot hear other  
23 witnesses’ testimony. Or the court may do so on its own. But this rule  
24 does not authorize excluding:

25 **(a)(1)** a party who is a natural person;

1           ~~(b)(2)~~ ~~an~~ one officer or employee of a party that is not a natural  
2           person, if that officer or employee has been designated as the party's  
3           representative by its attorney;

4           ~~(e)(3)~~ ~~a~~ any person whose presence a party shows to be essential to  
5           presenting the party's claim or defense;

6           ~~(d)(4)~~ a person authorized by statute to be present; or

7           ~~(e)(5)~~ a victim of crime, as defined by applicable law, who wishes  
8           to be present during proceedings against the defendant.

9           **(b) Additional Order to Prevent Disclosing and Accessing**  
10          **Testimony.** An order under (a) operates only to exclude witnesses  
11          from the courtroom. But the court may also order:

12           (1) prohibit disclosure of trial testimony to witnesses who are  
13           excluded from the courtroom; and

14           (2) prohibit excluded witnesses from accessing trial testimony.

15           In addition, the Petition proposes the adoption of a comment to Arizona Rule  
16           of Evidence 615 to clarify potential confusion between Rule 615(a)(2) and 615(a)(3).

## 17           **II. THE STATE BAR SUPPORTS THE PETITION**

18           The State Bar supports the amendments proposed by the Petition.

19           First, although there has been little dispute in Arizona regarding the effect of  
20           invocation of the Rule on access outside the courtroom by testifying witnesses to  
21           courtroom testimony of other witnesses, the split of authority at the federal level  
22           does give rise to potential future confusion or division over the issue. The federal  
23           changes make the Rule and the court's authority clear to avoid any such future  
24           disputes.  
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1 Electronic copy filed with the  
2 Clerk of the Supreme Court of Arizona  
3 this 1<sup>st</sup> day of May, 2023.

4 by: PSeguin

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