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3 (FIRM STATE BAR NO. 0003200)

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9 (STATE BAR NUMBER 011474)

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12 **ARIZONA SUPREME COURT**  
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15 IN RE:

R-13-0061

16 **PETITION TO AMEND RULE 23,**  
17 **ARIZONA RULES OF CIVIL**  
18 **PROCEDURE**

MARICOPA COUNTY ATTORNEY'S  
RESPONSE TO PETITION TO AMEND RULE  
23, ARIZ. R. CIV. P.

19 The Maricopa County Attorney hereby responds to the Petition to Amend Rule  
20 23 of the Arizona Rules of Civil Procedure and asks this Court to deny the petition.  
21 In effect the proposed rule change would provide a windfall exclusively for one  
22 entity: the Arizona Bar Foundation. Although that entity has laudable purposes, the  
23 parties may have their own preferences to support. If distribution residual funds are  
24 to be given to charitable organizations, there are many at least equally commendable  
25 entities or recipients who should not be foreclosed from the possible benefit to their  
26 own causes.

27 This is not a small matter. Experience demonstrates that only a small  
28 percentage of class members file claims to such funds and the residual amounts can

1 be substantial. Singling out the Arizona Bar Foundation for such bounty makes this  
2 proposal look more like a substantive tax than a procedural rule. Legislating a new  
3 tax by calling it a “procedural rule” is not the proper role for the Arizona Supreme  
4 Court or the Rules of Civil Procedure. Such matters belong in the State Legislature.  
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6 The parties to a class action settlement should be free to negotiate what is to be  
7 done with any residual funds in a settlement, and the court approving the settlement  
8 should likewise not have its judicial hands tied by Petitioner’s desire to support this  
9 particular charitable cause.  
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12 Respectfully submitted this 29<sup>th</sup> day of May, 2014.

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14 WILLIAM G. MONTGOMERY  
15 MARICOPA COUNTY ATTORNEY

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17 By   
18 for MARK FAULL  
19 CHIEF DEPUTY  
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