

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Arizona Supreme Court
No. R-19-0002

PETITION TO AMEND SUPREME
COURT RULE 123

**Comment to Proposed Change
to Rule 123, Rules of the Supreme Court**

Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Clerk of the Arizona Supreme Court submits this comment regarding the proposed amendment to Rule 123, Rules of the Supreme Court petitioned by Timothy Sandefur, individually and on behalf of the Goldwater Institute.

Petitioner's proposed amendment to Rule 123 requests that specific data, namely case names, counsel of record, case numbers, and questions presented in petitions for review filed with the Supreme Court be made publicly available online. The majority of the information requested by petitioner is available online from any computer in the world with Internet access at <http://apps.supremecourt.az.gov/aacc/asc/ascmain.htm>. At this website, a user may access a complete list of active cases by case type and the Court's calendar of agendas and scheduled oral arguments. Simply clicking on the case number from the active case list or the Court's calendar takes the user to the docket that includes case names, counsel of record, the status of the case, predecessor case numbers, and all docket entries of case filings and court actions.

The one exception is the questions presented for review. These questions are not captured in a data field within the Court's current case management system.

The Court recently signed a contract with a vendor to replace the current case management system and all technology and business resources are committed to bringing the new system online within the next 20-24 months. Pursuant to Rule 123(h)(4)(C), the

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requirements for the new case management system include “processing features and procedures that maximize the availability of court records maintained in electronic medium.” The new system was obtained through a procurement vehicle that identified many requirements. Those requirements did not include data fields for collection of questions presented for review. The requirements do include remote access to the actual documents filed with the Court pursuant to the provisions of Rule 123. Further, this Court through the Administrative Office of the Courts is in process of providing remote electronic access to superior court case records in the near term, thus establishing a “proving ground” for the appellate courts’ new case management system.

Contrary to petitioner’s statement regarding access to the one computer in the viewing room, over the course of the last seven years this Clerk is not aware of any lines forming nor has anyone attempted to speak directly to the Clerk about this concern. Nonetheless, a second computer is now available to enhance services for those persons who come to the Court to access the case information and documents.

It is recognized that with any offering of technology comes the opportunity for a system to be non-functional at just the moment when a user wishes to access the system. Clerk’s office staff attempt to remedy these issues quickly with the assistance of the Administrative Office of the Courts Information Technology support staff so as not to interfere with the user experience, but even the best-laid plans occasionally fail.

To further address petitioner’s concern regarding the awareness of the filing or the potential filing of a petition for review, the public may sign-up for automatic email notification when the court of appeals releases case decisions. The Division One sign-up is here: <https://www.azcourts.gov/coal/Decisions/DecisionsoftheCourt> and Division Two is found here: <https://www.appeals2.az.gov/e-filer/dailyDecisions.cfm>. The Rules of Procedure for civil and criminal petitions for review provide that a petition must be filed

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within 30 days of the decision of the court of appeals. For any case of interest, a user could calendar 30 days out from the date of the decision of the court of appeals to check the Supreme Court website to determine whether a petition for review has been filed. NOTE: Similar to the Supreme Court, Court of Appeals Division One provides Internet access to active case information <http://apps.supremecourt.az.gov/aacc/1ca/1camain.htm> so a member of the public could learn whether a motion for reconsideration had been filed, thus modifying the date when one would expect to see a petition for review filed in the Supreme Court. Access to Court of Appeals Division Two case information, including motions, can be found here: <https://www.appeals2.az.gov/ODSPlus/caseInfo.cfm>.

Petitioner notes that making the requested information available on the Internet “presents no greater confidentiality concerns” because the petitions for review are already available in the viewing room. Petitioner may not have considered the provisions of Rule 123(g) regarding access to unsealed documents that all users have on-site in the Clerk’s office versus access that will be given to the casual user browsing through case documents remotely. Subsection (D) of Rule 123(g) specifically provides the categories of “case records” that will not be available remotely to the general public but may be available to parties, attorneys, and arbitrators if they are not sealed, and to members of the State Bar of Arizona if they are not sealed or confidential. These distinctions were considered in the new case management system requirements and in the development of the system that will one day provide remote electronic access to court documents to ensure compliance with the provisions of Rule 123.

Finally, petitioner asserts that the Court’s cost would not significantly increase by making the information available on the Court’s website. The Court has made a substantial investment in the automation of the future, and staff are “heads down” working on the new case management system to meet the implementation goal of early 2021. Diverting limited staff resources from addressing the Court’s forward-looking overall technology solution at

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this critical stage of the project would cause unnecessary delays to provide the very information that the petitioner can already get by other means.

Respectfully submitted this 23rd day of April, 2019.

/s/

Janet Johnson
Clerk of the Court
Arizona Supreme Court