

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

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

10 IN THE SUPREME COURT OF THE STATE OF ARIZONA

11 IN THE MATTER OF:

R-15-0011

12 PETITION TO AMEND RULE 15.5
13 AND 39 OF THE ARIZONA RULES
14 OF CRIMINAL PROCEDURE

MARICOPA COUNTY ATTORNEY'S
15 RESPONSE TO PETITION TO AMEND RULE
16 15.5 AND 39, ARIZ. R. CRIM. P.

17 The Maricopa County Attorney hereby responds to the Petition to modify Rules
18 15.5 and Rule 39 of the Arizona Rules of Criminal Procedure and asks this Court to
19 deny the Petition because the requested changes are unnecessary, excessively time
20 consuming, and will significantly reduce the efficiency of the criminal justice system.

21 **THE PROPOSED RULE CHANGES ARE UNNECESSARY AND**
22 **INEFFICIENT.**

23 Petitioner asserts three justifications for the Petition, which, if adopted, would
24 impose a detailed and extensive set of rules on prosecutors when they fulfill their
25 constitutionally and court mandated obligations to redact discovery. First, Petitioner
26 complains that redactions are sometimes not readily identifiable because the redaction
27 is performed using the same color as the background. Petitioner complains that when
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1 this occurs, the recipient of the discovery does not know whether the information was
2 never included or if it was redacted. Setting aside the reality that a simple
3 conversation with the prosecutor as contemplated by Rule 15.7(b) would solve this
4 issue in a matter of minutes, prosecution offices around the State already recognize
5 the need to make redactions obvious. The Maricopa County Attorney's Office, for
6 example, has recently transitioned from the old correction tape method of redaction to
7 a software driven solution to increase efficiency and reduce the delay in getting
8 discovery to the defense. As with any transition, there have been some
9 implementation stumbles, but those have been largely solved at this point and this
10 office now has a policy in place that requires redactions to be obvious. Thus, the first
11 justification Petitioner gives for the new rules is already being addressed without the
12 need for a statewide rule of procedure. In those instances where the defense has
13 questions about whether something has been redacted, a simple conversation with the
14 prosecutor should readily solve the problem without the need for rule changes or
15 litigation.

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17 Likewise, the second justification Petitioner advances does not justify the
18 imposition of a detailed statewide rule. Petitioner complains that information is
19 sometimes redacted that should have been disclosed. To remedy this concern,
20 Petitioner asks this court to impose the detailed civil rules which would require the
21 creation of a "redaction log" to list every redaction and the legal basis for withholding
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1 that information. Given the amount of disclosure the Maricopa County Attorney's
2 Office provides in a given day, week, month, or year, such a requirement would be
3 excessively time consuming and would hinder our ability to timely provide discovery
4 to the defense. The result would be in unnecessary delays in the criminal justice
5 system. All of this extra time and delay would provide very little if any benefit to the
6 defense. Unlike civil cases that might involve redactions and withheld material based
7 on privileges or other matters that need to be litigated, the basis for a prosecutor's
8 redaction of discovery is straightforward-- to protect the rights of victims as required
9 by A.R.S. § 13-4434 and Rule 39 of the Arizona Rules of Criminal Procedure.
10 Inadvertent or unnecessary redaction of material information should be readily
11 obvious and easily brought to the prosecutor's or court's attention. To adopt this
12 provision of the Petition would be to assume that prosecutors will violate their
13 discovery obligations on a wholesale basis, which is simply not true.
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19 Example 2 included on Page 4 of the Petition demonstrates the
20 senselessness of requiring a complete list of all redactions and the reasons for them.
21 In that example, assuming the person identified was listed as "Victim 01" instead of
22 "Arrested Person -02" it would be perfectly obvious to anyone looking at that
23 document that the social security number (SSN) of that person had been redacted and
24 anyone practicing criminal law would know that information must be withheld
25 pursuant to A.R.S. § 13-4434 and Rule 39. Imposing a statewide rule of procedure
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1 that would require the State to create a list of each redacted item – such as, victim’s
2 date of birth, victim’s social security number, victim’s home phone number, victim’s
3 home address, victim’s employer, victim’s employer’s address, victim’s work phone
4 number, victim’s cell phone number, victim’s driver’s license number, victim’s email
5 address, etc. – is a classic example of form over substance because the “redaction
6 log” would provide no useful information to defense counsel. Furthermore, as noted
7 above, if there was a legitimate question about why something was redacted in a
8 given case, all defense counsel needs to do is ask the prosecutor why that information
9 was redacted. Petitioner’s third justification for this rule is similarly unconvincing.
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11 Petitioner asserts that in some reports the redaction of protected information makes a
12 police report narrative difficult to understand. To solve this problem, Petitioner
13 requests that Rule 39(b) be modified to require the prosecutor to identify the victim’s
14 name. [Petition at 12]. Because a victim’s name is not protected information and is
15 discoverable, Petitioner is apparently requesting a rule that would require the
16 prosecutor to go through a police report and write “Victim Smith’s address” over the
17 redacted information or to create some type of legend where “A=Victim Smith’s
18 Address” and then “A” is placed over the redacted information or something along
19 those lines. As drafted, it is unclear that the requested rule changes would actually
20 require this, but to the extent that is the intention of the Petition, it is another
21 unnecessary burden for the prosecution that will impair the State’s ability to make
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1 timely disclosures. The vast majority of criminal cases do not involve the type of
2 factual scenario Petitioner describes. Despite this fact, the requested rule change
3 would apply to every case where there are multiple victims regardless of the overall
4 clarity of the report. Thus, prosecutors will be required to complete this additional
5 duty even when it is patently unnecessary to do so. As mentioned above, there is a
6 far more efficient system already in place to deal with the types of situations where
7 redactions make a report difficult to follow. The defense attorney simply needs to ask
8 the prosecutor for some assistance in clarifying what was redacted so the report will
9 make sense. It is far more efficient for two lawyers to work together in good faith as
10 officers of the court to solve this problem than to create a statewide rule that is
11 relevant to a very small number of cases, if any, but would apply to all. Such a
12 dramatic and unnecessary change would impact every victim case in Arizona and
13 would still not remove the need for lawyers to work together to find commonsense
14 solutions to these issues when the need arises in a given case.
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20 Conclusion

21 Petitioner's request to graft the civil rules for redactions into the rules of
22 criminal procedure is an overly burdensome solution for a problem that arises in a
23 small percentage of criminal cases. The civil and criminal systems are vastly
24 different; the rules of disclosure and the timelines for that disclosure are completely
25 different. To attempt to shove detailed civil rules into the criminal rules should only
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1 be done when the need is overtly clear. There is no such need in this case. All of the
2 concerns Petitioner has raised have either already been recognized and addressed or
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4 can easily be addressed within the spirit of the current rules by professional counsel
5 acting in good faith. With this rule, Petitioner attempts to kill a fly with a
6 sledgehammer and the damage this solution will cause to the efficiency of our
7 criminal justice system is readily apparent. For all of these reasons, the Maricopa
8 County Attorney asks this court to deny the petition in its entirety.
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11 Respectfully submitted this 20th day of May, 2015.

12 WILLIAM G. MONTGOMERY
13 MARICOPA COUNTY ATTORNEY

14 By 
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16 MARK FAULL
17 CHIEF DEPUTY
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