

MASSACHUSETTS RULES OF CIVIL PROCEDURE

RULE 23. CLASS ACTIONS

Reporter's Notes--2023

This amendment deals with the notice required before residual funds in class action proceedings may be distributed.

Since 2009, residual funds were required to be disbursed to nonprofit groups “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 for the purpose of promoting access for low-income persons to the civil justice system. Rule 23(e)(2). A 2015 amendment to Rule 23 required the plaintiff to provide notice to the Massachusetts IOLTA Committee so that it may be heard on whether it should receive “any or all” residual funds that may remain in a class action after all payments have been made. Rule 23(e)(3). See also, Rule 23(c), as amended in 2015.

Subsequently, the Massachusetts IOLTA Committee informed the Standing Advisory Committee on the Rules of Civil Procedure that it believed that the 2015 amendment was not working because the Massachusetts IOLTA Committee was not receiving regular notices of class action settlements and judgments, notwithstanding the requirement of notice in Rule 23(c). The Massachusetts IOLTA Committee requested that Rule 23 be further amended to set up a more efficient procedure that would ensure that it receives notices.

As amended, Rule 23(e)(3) requires that prior to entry of judgment or prior to any hearing approving a compromise that creates residual funds, the plaintiff is required to provide notice to the Massachusetts IOLTA Committee at least 30 days before the entry of judgment or the hearing. If, no later than 10 days prior to entry of judgment or prior to a hearing approving a compromise, the court has not received a certification from the plaintiff that the notice has been sent to the Massachusetts IOLTA Committee, a judgment shall not enter and any hearing regarding approval of a compromise shall be continued until at least 30 days after notice has been provided and the plaintiff so certifies to the court. The language requiring notice to be given to the IOLTA Committee at least 30 days before a hearing approving a compromise is intended also to include any hearing preliminarily approving any compromise that creates residual funds.

The purpose of the certification procedure is to provide the Massachusetts IOLTA Committee with sufficient notice so that it has an opportunity to be heard on the issue of disposition of residual funds.