

1 John R. Evans
2 Arizona Bar No. 05797
3 Assistant U.S. Attorney
4 District of Arizona
5 405 W. Congress Street
6 Tucson, Arizona
7 Tel: (520) 620-7514
8 John.Evans2@usdoj.gov

9 Gary M. Restaino
10 Arizona Bar No. 017450
11 Assistant U.S. Attorney
12 District of Arizona
13 40 N. Central Avenue
14 Suite 1200
15 Phoenix, Arizona 85004
16 Tel: (602) 514-7756
17 Gary.Restaino@usdoj.gov

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

20 In the Matter of

21 **PETITION TO AMEND RULE 3.8 OF**
22 **THE ARIZONA RULES OF**
23 **PROFESSIONAL CONDUCT (RULE**
24 **42 OF THE ARIZONA SUPREME**
25 **COURT RULES)**

26 Supreme Court No. R-11-0033

THIRD SET OF COMMENTS
OF THE U.S. ATTORNEY'S
OFFICE FOR THE DISTRICT
OF ARIZONA

27 Pursuant to Ariz. Sup. Ct. R. 28(D) and the Minute Entry of August 28,
28 2013, the United States Attorney's Office for the District of Arizona, by
29 undersigned counsel, files its third set of comments as to the proposed
30 modification of the special duties of prosecutors in ER 3.8 and the creation of a
31 special duty for all lawyers in ER 3.10 in cases giving rise to claims of actual
32 innocence.

1 We appreciate the dialogue the Court has afforded all stakeholders in this
2 rule-making process, and continue to believe that a new set of ethical
3 responsibilities is unnecessary, because prosecutors in Arizona, and our law
4 enforcement partners, strive to meet the spirit of these proposed rules every day.
5 Although the stakeholders and Court staff have endeavored to construct clean and
6 fully-defined rules, there will likely be gaps and unintended consequences that
7 develop over time, particularly with respect to what it means “to know” about
8 new, credible and reliable evidence, and with respect to the scope of the inquiry
9 or investigation contemplated by the rules upon learning of such evidence. (This
10 is particularly true in the federal system, where we rely on outside agencies to
11 perform all investigative functions). To the extent the Court adopts the proposed
12 rules, and in light of potentially unintended complexities with compliance under
13 the new rules, we respectfully encourage Bar Counsel, the Presiding Disciplinary
14 Judge and this Court to develop a fair and consistent mechanism to evaluate
15 compliance with the professional responsibilities contemplated by these changes.

16 RESPECTFULLY SUBMITTED this 23rd day of October, 2013.

17 s/ John R. Evans
18 JOHN R. EVANS
19 Assistant U.S. Attorney

20 s/ Gary M. Restaino
21 GARY M. RESTAINO
22 Assistant U.S. Attorney
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