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IN THE ARIZONA SUPREME COURT

In the Matter of PETITION	)	Supreme Court No. R-08-0039
TO AMEND RULE 123, RULES OF THE	)	
SUPREME COURT OF ARIZONA, RULE 2.3	)	COMMENT TO PROPOSED
ARIZONA RULES OF CRIMINAL	)	RULES RELATED TO ACCESS
PROCEDURE and RULE 5, ARIZONA RULES	)	TO PUBLIC RECORDS AND
OF CIVIL PROCEDURE	)	DATA DISSEMINATION
_____	)	

The Arizona Association of Superior Court Clerks (AASCC) submits the following comments on the petition to amend Rule 123 of the Rules of the Supreme Court of Arizona and Rule 5 of the Arizona Rules of Civil Procedure.

The AASCC recommends changes to specific sections of the Supreme Court Committee’s draft rules in addition to calling out sections where the committee’s intent was unclear when the Clerks considered implementation of the proposed rules. Specific rule sections, recommendations and inquiries follow:

***Supreme Court Rule 123(g)(8).*** The AASCC recommends a technical change, clarifying that this rule applies to public records and that those records may be housed in a court or county facility that is not technically a courthouse. Suggested language appears in Appendix A, below.

***Supreme Court Rule 123(h)(5)(A).*** This section, applicable to general and limited jurisdiction courts, directs individuals to the court or clerk responsible for reviewing the court record for errors or omissions. Where this section states that individuals should

make a request with the court in which the original record was filed, the AASCC recommends replacing “should” with “shall” throughout, to ensure initial requests for correction are made in the appropriate court. Suggested language appears in Appendix A, below.

***Supreme Court Rule 123(h)(5) Correcting Data Errors; Administrative Review.***

Generally, the AASCC found the undefined term “data error” problematic when considering an implementation plan. The Clerks cannot determine if data errors apply to computer-generated information only, to technical errors, clerical errors, to all court records or any other subset of events possible in the court record. Three examples follow:

Example one: A party’s date of birth can be entered incorrectly in any case type. Law enforcement, for example, will file a document with one date of birth and the clerks, court administration, another agency or the parties themselves may enter the same person’s date of birth with one digit different on a subsequent document. How to correct this error once discovered and who should correct it on which databases becomes a challenging proposition until “data errors” are more clearly defined.

Example two: An individual could file an eight page document with the Clerk, but only seven pages appear in the court record. Upon notice, the Clerk may investigate, locate page eight and add it to the court record, which is an example of a clerical error.

Example three: An individual may recall the court providing a date certain at the time of hearing, but when that ruling is reduced to writing, the date differs from the individual’s recollection. If the court’s ruling is issued by electronic minute entry, it is unclear if that is the kind of data error envisioned in the rule and if a request for correction made with the Clerk is the appropriate first step, as opposed to reviewing a

transcript or other recording of the proceeding to determine the existence of an actual error and following up with a motion or other administrative procedure for correction.

***Supreme Court Rule 123(g)(1)(B)(ii) (a)-(h) regarding documents not to be accessible by remote electronic access.***

In criminal cases, preventing access to booking documents, warrants, charging documents, pre-sentence reports, disposition reports and victim information leaves the remaining court record spotty enough to be of little value to those who would access the records remotely and, more importantly, could lead to misuse of the remaining information if the user does not understand that they are not viewing a complete court record. Additionally, any of the documents listed in subsections a through h or the sensitive data contained within them, could be inadvertently attached as an exhibit to, or information within, a public record, such as a motion or response, thus eliminating the value of the protections intended.

At a minimum, the system that provides remote electronic access to criminal cases would have to prominently display to the user that a document was filed but that its image is unavailable to view remotely. A statement that prominently advises users that maximum possible accuracy can only be achieved by reviewing the complete official court record, located at a court-designated facility, would further protect sensitive information and insure users are not relying solely on the limited information available through remote access.



A copy of this comment has been mailed or delivered this  
\_30th\_ day of March, 2009, to:

Michael K. Jeanes, Chair  
Supreme Court Rule 123 & Data Dissemination Advisory Committee  
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Via electronic filing of comment

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APPENDIX A

**Rule 123. Public Access to the Judicial Records of the State of Arizona**

\* \* \*

**(g) Remote Electronic Access to Case Records.**

\* \* \*

(8) This section shall not limit the public's right of access to PUBLIC records at a ~~courthouse~~ COURT DESIGNATED FACILITY, whether in paper or electronic format.

**(h) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.**

(5) Correcting Data Errors; Administrative Review.

(A) An individual seeking to correct a data error or omission in an electronic court record shall be entitled to apply for relief with the court in which the original record was filed. If the record was filed in a superior court, the request ~~should~~ SHALL be made with the clerk of the superior court. If the record was filed in a justice court, the request ~~should~~ SHALL be made with the justice of the peace. If the record was filed in a municipal court, the request ~~should~~ SHALL be made to the presiding municipal court judge.