

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 2

In Support of Efforts by State Supreme Courts to Increase Funding for Civil Legal Aid and Related Access to Justice Efforts Through Residual Funds in Class Action Cases

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators has consistently recognized the critical importance of its members' leadership in ensuring equal access to justice, including committing to work towards meaningful access to justice for all,¹ supporting State Supreme Court and Court Administrative leadership in increasing funding for civil legal assistance,² and, most recently, supporting continuing efforts to meet civil legal needs³; and

WHEREAS, while there has been real progress towards improving access to the courts and expanding access to counsel throughout the country, studies continue to show that the great majority of low-income and middle-class Americans are unable to find affordable legal assistance when faced with significant civil legal problems⁴; and

WHEREAS, in class action cases, for a variety of reasons funds cannot always be fully distributed to all the class members who were the intended recipients, or these funds may go unclaimed⁵; and

WHEREAS, once courts conclude that reasonable efforts have been made to fully compensate the intended class action beneficiaries or that further distributions to the class are not feasible, courts are then required to determine or approve (in the case of settlements) where these residual funds should be directed; and

WHEREAS, one of the underlying goals of all class actions is to make access to justice a reality for people who could not realistically obtain the protections of the court system on their own; and

¹ https://ccj.ncsc.org/data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf

² https://ccj.ncsc.org/data/assets/pdf_file/0025/23749/07282010-in-support-of-state-supreme-court-leadership-in-increasing-funding-for-civil-legal.pdf

³ https://ccj.ncsc.org/data/assets/pdf_file/0016/60226/Resolution-2-In-Support-of-Continuing-Efforts-to-Meet-Civil-Legal-Needs.pdf

⁴ <https://lsc.gov/initiatives/justice-gap-research>

⁵ These situations occasionally arise in other types of cases as well, such as probate or bankruptcy matters.

WHEREAS, directing residual funds to legal aid organizations and related access to justice efforts furthers the purpose of class action lawsuits and the interests of the intended class action beneficiaries, regardless of the substantive legal issues in question, by expanding access to free and affordable legal representation, eliminating barriers that prevent litigants from using the court system to bring or defend legal claims, preparing courts to work more effectively for the self-represented litigants who comprise a growing share nationally of litigants in civil matters, and generally improving the administration of justice; and

WHEREAS, the Conferences previously have noted that state supreme courts have authority to promulgate rules governing residual fund awards to further their goal of increasing funding for legal assistance⁶; and

WHEREAS, at least 25 states and territories have adopted rules or statutes that require or specifically allow residual funds in class action cases to be directed to support legal aid or related access to justice efforts, including California, Colorado, Connecticut, Hawai'i, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Carolina, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Vermont, Washington, West Virginia, and Wisconsin⁷; and

WHEREAS, these residual fund awards, often referred to as *cy pres* awards, are a significant source of funding for legal aid and related access to justice efforts throughout the country; and

WHEREAS, the American Bar Association in 2016 adopted Resolution 104 urging states “to adopt court rules or legislation authorizing the award of class action residual funds to nonprofit organizations that improve access to civil justice for persons living in poverty;” and

WHEREAS, many other national, state, and local bar and access to justice entities, including the National Association of IOLTA Programs, the National Legal Aid and Defender Association, and the Association of Pro Bono Counsel, have formally endorsed using class action residual fund awards to support legal aid and related access to justice efforts; and

⁶ https://ccj.ncsc.org/_data/assets/pdf_file/0025/23749/07282010-in-support-of-state-supreme-court-leadership-in-increasing-funding-for-civil-legal.pdf

⁷ The American Bar Association keeps a list of relevant rules and statutes on its website, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/Is-sclaid-atj-cypres.pdf. Vermont adopted its Court Rule after the most recent update of the list on the ABA website, <https://casetext.com/rule/vermont-court-rules/vermont-rules-of-civil-procedure/iv-parties/rule-23-class-actions>.

WHEREAS, by encouraging all states to adopt rules or statutes and to use their collective leadership to advance this goal, the Conferences would further its existing resolutions to enhance and promote meaningful access to justice and adequate funding for legal aid;

NOW, THEREFORE, BE IT RESOLVED that the Conferences encourage their members to:

- Adopt a rule or statute regarding residual funds for legal aid and related access to justice efforts, if the state has not already done so;
- Publicize and promote the state's rule or statute regarding residual funds and the opportunity it creates to increase funding for civil legal aid and related access to justice efforts that will expand access to the justice system for self-represented litigants or otherwise further the goal of meaningful access to justice for all; and
- Collaborate with bar associations and bar foundations, IOLTA programs, access to justice commissions, the National Center for State Courts, and legal aid programs to plan and carry out effective strategies to implement the state's rule or statute and increase funding for legal aid and related access to justice efforts.

Adopted by the Conference of Chief Justices at its 2023 Midyear Meeting on February 13, 2023.

Adopted as proposed by the CCJ/COSCA Access and Fairness Committee as a Joint Resolution of the Conferences at the CCJ/COSCA Annual Meeting on August 2, 2023.