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8 **IN THE SUPREME COURT**

9 **STATE OF ARIZONA**

10 AMENDED PETITION TO AMEND
11 RULE 23, ARIZONA RULES OF CIVIL
12 PROCEDURE

Supreme Court No. R-15-007

**Amended Petition to Amend Rule
23 of the Arizona Rules of Civil
Procedure**

13 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the Arizona
14 Foundation for Legal Services & Education (“Arizona Bar Foundation”) submits this
15 amended petition to amend Rule 23 of the Arizona Rules of Civil Procedure to provide
16 direction for the distribution of residual funds in class action cases. Previously, on
17 January 8, 2015, the Foundation submitted its Petition to Amend Rule 23 of the Arizona
18 Rules of Civil Procedure. The Court has opened the petition for comment and the
19 comment period ends on May 20, 2015.

20 In response to the petition, the Foundation received informal comments
21 concerning the wording of the proposed rule amendment. Based on this additional input,
22 the Foundation proposes an amendment to the initial petition. This amendment clarifies
23 the intent of the initial petition. The amended proposal would allow for any residual class
24 action funds to be distributed to the Arizona Bar Foundation to administer in support of
25 projects promoting access to the justice system and the delivery of legal services for low-
26 income residents of Arizona or such related projects as directed by the court. In support
27 of this amended petition, the Arizona Bar Foundation states the following:
28

1 **I. Background and Purpose of the Amended Petition for Proposed Amendment**

2 The Arizona Bar Foundation incorporates the initial petition and exhibits filed
3 with the Court on January 8, 2015, into this amended petition. The purpose of the initial
4 petition as fully explained in the petition was to allow for the disbursement of residual
5 funds in class action cases to the Foundation so that the Foundation could further
6 distribute these funds to legal services and access to justice programs that serve low-
7 income Arizonans. The Foundation wanted Arizona to join the growing number of states
8 that have established similar methods of or options for disbursement of class action
9 residual funds. The wording at issue in the initial petition is the following:

10 In matters where residual funds remain, the residual funds
11 may be disbursed to the Arizona Foundation for Legal
12 Services and Education to provide legal services and access to
the justice system for low-income residents of Arizona.

13 After the initial petition was filed, some interested persons raised questions
14 concerning the wording in the petition. These persons stated the proposed rule
15 amendment was not clear whether the residual funds were to be distributed to the
16 Foundation to use directly to provide legal services or if the Foundation was going to
17 serve as an administrator to distribute the funds to legal services and access to justice
18 programs that serve low-income persons. The latter was the intent of the proposal. This
19 intended function of the Foundation in the distribution of the residual funds is similar to
20 its administration of the Interest on Lawyers' Trust Account ("IOLTA") program funds in
21 Rule 43(f)(6) of the Rules of the Supreme Court. See Section III(C) of the initial petition,
22 pages 7-8. To the extent that the intended role of the Foundation in the distribution of the
23 residual funds was not clear to some persons, the Foundation wants to clarify its intended
24 role in this amended petition. As explained below, it is only the above sentence that the
25 Foundation wants to amend.

26 **II. Amended Proposed Rule Amendment**

27 The amended proposed rule amendment is the following and is attached as
28 Amended Exhibit A. The amended wording is in bold:

1 Rule 23(g). Disposition of Residual Funds in Class Action
2 Cases.

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

14 (2) Any order entering a judgment or approving a proposed
15 compromise or settlement of a class action certified under this
16 rule that establishes a process for identifying and
17 compensating members of the class, or where such process is
18 impossible or economically impractical, may provide for the
19 disbursement of residual funds. **In matters where residual
20 funds remain, the residual funds may be disbursed to the
21 Arizona Foundation for Legal Services and Education to
22 administer in support of projects promoting access to the
23 justice system and the delivery of legal services for low-
24 income residents of Arizona or such related projects as
25 directed by the Court.**

19 **III. The Amended Petition Provides the Public Adequate Notice of the** 20 **Clarification**

21 The deadline to submit comments to the initial petition is May 20, 2015. The
22 filing of this amended petition provides the public adequate notice and an opportunity to
23 comment. The amended petition is filed almost three months prior to the deadline for
24 comments and is merely a clarification and not intended as a substantive change to the
25 initial petition.

26 **Conclusion**

27 For all the above reasons and those in the initial petition filed on January 8, 2015,
28 the Arizona Foundation for Legal Services & Education respectfully requests that the

1 Court amend Rule 23 of the Arizona Rules of Civil Procedure to specifically allow that
2 residual funds in class action cases may be distributed to the Arizona Bar Foundation to
3 administer in support of projects promoting access to the justice system and the delivery
4 of legal services for low-income residents of Arizona or such related projects as directed
5 by the court.

6 RESPECTFULLY SUBMITTED this 25th day of February 2015.

7 Arizona Foundation for Legal Services &
8 Education

9
10 By /s/Thomas J. Giallanza
11 Thomas J. Giallanza
12 Past President and Current Board Member
of Arizona Bar Foundation

13 Electronic copy filed with the Clerk
14 of the Supreme Court of Arizona this
15 25th day of February 2015

16 By: /s/Thomas J. Giallanza
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