

Proposed S.J.C. Rule 1:23

ATTORNEY GENERAL APPROVED MODIFICATIONS OF CERTAIN GIFT
INSTRUMENTS UNDER G.L. C. 180A, SECTION 5(d)

1.0 Administrative Equitable Deviation

If an institution determines that a restriction contained in a gift instrument on the management, investment or duration of an institutional fund has become impractical or wasteful, impairs the management or investment of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund, the institution, without application to the court, but with the consent of the Attorney General given in accordance with procedures adopted pursuant to Section 3.0, may modify the restriction. This Section 1.0 shall apply only if the fund subject to the restriction has a total value of seventy five thousand dollars (\$75,000) or less, as determined as of the end of the institution's last fiscal year, and has been in existence for twenty (20) years or longer. To the extent practicable, the modification shall be made in accordance with the donor's probable intention.

2.0 Administrative Cy Pres

If an institution determines that a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund has become unlawful, impracticable, impossible to achieve or wasteful, the institution, without application to the court, but with the consent of the Attorney General given in accordance with procedures adopted pursuant to Section 3.0, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. This Section 2.0 shall apply only if the fund subject to the restriction has a total value of seventy five thousand dollars (\$75,000) or less, as determined as of the end of the institution's last fiscal year, and has been in existence for twenty (20) years or longer.

3.0 Attorney General Procedures.

The Attorney General may adopt such requirements, definitions, forms and procedures for granting or withholding consent as are not inconsistent with the forgoing and applicable laws governing charitable funds.

4.0 De Novo Proceedings.

Any institution aggrieved by the decision of the Attorney

General may proceed, de novo, under G.L. c. 180A, §§s 5(b) or 5(c).