

1 Honorable Sam Myers
2 Criminal Department Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 175 W. Madison
5 Phoenix, AZ 85003
6 (602) 506-5262

7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9
10 PETITION TO AMEND RULE 23.1)
11 OF THE RULES OF CRIMINAL) Supreme Court No. R-16-____
12 PROCEDURE)
13 _____)

14 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
15 Judge of the Criminal Department of the Superior Court of Arizona in Maricopa
16 County respectfully petitions this Court to adopt the attached proposed
17 amendment to Rule 23.1 of the Rules of Criminal Procedure.

18 In May 2015, Presiding Judge Norman Davis established the Jury
19 Procedures Committee, chaired by Judge Dawn Bergin, to among other things
20 review procedures relating to juror privacy. This proposed rule change arose
21 from the committee’s recommendations.

22 Arizona Rules of Criminal Procedure 23.1(a), “Form of Verdict,”
23 currently states “[t]he verdict of the jury shall be in writing, signed by the
24 foreman, and returned to the judge in open court.” This petition seeks to amend
25 Rule 23.1 to clarify that jury forepersons may sign the verdict form using their
26 juror number and initials in lieu of a signature. The purpose of the rule change is
27 to protect the identity of jurors from public release.
28

1 Currently, there are rules to protect juror identities. Rule 123, Rules of the
2 Supreme Court of Arizona, which governs public access to judicial records,
3 provides that “[t]he home and work telephone numbers and addresses of jurors,
4 and all other information obtained by special screening questionnaires or in voir
5 dire proceedings that *personally identifies jurors summoned for service*, except
6 the names of jurors on the master jury list, are confidential, unless disclosed in
7 open court or otherwise opened by order of the court.” Arizona Supreme Court
8 Rule 123(e)(10) (emphasis added). Arizona Rule of Criminal Procedure 23.4
9 states: “[w]hen polling a jury at verdict, the judge and clerk shall not identify the
10 individual jurors by name, but shall use other methods or form of identification
11 as may be appropriate to ensure an accurate record of the poll and to
12 accommodate the jurors’ privacy.” Similar language exists in Rule 49(e)(2) of
13 the Arizona Rules of Civil Procedure.

14 Furthermore, last year the Rules of Civil Procedure were amended to allow
15 civil trial jurors to sign the verdict form “either by affixing their signatures on the
16 verdict or by writing their juror numbers and initials on the verdict.” Rule
17 49(d)(2), Ariz. R. Civ. P.

18 Juror privacy is not protected, however, when the public accesses the jury
19 verdict form in a criminal case. A jury verdict form is considered a “case record”
20 and is therefore available to the public. Arizona Supreme Court Rule 123(d).
21 The signature on a criminal verdict form identifies the foreperson who has
22 signed the verdict. Our proposed amendment would provide the same protection
23 to jury forepersons as provided in the Rules of Civil Procedure.

24 Permitting jury forepersons to sign the verdict form using juror numbers
25 and initials provides sufficient evidence that the foreperson has authenticated the
26 verdict while protecting the foreperson’s privacy. The court of appeals has
27 previously addressed this issue in *State v. McIntosh*, 213 Ariz. 579, 146 P.3d 80
28 (App. 2006). In that case, a defendant challenged his criminal conviction on the

1 grounds that the jury foreperson had simply written “#7,” the foreperson’s juror
2 number, on the verdict. The court held that the verb “sign” in Rule 23.1 could
3 encompass “a signature, mark or other symbol with the intent to authenticate. . .
4 .” *Id.* at 581, 146 P.3d at 83. The court further found that the 2004 amendment to
5 Rule 23.4 “evidences the supreme court’s intent that jurors’ privacy be protected
6 in the polling process,” and therefore “it is reasonable to conclude that it further
7 intended to allow a foreperson to sign the verdict in a manner that satisfies the
8 authentication purpose of Rule 23.1(a) yet protects the person’s privacy.” *Id.*,
9 146 P.3d at 83. The proposed amendment would clarify Rule 23.1 to reflect the
10 holding in *State v. McIntosh*.

11 The proposed amendment also changes “foreman” in the current rule to
12 the gender-neutral “foreperson.”

13 For the foregoing reasons, the Presiding Judge of the Criminal Department
14 of the Superior Court in Maricopa County respectfully requests this Court amend
15 Rule 23.1 of the Rules of Criminal Procedure, as detailed in the Attachment, to
16 allow jury forepersons to sign verdict forms with their juror number and initials.

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18 RESPECTFULLY SUBMITTED this 5th day of January, 2017.

19
20 /s/ Sam Myers
21 Hon. Sam Myers
22 Criminal Department Presiding Judge
23 Superior Court of Arizona, Maricopa County
24

25 Electronic copy filed the
26 Clerk of the Supreme Court
27 of Arizona this 9th day of
28 January, 2017.

