

David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 410  
Phoenix, Arizona 85007  
(602) 452-3307

**IN THE SUPREME COURT STATE OF ARIZONA**

In the Matter of: )  
 )  
 ) Supreme Court No. R-12-\_\_\_\_  
 )  
PETITION TO AMEND )  
 )  
RULE 123, RULES OF THE SUPREME )  
 )  
COURT OF ARIZONA and RULE 2.3, )  
 )  
RULES OF CRIMINAL PROCEDURE )

**PETITION TO AMEND RULES  
RELATING TO ACCESS TO PUBLIC RECORDS**

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director of the Administrative Office of the Courts, respectfully petitions this Court to adopt the proposed amendments to Rule 123, Rules of the Supreme Court of Arizona and Rule 2.3, Rules of Criminal Procedure attached as Appendix A.

I. Background

Rule 123 was last revised, effective January 1, 2010, to implement the work of the Rule 123 & Data Dissemination Advisory Committee. Since that time, it has come to the attention of the Administrative Director that several, primarily technical amendments to Rule 123 are needed. Additionally, one of the proposed revisions to Rule 123 requires a corollary revision to Rule 2.3, Rules of Criminal Procedure. The proposed revisions are set forth more fully below.

II. Proposed Amendments

**123(b)(14), 123(c)(6), 123(g)(1)(B):** This proposed revision eliminates the term “public

purpose organization” and adjusts the definition of the term “private organization serving a public purpose.” These revisions are necessary to maintain consistency with recent modifications to ACJA §§ 1-605 & 1-606, the code sections that compliment SCR123.

**123(e)(1)(H):** This proposed revision adds subsection (e)(1)(H) to clarify public access to court employee discipline records by expressly opening specific records of official action and closing all other employee discipline records. The amendment also addresses two recent statutory amendments. It would exempt probation departments from the requirements of A.R.S. § 38-1101(A)(3) by closing discipline files and at the same time open past disciplinary action of probation officers for use by officers facing new disciplinary action for similar offenses. It would also open records of disciplinary actions in a manner similar to the Arizona Department of Administration implementation of A.R.S. § 39-128 in A.C.C. R2-5-105.

**123(g)(3):** This proposed revision adds subsection J to the current reference in the rule to A.R.S. § 12-283(I). When SCR123(g)(3) was amended in 2008, only A.R.S. § 12-283(I), which requires a clerk in a county with a population of 2 million people to publish electronically all superior court criminal case minute entries in a searchable format, was effective. On Jan. 1, 2010, A.R.S. § 12-283(J), which applies this same requirement to a clerk in a county with a population of less than 2 million people, became effective. So, statute currently requires all superior court clerks to publish criminal case minute entries. The rule should be revised to properly cite A.R.S. § 12-283(I) & (J).

**123(g)(1)(C)(ii)(h) and Crim. Rule 2.3(b):** This proposed revision adds chapters 32 (Prostitution) and 35 (Obscenity) of Title 13 to the list of cases in which documents are not to be accessible to the general public by remote electronic access. The Rule 123 & Data Dissemination Advisory Committee intended that cases in which a minor is alleged to be the

victim of a sexual offense should not be made available to the general public by remote electronic access. The list of cases currently identified in the rule that fit this criteria are Title 13, chapters 14 (sexual offenses) and 35.1 (sexual exploitation of children). However, chapter 32, which includes taking a child for the purpose of prostitution, and child prostitution, among other related offenses, as well as chapter 35, which includes furnishing harmful items to minors in person or online, selling or distributing material harmful to minors through vending machines, and other related offenses should be added to the list of cases identified in the rule where the case documents will not be available to the general public by remote electronic access. These additional references in both Rule 123, Rules of the Supreme Court of Arizona and the corollary language in Rule 2.3, Rules of Criminal Procedure are in keeping with the Committee's intent.

**123(g)(1)(D)(iii):** This proposed revision adds the term "orders" to the list of documents the court of appeals and supreme court may post online. Currently, Rule 123 allows the court of appeals and the supreme court to make "opinions and decisions" available to the general public electronically; however, since some supreme court decisions are titled as "orders," for example an "order of reinstatement" in an attorney discipline case, the addition of the term "orders" is more inclusive and exact in identifying the documents that can be posted online.

**123(g)(3):** The proposed revision adds the presiding judge of a court, the chief judge of the court of appeals, or the chief justice of the supreme court to the list of judicial officers who may permit records to be posted online. This would allow the presiding judge of a court the chief judge of the court of appeals, or the chief justice of the supreme court to authorize the posting of audio-video recordings of judicial hearings on a court's website. The rule already provides that the judge in a particular case may authorize such a posting.

Finally, the proposed revisions correct minor typographical and editing errors in Rule 123.

III. Conclusion

For the foregoing reasons, the undersigned respectfully petitions this Court to amend Rule 123, Rules of the Supreme Court of Arizona and Rule 2.3, Rules of Criminal Procedure as set forth in Appendix A.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 201\_.

By \_\_\_\_\_  
David K. Byers, Administrative Director