

1 Hon. Joseph Kreamer, on behalf of the
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6 IN THE SUPREME COURT
7 STATE OF ARIZONA

8
9 **PETITION TO AMEND RULE 23,
10 ARIZONA RULES OF CIVIL
11 PROCEDURE**

Supreme Court No.
PETITION

12 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court,
13 acting on behalf of the Arizona Foundation for Legal Services & Education (the
14 “Arizona Bar Foundation”), Hon. Joseph Kreamer, Arizona Bar Foundation
15 Board President, petitions the Court to amend Rule 23 of the Arizona Rules of
16 Civil Procedure to provide direction for the distribution of residual funds in
17 class action cases where there are no statutory directives. The proposed rule
18 amendment specifically would require any residual class action funds, without
19 statutory directives, to be distributed to the Arizona Bar Foundation to grant
20 to Arizona legal services nonprofit entities for use, in accordance with judicial
21 instructions for the award, toward the provision of legal services and access
22 to justice for low-income residents of Arizona. In support of this Petition, the
23 Arizona Bar Foundation states the following:
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1 **I. Background and Purpose of the Proposed Amendment**

2 This Petition arises from the Conference of Chief Justices and the
3 Conference of State Court Administrators’ Resolution 2 (Feb. 2023): *In Support of*
4 *Efforts by State Supreme Courts to Increase Funding for Civil Legal Aid and*
5 *Related Access to Justice Efforts Through Residual Funds in Class Action Cases.*
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7 This resolution encourages states to adopt rules that require or specifically allow
8 residual funds in class action cases to be directed to support legal aid or related
9 justice efforts.
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12 In 2013 and in 2015, the Foundation submitted *cy pres* proposals,
13 following the State Bar of Arizona’s Access to Justice Task Force (“AJTF”)
14 recommendation. The AJTF was established in 2011 by the State Bar, and its
15 members were drawn from a broad group of legal professionals. In their final
16 report in the fall of 2011, the AJTF identified the use of *cy pres* awards distributed
17 from class action residual funds to access to justice initiatives as a way to
18 increase financial support for legal services. The 2013 and 2015 proposals did
19 not clarify that the Foundation was proposing to administer the *cy pres* residual
20 funds in accordance with the judgment in each specific case, similar to the
21 responsibility the Arizona Supreme Court has given the Foundation with
22 Interest on Lawyers’ Trust Account (“IOLTA”) revenue. This responsibility
23 includes monitoring of compliance by the financial institutions and of the grantees
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1 receiving funds, in addition to adherence to the uses as defined by Rule 43 of
2 the Rules of the Supreme Court of Arizona.

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4 This 2024 rule change proposal clarifies the intent for the Foundation to
5 serve the Arizona Judicial Branch and the public interest in the same manner
6 as it does with IOLTA revenue in managing the distribution of *cy pres* funds. As
7 explained below, if the rule is adopted, Arizona would join the growing number
8 of states that have established similar methods of disbursement for class action
9 residual funds. Currently, there is no procedure or rule guiding Arizona trial
10 courts on the disbursement of class action residual funds. The rule amendment
11 proposed in this Petition would provide direction for the disbursement of these
12 funds and is modeled after similar rules of civil procedure in Indiana,
13 Pennsylvania, Tennessee, and Washington. The Foundation submitted a Petition
14 to Amend Rule 23 of the Arizona Rules of Civil Procedure in December 2013,
15 Supreme Court No. R-13-0061, which would have required that 50% of the
16 residual funds go to the Foundation. The Court denied the petition. The
17 Foundation submitted another Petition on the issue in January 2015, Supreme
18 Court No. R-15-0007, proposing a more flexible provision on *cy pres* distributions
19 to the Foundation. The Court also denied the second petition. The Foundation
20 submits this Petition that requires disbursement of residual class action funds
21 for all the same reasons given in the prior petitions and to assist the Arizona
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1 Supreme Court meet the recommendations of the Conference of Chief Justices
2 and the Conference of State Court Administrators' Resolution 2 (Feb. 2023).

3 4 **II. Proposed Rule Amendment**

5 The proposed rule amendment is a new subsection (i) in Rule 23 of the
6 Arizona Rules of Civil Procedure. Here is the language for the proposed Rule
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8 23(i):

9 *Rule 23(i). Disposition of Residual Funds in Class Action Cases.*

10 *(1) "Residual Funds" are (a) the funds that remain after the*
11 *payment of all approved class member claims, expenses,*
12 *litigation costs, attorneys' fees, and other court-approved*
13 *disbursements to implement the relief granted, or (b) if it is*
14 *impossible or economically impractical to distribute the*
15 *settlement or judgment funds to the class at all, the funds*
16 *remaining after the payment of all approved expenses, litigation*
17 *costs, attorneys' fees, and other court-approved disbursements to*
18 *implement the relief granted. Nothing in this rule is intended to*
19 *limit the trial court from approving a settlement or order that does*
20 *not create residual funds.*

21 *(2) Any order entering a judgment or approving a proposed*
22 *compromise or settlement of a class action certified under this rule*
23 *that establishes a process for identifying and compensating members*
24 *of the class, or where such process is impossible or economically*
25 *impractical, may provide for the disbursement of residual funds.*
26 *In matters where residual funds remain and are not subject to*
27 *statutory directives the residual funds shall be disbursed to the*
28 *Arizona Foundation for Legal Services and Education to grant to*
Arizona legal services nonprofit entities for use, in accordance with
judicial instructions for the award, toward the provision of legal
services and access to the justice system for low-income
residents of Arizona.

1 Similar provisions have been implemented by twenty-four other states
2 and one U.S. territory by rule or statute. The states adopting statutes include:
3 California (1994), Illinois (2008), Nebraska (2014), North Carolina (2005),
4 Oregon (2015), Puerto Rico (2017), South Dakota (2008), and Tennessee (2006).
5 The states that have amended court rules/orders include: Colorado (2016),
6 Connecticut (2015), Hawaii (2011), Indiana (2011), Kentucky (2014),
7 Louisiana (2012), Maine (2013), Massachusetts (2009), Michigan (2020),
8 Minnesota (2021), Montana (2015), New Mexico (2011), Pennsylvania (2012),
9 South Carolina (2016), Washington (2006), West Virginia (2017), Wisconsin
10 (2017), and Vermont (2023).¹
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15 The states that have adopted provisions for the disbursement of *cy pres*
16 funds to legal services have varied directions for the class action residual
17 funds distribution. However, the one constant in these rules and statutory
18 changes is that the residual funds are designated to go toward legal services
19 providing assistance for low-income persons and access to justice efforts.
20 Seventeen of the 25 states/territory specifically list the Interest on Lawyers’
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24 ¹ The American Bar Association keeps a list of relevant rules and statutes on its
25 website,
26 [https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_de](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls-sclaid-atj-cypres.pdf)
27 [fendants/ATJReports/ls-sclaid-atj-cypres.pdf](https://casetext.com/rule/vermont-court-rules/vermont-rules-of-civil-procedure/iv-parties/rule-23-class-actions). Vermont adopted its Court Rule after
28 the most recent update of the list on the ABA website,
[https://casetext.com/rule/vermont-court-rules/vermont-rules-of-civil-procedure/iv-](https://casetext.com/rule/vermont-court-rules/vermont-rules-of-civil-procedure/iv-parties/rule-23-class-actions)
[parties/rule-23-class-actions](https://casetext.com/rule/vermont-court-rules/vermont-rules-of-civil-procedure/iv-parties/rule-23-class-actions).

1 Trust Account (“IOLTA”) program as the designated entity for receipt of
2 residual funds.

3 4 **III. Explanation of the Need for and Purpose of the Proposed Amendment**

5 **A. The Access to Justice Gap Continues to Grow in Arizona**

6 The Legal Service Corporation’s “The Justice Gap: The Unmet Civil Legal
7 Needs of Low-income Americans” (April 2022) reports that legal services agencies
8 are forced to turn away 1 in 2 requests for legal help due to lack of available
9 resources. The report goes onto clarify that their legal aid organizations are
10 unable to provide any or enough legal help for an estimated 1.4 million civil
11 legal issues brought to their doors.² Funding for legal services for low-income
12 persons has never been adequate to meet the legal needs of this population. Two
13 of the largest funding sources for legal services programs are federal funding
14 and IOLTA funds. Both of these funding sources fluctuate with the national
15 economic ups and downs.

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20 Meanwhile, the public demand and community need for legal services is
21 counter-cyclical with national economic conditions, with periods of economic
22 stagnation or recession coinciding with increased need for legal services to
23 protect low-income and other vulnerable people’s economic security and other
24 basic life needs. In short, history shows that while funding fluctuates, the
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28 ² <https://justicegap.lsc.gov/> (last visited Mar. 15, 2023).

1 demand for legal services only increases, especially in periods of economic
2 uncertainty. As of July 2022, over two years past the declaration of a national
3 public health emergency, Arizona has 941,977 individuals living in poverty, 12.8%
4 of our population. <https://www.census.gov/quickfacts/fact/table/AZ/PST045222>.
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6 Arizona ranks 15th among the states for persons in poverty.³ Yet, according to
7 the ABA Array 2021 study, Arizona ranks 33rd in the funding resources for civil
8 legal aid. Thus, the number of Arizonans eligible for legal services is huge and
9 the funding resources fall greatly behind. The proposed rule is a modest effort to
10 try to close the access to justice gap in Arizona. Nothing in this proposal
11 requires that there be residual finds. The contrary is true. The last sentence in
12 subsection (i)(1) of the proposed rule provides that: “Nothing in this rule is
13 intended to limit the trial court from approving a settlement or order that does
14 not create residual funds.” This rule would only be applied if there are residual
15 funds after the normal operation of the rule in delivering relief to class
16 members benefitting from a class action judgment.
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21 As more fully explained below, all the proposed rule does is to
22 recognize the premise underlying all class actions, which is to make access to
23 justice a reality for persons who otherwise would not realistically be able to
24 obtain the protection of the justice system. Moreover, the proposed rule
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28 ³ <https://wisevoter.com/state-rankings/poverty-rate-by-state/> (last visited Aug. 14, 2023).

1 recognizes that legal services programs provide access to justice for those who
2 otherwise would have limited or no access to the justice system. The civil legal
3 aid agencies protect people with disabilities, victims of domestic violence,
4 veterans, the elderly, children, and other vulnerable populations in communities
5 across Arizona. They protect the basic needs in areas of family safety and
6 security, health care, food and sustenance, housing stability, and financial
7 support. The civil legal aid agencies save families from discrimination, predatory
8 business conduct and consumer exploitation. Finally, the proposal recognizes
9 that the distribution of residual funds to legal services and access to justice
10 programs for low-income persons serves the fundamental principle of access to
11 justice and is a “next best use” in class action cases.

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16 As documented by the legal services programs, many persons in Arizona
17 have to go without needed legal representation. When the Court has the
18 opportunity to increase access to justice, it should do so.

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20 **B. The Rule 23 Amendment Furthers the Public Policy of the Arizona**
21 **Bar Foundation/IOLTA Program to Support Access to Justice**

22 It was in the early 1970s that discussion of IOLTA programs began to be
23 explored. The principle was simple; client funds in a lawyer’s possession that are
24 nominal or held for a short time would be pooled in an interest generating trust
25 account and the interest would be allocated to law-related public activities
26 through a nonprofit corporation. Some states developed their IOLTA
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1 programs through state legislation and others through court rulemaking
2 procedures. In March 1978, the Supreme Court of Florida issued a decision
3 establishing the first United States IOLTA program with the interest going to the
4 Florida Bar Foundation. Key provisions in gaining approval for the IOLTA
5 program concept addressed the Internal Revenue Service's concerns that the
6 funds generated would not result in inurement to the benefit of private individuals
7 and groups, but rather that they would be used exclusively for public purposes.⁴

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10 In 1983–1984 Arizona established an IOLTA program under court rule,
11 and the Arizona Bar Foundation was entrusted with administering the IOLTA
12 funds. The purpose of the IOLTA program is to create access to legal services and
13 access to justice by aggregating small amounts of interest earned on short-term
14 or small deposits that would not be sufficient to generate net earnings to their
15 owners. Thus, the parallel between the use of class action remedies and the
16 IOLTA program supports administration of the residual funds by the Arizona Bar
17 Foundation.
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21 The Arizona Bar Foundation, after four decades of operation, has
22 administrated over \$49 million in IOLTA funding and continues to serve as the
23 entity entrusted by the Arizona Supreme Court with this important function. The
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26 ⁴ *Report to the Board of Governors Task Force and Advisory Board on Interest*
27 *on Lawyer (sic) Trust Accounts*, Section VII, pages 13–21, American Bar
28 Association, July 26, 1982.

1 Arizona Bar Foundation has a proven track record and ensures that the IOLTA
2 interest is used exclusively for the public purposes defined under Rule 43 of the
3 Rules of the Supreme Court of Arizona. Other Arizona state agencies have
4 also entrusted the Arizona Bar Foundation to administer funds for the purpose
5 of providing legal services. Two examples are:
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8 **Arizona Domestic Violence Legal Assistance Project**

9 ***1998- Present (Partnership with DES)***

10 Statewide collaborative of civil legal assistance provided by legal aid
11 lawyers, volunteer lawyers, and lay legal advocates. Services more than
12 10,000 victims each year. \$1 million, primarily TANF funding to 3 legal
13 aid & 13 DV shelter/service providers. Includes online public legal
14 education, online access to legal aid providers and training opportunities
15 for lawyers and non-lawyers.
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18 **Arizona Foreclosure Relief Legal Services**

19 ***2012-2015 (Partnership with Arizona Attorney General's Office)***

20 Statewide foreclosure relief legal assistance and public legal education
21 for Arizonans at risk of or experiencing foreclosure due to housing
22 crisis. In partnership with the Arizona Attorney General, funding was
23 from the National Mortgage Settlement.
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1 The Arizona Bar Foundation is in the unique position, having a proven track
2 record of disbursing and administrating funds to a broad array of programs that
3 provide legal services and access to justice to those in Arizona.
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5 The proposed amendment confirms that there is a procedural nexus between
6 ability of class members to secure relief in the judicial forum under Rule 23 and
7 the interests of others who may similarly need access to the justice system to assert
8 or defend critical legal rights and interests. The proposed amendment does not
9 substantially interfere with the freedom of parties or their attorneys to craft and
10 propose class action settlement. Instead, it specifically allows for residual funds to
11 go towards increasing access to justice.
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14 Finally, the proposal places no additional burdens on the courts or the parties
15 in the management of class action cases. The amendment will support access to
16 justice for many Arizonans who otherwise would have no legal assistance.
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19 **IV. The Proposed Amendment Would Further the Public Policy of Access**
20 **to Justice in Arizona**

21 There is a growing recognition in states that the use of *cy pres* funds are
22 appropriate funds to support the work of legal services programs. The Conference
23 of Chief Justices and the Conference of State Court Administrators' Resolution 2
24 (Feb. 16, 2023): *In Support of Efforts by State Supreme Courts to Increase*
25 *Funding for Civil Legal Aid and Related Access to Justice Efforts Through*
26 *Residual Funds in Class Action Cases* clearly supports this recognition. This
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1 resolution encourages states to adopt rules that specifically allow residual funds in
2 class action cases to be directed to support legal aid or related justice efforts.

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4 With this rule, Arizona would join the growing number of states that have
5 established similar methods of disbursement for class action residual funds. The
6 states that have adopted provisions for the disbursement of *cy pres* funds to legal
7 services have varied directions for the class action residual funds distribution.
8 However, the one constant in these rules and statutory changes is that the residual
9 funds are designated to go toward legal services providing assistance for low-
10 income persons and access to justice efforts. Seventeen of the 25 states/territory
11 specifically list the IOLTA program as the designated entity for receipt of residual
12 funds.
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16 **A. The History and Development of *Cy Pres* Awards Support the**
17 **Petition**

18 *Cy pres* awards are distributions of the residual funds from class action
19 settlements or judgments that, for various reasons, are unclaimed or cannot be
20 distributed to the class members or other intended recipients. The term *cy pres*
21 derives from the Norman-French phrase, *cy pres comme possible*, meaning “as
22 near as possible.” Edith L. Fisch, *Cy Pres Doctrine in the United States* (1950)
23 (“*Cy Pres Doctrine*”). The *cy pres* doctrine has its roots in the laws of trust and
24 estates, operating to modify charitable trusts that specified a gift that had been
25 granted to a charitable entity that no longer existed, had become infeasible, or was
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1 in contravention of public policy. Alba Conte & Herbert B. Newberg, *Newberg on*
2 *Class Actions* § 10:17 (4th ed. 2012). In such instances, courts transferred the
3 funds to the next best use that would satisfy, “as nearly as possible” the trust
4 settlor’s original intent. Fisch, *Cy Pres Doctrine* at 1.

6 When class actions are resolved through settlement or judgment, there may
7 be residual funds because of the inability to locate class members or class members
8 fail or decline to file claims for settlement checks. Residual funds may also be
9 generated when it is not economically or administratively feasible to distribute
10 funds to class members if, for example, the cost of distributing individually to all
11 class members exceeds the amount to be distributed. *Cy pres* awards preserve the
12 deterrent effect and allow courts to distribute residual funds to charitable causes
13 that reasonably approximate the interests pursued by the class action for absent
14 class members who have not received individual distributions. *See* Wilber H.
15 Boies and Latonia Haney Keith, *Class Action Settlement Residue and Cy Pres*
16 *Awards: Emerging Problems and Practical Solutions*, Virginia Journal of Social
17 Policy & the Law, February 2014, Vol. 21: 2 (“Class Action Settlement Residue”)
18 found at <http://www.vjspl.org>. The *cy pres* doctrine has been borrowed as a device
19 to facilitate the administration of class actions. Boies and Keith, *Class Action*
20 *Settlement Residue* at 289.

21 Similarly, Arizona courts have approved the application of the *cy pres*
22 doctrine to class action cases:
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1 'Cy pres' is a derivative from French meaning 'as near as.' Black's
2 Law Dictionary 415 (8th ed. 2004). . . . It is also used to distribute
3 unclaimed portions of a class-action judgment or settlement funds
4 to a charity that will advance the interests of the class. *Id.* In the
5 context of a class action settlement agreement, when it is not feasible
6 to distribute the class recovery or when there is a balance that remains
7 after distribution, the court may direct 'undistributed funds to be
8 applied prospectively to the indirect benefit of the class.' Alba Conte
& Herbert Newberg, *Newberg on Class Actions* § 10.17 (4th ed.
2005) ('Newburg'). These funds are usually distributed to a third
party for a specified purpose. *Id.*

9 *Charles I. Friedman v. Microsoft Corp.*, 213 Ariz. 344, 348, n.7, 141 P.3d 824, 828
10 (App. 2006).

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12 **B. Organizations that Provide Access to Justice are Appropriate**
13 **Beneficiaries of *Cy Pres* Awards**

14 Courts throughout the country have long recognized that organizations that
15 provide access to justice for low-income persons are appropriate beneficiaries of *cy*
16 *pres* awards from class action cases. *See, e.g., Lessard v. City of Allen Park*, 470
17 F.Supp.2d 781, 783–84 (E.D. Mich. 2007) ("The Access to Justice fund is the 'next
18 best' use of the remaining settlement monies in this case, because both class
19 actions and Access to Justice programs facilitate the supply of legal services to
20 those who cannot otherwise obtain or afford representation in legal matters."
21 (citations omitted)); *Jones v. Nat'l Distillers*, 56 22F.Supp.2d 355, 359 (S.D.N.Y.
22 1999) (listing multiple cases where a class action *cy pres* distribution designed to
23 improve access to legal aid was appropriate); *In re Folding Carton Antitrust Litig.*,
24 MDL No. 250, 1991 U.S. Dist. LEXIS 2553, at *7–8 (N.D. Ill. Mar. 5, 1991)

1 (approving *cy pres* distribution of class action “Reserve Fund” to establish a
2 program that would, in part, increase access to justice “for those who might not
3 otherwise have access to the legal system”); see also Doyle, *Residual Funds in*
4 *Class Action Settlements*, at 2627 (providing examples of approved class action
5 settlements with *cy pres* distribution components that improved access to justice
6 for indigent litigants).
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9 These awards are based on one of the underlying premises for all class
10 action cases: to provide access to justice for persons who would not otherwise be
11 able to obtain the protections of the justice system. See Bob Glaves & Meredith
12 McBurney, *Cy Pres Awards, Legal Aid and Access to Justice, Key Issues in 2013*
13 *and Beyond*, 27 Mgmt. Info. Exch. J., 24, 25 (Spring 2013) found at
14 <http://americanbar.org>. (“[L]egal aid or [Access To Justice] organizations are
15 always appropriate recipients of *cy pres* or residual fund awards in class actions
16 because no matter what the underlying issue is in the case, every class action is
17 always about access to justice for a group of litigants who on their own would not
18 realistically be able to obtain the protections of the justice system.”); Doyle,
19 *Residual Funds in Class Action Settlements*, at 27 (stating that the myriad of state
20 statutes and rules enacted to “require residual funds to be distributed, at least in
21 part, to legal aid projects ... provide(s) evidence of a public policy favoring *cy pres*
22 awards that serve the justice system”).
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1 **C. A Growing Number of States Have Adopted Rules and Statutes**
2 **that Provide that Access to Justice is an Appropriate Use of Cy**
3 ***Pres Funds***

4 Arizona courts have recognized the role class actions serve in promoting
5 access to justice. *See ESI Ergonomic Solutions, LLC v. United Artists Theatre*
6 *Circuit, Inc.*, 203 Ariz. 94, 98, ¶ 14, 50 P.3d 844, 848 (2002) (A class action allows
7 for the bringing of a claim that is not economically feasible, thus, allowing for the
8 “vindication of rights that would otherwise go unprosecuted.”) The class action
9 also serves to educate individuals about their rights as well as protect those rights.
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12 *Id.*

13 Those are the very reasons legal services programs were established. They
14 represent low-income persons who financially cannot bring or defend cases.
15 Without legal services, these persons’ most fundamental legal rights would go
16 unprotected. The victim of domestic violence who needs a divorce, custody and
17 child support; the tenant living in substandard housing without air conditioning; the
18 farm worker being mistreated by her supervisor; or the child improperly denied
19 food stamps, cash assistance, or Medicaid. These are all cases where rights
20 would not be vindicated without legal services programs. The analogy to class
21 action cases is straight forward.
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25 Legal services programs not only provide direct representation, they (and the
26 Arizona Bar Foundation) prepare legal educational materials, put on workshops
27 and clinics, and make public presentations. They serve the same educational
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1 interests as class actions. *See, e.g.,* Community Legal Services website at
2 clsaz.org; Arizona Bar Foundation resources at AzCourtHelp.org;
3 AZLawHelp.org; LawForSeniors.org; LawForKids.org; LawForVeterans.org;
4 AZEvictionHelp.org; and AZCrimeVictimHelp.org.

6 Whether awarded by a court order or pursuant to a state statute or rule, class
7 action *cy pres* distributions to legal assistance organizations are widely recognized
8 as an appropriate and successful mechanism to further access to justice. *See, e.g.,*
9 Daniel Blynn, *Cy Pres Distributions: Ethics & Reform*, 25 Geo. J. Legal Ethics
10 435, 438 (2012) (*cy pres* distributions to specific legal aid organizations have
11 advanced legal services); Calvin C. Fayard, Jr. & Charles S. McCowan, Jr., *The Cy*
12 *Pres Doctrine: A Settling Concept*, 58 La. B.J. 248, 251 (2011) (discussing how *cy*
13 *pres* awards made to local legal aid organizations will promote access to the courts,
14 in part, by funding and coordinating a pro bono panel utilizing local attorneys);
15 Danny Van Horn & Daniel Clayton, *It Adds Up: Class Action Residual Funds*
16 *Support Pro Bono Efforts*, 45 Tenn. B.J. 12, 13-14 (2009) (identifying legal aid
17 organizations which have received residual *cy pres* funds because of the indirect
18 benefit they provide to class members, which is similar to the central purpose for
19 which rule 23 of the federal rules of civil procedure was designed – access to
20 justice); Nina Schuyler, *Cy Pres Awards – A Windfall for Nonprofits*, 33 San
21 Francisco Attorney 26, 27–28 (Spring 2007) (lauding the assistance that Volunteer
22 Legal Services has provide to low-income residents); *Cy Pres Nets \$162,000 for*

1 *Justice Foundation*, 30 May Mont. Law. 24, 24 (2005) (noting that a significant *cy*
2 *pres* distribution to the Montana Justice Foundation will help fund legal aid for
3 indigent individuals).
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5 **D. This Petition Supports the Goals of the Arizona Supreme Court**
6 **and the Access to Justice Commission Established by the Court**

7 The Court established the Arizona Commission on Access to Justice in
8 2014. Administrative Order No. 2014-83. The Court identified as one purpose of
9 the Commission during its first year to look at ways of “promoting access to justice
10 for individuals who cannot afford legal counsel . . .” The Arizona Supreme
11 Court’s strategic plan includes access to justice as one of its goals. This Petition
12 would promote that purpose.
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15 **V. Potential Benefit from Residual Funds Designation**

16 The history of the implementation of similar provisions in other states shows
17 that use of the residual funds can be an effective tool to support legal services. States
18 vary in their procedures for either mandating or providing an option for the residual
19 funds disbursement to an entity that supports legal services or access to the courts
20 for low-income persons.
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22 The ABA Resource Center also attempts to collect information on how much
23 funding is being generated annually by states with rule or statutory class action
24 residual funds distribution provisions. There is not accurate or complete data for all
25 states, but the existing data shows that the amount collected annually varies
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1 significantly, both from year to year within each state and from state to state. The
2 ABA Array database records over 74 million dollars going to support legal services
3 in 2021.
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5 This information demonstrates that there is the potential for a large increase in
6 funds designated toward access to justice efforts when rules and/or statutes
7 concerning class action residual funds are amended. With now 24 states and a
8 territory establishing *cy pres* rules to support legal services, it is clear that there is a
9 growing recognition and significant momentum toward the use of residual funds as
10 an appropriate way to obtain additional funding for legal services.
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13 The Arizona Bar Foundation respectfully requests that the Court approve this
14 Petition so that the legal services and access to justice programs in Arizona can reap
15 the benefits of the use of residual funds to help low-income Arizonans. This
16 amendment is consistent with the furtherance of important public policy goals,
17 including the efficient use and conservation of judicial resources, the promotion of
18 settlements, the provision of legal representation and services to low-income
19 Arizonans and the improvement of the administration of justice.
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23 **VI. The Access to Justice Programs Will Maximize the Use of the Residual**
24 **Funds**

25 The history of the implementation of similar provisions in other states shows
26 that use of the residual funds can be an effective tool to support legal services.
27 Legal services programs are very adept at making additional money go a long way.
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1 An attorney hired at \$50,000 can be expected to assist over 300 clients a year.
2 Relatively small amounts of money can print out educational brochures and support
3 clinics. Additional funds can support the volunteer lawyers' programs. These
4 programs have modest office space and no frills.
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6 The Court's approval of the Petition will support legal services and access to
7 justice programs in Arizona. With the rule change, our legal services and access to
8 justice programs will have access to more resources to use to help low-income
9 Arizonans, as has occurred in other states. It is a win-win for all of Arizona.
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12 **Conclusion**

13 For the above reasons, the Arizona Bar Foundation respectfully requests that
14 the Court Amend Rule 23 to specifically require residual funds to class action
15 cases to be distributed to the Arizona Bar Foundation to grant Arizona legal
16 services nonprofit entities for use, in accordance with judicial instructions for the
17 award, toward the provision of legal services and access to justice for low-income
18 residents of Arizona.
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21 Respectfully submitted this 10th day of January 2024.

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23 Hon. Joseph Kreamer, 2024 President,
24 Arizona Foundation for Legal Services
& Education Board of Directors

25 */s/ Joseph Kreamer*

26 _____
27 Joseph Kreamer
28 of Arizona Bar Foundation

1 Original electronically filed with the
2 Clerk of the Supreme Court of Arizona
3 this 10th day of January 2024.

4 By: /s/ Andrew P. Schaffer

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