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CLERK SUPREME COURT

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JANET JOHNSON  
CLERK SUPREME COURT  
BY:

SUPREME COURT OF  
ARIZONA

In the Matter of

Case R-19-0032

Petition To Amend 3.10(A)  
OF The Arizona Rules OF  
Professional Conduct

PETITION  
For a Proposal to Amend  
3.10(A) OF The Arizona Rules  
of Professional Conduct

The Supreme Court of Arizona has jurisdiction in this matter. In 2013, No. R-11-0033, the Supreme Court of Arizona in its ORDER dated 11/14/2013, amended Rule 42, ER 3.8 and promulgated Rule 42, ER 3.10 Rules of the Supreme Court.

The Amendment ORDERED that if a prosecutor knows of the existence of evidence that proves that a criminal defendant has been convicted of a crime that they did not commit, or proves that a criminal defendant did not commit the crime for which they have been convicted, that prosecutor must take the proper steps to rectify the conviction to ensure that the best interests of justice has been served, by promptly disclosing that evidence to the court the criminal defendant was convicted

The amendment was meant to aid wrongfully convicted criminal defendants against prosecutorial misconduct. However, there is a missing factor that was not in the original petition that still leaves a criminal defendant that did not commit the crimes for which they have been convicted vulnerable.

The amendment leaves the rectification to the prosecutor and the prosecutor alone. The Court ruled on the assumption that the prosecutor by this amended rule of conduct, will become an advocate of justice on behalf of the criminal defendant of whom they are prosecuting or have prosecuted in the past, and thereby rectify any miscarriage of justice that has occurred. But, what happens if the prosecutor does [not] rectify the injustice? What relief does a criminal defendant have if there is evidence, but the prosecutor refuses to acknowledge or admit any acts of prosecutorial misconduct? The manner in which the amendment currently reads, it leaves a loop hole, a means by which that the injustice will not be rectified if the prosecutor does not intervene. Ultimately justice will be denied.

Petitioner respectfully proposes that an amendment be added to circumvent this missing factor, that a criminal defendant who has evidence of prosecutorial misconduct, that proves that they are not guilty of the crime for which they have been convicted, and the prosecutor refuses to rectify their injustice, that criminal defendant, regardless of time frames, be permitted to file a brief and petition the court in which they were convicted for an evidentiary hearing so that the criminal defendant be afforded the opportunity to present such evidence, and prove their innocence,

and/or expose prosecutorial misconduct, if prosecutorial misconduct exist.

In conclusion, Petitioner respectfully proposes this amendment to be added to ensure that justice be served. Without this clause, the Court has put the full weight of rectifying a wrongful conviction on the conscience of the prosecutors. However, the Court has failed to consider the possibility that a prosecutor may refuse to administer justice and thereby refuse to present evidence and rectify an injustice.

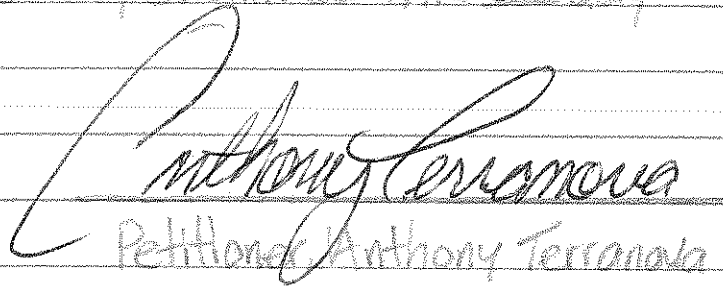
This Clause would ensure that if a prosecutor fails to rectify a wrongful conviction, that justice could still be served, because a criminal defendant would be guaranteed an evid. hearing by which they could disclose evidence that would prove that they did not commit the crime(s) for which they have been convicted.

This would allow evidence to be disclosed that would expose prosecutorial misconduct by credible and material evidence, in absence of the prosecutor's unwillingness to rectify injustices. This new amendment would ensure the best interests of justice be served.

The proposed amendment could be added at the end of Rule 42, ER 3.10(A) and may read: In the event that a criminal defendant is in possession of evidence that proves they are not guilty of the crime(s) for which they have been convicted and the prosecutor refuses to acknowledge such evidence or assist in the rectification of the defendant's wrongful conviction, the criminal defendant shall file a brief and petition the court

for which they were convicted for an evidentiary hearing to disclose such evidence under this Rule.

This Petition for a proposal for the amendment of Rule 42, ER 3.10(A) is respectfully submitted this 30<sup>th</sup> day of January, 2019.

  
Petitioner Anthony Terranova

The original and copies of this Petition were mailed this 30<sup>th</sup> day of January, 2019 to the following:

The original and (4) copies were sent to:  
The Clerk of the Supreme Court of Arizona  
Supreme Court  
1501 W. Washington  
Phoenix, AZ 85007