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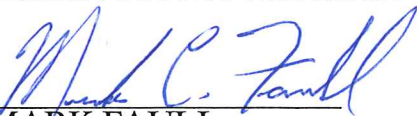
8 ARIZONA SUPREME COURT

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10 IN RE:
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12 **RULE 39, RULES OF CRIMINAL**
13 **PROCEDURE**

R-14-0022____
MARICOPA COUNTY ATTORNEY'S
COMMENT TO ORDER TO AMEND RULE
39, ARIZ. R. CRIM. P.

14 The Maricopa County Attorney hereby submits this comment regarding Rule
15 39(b) of the Arizona Rules of Criminal Procedure effective July 24, 2014. Because
16 the language of the Rule that permits disclosure of victim information upon showing
17 of "good cause" directly conflicts with the victim's right to protect their information
18 pursuant to A.R.S. § 13-4434, the Maricopa County Attorney asks this court to amend
19 the rule to delete the "good cause" provisions in Rule 39(b)(10).
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22 Respectfully submitted this 25th day of September, 2014.

23
24 WILLIAM G. MONTGOMERY
25 MARICOPA COUNTY ATTORNEY
26 By 
27 MARK FAULL
28 CHIEF DEPUTY

1 **I. INTRODUCTION**

2 Effective July 23, 2014, the Arizona Legislature modified A.R.S. § 13-4434 to
3 give a victim the right to require the redaction of specific victim information from all
4 records relating to a criminal case including discovery given to the defendant. The
5 legislature further clarified that the specific victim information to be redacted
6 includes the victim’s date of birth, social security number, driver or identification
7 numbers, address, telephone numbers, e-mail address and place of employment.
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9 A.R.S. § 13-4434(D)(1),(2).

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11 In response to this legislative change, this Court modified Rule 39(b)(10),
12 Arizona Rules of Criminal Procedure. Consistent with the statute, the modified rule
13 grants a victim the right to require redaction of specific items such as the victim’s
14 date of birth, social security number, license number and e-mail addresses. However,
15 the rule also includes a “good cause” exception which requires disclosure of this
16 locating and identifying information merely upon a showing of good cause. Because
17 this “good cause exception” violates victims’ rights as defined in A.R.S. § 13-4434,
18 the Maricopa County Attorney asks that the rule be further modified to remove this
19 unconstitutional language.¹
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24 ¹ Rule 39(b)(11) was not modified by this Court’s June 11, 2014 order regarding R-14-0022.
25 Nevertheless, Rule 39(b)(11) contains language that is unconstitutional and is no longer included in
26 the victim’s rights legislation. See A.R.S. § 13-4433, amended by Laws 2012, Ch. 268 § 3 effective
27 August 2, 2012 (removing A.R.S. § 13-4433(G) which stated, “For the purposes of this section, a
28 peace officer shall not be considered a victim if the act that would have made the officer a victim
occurs while the peace officer is acting in the scope of the officer’s official duties.”); *State v. Roscoe*, 185 Ariz. 68, 74, 912 P.2d 1297, 1303 (1996) (holding that A.R.S. § 13-4433(F) (later renumbered “G”) and Rule 39(b)(11) are unconstitutional). Therefore, the last sentence of Rule 39(b)(11) is an incorrect statement of the law and it should be deleted.

1 **II. DISCUSSION**

2 The Arizona Constitution gives the legislature the authority to enact both
3 “substantive and procedural laws to define, implement, preserve and protect the rights
4 guaranteed to victims . . .” ARIZ. CONST. art. II, § 2.1(D). Additionally, crime
5 victims have the constitutional right “to have all rules governing criminal procedure
6 and the admissibility of evidence in all criminal proceedings protect victims’ rights
7 and to have these rules subject to amendment or repeal by the legislature to ensure the
8 protection of these rights.” *Id.* §2.1(A)(11).

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12 The Arizona Legislature modified A.R.S. § 13-4434 to provide a crime victim
13 with an unequivocal and absolute statutory right to withhold his or her identifying
14 and locating information. However, amended Rule 39(b)(10) provides an exception
15 to this unequivocal and absolute statutory right; namely, that a defendant need show
16 only “good cause” to be entitled to disclosure of a victim’s identifying and locating
17 information. The statute grants the victim a substantive right to require the
18 withholding of his or her information, including the victim’s date of birth, and the
19 unambiguous language of the statute governs over the conflicting language provided
20 in the Rule.
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24 “Substantive law is that part of the law which creates, defines, and regulates
25 rights.” *Patterson v. Mahoney*, 219 Ariz. 453, 456, ¶ 12, 199 P.3d 708, 711 (App.
26 2008) (citing *State v. Birmingham*, 96 Ariz. 109, 110, 392 P.2d 775, 776 (1964))
27 (internal quotations omitted). This is opposed to procedural constraints, prescribed
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1 by the Arizona Supreme Court, that regulate only the manner, method, or procedure
2 involved in enforcing substantive law.² *Id.*

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4 The statute does not limit the victim's right of non-disclosure. This
5 unequivocal, substantive right may be limited *only* when the victim's right comes into
6 direct conflict with a defendant's constitutional right to due process or a fair trial. *See*
7 *Patterson*, 219 Ariz. at 456, ¶ 11, 199 P.3d at 711; *State ex rel. Romley v. Dairman*
8 (*"Holguin"*), 208 Ariz. 484, 490, 95 P.3d 548, 554 (App. 2004); *State ex rel. Romley*
9 *v. Superior Court ("Roper")*, 172 Ariz. 232, 237, 836 P.2d 445, 450 (App. 1992). In
10 contrast to this high standard, Rule 39(b)(10) offers an exception to non-disclosure
11 upon a mere showing of "good cause." "Good cause," however, is an extremely
12 vague standard that lacks any objective criteria by which to measure a court's
13 discretion. *See Black's Law Dictionary* (9th ed. 2009) (good cause defined as any
14 "legally sufficient reason"). Under Rule 39(b)(10) as it presently stands, a defendant
15 may be able to show "good cause" by merely showing that a victim's identifying
16 information would be useful for trial preparation without having to meet the high
17 burden of proving that withholding the information would result in a deprivation of
18 the defendant's constitutional rights. "Good cause" does not sufficiently limit a
19 court's discretion to override a victim's right to withhold his or her identifying and
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26 ² The changes to A.R.S. § 13-4434 are clearly substantive rights given to crime victims to protect
27 their identifying and locating information. As discussed above, however, the legislature has an
28 equal constitutional authority to enact procedural laws to define, implement, preserve and protect
victims' rights as well as the authority to modify any rules of criminal procedure to protect victims.
The "good cause" provision of Rule 39(b)(10) is unconstitutional regardless of whether the
protections afforded under A.R.S. § 13-4434 are substantive or procedural.

1 locating information to only those rare situations where the victim's right is in direct
2 conflict with the defendant's constitutional rights. Thus, the exception provided in
3 Rule 39(b)(10) is plainly in conflict with the victim's unequivocal, substantive right
4 afforded by A.R.S. § 13-4434(B) and it should be deleted.
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6 **III. CONCLUSION**

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8 Because the rule as currently written conflicts with the victim's substantive
9 rights as defined in A.R.S. § 13-4434, the Maricopa County Attorney requests that
10 the rule be modified as described below to bring the rule into conformance with the
11 law.
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13 Rule 39. Victims' Rights

14 a. [no change in text]
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16 b. Victims' Rights. These rules shall be construed to preserve and protect
17 a victim's rights to justice and due process. Notwithstanding the
18 provisions of any other rule in these Rules of Criminal Procedure, a
19 victim shall have and be entitled to assert each of the following rights:

20 1.—9. [no change in text]

21 10. The right to require the prosecutor to withhold, during discovery and
22 other proceedings, the victim's date of birth, social security number,
23 official state- or government-issued driver license or identification
24 number, home address, and telephone number of the victim, e-mail
25 address, the address and telephone number of the victim's place of
26 employment, and the name of the victim's employer; ~~provided, however,~~
27 ~~that for good cause shown by the defendant, the court may order that~~
28 ~~such information be disclosed to defense counsel and may impose such~~
~~further restrictions as are appropriate, including a provision that the~~
~~information shall not be disclosed by counsel to any person other than~~
~~counsel's staff and designated investigator and shall not be conveyed to~~
~~the defendant.~~

1 11. The right to refuse an interview, deposition, or other discovery
2 request by the defendant, the defendant's attorney, or other person acting
3 on behalf of the defendant. After charges are filed, defense initiated
4 requests to interview the victim shall be communicated to the victim
5 through the prosecutor. The victim's response to such requests shall also
6 be communicated through the prosecutor. If there is any comment or
7 evidence at trial regarding the victim's refusal to be interviewed, the
8 court shall instruct the jury that the victim has the right to refuse an
9 interview under the Arizona Constitution. ~~For purposes of a pretrial
10 interview, a peace officer shall not be considered a victim if the act that
11 would have made him or her a victim occurs while the peace officer is
12 acting in the scope of his or her official duties.~~

13 12. —16. [no change in text]

14 Respectfully submitted this 25th of September, 2014.

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