

Residual Class Action Funds: Supreme Judicial Court Identifies IOLTA as Appropriate Beneficiary

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At the conclusion of a class action it is not uncommon for a portion of the funds that have been designated for the benefit of the plaintiff class, whether by settlement or court order, left over and not distributed to certain class members even though they are entitled to them. In some instances, certain members of the class cannot be located. In other instances, eligible class members fail to submit claims as required by the judgment, order or settlement. And, on occasion, the court may order that no disbursement be made to certain class members because the amount of recovery due is so small that the cost of notice, disbursement and administration may exceed the value of the claim. Such left over funds are commonly referred to as residual funds.

On November 25, 2008, the Supreme Judicial Court amended Mass. R. Civ. P. 23, which outlines the requirements for bringing, maintaining and concluding a class action law suit. The superseded version of the Rule did not provide direction with respect to how residual funds should be disbursed.

The amended Rule directs the payment of residual funds in class actions either to one or more nonprofit organizations whose activities benefit the class (which could include legal services programs) or to the Massachusetts IOLTA Committee, which provides funds for legal services programs.

The amendment does not alter the ability of parties, subject to court approval, to formulate settlements that do not create residual funds. However, the rule does provide direction to parties and the court in those instances in which there will be residual funds, for whatever reason.

The Court's amendment comes at a critical time for civil legal aid programs, which are facing substantial losses in IOLTA income due to falling interest rates and a depressed housing market. IOLTA makes up a significant portion of legal aid funding. The state appropriation for civil legal aid was also cut in this tight budget year.

Legal services programs are often the next best use of residual class action funds because the programs can directly benefit the members of a class for whom funds have been set aside but not distributed. These programs can provide 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.

North Carolina, Illinois and California have adopted legislation, and the State of Washington a Supreme Court rule, requiring that all or part of the residual funds in class action cases go toward legal aid or related access to justice initiatives.

With close to one million people in Massachusetts eligible for free legal services, there is a huge unmet need for the kind of services that IOLTA-funded programs provide. Advocates are continually challenged to find resources to help more people in need who otherwise would go without legal representation. Even before the economic downturn, almost half of the eligible applicants for legal aid were turned away due to lack of resources.

Free legal services are a necessity in critical areas such as housing, family, income maintenance, and individual rights. Such services are a good investment. They help to stabilize struggling families, improve access to public benefits programs, avoid the costs of homelessness and hunger, obtain needed health care, and secure reliable child care. The Supreme Judicial Court's change to Rule 23 may provide the boost that civil legal aid programs so badly need.