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10 **IN THE SUPREME COURT**  
11 **STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-15-0026

13 **PETITION TO AMEND RULE 41**  
14 **OF THE ARIZONA RULES OF**  
15 **CRIMINAL PROCEDURE**

**COMMENT OF**  
**THE STATE BAR OF ARIZONA**

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18 **I. BACKGROUND OF PETITION**

19 The Administrative Director of the Administrative Office of the Courts  
20 (AOC) has filed a petition to amend Rule 41, Forms (Appendix), Forms 4(a) and  
21 4(b) of the Rules of Criminal Procedure. The amendments would respond to recent  
22 changes in A.R.S. §§ 22-601 and -602 dealing with specialty courts in Arizona.  
23 Because the proposed amendments would enhance the information available to a  
24 court in determining release conditions, the State Bar of Arizona supports the  
25 petition with one caveat: that is, the inclusion of a question on Form 4(a) inquiring  
whether the Department of Child Safety is involved in a matter related to the  
defendant. Although that additional question was suggested by the Commission on

1 Victims in the Court, because such information is oftentimes confidential and  
2 prohibited from disclosure, the State Bar does not believe that question should be  
3 included in the Form 4(a).  
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5 **II. DISCUSSION/ANALYSIS**

6 The Form 4, commonly known as a release questionnaire, can assist all parties  
7 with important information for whether or not a suspect should be released back into  
8 the community or released with conditions. These release questionnaires are for  
9 criminal matters only and are subject to Rule 15 discovery requirements.  
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11 The Arizona Department of Child Safety (DCS) policy manual indicates that  
12 DCS information is confidential and shall not be released, except as provided for by  
13 law (A.R.S. § 8-807). DCS Policy and Procedure Manual, Chapter 7: Section 2,  
14 *Safeguarding Case Records*. Nowhere in that section or policy does it state that  
15 these records can be released to a criminal court, on criminal case, to a prosecutor or  
16 to a defense attorney. DCS investigations are mainly civil in nature; although there  
17 can be some overlap with a criminal investigation. DCS has its own policies and  
18 procedures with respect to investigations and disclosure of information. According  
19 to the DCS Policy and Procedure Manual (Chapter 7: Section 3), DCS shall redact  
20 all DCS information in accordance with DCS procedures. Confidential DCS  
21 information may only be released in specific circumstances. There is no exception  
22 for release in a criminal matter. Yet the Form 4 is a public record in a criminal case.  
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1 If confidential DCS information is released, it is considered a class 2 misdemeanor  
2 under ARS § 8-806. DCS Policy and Procedure Manual, Chapter 7: Section 3.

3         The confidentiality requirement of DCS records is included in adoption,  
4 delinquency and dependency cases. A.R.S. § 8-120 is clear that all records shall be  
5 withheld from public inspection (with limited exceptions), and even when hearings  
6 are open to the public, they can be closed if it is in the best interests of the child.  
7 However, even in an open court setting the court is still required to admonish parties  
8 that disclosure is prohibited. See A.R.S. § 8-121, §8-208, and §8-525.  
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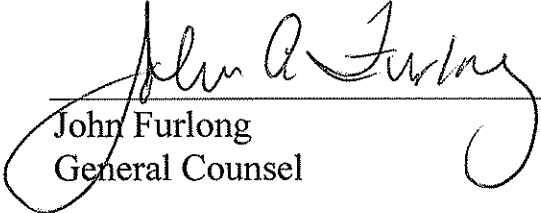
10         DCS and Arizona law is well established protecting the confidentiality of  
11 children's cases and providing for a class 2 misdemeanor - and possibly contempt of  
12 court - for disclosing confidential information. If the proposed revision to Form 4(a)  
13 inquiring about DCS involvement was approved, there could be conflicting laws  
14 between the criminal rules and children's code under section 8. While the suggestion  
15 by the Commission on Victims in the Court is well-intended, it is the position of the  
16 State Bar of Arizona that the DCS inquiry should not be added to the Form 4(a)  
17 revisions.  
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### 19                 **III. CONCLUSION**


20         The State Bar of Arizona respectfully requests that the Arizona Supreme  
21 Court adopt the amendments to Form 4(a) and 4(b) recommended by the AOC with  
22 the exception of an inquiry as to whether the Department of Child Safety is involved  
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1 in any matter related to the defendant. Interests of confidentiality and rules  
2 prohibiting disclosure weigh against adding such an inquiry.

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4 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2015.

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6   
7 John Furlong  
General Counsel

8 Electronic copy filed with the  
9 Clerk of the Arizona Supreme Court  
10 this 27<sup>th</sup> day of April, 2015.

11 by:   
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