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

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:** Original legislation, effective January 1, 1994, permitted class action residuals to go to legal aid. Statute was amended, effective June 27, 2017, to provide set-asides, including 25% for legal aid. That language was rescinded in June, 2018.

**Implementation work and analysis:** A cy pres brochure and a more comprehensive cy pres toolkit are updated regularly and distributed at appropriate venues.

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

**Entry updated:** 7/18

Colorado

**The Colorado Supreme Court amended Sec. 23(g) of the Colorado Rule of Civil Procedure in 2016 to state that** “……In matters where the claims process has been exhausted and residual funds remain, not less than 50 percent of the residual funds shall be disbursed to the Colorado Lawyer Trust Account Foundation (COLTAF) to support activities and programs that promote access to the civil justice system for low income residents of Colorado. The court may disburse the balance of any residual funds beyond the minimum percentage to COLTAF 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:** July 1, 2016
**Implementation work and analysis:** There are plans to begin to publicize the new rule. Hoping to use state rule to encourage federal court cy pres awards.

**For more information, please contact:** Diana Poole, Executive Director, Colorado Lawyer Trust Account Foundation, diana@legalaidfoundation.org, 303/863-9544

**Entry updated:** 8/16

**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

**Implementation work and analysis:** Connecticut Bar Foundation (the IOLTA program) receives periodic awards from both state and federal class action cases. CBF sends letters to the state’s chief justice, the chief United States district court judge, the DBA’s federal practice and litigation sections and noted members of the class action bar.

**For more information, please contact:** Don Philips, Executive Director, Connecticut Bar Foundation, don@cbf-1.org, 860/722-2494

**Entry updated:** 8/16

**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

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

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, 312/554-1205.

Entry updated: 8/16

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

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: Marilyn Smith, Director of Civil Justice Programs, Indiana Bar Foundation, msmith@inbf.org, 317/269-7863

Entry updated: 8/16
Kentucky

The Kentucky Supreme Court amended Civil Rule 23.05 to add subsection (6) which states in part “In matters where the claims process has been exhausted and residual funds remain, not less than 25% of residual funds shall be disbursed to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20).” The funds are allocated to Kentucky legal aid organizations based on the poverty population formula established by the Legal Services Corporation.

Effective date: January 1, 2014

Implementation work and analysis: The new rule was published in the state bar magazine in November, 2013, and judges were advised of the new rule at their annual colleges.

For more information, please contact: Amelia Martin Adams, Executive Director, Kentucky IOLTA Fund, aadams@kybar.org, 800/874-6582.

Entry updated: 8/16

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

Implementation work and analysis: LBF staff provided judges throughout the state with materials regarding the rule when it became effective. LBF Presidents attend annual Judicial College events to advise judges about the rule and the value of using cy pres awards to benefit civil legal aid through gifts to the LBF. Information about the rule is posted on the LBF website.

For more information, please contact: Donna Cuneo, Executive Director, Louisiana Bar Foundation, donna@raisingthebar.org, 504/561-1046, or Laura Sewell, Development Director, Louisiana Bar Foundation, laura@raisingthebar.org, 504/561-1046

Entry updated: 8/16

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

*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, dscullly@mbf.org, 207/622-3477

*Entry updated:* 7/14

**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.” The rule was revised in 2015 to require in cases with residual funds that the plaintiff provide notice to IOLTA for the purpose of allowing IOLTA to be heard on whether it ought to be a recipient of any or all residual funds.

*Effective date:* January 1, 2009; revised July 1, 2015

*Implementation work and analysis:* With the revised rule mandating that the IOLTA Committee receive notice, IOLTA staff sent a letter to most plaintiff attorneys who engage in class actions, placed an article in the Lawyers Weekly, did a press release, updated the cy pres toolkit, and did presentations to the Boston Bar Council, Association of Legal Administrators and other relevant organizations.

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

*Entry updated:* 8/16

**Minnesota**

*The Minnesota Supreme Court amended Rule 23 of the Minnesota Rules of Civil Procedure* to require notice be given to legal services providers (and any other potential recipient of residual
funds identified by the parties or the court) when the district court is considering the possible
distribution of cy pres funds.

**Effective date:** July 1, 2018

**Implementation work and analysis:**

**For more information, please contact:** Bridget Gernander, IOLTA Program Director,
bridget.gernander@courts.state.mn.us; 651/284-4379

**Entry updated:** 3/18

**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

**Implementation work and analysis:**

**For more information, please contact:** Niki Zupanic, Executive Director, Montana Justice
Foundation, nzupanic@mtjustice.org, 406/523-3920

**Entry updated:** 12/14

**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

**Implementation work and analysis:** None to date.
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

Implementation work and analysis: Held a CLE on cy pres at the 2013 annual bench & bar conference - panelists include judges and private attorneys.

For more information, please contact: Richard Spinello, General Counsel, State Bar of New Mexico, rspinello@nmbar.org, 505/797-6050.

Entry updated: 7/14

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

Implementation work and analysis: In 2012, the North Carolina Access to Justice Commission prepared a toolkit, which is accessible on line and has been distributed to judges and attorneys.
Oregon

The legislature amended section 32 of the Oregon Code of Civil Procedure to add a new section O, which provides that, in class action cases where residual funds exist, at least 50 percent of the amount not paid to class members be paid to the Oregon State Bar for the funding of legal services. The remainder will be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

Effective date: March 4, 2015

Implementation work and analysis: Oregon has not yet taken steps to implement the rule change by educating judges and lawyers. They hope to do so in the near future.

For more information, please contact: Judith Baker, Director of Legal Services Program, Oregon State Bar, jbaker@osbar.org, 503/431-6323

Entry updated: 8/16

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

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, Executive Director, Lawyer Trust Account Board, stephanie.libhart@pacourts.us, 717/238-2001

Entry updated: 8/16

Puerto Rico

Legislature amended the Puerto Rico Rules of Civil Procedure to add Rule 20.6 which provides that residuals shall be deposited in the Access to Justice Fund, which was created to be
distributed among programs that provide legal assistance to low-income individuals in cases involving civil, family or administrative matters, or for purposes of addressing matters that have a direct or indirect relationship to the objectives of the underlying class action litigation, or that otherwise promote the substantive or procedural interests of the member of the class.

**Effective date:** July, 2017

**Implementation work and analysis:**

**For more information, please contact:**

**Entry updated:** 3/1/18

**South Carolina**

*The Supreme Court of South Carolina has amended the Rules of Civil Procedure* to provide that “In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent of residuals must be distributed to the South Carolina Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of South Carolina.” The balance may be distributed to any other entities for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive and procedural interests of members of the class.

**Effective date:** April 27, 2016

**Implementation work and analysis:** Bar Foundation is planning to do outreach to attorneys in summer, 2016.

**For more information, please contact:** Megan Seiner, Executive Director, South Carolina Bar Foundation, mseiner@scbar.org, 803/576-3786

**Entry updated:** 8/16

**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

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

Implementation work and analysis:

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

Entry updated: 7/14

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 fifty percent (50%) 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

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.
West Virginia

The West Virginia Supreme Court amended Rule 23 of the West Virginia Rules of Civil Procedure to state that, “When the claims process has been exhausted and residual funds remain, then 50% of the amount of residual funds shall be disbursed to Legal Aid of West Virginia. The court may, after notice to counsel of record and a hearing, distribute the remaining 50% to one or more West Virginia nonprofit organizations, schools within West Virginia universities or colleges, or foundations, which support programs that will benefit the class consistent with the objectives and purposes of the underlying causes of action upon which relief was based.”

Effective Date: March 8, 2017

Implementation work and analysis:

For more information, please contact: Adrienne Worthy, Executive Director, Legal Aid of West Virginia, aworthy@lawv.net, 304/343-3013, ext. 2128

Entry updated: 5/17

Wisconsin

The Wisconsin Supreme Court amended Wisconsin Statute 803.08 to state that, “In class actions in which residual funds remain, not less than fifty percent of the residual funds shall be disbursed to the Wisconsin Trust Account Foundation to support direct delivery of legal services to persons of limited means in non-criminal matters. The circuit court may disburse the balance of any residual funds beyond the minimum percentage to WisTAF 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, 2017

Implementation work and analysis:

For more information, please contact: Jeff Brown, Staff Coordinator, State Bar of Wisconsin, jbrown@wisbar.org, 608/250-6177

Entry updated: 6/16