



Mass R. Civ. P. 23 Class Action Residuals & The Massachusetts IOLTA Committee: Expanding Access to Justice

Mass. R. Civ. P. 23 outlines the requirements for bringing and maintaining a class action lawsuit. Such suits often end with residual funds that cannot be distributed to class members and Rule 23 contains several important provisions about these residual or “cy pres” funds. **No Massachusetts state court class action judgment or settlement that may create residual funds may be entered without notice to the IOLTA Committee.**

The Massachusetts IOLTA Committee funds organizations all over Massachusetts that provide civil legal services to individuals and families who cannot afford a lawyer and projects that seek to improve the administration of justice in the Commonwealth. Like class actions themselves, organizations that receive IOLTA funding seek to provide broad access to justice. Residual funds are a critical component of IOLTA funding.

Rule 23 permits the IOLTA Committee to **receive residual funds in any class action** and **requires notice to the Committee** of the proposed distribution in every Massachusetts state court class action that may create residual funds.

- Rule 23(c): Before a class action that may create residual funds is dismissed or compromised, “[t]he court shall require notice to the Massachusetts IOLTA Committee for the purpose set forth in subdivision (e)(3) of this rule.”
- Rule 23(e)(2): Recognizes the IOLTA Committee as an appropriate beneficiary of residual funds in any class action.
- Rule 23(e)(3): Requires notice and permits the IOLTA Committee to be heard “on whether it ought to be a recipient of any or all residual funds.” Effective 9/1/23, notice must be provided at least 30 days before entry of judgment or a settlement approval hearing (including a preliminary approval hearing).
- When notified, the IOLTA Committee will typically file a Notice of Non-Objection or, if necessary, an Objection, in advance of the approval hearing.

Please contact Jenna Miara at the IOLTA Committee with any questions:
jmiara@maiolta.org or 617-963-3903.

