

## The “Next Best Use”

*Cy pres* awards can be used to fund operational costs for legal aid organizations, allowing them to provide essential basic civil legal services in their communities.

Legal aid and IOLTA programs are appropriate recipients of residual class action funds for two basic reasons:

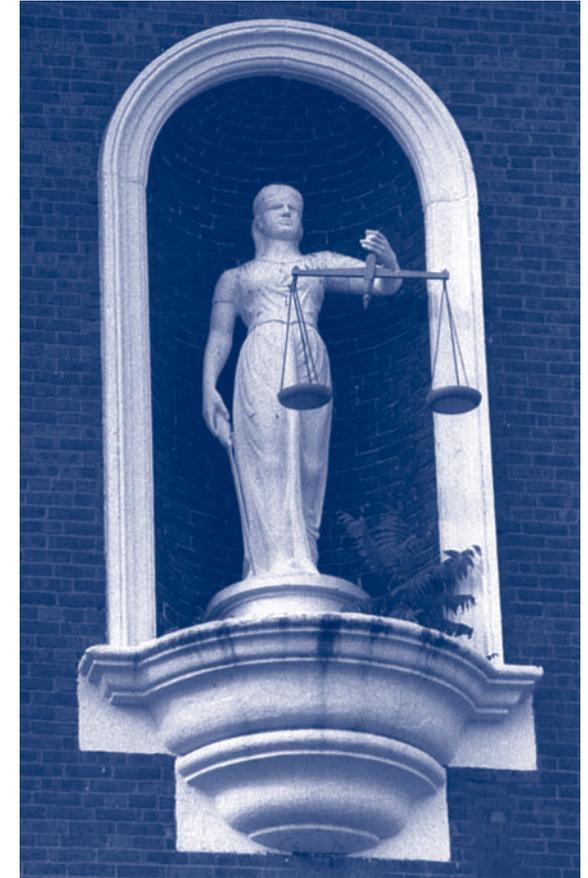
- Legal services programs are often the next best use of unclaimed funds because of their ability to directly benefit the members of a class for whom funds have been set aside and then not distributed. These programs provide individual assistance as well as systemic advocacy in support of low-income groups. As the states’ experts on the legal issues of low-income people, legal services attorneys and paralegals are highly effective advocates at the legislative, administrative, and judicial levels, bringing about substantial positive changes for individuals and communities.
- The underlying mission of these programs is consistent with the purpose of Rule 23, which recognizes the need to protect the legal rights of those who, because of their economic position, would otherwise be unrepresented.

### MASSACHUSETTS INTEREST ON LAWYERS TRUST ACCOUNTS COMMITTEE



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# Class Action Residuals

*An Opportunity  
to Support  
Legal Aid*



## Massachusetts' Groundbreaking Development

The Supreme Judicial Court Rules Committee has adopted an amendment to Rule 23: Effective January 2009, payments of residual funds in class actions can be directed to either one or more nonprofit organizations (including legal services programs) that benefit the class or can be directed to the IOLTA Committee.

Legal services programs promote access to the civil justice system for low-income residents of the Commonwealth. The IOLTA Committee distributes funds to three charitable entities that support legal services for low-income individuals.

This amendment creates a new source of funding to assist low-income residents of the Commonwealth with critical legal needs involving shelter, sustenance, health and safety.

## Cy Pres: "Next Best Use" of Unclaimed Funds

The *cy pres* doctrine (from the Norman French term "*cy pres comme possible*," meaning "as near as possible") is a court approved method of distributing a damage fund when the original purpose cannot be achieved.

At the conclusion of a class action where damages have been awarded to class members, a fund is created. After class members' claims are paid, there is often an amount remaining because members of the class could not be located, not all members of the class collected their portion or award, or it was not possible to determine each plaintiff's actual damages or share of the settlement fund. Under the doctrine of *cy pres*, judges and counsel can recommend that residual funds be put to their "next best" use for the aggregate, indirect, or prospective benefit of the class members.

The *cy pres* remedy can also be used for the entirety of a statutory damage award when the amount of damages to each class member is too small to warrant distribution.



## The Need

With close to one million people in Massachusetts eligible for free legal services, there is a huge unmet need for the assistance that legal aid and IOLTA programs provide. Advocates are continually challenged to find resources to help more people in need who otherwise would go without legal representation.

Free legal services are a necessity in critical areas such as housing, family, income maintenance, and individual rights. Such services are a good investment, since they help to stabilize struggling families and secure income support and thus help avoid the costs of homelessness, hunger, health care, and foster care.