

1 ELLEN SUE KATZ, AZ Bar. No. 012214  
2 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE  
3 202 East McDowell Road, 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 Rule 23 of the  
10 Arizona Rules of Civil Procedure**

Supreme Court No. R-13-0061

11 **COMMENTS TO PETITION TO  
12 AMEND RULE 23, ARIZONA  
13 RULES OF CIVIL PROCEDURE**

14 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the William E.  
15 Morris Institute for Justice (“Institute”), Community Legal Services (“CLS”), DNA  
16 People’s Legal Services (“DNA”) and Southern Arizona Legal Aid (“SALA”) submit  
17 these comments in support of the Petition to Amend Rule 23 of the Arizona Rules of  
18 Civil Procedure. The proposed rule amendment requires that at least 50% of any residual  
19 class action funds be distributed to the Arizona Foundation for Legal Services and  
20 Education (“Arizona Bar Foundation”) to provide legal services and access to justice for  
21 low-income residents of Arizona. In support of the petition, the Institute, CLS, DNA and  
22 SALA state the following:

23 **I. Statements of Interest**

24 The Institute is a non-profit public interest program that works on issues of  
25 importance to low-income Arizonans. Access to justice is such an issue. CLS, DNA and  
26 SALA are the federally funded civil legal services program for low-income Arizonans in  
27 Arizona. As front line providers of civil legal services, they know firsthand how limited  
28 resources affect access to justice. As explained below, the proposed rule will promote  
access to justice.

1 **II. The Proposed Amendment Would Further the Public Policy of Access to**  
2 **Justice**

3 There is a growing recognition in states that the use of *cy pres* funds are  
4 appropriate funds to support the work of legal services programs. *See, e.g.,* Thomas  
5 Doyle, *Residual Funds in Class Action Settlements: Using “Cy Pres” Awards to Promote*  
6 *Access to Justice*, *The Federal Lawyer*, Vol. 27, pp. 26-29, July 2010 (“*Residual Funds in*  
7 *Class Action Settlements*”) found at <http://papers.ssrn.com>.

8 With this rule, Arizona would join the growing number of states that have  
9 established similar methods of disbursement for class action residual funds. Since the  
10 filing of the petition, two additional states have addressed this matter. Kentucky enacted  
11 a rule of civil procedure concerning residual funds distribution, effective January 1, 2014.  
12 Kentucky’s civil rule requires that at least 25% of the residual funds be disbursed to the  
13 Civil Rule 23 Account maintained by the Kentucky Interest on Lawyers’ Trust Account  
14 (“IOLTA”) Fund Board of Trustees to be allocated to legal aid organizations. The  
15 Kentucky rule is attached as Appendix C to the Arizona Bar Foundation’s Supplemental  
16 Comments. Also, Nebraska passed a statute concerning residual funds distribution. The  
17 Nebraska statute also is attached as Appendix C to the Arizona Bar Foundation’s  
18 Supplemental Comments. With the two additional states, currently nine states have rules  
19 of civil procedure and six states have statutes that provide for the disbursement of  
20 residual funds to entities such as a bar foundation and/or legal assistance organization to  
21 promote access to justice.

22 **A. The History and Development of *Cy Pres* Awards Support the Petition**

23 *Cy pres* awards are distributions of the residual funds from class action settlements  
24 or judgments that, for various reasons, are unclaimed or cannot be distributed to the class  
25 members or other intended recipients. The term *cy pres* derives from the Norman-French  
26 phrase, *cy pres comme possible*, meaning “as near as possible.” Edith L. Fisch, *Cy Pres*  
27 *Doctrine in the United States (1950)* (“*Cy Pres Doctrine*”). The *cy pres* doctrine has its  
28 roots in the laws of trust and estates, operating to modify charitable trusts that specified a

1 gift that had been granted to a charitable entity that no longer existed, had become  
2 infeasible, or was in contravention of public policy. 3 Alba Conte & Herbert B.  
3 Newberg, *Newberg on Class Actions* § 10:17 (4<sup>th</sup> ed. 2012). In such instances, courts  
4 transferred the funds to the next best use that would satisfy, “as nearly as possible” the  
5 trust settlor’s original intent. Fisch, *Cy Pres Doctrine* at 1.

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

18 The use of the *cy pres* doctrine to distribute class action residual funds is really  
19 just a convenient analogy. In a class action settlement, there is no underlying trust that a  
20 deceased settlor has created for a specified purpose that has become unfeasible. Rather,  
21 the *cy pres* doctrine has been borrowed as a device to facilitate the administration of class  
22 actions. Boies and Keith, *Class Action Settlement Residue* at 289.

23 Similarly, Arizona courts have approved the application of the *cy pres* doctrine to  
24 class action cases.

25 ‘*Cy pres*’ is a derivative from French meaning ‘as near as.’  
26 Black’s Law Dictionary 415 (8<sup>th</sup> ed.2004) ... It is also used  
27 to distribute unclaimed portions of a class-action judgment or  
28 settlement funds to a charity that will advance the interests of  
the class. *Id.* In the context of a class action settlement  
agreement, when it is not feasible to distribute the class

1 recovery or when there is a balance that remains after  
2 distribution, the court may direct ‘undistributed funds to be  
3 applied prospectively to the indirect benefit of the class.’ 3  
4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* §  
5 10.17 (4<sup>th</sup> ed. 2005) (‘Newburg’). These funds are usually  
6 distributed to a third party for a specified purpose. *Id.*

7 *Charles I. Friedman v. Microsoft Corporation*, 213 Ariz. 344, 348, n. 7, 141 P.3d 824,  
8 828 n.7 (App. 2006).

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

11 Courts throughout the country have long recognized that organizations that  
12 provide access to justice for low-income persons are appropriate beneficiaries of *cy pres*  
13 awards from class action cases. *See, e.g., Lessard v. City of Allen Park*, 470 F.Supp.2d  
14 781, 783-84 (E.D. Mich. 2007) (“The Access to Justice fund is the ‘next best’ use of the  
15 remaining settlement monies in this case, because both class actions and Access to Justice  
16 programs facilitate the supply of legal services to those who cannot otherwise obtain or  
17 afford representation in legal matters.” (citations omitted)); *Jones v. Nat’l Distillers*, 56  
18 F.Supp.2d 355, 359 (S.D.N.Y. 1999) (listing multiple cases where a class action *cy pres*  
19 distribution designed to improve access to legal aid was appropriate); *In re Folding*  
20 *Carton Antitrust Litig.*, MDL No. 250, 1991 U.S. Dist. LEXIS 2553, at \*7-8 (N.D. Ill.  
21 Mar. 5, 1991) (approving *cy pres* distribution of class action “Reserve Fund” to establish  
22 a program that would, in part, increase access to justice “for those who might not  
23 otherwise have access to the legal system”); *see also Doyle, Residual Funds in Class*  
24 *Action Settlements*, at 26- 27 (providing examples of approved class action settlements  
with *cy pres* distribution components that improved access to justice for indigent  
litigants).

25 These awards are based on one of the underlying premises for all class action  
26 cases: to provide access to justice for persons who would not otherwise be able to obtain  
27 the protections of the justice system. *See Bob Graves & Meredith McBurney, Cy Pres*  
28 *Awards, Legal Aid and Access to Justice, Key Issues in 2013 and Beyond*, 27 Mgmt. Info.

1 Exch. J., 24, 25 (Spring 2013) found at <http://americanbar.org>. (“[L]egal aid or [Access  
2 To Justice] organizations are always appropriate recipients of *cy pres* or residual fund  
3 awards in class actions because no matter what the underlying issue is in the case, every  
4 class action is always about access to justice for a group of litigants who on their own  
5 would not realistically be able to obtain the protections of the justice system.”); Doyle,  
6 *Residual Funds in Class Action Settlements*, at 27 (stating that the myriad of state statutes  
7 and rules enacted to “require residual funds to be distributed, at least in part, to legal aid  
8 projects ... provide(s) evidence of a public policy favoring *cy pres* awards that serve the  
9 justice system”).

10 **C. A Growing Number of State Courts Have Adopted Rules that Access to**  
11 **Justice Is An Appropriate Use of *Cy Pres* Funds**

12 In addition to cases supporting the use of *cy pres* awards to advance access to  
13 justice, a growing number of states have adopted court rules or statutes codifying the  
14 principle that *cy pres* distributions to organizations that promote access to justice are an  
15 appropriate use of residual funds in class actions. See Appendix B to Arizona Bar  
16 Foundation Petition and Appendix C to Arizona Bar Foundation Supplemental  
17 Comments; Boies and Keith, *Class Action Settlement Residue*, footnote 115 compiling  
18 state statutes and civil rules. The rationale for the court rules can be summarized as (1)  
19 *cy pres* distributions are proper; (2) charitable organizations that promote access to justice  
20 for low-income persons are appropriate entities to receive *cy pres* funds; and (3) a  
21 minimum baseline distribution to the entities is appropriate. By doing this, the statutes  
22 and rules recognize the connection between access to justice through legal services  
23 programs and through class action procedures.

24 Arizona courts have recognized the role class actions serve in promoting access to  
25 justice. See *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203  
26 Ariz. 94, 98, 50 P.3d 844, 848 (2002) (A class action allows for the bringing of a claim  
27 that is not economically feasible, thus, allowing for the “vindication of rights that would  
28 otherwise go unprosecuted.”) The class action also serves to educate individuals about

1 their rights as well as protect those rights. *ESI*, 203 Ariz. at 98.

2 Those are the very reasons legal services programs were established. They  
3 represent low-income persons who financially cannot bring or defend cases. Without  
4 legal services, these persons' rights would go unprotected. The victim of domestic  
5 violence who needs a divorce, custody and child support; the tenant living in substandard  
6 housing without air conditioning; the farm worker being mistreated by her supervisor; or  
7 the child improperly denied food stamps, cash assistance or Medicaid. These are all  
8 cases where rights would not be vindicated without legal services programs. The analogy  
9 to class action cases is straight forward.

10 Legal services programs not only provide direct representation, they (and the  
11 Foundation) prepare legal educational materials, put on workshops and clinics and make  
12 public presentations. They serve the same educational interests as class actions. *See*,  
13 *e.g.*, CLS website at [www.clsaz.org](http://www.clsaz.org); Arizona Bar Foundation resources at  
14 [www.AZLawHelp.org](http://www.AZLawHelp.org); [www.lawforseniors.org](http://www.lawforseniors.org); [www.lawforkids.org](http://www.lawforkids.org); [www.lawfor](http://www.lawforveterans.org)  
15 [veterans.org](http://www.lawforveterans.org).

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

1 designed – access to justice); Nina Schuyler, *Cy Pres Awards – A Windfall for*  
2 *Nonprofits*, 33 San Francisco Attorney 26, 27-28 (Spring 2007) (lauding the assistance  
3 that Volunteer Legal Services has provide to low-income residents); *Cy Pres Nets*  
4 *\$162,000 for Justice Foundation*, 30 May Mont. Law. 24, 24 (2005) (noting that a  
5 significant *cy pres* distribution to the Montana Justice Foundation will help fund legal aid  
6 for indigent individuals).

### 7 **III. The Access to Justice Gap Continues to Grow in Arizona**

8 Arizona has a high percentage of low-income persons. Approximately, 1.2 million  
9 persons in Arizona receive basic public benefits such as food stamps and medical care.  
10 *See* Arizona Department of Economic Security monthly report of the number of persons  
11 receiving public benefits. [www.azdes.gov/InternetFiles/Reports/pdf/dbme\\_statistical\\_](http://www.azdes.gov/InternetFiles/Reports/pdf/dbme_statistical_bulletin_4_2014.pdf)  
12 [bulletin\\_4\\_2014.pdf](http://www.azdes.gov/InternetFiles/Reports/pdf/dbme_statistical_bulletin_4_2014.pdf). Thus, the number of persons eligible for legal services is huge. To  
13 understand the numbers of persons seeking legal assistance, in April 2013, the legal  
14 services program documented the number of persons who contacted the programs on one  
15 day. In this one day count of requests for help, CLS, DNA and SALA documented that  
16 over 600 people sought assistance from the programs. Despite this huge demand for  
17 services, the legal services programs have suffered a one million dollar reduction in  
18 federal funding from the Legal Services Corporation since 2010. [www.lsc.gov/](http://www.lsc.gov/media/news-items/2014/fy-2014-grantee-budgetallocations)  
19 [media/news-items/2014/fy-2014-grantee-budgetallocations](http://www.lsc.gov/media/news-items/2014/fy-2014-grantee-budgetallocations). As a result, the legal  
20 services programs were forced to lay off staff and make drastic cuts in services. They  
21 are not able to represent all the persons contacting them with credible claims and  
22 defenses.

23 At the same time, interest rates on the IOLTA accounts have been at record low  
24 levels, barely above zero for the fifth consecutive year. There is no indication that  
25 interest rates will increase sufficiently to make a significant difference in IOLTA funding  
26 in the upcoming years. Across the nation, from 2007 through 2011, the amount of IOLTA  
27 funding dropped by 68%. James Sandman, *Memorandum to Finance Committee*,  
28 Request Recommendations July 19, 2013 pdf. found at [www.lsc.gov/sites/lsc.gov/](http://www.lsc.gov/sites/lsc.gov/)

1 files/LSC/pdfs/Management\_sRevisedFY2015Budget.

2 The proposed rule is a modest effort to try to close the access to justice gap in  
3 Arizona. Nothing in this proposal requires that there be residual funds. The contrary is  
4 true. The last sentence in subsection (g) (1) of the proposed rule provides that: “Nothing  
5 in this rule is intended to limit the trial court from approving a settlement or order that  
6 does not create residual funds.” Appendix A to Petition. This rule would only be applied  
7 if there are residual funds.

8 All the proposed rule does is recognize the premise underlying all class actions is  
9 to make access to justice a reality for persons who otherwise would not realistically be  
10 able to obtain the protection of the justice system and that legal services programs also  
11 provide access to justice for those who otherwise would have limited or no access to the  
12 justice system. This proposal recognizes that the distribution of residual funds to legal  
13 services and access to justice programs for low-income persons serves the fundamental  
14 principle of access to justice and is a “next best use” in class action cases.

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

18 **IV. The Access to Justice Programs Will Maximize the Use of the Residual Funds**

19 The history of the implementation of similar provisions in other states shows that  
20 use of the residual funds can be an effective tool to support legal services. Legal  
21 services programs are very adept at making additional money go a long way. An attorney  
22 hired at \$50,000 can be expected to assist over 300 clients a year. Relatively small  
23 amounts of money can print out educational brochures and support clinics. Additional  
24 funds can support the volunteer lawyers programs. These programs have modest office  
25 space and no frills.

26 The approval of the petition will support legal services and access to justice  
27 programs in Arizona. Then our legal services and access to justice programs will be able  
28 to reap the benefits of the use of residual funds to help low-income Arizonans as has

1 occurred in other states. It is a win-win for us all.

2 **V. The Posted Objection Submitted Has No Merit**

3 As of the filing of these comments, one local attorney submitted a comment  
4 opposing this proposed rule. The commenter made two arguments: (1) that the rule is  
5 substantive, not procedural; and (2) allocation of unclaimed funds to the Arizona Bar  
6 Foundation may not further the interests of the class. Neither contention is correct.

7 The commenter, without any legal support, incorrectly claims the proposed rule is  
8 substantive, not procedural. The proposed rule merely sets forth the process to disburse  
9 the residual funds in a class action case. This is not uncharted territory. Nine other  
10 courts have civil rules of procedure to disburse residual funds.

11 In addition, this rule is not substantive. A procedural rule prescribes the method  
12 by which a substantive law is enforced or made effective. *State v. Birmingham*, 96 Ariz.  
13 109, 110, 392 P.2d 775, 776 (1964). Moreover, a procedural provision does not operate  
14 to abridge, enlarge or modify the rules of decision by which the court adjudicates rights.  
15 Rather it relates to the manner and means by which a right to recovery is enforced.  
16 *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 446 (1946) (quotations  
17 omitted). The proposed rule only pertains to the disbursement of residual funds. The  
18 rule does not infringe on the judgment or settlement of any case. All it does is provide  
19 that if there are residual funds, then 50% shall go to the Arizona Bar Foundation.

20 Concerning the commenter’s speculation that allocating residual funds to the  
21 Foundation may not further the interests of the absent class members, the commenter tries  
22 to set the bar too high for *cy pres* awards. It is well recognized that distribution of  
23 unclaimed funds can “indirectly” benefit the class. *Six Mexican Workers*, 904 F.2d 1301,  
24 1305 (9<sup>th</sup> Cir. 1990). The commenter also fails to recognize the common premise of class  
25 action cases, in general, and the purpose of legal services programs – access to justice.

26 The commenter cites two cases in support of his claim. The two cases cited are  
27 easily distinguishable. In *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1041 (9<sup>th</sup> Cir. 2011),  
28 plaintiffs claimed promotional online messages were unlawfully sent to subscribers in

1 breach of consumer protection, electronic communications privacy and other laws. The  
2 putative class consisted of more than 66 million subscribers throughout the country. The  
3 \$2 million settlement would have allocated each subscriber only 3 cents and the cost to  
4 distribute the payments would have exceeded the potential recovery. The parties selected  
5 several groups to receive the *cy press* funds. *Id* at 1037. Although the class was  
6 nationwide, two-thirds of the funds would be made to charities in Los Angeles,  
7 California. *Id.* at 1040. The court found the designated charities had no apparent  
8 relationship to the objectives of the underlying statutes and the geographic area of the  
9 charities was too narrow. *Id.* at 1040-1041. The Ninth Circuit did note that non-profit  
10 organizations that work to protect consumers from similar fraud would be among the  
11 appropriate *cy pres* recipients. *Id.* at 1041.

12 In contrast, legal services and access to justice programs work throughout the state  
13 to protect and educate consumers. The proposed rule can be applied in class cases that  
14 extend beyond Arizona. As an example, the remaining 50% of residual funds can be  
15 distributed in areas outside Arizona or to national groups and the parties can designate  
16 other entities to receive the funds.

17 In the second case cited, *Dennis v. Kellogg Company*, 697 F.3d 858 (9<sup>th</sup> Cir.  
18 2012), plaintiffs challenged the marketing practices of the cereal company. A nationwide  
19 class was certified of all persons who had purchased the cereal product. As part of the  
20 settlement, several million dollars “worth” of Kellogg food items were to be distributed  
21 to unnamed charities that fed the poor without any limitations on how the money would  
22 be used. *Id.* at 861. When the settlement was challenged, the court faulted the whole  
23 process and specifically the parties not identifying the recipients of the *cy pres* award.  
24 The court concluded that groups that feed the needy were not appropriate recipients of the  
25 *cy pres* award and found the true value of the food product to be distributed was a  
26 “mystery.” *Id.* at 867-868. Significantly, the court noted that among appropriate  
27 recipients of the *cy pres* award would be organizations that protect consumers or redress  
28 similar injuries. *Id.* at 867. As explained above, legal services programs redress similar

1 injuries to class action cases.

2 Courts also look to see if the charity has a “substantial record of service.”  
3 *Mexican Workers*, 904 F.2d at 1308. The Foundation does. For 35 years, the Court has  
4 entrusted IOLTA funds to the Foundation for distribution under Rule 43 of the Arizona  
5 Rules of the Supreme Court.<sup>1</sup> The Arizona Bar Foundation, after three decades of  
6 operation, has administrated over \$41 million in IOLTA funding and continues to serve  
7 as the entity entrusted by the Arizona Supreme Court with this important function. The  
8 Arizona Bar Foundation has a proven track record of receiving, disbursing and managing  
9 funds from multiple regulated sources. The Foundation ensures that the IOLTA interest  
10 is used exclusively for the public purposes defined under Rule 43 of the Arizona Rules of  
11 the Supreme Court. The Arizona Bar Foundation is in the unique position of having a  
12 proven track record of disbursing funds to a broad array of programs that provide legal  
13 services and access to justice services to those in Arizona. They will ensure the *cy pres*  
14 funds are used as directed by the proposed rule

15 The proposed amendment confirms that there is a procedural nexus between the  
16 ability of class members to secure relief in the judicial forum under Rule 23 and the  
17 interests of others who may similarly need access to the justice system to assert or defend  
18 critical legal rights and interests. The proposed amendment does not interfere with the  
19 parties or their attorneys to craft and propose class action settlements. The proposal  
20 places no additional burdens on the courts or the parties in the management of class  
21 action cases. What it does, is provide that if there are residual funds, then 50% of those  
22 funds should go to support access to justice for the many Arizonans who otherwise would  
23 have no legal assistance.

24 Finally, regardless of the Ninth Circuit cases, the Court may deviate from the  
25 Federal Rules of Civil Procedure by adopting state civil rules of procedure that are  
26 different. Several states that have passed court rules regarding the use of *cy pres* funds

---

27 <sup>1</sup> In a more recent decision, *Lane v. Facebook, Inc.*, 696 F.3d 811 (9<sup>th</sup> Cir. 2012),  
28 *cert. denied*, *Marek v. Lane*, 134 S. Ct. 8 (2013), the Ninth Circuit allowed the defendant  
to establish a new grant making entity rather than select an already existing organization.

1 are in the Ninth Circuit. *See, e.g.*, Hawaii Rule of Civil Procedure, Rule 23 (f) and  
2 Washington Superior Court Rule 23 (f)(2). The Ninth Circuit decisions have not  
3 impacted the use of the state rules concerning *cy pres* and would not in this case.

4 **Conclusion**

5 For the above reasons, the Institute, CLS, DNA and SALA respectfully request  
6 that the Court amend Rule 23 to require that at least 50% of the residual funds in class  
7 action cases be distributed to the Arizona Bar Foundation to provide legal services and  
8 access to the justice system for low-income residents of Arizona.

9 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of May 2014.

10 WILLIAM E. MORRIS INSTITUTE FOR  
11 JUSTICE

12 By /s/ Ellen Sue Katz

13 Ellen Sue Katz  
14 William E. Morris Institute for Justice  
15 202 East McDowell, Suite 257  
16 Phoenix, Arizona 85004

16 Electronic copy filed with the Clerk  
17 of the Supreme Court of Arizona this  
18 20<sup>th</sup> day of May 2014

19 Copy of the foregoing emailed to

20 Thomas J. Giallanza  
21 Arizona Foundation for Legal Services  
22 & Education  
23 4201 North 24<sup>th</sup> Street, Suite 210  
24 Phoenix, Arizona 85016-6288  
25 Thomas.Giallanza@azflse.org

26 By /s/ Ellen Sue Katz