

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-12-0034
PETITION TO AMEND RULE 803(10),)
ARIZONA RULES OF EVIDENCE)
)
)
)
_____) **FILED 08/28/2013**

**ORDER
AMENDING RULE 803(10), ARIZONA RULES OF EVIDENCE**

A petition having been filed proposing to amend Arizona Rule of Evidence 803(10), and comments having been received, upon consideration,

IT IS ORDERED that Rule 803(10), Arizona Rules of Evidence, be amended in accordance with the attachment hereto, effective January 1, 2014.

DATED this _____ day of August, 2013.

REBECCA WHITE BERCH
Chief Justice

TO:

Rule 28 Distribution

Mark W Armstrong

Samuel A Thumma, Judge, Court of Appeals - Division One

:State Bar of Arizona

John A Furlong

Sheila Sullivan Polk

Elizabeth B Ortiz

ATTACHMENT¹

Arizona Rules of Evidence

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

* * * * *

(10) *Absence of a Public Record.* Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if ~~the testimony or certification is admitted to prove that:~~

(A) the testimony or certification is admitted to prove that

~~(A i)~~ the record or statement does not exist; or

~~(B ii)~~ a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 20 days before trial, and the defendant does not object in writing within 10 days of receiving the notice—unless the court sets a different time for the notice or the objection.

* * * * *

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

Comment to 2014 Amendment

Rule 803(10) has been amended to incorporate, with minor variations, a “notice-and-demand” procedure that was approved in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). This amendment is not intended to alter any otherwise applicable disclosure requirements.

Comment to 2012 Amendment

[No change in text.]

Comment to 1994 Amendment

[No change in text.]