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7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 IN THE MATTER OF

R-14-0005

9 PETITION TO MODIFY RULE  
10 24.2, ARIZONA RULES OF  
11 CRIMINAL PROCEDURE

12 ARIZONA PROSECUTING ATTORNEYS'  
13 ADVISORY COUNCIL'S  
14 COMMENTS IN SUPPORT OF PETITION TO  
15 MODIFY RULE 24.2, ARIZONA RULES OF  
16 CRIMINAL PROCEDURE

17 Pursuant to Arizona Rules of the Supreme Court, Rule 28(C), the Arizona  
18 Prosecution Attorneys' Advisory Council ("APAAC") hereby submits its comments  
19 in support of R-14-0005, Petition to Modify Rule 24.2, Arizona Rules of Criminal  
20 Procedure. This Court's adoption of Ethical Rule 3.8(h) specifically requires  
21 prosecutors to "take appropriate steps . . . to set aside the conviction" under certain  
22 specified circumstances. The rule, however, does not provide any guidance on what  
23 the appropriate steps might be other than the need to notify any victims. The Rules of  
24 Criminal Procedure do not currently provide any procedural mechanism for the State  
25 to move to set aside a conviction. Rule 32, for example, only applies to convicted  
26 defendants, and motions to vacate pursuant to Rule 24.2 must be filed within 60 days  
27 of the entry of judgment. In most situations where ER 3.8(h) will be implicated, the  
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1 judgment will likely be several years old. For the overwhelming majority of criminal  
2 cases, the 60 day limitation in Rule 24.2 is reasonable, appropriate, and necessary to  
3 promote judicial efficiency and finality. The proposed modification does not alter the  
4 current rule, so the 60 day limitation still applies to any motions to vacate filed by the  
5 defense. The proposed modification simply allows the State, and only the State, to  
6 file a motion to vacate at any time after entry of judgment in two limited  
7 circumstances. Those two circumstances would only apply in two extremely rare  
8 situations when it is necessary to correct an erroneous conviction. Because the  
9 proposed modification is appropriately limited and will provide a procedural  
10 mechanism for prosecutors to comply with their new ethical obligations, APAAC  
11 asks this Court to modify Rule 24.2 as proposed in the petition.  
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16 Respectfully submitted this      day of May, 2014.

17 ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

18 SHEILA SULLIVAN POLK  
19 YAVAPAI COUNTY ATTORNEY  
20 APAAC Chair

21 ELIZABETH ORTIZ  
22 APAAC Executive Director

23 By: \_\_\_\_\_  
24 SHEILA SULLIVAN POLK  
25 APAAC Chair  
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