



## **Legislation and Court Rules Providing for Legal Aid to Receive Class Action Residuals\***

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### **California**

*Legislature amended Section 384 of the California Code of Civil Procedure* to permit payment of class action residuals “to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

*Effective date:* January 1, 1994.

*Amount received to date:* It is unknown how much is generated specifically because of the statute. California legal aid programs received at least \$9,017,000 in 2012.

*Implementation work and analysis:* Cy Pres Manual prepared in 2014. Many legal aid providers in California actively solicit cy pres contributions.

*For more information, please contact:* Stephanie Choy, Managing Director, Legal Services Trust Fund Program, State Bar of California, [stephanie.choy@calbar.ca.gov](mailto:stephanie.choy@calbar.ca.gov), 415/538-2249.

### **Connecticut**

*The Connecticut Supreme Court amended Sec. 9-9 of the Connecticut Superior Court Rules in 2014 to state that* “.....Any order, judgment or approved settlement in a class action that establishes a process for identifying and compensating members of the class may designate the recipient or recipients of any such residual funds that may remain after the claims payment process has been completed. In the absence of such designation, the residual funds shall be disbursed to the organization administering the program for the use of interest on lawyers’ client funds pursuant to General Statutes 51-81c for the purpose of funding those organizations that provide legal services for the poor in Connecticut.”

*Effective Date:* January 1, 2015

*Amount received to date:* None

*Implementation work and analysis:*

***For more information, please contact:*** Steve Eppler-Epstein, Executive Director, Connecticut Legal Services, [suppler-epstein@connlegalservices.org](mailto:suppler-epstein@connlegalservices.org), 860/344-0447, ext. 109

## **Hawaii**

***The Hawaii Supreme Court amended Rule 23 of Hawaii's Rules of Civil Procedure***, in January, 2011, to state that "...it shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 (or any successor provision) or the Hawaii Justice Foundation, for distribution to one or more of such organizations. Judges may approve the distribution of residual funds to legal aid organizations or to the Hawaii Justice Foundation to disburse to one or more of such organizations."

***Effective date:*** July 1, 2011

***Amount received to date:*** In 2013, legal aid providers received \$130,000 of \$450,000 total cy pres funds awarded in state pursuant to rule. \$124,000 received in 2014 through 6/30/14.

***Implementation work and analysis:*** In 2011, the Hawaii Access to Justice Commission prepared a Toolkit.

***For more information, please contact:*** Bob LeClair, Executive Director, Hawaii Justice Foundation, [hjf@hawaii.rr.com](mailto:hjf@hawaii.rr.com), 808/537-3886

## **Illinois**

***Legislature amended Section 5 of the Code of Civil Procedure to add new Section 2-807 (735 ILCS 5/2-807)***, to establish a presumption that residual funds in class actions will go towards organizations that improve access to justice for low-income Illinois residents. Courts have the discretion to award up to 50% of the funds to other organizations that serve the public good as part of a settlement if the court finds good cause to do so, but at least 50% of these funds must go to support legal aid.

***Effective date:*** July 1, 2008

***Amount received to date:*** Approximately \$5,300,000 in 2013FY. This includes awards made pursuant to the legislation and others.

***Implementation work and analysis:*** The Chicago Bar Foundation has developed educational materials and sample language that they distribute to area judges, class action lawyers and other relevant parties (e.g., claims administrators). CBF website provides detailed information.

***For more information, please contact:*** Bob Glaves, Executive Director, Chicago Bar Foundation, [bglaves@chicagobar.org](mailto:bglaves@chicagobar.org),

## **Indiana**

***New language in Rule 23 of the Indiana Rules of Civil Procedure, adopted by the Indiana Supreme Court, reads, in part:*** “In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and its pro bono districts. The court may disburse the balance of any residual funds beyond the minimum percentage to the Indiana Bar Foundation or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

***Effective date:*** January 1, 2011

***Amount received to date:*** \$2,069.59

***Implementation work and analysis:*** Completed education campaign. Discussed federal courts local rule. Rule is seen as influencing local federal courts.

***For more information, please contact:*** Andrew Homan, Indiana Pro Bono Commission, ahoman@inbf.org, 317/269-7863.

## **Kentucky**

***The Kentucky Supreme Court amended Civil Rule 23*** to direct at least 25% of residual funds of any class action award to civil legal aid. Funds are to be maintained by the Kentucky IOLTA Board of Trustees and distributed to legal aid programs in accordance with a formula based on poverty population.

***Effective date:*** January 1, 2014

***Amount received to date:*** None; see implementation date.

***Implementation work and analysis:*** The new rule has been published in the state bar magazine and judges will be advised of the new rule at their annual colleges.

***For more information, please contact:*** Judge Roger Crittenden (ret.), Chair, Kentucky Access to Justice Commission, rlcrittenden@fewpb.net

## **Louisiana**

***The Louisiana Supreme Court enacted Rule XLIII***, which states in part: “In matters where the claims process has been exhausted and Cy Pres Funds remain, such funds may be disbursed by the trial court to one or more non-profit or governmental entities which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, including the Louisiana Bar Foundation

for use in its mission to support activities and programs that promote direct access to the justice system.”

***Effective date:*** September 24, 2012

***Amount received to date:***

***Plans for implementation:***

***For more information, please contact:***

## **Maine**

The Maine Supreme Judicial Court has amended Civil Rule 23(f)(2) as follows: “The parties may agree that residual funds be paid to an entity whose interests reasonably approximate those being pursued by the class. When it is not clear that there is such a recipient, unless otherwise required by governing law, the settlement agreement should provide that residual fees, if any, be paid to the Maine Bar Foundation to be distributed in the same manner as funds received from interest on lawyers trust accounts.....”

***Effective date:*** March 1, 2013

***Amount received to date:*** Neither the MBF nor any legal aid provider has received an award since the rule’s effective date. MBF received \$58,708 in 2012.

***Plans for implementation:*** MBF and providers to talk about heightening awareness of the new rule.

***For more information, please contact:*** Diane Scully, Executive Director, Maine Bar Foundation, dscully@mbf.org, 207/622-3477.

## **Massachusetts**

***New language in Rule 23 of the Massachusetts Rules of Civil Procedure, adopted by the Supreme Judicial Court of Massachusetts,*** reads, in part: “In matters where the claims process has been exhausted and residual funds remain, the residual funds shall be disbursed to one or more nonprofit organizations or foundations (which may include nonprofit organizations that provide legal services to low income persons) which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, or to the Massachusetts IOLTA Committee to support activities and programs that promote access to the civil justice system for low income residents of the Commonwealth of Massachusetts.”

***Effective date:*** January 1, 2009

***Amount received to date:*** Since June, 2011, \$1,605,000 has been received; \$343,000 to IOLTA and the balance to individual legal aid programs.

**Implementation work and analysis:** IOLTA staff have provided judges and court clerks throughout the state with a brochure and other materials regarding the rule change.

**For more information, please contact:** Jayne Tyrrell, Executive Director, Massachusetts IOLTA Committee, [jtyrrell@maiolta.org](mailto:jtyrrell@maiolta.org), 617/723-9093.

## **Montana**

**The Montana Supreme Court amended Rule 23 of the Montana Rules of Civil Procedure** to state that “In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to an Access to Justice Organization to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage to an Access to Justice Organization or to another non-profit entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

**Effective date:** January 1, 2015

**Amount received to date:** None (see effective date)

**Implementation work and analysis:**

**For more information, please contact:** Amy Sings in the Timber, Executive Director, Montana Justice Foundation, [asings@mtjustice.org](mailto:asings@mtjustice.org), 406/523-3920.

## **Nebraska**

**The Nebraska Legislature amended section 30-3839 of Revised Statutes Cumulative supplement, 2012**, to provide that: “Prior to the entry of any judgment or order approving settlement in a class action described in section 25-319, the court shall determine the total amount that will be payable to all class members if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise to further the purposes of the underlying cause of action, shall direct the defendant to pay the sum of the unpaid residue to the Legal Aid and Services Fund”.

**Effective date:** April, 2014

**Amount received to date:** None

**Implementation work and analysis:**

**For more information, please contact:**

## **New Mexico**

***The New Mexico Supreme Court adopted new language in Rule 23 of the New Mexico Rules of Civil Procedure:*** The new language provides that residual class action funds may be distributed to non-profit organizations that provide legal services to low income persons, the IOLTA program, the entity administering the pro hac vice rule and/or educational entities that provide training, teaching and legal services that further the goals of the underlying causes of action on which relief was based. Funds also may go to other non-profit organizations that support projects that benefit the class or similarly situated persons consistent with the goals of the underlying causes of action on which relief was based.

***Effective date:*** May 11, 2011

***Amount received to date:*** \$10,000 to Equal Access to Justice (a combined private bar campaign for 5 NM legal aid programs) through the Access to Justice Commission. May have been awards to individual programs as well.

***Implementation work and analysis:*** Holding a CLE on cy pres at the 2013 annual bench & bar conference - panelists include judges and private attorneys. The purpose of the CLE is two-fold: 1) educate and inform; and 2) establish a committee.

***For more information, please contact:***

## **North Carolina**

***Legislature amended Subchapter VIII of Chapter 1 of the General Statutes to add new Article 26B,*** which reads, in part: “Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person’s Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents.”

***Effective date:*** October 1, 2005

***Amount received to date:*** Awards received by IOLTA and disbursed to legal aid programs pursuant to division described in rule: 2007=\$18,000; 2010=\$2,200; 2011=\$33,000; 2013=\$528,000 (plus an additional direct award of \$130,000 for a total of \$658,000 for 2013). Individual legal aid programs also have received awards.

**Implementation work and analysis:** In 2012, the North Carolina Access to Justice Commission prepared a toolkit.

**For more information, please contact:** Evelyn Pursley, Executive Director, North Carolina IOLTA, epursley@ncbar.gov, 919/828-0477.

## **Pennsylvania**

**The Supreme Court of Pennsylvania has revised Chapter 1700 of the Rules of Civil Procedure,** directing that at least 50% of residual funds in a given class action shall be disbursed to the Pennsylvania IOLTA Board to support activities and programs which promote the delivery of civil legal assistance. The balance may go to IOLTA, or to another entity for purposes that have a direct or indirect relationship to the objectives of the underlying class action, or which otherwise promote the substantive or procedural interests of the members of the class.

**Effective date:** July 1, 2012

**Amount received to date:** In fiscal year ended June 30, 2013, cy pres revenue to IOLTA totaled \$78,010. In fiscal year ended June 30, 2014, revenue totaled \$2,282,191. Individual legal aid programs also have received awards.

**Implementation work and analysis:** IOLTA developed a toolkit that has been distributed to Pennsylvania trial judges. They also are working on an educational plan for the class action bar and the federal and state trial bench.

**For more information, please contact:** Stephanie Libhart, Assistant Director, Lawyer Trust Account Board, stephanie.libhart@pacourts.us, 717/238-2001.

## **South Dakota**

**Legislature approved Section 16-2-57 of its codified laws on the settlement of class action lawsuits** to provide that “Any order settling a class action lawsuit that results in the creation of a common fund for the benefit of the class shall provide for the distribution of any residual funds to the Commission on Equal Access to Our Courts. However, up to fifty percent of the residual funds may be distributed to one or more other nonprofit charitable organizations that serve the public good if the court finds there is good cause to approve such a distribution as part of the settlement.”

**Effective date:** 2008

**Amount received to date:** There have been 3 payments to date; paid to the Commission on Equal Access to Our Courts, which disbursed the funds to legal aid providers.

**Implementation work and analysis:** There are relatively few class action cases in South Dakota.

***For more information, please contact:*** Thomas Barnett, Executive Director and Secretary Treasurer, State Bar of South Dakota, thomas.barnett@sdbar.net, 605/224-7554.

## **Tennessee**

***Legislature amended the Tennessee Code Annotated, Title 16, Chapter 3, Part 8,*** to create the Tennessee Voluntary Fund for Indigent Civil Representation and authorize it to receive contributions from several sources, including: “The unpaid residuals from settlements or awards in class action litigation in both state and federal courts, provided any such action has been certified as a class action under Rule 23 of the Tennessee Rules of Civil Procedure or Rule 23 of the Federal Rules of Civil Procedure;” In 2009, Rule 23.08 was amended to clarify that judges and parties to class actions may enter into settlement decrees providing for unclaimed class action funds to be paid to the Tennessee Voluntary Fund for Indigent Civil Representation.

***Effective date:*** September 1, 2006

***Amount received to date:*** None

***Implementation work and analysis:***

***For more information, please contact:*** Ann Pruitt, Executive Director, Tennessee Alliance for Legal Services, apruitt@tals.org, 615/627-0956

## **Washington**

***New language in Rule 23, adopted by the Washington Supreme Court,*** reads, in part: “Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

***Effective date:*** January 3, 2006

***Amount received:*** In 2013, received \$6,196,718 due to Rule 23, out of total cy pres receipts of \$15,935,503.

***Implementation work and analysis:*** Staff and volunteers of the Legal Foundation of Washington and LAW Fund continually educate judges and lawyers about the rule and about the value of using cy pres to benefit access to justice through gifts to the Legal Foundation of Washington.



***For more information, please contact:*** Caitlin Davis Carlson, Executive Director, Legal Foundation of Washington, [caitlindc@legalfoundation.org](mailto:caitlindc@legalfoundation.org), 206/624-2536, ext 288.

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