

1 ELLEN SUE KATZ, AZ Bar. No. 012214
2 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE
3 202 E. McDowell Rd., Suite 257
4 Phoenix, AZ 85004
5 (602) 252-3432
6 eskatz@qwestoffice.net

7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9 PETITION TO AMEND ETHICAL)
10 RULES 1.5, 4.2, 4.3 AND 6.5, RULE 42)
11 OF THE ARIZONA RULES OF THE)
12 SUPREME COURT, AND RULES 5.1)
13 AND 11 OF THE ARIZONA RULES OF)
14 CIVIL PROCEDURE)

Supreme Court No. R-12-0027

**MOTION FOR EXPEDITED
CONSIDERATION OF PETITION
FOR RULES CHANGES**

15 Pursuant to Rule 28(G) of the Arizona Rules of the Supreme Court, the William E.
16 Morris Institute for Justice on behalf of the Arizona Foundation for Legal Services and
17 Education, Community Legal Services, Southern Arizona Legal Aid and DNA-People’s
18 Legal Services submits this Motion to Expedite Consideration of the Petition to Amend
19 the rules or the comments to Ethical Rules 1.5, 4.2, 4.3 and 6.5, Rule 42 of the Arizona
20 Rules of the Supreme Court, and Rules 5.1 and 11 of the Arizona Rules of Civil
21 Procedure. The Petition was submitted to the Court for comment on May 14, 2012. The
22 Court opened the comment period at the end of August. Currently, the comment period
23 ends May 21, 2013. As of the filing of this motion, no comments have been submitted.

24 Rule 28(G) allows for a Motion to Expedite when the petition “presents an urgent
25 matter for which compelling circumstances render the annual rule processing cycle
26 inadequate.” This petition presents such a situation. In support of this Motion, the
27 William E. Morris Institute for Justice states the following:

Statement of Interest

28 The William E. Morris Institute for Justice is a non-profit program established to
advocate, litigate and lobby on behalf of the interests of low-income Arizonans. We

1 work closely with the federally funded legal services programs and community groups.
2 The Arizona Foundation for Legal Services and Education is a non-profit organization
3 with the purpose of promoting access to justice for all Arizonans. Community Legal
4 Services, Southern Arizona Legal Aid and DNA-People’s Legal Services are the three
5 federally funded legal services programs in Arizona that provide civil legal services to
6 low income Arizonans throughout the state.

7 The movants, who are the front line providers of legal services to low income
8 Arizonans, know firsthand the huge unmet legal needs in this state. They support these
9 rules changes. The purpose of the rules changes is to remove barriers to attorneys
10 providing pro bono and for fee civil legal services short of full representation and thus, to
11 increase the attorneys available to represent low income Arizonans.

12 **Background to Proposed Rules Changes**

13 In the summer of 2011, the Arizona State Bar established the Access to Justice
14 Task Force to look at ways to increase access to justice for Arizonans. This broad based
15 task force came up with several recommendations. One of the recommendations was to
16 amend several ethical and procedural rules to facilitate the ability of lawyers to engage in
17 limited scope or short term legal representation to increase access to justice for persons
18 with limited or no income. The recommendation was presented to the State Bar. The
19 proposed rules changes were drafted and went through the normal vetting process. The
20 proposed rules changes were reviewed by the Rules Committee of the State Bar,
21 approved by the Board of Governors and subsequently the State Bar submitted the
22 Petition to the Court.

23 **Proposed Rules Changes**

24 The purpose of the proposed rules changes is to clarify that lawyers may provide
25 services short of full representation, such as writing/preparing documents to be filed by
26 otherwise self-represented litigants or by performing discrete, agreed upon tasks.
27 Limited scope representation is often referred to as “unbundling,” “discrete task
28 representation” and “limited scope legal representation.” The rules changes clarify the

1 attorney – client relation in limited scope representation concerning communication with
2 opposing counsel, the preparation of pleadings and other documents and court
3 appearances. Permitting such limited-scope engagements will provide legal
4 representation to clients who can afford some assistance but cannot afford full
5 representation. Permitting limited scope pro bono representation also will provide
6 additional opportunities for pro bono service and encourage such service by lawyers
7 unable to commit to handling an entire case. Finally, limited scope representation will
8 allow legal services programs and their volunteers to assist more persons.

9 The rationale for these changes is simple: to increase the number of attorneys
10 willing to take on for fee and pro bono representation.

11 **Need for the Proposed Rule**

12 Arizona was hit particularly hard by the economic recession and has a high
13 percentage of low income persons. In August 2012, 1,127,702 persons received food
14 stamps and 1,129,544 persons received medical care through the Arizona Health Care
15 Cost Containment System (“AHCCCS”). “State of Arizona Department of Economic
16 Security Family Assistance Administration Statistical Bulletin August 2012.”
17 https://www.azdes.gov/InternetFiles/pdf/dbme_statistical_bulletin_08_2012.pdf. (pages
18 15 (Table 6) and 17 (Table 7A), respectively. This represents almost 20% of our
19 population.

20 In 2011, the Census Bureau estimated that during the period 2006-2010, 15.3%
21 or over 990,000 Arizonans fell below the poverty level.
22 <http://quickfacts.census.gov/qfd/states/0400.html>. The federal poverty level for one
23 person in 2012 is \$11,170 and for a family of three it is \$19,090. [http://aspe.hhs.gov/
24 poverty/12fedreg.shtml](http://aspe.hhs.gov/poverty/12fedreg.shtml). Persons with limited income cannot afford to hire an attorney.
25 Although low income, these persons often have significant and life altering legal claims.
26 Their legal issues run the gamut of civil law and include: the need for benefits such as
27 healthcare, unemployment insurance or Social Security Disability; compensation for
28 consumer scams; the right to remain in rental property (landlord/tenant); home

1 ownership and mortgage claims: the need for custody and support; and protection from
2 abuse.

3 Legal services programs and their volunteer attorneys provide the primary and
4 often the only source of legal representation available to low income Arizonans. On
5 April 5, 2012, the three legal services programs kept track of the number of persons who
6 contacted the programs for assistance on that day. *The number was a staggering 638*
7 *calls/contacts*. Of those requesting assistance that day, 182 persons were turned away due
8 to lack of resources and no other available alternatives. “The Difference One Day Makes
9 – 2012.” <http://www.azbar.org/aboutus/corevalues/2012thedifferenceonedaymakes>. At
10 this time of increased demand for legal services, from 2011 to 2012, the three legal
11 services programs suffered significant reductions in federal support totaling over 1.6
12 million dollars. <http://www.lsc.gov/local-programs/state-profile?st=AZ>. The result is
13 that many persons with important legal issues cannot obtain a legal services attorney.

14 When low income persons cannot afford to hire an attorney and they cannot obtain
15 assistance from the legal services program or a volunteer/pro bono attorney, they must
16 fend for themselves in administrative and judicial processes that are unfamiliar and
17 difficult to navigate without legal assistance. Many important client issues could be
18 helped with this Petition. Many more attorneys would be available to assist clients on a
19 limited basis if this Petition is approved. As explained above, the amended rules will
20 allow legal services attorneys and their volunteer lawyers programs to provide assistance
21 to more persons. In addition, more private attorneys will be willing to assist clients for
22 fee or pro bono for discrete functions instead of rejecting cases because of fears they will
23 not be able to withdraw. This Petition is needed to enable more low income persons to
24 obtain legal assistance. The amended rule accomplishes the worthy goal of expanding
25 the legal options for low income Arizonans.

26 **Request for Expedited Consideration**

27 The Petition is a product of the State Bar Access to Justice Committee and the
28 State Bar. It has been open for comment for over six weeks and there are no comments

1 posted. Currently, the comment period closes on May 21, 2013.

2 Rule 28(G) allows for a Motion to Expedite when the petition “presents an urgent
3 matter for which compelling circumstances render the annual rule processing cycle
4 inadequate.” While the Rule contemplates the filing of the motion when the petition is
5 filed, there is no reason to limit a motion to that timing. Rather, as seen by the State Bar
6 process and the lack of comments, this is a well thought out proposal and is not
7 controversial. To delay consideration of the Petition any further would simply delay
8 implementation of these critically needed rules changes if approved by the Court.

9 Wherefore, the William E. Morris Institute for Justice on behalf of the Arizona
10 Foundation for Legal Services and Education, Community Legal Services, Southern
11 Arizona Legal Aid and DNA-People’s Legal Services requests that this Court:

- 12 A. Expedite consideration of this Petition; and
- 13 B. Grant such further relief as is just.

14 Respectfully submitted this 23rd day of October 2012.

15 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

16
17
18 By /s/ Ellen Sue Katz
19 Ellen Sue Katz
20 William E. Morris Institute for Justice
21 202 E. McDowell Road, Suite 257
22 Phoenix, Arizona 85004

23
24 Original electronically filed with the
25 Clerk of the Supreme Court of Arizona
26 this 23rd day of October 2012
27
28

1 Copy of the foregoing emailed this 23rd day
2 of October 2012, to:

3 John A. Furlong
4 General Counsel
5 State Bar of Arizona
6 4201 North 24th Street, Suite 100
7 Phoenix, Arizona 85016-6266
8 John.Furlong@staff.azbar.org

9
10 By: /s/ Ellen Sue Katz

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28