

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

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

} Supreme Court No. R-12-0003

RULES OF THE ARIZONA
SUPREME COURT, RULE 123

} COMMENT TO PETITION TO
} AMEND RULE 123 OF THE RULES
} OF THE ARIZONA SUPREME
} COURT

The Presiding Judge of the Superior Court in Maricopa County respectfully submits the following comment pursuant to Rule 28, Rules of the Arizona Supreme Court, which seeks to amend Rule 123 of the Rules of the Arizona Supreme Court. The petition in part seeks to amend Rule 123(e)(1)(H) to allow public access to employee disciplinary records and deny access to investigation files. The provision as drafted includes a “warning” as a disciplinary action that is open to the public. This is inconsistent with state law, which provides employee discipline and letters or reprimand are open to the public upon request. A.A.C. R2-5-105(F). Discipline for this purpose is defined as suspension, demotion, and dismissal. A.A.C. R2-5-801, et seq. Adding “warning” to the employee disciplinary records that are public expands Rule 123 beyond state public records law.

Whether to open employee disciplinary records, and to what extent, is a matter of state-wide importance and the language necessary for a rule to accomplish this may differ in the various courts in the state, because the various courts have different merit rules and commissions.

1 In a comment to rule petition R-12-0017, the Administrative Office of the
2 Courts requested the Chief Justice of the Arizona Supreme Court establish a
3 committee to review and make recommendations on other matters relating to
4 Rule 123. The Superior Court in Maricopa County believes the issues raised in
5 rule petition R-12-0003 also warrant further study and consideration and if a
6 committee is formed to advise on amendments to Rule 123, these proposed
7 amendments could be considered by that committee as well.

8 For the foregoing reasons, the Superior Court in Maricopa County
9 respectfully requests the Supreme Court continue this rule petition until a
10 committee can be formed to make recommendations regarding appropriate
11 amendments to Rule 123 of the Rules of the Arizona Supreme Court.

12 Respectfully submitted this 21st of May, 2012.

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Honorable Norman J. Davis
16 Presiding Judge
Superior Court of Arizona, Maricopa County

17 Original and six (6) copies delivered this
18 21st day of May, 2012 to:

19 Clerk of the Arizona Supreme Court
20 1501 W. Washington, Suite 402
21 Phoenix, AZ 85007

22 Copy mailed this 21st day of
23 May, 2012 to:

24 David K. Byers, Director
25 Administrative Office of the Courts
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28