

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 15-06

In the matter of the Proposed Amendment to Wis. Stat. § 803.08 Allocating a Portion of Unclaimed Class Action Awards to Support the Provision of Legal Services to Low Income and Indigent Persons

FILED**JUN 24, 2016**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On October 9, 2015, the Wisconsin Access to Justice Commission (WATJ), by David J. Harth and Melody K. Glazer, filed this rule petition asking the court to amend Wis. Stat. § 803.08 to allow the allocation of a portion of unclaimed class action awards to the Wisconsin Trust Account Foundation, Inc. (WisTAF) for the support of legal services to low-income and indigent persons.

The court discussed this petition at open rules conference on December 4, 2015, and voted to gather additional information from the petitioner before deciding on a public hearing. On December 16, 2015, a letter was sent to the petitioner, seeking a response to questions raised at the preliminary discussion. The petitioner filed a response dated January 15, 2016. The Committee of Chief Judges also filed a letter on January 12, 2016, opposing the petition.

The court again discussed this matter at open rules conference on January 22, 2016, and voted to schedule a public hearing. The

hearing was scheduled for April 13, 2016. On January 27, 2016, a letter was sent to interested persons, seeking input. By letter dated February 3, 2016, the petitioner filed a letter offering technical amendments to the proposed draft language based on comments received from the Legislative Reference Bureau. Legal Action of Wisconsin, by its Executive Director, David A. Pifer, submitted a letter in support of the petition, as amended. The Honorable Richard J. Sankovitz also submitted a letter in support of the petition.

The court conducted a public hearing on April 13, 2016. Attorney David J. Harth appeared and presented the petition on behalf of the Wisconsin Access to Justice Commission. State Bar of Wisconsin President Ralph M. Cagle, Marsha Mansfield, on behalf of the WATJ, David A. Pifer, Executive Director, Legal Action of Wisconsin, James A. Gramling, Jr., President, WATJ, and Kevin J. Palmersheim, Vice President, WisTAF, all testified in support of the petition. At the ensuing open rules conference, the court discussed the petition and voted unanimously to amend the rule as requested by the petitioner. Therefore,

IT IS ORDERED that:

SECTION 1. 803.08 of the statutes is renumbered 803.08 (1).

SECTION 2. 803.08 (1) (title) of the statutes is created to read:

803.08 **(1)** (title) "CLASS ACTIONS MAY BE MAINTAINED."

SECTION 3. 808.03 (2) of the statutes is created to read as follows:

803.08 **(2)** DISPOSITION OF RESIDUAL FUNDS. (a) In this subsection:

1. "Residual Funds" means funds that remain after the payment of all approved class member claims, expenses, litigation costs,

attorney fees and other court-approved disbursements in an action under this section.

2. "WistAF" means the Wisconsin Trust Account Foundation, Inc.

(b) 1. Any order entering a judgment or approving a proposed compromise of a class action that establishes a process for identifying and compensating members of the class shall provide for disbursement of any residual funds. In class actions in which residual funds remain, not less than fifty percent of the residual funds shall be disbursed to WistAF to support direct delivery of legal services to persons of limited means in non-criminal matters. The circuit court may disburse the balance of any residual funds beyond the minimum percentage to WistAF for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

2. This subsection does not prohibit the trial court from approving a settlement that does not create residual funds.

IT IS FURTHER ORDERED that the effective date of this order is January 1, 2017.

IT IS FURTHER ORDERED that the rule adopted pursuant to this order shall apply to proceedings commenced after the effective date of this rule and, insofar as is just and practicable, to proceedings pending on the effective date.

IT IS FURTHER ORDERED that notice of this amendment of Wis. Stat. § 808.03 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court

system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 24th day of June, 2016.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

