

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the seventh day of June, in the year of two thousand and twenty-three:

present,

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| <u>KIMBERLY S. BUDD</u> |) | Chief Justice |
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| <u>FRANK M. GAZIANO</u> |) | |
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| <u>DAVID A. LOWY</u> |) | Justices |
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| <u>ELSPETH B. CYPHER</u> |) | |
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| <u>SCOTT L. KAFKER</u> |) | |
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| <u>DALILA ARGAEZ WENDLANDT</u> |) | |
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| |) | |
| <u>SERGE GEORGES, JR.</u> |) | |

ORDERED: That the Massachusetts Rules of Civil Procedure adopted by order dated July 13, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rule 23(e) (3)

By inserting the following two sentences at the end of Rule 23(e) (3):

The plaintiff shall provide such notice no later than 30 days prior to the entry of judgment or any hearing approving any compromise that creates residual funds. If no later than 10 days prior to the entry of judgment or such hearing, the court does not receive a certification by the plaintiff that the required notice has been provided to the

Massachusetts IOLTA Committee, no judgment shall enter and any such hearing shall be continued to a date at least 30 days after the required notice has been provided and certification of such is submitted to the court.

The amendment accomplished by this order shall take effect on September 1, 2023 and shall be applicable to all cases commenced after the effective date and to all pending cases in which, as of the effective date, the plaintiff has not yet provided the notice required by Rule 23(e)(3).

ORDERED:

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| <u>KIMBERLY S. BUDD</u> |) | Chief Justice |
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| <u>FRANK M. GAZIANO</u> |) | |
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| <u>SERGE GEORGES, JR.</u> |) | |

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.