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13 ARIZONA SUPREME COURT

14 In the Matter of:

15 AMENDED PETITION TO
16 AMEND RULES 2.3, 13.2, 16.1,
17 26.4, 31.13, 31.8 & 35.1,
18 RULES OF CRIMINAL
19 PROCEDURE, RULE 111 & 125
20 RULES OF THE SUPREME
21 COURT, AND RULES 15, 24, 34,
22 106 & 107, RULES OF
23 PROCEDURE FOR THE JUVENILE
24 COURT.

25 Supreme Court No. R-12-0004

26 **COMMENTS OF KPNX
27 BROADCASTING CO. AND
28 PHOENIX NEWSPAPERS,
INC. IN OPPOSITION TO
PROPOSED AMENDMENTS
OF RULES GOVERNING
VICTIM IDENTIFICATION**

29 KPNX Broadcasting Co., which produces “12 News,” and Phoenix
30 Newspapers, Inc., which publishes *The Arizona Republic* (collectively, “Republic
31 Media”), respectfully oppose the proposed amendments to the Arizona Rules of
32 the Supreme Court, Rules of Criminal Procedure and Rules of Procedure for the
33 Juvenile Court regarding victim identification.

34 The amendments, as revised, do not address the concerns expressed
35 in the April 2, 2012 Comment submitted by Randy Lovely and Mark Casey of
36 Republic Media. The amendments would remove from all court records – and, in
37 some instances, records of court proceedings – the names of juvenile and adult
38 victims of sex offenses. While well-intentioned, these sweeping changes merit
additional study by a Court-appointed committee that includes all stakeholders,

1 including court staff, victims' rights advocates, prosecutors, defense attorneys,
2 representatives of the news media and members of the public. As explained
3 below, the proposal is overbroad and contrary to Arizona's strong tradition of
4 open court records. *See* Ariz. R. Sup. Ct. 123(c)(1).

5 First, the proposed amendments are inconsistent with Arizona's
6 longstanding commitment that "[j]ustice in *all* cases shall be administered *openly*
7" (emphasis added). Ariz. Const. art. 2, § 11 (emphasis added). Indeed, the
8 proposal would establish a parallel docketing system for victims' names with the
9 creation of the "confidential victim information form," which would be available
10 for inspection *only* by the State, the victim, the defendant, court personnel, the
11 probation department and persons authorized by court order. This dual-docketing
12 system violates the command of "openly" administered justice in the Arizona
13 Constitution, and would set a dangerous precedent for secrecy in the judicial
14 system. *Id.*

15 Second, alternatives to a blanket closure rule should be considered
16 before taking the unprecedented step of creating a dual system of court records.
17 For example, a less-restrictive approach would be a prohibition against the *online*
18 posting of all victim-related information. *E.g., Press-Enterprise Co. v. Superior*
19 *Court*, 478 U.S. 1, 13-14 (1986) (requiring use of less-restrictive alternative
20 before sealing court proceedings). This would be a more "narrowly tailored"
21 solution to concerns about online access to victims' identities than prohibiting the
22 use of victims' names in virtually all judicial records, from charging documents to
23 appellate opinions. *Id.* A Court-appointed study committee is the perfect
24 environment to evaluate such alternative approaches that could provide greater
25 protection for crime victims while preserving the public's right to monitor court
26 proceedings.

27 Third, if enacted, the amendments will have unintended adverse
28 consequences, limiting access to basic information about the criminal justice

1 system. Indeed, most news organizations – including *The Arizona Republic* and
2 KPNX – have ethics policies that prohibit the publication of identities of sexual
3 assault victims and other victims of sex crimes. Nevertheless, journalists rely
4 upon court records to ensure precise newsgathering and reporting about crimes,
5 such as accurately identifying a suspect accused of a particular crime. Prohibiting
6 access to this information could lead to less accurate reporting – and less public
7 information – about the criminal justice system.

8 For example, the proposal’s secrecy requirement would continue to
9 apply even where victims are deceased. This protects no direct privacy interests,
10 but would complicate journalists’ ability to gather news and information about
11 matters of acute public concern, including child abuse cases that result in fatalities
12 and near-fatalities. It merits note that the proposal conflicts with statutes that
13 govern disclosure of information and records relating to fatalities and near-
14 fatalities of children in the custody of Arizona Child Protective Services (“CPS”)
15 – statutes that were recently revised by the Arizona Legislature to ensure more
16 openness and accountability for CPS. *See* A.R.S. § 8-807.

17 It is well and good to say that the media can still obtain such victim
18 information in police reports, probable cause statements and similar law
19 enforcement records. But if the courts themselves embrace a rule of categorical
20 secrecy when it comes to “victims’ names,” then it is only a matter of time before
21 police agencies do the same. Indeed, one is hard-pressed to find any reasonable
22 means under this proposed rule change to seek an exception for public access –
23 say, when the victim is a public official or information about the victim’s identity
24 or credibility is a matter of public interest.

25 At bottom, PNI and KPNX are sensitive to the rights of crime
26 victims, and shall continue to observe their own ethical guidelines about
27 identifying victims of sex crimes. However, these proposed changes are seriously
28 risky – and require more study. PNI and KPNX were not involved in the

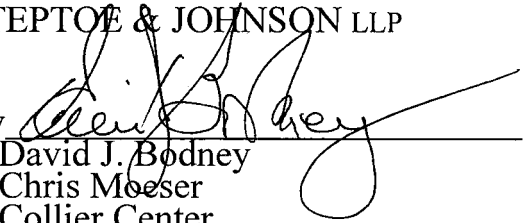
1 discussions that led to the proposals, and are unaware of any involvement by news
2 organizations in the drafting of the proposal. As a matter of well-settled law, “[a]
3 trial is a public event. What transpires in the court is public property.” *Craig v.*
4 *Harney*, 331 U.S. 367, 374 (1947). Before the Court alters this “public” nature of
5 the justice system by adopting these amendments, more study – including the
6 possibility of less-restrictive alternatives – is needed.

7 Conclusion

8 For the foregoing reasons, PNI and KPNX urge the Court to reject
9 these proposed amendments to Arizona’s court rules regarding the identification
10 of victims in judicial records.

11 RESPECTFULLY SUBMITTED this 13th day of August, 2012.

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