

1 John A. Furlong, Bar No. 018356
General Counsel
2 STATE BAR OF ARIZONA
3 4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
4 Telephone: (602) 252-4804
John.Furlong@staff.azbar.org
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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

8
9 **PETITION TO AMEND RULE 803(10),**
ARIZONA RULES OF EVIDENCE

Supreme Court No. R-12-0034

10 **Comment of the State Bar of Arizona**
11 **on Petition to Amend Rule 803(10),**
Arizona Rules of Evidence

12 The longstanding rule allowed a party to prove an absence of a public record
13 either through live witness testimony or through the introduction of a document
14 certified under Rule 902, Ariz. R. Evid. However, recent decisions by the United
15 States Supreme Court have recognized that in a criminal case, a material fact may not
16 be proved through the mere introduction of a document, because a document cannot
17 be cross-examined. Thus, the existing procedure potentially violates the
18 Confrontation right of an accused.

19 The proposed revision includes a provision that in a criminal case, a prosecutor
20 intending to offer a certification (of lack of existing public record) provide written
21 notice of that intent at least 20 days before trial, providing a defendant 10 days to object
22 thereto—unless the court proscribes a different time frame for the notice and/or the
23 objection.

24 The United States Supreme Court has approved the aforementioned “notice-and-
25 demand” procedure, as has Congress in its revision to the Federal Rules of Evidence.

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For the above reasons, the State Bar supports the proposed rule change.

RESPECTFULLY SUBMITTED this 29th day of April

2013.

By



John A. Furlong
General Counsel

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
29th day of April, 2013.

By: Kathleen A. Lundgren