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11 **ARIZONA SUPREME COURT**

12 **In the Matter of:**

R-21-0023

13 **PETITION TO ADOPT RULE 36,  
14 ARIZONA RULES OF CRIMINAL  
15 PROCEDURE**

MARICOPA COUNTY ATTORNEY'S  
COMMENT IN SUPPORT

16 The Maricopa County Attorney's Office (MCAO) supports the Petition to Adopt  
17 Rule 36, Arizona Rules of Criminal Procedure, because it will provide individuals with  
18 a procedure to accomplish the voters' will as expressed in the recent passage of  
19 Proposition 207. However, MCAO suggests some additions to the proposed Rule to  
20 address two specific issues.

21 The first issue is the reality that in some circumstances the expungement will only  
22 involve certain counts in a case. The Petition seems to only contemplate the situation  
23 where all counts of a particular case will be expunged. To address this circumstance,  
24 MCAO proposes the following modification to proposed Rule 36(d)(4):  
25

26  
27 (4) **Action on granting the petition.** If the court grants the petition,  
28 the court must vacate the conviction, if any, order that any record of the

1 petitioners' arrest, charge, conviction and sentence **ON ANY**  
2 **APPLICABLE COUNT** be expunged, and order the petitioner's civil  
3 rights **ON ANY APPLICABLE COUNT** be restored including the right  
4 to possess a firearm unless otherwise prohibited.

5 The second issue is that the proposed rule does not provide a procedural  
6 mechanism for the State to use in filing petitions to expunge. A.R.S. § 36-2862(I)  
7 permits the State to file a motion to expunge cases or counts. MCAO suggests the  
8 following addition to the proposed rule:  
9

10 **(g) A PROSECUTORIAL AGENCY MAY FILE A PETITION**  
11 **TO EXPUNGE CONVICTIONS PURSUANT TO A.R.S. § 36-**  
12 **2862(I) IN THE COURT THAT ENTERED THE JUDGEMENT OF**  
13 **CONVICTION. THE PETITION MUST INCLUDE:**

14 **(1) THE COURT'S CASE NUMBER;**

15 **(2) THE NAME OF THE ARRESTING AGENCY;**

16 **(3) A LIST OF COUNTS TO BE EXPUNGED IF THE**  
17 **PETITION DOES NOT SEEK TO EXPUNGE ALL**  
18 **COVICTIONS IN THE CASE;**

19 **(4) ANY INFORMATION LISTED IN (a)(1)(A) AND (B)**  
20 **THAT THE PROSECUTOR KNOWS AT THE TIME OF**  
21 **FILING.**

22 **NOTICE OF FILING DOES NOT NEED TO BE SERVED ON A**  
23 **DEFENDANT OR THEIR ATTORNEY. THE COURT MAY**  
24 **GRANT A PETITION FILED BY A PROSECUTORIAL AGENCY**  
25 **WITHOUT A HEARING.**


26 MCAO proposes the limitation on notice to the defense in this circumstance  
27 because in some instances a prosecution agency may seek to expunge large  
28 numbers of convictions and potentially some old convictions. Because these  
petitions will only benefit Defendants, undoubtedly without objection from the

1 Defendant, this unusual departure from the service and notice requirements will  
2 further the will of the voters in passing Proposition 207 by eliminating an  
3 unnecessary procedural barrier. Furthermore, Defendants and their counsel will  
4 receive notice from the court when the petition is granted.  
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6 MCAO supports the efforts of the Administrative Office of the Courts in  
7 this matter and asks this Court to include these amendments to the Petition to  
8 further support the Petition's goals.  
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10 Respectfully submitted this 14<sup>th</sup> day of April 2021.  
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12 ALLISTER ADEL  
13 MARICOPA COUNTY ATTORNEY

14 By /s/  \_\_\_\_\_  
15 Kenneth N. Vick  
16 Chief Deputy  
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