Rule 23 Class Action Residuals & Mandatory Notice to IOLTA Committee: Expanding Access to Justice with *Cy Pres*

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

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

The Supreme Judicial Court emphasized in *Ortins v. Lincoln Property Company* (2026) that the Committee's right to notice and an opportunity to be heard are "integral to the rule" and that **compliance with Rule 23(e)(3) is "mandatory."**

Important Reminders:

- **The IOLTA Committee is an appropriate cy pres recipient in *any* class action** and has standing to be heard on whether it should be the recipient of any or all residual funds. Rule 23(e)(2), (3).
- **Plaintiff must notify the IOLTA Committee at least 30 days before preliminary approval** of a class action settlement that may create residual funds and certify to the court that notice was provided. Rule 23(e)(3), Reporter's Notes (2023).
- 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**.

updated November 2026