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Supreme Judicial Court Establishes *Cy Pres* Guidelines:

Legal Aid May Benefit from Class Action Lawsuits

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The Supreme Judicial Court on November 25, 2008 adopted an amendment to Mass. R. Civ. P. 23, effective January 1, 2009, that will provide direction to parties and the trial court regarding the disposition of residual funds in class action proceedings. Although class action matters may result in the creation of residual funds, the Court does not currently provide direction with respect to how such funds should be managed and disbursed. The adoption of the amendment fills this gap.

The amendment directs payment of residual funds in any class action to the appropriate nonprofit organizations or foundations, or to the Massachusetts IOLTA Committee. In the event residual funds are dispersed to the IOLTA Committee, the Committee would distribute the funds to the Boston Bar Foundation, Massachusetts Bar Foundation and Massachusetts Legal Assistance Corporation to provide legal aid to the poor and improve the administration of justice. “The proposal codifies and refines the judicially developed *cy pres* doctrine in a way that is consistent with its equitable purpose and will serve the compelling interest of ensuring equal access to justice,” says Lisa Wood, Chair of the IOLTA Committee.

Cy pres awards are funds in class action cases that, for a variety of reasons, cannot be distributed to class members or beneficiaries who were the intended recipients. When an original purpose cannot be achieved, the Massachusetts courts now have an approved method of distributing residual funds in line with the *cy pres* doctrine.

Cy pres awards (ranging from thousands to millions of dollars) have been utilized to fund vital civil legal services throughout the country. For example,

a \$295,000 *cy pres* award secured for the Florida Bar Foundation supported the work of those who represent the state's most vulnerable citizens.

The Court's announcement comes at a critical time for civil legal aid programs, which are facing substantial losses in IOLTA income due to falling interest rates and a depressed housing market. IOLTA makes up a significant portion of legal aid funding. Even before the economic turndown, almost half of the eligible applicants for legal aid were turned away due to lack of resources.

The amendment is designed to apply only in those cases in which the court approves or authorizes the creation of residual funds. It does not alter the ability of parties, subject to court approval, to formulate settlements that do not create residual funds remaining for distribution

"The legal community has a special responsibility to ensure all Massachusetts residents have meaningful access to justice," says Wood. "*Cy pres* awards can make a substantial contribution toward that effort."

For additional information contact the IOLTA Committee at 617-723-9093.