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2 (FIRM STATE BAR NO. 00032000)

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5 (STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-12-0036

8 PETITION TO AMEND RULE 7.6 OF THE
ARIZONA RULES OF CRIMINAL
9 PROCEDURE

MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENT ON PETITION TO
AMEND RULE 7.6 OF THE ARIZONA
RULES OF CRIMINAL PROCEDURE

10 The Maricopa County Attorney's Office hereby comments on the Petition to Amend Rule
11 7.6 of the Arizona Rules of Criminal Procedure.

12 Respectfully submitted this 16th day of May, 2013.

13 WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

14 BY: 

15 Mark C. Faull
16 Chief Deputy
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1 The proposal in Petition 12-0036 would take away the court's discretion to exonerate bond
2 when a bonding company surrenders a defendant and would instead mandate that exoneration be
3 ordered. Bonding companies choose to engage in a high risk business. By posting an appearance
4 bond, they assume the risk that the defendant may not appear for court and that the money posted
5 might then be forfeited. The proposal in Petition 12-0036 would both allow them to post bond and
6 to minimize their risk. This proposal overlooks one very important reason for the entire bonding
7 process. Namely, bonds are allowed to ensure *timely* appearance, not *eventual* appearance. Without
8 a timely appearance by a defendant, the system suffers costly delay and inconvenience. For victims
and the State, this delay may also cause irreversible damage to a case.

9 The Petitioner's proposal would institute an expectation that the court notify the bonding
10 company of any failure to appear so that the company could start the process of looking for the
defendant. It is the bonding company's responsibility to keep track of their client, not the court's.

11 This proposed rule change would allow bonding companies to have their cake and eat it too.
12 Rather than actively tracking defendants and taking action to maximize timely appearances,
13 bonding companies could simply sit back, wait for the court to notify them of any non-appearance,
14 then, and only then, attempt to locate a defendant. In the meantime, everyone else involved in the
15 case is inconvenienced, victims are furthered traumatized, and cases suffer.

16 Bondsmen assume the risks inherent in their profession. It is that risk that leads to
17 monitoring and a greater likelihood of timely appearance. By removing this risk, the system gains
18 nothing. Rather, courts would have responsibilities that do not currently exist, and timely
appearances would be less, not more, likely.

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1 For all of these reasons, the Maricopa County Attorney's Office respectfully opposes Rule
2 Petition 12-0036.

3 Respectfully submitted this 16th of May, 2013.

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