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

12 In the Matter of:

Supreme Court No. R-14-0007

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14 **PETITION TO ADOPT RULE**
15 **32.12, ARIZONA RULES OF**
16 **CRIMINAL PROCEDURE**

COMMENT OF
THE STATE BAR OF ARIZONA

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18 The State Bar of Arizona supports the petition to adopt new Rule 32.12 of the
19 Arizona Rules of Criminal Procedure. The proposed rule would help in that it would
20 provide a process for complying with A.R.S. § 13-4240, which governs the
21 mechanism for convicted felons to petition the court for DNA testing.

22 The State Bar suggests modifications to three paragraphs of the proposed rule,
23 however:

24 **1. Minor grammatical edits to Rule 32.12(a)**

25 The first comma in paragraph (a) is unnecessary and can be omitted. In
addition, the word “that” in line 3 of paragraph (a) should be changed to “which”.
The revised paragraph would read:

- 1 a. Any person who has been convicted and sentenced for a felony
2 offense may petition the court for the forensic deoxyribonucleic acid
3 (DNA) testing of any evidence that is in the possession or control of
4 the court or the state, which is related to the investigation or
5 prosecution that resulted in the judgment of conviction, and that may
6 contain biological evidence.

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17 **2. Suggested change to Rule 32.12(d)(1)(ii)**

18 In Rule 32.12(d)(1)(ii), the word “will” should be changed to “may,” making
19 it less subjective and less difficult for a party to apply the new standard. The revised
20 paragraph would read:

- 21 d. Upon consideration of the petition and the state’s response, the court
22 may order DNA testing if the court finds that all of the following
23 apply:

24 1. A reasonable probability exists that either:

25 i. The petitioner’s verdict or sentence would have been
more favorable if the results of DNA testing had been
available at the trial leading to the judgment of conviction,

or

ii. DNA testing may produce exculpatory evidence.

17 **3. Suggested changes to Rule 32.12(f)**

18 In Rule 32.12(f), the State Bar suggests three revisions to the last
19 sentence:

- 20 • Striking the word “intentional”;
- 21 • Deleting the clause “appropriate sanctions, including criminal
22 contempt, for a knowing violation”; and
- 23 • Adding the phrase “any appropriate sanction” to the end of the
24 sentence.

25 With these changes to the final sentence, paragraph (f) would read:

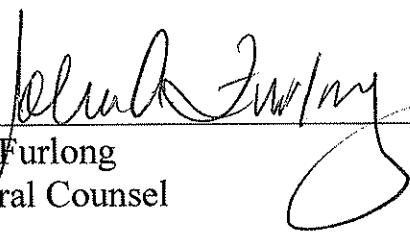
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f. If a petition is filed pursuant to this rule, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If evidence is destroyed after the court orders its preservation, the court may impose any appropriate sanction.

CONCLUSION

As long as its proposed modifications are made, the State Bar of Arizona agrees that this new rule will help promote efficiency and reduce confusion for petitioners, prosecutors, and the courts in this important and expanding area of post-conviction law.

RESPECTFULLY SUBMITTED this 7th day of May, 2014.



John Furlong
General Counsel

Electronic copy filed with the
Clerk of the Arizona Supreme Court
this 9th day of May, 2014.

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