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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND)	
RULE 123 OF THE RULES OF)	Supreme Court No. R-15-_____
THE SUPREME COURT)	
)	PETITION
)	(Modified Comment Period
_____)	Requested)

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 123 of the Supreme Court Rules as proposed below. Petitioner has attached an Appendix A showing all proposed amendments.

1. Amendment to Rule 123(b) and (e)(1) clarifying access to personnel records.

The current language of subsection (e)(1) lacks clarity regarding the public's right to access the many and varied types records maintained by court human resource departments beyond the official personnel file. The proposed amendment would clarify that the Rule's limitations on disclosure relate to all types of records

maintained for human resource purposes. The proposal also relocates the current policy appearing in subsection (e)(15), relating to employee discipline records, so all personnel records policies can be found in the same subsection of the Rule.

Proposed amendments:

Supreme Court Rule 123

(b) Definitions.

(17) Records Maintained for Human Resources Purposes.

“Records maintained for human resources purposes” means records relating to employees and volunteers such as the official personnel file, and records of employee benefits, investigations, EEOC complaints, reclassifications, supervisors’ working files, employee relations guidance, counseling notes, and similar matters.

(e) Access to Administrative Records

(1) *Employee Records.* Records maintained for human resources purposes concerning individuals who are employees or who perform volunteer services are closed except for the following information:

- (A) Full name of individual;
- (B) Date of employment;
- (C) Current and previous job titles and descriptions, and effective dates of employment;
- (D) Name, location and phone number of court and/or office to which the individual has been assigned;
- (E) Current and previous salaries and dates of each change;
- (F) Name of current or last known supervisor;
- (G) Information authorized to be released by the individual to the public unless prohibited by law.
- (H) All records concerning employee misconduct or

discipline are closed except on a showing of good cause for release of a record as determined in the process provided in paragraph (f)(5) of this rule. These records may be accessed by court personnel for official purposes and by an employee who is the subject of the discipline, to the extent such access is permitted or required by applicable personnel policies.

2. Amendment to Rule 123(e)(2) limiting access to job applicant records

Unlike the corresponding policy governing executive branch agencies, Supreme Court Rule 123 does not explicitly protect the work product of human resource staff and interview panel members such as notes made during reference checks and candidate interviews, candidate rankings, education verification, and test results. The proposed amendment would clarify this and thereby facilitate recruitment of the best talent and encourage candor from employers and other references contacted about prospective employees. The proposed amendment also honors applicants' expectation that review of their applications will be limited to the organization to which they are applying. The proposal follows the disclosure policy in the Arizona Administrative Code § R2-5A-105, which permits disclosure of names and resumés of the final candidates for high-level positions, as determined by the Director of the Department of Administration. The proposal differs from state law in that it would pre-define what constitutes a high-level administrative position, to promote statewide uniformity and consistency. The proposal also follows the Supreme Court's opinion in *Arizona Board of Regents v.*

Phoenix Newspapers, 167 Ariz. 254, 806 P.2d 348 (1991), where the Court held the news media was entitled to the names and resumés of the 17 candidates interviewed for the position of President of Arizona State University. The Court also decided the newspaper was not entitled to names or resumés of the other 239 prospects considered by the Board of Regent’s search committee.

Proposed amendment:

(b) Definitions

(10) High-Level Administrative Positions. In the superior, justice, and municipal courts, “high-level administrative positions” means court administrators, chief probation officers, and juvenile court directors. In the appellate courts, it means the clerks of the court and the administrative director.

(e) Access to Administrative Records.

(2) Applicant Records. Unless otherwise provided by law, ~~records concerning applicants for employment or volunteer services are the names and resumes of final candidates for high-level administrative positions shall be open to the public, after the names, home addresses, telephone numbers, and other contact information social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed. All other records concerning applicants for employment or volunteer services are closed.~~

3. Amendment to Rule 123(e)(3) reflecting recent changes to ACJA § 1-402: Procurement Code for the Judicial Branch

In Supreme Court Administrative Order No 2013-87, the Court adopted substantial revisions to the procurement rules. Those revisions require

corresponding amendments to Rule 123(e)(3)(B)&(C).

Proposed amendment:

(e) Access to Administrative Records.

(3) *Procurement Records.* Procurement and bid records are open to the public except as provided herein:

(A) Sealed Bids. Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) Invitation for Bid. Bid records submitted under ~~Rule 18 of the Judicial Branch Procurement Code~~ section (H) of ACJA § 1-402: Procurement Code for the Judicial Branch or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) Competitive Sealed Proposals and Requests for Qualifications. Records containing competitive sealed proposals and requests for qualification submissions under ~~Rules 26 or 35 of the Judicial Branch Procurement Code~~ section (I) or (J) of ACJA § 1-402: Procurement Code for the Judicial Branch or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

4. Amendment to Rule 123(g)(5) establishing deadlines for removing online access to case documents and information

In December, 2013, the Arizona Judicial Council approved the Final Report of the Supreme Court Advisory Committee to Develop Policies for Retention,

Destruction, and Access to Electronic Court Records. That report recommended, inter alia, that the length of time electronic case documents and data are made available online and at a court facility should be consistent from court to court. The report also recommended that records managers remove electronic records from online access consistent with the records' retention schedules. The current rule gives each record custodian discretion to determine how long to make case records available online. The proposed amendment to Rule 123(g)(5) will implement the Advisory Committee's recommendation and provide statewide consistency.

Proposed amendment:

(g) Remote Electronic Access to Case Records

(1) through (4) [no changes]

(5) Removing case records from online access.

(A) Courts or clerks of court ~~may~~ shall remove case management system data and case records from online display as provided in ~~onee~~ the applicable records retention schedule ~~period is met~~.

(B) For cases scheduled to be retained more than 25 years, courts or clerks of court ~~may~~ shall remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.

II. Request for Modified Comment Period. Although petitioner has already received comments from some stakeholders relating to some of the proposed changes to the rule, additional public comments may address items that this petition overlooks or otherwise improve the proposed amendments. Petitioner therefore requests that the Court allow a modified comment period to accommodate filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

- March 1, 2015: First round of comments due
- April 1, 2015: Amended petition due
- May 20, 2015: Second round of comments due
- June 30, 2015: Reply due

Petitioner has included an Appendix A showing all proposed changes to the Rule. Wherefore, petitioner respectfully requests that the Court amend Supreme Court Rule 123 as set forth above.

RESPECTFULLY SUBMITTED this 12th day of January, 2015.

By /s/ _____
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Appendix A

(language to be removed is shown in ~~strikethrough~~; new language is underlined)

Rule 123, Rules of the Supreme Court

(a) [no changes]

(b) **Definitions.**

(1) through (9) [no changes]

(10) High-Level Administrative Positions. In the superior, justice, and municipal courts, “high-level administrative positions” means court administrators, chief probation officers, and juvenile court directors. In the appellate courts, it means the clerks of the court and the administrative director.

(10) through (16) [renumber]

(18) Records Maintained for Human Resources Purposes. “Records maintained for human resources purposes” means records relating to employees and volunteers such as the official personnel file, and records of employee benefits, investigations, EEOC complaints, reclassifications, supervisors’ working files, employee relations guidance, counseling notes, and similar matters.

(17) & (18) [renumber]

(c) and (d) [no changes]

(e) **Access to Administrative Records**

(1) *Employee Records.* Records maintained for human resources purposes concerning individuals who are employees or who perform volunteer services are closed except for the following information:

- (A) Full name of individual;
- (B) Date of employment;
- (C) Current and previous job titles and descriptions, and effective dates of employment;
- (D) Name, location and phone number of court and/or office to which the individual has been assigned;
- (E) Current and previous salaries and dates of each change;
- (F) Name of current or last known supervisor;
- (G) Information authorized to be released by the individual to the public unless prohibited by law.

(H) All records concerning employee misconduct or discipline are closed except on a showing of good cause for release of a record as determined in the process

provided in paragraph (f)(5) of this rule. These records may be accessed by court personnel for official purposes and by an employee who is the subject of the discipline, to the extent such access is permitted or required by applicable personnel policies.

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(C) Competitive Sealed Proposals and Requests for Qualifications. Records containing competitive sealed proposals and requests for qualification submissions under ~~Rules 26 or 35 of the Judicial Branch Procurement Code~~ section (I) or (J) of ACJA § 1-402: Procurement Code for the Judicial Branch or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(4) through (14) [no changes]

~~(15) *Employee Discipline Records.* All records concerning employee misconduct or discipline are closed except on a showing of good cause for release of a record as determined in the process provided in paragraph (f)(5) of this rule. These records may be accessed by court personnel for official purposes and by an employee who is the subject of the discipline, to the extent such access is permitted or required by applicable personnel policies.~~

(f) [no changes]

(g) Remote Electronic Access to Case Records

(1) through (4) [no changes]

(5) Removing case records from online access.

(A) Courts or clerks of court ~~may~~ shall remove case management system data and case records from online display as provided in ~~once~~ the applicable records retention schedule ~~period is met~~.

(B) For cases scheduled to be retained more than 25 years, courts or clerks of court ~~may~~ shall remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.

(6) through (8) [no changes]

(h) through **(j)** [no changes]