

1 Michael B. Whiting  
2 Apache County Attorney  
3 mwhiting@co.apache.az.us  
4 P.O. Box 637  
5 St. Johns, AZ 85936-0637  
6 Arizona State Bar Number 22092  
7 Attorney for State

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SUE HALL, CLERK  
APACHE COUNTY SUPERIOR COURT

8 In the Superior Court of the State of Arizona

9 In and For the County of Apache

10 In the matter of: ) Case No.: JV2008-065  
11 Christian Ryan Romero, ) Response to Application to Intervene  
12 a person under the age of (18) eighteen years. )

13 Phoenix Newspapers, Incorporated and Dennis Wagner (hereinafter "PNI") seek to  
14 intervene in the above-captioned juvenile delinquency matter for the purpose of having the Court  
15 make available to PNI the contents of judicial records. The State submits that intervention in the  
16 juvenile court proceeding in order to obtain the contents of the files of the Superior Court or a  
17 department thereof,<sup>1</sup> is inappropriate. Simply put, joining the juvenile case as an intervenor is  
18 not the appropriate means for PNI to seek to obtain court records. Further, aside from the  
19 procedural inadequacies of the Application to Intervene, the State objects to the unsealing of the  
20 documents in question because of the potential harm to the victims and victims' families in this  
21 case, as well as the potential harm to the juvenile.

22 **Intervention is an improper means to obtain court documents**

23 Public access to the judicial records of the State of Arizona is governed by Arizona  
24 Supreme Court Rule 123. Rule 123 sets forth the method for requesting a judicially maintained  
25 record and a procedure to grieve the non-compliance with such a request. Specifically, Rule 123  
26 was "adopted to govern public access to the records of all courts and administrative offices of the  
judicial department of the State of Arizona."

<sup>1</sup> Whether the documents sought are part of the case file or the social file are immaterial to the State's position.

1 By its own terms, Rule 123 applies directly to the type of information requested by PNI  
2 in this case. Rule 123 deals with the access by the public of court records. The public is defined  
3 as “those persons who are not judges, clerks, administrators, professionals or other staff  
4 employed by or working under the supervision of the court, or employees of other public  
5 agencies who are authorized by state or federal rule or law to inspect and copy closed court  
6 records.” Thus, PNI is clearly a member of the public. Additionally, the records sought fall  
7 within the purview of Rule 123, which defines records as “all existing documents, papers, letters,  
8 maps, books, tapes, photographs, films, sound recordings or other materials, regardless of  
9 physical form or characteristics, made or received pursuant to law or in connection with the  
10 transaction of any official business by the court . . .” In fact, access to juvenile court records are  
11 expressly covered in the rule.

12 Because PNI has an equal, adequate, preferred and possibly exclusive<sup>2</sup> method of  
13 obtaining the records it seeks through Rule 123, the Court should deny the request to intervene in  
14 a case where PNI admittedly has no interest in the case beyond obtaining an order of the Court  
15 unsealing judicial documents. PNI should make its request under Rule 123(f)(1) and, if its  
16 request is denied, PNI should seek redress under Rule 123(f)(5).

17 **Even if Intervention is the proper method for obtaining court records, unsealing victim**  
18 **letters is inappropriate**

19 Beyond submitting that PNI’s request is procedurally improper and that the determination  
20 of whether a sealed record should be released to the public should be made by the presiding  
21 judge or her designee, rather than this Court, as set forth by Rule 123, the State also maintains  
22 that the release of these sealed documents would adversely affect the victims’ families’ right to  
23 privacy and the child’s right to be free from the unnecessary heightening of public  
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25 <sup>2</sup> See *Arpaio v. Davis*, 221 Ariz. 116, 210 P.3d 1287 (App. 2009) which posits that Rule 123 is the appropriate  
26 method of obtaining judicial records even where other means exist which would otherwise equally apply to the  
acquisition of judicial records. *Id.* at 120, ¶ 17, 1291 (“Rule 123 – not the Arizona Public Records Law-controls  
requests for judicial records.”)

1 condemnation. Indeed the rights of the families and of the child outweigh whatever public value  
2 would inhere from releasing the contents of the sought documents to the press.

3 First, the letters in question reflect the victims' families' attempts to convey their pain to  
4 the judge in this juvenile proceeding, and they did so with the understanding that their private  
5 pain would remain private. Unsealing these letters would expose their pain and suffering to the  
6 public, and would reopen wounds that are being dealt with privately.

7 Additionally, the rights of the juvenile would be adversely affected by the unsealing of  
8 these documents. Due to the unique nature of the charges, and the small size of the community  
9 in which the juvenile resides and the crime, these court proceedings are already being covered  
10 extensively. The release of these letters would heighten public scrutiny and condemnation, and  
11 could also serve to prejudice the juvenile. Indeed, prejudice to the juvenile has already been the  
12 basis for motions in this case. Further coverage of victim letters would only serve to unfairly  
13 prejudice the juvenile, while the benefit to the public is limited at best. The concept of fairness is  
14 an essential component of juvenile proceedings and the Rules of Procedure of Juvenile Court.<sup>3</sup>

15 The State maintains that fairness to the child, and to the victims' families, requires these  
16 sealed letters remain sealed. Further, as established above, a motion to intervene is not an  
17 appropriate method for obtaining the documents in question.

18 Respectfully submitted this 2<sup>nd</sup> day of December, 2009.

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20 Michael B. Whiting  
Apache County Attorney

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25 <sup>3</sup> See Rule 6 of the Arizona Rules of Procedure of Juvenile Court requiring all proceedings to be conducted as  
26 "informally as the requirements of due process and fairness permit."

1 A copy of the foregoing was  
2 mailed/delivered on the 2<sup>nd</sup>  
3 day of December, 2009, to:

4 Apache County Clerk of the Superior Court  
5 P.O. Box 365  
6 St. Johns, AZ 85936

7 Honorable Monica Lynn Stauffer  
8 Presiding Judge  
9 Greenlee County Superior Court  
10 P.O. Box 1027  
11 Clifton, AZ 85533

12 Ron Wood  
13 Wood Law Office  
14 Attorney for Juvenile  
15 201 S. White Mountain Rd.  
16 Show Low, AZ 85901

17 Marsha Gregory  
18 Guardian Ad Litem  
19 P.O. Box 818  
20 Springerville, AZ 85936

21 Steve Williams  
22 Attorney for the juvenile's mother  
23 240N. White Mountain Rd., Ste. A  
24 Show Low, AZ 85901

25 Steptoe & Johnson  
26 Attorneys for Phoenix Newspapers, Inc. and Dennis Wagner  
201 E. Washington St., Ste. 1600  
Phoenix, AZ 85004

