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JANET JOHNSON
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CLERK SUPREME COURT

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE ARIZONA RULE OF)	No. R-12-0036
CRIMINAL PROCEDURE,)	
RULE 7.6)	REPLY TO THE COMMENT BY
)	THE MARICOPA COUNTY
)	ATTORNEY'S OFFICE
)	TO THE PETITION TO AMEND
)	ARIZONA RULE OF CRIMINAL
)	PROCEDURE, RULE 7.6

Although citing no cases, the Comment correctly points out that a purpose of an appearance bond is to secure the timely appearance of a defendant in court. [See e.g. State v. Bail Bonds, USA, 223 Ariz. 394, 224 P.3d 210 (App. Div. 1, 2010)]. It complains that the proposed rule change would allow the bonding companies the opportunity "to have their cake and eat it, too," Comment, page 2, line 11, by obtaining a partial exoneration upon the successful apprehension and surrender of an absconding defendant.

Really? Having our cake and eating it too? The Petition seeks to give some certainty and to encourage a surety to apprehend and surrender an absconding defendant back into custody, so that the prosecution can move

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3 forward--as opposed to the present system which requires a
4 surety to go "hat-in-hand" and "hope for the best" from
5 the court, despite a rapid and successful apprehension by
6 the surety. c.f. State v. Old West Bonding Company, 203
7 Ariz. 468, 475, 56 P.3d 42, 49 (Ct. of Appeals, Div. 1,
8 2002) which states:

9 "Here, even if Old West had
10 arrested Sanders after receiving
11 timely notification of the bench
12 warrant, exonerated of the bond
13 would still have been discretionary
14 with the court."

15 As pointed out in the Petition, there have been
16 innumerable instances where the Court, at the behest of
17 the State, has "exercised its discretion" by forfeiting
18 most or all of the amount of the bond, notwithstanding a
19 successful and rapid apprehension and surrender.

20 Right now it is the State, and not the bonding
21 community that is "having its cake and eating it too"
22 by getting both the Defendant back, and the bond
23 forfeiture money. As indicated in the Petition, the
24 bonding community is simply trying to create a more
25 "balanced approach" to the system.

26 Finally, although Petitioner agrees that one of
27 the purposes of an appearance bond is to have the
28 defendant appear on time for all his regularly scheduled
court appearances, sometimes that doesn't happen. As
indicated in State v. Vang, 763 N.W.2d 355, 358

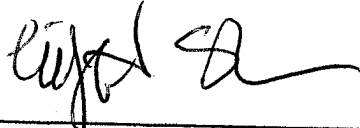
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(Minn.App. 2009), however, :

"Another (purpose of a bail bond) is to encourage sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice. [citing State v. Storkamp, 656 N.W.2d 539, 543 (S.Ct. Minn. 2003).]

As indicated previously, the purpose of the Petition is to encourage the sureties to apprehend and surrender those defendants who do abscond, and take the uncertainty out of the system when such apprehension and surrender occurs. By doing so the proposed Rule change encourages the timely administration of justice, which is what the County Attorney claims in his Comment that he wants.

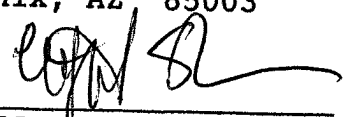
Respectfully submitted this 31st day of May, 2013.



Clifford Sherr
Attorney Petitioner

Copy of the foregoing
mailed this 31st day of May
2013, to:

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