

**FINAL REPORT OF THE  
ADVISORY COMMITTEE ON  
SUPREME COURT RULE 123  
AND DATA DISSEMINATION**



**DECEMBER 2008**

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## **ACKNOWLEDGMENT**

I want to extend my appreciation to the members of the committee for their generous giving of time and expertise. Without their immeasurable effort, we could not have achieved the product we did in such a very brief period of time. Considerable hours, commitment, and enthusiasm were offered by all members of the committee to make this project a success. I believe the recommendations presented in this report will improve access to court records by the public, members of the bar, and commercial users, while balancing the privacy concerns of everyone. At the same time, it will move Arizona to a new level of openness within the judiciary.

Michael K. Jeanes  
Committee Chair

*“Courts exist to serve the public and cannot serve effectively if meaningful communication among the branches, within the branch, and with the public does not take place.”*

*Chief Justice Ruth McGregor  
Good to Great, A Strategic Agenda for Arizona’s Courts; 2005 - 2010*

*“Justice in all cases shall be administered openly, and without unnecessary delay.”*

*Arizona Constitution Art. II §11*

## **INTRODUCTION**

Rule 123, Rules of the Supreme Court of Arizona, governs public access to records maintained by the judiciary. The foundation of the Rule is that court records should be open to everyone. Specifically, the Rule provides:

Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law. *Rule 123(c)(1)*

Questions begin to emerge, however, when the competing interests of public access to court records and the privacy rights of the public the court serves are analyzed more closely. For example, does the fact that the records of the court are presumed to be open mean that access should be extended from viewing the file at the courthouse to viewing the file online by remote electronic means? Should all the data about an individual, such as social security number, address, and date of birth, be provided in bulk upon request to credit bureaus or other information gathering entities? Should court administrative records, such as an employee personnel file, be open to everyone? Should court system partners, such as law enforcement, probation departments, and child support enforcement agencies, have unlimited access to court records and data to assist in apprehending criminals, monitoring felons, or collecting child support? These questions present complex issues that require balancing the competing interests of all parties concerned.

Rule 123, adopted in the early 1990's, currently acknowledges this need to balance these competing principles, including the public's expectation of uncensored access to court records, a duty to protect confidential and privileged information in those records, and a duty to effectively and efficiently respond to requests for information from individuals and from public and private entities. Specifically, the rule provides, ". . . the records in all courts . . . are *presumed* to be open . . . . However, . . . public access to some court records *may be* restricted . . ." for reasons of privacy, confidentiality, or in the state's best interests. *Rule 123(c)(1)*. The Rule carves out limited areas of protection, setting forth specific reasons for denying access, including:

- the nature of the information – privacy interests can override the right of access – 123(c), (d) and (e);
- problems with providing access, including that the logistics overwhelm court resources or new records – 123(f)(4); and
- the nature of the request, such as harassment – 123(f)(4).

However, in this age of technology, which seems to demand immediate and unlimited ease of access to information through public and private computers everywhere, these limiting provisions of the rule have become strained.

An additional factor complicating the debate is that court records are being used for ever-expanding purposes, including employment, tenant, and insurance screening and general background checks, along with the ongoing use of court records for credit reports. Court records are a primary source of information for these reviews, and courts have experienced an increased demand for access, in terms of both the number and scope of the requests for information. The expanding demand for access to court records has placed additional burdens on already limited court resources required to respond to these requests.

In order to achieve a thoughtful, consistent, statewide approach to these issues, in December 2007, Chief Justice Ruth V. McGregor established the Ad Hoc Advisory Committee on Supreme Court Rule 123 and Data Dissemination. The Chief Justice charged the committee with examining and making recommendations in the specific areas of bulk data, database access, data retention, case look-up websites, and any other Rule 123 issues the committee believes need resolution. The committee examined each of these topics and drafted specific recommendations for revisions to Rule 123 which it believes will better serve the public by providing greater access to court records and by sharing meaningful communication among the branches, within the branch, and with the public.

## **CHARGE OF THE COMMITTEE**

The Advisory Committee on Supreme Court Rule 123 and Data Dissemination was specifically charged with examining and making recommendations on the following topics:

- What information should be available to the public online for individual cases?

- Should criminal case data be available online for those cases in which a conviction has been “set aside” pursuant to ARS § 13-907? If so, how should the set-aside order be indicated in the online record?
- Should record retention schedules applicable to paper case files apply to case management data available online? If not, how long should case records be available online?
- Should courts or the Administrative Office of the Courts maintain an archive of case management data for cases that have exceeded their retention period for the purpose of conducting research, establishing long-term trends or other related inquiries? If so, how long should case records be preserved in such an archive? Should the archive be publicly accessible, and if so, what standards and processes are needed to identify and regulate authorized users of the archive?
- Should certain recipients who have a legitimate need for data not available on the public website be authorized to obtain additional bulk data, for example, government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so,
  - what standards should be applied to identify authorized recipients,
  - what process should users undergo to establish their eligibility to receive bulk data, and
  - what restrictions should be imposed on their use of the data?
- Should certain users be authorized to directly access case management databases in real time, such as government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so, what standards and processes are needed to qualify for such access?
- Examine other issues needing resolution relating to Rule 123 that have come to light since the rule was last updated.

Additionally, the Committee was to submit a final report of its recommendations to the Arizona Judicial Council by December, 2008.

## **WORK OF THE COMMITTEE**

The Advisory Committee on Supreme Court Rule 123 and Data Dissemination included members of the judiciary at both the trial and appellate court level; court administrators from superior and limited jurisdiction courts; court clerks; attorneys representing media interests, credit agency interests, the State Bar, and the legal education community. The committee was chaired by the Honorable Michael K. Jeanes, Clerk of the Court for the Superior Court in Maricopa County. The committee moved quickly to complete its assignment. It held ten full-day meetings over a period of ten months and assigned certain tasks to a workgroup which then held teleconference meetings.

The committee heard from experts, both local and national, in the fields of information sharing among justice system partners, commercial use and data compilation of court records, privacy interests, and identity management. The committee also received input from private and public

individuals and agencies, each of whom had unique knowledge and insight into specific access to court records issues. These representatives included private investigators, the employment screening industry, the tenant screening industry, the background check industry, the data compilation and credit bureau industry, prosecutors, victims' advocates, and representatives from the Arizona Attorney General's Office.

The committee reviewed print and electronic research material on such topics as identity theft, the dormant commerce clause, and privacy interests. In addition, the committee considered access to court records policy models from the federal courts and from other states and individual counties, including King County, Washington, Manatee County, Florida, Oklahoma, Ohio, New Jersey, Colorado, and others. Finally, the committee looked at work on the topic of public access to court records by policy organizations such as the Justice Management Institute and the National Center for State Courts.

This report presents recommendations for revisions to Rule 123, Rules of the Supreme Court of Arizona, additions to the Rules of Civil and Criminal Procedure, and the creation of a new Arizona Code of Judicial Administration (ACJA) public records section, all of which the committee expects will improve public access to court records in Arizona. With approval of the Arizona Judicial Council, a rule petition incorporating the amendments to Rule 123 will be filed with the supreme court in January 2009. The committee encourages all court personnel to comment on this petition with suggestions and recommendations that will move public access to court records in Arizona from "Good to Great."

## **SUMMARY OF RECOMMENDATIONS**

The committee affirms the value of open court records and makes the following recommendations:

1. Provide expanded access to case records by making them available through remote electronic access with safeguards, including registration, payment of a fee, and limitations on access to some case records;
2. Require that courts and clerks clearly and prominently display current charge disposition for cases made available online so that the public is readily advised of the status of the case, including the existence of a set-aside;
3. Allow courts and clerks to remove case records and case management system data from online display pursuant to the applicable records retention schedule period, or after twenty-five years;
4. Allow courts and clerks the option of retaining case records and case management system data through an electronically preserved method, beyond the applicable records retention schedule period, and without limitation as to time;

5. Establish a process by which courts and clerks may release bulk data once the recipient executes a dissemination and disclaimer containing specific provisions established by the supreme court, and clearly authorize courts to engage in data sharing arrangements with other government agencies, pursuant to the requirements and limitations of Rule 123;
6. Prohibit direct access to AOC case management system databases and the AOC Public Access site at this time, but address this issue at some point in the future, as the court's technology system advances.
7. Resolve additional, miscellaneous issues relating to Rule 123 as follows:
  - a. Require filers in civil cases to refrain from including social security numbers, financial account numbers, a juvenile victim's name, and a victim's address and telephone number or other locating information;
  - b. Clarify that proprietary material required to be submitted to the supreme court by applicants for certification and licensing is closed;
  - c. Expand the provision found in Rule 123(g)(6), which grants immunity from suit to clerks of court for any conduct relating to the electronic posting of case documents containing sensitive data that parties have failed to redact, to include other court employees and entities who deal with case records;
  - d. Clarify that any record that might link a request to view a case file to a particular person should be closed.

A draft of the proposed revisions to Rule 123, Rules of the Supreme Court of Arizona; the proposed revisions to the Rules of Civil and Criminal Procedure; and the recommended provisions for a new ACJA section addressing public records, implementing these proposals are incorporated in Appendices B through D, respectively.

## **FINDINGS AND RECOMMENDATIONS**

### **A. Remote Electronic Access to Case Records**

There are many advantages to the public and the courts in providing remote electronic access to case records, including:

- Convenience to attorneys, parties, justice system partners, and the public in accessing records directly and immediately.
- Reduced foot traffic in courthouses and clerk's offices.
- Reduced court and clerk staff time in responding to requests for records.
- Ease of access to court records by the media as a vital source of public information.
- Accountability of the courts to an informed public through open court records.
- Meeting a growing public expectation of remote electronic access to information held by the government.

And while some Arizona courts have already made certain case records available online, this process has been carried out in an irregular manner.

The committee is recommending a consistent, statewide approach of expanded access to case records by making them available through remote electronic access. However, by making case records available in this manner, inevitably some personal and sensitive data contained within those records will be released. No set of safeguards the committee can recommend will ensure that all privacy concerns are overcome. The committee has sought to minimize the release of personal and sensitive data contained within case records by recommending a series of rule changes that limit accessibility by remote electronic access to those who register and pay a fee, by further limiting such accessibility to only members of the public who are Arizona residents, and by limiting the scope of the records that are available online. The release of personal and sensitive data can further be minimized when members of the bench adhere closely to the provisions of Rule 125, Rules of the Supreme Court of Arizona which defines and sets forth the recommended content of minute entries, orders, rulings, and notices.

Finally, the public should keep in mind that all case records that are not sealed and are not otherwise confidential will continue to be available in person or by mail at the courthouse.

#### **1. What information should be available to the public online for individual cases?**

The committee recognizes the need to strike an appropriate balance between open government and the protection of personal information and recommends three types of remote electronic access to case records. The first type of access allows parties, attorneys, and arbitrators to receive remote electronic access to case records in all case types in which the person requesting access is a named party, attorney of record, or arbitrator. The second type of access allows members of the public who hold an Arizona driver's license or nonoperating identification license to receive remote electronic access to civil, criminal, and civil traffic case records, except for certain identified documents likely to contain sensitive data, such as charging documents, warrants, and pre-sentence reports. The third type of access allows continued access to all members of the public, including attorneys, parties and arbitrators, to certain, limited case

identifying information, docket entries, and calendar information, which many courts already make available online. Court of appeals and supreme court opinions and decisions will continue to be available online as well.

The first two types of access require registration, including verification of identification and payment of a nominal registration fee. The second type of access, in addition to these same requirements, requires payment of a fee, to be established by the supreme court, to access the documents. The third type of access allows access to everyone without registration or a fee.

The second level of access is limited to members of the public who hold an Arizona driver's license or nonoperating identification license for several reasons. First, Arizona residents are subsidizing the infrastructure of the remote electronic access system through their taxes. Second, limited access is a reasonable first step in making court records available online. Third, should a problem occur with inappropriate use of the records, the limitation of access to Arizona residents will offer some control in terminating the misuse.

**2. Should criminal case data be available online for those cases in which a conviction has been “set aside” pursuant to ARS § 13-907? If so, how should the set-aside order be indicated in the online record?**

The committee recognizes there is confusion within the Arizona legal community regarding the effect on court records of what is commonly known as a “set-aside,” but the committee is limited in its ability to propose action to resolve this problem due to constraints imposed by current statutes. A “set-aside,” authorized by A.R.S. § 13-907, allows a person to apply to the sentencing court to have a judgment of guilt set aside so long as the terms and conditions of the sentence are completed. If the application is granted, statute provides that the court “shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction,” with some limitations. The statute does not allow the court or clerk to remove or destroy a judgment that has been set aside.<sup>1</sup> The court or clerk is permitted only to make a notation of the set-aside in the record.

The committee believes, however, that to reduce confusion of the effect of a set aside on court records, courts throughout the state should prominently display the existence of a set aside online, in a consistent manner. Therefore, the committee recommends that courts and clerks clearly and prominently display current charge disposition for all cases made available online so that the public is readily advised of the status of the case, including the existence of a set-aside.

The committee also suggests that, at some future point, all Arizona statutes pertaining to events such as a set-aside, expungement, or restoration of civil rights (A.R.S. §§ 13-907, 13-4051, 13-

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<sup>1</sup> This position must be distinguished from a juvenile expungement, under A.R.S. § 13-921 where the juvenile record must be pulled from public access, since “expunge” in this instance means “sealed.” Furthermore, the case must remain available so that it may be pleaded and proved as a prior conviction in any subsequent prosecution of the defendant.

921, etc.) should be reviewed to clarify the specific action the court or clerk must make on the record upon the occurrence of these events.

**3. Should record retention schedules applicable to paper case files apply to case management data available online? If not, how long should case records be available online?**

Presently, courts often retain case information online long after the underlying case file has been destroyed. This practice causes confusion and even harm to parties who seek to clarify or dispute online case information but are unable to do so when the underlying case file has been destroyed. The committee believes there should be consistency among case information online and the underlying case file.

The committee recommends that courts and clerks be permitted to remove case records and case management system data from online display pursuant to the applicable records retention schedule period, or after twenty-five years if the retention period has not expired. This practice will enable a court to eliminate the online display of case records and case management system data at the same time the court destroys the underlying case file. However, the committee believes the court should then be able to choose to retain case information it has removed from online display, through an electronically preserved method. The committee further recommends that when a court or clerk removes case records or case management system data from online display after twenty-five years, if the applicable records retention schedule period has not yet been reached, the court or clerk must place a notice on its website explaining that to obtain information on a case older than twenty-five years, the requestor must contact the court or the clerk.

**4. Should courts or the Administrative Office of the Courts maintain an archive of case management data for cases that have exceeded their retention period for the purpose of conducting research, establishing long-term trends or other related inquiries? If so, how long should case records be preserved in such an archive? Should the archive be publicly accessible, and if so, what standards and processes are needed to identify and regulate authorized users of the archive?**

The committee recognizes that courts or the Administrative Office of the Courts (AOC) may wish to retain case management system data beyond the applicable records retention schedule period in order to conduct research, establish long-term trends, and answer other related inquiries. This practice is particularly valuable to limited jurisdiction courts, where records retention schedule periods are short – sometimes only a year. Therefore, the committee recommends that courts or clerks be permitted to archive their case management system data after the records retention period has been met or after twenty-five years if the records retention period has not been met.

As stated above, the committee recommends that courts, clerks, and the AOC be given the option of retaining case records and case management system data through an electronically preserved

method, beyond the applicable records retention schedule period, and without limitation as to time. Any records retained in this manner must be available to the public under Rule 123.

## **B. Bulk Data Access**

With the expanded interest in court records today, courts and the public will benefit from an improved bulk data dissemination process that provides for the uniform release of bulk data to authorized subscribers. The committee proposes that limited, basic provisions governing the release of bulk data by the courts be placed in Rule 123, and that further details of the release process be placed in a proposed new ACJA public records section, as set forth in Appendix D.

- 5. Should certain recipients who have a legitimate need for data not available on the public website be authorized to obtain additional bulk data, for example, government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so,**
  - **what standards should be applied to identify authorized recipients,**
  - **what process should users undergo to establish their eligibility to receive bulk data, and**
  - **what restrictions should be imposed on their use of the data?**

The committee recommends that courts and clerks be permitted to release bulk and compiled data, so long as the recipient executes a dissemination and disclaimer agreement containing specific provisions established by the supreme court. The committee discovered that valid public policy reasons exist for providing bulk and compiled data to authorized recipients. For example, since the dissemination of court records to credit reporting agencies actually reduces the likelihood that the credit agency will mis-match a person and information and thereby potentially report negative information on the wrong “John Smith,” it is beneficial for courts to provide sufficient data that will enable a credit reporting agency to match the right person with the right information. Further, courts benefit from reducing the resources required to respond to a bulk or compiled data request if the parameters of the request are set forth in rule or code and are such that only authorized requests are met. Therefore, the committee proposes that limited provisions which permit the release or denial of bulk data requests by the courts be set forth in Rule 123, and that additional details of a dissemination and disclaimer agreement, as proposed in Appendix D, be placed in a forthcoming ACJA section addressing public records.

Additionally, the committee discovered that Rule 123 currently does not clearly delineate all the various persons or entities that may rely upon the Rule to support their need for access to court records. These groups include judicial officers and court employees and employees of government agencies and private organizations. Currently, the Rule proclaims to govern “public” access to court records. The committee believes the Rule should also govern access to court records by court personnel and government agencies that rely upon court records to meet their own statutory reporting requirements, such as the Arizona Department of Transportation, Motor Vehicle Division. The committee recommends that in order to provide clarification that

courts may individualize the access granted to personnel within their own court and engage in data sharing arrangements with other government agencies, pursuant to the requirements and limitations of Rule 123, all contemplated users of court records must be properly identified within the Rule.

- 6. Should certain users be authorized to directly access case management databases in real time, such as government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so, what standards and processes are needed to qualify for such access?**

The committee believes that the current case management system in use by a majority of the courts in Arizona will not and should not enable direct access to civil and criminal case management databases located on servers at the AOC. Direct access by external users to case management databases would create a security concern to all courts and, as an alternative, direct access to the AOC data warehouse would cripple internal access to the warehouse due to the high volume of traffic that would be encountered. It appears that the real question this particular issue attempts to address is whether commercial subscribers should be granted real time access to the AOC Public Access site. However, since the Public Access site is presently updated only once per day, real time access is of no value. Currently, commercial subscribers receive data from the AOC Public Access site, every thirty days, on five CD's provided by the AOC for a fee. If there is sufficient demand, the AOC could consider providing this data more frequently, however the cost structure for the service would need to be revised. Additionally, the AOC is currently working toward a court technology system that would offer real time access to the Public Access site, but this system will not offer real time access to the case management databases due to the concerns mentioned above. It is uncertain when this system will be available. As a result, the committee recommends that the issue of direct access to either case management system databases or to the AOC Public Access site be given further consideration at some point in the future, as the court's technology system advances.

### **C. Miscellaneous Issues**

The committee looked at a series of additional issues brought to its attention from a variety of sources proposing changes to Rule 123. The miscellaneous issues are addressed here.

- 7. Examine other issues needing resolution relating to Rule 123 that have come to light since the rule was last updated.**

- a. Removing Sensitive Data in Case Records**

The committee believes that sensitive information, which is generally unnecessary to litigation, should not be placed in the case record, since this information could result in

embarrassment to unwitting individuals or be used to facilitate identity theft. Therefore, the committee recommends that in all civil cases, a filer must refrain from including social security numbers, financial account numbers, a juvenile victim's name, and a victim's address and telephone number or other locating information. The burden of removing this sensitive information must lie with the attorneys, parties, or any other filer, and not the court or clerks. To ensure compliance with this provision, the court should be given authority to impose sanctions for noncompliance. The committee has given consideration to extending this recommendation to criminal cases as well, however, the committee was convinced by the arguments of prosecuting agencies around the state that compliance with such a requirement would cause confusion in identifying multiple victims within the same case and could leave blanks or holes in documents that are required as evidence in court. Therefore, the committee believes it would be best to impose the restriction against filing sensitive information to civil cases only at this time, being mindful that the restriction can be expanded to criminal cases at a future date. In fact, some prosecuting agencies already voluntarily abide by such a restriction with regard to juvenile victims' names.

#### **b. Certification Records**

The committee learned that, on occasion, a person or entity must submit proprietary material to the supreme court, most commonly during the application process for certification or licensing in a particular field. The committee believes these records should be made available only to the certification and licensing division of the supreme court, and should be closed to others, due to the potential financial damage that might be caused to the owner of the material. Therefore, the committee recommends that proprietary material required to be submitted to the supreme court by applicants for certification and licensing be closed.

#### **c. Expansion of Immunity Provision**

The committee considered whether immunity from suit for conduct relating to the posting of case documents containing sensitive data that parties fail to redact, should be expanded to include courts that do not have clerks. Presently, Rule 123(g)(6) provides: "The Clerk of the Court shall be immune from suit for any conduct relating to the electronic posting of case documents containing sensitive data that a party or parties have failed to redact." The committee learned that the given title of the records custodian among courts varies widely throughout the state and further varies between limited and general jurisdiction courts. For example, in some limited jurisdiction courts, the court administrator also holds the title of clerk and is responsible for the court record in the capacity as clerk. Therefore, the committee agreed that the present immunity provision found in Rule 123(g)(6) should be expanded to other court employees and entities including the court, court agencies, and their employees.

#### **d. Access to Logs of Files Reviewed in Clerk's Offices**

The committee learned that, due to concern over potential theft of case records, some clerks and courts request identification from a person before a case file is turned over for review. The committee acknowledges that access to court records cannot be denied for failure of the requester to identify himself. However, some courts have found it prudent to ask for identification for security reasons. Since such records of identification do exist, the committee believes that any record that might link a request to view a case file to a particular person should be closed.

## **CONCLUSION**

The committee is mindful of the need to file a rule petition with the supreme court by January 2009 to propose rule changes to fulfill the recommendations set forth in this report. In light of this fast-approaching deadline, the committee is unable to circulate the proposed rule changes to the broader court community for comment prior to filing the rule petition. Instead, the committee expects to file the rule petition in January and then reconvene in the spring to review and address any comments received in response to the petition. Should the committee find that amendments are necessary to the petition to accommodate the comments, the committee will proceed to amend the petition at that time. Furthermore, the committee will continue its work on a new ACJA public records section, incorporating the recommended provisions set forth in Appendix D attached to this report.

**APPENDIX A: Administrative Order Establishing the Committee**

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

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In the Matter of: )  
)  
ESTABLISHMENT OF THE ) Administrative Order  
ADVISORY COMMITTEE ON ) No. 2007-101  
SUPREME COURT RULE 123 AND )  
DATA DISSEMINATION )  
\_\_\_\_\_ )

Supreme Court Rule 123 governs public access to records maintained by the judiciary. The rule requires courts to accommodate requests for access to non-confidential case information, including compilations of data from multiple cases, commonly referred to as bulk data. The rule prohibits access to confidential court data by members of the general public, but allows such access by individuals working under court supervision and by employees of other public agencies authorized by state or federal law to access confidential court records (Rule 123(b)(11)). The rule does not specify what data can be provided in bulk, nor does it establish specific parameters for access by non-judicial branch users who fall under the exception in section (b)(11).

Courts extract information from their case management system databases in responding to bulk data requests. These databases also provide the case information currently offered by some courts to the public online. A limited number of government agencies and treatment providers now have direct access to some case management systems, and additional data sharing arrangements are under consideration that raises questions about what standards to apply in assigning appropriate access levels to external agencies and others.

The need for statewide consistency in responding to bulk data requests and the expanding role of case management databases in data sharing and public access to court records warrant a focused examination of the issues identified below. In accordance with Arizona Code of Judicial Administration § 1-104, the Chief Justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities. Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Advisory Committee on Supreme Court Rule 123 and Data Dissemination is established to examine and make recommendations on the following topics:

Bulk Data

- Should certain recipients who have a legitimate need for data not available on the public website be authorized to obtain additional bulk data, for example, government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so,
  - what standards should be applied to identify authorized recipients,
  - what process should users undergo to establish their eligibility to receive bulk data, and
  - what restrictions should be imposed on their use of the data?

#### Database Access

- Should certain users be authorized to directly access case management databases in real time, such as government agencies, government contractors, commercial agencies subject to the Fair Credit Reporting Act, the news media, or research organizations? If so, what standards and processes are needed to qualify for such access?

#### Data Retention

- Should record retention schedules applicable to paper case files apply to case management data available online? If not, how long should case records be available online?
- Should courts or the Administrative Office of the Courts maintain an archive of case management data for cases that have exceeded their retention period for the purpose of conducting research, establishing long-term trends or other related inquiries? If so, how long should case records be preserved in such an archive? Should the archive be publicly accessible, and if so, what standards and processes are needed to identify and regulate authorized users of the archive?

#### Case Lookup Websites

- What information should be available to the public online for individual cases?
- Should criminal case data be available online for those cases in which a conviction has been “set aside” pursuant to ARS § 13-907? If so, how should the set-aside order be indicated in the online record?

#### Rule 123

- Examine other issues needing resolution relating to Rule 123 that have come to light since the rule was last updated.

The Committee shall report its recommendations to the Arizona Judicial Council by December, 2008.

IT IS FURTHER ORDERED that the individuals listed on Appendix A are appointed as members of the Committee beginning upon entry of this Order and ending on December 31, 2008. The Chief Justice may appoint additional members as necessary.

IT IS FURTHER ORDERED that Committee meetings shall be scheduled at the discretion of the Chair. Pursuant to Arizona Code of Judicial Administration § 1-202, all meetings shall comply with the public meeting policy of the Arizona Judicial Branch. The Administrative Office of the Court shall provide staff for the Committee, who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 20<sup>th</sup> day of December, 2007.

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RUTH V. MCGREGOR  
Chief Justice

## **Appendix A**

### Advisory Committee on Supreme Court Rule 123 and Data Dissemination

- Hon. Michael Jeanes, Chair
- Dave Byers, Vice Chair
- Patty Noland
- Rachelle Resnick
- Karen Westover
- Terry Stewart
- Don Jacobsen
- Jim Scorza
- Hon. Peter Swann
- Hon. John Taylor
- David Bodney, Esq.
- Patricia Sallen, Esq.
- Janna Day, Esq.

APPENDIX B: Proposed Revisions to Rule 123, Rules of the Supreme Court of Arizona

**NEW LANGUAGE IN BLUE CAPS**

~~Deleted language in red strikethrough~~

**Rules of the Supreme Court of Arizona**

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

(a) **Authority and Scope of Rule.** Pursuant to the administrative powers vested in the supreme court by Article VI, Section 3, of the Arizona Constitution, and the court's inherent power to administer and supervise court operations, this rule adopted to govern public access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

**(b) Definitions.**

**(1) BULK DATA. AS USED IN THIS RULE, BULK DATA MEANS ALL, OR A SIGNIFICANT SUBSET, OF THE NON-CONFIDENTIAL CASE INFORMATION MAINTAINED IN A COURT CASE MANAGEMENT SYSTEM, EITHER WITH OR WITHOUT MODIFICATION OR CUSTOMIZED COMPILATION**

~~(1)~~ **(2) *Closed or Confidential (Records).*** "Closed" or "Confidential", when used in this rule in reference to records, means that members of the public may not inspect, obtain copies of, or otherwise have access to such records unless authorized by law.

~~(2)~~ **(3) *Commercial Purpose.*** As used in this rule "Commercial Purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public records. "Commercial Purpose" does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

~~(3)~~ **(4) *Court.*** "Court" means the Supreme Court, the Court of Appeals, Superior Court, Justice Courts, Municipal Courts and all judges of those courts.

~~(4)~~ (5) *Court Administrator or Clerk of the Court.* "Court Administrator" or "Clerk of the Court" means a person employed, appointed or elected for the purpose of administering the operations of any court or court system.

~~(5)~~ (6) *Criminal History Record Information (CHRI).* "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center (ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

~~(6)~~ (7) *Custodian.* "Custodian" is the person responsible for the safekeeping of any records held by any court, administrative office, clerk of court's office or that person's designee who also shall be responsible for processing public requests for access to records.

**(8) CUSTODIAN OF BULK DATA. "CUSTODIAN OF BULK DATA" MEANS, DEPENDING ON LOCAL PRACTICE, IN A SUPERIOR COURT OR APPELLATE COURT THE CUSTODIAN MAY BE EITHER THE CLERK OF COURT OR THE PRESIDING JUDGE. IN A JUSTICE OF THE PEACE OR MUNICIPAL COURT, THE CUSTODIAN IS THE PRESIDING JUDGE OF THE COURT.**

~~(7)~~ (9) *Information.* "Information" is any recognizable alpha/numerical data which constitute a record or any part thereof.

~~(8)~~ (10) *Judge.* "Judge" means any justice, judge, judicial officer, referee, commissioner, court-appointed arbitrator or other person exercising adjudicatory powers in the judicial branch.

~~(9)~~ (11) *Law.* "Law" means statute, rule, administrative order, court order or case law.

~~(10)~~ (12) *Presiding Judge.* "Presiding Judge" means the presiding judge of the superior court for each county, or the chief judge for each division of the court of appeals or the chief justice of the supreme court. For municipal and justice courts "Presiding Judge" means the presiding judge of the superior court.

~~(11)~~ (13) *Public.* "Public" means ~~those persons who are not judges, clerks, administrators, professionals or other staff employed by or working under the supervision of the court, or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records~~ **ALL USERS OF COURT RECORDS, INCLUDING ARIZONA JUDICIAL OFFICERS AND EMPLOYEES, EMPLOYEES OF GOVERNMENT AGENCIES AND PRIVATE ORGANIZATIONS.**

~~(12)~~ (14) *Record.* "Record" means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics, made or received pursuant to law or in connection with the

transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

(A) Administrative Record. "Administrative record" means any record pertaining to the administration of the courts, court systems or any non-adjudicatory records.

~~(B) Case Record. "Case record" means any record pertaining to a particular case or controversy.~~

**(B) CASE RECORD. "CASE RECORD" MEANS:**

**(1) ANY RECORD THAT IS COLLECTED, RECEIVED, OR MAINTAINED BY A COURT OR CLERK OF COURT IN CONNECTION WITH A JUDICIAL PROCEEDING; AND**

**(2) ANY ORDER, JUDGMENT, OR MINUTE ENTRY THAT IS RELATED TO A JUDICIAL PROCEEDING; AND**

**(3) ANY INDEX, CALENDAR, DOCKET, OR REGISTER OF ACTIONS ASSOCIATED WITH A CASE OR IN CONNECTION WITH A JUDICIAL PROCEEDING.**

**(15) SENSITIVE DATA. "SENSITIVE DATA" MEANS SOCIAL SECURITY NUMBER, BANK ACCOUNT NUMBER, CREDIT CARD NUMBER, OTHER FINANCIAL ACCOUNT NUMBER, A JUVENILE VICTIM'S NAME, AND A VICTIM'S ADDRESS AND TELEPHONE NUMBER OR OTHER LOCATING INFORMATION.**

**(c) General Provisions.**

(1) *Open Records Policy.* Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law.

(2) *Creation, Production and Management of Records.*

(A) Court personnel, who generate or receive paper or electronic records known or marked as containing confidential information, shall identify and segregate the confidential information from the public record whenever practicable.

(B) The custodian shall utilize reasonable records management practices and procedures to assure that all closed records are properly identified as "confidential" and maintained segregated or apart from records open to the public. Whenever possible, records containing both public and confidential information shall be identified as "containing both public and confidential information."

(C) Upon request, the custodian shall reproduce any record containing public information that would otherwise be closed, by redacting all confidential information from the record unless release of the entire record is prohibited by law. Records that are reproduced after redaction shall contain a disclosure that they were redacted, unless such disclosure would defeat the purpose of the redaction. Identification of redacted records shall include a description of the nature and length of the matters contained therein, unless the description, if given, constitutes a disclosure of confidential information. Upon request, the custodian shall identify the legal authority for the redaction.

(3) *Confidential and Personal Financial Records.* Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.

(4) *New Records.* The court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

**(5) JUDICIAL OFFICERS AND EMPLOYEES. ARIZONA JUDICIAL OFFICERS, CLERKS, ADMINISTRATOR, PROFESSIONALS OR OTHER STAFF EMPLOYED BY OR WORKING UNDER THE SUPERVISION OF THE COURT SHALL HAVE SUCH ACCESS AS NEEDED TO CARRY OUT THEIR ASSIGNED DUTIES AND AS DIRECTED BY THEIR SUPERVISOR.**

**(6) EMPLOYEES OF GOVERNMENT AGENCIES AND PRIVATE ORGANIZATIONS. EMPLOYEES OF FEDERAL, STATE, TRIBAL, AND LOCAL GOVERNMENT AGENCIES AND POLITICAL SUBDIVISIONS, AND PRIVATE ORGANIZATIONS, IN ORDER TO SERVE A PUBLIC PURPOSE, SUCH AS CRIMINAL JUSTICE, CHILD WELFARE, LICENSING, MENTAL HEALTH TREATMENT, OR RESEARCH FOR SCHOLARLY, JOURNALISTIC, POLITICAL, OR GOVERNMENTAL PURPOSES MAY BE GRANTED SUCH ACCESS TO COURT RECORDS AS REQUIRED TO SERVE THAT PURPOSE ACCORDING TO THIS RULE OR AS PROVIDED BY ANY SUPPLEMENTAL SUPREME COURT POLICIES OR COURT ORDER.**

**(7) ACCESS TO BULK DATA. PERSONS WHO EXECUTE A DISSEMINATION CONTRACT AND DISCLAIMER CONTAINING PROVISIONS SPECIFIED BY**

**THE SUPREME COURT MAY HAVE SUCH ACCESS AS PERMITTED BY  
SUBSECTION (J) OF THIS RULE.**

**(d) Access to Case Records.**

All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

*(1) Juvenile Delinquency Proceedings Records.*

(A) Records of all juvenile delinquency and incorrigibility proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ~~ARS § 8-230.01, or renumbered as~~ ARS § 8-321, ~~effective June 30, 1998~~) or the family counseling fund (ARS § 8-261 et seq.) are confidential and shall not be released unless authorized by rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or his family may be identified, wherever such records are maintained by the court.

*(2) Adult Criminal Records.*

(A) Criminal History Records, diagnostic evaluations, psychiatric and psychological reports, medical reports, alcohol screening and treatment reports, social studies, probation supervision histories and any other records maintained as the work product of pretrial services staff, probation officers and other staff for use by the court are closed and shall be withheld from public inspection, including such records associated with the interstate compact pursuant to ARS § 31-461. However, the bail determination report, any related pretrial service records, the presentence report, and any related probation office records are open to the public when: (i) ordered by the court, (ii) filed with the clerk of court or attached to any filed document and not segregated and identified as being closed or confidential, or (iii) considered or used for any purpose in open court proceedings unless restricted by law or sealed by the court.

(B) In adult criminal cases the pretrial services unit, probation department, limited jurisdiction court, or other primary user shall separate and identify as "confidential" all records defined herein as "criminal history record information," and those records identified in paragraph (d)(2)(A). Such records shall be closed

and placed in an envelope marked "confidential", or otherwise stored as a confidential record, and shall only be disclosed as authorized by ARS § 41-1750 *et seq.* or by court order.

(C) All other information in the adult criminal case files maintained by the clerk of the court is open to the public, unless prohibited by law or sealed by court order.

(3) *Judicial Work Product and Drafts.* Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

(4) *Unofficial Verbatim Recordings of Proceedings.* Electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed.

**(e) Access to Administrative Records.**

All administrative records are open to the public except as provided herein:

(1) *Employee Records.* Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

(A) Full name of individual;

(B) Date of employment;

(C) Current and previous job titles and descriptions, and effective dates of employment;

(D) Name, location and phone number of court and/or office to which the individual has been assigned;

(E) Current and previous salaries and dates of each change;

(F) Name of current or last known supervisor; and

(G) Information authorized to be released by the individual to the public unless prohibited by law.

(2) *Applicant Records.* Unless otherwise provided by law, records concerning applicants for employment or volunteer services are open to the public, after the names, home addresses, telephone numbers, social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed.

(3) *Judicial Case Assignments.* Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

(4) *Security Records.* All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence, are closed.

(5) *Procurement Records.* Procurement and bid records are open to the public except as provided herein:

(A) Sealed Bids. Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) Invitation for Bid. Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) Competitive Sealed Proposals and Requests for Qualifications. Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement Code or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(6) *Preliminary and Draft Reports Concerning Court Operations; Pre-decisional Documents.* Final administrative documents and reports concerning the operation of the court system are open for public inspection and copying by the custodian on court premises. Preliminary drafts of such reports, and pre-decisional documents relating to court operations, shall be open once such draft reports and such pre-decisional documents are circulated to any court policy advisory committee or the public for comment.

(7) *Library PATRON Records.* Records maintained in any court law library, **CLERK'S OFFICE OR COURT** which link a patron's name with materials requested or borrowed by the patron, or which link a patron's name with a specific subject about which the patron has requested information or materials are closed. **THIS PROVISION SHALL NOT PRECLUDE A LIBRARY, CLERK'S OFFICE OR COURT FROM REQUIRING THAT THE REQUEST SPECIFY ANY COMMERCIAL USE INTENDED FOR THE RECORDS AS PROVIDED IN SECTION (f) OF THIS RULE.**

(8) *Attorney and Judicial Work Product.*

(A) The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch are closed unless disclosed by the court.

(B) All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

(9) *Juror Records.* The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(10) *Proprietary and Licensed Material.* Computer programs or other records that are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the applicable agreements and licenses, or by court order. No records shall be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because they are subject to proprietary rights.

(11) *Copyrighted Documents and Materials.* Documents produced and copyrighted by the court are public records that may not be re-published without proper authorization from the court.

**(12) JUDICIAL BRANCH TRAINING MATERIALS AND RECORDS. EVALUATION MATERIALS AND RECORDS GENERATED BY PARTICIPANTS IN JUDICIAL EDUCATION PROGRAMS SUCH AS TEST SCORES, EDUCATIONAL ASSESSMENTS, PRACTICAL EXERCISE WORKSHEETS, AND SIMILAR MATERIALS ARE CLOSED.**

**(13) CERTIFICATION RECORDS. PROPRIETARY MATERIALS REQUIRED TO BE SUBMITTED TO THE SUPREME COURT BY APPLICANTS FOR CERTIFICATION OR LICENSING ARE CLOSED. APPLICANTS FOR CERTIFICATION OR LICENSURE SHALL BE RESPONSIBLE FOR CLEARLY IDENTIFYING ANY MATERIAL THEY CONSIDER TO BE PROPRIETARY AT THE TIME THE MATERIAL IS SUBMITTED.**

**(f) Access to Records in Paper Medium.**

(1) *Filing a Request.* A request to inspect or obtain copies of records that are open to the public shall be made orally or in a written format acceptable to the custodian. The request shall specify any commercial use intended for the records. All requests for copies must include sufficient information to reasonably identify what is being sought. The applicant shall not be required to have detailed knowledge of the court's filing system or procedures.

(2) *Timely Response.* Upon receiving a request to inspect or obtain copies of records, the custodian shall promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time based upon the following factors:

- (A) Immediate availability of the requested records;
- (B) Specificity of the request and need for clarification;
- (C) Amount of equipment, materials, staff time and other resources required to satisfy the request; or
- (D) Whether the requested records are located at the court or in off site storage.

(3) *Cost; Non-Commercial and Commercial Purposes.*

(A) Applicants who request records for non-commercial purposes shall not be charged any fee for the cost of searching for a record or redacting confidential information from a record, except as provided by statute, nor shall they be required to disclose the intended purpose or use of the records. If no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.

(B) An applicant requesting copies, printouts or photographs of records for a commercial purpose shall provide a verified or acknowledged statement to the custodian setting forth the commercial purpose and specific use intended for the records. If the custodian has reason to believe an applicant has failed to adequately disclose the commercial purpose or use of the requested records, the custodian may require additional information regarding the intended use of the records. The custodian shall collect a fee for the cost of:

(i) obtaining the original or copies of the records and all redaction costs; and

(ii) the time, equipment and staff used in producing such reproduction.

Notwithstanding the above provision, the Clerks of the Supreme Court and the Court of Appeals shall distribute copies of opinions to authorized publishers free of charge for publication pursuant to law and Ariz.Const. Art. 6, § 8.

(C) The custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined.

(4) *Delay or Denial; Explanation.*

(A) The custodian is required to comply with any request for records, except requests that are determined:

(i) to create an undue financial burden on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;

(ii) to substantially interfere with the constitutionally or statutorily mandated functions of the court or the office of the custodian;

(iii) to be filed for the purpose of harassing or substantially interfering with the routine operations of the court; or

(iv) to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

(B)(i) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant in writing of the nature of any problem delaying or preventing access, and if applicable, the specific federal or state statute, law, court or administrative rule or order that is the basis of the delay or denial. If access to any record is denied for any reason, the custodian shall explore in good faith with the applicant alternatives to allow access to the requested records, including redaction of confidential information.

(ii) If unsuccessful, the custodian shall meet with the judge having immediate, supervisory responsibility for the daily operations of the respective court, to determine if an alternative means of access to the records may be provided for the applicant. Thereafter, as soon as practicable, the judge shall inform the applicant if the denial is affirmed. Reviews of the foregoing denial and all other denials shall be conducted in accordance with the provisions of paragraph (f)(5) below.

*(5) Review of Denials to Access Records.*

(A) Any applicant who is denied the right to inspect, receive copies or access any record, **BULK DATA, OR COMPILED DATA** pursuant to the authority of this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under Paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding judge or a designee within 3 business days of the request for review. The presiding judge shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge may seek review by filing a special action in the Court of Appeals pursuant to the Rules of Procedure for Special Actions.

**(g) REMOTE ELECTRONIC ACCESS TO CASE RECORDS**

**(1) A COURT MAY PROVIDE REMOTE ELECTRONIC ACCESS TO CASE RECORDS AS FOLLOWS:**

**(A) *PARTIES, ATTORNEYS, AND ARBITRATORS.* PARTIES, ATTORNEYS, AND ARBITRATORS MAY BE PROVIDED REMOTE ELECTRONIC ACCESS, UPON REGISTERING, TO CASE RECORDS WHICH ARE NOT SEALED IN ALL CASE TYPES IN WHICH THE PERSON IS AN ATTORNEY OF RECORD, ARBITRATOR, OR NAMED PARTY, INCLUDING AN INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, OR PUBLIC OR PRIVATE ORGANIZATION. AN ATTORNEY OF RECORD ON THE STAFF OF A PUBLIC OR PRIVATE LAW FIRM MAY EXTEND ACCESS TO ANY OTHER ATTORNEY OR PERSON WORKING FOR OR ON BEHALF OF THAT PUBLIC OR PRIVATE LAW FIRM, UPON THE OTHER ATTORNEY'S OR PERSON'S REGISTRATION.**

**(B) *GENERAL PUBLIC, REGISTERED USERS.***

**(i) MEMBERS OF THE PUBLIC WHO HOLD AN ARIZONA DRIVER LICENSE OR NONOPERATING IDENTIFICATION LICENSE MAY BE PROVIDED REMOTE ELECTRONIC ACCESS, UPON REGISTERING AND PAYING ANY ESTABLISHED FEE, TO ALL OF THE FOLLOWING CATEGORIES OF CASE RECORDS UNLESS SEALED OR OTHERWISE MADE CONFIDENTIAL BY RULE OR LAW:**

**(a) CIVIL CASE RECORDS IN ANY ACTION BROUGHT TO ENFORCE, REDRESS, OR PROTECT A PRIVATE OR CIVIL RIGHT BUT NOT:**

- JUVENILE DEPENDENCY AND DELINQUENCY OR OTHER MATTERS BROUGHT UNDER ARS TITLE 8;**
- FAMILY LAW, PATERNITY, OR OTHER MATTERS ARISING OUT OF TITLE 25;**
- ORDERS OF PROTECTION, INJUNCTIONS AGAINST HARASSMENT AND ALL PROCEEDINGS, JUDGMENTS OR DECREES RELATED TO THE ESTABLISHMENT, MODIFICATION OR ENFORCEMENT OF SUCH ORDERS, INCLUDING CONTEMPT; OR**
- PROBATE PROCEEDINGS BROUGHT UNDER ARS TITLES 14 AND 32.**

**(b) CIVIL TRAFFIC CASE RECORDS IN ANY ACTION BROUGHT AS SUCH UNDER ARS TITLES 28 OR 41 OR A MATTER EXPRESSLY DESIGNATED AS A CIVIL TRAFFIC**

**VIOLATION BY A TRAFFIC ORDINANCE OF A CITY OR TOWN AND ANY BOATING VIOLATION PUNISHABLE BY A CIVIL SANCTION UNDER ARS TITLE 5, CHAPTER 3, ARTICLES 1 THROUGH 11, OR EXPRESSLY DESIGNATED A CIVIL VIOLATION OR A BOATING ORDINANCE BY A CITY OR TOWN.**

**(c) CRIMINAL CASE RECORDS IN ANY ACTION INSTITUTED BY THE GOVERNMENT TO PUNISH OFFENSES CLASSIFIED AS A MISDEMEANOR OR FELONY BROUGHT PURSUANT TO ARS TITLES 4, 13, 28, OR LOCAL ORDINANCE.**

**(ii) THE FOLLOWING DOCUMENTS SHALL NOT BE ACCESSIBLE BY REMOTE ELECTRONIC ACCESS TO USERS REGISTERED UNDER SUBSECTION (g)(1)(B) DUE TO THE INABILITY TO PROTECT SENSITIVE DATA THAT IS LIKELY TO BE CONTAINED WITHIN THESE DOCUMENTS:**

- (a) BOOKING-RELATED DOCUMENTS;**
- (b) WARRANTS, INCLUDING SEARCH WARRANTS, CONFIDENTIAL WIRETAPS, PEN REGISTERS, HANDWRITING EXEMPLARS, TRAP AND TRACE, AND BENCH WARRANTS;**
- (c) CHARGING DOCUMENTS, INCLUDING CRIMINAL AND CIVIL TRAFFIC CHARGING DOCUMENTS;**
- (d) PRE-SENTENCE REPORTS;**
- (e) DEFENDANT'S FINANCIAL STATEMENT;**
- (f) DISPOSITION REPORT;**
- (g) TRANSCRIPTS**
- (h) THE COMPLETE CASE RECORD IN CRIMINAL CASES IN WHICH A JUVENILE IS ALLEGED TO BE THE VICTIM OF SEXUAL ASSAULT, INCLUDING ARS §§ 13-1403, 13-3201, AND 13-3552. THE PROSECUTING AGENCY, UPON FILING A CHARGING DOCUMENT, SHALL ADVISE THE CLERK THAT THE CASE IS SUBJECT TO THIS PROVISION.**

**UPON MOTION BY A PARTY, BY ANY PERSON, OR UPON THE COURT'S OWN MOTION, AND FOR GOOD CAUSE SHOWN, THE COURT IN WHICH SUCH ACTION IS PENDING, MAY ISSUE AN ORDER TO ALLOW REMOTE ELECTRONIC ACCESS TO MEMBERS OF THE PUBLIC, AS PROVIDED IN THIS SECTION, TO ANY CASE IN WHICH A JUVENILE IS ALLEGED TO BE THE VICTIM UNDER (B)(ii)(h). THE ORDER MAY INCLUDE ANY APPROPRIATE PROVISION REQUIRED TO PROTECT THE JUVENILE FROM EMBARRASSMENT OR OPPRESSION. THE BURDEN OF SHOWING GOOD CAUSE FOR AN ORDER SHALL REMAIN WITH THE PERSON SEEKING REMOTE ELECTRONIC ACCESS TO THE CASE RECORD.**

**IRRESPECTIVE OF AN ORDER LIMITING ELECTRONIC ACCESS UNDER THIS SUBSECTION, THE CLERK SHALL PROVIDE NON-REGISTERED USERS REMOTE ELECTRONIC ACCESS AS SET FORTH IN SECTION (C)(ii) HEREIN WHEN THE COURT GENERALLY PROVIDES SUCH NON-REGISTERED ACCESS IN OTHER CASES.**

**(iii) ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL ENTITY MAY BE PROVIDED REMOTE ELECTRONIC ACCESS AT NO CHARGE, UPON REGISTERING, AND WITHOUT PRODUCING AN ARIZONA DRIVER LICENSE OR NONOPERATING IDENTIFICATION LICENSE, TO THE SAME CASE RECORDS AS MAY BE PROVIDED TO MEMBERS OF THE PUBLIC UNDER SECTION (g)(1)(B), IN ORDER TO CARRY OUT A PARTICULAR GOVERNMENTAL RESPONSIBILITY AS IDENTIFIED BY THE GOVERNMENTAL AGENCY AND AS AUTHORIZED BY THE COURT OR CLERK.**

**(C) *GENERAL PUBLIC, NON-REGISTERED USERS.* UNLESS OTHERWISE PROVIDED BY RULE OR LAW, MEMBERS OF THE PUBLIC MAY BE PROVIDED REMOTE ELECTRONIC ACCESS, WITHOUT REGISTERING, TO**

**(i) THE FOLLOWING DATA ELEMENTS IN CLOSED CASES, JUVENILE DELINQUENCY; MENTAL HEALTH; PROBATE AND CRIMINAL CASES IN WHICH A JUVENILE IS ALLEGED TO BE THE VICTIM, AS IDENTIFIED IN SECTION (B)(I)(H) ABOVE :**

- PARTY NAMES,**
- CASE NUMBER,**
- JUDICIAL ASSIGNMENT; AND**
- ATTORNEYS' NAMES**

**(ii) INDIVIDUAL CASE INFORMATION IN ALL CIVIL, CRIMINAL, AND CIVIL TRAFFIC CASES IDENTIFIED IN SUBSECTION (g)(1)(B)(i)(a) THROUGH (c), AND FAMILY LAW CASES EXTRACTED FROM A CASE MANAGEMENT SYSTEM, SUCH AS A LIST OF DOCUMENTS FILED, EVENTS, DATES, CALENDARS, PARTY NAMES, MONTH AND YEAR OF BIRTH, RESIDENTIAL CITY, STATE AND ZIP CODE, CASE NUMBER, JUDICIAL ASSIGNMENT, ATTORNEYS, CHARGES FILED OR CLAIMS MADE, INTERIM RULINGS, AND CASE OUTCOMES, INCLUDING SENTENCE, FINES, PAYMENT HISTORY, MINUTE ENTRIES, AND NOTICES.**

**(iii) COURT OF APPEALS AND SUPREME COURT OPINIONS AND DECISIONS IN ALL CASE TYPES, EXCEPT THAT ANY APPENDIX**

**IN CRIMINAL CASES IN WHICH A JUVENILE IS ALLEGED TO BE THE VICTIM, AS IDENTIFIED IN SUBSECTION (g)(1)(B)(ii)(h), ABOVE, SHALL NOT BE PROVIDED BY REMOTE ELECTRONIC ACCESS.**

**(2) REGISTRATION AND FEES. THE REGISTRATION PROCESS AND FEES FOR REMOTE ELECTRONIC ACCESS TO CASE RECORDS SHALL BE ESTABLISHED BY THE SUPREME COURT AND SHALL NOT EXCEED THE COST OF THE SERVICE PROVIDED. ALL INFORMATION PROVIDED BY A POTENTIAL USER FOR REGISTRATION PURPOSES SHALL BE CLOSED.**

**(3) COURTS AND CLERKS OF COURT SHALL NOT DISPLAY CASE RECORDS ONLINE EXCEPT AS PROVIDED HEREIN, AS PROVIDED BY ARS § 12-283(I), OR AS ORDERED BY THE COURT IN A PARTICULAR CASE. ANY REMOTE ELECTRONIC ACCESS SHALL BE CONDITIONED UPON THE USER'S AGREEMENT TO ACCESS THE INFORMATION ONLY AS INSTRUCTED BY THE COURT, TO NOT ATTEMPT ANY UNAUTHORIZED ACCESS, AND TO CONSENT TO MONITORING BY THE COURT OF ALL USE OF THE SYSTEM. THE COURT WILL ALSO NOTIFY USERS THAT IT WILL NOT BE LIABLE FOR INACCURATE OR UNTIMELY INFORMATION, OR FOR MISINTERPRETATION OR MISUSE OF THE DATA. SUCH AGREEMENT AND NOTICES SHALL BE PROVIDED TO THE USERS IN ANY MANNER THE COURT DEEMS APPROPRIATE. THE COURT MAY DENY ACCESS TO USERS FOR FAILURE TO COMPLY WITH SUCH REQUIREMENTS. THE COURT OR CLERK OF COURT THAT ESTABLISHES REMOTE ELECTRONIC ACCESS TO CASE RECORDS MAY ALSO ESTABLISH LIMITATIONS ON REMOTE ELECTRONIC ACCESS BASED ON THE NEEDS OF THE COURT, LIMITATIONS ON TECHNOLOGY AND EQUIPMENT, STAFF RESOURCES AND FUNDING.**

**(4) COURTS AND CLERKS OF COURT MUST CLEARLY AND PROMINENTLY DISPLAY CURRENT CHARGE DISPOSITIONS FOR ANY CASE WHICH THE COURT OR CLERK OF COURT MAKES PUBLICLY AVAILABLE ONLINE.**

**(5) REMOVING CASE RECORDS FROM ONLINE ACCESS.**

**(A) COURTS OR CLERKS OF COURT MAY REMOVE CASE MANAGEMENT SYSTEM DATA AND CASE RECORDS FROM ONLINE DISPLAY ONCE THE APPLICABLE RECORDS RETENTION SCHEDULE PERIOD IS MET.**

**(B) FOR CASES SCHEDULED TO BE RETAINED MORE THAN TWENTY-FIVE YEARS, COURTS OR CLERKS OF COURT MAY REMOVE CASE MANAGEMENT SYSTEM DATA AND CASE RECORDS FROM ONLINE DISPLAY AFTER TWENTY-FIVE YEARS, IF THE DATA AND RECORDS ARE THEN RETAINED**

THROUGH AN ELECTRONICALLY PRESERVED METHOD. IN PLACE OF THE RECORDS, THE COURT OR CLERK OF COURT SHALL DISPLAY A NOTICE ONLINE WHICH DIRECTS THE VIEWER TO CONTACT THE COURT OR CLERK FOR ACCESS TO THE CASE RECORD.

(6) THE CLERK OF THE COURT, COURT, COURT AGENCY, OR THEIR EMPLOYEES SHALL BE IMMUNE FROM SUIT FOR ANY CONDUCT RELATING TO THE ELECTRONIC POSTING OF CASE DOCUMENTS IN ACCORDANCE WITH THIS RULE.

(7) DATA OR INFORMATION WHICH WOULD DISCLOSE THAT A USER OF A REMOTE ELECTRONIC ACCESS SYSTEM HAS ACCESSED A PARTICULAR COURT RECORD IS CLOSED. RECORD ACCESS INFORMATION SHALL BE ACCESSIBLE BY THE PUBLIC ONLY ON A SHOWING OF GOOD CAUSE PURSUANT TO THE PROCESS SET FORTH IN SUBSECTION (f) OF THIS RULE.

(8) THIS SECTION SHALL NOT LIMIT THE PUBLIC'S RIGHT OF ACCESS TO RECORDS AT A COURTHOUSE, WHETHER IN PAPER OR ELECTRONIC FORMAT.

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

(1) *Scope.* This section applies to all requests to access or obtain copies of any audiotape, videotape, microfilm, computer or electronic based records maintained by the court, except for requests initiated by judges, court administrators, or clerks of the court for use in the administration or internal business of the court.

(2) *Authority; Procedures.*

(A) Except by court order, only the custodian or designee is authorized by this rule to provide access to or copies of computer or electronic based records.

(B) All the requirements set forth in paragraph (f), except subparagraph (3) thereof, are incorporated herein by reference and shall apply to requests for records submitted pursuant to this section.

(3) *Cost to Obtain Copies.*

(A) The custodian shall first meet with the applicant to understand the scope of the request so it can be defined as precisely as possible. The cost to obtain copies of information held electronically, which requires no programming or translation, shall be limited to the cost of materials. If a request requires programming or translation, the applicant shall bear the actual cost incurred by the court to comply with the request for copies of records. If no fee is prescribed by law, the custodian

shall collect a fee covering the cost of producing the requested records, including staff time, computer time, programming costs, equipment, materials and supplies.

(B) Unless otherwise prescribed by law relating to the collection and deposit of fees by the custodian, the custodian may retain the fees collected pursuant to paragraph (g)(3)(A) to compensate for the expenses related to reproduction of electronic records.

*(4) Databases, Operating Systems and Network Programs.*

(A) Databases and electronic records containing case and administrative records are open to the public. However, databases and electronic records containing confidential information that may not be entirely redacted, may be closed in accordance with the provisions of paragraph (f)(4).

(B) Documentation and other records that describe the technical location, design, function, operation, or access control features of any court computer network, automated data processing or telecommunications systems, are closed to the public.

(C) Consistent with the court's obligation to provide public access to its records, and subject to resource limitations, the design and operation of all future automated record management systems shall incorporate processing features and procedures that maximize the availability of court records maintained in electronic medium. Automated systems development policy shall require the identification and segregation of confidential data elements from data base sections that are accessible to the public. Whenever feasible, any major enhancement or upgrade to existing systems shall include modifications that segregate confidential information from publicly accessed data bases.

*(5) Remote Electronic Access to Records and Cost.*

~~(A) Pursuant to the provisions of this paragraph, every presiding judge may authorize on-line, remote electronic access to both case and administrative records in their respective courts. Fees may be charged for the value added and custom remote electronic access service as authorized by ARS §§ 12-119.02, 12-120.31, 22-281.01, 22-404.01 and 12-284.02. The fees shall be based on the recovery of costs incurred in the provision of remote electronic access, including the cost of providing a general public access information system, but shall not exceed the applicable statutory limits. For the supreme court, court of appeals and superior court records, the fees shall be paid to the clerk of each respective court. For justice and municipal court records, the fees shall be paid to an appropriate official designated by the court. The presiding judge of the superior court will consult with the local funding authority before any municipal court fee is imposed.~~

~~(B) Prior to establishing value added remote electronic access for which fees are charged, each court shall establish a remote electronic access information system~~

~~that, subject to available funding, will be available to the general public without additional court fees. At a minimum, both the public remote electronic access system and the value added remote electronic access shall permit access to information by case number, party name and counsel name, if maintained electronically. Both systems shall contain the same case data elements. Any difference between the two systems shall be limited to providing enhanced services in the value added remote electronic access, such as guaranteed response times and service levels, search and reporting tools, help desk services, etc. Courts are encouraged to make data elements available to both systems at the same time. If a court chooses to make additional data elements available in the value added remote electronic access system first, the same data elements must be made available in the public remote electronic access system within six months.~~

~~(C) Additional policies and procedures for remote electronic access to court records shall be adopted when necessary by the supreme court through subsequent rules or separate administrative orders after considering applicable comments and recommendations, including those of the court's Commission on Technology and the Arizona Judicial Council.~~

~~(D) Any on-line electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, to not attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements.~~

~~(E) For value added or custom remote electronic access, each court will utilize a published standard fee schedule or written contracts with each subscriber. The fee schedule or contract shall set forth the services and service levels to be provided, the fee structure, manner of billing, payment requirements, and grounds for termination of the service. The state of Arizona, its county and municipal governments and agencies shall be exempt from such fees.~~

~~(F) The presiding judge of each court may establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.~~

~~(G) All courts and clerks of court shall employ appropriate security measures, procedures, devices and software to protect assets and records and to prevent unauthorized access.~~

~~(J) Communication protocols shall be adopted that are consistent with standards adopted for the Arizona Judicial Information Network (AJIN) as reflected in Supreme Court Administrative Order 95-37. Free public remote electronic access shall, at a minimum, be available by means of standard telenet or an industry-~~

~~standard hypertext mark up language (HTML) browser. By December 31, 1999, a single non-proprietary, open systems communications protocol for value added and custom remote electronic access shall be determined by the Commission on Technology. By January 30, 2004, all courts shall comply with and use the communication protocols and standards adopted for remote electronic access by the Commission on Technology.~~

**(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 BE MADE WITH THE CLERK OF THE SUPERIOR COURT. IF THE RECORD WAS FILED IN A JUSTICE COURT, THE REQUEST SHOULD BE MADE WITH THE JUSTICE OF THE PEACE. IF THE RECORD WAS FILED IN A MUNICIPAL COURT, THE REQUEST SHOULD BE MADE TO THE PRESIDING MUNICIPAL COURT JUDGE.**

**(B) IF THE REQUEST IS DENIED, THE INDIVIDUAL MAY THEN APPLY FOR ADMINISTRATIVE REVIEW OF THAT DECISION BY THE PRESIDING SUPERIOR COURT JUDGE. THE REQUEST FOR ADMINISTRATIVE REVIEW MUST BE FILED IN WRITING WITH THE CUSTODIAN WHO DENIED THE REQUEST WITHIN TEN BUSINESS DAYS OF A DENIAL. THE CUSTODIAN SHALL FORWARD THE REQUEST FOR REVIEW, A STATEMENT OF THE REASON FOR DENIAL AND ALL RELEVANT DOCUMENTATION TO THE PRESIDING SUPERIOR COURT JUDGE OR A DESIGNEE WITHIN THREE BUSINESS DAYS OF THE REQUEST FOR REVIEW. THE PRESIDING SUPERIOR COURT JUDGE SHALL ISSUE A DECISION AS SOON AS PRACTICABLE CONSIDERING THE NATURE OF THE REQUEST AND THE NEEDS OF THE APPLICANT, BUT NOT MORE THAN TEN BUSINESS DAYS FROM THE DATE THE WRITTEN REQUEST FOR REVIEW WAS RECEIVED.**

**(C) ANY PARTY AGGRIEVED BY THE DECISION OF THE PRESIDING JUDGE MAY SEEK REVIEW BY FILING A SPECIAL ACTION IN THE COURT OF APPEALS PURSUANT TO THE RULES OF PROCEDURE FOR SPECIAL ACTIONS.**

**(h) (i) Inspection and Photocopying.**

(1) *Access to Original Records.* During regular business hours a person shall be allowed to inspect or obtain copies of original versions of records that are open to the public in the office where such records are normally kept. If access to original records would result in disclosure of information which is not permitted, redacted copies of the closed records

may be produced. If access to the original records would jeopardize the integrity of the records, or is otherwise impracticable, a copy of the complete records in other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or court order, records shall not be removed from the office where they are normally kept.

(2) *Access to Certain Evidence.* Documents and physical objects admitted into evidence shall be available for public inspection under such condition as the responsible custodian may deem appropriate to protect the security of the evidence.

**(j) BULK OR COMPILED DATA DISSEMINATION IN BULK IS NOT PERMITTED EXCEPT AS PROVIDED IN THIS RULE OR AS PERMITTED BY COURT ORDER.**

**(1) REQUESTS FOR BULK OR COMPILED COURT DATA**

**(A) BEFORE RELEASING BULK DATA, A CUSTODIAN SHALL REQUIRE THE RECIPIENT TO EXECUTE A DISSEMINATION CONTRACT AND DISCLAIMER CONTAINING PROVISIONS SPECIFIED BY THE SUPREME COURT.**

**(B) A CUSTODIAN OF BULK DATA MAY CONTRACT WITH A PRIVATE COMPANY OR PUBLIC ORGANIZATION FOR THE PROVISION OF BULK DATA AND SPECIALIZED REPORTS OF COMPILED DATA UNDER THIS POLICY.**

**(2) DENYING REQUESTS FOR BULK DATA. THE CUSTODIAN MAY DENY A REQUEST FOR BULK DATA IN COMPLIANCE WITH SUPREME COURT RULE 123(c)(1), (f)(4), or (h)(4)(A).**

**(3) PERSONAL IDENTIFIERS AVAILABLE IN BULK COURT DATA. THE CUSTODIAN OF BULK DATA MAY RELEASE DATA THAT CONTAINS THE FOLLOWING PERSONAL IDENTIFYING INFORMATION ABOUT A PETITIONER, PLAINTIFF, RESPONDENT, OR DEFENDANT OTHER THAN A PETITIONER SEEKING AN ORDER OF PROTECTION:**

**(A) ADDRESS**

**(B) MONTH AND YEAR OF BIRTH**

**(C) LAST FOUR DIGITS OF THE SOCIAL SECURITY OR DRIVER LICENSE NUMBER.**

**APPENDIX C: Proposed Revisions to the Rules of Civil and Criminal Procedure**

**Civil Rule Change Recommendation:**

**Rules of Civil Procedure for the Superior Courts of Arizona**

**Rule 5(f) Sensitive Data**

- A. IN ALL CIVIL CASES, A FILER SHALL REFRAIN FROM INCLUDING THE FOLLOWING SENSITIVE DATA FROM ALL PLEADINGS OR OTHER DOCUMENTS FILED WITH THE COURT, INCLUDING EXHIBITS THERETO, WHETHER FILED ELECTRONICALLY OR IN PAPER, UNLESS OTHERWISE ORDERED BY THE COURT OR AS OTHERWISE PROVIDED BY LAW:**
- 1. SOCIAL SECURITY NUMBERS. IF AN INDIVIDUAL'S SOCIAL SECURITY NUMBER MUST BE INCLUDED IN A PLEADING OR OTHER DOCUMENT, ONLY THE LAST FOUR DIGITS OF THAT NUMBER SHALL BE USED.**
  - 2. FINANCIAL ACCOUNT NUMBERS. IF FINANCIAL ACCOUNT RECORDS ARE RELEVANT OR SET FORTH IN A PLEADING OR OTHER DOCUMENT, ONLY THE LAST FOUR DIGITS OF THESE NUMBERS SHALL BE USED.**
  - 3. JUVENILE VICTIM'S NAME. IF A JUVENILE VICTIM MUST BE IDENTIFIED IN A PLEADING OR OTHER DOCUMENT, ONLY THE INITIALS OF THE JUVENILE VICTIM SHALL BE USED. IN THE ALTERNATIVE, THE FILER MAY REFER TO THE JUVENILE VICTIM IN A MANNER THAT SHIELDS THE IDENTITY OF THE JUVENILE VICTIM IN THE CONTEXT OF THE PROCEEDING, FOR EXAMPLE, BY SYMBOL, SUCH AS CHILD A, CHILD B, OR AS DOE 1, DOE 2, OR BY THE CHILD'S STATUS, SUCH AS VICTIM.**
  - 4. VICTIM'S ADDRESS AND TELEPHONE NUMBER OR OTHER LOCATING INFORMATION. IF A VICTIM'S ADDRESS IS RELEVANT, ONLY THE CITY AND STATE SHALL BE USED.**
- B. THE RESPONSIBILITY FOR REDACTING SENSITIVE DATA SHALL REST SOLELY WITH COUNSEL, THE PARTIES, OR ANY OTHER FILER. THE CLERK OF THE COURT OR THE COURT IS NOT REQUIRED TO REVIEW DOCUMENTS FOR COMPLIANCE WITH THIS RULE, SEAL DOCUMENTS THAT CONTAIN SENSITIVE DATA ON THE CLERK'S OWN INITIATIVE,**

**OR REDACT PLEADINGS OR OTHER DOCUMENTS. HOWEVER, SUBJECT TO RULE 123(H)(5), RULES OF THE SUPREME COURT OF ARIZONA, EACH COURT SHALL DEVELOP PROCEDURES FOR CORRECTING DATA ERRORS, REDACTING SENSITIVE DATA, AND SEALING CASE RECORDS IN A CIVIL CASE THAT IS SUBJECT TO AVAILABILITY BY REMOTE ELECTRONIC ACCESS WHEN SUCH ERRORS, SENSITIVE DATA, AND SEALING ARE BROUGHT BEFORE THE COURT.**

**C. FOR VIOLATION OF THIS RULE, THE COURT MAY IMPOSE SANCTIONS AGAINST COUNSEL OR THE PARTIES TO INSURE FUTURE COMPLIANCE WITH THIS RULE.**

### **Criminal Rule Change Recommendation:**

#### **Rules of Criminal Procedure**

**Rule 2.3, new paragraph – rule to now be set out as (A) & (B)**

**UPON FILING A CHARGING DOCUMENT IN A CRIMINAL CASES IN WHICH A JUVENILE IS ALLEGED TO BE THE VICTIM OF SEXUAL ASSAULT, SUCH AS ARS §§ 13-1403, 13-3201, AND 13-3552, THE PROSECUTING AGENCY SHALL ADVISE THE CLERK THAT THE CASE IS SUBJECT TO THE PROVISIONS OF RULES OF THE SUPREME COURT OF ARIZONA, RULE 123(g)(2)(B)(ii)(h).**

## APPENDIX D: Recommended Provisions for New ACJA Section on Public Records

### Registration/Fee/User Agreement for Remote Online Access to Case Records

#### Registration

- Registration should be centralized.
- Users should be permitted to complete the registration process online, in person, or by fax.
- Users should generally provide the following information for registration:
  - name
  - address
  - email
  - phone
  - d.o.b.
  - Arizona driver license number
  - credit card number, security code, and expiration date
  - attorney information: Firm, Bar No., Bar state, where applicable
  - username
  - password
    - In state attorneys will need to fill out a registration form online, present identification, and an Arizona Bar No., generally online. Out of state attorneys must register manually since these attorneys do not have an Arizona Bar No., unless the Arizona State Bar decides to issue Pro Hoc Vice No.'s.
    - Arizona parties and pro pers will need to present an Arizona driver license; However out of state parties and pro pers will need to present another form of government-issued ID to verify that they are who they say they are.
- A potential user's driver license must be verified by the Motor Vehicle Division of the Arizona Department of Transportation before access is approved.
- All information provided by a potential user for registration purposes should remain confidential.

## Fees

- The fee for registration should be nominal, and the fee for accessing documents should not exceed the cost of the service provided. In general, fees should remain low to encourage use, as this will enable the attorneys and the public to obtain records on their own and thereby reduce the workload of the clerks and courts.
- A one-time registration fee, instead of an annual registration fee, is encouraged.
- The fee for registration should go to the AOC, and the fee for accessing case records should go to the local court and could vary among courts (depending on whether the court is an AJACS court, or a separate case management court). Options for charging for remote access to online case records might be: length of time online, per view, volume of usage, yearly subscription fee.
  - However, one committee member envisions a model of requiring a registration fee for remote access to court records and then nothing more for viewing or printing those records.
- Since the committee does not know the amount of anticipated usage, it is difficult to establish a fee model. The type of usage is likely to be different for limited jurisdiction Courts (more cases filed, but fewer documents) than general jurisdiction courts (fewer cases filed, but a higher volume of documents). Therefore, a per-document fee will have a greater impact in general jurisdiction courts.

## User Agreement

- Proposed User Agreement:

By logging into and/or using this remote electronic access system, the user agrees to access all documents and information only as instructed by the Clerk or the Court, to not attempt any unauthorized access, and to consent to monitoring of all use of the system. This site is a replication of the official court records system, however Arizona law, court rule, or court order prohibits the posting of certain information on this site. No remote access will be granted to documents which are sealed or designated as confidential by the Court. The records custodian uses its best efforts to maintain this website but makes no

guarantees concerning the information contained in this website and will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the images or data,. Users are also advised that any disclosure of such information to third parties is done at the user's own risk. The Clerk or the Court may deny access to users for failure to comply with these requirements. Any unauthorized access may be reported to the appropriate prosecuting authority for further investigation.

## **Bulk Data**

- **Definitions.** The definitions found in Rule 123, Rules of the Supreme Court of Arizona apply to this section.
- **Bulk or Compiled Data Dissemination Agreement.** The custodian shall require individuals requesting bulk data to provide proof of identification and to execute a dissemination contract and disclaimer that include the following provisions:
  1. Recipient agrees to comply with all current laws, rules and policies governing the confidentiality of any data provided by custodian.
  2. The data will not be used or re-sold for the purpose of commercial solicitation of an individual named in the data.
  3. Recipient will not publish or re-disseminate the data for the purpose of unrestricted access on the Internet with the personal identifiers set forth in Rule 123(j)(4), Rules of the Supreme Court of Arizona.
  4. Recipient agrees that the custodian may audit recipient's compliance with the terms and conditions of the dissemination contract and will cooperate fully with any law enforcement investigation concerning the use of the data by recipient or any of recipient's subscribers.
  5. Recipient will update its database with any data it uses or provides its subscribers with the most current data within 48 hours of receipt of the new data.
  6. Recipient agrees to remove from its files, upon notification and in a timely manner, any data that subsequently is sealed or otherwise restricted. The data provided to the recipient will identify the cases that are to be removed or otherwise restricted.

7. Recipient will enter into a written subscriber agreement with each of its subscribers that specifically details the authorized uses of the data accessed, condition access to lawful use, and include a provision for immediate termination of the agreement in the event of improper use of the data. The agreement shall further require the subscriber to provide a disclosure statement to each customer, client, or other third party at the time any of the data obtained under the agreement is provided, which states:

The custodian provides no warranties, express or implied, that the data provided is accurate, current, correct, or complete. It is expressly understood that it is the responsibility of the recipient and/or its subscribers, customers, clients, or other third parties to whom the data is supplied to verify the data obtained under this agreement with the official court records reposing at the court of record.

8. Recipient's agreement to defend, indemnify, and hold harmless the custodian, the supreme court, and the State of Arizona and their officers, agents and employees from all risk of loss and damages incurred because of any claims, judgments, or executions arising out of any use made of the data obtained under the agreement.
9. Recipient's agreement to purchase and maintain commercial general liability insurance with minimum limits of \$1,000,000 each claim, naming the State, the supreme court, and the court from which the data is disseminated as additional insureds. Non-commercial users may be excepted from this requirement.