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(STATE BAR NUMBERS 003813 AND 009894)

10 IN THE SUPREME COURT OF THE STATE OF ARIZONA

11 IN THE MATTER OF:

R-08-0039

12 PETITION TO AMEND RULE 123, RULES OF  
13 THE SUPREME COURT OF ARIZONA,  
14 RULE 2.3, ARIZONA RULES OF CRIMINAL  
15 PROCEDURE, and RULE 5, ARIZONA  
RULES OF CIVIL PROCEDURE

MARICOPA COUNTY ATTORNEY'S  
INITIAL COMMENTS TO PETITION TO  
AMEND VARIOUS RULES RELATING TO  
ACCESS TO PUBLIC RECORDS

16 The Maricopa County Attorney hereby comments to, and recommends revisions to, the Petition to  
17 Amend Rule 123, Rules of the Supreme Court, Rule 2.3, Rules of Criminal Procedure, and Rule 5,  
18 Rules of Civil Procedure as set forth in the attached Comment.  
19

20 Respectfully submitted this 15<sup>th</sup> day of April, 2009.

21 ANDREW P. THOMAS  
22 MARICOPA COUNTY ATTORNEY

23 BY:   
24 PHILIP J. MACDONNELL  
25 CHIEF DEPUTY COUNTY ATTORNEY

26 SALLY WOLFGANG WELLS  
27 CHIEF ASSISTANT COUNTY ATTORNEY  
28

COMMENT

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2 The Maricopa County Attorney's Office supports the efforts of the Arizona Supreme Court's  
3 Advisory Committee on Supreme Court Rule 123 and Data Dissemination to improve public access  
4 to court records in Arizona. The recommendations balance the need for ease of access to public  
5 information with the need to protect individual privacy and information that may be used for  
6 criminal or other harmful purposes.  
7

8 One of the major changes proposed by the Committee is to now include "judges, clerks,  
9 administrators, professionals or other staff employed by or working under the supervision of the  
10 court, or employees of other public agencies who are authorized by state or federal rule or law to  
11 inspect and copy closed court records" in the new general definition of "Public." The proposal then  
12 divides each type of agency into categories and describes the type of information to which the  
13 agency may have access: 1) Judicial Officers and Employees, 2) Employees of Government  
14 Agencies and Private Organizations, and 3) [Persons who request] Access to Bulk Data.  
15

16 Elsewhere in the proposal, when discussing remote access to records, users are divided into  
17 different categories: 1) Parties, Attorneys, and Arbitrators, and 2) General Public, Registered Users,  
18 and 3) General Public, Non-Registered Users. The rules for remote access seem to create a new  
19 definition of "Public" and appear to bar criminal justice agencies from remote access to information  
20 that is currently available. According to the proposed rule, a prosecution agency may have remote  
21 access to cases in which the agency is a party under the "Parties, Attorneys, and Arbitrators" section.  
22

23 But that access is not sufficient for criminal justice purposes, e.g. acquiring information about  
24 criminal convictions. Under the next section of the proposed rule, a prosecution agency may have  
25 remote access only to criminal case records in any action brought pursuant to A.R.S. Titles 4, 13, 28  
26 or local ordinance. There are many other criminal statutes dispersed among the Arizona Revised  
27  
28

1 Statutes that are commonly used by the Maricopa County Attorney's Office, e.g., elections violations  
2 (Title 16), health provider violations (Titles 32 and 36), and fraudulent transactions (Title 44).

3 Therefore, the remote access provisions do not appear to be sufficient.  
4

5 The new categories are confusing and call into question access that is currently available to  
6 prosecution agencies. There are additional concerns about the need to petition the court for records  
7 that currently are accessible and the remedy available when there is a dispute about access.

8 The Maricopa County Attorney's Office asks that the Committee review the proposed changes  
9 with representative Arizona prosecutors' offices before filing the amended petition on May 8<sup>th</sup> so  
10 that these issues may be resolved. The proposed rules, as they are currently drafted, need to be  
11 revised both as to the categories created and the access ascribed to those categories. Rather than  
12 curing the discrepancies, the proposed new public records section in Arizona Code of Judicial  
13 Administration will only add to the confusion if the backbone, Rule 123, is not modified. The  
14 Maricopa County Attorney's Office offers its services should the Committee request them.  
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16

17 Copies of the forgoing mailed  
18 This 15 day of April, 2009 to:

19 Clerk of the Court  
20 Arizona Supreme Court

21 Michael K. Jeanes, Clerk of the Court  
22 Superior Court in Maricopa County  
23 601 W. Jackson St.  
24 Phoenix, Arizona 85003  
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