

1 WILLIAM G. MONTGOMERY
2 MARICOPA COUNTY ATTORNEY
(FIRM STATE BAR NO. 00032000)

3 MARK FAULL
4 CHIEF DEPUTY
5 301 WEST JEFFERSON STREET, SUITE 800
6 PHOENIX, ARIZONA 85003
7 TELEPHONE: (602) 506-3800
(STATE BAR NUMBER 011474)

8 IN THE SUPREME COURT
9 STATE OF ARIZONA

10 PETITION TO ADOPT RULE 23.5,
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

SUPREME COURT No. R-14-_____

Petition to Adopt Rule 23.5, Ariz. R. Crim. P.

13 The Maricopa County Attorney, pursuant to Arizona Supreme Court Rule 28, hereby petitions
14 this Court to adopt a new rule of criminal procedure to protect trial jurors' privacy by limiting post-
15 verdict contact with a juror by a party to the case.

16 Respectfully submitted this 10th day of January, 2014.

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18 WILLIAM G. MONTGOMERY
19 MARICOPA COUNTY ATTORNEY

20 By 
21 for MARK FAULL
22 CHIEF DEPUTY
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1 INTRODUCTION

2 Trial by jury is a hallmark of the American judicial system founded in the belief that citizens
3 in our own communities are best suited to determining the facts of a case and applying the law to
4 those facts. Citizens from our community are compelled to come to court and interrupt their lives
5 for days, weeks, or months to decide various controversies. While jury duty is an important civic
6 responsibility, it can be an extremely difficult and stressful obligation. Our citizens are forced into
7 intimidating courtrooms and asked to become experts on a wide range of topics while
8 simultaneously trying to understand the rules of court which most of them have never seen in
9 practice. Our jurors are then asked to determine who is telling the truth and who is lying as they
10 decide issue of grave importance to the litigants – sometimes these decisions are literally a matter of
11 life and death. As daunting as these realities are in civil cases, they are compounded in criminal
12 matters by the fact that jurors are exposed to violence, depravity, and cruelty that is, thankfully,
13 completely foreign to their everyday lives and experiences. While jury service is compulsory, the
14 reality is that people must be willing to serve as jurors for the system to work. Therefore, it is
15 critical that the system be as accommodating and understanding of the difficulties of jury service as
16 possible. To that end, Arizona has enacted rules of procedure that help protect juror information to
17 secure a juror’s privacy. *See e.g.* Rule 18.3, Ariz. R. Crim. P.

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21 The current rules, however, are no longer able to protect the privacy of our jurors.
22 Inexpensive, fast internet service makes it possible for anyone to quickly find a juror’s home
23 address, phone numbers, and other information that should be protected under Rule 18.3. While
24 preventing access to this information is not possible, it is possible to protect jurors from parties
25 using this information to contact and interrogate them days, months and years after they have
26 rendered a verdict in a case. This type of post-verdict interrogation is understandably upsetting to
27 jurors who performed their duty as required and, for the most part, want their contact with the case
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1 and parties to end when the trial is finished. Therefore, to protect jurors from unwanted and
2 unexpected contact after the case has concluded, the Maricopa County Attorney proposes the
3 adoption of a new rule of criminal procedure that would prohibit any party from contacting jurors
4 outside the courthouse after a case is concluded absent a showing of good cause and with the
5 permission of the court.
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7 DISCUSSION

8 Proposed Rule 23.5 protects our jurors from unwanted contact after a case has concluded
9 while protecting the parties' ability to make court approved and supervised contact if there is good
10 cause to do so. The harms the rule seeks to address are not speculative. In numerous cases in
11 Maricopa County, prosecutors have been contacted by jurors complaining that they are being
12 contacted and questioned by defense attorneys or defense investigators about the trial. Some of
13 these contacts have occurred a few days after the trial, but others, particularly in death penalty
14 cases, have occurred years after the trial ended. For jurors who have sat on the most difficult type
15 of case in our legal system and have rendered a verdict that a killer should be put to death, these
16 types of interrogations, years later, are clearly upsetting. Not only does this contact make the juror
17 relive what is usually a very traumatic time for them, it also makes them fearful of who else knows
18 they served on a jury that convicted a criminal and who else has may come looking for them. In
19 sum, harassing jurors following their service to our community and our justice system is unseemly
20 and will certainly reduce the number of people who are willing to serve on tough cases.
21 Nevertheless, there may be occasions where there are good reasons for a party to contact a juror
22 following a verdict and the proposed rule will allow for contact in those situations upon a showing
23 of good cause and with court oversight. The "good cause" standard is consistent with the provisions
24 of Rule 18.3 and will adequately protect the rights of all parties and our jurors. Similar rules that
25 prohibit contact with jurors post-verdict absent specific court approval are already enacted in other
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1 jurisdictions. *See e.g.* U.S. DIST. CT. R. D. ARIZ. LRCIV 39.2; WASH. R. CHELAN SUPER. CT. LR 47
2 (“Counsel or the parties shall not contact or interview jurors or cause jurors to be contacted or
3 interviewed after trial without first having been granted leave to do so by the Court”); WASH R.
4 DOUGLAS SUPER. CT. LR 47; KY. R. FAYETTE CIR. CRIM. CIV. CT. RULE 32 (“No party, attorney, or
5 representative of any party or attorney, shall communicate with a member of a jury without leave of
6 Court. Court approval for the interviews of or communication with the jurors after trial will be
7 granted only upon proper showing of good cause and subject to such conditions as the Court shall
8 prescribe.”); U.S. DIST. CT. R. N.D. OHIO, CARR—CRIM. (“7. Post-Trial Contact With Jurors. To
9 the extent jurors are willing to speak with counsel, counsel may speak with jurors in the courthouse.
10 Thereafter counsel shall not initiate, either directly or indirectly, any contact with former jurors
11 without prior court approval.”); U.S. DIST. CT. R. W.D. WASH. LCR 47(d) (“Contacting Jurors.
12 Counsel shall not contact or interview jurors or cause jurors to be contacted or interviewed after
13 trial without first having been granted leave to do so by the court.”); JOINT U.S. DIST. CT. R. D. KY.
14 LCRR 24.1(a) (“Contact With Jurors. Unless permitted by the Court, no person, party or attorney,
15 nor any representative of a party or attorney, may contact, interview, or communicate with any juror
16 before, during or after trial.”); U.S. DIST. CT. R. N.D. TEX. LCRR 24.1 (“A party, attorney, or
17 representative of a party or attorney, shall not, before or after trial, contact any juror, prospective
18 juror, or the relatives, friends, or associates of a juror or prospective juror, unless explicitly
19 permitted to do so by the presiding judge.”); Mo. R. 22 Cir. Rule 53.3.

23 **CONCLUSION**

24 Our system has taken many steps toward protecting our jurors’ privacy through the
25 protection of their information under Rule 18.3, the limitation on voir dire under Rule 18.4(e), and
26 the practice, in some courts, of only using juror numbers during the voir dire process. While these
27 are all necessary measures, they are no longer sufficient safeguards. This Court should adopt Rule
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1 23.5 to protect our jurors after they have performed their service so they will be free from having to
2 answer questions about their service unless a court finds it is appropriate.

3 Respectfully submitted this 10th of January, 2014.

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5 WILLIAM G. MONTGOMERY
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8 MARK FAULL
9 CHIEF DEPUTY
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DRAFT OF PROPOSED NEW ARIZONA RULE OF CRIMINAL PROCEDURE

3 Rule 23.5 Contact with Jurors After Discharge

4 Immediately after a jury has been discharged, a party to the action may initiate contact with any of
5 the jurors within the courthouse unless the court directs otherwise. However, after the jury has been
6 discharged and the jurors have departed from the courthouse, a party to the case, and any person
7 acting on behalf of any party to the case, may not initiate contact with a juror by any means unless
8 specifically permitted by the court upon a showing of good cause. Good cause must be established
9 by substantial evidence which justifies intrusion into a juror's privacy. The court may impose any
10 restrictions on the nature and form of any contact by a party to protect the juror's privacy and to
11 reduce the possibility of harassment. Upon discharging the jury, the court shall remind the parties
12 of their obligations under this rule.