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**BEFORE THE SUPREME COURT OF
THE STATE OF ARIZONA**

IN THE MATTER OF
PETITION TO AMEND RULE OF
THE SUPREME COURT, RULE 122

Supreme Court No. R-07-0016

**Comments of the Pima County Bar
Association Regarding Petition to Amend the
Rules of the Supreme Court Rule 122**

The Pima County Bar Association, pursuant to Rule 28, Ariz.R.Sup.Ct., hereby files its comment to the Petition to Amend Rule 122 of the Rules of the Supreme Court, filed on November 1, 2007.

The Pima County Bar Association objects to the proposed amendment. The proposed amendment, if adopted, in essence would make it a presumption that there are to be cameras in the courtroom. There may be times where cameras should be allowed and other times where it would be disruptive or may not be in the interest of justice and a fair trial. The Trial Court needs the discretion to regulate the use of cameras including the authority to rule that cameras may not be allowed in the courtroom in specific cases in order to protect the integrity of the courtroom and the trial or hearing and the safety of

those involved. From Dr. Sam Shepard prosecution to the O.J. Simpson trial there is a long history demonstrating the potential negative impact, or perceived negative impact of cameras in the courtroom. Extreme caution needs to be exercised in amending this rule.

There are concerns in this electronic age of how to determine who is the media. There are bloggers, internet news, web sites, neighborhood news letters and other types of “media.” The definition of what is considered a news organization is an important consideration.

There is a need for other requirements as a basis for denying cameras in the courtroom beside the “substantial likelihood of harm.” The standard for this rule would be very difficult for the Court and could result in an infringement on the rights of the parties. Different areas of the State may have other concerns that need to be addressed. Examples of considerations the Judge may need to apply could be the size of the courtroom, distraction that cameras may cause, including distraction of witnesses and jurors, identity of witnesses, time restrictions, the effect on the parties, the jury and witnesses, and the prejudice that might ensue. The distraction of cameras and lights and the effect it has on people who know they are going to be on television is also a consideration. It is difficult in many cases to get witnesses to testify candidly about personal matters or other events or about matters that could be embarrassing. Cameras in the courtroom could make this much harder. The parties should have the right to object to cameras in the courtroom. The present rule gives the Judge ample discretion should not be abrogated or amended. There is no evidence of substantial problems with application of the present rule.

In meeting the proposed requirement of making written findings that show the “likelihood of harm,” the trial court could influence the jury pool. It puts quite a burden on the judge not only to explain the decision as to how there is a likelihood of harm, but to do it in a way not to influence the jury pool. The rule could result in multiple hearings causing additional burden on an already busy court. Multiple appeals by members of the media or parties to the action of the Judge’s decision could delay the trial thereby delaying justice.

It is submitted that the present rule has been effective but if an amendment is needed it is not this one. It is suggested that a committee be formed to look into the issue and to propose standards and considerations for an amended rule, if any, to be adopted in the future. Members on the committee should include judges from various counties, attorneys, media representatives and the public.

This rule can change the complexion of a trial or hearing in many ways and should not be adopted without input from the various constituencies and from the various areas in the state. Perhaps it is time to consider a new rule but the importance and far reaching ramifications require more thought, information and input.

Respectfully submitted this 14th day of May, 2008.

PIMA COUNTY BAR ASSOCIATION

Dee-Dee Samet, President
Pima County Bar Association