

1 Honorable Sam Myers
2 Criminal Presiding Judge
3 Superior Court of Arizona in Maricopa County
4 175 W. Madison Street
5 Phoenix, Arizona 85003
6 (602) 372-2940

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

) Supreme Court No. R-18-0001

9
10 PETITION TO AMEND THE
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

) COMMENT TO PROPOSED
) CHANGES TO THE RULES OF
) CRIMINAL PROCEDURE

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14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Criminal
15 Department Presiding Judge of the Superior Court of Arizona in Maricopa
16 County submits the following comment regarding the proposed amendments to
17 the Arizona Rules of Criminal Procedure petitioned by the Arizona Voice for
18 Crime Victims.

19 The petitioner’s proposed changes to the Rules of Criminal Procedure
20 would eliminate the existing Rule 39, “Victims’ Rights,” that enumerates all of
21 the rights of victims in criminal proceedings as set forth in both the Arizona
22 Victims’ Bill of Rights (Ariz. Const. art. 2, § 21) and the Victims’ Rights
23 Implementation Act (A.R.S.§§ 13-4401, *et. seq.*). In place of Rule 39, the
24 petitioner’s proposal would add victim’s rights language to thirty-six separate
25 Rules of Criminal Procedure. The elimination of Rule 39 would have a
26 detrimental effect on the courts because it would remove from the Criminal
27 Rules the comprehensive overview relied upon by judicial officers for a concise
28 listing of all of the rights of victims in a criminal proceeding.

1 Furthermore, though not explicitly mentioned in the body of the petition
2 itself, the proposed changes in several of the specific rule amendments amount
3 to a substantive change in criminal procedure and/or an expansion of victims'
4 rights not currently contained in rules, statutes or the Constitution. For example,
5 the proposed amendment to Rule 6.7(d) makes no mention of victims; instead, it
6 changes the time frame for which a defendant in a capital case may move for an
7 expert or mitigation specialist from no later than 60 days after the State's
8 disclosures under Rule 15.1(i)(3) to no later than 30 days. Also, the addition of
9 victims' rights language to Rule 15.1(e)(2) regarding the State's disclosures adds
10 the following additional rule: "[i]n the case of 911 calls from a victim, before
11 permitting access or testing of such tapes, the court must first consider the
12 victim's rights to be treated with fairness, respect, and dignity, and to be free
13 from intimidation, harassment, and abuse." Likewise, the proposed addition of
14 the language "after considering the views of the victim" to Rule 16.3(d) (which
15 allows the court to decide a variety of issues regarding hearing of motions,
16 setting of conferences and evidentiary hearings, discussing time limits for trial
17 proceedings, and other decisions regarding the management of the case) is an
18 expansion of victims' rights not currently found in Rule 39, the statutes, or the
19 Constitution.

20 Furthermore, the elimination of Rule 39 eliminates its provisions that
21 require victims to exercise certain rights by request, and that they must keep the
22 prosecuting agency apprised of their current notification information. Many of
23 the proposed amendments to the Rules eliminate these requirements on victims,
24 making no distinction between victims that choose to exercise their rights and
25 those that choose not to do so. Such changes to expand victims' rights or
26 substantively change the Rules of Criminal Procedure should be the result of
27 study and consultation with stakeholders such as the judiciary and criminal
28 prosecutors and defense attorneys.

1 This petition to eliminate Rule 39, which currently enables judges and
2 practitioners to find all victims' rights provisions in a simple and unified format,
3 eliminates a practical and important tool utilized by the courts to ensure
4 compliance with the rights of victims. The proposed amendments will make it
5 more difficult for judicial officers to teach, learn, and quickly access the rules
6 that apply to victims' rights.

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8 Respectfully submitted this 21st day of May, 2018.

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10 /s/ Sam Myers

11 _____
12 Hon. Sam Myers
13 Criminal Department Presiding Judge
14 Superior Court of Arizona in Maricopa
County

15 Electronic copy filed with the
16 Clerk of the Arizona Supreme Court
17 this 21st day of May, 2018.
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