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ARIZONA SUPREME COURT

In the Matter of:

PETITION TO AMEND RULE
22.5, ARIZONA RULES OF
CRIMINAL PROCEDURE

Supreme Court No. R-_____

**PETITION TO AMEND ARIZONA
RULE OF CRIMINAL PROCEDURE,
RULE 22.5, TO REGULATE POST-
TRIAL JUROR CONTACT**

Pursuant to Rule 28, Rules of Supreme Court, the Maricopa County Attorney respectfully requests this Court adopt amendments to Rule 22.5 of the Arizona Rules of Criminal Procedure to regulate post-trial juror contact.

I. Introduction.

Various Arizona rules and statutes protect jurors' privacy during their service in a criminal trial. Prospective jurors are informed through court pamphlets and websites that their privacy will be protected. But there is no rule or statute protecting jurors' privacy once their civic duty ends. Thus, jurors are subject to unwarranted, and sometimes invasive, contact by the parties years and decades after their service.

The proposed amendment to Rule 22.5, which governs the discharge of jurors, is not intended to preclude juror contact, but to simply regulate post-trial juror contact and require court oversight to prevent unwarranted and unwanted post-trial contact.¹ Because the Rules of Criminal Procedure limit the admissibility of information obtained from jurors and the time-period in which the information may be admitted, discharged or excused jurors should be protected from unwarranted post-trial contact after the 10-day jurisdictional time-period under Rule 24.1 expires.

II. Background

Although the current Rules provide some privacy protections to persons summoned for jury service, Arizona jurors receive no statutory protection after discharge. Jury service is not optional. It is a required civic duty of all qualified summoned jurors. *See State v. Bojorquez*, 111 Ariz. 549 (1975) (“Jury service is not a matter of choice or right, but is a duty imposed by the state on such terms as the state may set.”). Absent postponement or excuse, a juror may be fined for failing to appear on the date scheduled. A.R.S. § 21–223. Jury service, however, is not *perpetual*. A juror’s term of service is fulfilled upon excuse or discharge. A.R.S. § 21–332(A)(1).

Several Arizona rules and statutory provisions protect jurors’ personal

¹ Rule changes were proposed in 2019 by the Maricopa County Attorney’s Office to accomplish a similar goal. Those proposed changes were not adopted, but the current petition is a new means to achieve the same ends.

information, demonstrating an intent to protect jurors from unsolicited contact and harassment. Rule 18.3(b) of the Arizona Rules of Criminal Procedure provides that juror information “may be used only for the purpose of jury selection” and requires the court to “keep all jurors’ home and business numbers and addresses confidential, and may not disclose them unless good cause is shown.” Other rules also reflect an intent to protect juror privacy, including Rule 18.5(e), which limits the scope of examination of jurors to “ensure the reasonable protection of the prospective jurors’ privacy,” and Rule 23.3(b), which prohibits the court from identifying the jury by name when polling the jury to ensure juror confidentiality and privacy.

The Legislature also acted to keep jurors’ personal information private, prohibiting the release of juror names and information “unless specifically required by law or ordered by the court.” A.R.S. § 21–312.

This Court acknowledges these protections on its website:

Privacy/Confidentiality of Jurors: Both prospective and impaneled jurors have the right to privacy and confidentiality. . . .

2. Your home or mailing address is known only to the court. Only the judge can order the release of jurors’ addresses, usually to the lawyers in the case, and only for a good, legal reason. This very rarely happens. At the conclusion of the trial, should you be contacted by the lawyers in a case in which you sat as a juror, remember that you are not obligated to divulge any information concerning the deliberations, the verdict, or your opinions about anything concerning the case unless ordered to do so by the court.
3. Occasionally television reporters will ask the judge for permission to film courtroom activities. If the judge approves, the reporters are instructed to be unobtrusive and to not film jurors. You will not

appear on television.

4. Reporters may interview the lawyers or parties in a case, and once the trial is over may request to interview the jurors. It is your decision whether or not to consent to an interview. You are not obligated to divulge any information concerning the deliberations, the verdict, or your opinions about anything concerning the case.²

Notably, jurors are assured that their address will be released *only* for “a good, legal reason,” and this occurs “very rarely.” Additionally, Arizona Supreme Court Rule 123(e)(10) protects jurors’ personal information, requiring a court order to release jurors’ addresses and phone numbers.

Recognizing these protections of confidentiality guaranteed to jurors, the Maricopa County Superior Court Criminal Presiding Judge recently precluded juror contact in post-conviction proceedings absent a showing of good cause, citing the rules and provisions protecting juror’s contact information and questioning how defense counsel would “locate jurors without violating that confidentiality.” (*See State v. Acuna-Valenzuela*, CR 2011-140108, ME 8/7/19; *State v. Sanders*, CR 2009-157459, ME 8/7/19, 11/12/19.)

The Maricopa County Superior Court’s website and a juror handbook/pamphlet for the Superior Court of Arizona in Maricopa County entitled “A Guide To Jury Service,” available to jurors pursuant to Arizona Rule of Criminal

² “Jury Service – What to Expect” viewed at <https://www.azcourts.gov/juryduty/Jury-Service-What-to-Expect>, on January 3, 2020.

Procedure 18.6(a), includes a “**Confidentiality**” section informing jurors:

Prospective and empaneled jurors have the right to privacy and confidentiality. At the conclusion of trial, jurors are not obligated to divulge any information about the deliberations, the verdict or opinions about anything concerning the case unless ordered to do so by the court.

...

Once the trial ends, news reporters may ask to interview jurors. It is a juror’s decision whether or not to consent to an interview.³

These rules, statutes, and advisements are aimed at protecting jurors’ privacy, and assuring jurors that they do not forfeit their right to privacy and confidentiality by performing their civic duty. It therefore follows that a rule should regulate post-trial juror contact to ensure those assurances of privacy and confidentiality are enforced. The proposed amendment to Rule 22.5 would do just that. Indeed, the Arizona Court of Appeals already approved the practice that Petitioners are proposing. *See State v. Paxton*, 145 Ariz. 396, 397 (App. 1985), (affirming the trial court’s order “that there be no contact or communication with the jurors unless a motion with accompanying affidavit establishing good cause was granted.” (aff’d in *State v. Olague*, 240 Ariz. 475, 481 (App. 2016))).

III. Reasons for the proposed amendment to Rule 22.5

In addition to supporting the assurances of privacy and confidentiality courts

³ “A Guide to Jury Service” viewed at <http://www.superiorcourt.maricopa.gov/JuryServices/docs/JuryDutyGuide2.pdf>, on January 3, 2020.

make to jurors, other compelling reasons also support adoption of this amendment regulating post-trial contact with jurors, including: (1) a juror's right to privacy; (2) protection of the integrity and finality of the jury verdict; (3) the limited grounds and time in which a motion for new trial may be filed; (4) prevention of potential juror harassment, fear, and anxiety; and (5) regulating against fishing expeditions.

A. *A juror's right to privacy.*

Jurors who have performed their civic duty should not have to worry about their privacy after their discharge from service. Furthermore, the civic duty to serve on a jury and a defendant's right to due process do not negate a juror's right to privacy. The Court of Appeals recognized this principle rejecting a defendant's constitutional challenge to a statute allowing certain prospective jurors to opt out of jury service and prohibiting public disclosure of statements submitted by jurors asking to be excused for "mental or physical" reasons:

Individuals who are called for jury duty *do not forfeit their privacy rights when they are called for jury duty.* As a matter of policy, *we wish to encourage jury service.* Requiring prospective jurors to run the risk of having their private mental or physical conditions made public hardly encourages jury service. Further, as our supreme court has recognized, the open-courts requirement "does not guarantee a defendant access to information that he or she desires. Any constitutional right to this information must be found elsewhere."

Stewart v. Carroll, 214 Ariz. 480, ¶ 20 (App. 2007) (emphasis added) (quoting *State v. Ramirez*, 178 Ariz. 116, 127 (1994)).

California courts likewise recognize the importance of protecting the privacy

of discharged jurors. “Absent a showing of good cause for the release of the [juror contact] information, the public interest in the integrity of the jury system and the jurors’ right to privacy outweighs the defendant’s interest in disclosure.” *People v. McNally*, 236 Cal. App. 4th 1419, 1430 (App. 2015). “[S]trong public policies protect discharged jurors from improperly intrusive conduct in all cases,” and that “the uncontrolled invasion of juror privacy following completion of service on a jury is, moreover, a substantial threat to the administration of justice.” *Townsel v. Superior Court*, 20 Cal. 4th 1084, 1092 (1999) (citations omitted). In construing a rule governing post-trial juror contact a court “must consider the declared statutory purpose of protecting the lives and safety of jurors who serve in criminal cases. . . . The disclosure of jurors’ addresses and telephone numbers involves a sensitive issue. Most jurors are greatly concerned about their privacy, and rightly so.” *People v. Winston*, 43 Cal. App. 4th 839, 852 (App. 1996).

This Court should continue protecting these privacy rights post-trial by amending the rules to regulate juror contact by parties after discharge from service.

B. *Protecting the integrity and finality of jury verdicts.*

Public policy also supports court oversight of juror contact to prevent improper inquiries into the jury’s deliberative process. *See Hyde v. United States*, 225 U.S. 347, 383–84 (1912); *State v. Landrum*, 25 Ariz. App. 446, 448 (1975). Guidelines and limitations governing post-trial juror contact protect the integrity and

finality of the jury’s verdict—something which the State, this Court, the community, and crime victims have an interest. *See State v. Callahan*, 119 Ariz. 217, 219 (App. 1978); *see also* Ariz. Const. Art. 2.1(A)(10) (victims have a right to final conclusion of the case after conviction and sentence).

“[L]ong-recognized and very substantial concerns support the protection of jury deliberations from intrusive inquiry.” *Tanner v. United States*, 483 U.S. 107, 127 (1987). The Supreme Court explained these concerns:

There is little doubt that postverdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior. It is not at all clear, however, that the jury system could survive such efforts to perfect it. Allegations of juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process. Moreover, full and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict, and the community’s trust in a system that relies on the decisions of laypeople would all be undermined by a barrage of postverdict scrutiny of juror conduct.

Id. at 120–21 (internal citations omitted). Similarly, the Fifth Circuit Court of Appeals observed that, “[h]istorically, interrogations of jurors have not been favored by federal courts except where there is some showing of illegal or prejudicial intrusion into the jury process. . . . Courts simply will not denigrate jury trials by afterwards ransacking the jurors in search of some ground, not previously supported by evidence, for a new trial.” *United States v. Riley*, 544 F. 2d 237, 242 (5th Cir. 1976). The California Supreme Court also stated that “policy-based” reasons for

preventing disclosure of juror information include “reducing incentives for jury tampering; promoting free and open discussion among jurors in deliberations; and protecting the finality of verdicts.” *Townsel*, 20 Cal. 4th at 1093.

The Supreme Court further explained that “[b]y the beginning of [the twentieth] century, if not earlier, the near-universal and firmly established common-law rule in the United States flatly prohibited the admission of juror testimony to impeach a jury verdict.” *Tanner*, 483 U.S. at 117. This is supported by “substantial policy considerations” that necessitate “shielding jury deliberations from public scrutiny,” including contact from the defeated party who may attempt to secure evidence from the jurors to establish misconduct sufficient to set aside a verdict. *Id.* at 119-20 (quoting *McDonald v. Pless*, 238 U.S. 264, 267-68 (1915)).

Finally, the Constitution does not require courts to permit post-verdict interviews of jurors. *See Tanner*, 483 U.S. at 113–128; *see also United States v. Griek*, 920 F. 2d 840, 843–44 (11th Cir. 1991) (restrictions on juror interviews do not violate Sixth or First Amendment); *Smith v. Cupp*, 457 F. 2d 1098, 1100 (9th Cir. 1972) (“[T]here is no federal constitutional problem involved in the denial of a motion to interrogate jurors where, as here, there has been no specific claim of jury misconduct.”). Even in the recent case of *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017), the Supreme Court recognized that the narrow racial animus exception to the no-impeachment rule does not give the parties carte blanche access

to jurors. *Id.* at 869 (noting that both state rules of professional ethics and local court rules “often limit counsel’s post-trial contact with jurors.”).

C. *Limitations on raising juror misconduct claims.*

A motion for new trial filed within 10 days after the verdict is the proper vehicle for raising a juror misconduct claim. Ariz. R. Crim. P. Rule 24.1(b) and (c). The necessity for this limited time-period is illustrated by this Court’s analysis addressing whether an evidentiary hearing regarding a claim of juror misconduct was required four years after the verdict:

The arguments against ordering a hearing at this late date are understandable. Memories fade with time. Assuming the jurors can be reassembled, testimony obtained now might be suspect, and its reliability subject to challenge. Moreover, the judge who saw the witnesses and heard the case on its merits has long since retired. Ordering a hearing now will leave another judge who had no involvement in the trial with the difficult task of determining whether the communication prejudiced the verdict.

State v. Miller, 178 Ariz. 555, 557 (1994). The ideal time for interviewing jurors, likewise, comes immediately after trial, when events are fresh in the jurors’ minds.⁴

⁴ See *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 861 (2017) (two jurors spoke with defense counsel immediately following discharge of the jury); *United States v. Villar*, 586 F. 3d 76, 78–88 (1st Cir. 2009) (juror emailed defense counsel within hours of verdict to report racial bias); *Williams v. Price*, 343 F. 3d 223, 226–39 (3d Cir. 2003) (juror misconduct claim raised in motion for new trial shortly after verdict); *Doan v. Brigano*, 237 F. 3d 722, 726–27 (6th Cir. 2001) (juror misconduct raised during juror interviews occurring after conviction but before sentencing); *United States v. Swinton*, 75 F. 3d 374, 380–82 (8th Cir. 1996) (juror contacted defendant after trial to report consideration of extrinsic evidence); *Keller v. Petsock*, 853 F. 2d 1122, 1124–30 (3rd Cir. 1988) (jurors visited attorney within 10 days of verdict to report

Furthermore, juror testimony or affidavits may not be used in Arizona courts to impeach the verdict except in strictly limited cases of juror misconduct. Arizona Rule of Criminal Procedure 24.1(d) prohibits courts from even *receiving* testimony or affidavits “which inquire[] into the subjective motives or mental processes which led to a juror assent or dissent from the verdict.” This Court declined defendant’s “invitation to abandon this rule” in *State v. Nelson*, 229 Ariz. 180, 190–91, ¶¶ 47-49 (2012) (citing Lord Mansfield’s rule and *State v. Poland*, 132 Ariz. 269, 282 (1982)), finding that the rule serves “to protect the process of frank and conscientious jury deliberations and the finality of jury verdicts.”

The Ninth Circuit Court of Appeals also concluded that because “neither a trial court nor an appellate court has the authority to inquire into the jury’s decisional processes, even when information pertaining to the deliberations is volunteered by one of the jurors . . . in a federal case, [] it is improper and unethical for lawyers to interview jurors to discover what was the course of deliberation of a trial jury.” *Smith*, 457 F. 2d at 1100 (citations omitted).

The proposed amendment to Rule 22.5 would not preclude post-trial juror

juror misconduct); *United States v. Perkins*, 748 F. 2d 1519, 1529–34 (11th Cir. 1984) (jurors contacted appellant, his counsel, and the court immediately after the verdict to report jury misconduct); *Bulger v. McClay*, 575 F. 2d 407, 408–09 (2d Cir. 1978) (defense counsel questioned jurors as they left the courtroom and discovered basis for jury-misconduct claim); *United States v. Kum Seng Seo*, 300 F. 2d 623, 623–26 (3d Cir. 1962) (juror contacted defense attorney to report jurors’ consideration of newspaper article).

contact past the 10-day time-period under Rule 24.1, but simply regulate any contact by requiring good cause and notice to the juror. These regulations certainly do not impede or encumber a defendant's post-trial investigation because they simply regulate, not preclude, post-trial juror contact.

D. *Prevention of potential juror harassment.*

Prevention of juror harassment is yet another legitimate and compelling reason to regulate post-trial juror contact. *McDonald*, 238 U.S. at 267–68. *See also United States v. Gutman*, 725 F. 2d 417, 422 (7th Cir. 1984) (the practice of obtaining affidavits from jurors is “inherently intimidating”); *United States v. Moten*, 582 F. 2d 654, 665 (2d Cir. 1978) (“in order to insure that jurors are protected from harassment, a district judge has the power, and sometimes the duty, to order that post-trial investigation of jurors shall be under his supervision”); *People v. Cox*, 53 Cal. 3d 618, 700 (1991) (“after being apprised of juror anxiety resulting from contacts by defense investigators,” trial court acted within its authority directing “that all further communication would be through the court clerk unless jurors were already agreeable”).

The possibility of being subjected to post-trial contact years after the verdict creates a “possible deterrence of prospective jurors from fulfilling their obligation to serve.” *Townsel*, 20 Cal. 4th at 1093. Jurors might reasonably experience fear and anxiety when contacted by the representative of a convicted person they found

guilty. *See e.g., Gutman*, 725 F. 2d at 422 (practice of obtaining juror affidavits is “inherently intimidating” and must not be encouraged). Further, if obtaining post-trial juror affidavits “ever becomes widespread [it] will make it even more difficult than it already is to get competent people to serve on juries.” *Id.*

Moreover, a party’s agent at a juror’s doorstep years after trial is different than speaking with jurors in the courtroom immediately after trial:

We do not encourage or suggest approval of post-verdict contact with jurors, seeking information with which to impeach the verdict, where such contacts are initiated without any cause to believe that improprieties occurred. . . . To some jurors, a post-verdict contact by a convicted murderer’s agent may be an event of particular stress and fear. Such contacts may or may not invite accurate responses that recount events as they occurred. Instead, because of the difficult position in which a juror is placed, such contact may invite statements which the contacted juror may think necessary to satisfy the agent.

State v. Chesnel, 734 A. 2d 1131, 1139-40 (Me. 1999).

E. *Regulating against fishing expeditions.*

Because jurors are not percipient or otherwise permissible “witnesses,” to the trial itself a party who pursues juror interviews without good cause, after the 10-day time-period under Rule 24.1, necessarily engages in a “fishing expedition.” “Arizona has long been committed to a broad interpretation of its discovery rules, but mere ‘fishing expeditions’ are not countenanced.” *State v. Kevil*, 111 Ariz. 240, 242 (1974); *Corbin v. Superior Court (Maricopa)*, 103 Ariz. 465, 469 (1968); *State v. Fields*, 196 Ariz. 580, 583, ¶ 9 (App. 1999). Federal courts agree that post-trial

jury hearings should not be held simply for a convicted defendant to conduct a “fishing expedition.” *United States v. Moten*, 582 F. 2d 654, 667 (2d Cir. 1978).

This Court and the Arizona Court of Appeals have upheld trial court rulings denying requests to interview jurors where the requests were speculative and did not warrant further investigation. For example, after the trial in *State v. West*, 176 Ariz. 432 (1993), the defendant requested contact information for the grand jury, “contending he was entitled to this information to investigate and see whether any juror was guilty of misconduct.” *Id.* at 446–47. The trial court denied this request. *Id.* On appeal, the defendant claimed that “because this is a capital case, it justifies ‘the exercise of judicial authority to order more liberal discovery than usual.’” *Id.* This Court disagreed, citing to *State ex rel. Hastings v. Sult*, 162 Ariz. 112 (1989).

In *Sult*, defense counsel requested permission to question the grand jury following the defendant’s indictment. 162 Ariz. at 112. This Court reversed the trial court’s grant of the request, finding it improper because defense counsel’s request was “unaccompanied by any showing or hint of bias or prejudice on the part of the grand jurors”; thus the request was “no less than a ‘fishing expedition’ designed to establish the basis for a motion to challenge the indictment.” *Id.* at 113–14.

Finally, in *State v. Paxton*, 145 Ariz. 396 (App. 1985), the trial court denied the defendant’s post-trial request to interview the jurors based on assertions that two of them were visibly upset and one was crying after the verdict. *Id.* at 397. The

Arizona Court of Appeals affirmed the denial because the affidavit supporting the motion was “speculative at best and does not provide sufficient grounds to warrant further investigation.” *Id.* *West, Paxton, and Sult*, therefore illustrate Arizona’s strong policy against fishing expeditions, especially in the context of protecting jurors and their role in the judicial system.

Other jurisdictions have likewise prohibited fishing expeditions in the context of post-trial juror contact. In *Orbe v. True*, a federal district court found that glares from the defendant’s family members did not constitute “impermissible extrajudicial contact” and “to the extent that Orbe intends to inquire about other instances in which the jurors may have been exposed to extraneous influences, his request to depose the trial jurors is merely an impermissible fishing expedition to attempt to find other instances of wrongdoing.” 201 F. Supp. 2d 671, 682 (E.D. Va. 2002). In *People v. Williams*, 807 N.E. 2d 448, 455 (Ill. 2004), after defense counsel “admitted that the identities of the jurors were being sought so that they could be asked what they read, whom they talked to, and what they observed during the trial that might have influenced their deliberations,” the court found the defendant’s “effort to discover the identity of the jurors was precisely the type of “fishing expedition” that our rule [] was designed to avoid.” *Id.*

This case law aligns with the intention of the rule amendments—to *regulate* post-trial juror contact. Notwithstanding that these courts imposed a good cause

requirement on juror contact on a case-by-case basis, this Court should adopt the proposed rule amendments to provide uniform and consistent regulation of post-trial juror contact. Based on the limited admissibility of information obtained from jurors, post-trial juror contact without a showing of good cause is unwarranted.

F. *Guidance from other jurisdictions.*

1. Other states. Recognizing the need to balance juror protection with a defendant's rights, many states require a showing of good cause before post-trial juror contact may occur and thereafter regulate the contact.⁵ The Idaho Supreme Court explained that the purpose of the good cause requirement is to protect jurors "from unwanted contact and potential harassment" while also acknowledging a

⁵ See, e.g., *People v. Wilson*, 43 Cal. App. 4th 839, 852 (App. 1996) (speculation on how the jurors might have arrived at their verdict was insufficient to establish good cause for disclosure of juror contact information); *People v. Barton*, 37 Cal. App. 4th 709, 716 (App. 1995); (a defendant has no right to personal juror information and a trial court may deny such request "[a]bsent a sufficient showing of good cause"); *Hall v. State*, 253 P.3d 716, 722 (Idaho 2010) (trial court "did not err in using its inherent authority to enter an order prohibiting post-verdict juror contacts absent a showing of good cause to believe that juror misconduct occurred"); *Gatewood v. Sampson*, 812 So.2d 212, 217 (Miss. 2002) (to warrant an investigation into an allegation of juror misconduct, "[a]t the very minimum, it must be shown that there is sufficient evidence to conclude that good cause exists to believe that there was in fact an improper outside influence or extraneous prejudicial information"); *Cyr v. State*, 308 S.W.3d 19, 30 (Tex. App. 4 Dist. 2009) (good cause to disclose juror contact information is "more than a mere possibility that jury misconduct might have occurred; it must have a firm foundation"); *State v. Beskurt*, 293 P.3d 1159, 1162 (Wash. 2013) (juror information is private and a showing of good cause must be made to access the information.); *State v. Blazina*, 301 P.3d 492, 493–94 (Wash. 2013) (trial court cannot consider facts inherent in verdict when evaluating good cause requirement).

defendant's fair trial right by not "unduly restrict[ing] the discovery of evidence suggesting juror misconduct." *Hall*, 253 P.3d at 724-25. Consequently, after a finding of good cause, the party seeking post-verdict contact is required to send a letter advising the juror that they "have complete discretion to decline any contacts, or to terminate any agreed-upon contact once initiated." *Id.* at 722. The *Hall* court also found that the trial courts have inherent authority to review the letters and edit them as necessary. *Id.* Indeed, numerous states have codified guidelines in court rules and statutes designed to protect jurors' personal information and prohibit post-trial contact absent a showing of good cause.⁶

2. Federal jurisdictions. Recognizing the importance of a formal process

⁶ Cal. Code Civ. P. § 206 (criminal actions) (court to inform jurors upon discharge right not to discuss deliberations or verdict; parties contacting jurors more than 24 hours after the verdict must inform the jurors of their right not to participate and to review any declaration filed with court; requiring petition to court to obtain juror information); *Id.* § 237 (sealing juror identifying information); Fla. R. Civ. P. 1.431 (party seeking juror interviews must file motion within 15 days after verdict; court may prescribe place, manner, conditions, and scope of interviews); Haw. R. Prof. Conduct 3.5 (lawyers must obtain leave of court to interview jurors after dismissal and must do so in manner not calculated to harass or embarrass or influence juror's actions in future jury service; within 10 days of verdict lawyer make request in-court questioning of jurors for good cause shown)⁶; Ill. 12th Jud. Cir. Local R. 3.03 (jurors' addresses and telephone numbers released to parties only upon good cause shown and finding that failure to do so would cause material prejudice); Ky. Fayette Cir. Ct. Local R. 32 & Knox and Laurel Cir. Ct. R. 26 (no communication with jurors absent leave of court on good cause shown; court may prescribe conditions for contact); N.J. R. Ct. 1:16-1 (no juror contact except by leave of court on good cause shown); Ohio Cuyahoga County Ct. Common Pleas Local R. 22(e) (same); Tex. Code Crim. P. art. 35.29 (same); Wash. Gen. R. 31(j) (same).

for obtaining information from jurors, and generally disfavoring post-verdict juror interviews, federal courts also regulate post-trial juror contact, requiring a showing of good cause. The First Circuit “prohibits the post-verdict interview of jurors by counsel, litigants or their agents except under the supervision of the district court, and then only in such extraordinary situations as are deemed appropriate.” *United States v. Kepreos*, 759 F. 2d 961, 967 (1st Cir. 1985). The Fifth Circuit uniformly refuses requests to contact jurors post-trial “unless specific evidence of misconduct was shown by testimony or affidavit,” because “[p]rohibiting post-verdict interviews protects the jury from an effort to find grounds for post-verdict charges of misconduct, reduces the ‘chances and temptations’ for tampering with the jury, increases the certainty of civil trials, and spares the district courts time-consuming and futile proceedings.” *Haeberle v. Texas Intern. Airlines*, 739 F. 2d 1019, 1020 (5th Cir. 1984) (citation omitted). *See also Gutman*, 725 F. 2d at 422 (request to contact the jurors requires a “showing of adequate need.”); *Griek*, 920 F. 2d at 842 (post-trial juror contact requires showing of good cause). And the Ninth Circuit found that the “better practice” is to “seek leave of the court to approach the jury.” *Hard v. Burlington Northern R.R.*, 812 F. 2d 482, 485 n.3 (9th Cir. 1987).

Additionally, many federal district courts have enacted rules intended to protect the privacy and security of jurors, and/or prohibit post-trial juror contact absent a showing of good cause. For example, the District of Arizona’s Local Rule

of Civil Procedure 39.2, governing communications with trial jurors, provides:

(b) After Trial. Interviews with jurors after trial by or on behalf of parties involved in the trial are prohibited except on condition that the attorney or party involved desiring such an interview file with the Court written interrogatories proposed to be submitted to the juror(s), together with an affidavit setting forth the reasons for such proposed interrogatories, within the time granted for a motion for a new trial. Approval for the interview of jurors in accordance with the interrogatories and affidavit so filed will be granted only upon the showing of good cause. See Federal Rules of Evidence, Rule 606(b). Following the interview, a second affidavit must be filed indicating the scope and results of the interviews with jurors and setting out the answers given to the interrogatories.

(c) Juror's Rights. Except in response to a Court order, no juror is compelled to communicate with anyone concerning any trial in which the juror has been a participant.

Other federal district courts have enacted similar rules requiring a showing of good cause or prior approval from the court for juror contact/interviews.⁷

⁷ Alabama, LR ("Local Rule") 47.1, 47.2; Alaska, LR 83.1(g); Arkansas, LR 47.1; Colorado, LR 47.2; Connecticut, Rule 12(e); Florida, Middle Dist. LR 5.01(d), Southern Dist. LR 11.1 E; Illinois, Northern Dist. Crim LR 31.1, Central Dist. LR 47.2; Indiana, LR 47.2; Iowa, Northern and Southern Dists. LR 47.1; Northern Dist. Crim LR 24.2; Kansas, LR 47.1, Kentucky, LR 47.1; Louisiana, Eastern Dist. LR 47.5E(c), Middle and Western Dists. LR 47.5M & W (d); Maryland, LR 107.16, Minnesota, LR 47.2, Mississippi, LR 83.1(B)(4); Missouri, Eastern Dist. LR 47-7.01(B)(1); Nevada, LR 48.1; New Hampshire, LR 47.3, New Jersey, LR 47.1(e), Crim. R. 24.1(g); North Carolina, Middle Dist. LR 47.1(4), Western Dist. LR 47.2; Ohio, LR 47.1; Oklahoma, Northern Dist. LR 47.2, Western Dist. LR Civ. LR 47.1; Oregon, LR 48.4; Pennsylvania, Eastern Dist. Crim. LR 24.1(c); South Carolina, LR 47.05; South Dakota, LR 47.2; Tennessee, Eastern Dist. LR 48.1, Middle Dist. LR 12(h); Western Dist. LR 47.1; Texas, Eastern Dist. LR CV 47, Northern Dist. Civil LR 47.1, Crim. LR 24.1, Southern Dist. Civil LR 47, Crim. LR 24.1; Utah, LR 47-2(b); Washington, Eastern Dist. LR 47.1(d), Western Dist. LR CR 047(b); Washington, DC, LR 47.2(b); West Virginia, LR 3.04; Wisconsin, Eastern Dist. LR 47.3, Western Dist. LR, Rule 4 (LR 47.2); and Wyoming, LR 47.2(b).

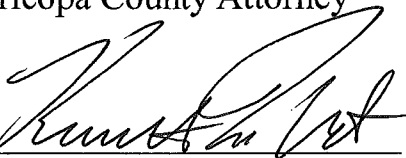
The rules and procedures promulgated by state and federal jurisdictions provide a model for the protections that should be provided to Arizona's jurors.

IV. Proposed Amendment

The Proposed Amendment to Rule 22.5 would allow courts to regulate juror contact after the 10-day jurisdictional time-period of Rule 24.1. The amendment would require counsel to show good cause to speak with a juror after that 10-day period. If the court finds good cause and permits juror contact, the amendment also requires the party to inform the juror in writing, at least 48 hours prior to the contact, of specific details about the nature of the contact and the juror's rights to refuse or terminate any contact and to set reasonable conditions on the contact. The proposed amendment does not prohibit all post-trial juror contact; it simply imposes reasonable, court-controlled limits on how our jurors are treated after their jury service.

Respectfully submitted this 10th day of January 2020.

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By 

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Chief Deputy

APPENDIX

Contents of the Proposed amendment to Ariz. R. Crim. P. 22.5

(a) – (b) *No Change*

(c) After the 10-day time period in Rule 24.1, contact with jurors about the case by a party or a party's representative or agent is prohibited unless specifically authorized by the court upon motion of a party and finding of good cause. If contact is authorized, the juror(s) must be informed in writing at least 48 hours before any contact of the following:

(1) the case name and number,

(2) the party seeking the contact,

(3) the subject matter of the interview, and

(4) the absolute right of the juror to:

(A) discuss or not discuss the case,

(B) terminate the contact at any time,

(C) request the presence of a representative from all parties, and

(D) review and have a copy of any subsequent declaration about the contact that is filed with the court.

(d) Except in response to a court order, no juror is required to communicate with anyone at any time concerning any trial in which they have been a juror.