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(FIRM STATE BAR NO. 0003200)

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(STATE BAR NUMBER 003813)

8  
9 IN THE SUPREME COURT OF THE STATE OF ARIZONA

10  
11 IN THE MATTER OF:

12 AMENDED PETITION TO AMEND THE  
13 FORMS APPENDED TO THE RULES OF  
14 CRIMINAL PROCEDURE.

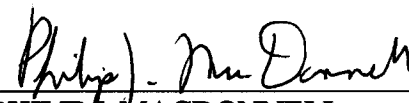
ARIZONA SUPREME COURT  
No. R-03-0029

MARICOPA COUNTY ATTORNEY'S RESPONSE TO  
AMENDED PETITION TO AMEND THE FORMS  
APPENDED TO THE RULES OF CRIMINAL  
PROCEDURE

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17 The Maricopa County Attorney hereby responds to the Amended Petition to Amend the Forms  
18 Appended to the Rules of Criminal Procedure.

19 Respectfully submitted this 18<sup>th</sup> day of May, 2007.

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21 ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

22  
23 BY:   
24 PHILIP J. MACDONNELL  
25 CHIEF DEPUTY  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **All Forms**

3 The Maricopa County Attorney’s Office agrees with the Supreme Court Criminal Forms Review  
4 Committee’s determination that revised forms should be made available to practitioners by appending  
5 them to the Arizona Rules of Criminal Procedure. As stated in the section describing revised Form 2  
6 (Warrant for Arrest), a newly revised form should serve as “a template which is exceedingly legible and  
7 readily permits adaptation by all jurisdictions.” In no case, however, should deviation from an  
8 appended form in the rules be a basis for litigation or invalidate the purpose of any form that otherwise  
9 complies with the law. To clarify that the forms serve as a guide for best practices, the Maricopa  
10 County Attorney’s Office recommends a preamble to the Forms section that clarifies the purely advisory  
11 nature of the forms.  
12  
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14 **Form 4(a) (Release Questionnaire)**

15 The Committee invited comment about the elimination of questions concerning national origin  
16 and citizenship which have always been part of the current version of Part II of Form IV. For the  
17 reasons discussed in more detail below, the Maricopa County Attorney’s Office opposes the elimination  
18 of these questions from Form 4(a) (Release Questionnaire).  
19

20 Questions about birthplace and immigration status are now – and have always been – relevant to  
21 the issues of community ties and the ability of a suspect to appear at future court appearances.  
22 Moreover, Arizona voters reaffirmed the relevance of these questions by overwhelmingly approving  
23 Proposition 100 in November, 2006. Proposition 100 served to amend Article II, Section 22 of the  
24 Constitution of Arizona to add an exception to the right to bail for serious felony offenses if the person  
25 charged had entered or remained in the United States illegally. In order to carry out the directive of the  
26 new constitutional amendment, judicial officers need information about immigration status. The  
27  
28

1 proposed Form 4(a) is the logical place to elicit that information. That is how immigration status has  
2 always been documented for purposes of determining release conditions.

3 The argument that the recent addition of subsection (f) to Rule 17.2 somehow precludes judges  
4 from asking about immigration status is misplaced. Rule 17.2(f) states that *before accepting a plea of*  
5 *guilty or not contest*, the court shall inform the defendant that the plea may have immigration  
6 consequences, and the court may not require the defendant to disclose his or her legal status in the  
7 United States. The petitioners for the change to Rule 17.2(f) also asked for the same prohibition against  
8 disclosure of immigration status to be included in Rule 14.3, Proceedings at Arraignment. The court  
9 declined to adopt such a rule. Because Arraignment proceedings and Initial Appearance (IA)  
10 proceedings are similar and are often combined, it is reasonable to conclude that the court did not intend  
11 to prohibit an inquiry about immigration status during IA proceedings.  
12

13 Moreover, the proposed Form 4(a) does not *require* defendants to reveal information about  
14 immigration status. The proposed form clearly communicates the voluntary nature of the information  
15 requested:  
16

17 The following information is for the purpose of determining the conditions  
18 under which you may be released at this time. You are not required to answer  
19 any question if you feel the answer might be harmful to you. The answers  
20 you give to the following questions will be used by the court for the purpose  
21 of determining the conditions of your release. However, your answers will be  
22 checked against the information supplied by the police, and with the  
23 references you yourself give on the form. Any discrepancies may result in  
24 higher bail or harsher conditions of release. **Any information you give may**  
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1           **be used against you in this or any other matter.** [Bold font appears in  
2           original.]

3           **Forms 15(a), 15(c), 15(d) (Notice of Appointment of Mental Health Expert)**

4           The Maricopa County Attorney's Office agrees that the forms directing the prosecutor  
5           and defense counsel to provide documents or information should be clear about the  
6           respective responsibilities of the parties. Otherwise, unnecessary duplication or unintentional  
7           delay may occur due to misunderstandings. The delineation of duties may be determined by  
8           the assigned court, however, without a change to the Rules of Criminal Procedure.

9           **Form 18 (Plea Agreement)**

10           Like a criminal complaint, a plea agreement is a document most often drafted by the  
11           state. The proposed form incorporates many good suggestions for a plea agreement that  
12           ensures a knowing and voluntary plea of guilty or no contest. However, the content of the  
13           plea agreement is the result of negotiation between the state and the defendant and should not  
14           be subject to attack simply because it deviates in some substantial way from a form appended  
15           to the Rules of Criminal Procedure. The Maricopa County Attorney's Office therefore

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1 reiterates the importance of using the appended forms as guides rather than new rules that  
2 must be followed.

3 Respectfully submitted this 18<sup>th</sup> of May, 2007.  
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6 ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

7  
8 BY: Philip J. MacDonnell  
9 PHILIP J. MACDONNELL  
CHIEF DEPUTY

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13 Copies of the forgoing mailed  
14 this 18 day of May, 2007 to:

15 Clerk of the Court  
Arizona Supreme Court  
16  
17 Supreme Court Criminal Rules Review Committee  
Hon. Kevin E. Kane, Chair  
Phoenix Municipal Court  
18 300 W. Washington  
Phoenix, AZ 85003  
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