

1 Honorable Norman J. Davis
2 Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 125 W. Washington St.
5 Phoenix, AZ 85003
6 (602) 506-5262

7 Honorable Rosa Mroz
8 Presiding Probate/Mental Health Court Judge
9 Superior Court of Arizona, Maricopa County
10 125 W. Washington St.
11 Phoenix, AZ 85003
12 (602) 372-0384

13 IN THE SUPREME COURT OF THE STATE OF ARIZONA

14 In the Matter of:) Supreme Court No. R-12-____
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PETITION TO AMEND RULE 123
OF ARIZONA RULES OF THE
SUPREME COURT

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding Judge and the Presiding Probate/Mental Health Court Judge of the Superior Court of Arizona in Maricopa County, respectfully petition this Court to adopt the attached proposed amendment to Rule 123 of the Arizona Rules of the Supreme Court.

Arizona has a history of favoring open access and transparency for our government activities. “[T]he core purpose of the public records law . . . is to ‘to allow the public access to official records and other government information so that the public may monitor the performance of government officials and their employees.’” *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 541, ¶ 27, 177 P.3d 275, 283 (App. 2008), quoting *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, ¶ 33, 35 P.3d 105, 112 (App.2001). Unfortunately, the restrictions placed on electronic access to probate records limits the ability of the

1 general public to monitor probate case, which is one of the core purposes of
2 public records laws.

3 The current version of Rule 123 prevents the Superior Court from
4 providing remote electronic (internet) access records for “Probate proceedings
5 brought under ARS Titles 14 and 36.” Ariz. R. Sup. Ct. 123(g)(1)(C)(i)(a). Until
6 recently, these records were available via the Maricopa County Clerk of Court’s
7 internet site to the general public. Neither the Maricopa County Clerk of Court
8 nor the Superior Court in Maricopa County received any negative response from
9 the availability of these records online. However, both have received many
10 concerns that these records are no longer accessible to the public. Given the
11 scrutiny regarding probate proceedings in recent years, it makes little sense to
12 limit the public’s access to these records. Open access to these records will
13 enable the general public to continue to have confidence in the court system,
14 including probate.

15 Presumably, the prohibition against online records in probate cases was
16 intended to prevent exploitation of the incapacitated persons and protect their
17 privacy interests. However, the majority of estates have competent conservator
18 charged with protecting the assets. In addition, any financial information
19 regarding the estate is part of the accounting, which is a confidential document
20 under Probate Rule 7. As a result, all the financial information would remain
21 protected with the proposed rule change.

22 The Court of Appeals and the Supreme Court are authorized under Rule
23 123 to provide copies of probate opinions and decisions online to the general
24 public. However, the Superior Court cannot publish online its decisions in
25 probate cases. There is little to no distinction between the information provided
26 in a probate case memorandum decision from the Court of Appeals and a minute
27 entry decision or order from the Superior Court.

1 Limiting access to these records will also result in an increase in staff. If
2 someone has to make a public records request or go to the Clerk's Office to
3 obtain copies of probate records, the Clerk's Office will require additional staff
4 to respond to the many requests for these records. In times of budget issues, it is
5 hard to justify hiring staff to provide public records in a paper format, when the
6 records could easily be placed online.

7 In addition, the current version of Rule 123 has registration requirements
8 to access these records:

9 (i) Members of the public who hold an Arizona driver license or non-
10 operating identification license may be provided remote electronic
11 access, upon registering and paying any established fee, to all of the
following categories of case records unless sealed or otherwise made
confidential by rule or law:

12 Ariz. R. Sup. Ct. 123(g)(1)(C)(i). This requirement makes no sense. Members of
13 the public can walk up to a counter in any Clerk's office and obtain these records
14 with no registration, no form, and no identification, whether they have an Arizona
15 driver license or non-operating identification license. The Superior Court often
16 receives public records requests from individuals and organizations in other states.
17 Why limit electronic access to those in the State of Arizona? When the driver
18 license expires, would the Superior Court be expected to terminate the user's
19 access? This is a complicated and unnecessary process for obtaining public
20 records.

21 For the foregoing reasons, the Presiding Judge and the Presiding
22 Probate/Mental Health Court Judge of the Superior Court of Arizona in Maricopa
23 County, respectfully request this Court adopt the proposed amendment to Rule
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1 123 of the Arizona Rules of the Supreme Court, which is attached to this petition
2 as Exhibit A.

3 Respectfully submitted this 10th day of January, 2012.
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Hon. Norman J. Davis
Presiding Judge
Superior Court of Arizona, Maricopa County
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Hon. Rosa Mroz
Presiding Probate/Mental Health Court Judge
Superior Court of Arizona, Maricopa County
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12 Original and six (6) copies delivered this
13 10th day of January, 2012 to:

14
15 Clerk of the Arizona Supreme Court
1501 W. Washington, Suite 402
16 Phoenix, AZ 85007

17 Copy mailed this
18 10th day of January, 2012 to:

19
20 David K. Byers, Director
Administrative Office of the Courts
21 1501 W. Washington St.
22 Phoenix, Arizona 85007
23
24
25
26
27
28

1 Exhibit A

2 **Rule 123. Public Access to the Judicial Records of the State of Arizona**

3 ...

4 (C) *General Public, Registered Users.*

5 (i) Members of the public ~~who hold an Arizona driver license or nonoperating~~
6 ~~identification license~~ may be provided remote electronic access, ~~upon~~
7 ~~registering and paying any established fee,~~ to all of the following categories of
8 case records unless sealed or otherwise made confidential by rule or law:

9 (a) Civil case records in any action brought to enforce, redress, or protect a
10 private or civil right but not:

- 11 • Juvenile dependency and delinquency or other matters brought under ARS
12 Title 8;
- 13 • Family law, paternity, or other matters arising out of ARS Title 25; OR
- 14 • Orders of protection, injunctions against harassment and all proceedings,
15 judgments or decrees related to the establishment, modification or
16 enforcement of such orders, including contempt; ~~or~~
17 • ~~Probate proceedings brought under ARS Titles 14 and 36.~~

18 ...