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9 (STATE BAR NUMBER 003813)

10
11 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

12 **IN THE MATTER OF:**

13 **PETITION TO AMEND RULE 39,**
14 **ARIZONA RULES OF CRIMINAL**
15 **PROCEDURE.**

R-08-0037

MARICOPA COUNTY ATTORNEY'S
COMMENTS TO PETITION TO
AMEND RULE 39 OF THE ARIZONA
RULES OF CRIMINAL PROCEDURE

16 The Maricopa County Attorney hereby comments to, and supports, the Petition to
17 Amend Rule 39 of the Arizona Rules of Criminal Procedure.

18 Rule 39(b)(4) of the Arizona Rules of Criminal Procedure authorizes a “victim” to
19 be present at all proceedings the defendant is entitled to attend. Under Rule 39(a), a
20 “victim” is currently defined as:
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23 a person against whom a criminal offense as defined by § 13-4401(6) has
24 allegedly been committed, or the spouse, parent, lawful representative, or
25 child of someone killed or incapacitated by the alleged criminal offense,
26 except where the spouse, parent, lawful representative, or child is also the
27 accused.
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1 In 2005, the Arizona Legislature amended the statutory definition of “victim”
2 and now a “victim” is defined as:

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4 a person against whom the criminal offense has been committed, including a
5 minor, or if the person is killed or incapacitated, the person’s spouse, parent,
6 child, grandparent or sibling, any other person related to the person by
7 consanguinity or affinity to the second degree or any other lawful
representative of the person.

8 See A.R.S. §§ 8-382, 13-703.01, 13-703.03, and 13-4401(19).

9 The proposed amendment to Rule 39 will conform the Rule’s definition of a
10 “victim” to the criminal statutes’ definition of a “victim.” This position is consistent
11 with a recent court of appeals decision defining “victim.” In *Patterson v. Mahoney*,
12 219 Ariz. 453, ¶ 15, 199 P.3d 708 (App. 2008), the Arizona Court of Appeals held that
13 the statutory definition of victim must be used when applying the Arizona Rules of
14 Criminal Procedure. A.R.S. § 13-4401(19)
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16 By adopting the proposed change to Rule 39, this Court would ensure that the
17 most recent and inclusive definition of “victim” would be used by Arizona courts
18 when applying the rules of criminal procedure. The Maricopa County Attorney’s
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1 Office requests that this Court adopt the Petition to Amend Rule 39 of the Arizona
2 Rules of Criminal Procedure.

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4 Respectfully submitted this 19th day of May, 2009.

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7 ANDREW P. THOMAS
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9 BY: Philip J. MacDonnell

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