

1 ANDREW P. THOMAS
2 MARICOPA COUNTY ATTORNEY
3 (FIRM STATE BAR NO. 0003200)

4 PHILIP J. MACDONNELL
5 CHIEF DEPUTY COUNTY ATTORNEY
6 LAURENCE G. TINSLEY, JR.
7 DEPUTY COUNTY ATTORNEY
8 301 WEST JEFFERSON STREET, SUITE 800
9 PHOENIX, ARIZONA 85003
10 TELEPHONE: (602) 506-3800
11 (STATE BAR NUMBERS 003813 AND 17215)

12 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

13 **IN THE MATTER OF:**

R-08-0032

14 **PETITION TO AMEND RULE 7,**
15 **ARIZONA RULES OF PROBATE**
PROCEDURE.

MARICOPA COUNTY ATTORNEY'S
COMMENTS TO PETITION TO
AMEND RULE 7, ARIZONA RULES
OF PROBATE PROCEDURE

16 The Maricopa County Attorney's Office supports the proposed amendment to Rule
17 7 of the Arizona Rules of Probate Procedure, but urges that additional language to be
18 added to the proposed amendment to Rules 7(G)(4) and 7(H)(4).
19

20 This Office recognizes that these relatively new rules, adopted in 2008, have yet to
21 be thoroughly tested for their pragmatic effect on day-to-day practice, and how they are
22 implemented. Thus, this Office believes that the recommendations of the Arizona
23 Association of Superior Court Clerks make practical sense, since members of that office
24 handle probate documents and consequent issues on a daily basis. The Court should
25 recognize that their experience adds value and weight to their recommendations.
26
27
28

1 This Office recommends the following italicized language be added to proposed
2 amendments to Rules 7(G)(4) and 7(H)(4):
3

4 G. The clerk of the court shall disclose confidential documents, except for the
5 probate information form described in Rule 6, and confidential information only to
6 the following persons:

7 4. Judicial officers, COURT ADMINISTRATION STAFF AND OTHER
8 AUTHORIZED COURT PERSONNEL, *ACTING IN THE PERFORMANCE
9 OF THEIR OFFICIAL DUTIES.*

10 * * *

11 H. The clerk of the court shall disclose the probate information form described in
12 Rule 6 only to the following persons:

13 4. Judicial officers, COURT ADMINISTRATION STAFF AND OTHER
14 AUTHORIZED COURT PERSONNEL, *ACTING IN THE PERFORMANCE
15 OF THEIR OFFICIAL DUTIES.*

16 This proposal is also attached as Exhibit A. While judges have professional ethical
17 obligations to maintain confidentiality, court staff does not. This distinction should be
18 underscored if the Rules are to be amended.

19 In addition, this Office favors maintaining a distinction between identifying
20 documents as “confidential” as opposed to “sealed.” All sealed documents are
21 confidential, but not all confidential documents are sealed. Creating this distinction
22 would allow the courts greater flexibility in implementing protections over documents at
23 issue in probate proceedings.
24

25 ///

26 ///

27 ///

1 This Office supports the balance of the proposed amendments, with the
2 aforementioned caveats.
3

4 Respectfully submitted this 19th day of May, 2009.
5

6
7 ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

8
9 BY: *Philip J. MacDonnell*
10 PHILIP J. MACDONNELL
CHIEF DEPUTY
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EXHIBIT A

2
3
4 TEXT OF PROPOSED RULE CHANGES

5 RULE 7. CONFIDENTIAL DOCUMENTS AND INFORMATION

6
7
8
9 G. The clerk of the court shall disclose confidential documents, except for the
10 probate information form described in Rule 6, and confidential information
only to the following persons:

- 11 4. judicial officers, COURT ADMINISTRATION STAFF AND
12 OTHER AUTHORIZED COURT PERSONNEL, ACTING IN THE
13 PERFORMANCE OF THEIR DUTIES.

14
15 H. The clerk of court shall disclose the probate information form described in
16 Rule 6 only to the following persons:

- 17 4. judicial officers, COURT ADMINISTRATION STAFF AND
18 OTHER AUTHORIZED COURT PERSONNEL, ACTING IN THE
19 PERFORMANCE OF THEIR DUTIES.