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Supreme Court Rules 123 and 125
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:)
)
AMENDED PETITION TO AMEND) Supreme Court No. R-13-0002
RULE 123, RULES OF THE)
SUPREME COURT OF ARIZONA)
_____)

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

Pursuant to this court’s order of January 15, 2013, Mike Baumstark, chair of the Advisory Committee on Supreme Court Rules 123 and 125, respectfully petitions this Court to adopt revised amendments to Rule 123, Rules of the Supreme Court of Arizona, as set forth in Appendix A, attached hereto. The primary purpose of the revised, proposed amendments is to allow publication of the docket in a subset of criminal cases and permit additional, limited remote electronic access to case documents to active members of the State Bar of Arizona and governmental entities.

I. Background

In January 2013, Mr. Baumstark, on behalf of the committee, filed a petition to amend Rule 123, Rules of the Supreme Court of Arizona, and asked that the deadline for comment set

forth in Rule 28(D), Rules of the Supreme Court of Arizona, be modified. This court granted the request for a modified comment period, ordering that initial comments to the petition be filed by April 1, 2013, and further authorizing the committee to submit an amended petition, if necessary, to address the comments by May 8, 2013.

The committee met in April to review all comments filed in this matter and elected to revise its original petition. This amended petition and attached Appendix A incorporate revisions by the committee in response to the comments filed.

II. Comments and Responses

Three comments were filed in response to the committee's initial petition. Comments were received from the Committee on the Impact of Domestic Violence and the Courts (CIDVC), the State Bar of Arizona, and the Arizona Association of Superior Court Clerks (AASCC). CIDVC supports the initial petition in its entirety. The State Bar and the AASCC have requested additional modifications.

The State Bar requests an amendment to allow licensed Arizona attorneys to have access to family law minute entries that would otherwise be unavailable to the public (those issued outside of open court hearings). In response, the committee has proposed a new level of remote electronic access to case records for attorneys who are active members of the State Bar, subject to details to be developed in the Arizona Code of Judicial Administration (ACJA). The committee believes that because licensed attorneys are regulated by the supreme court and are bound by the Arizona Rules of Professional Conduct, terms and conditions necessary to permit attorneys greater access to records could be established by ACJA and enforced by the supreme court.

Regarding the AASCC comment, the AASCC supports the petition but has offered an

additional proposal to allow online posting of the docket or register of actions in criminal cases in which the defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense. The AASCC believes that permitting the docket to be published online will give victims more timely access to case events and allow them to monitor the progress of their cases. The committee agrees with AASCC and, in this amended petition, the committee proposes language that will permit the docket to be published, provided the victim's name is prohibited from appearing in the docket and remote electronic access to images of all case documents is prohibited in this subset of criminal cases.

In addition to comments filed in response to the pending rule petition, the Administrative Office of the Courts was asked to consider how a government entity official, such as a county attorney or the Attorney General, who requires access to specific court documents or data could access this information statewide without entering into a memorandum of understanding (MOU) with each records custodian as now required by Rule 123. The example provided to illustrate the problem was a county attorney who filed a Chapter 36 mental health proceeding in one county and had no way of knowing that an involuntary commitment order had already been entered on the same person in another county. The committee is recommending that the authority to enter into a MOU with a governmental entity to allow broader access to court records be expanded to include the administrative director of the AOC as well as the local court records custodian. With this change, the administrative director could authorize electronic access to records filed in courts statewide through a single, web-based portal.

III. Conclusion

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

RESPECTFULLY SUBMITTED this 3rd day of May, 2013.

By _____
Mike Baumstark, Chair

APPENDIX A

Rules of the Supreme Court of Arizona¹

Rule 123. Access to the Judicial Records of the State of Arizona²

(a) – (f) [No change]

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators.* Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records ~~which~~ that are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) *Members of the State Bar of Arizona.* In addition to access provided by subsection A, attorneys who are active members of the State Bar of Arizona may be provided remote electronic access to all case records that are not sealed or confidential by law, as authorized by the Arizona Code of Judicial Administration (ACJA).

~~(B)~~ (C) *Governmental Entities and Private Organizations Serving a Public Purpose.* Any federal, state, tribal or local governmental entity or private organization serving a public purpose may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records. The director of the Administrative Office of the Courts may enter into a memorandum of understanding with a governmental entity as authorized by the ACJA.

~~(C)~~ (D) *General Public, Registered Users.*

(i) Members of the public ~~who hold an Arizona driver license or nonoperating identification license~~ may be provided remote electronic access, ~~upon registering and paying any established fee pursuant to ACJA § 1-604,~~ to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) – (d) [No change]

¹ Revisions to Rule 123 that become effective on September 1, 2013, pursuant to R-12-0004 have been incorporated into the text set forth in Appendix A.

² Additions to text are indicated by underscoring; deletions by ~~striking through~~.

(ii) [No change]

~~(D)~~ (E) *General Public, Non-Registered Users*. Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:

(i) the following data elements in ~~closed cases, including~~ juvenile delinquency, mental health, probate, and criminal cases in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense as provided in paragraph (g)(1)(C)(ii)(h) above:

- party names,
- case number,
- judicial assignment, ~~and~~
- attorney names, and
- in the above-described criminal cases only, the docket or register of actions, but not remote electronic access to other documents, so long as the names of victims do not appear in the docket or the register of actions.

(ii) except as provided in paragraph (g)(1)(C)(ii)(h) above, individual case information extracted from a case management system in all civil, criminal, and civil traffic cases identified in paragraphs (g)(1)(C)(i)(a) through (d), ~~and family law cases, including~~. Case information includes a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices. Case information does not include any information regarding the registration, filing of a petition for, or issuance of an order of protection or an injunction against harassment, if such publication would be likely to reveal to the general public the identity or location of the party protected under such order.

(iii) Case information may be provided for family law matters, with minute entries limited only to those issued during hearings conducted in open court or in chambers when one or more parties or their counsel are present. For purposes of this subsection, case information includes a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, ~~charges filed or claims made, interim rulings, and case outcomes, including~~ sentence, fines, payment history, minute entries, and notices. Case information does not include any information regarding the registration, filing of a petition for, or issuance of an order of protection or an injunction against harassment, if such publication would be likely to reveal to the general public the identity or location of the party protected under such order.

~~(iii)-(iv)~~ (iv) court of appeals and supreme court opinions and decisions in all case types, except

that any appendix in criminal cases in which a defendant is charged with any offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense as provided in paragraph (g)(1)(c)(ii)(h) above, shall not be provided by remote electronic access.

(2) [No change]

(3) Courts and clerks of court shall not display case records online except:

A. minute entries, as provided by ARS §§ 12-283(I) ~~and (J)~~³;

B. case records, as ordered by the court in a particular high profile case that creates great public or media interest to which the court can more timely and efficiently respond by displaying records of the case online;

C. audio or video of any case, as authorized by the presiding judge of the court, the chief judge of the court of appeals, or the chief justice of the supreme court; or

D. as otherwise provided in this rule.

Any remote electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, not to attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements. The court or clerk of court that establishes remote electronic access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(4) – (8) [No change]

(h)-(j) [No change]

[2013] COURT COMMENT TO PARAGRAPH (G)(1)(d)(3)

Courts and clerks of court should clearly and prominently display a cautionary note on their document access website advising users that not all documents in a case might be posted to the website and that additional or subsequent documents or orders may be available from the court or clerk of court.

³ Laws 2013, Chapter 45 combined A.R.S. §§ (I) and (J), so this technical amendment is being proposed to conform to the new statute.