



STATEWIDE HEADQUARTERS

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September 10, 2022



Ms. Edythe Nash Gaiser, Clerk of Court
Supreme Court of Appeals of West Virginia
State Capitol Room E-317
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Ms. Gaiser:

I am writing on behalf of Legal Aid of West Virginia (LAWV) to comment on the Proposed Amendments to the West Virginia Rules of Civil Procedure. LAWV will be commenting as an organization on the impact of the proposed changes on access to justice for low-income West Virginians and the impact on LAWV as a law firm representing those citizens. Comments on the former will be submitted by LAWV Legal Director Clint Adams. My comments are focused on one specific rule change – Rule 23(i) and its impact on Legal Aid of West Virginia.

On April 10, 2017, I wrote a thank you letter to the five Justices of the West Virginia Supreme Court of Appeals for their adoption of the Amendment to Rule 23 in March 2017. This Amendment changed the distribution rules for class action residuals. The current language is as follows:

Rule 23. Class actions.

(f) Residual funds. – When the claims process has been exhausted in class actions and residual funds remain, then fifty percent (50%) of the amount of the residual funds shall be disbursed to Legal Aid of West Virginia. The court may, after notice to counsel of record and a hearing, distribute the remaining fifty percent (50%) to one or more West Virginia non-profit organizations, schools within West Virginia universities or colleges, or foundations, which support programs that will benefit the class consistent with the objectives and purpose of the underlying cause of action upon which relief was based.

The above noted change, effective more than five years ago, has been incredibly meaningful to LAWV over the time that it has been in place. It means that every year, unrestricted funds become available to maintain or grow our services and the resources available for clients. We cannot budget for the cy pres revenue because it is unpredictable, but the fact that we have received on average of \$416,000 per year in cy pres funding over the last five years has been

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critical to our services. These funds generally have no onerous rules or specific requirements like our grants, which means that they can cushion the impact when a grant expires, or they act as a bridge when we have a new grant on the horizon. They have supported pilot projects and time-limited services and they have also helped us build a modest reserve so that we now meet non-profit best practice guidelines.

The proposed change to Rule 23 (i) is very minor but quite impactful. The proposed relevant language is as follows:

(i)Residual funds. When the claims process has been exhausted in class actions and residual funds remain, the court may, after notice to counsel of record and a hearing, distribute the residual funds to Legal Aid of West Virginia, to one or more West Virginia nonprofit organizations, schools within West Virginia universities or colleges , or foundations, which support programs that will benefit the class consistent with the objects and purpose of the underlying cause of action upon which relief was based...

We strongly believe if LAWV is not designated as a residual fund recipient, cy pres awards will be more rare and much smaller. The 50% requirement directs funds that are significant enough to support individual attorneys doing real work for real clients. Currently, LAWV receives only \$400,000 in West Virginia state general revenue funding. The rest is a mix of federal and state grants, and private foundation and individual funding, with more than twenty-five sources creating a complex, yet still vulnerable annual budget. Cy pres funds matter in that budget.

As we look toward the future, of most immediate concern is that filing fee revenue from the civil filing fee has dropped significantly from 2014 to 2021. With 9,600 fewer cases filed last year than in 2014, LAWV's important fee-based revenue is in trouble and will be significantly less. Whether the decrease in civil case filings is a temporary impact of the pandemic remains to be determined, but we have been told by the Department of Homeland Security's Division of Justice and Community Services to anticipate a decrease of hundreds of thousands of dollars in 2023 of funds available to us from filing fees.

In addition, 2022 IOLTA formula payments are at historic lows; we do not know if this is temporary or a trend that will continue. And finally, we believe the intermediate court, through the relocation of administrative appeals, may have an impact on filing fees that might have helped support Legal Aid. The added impact of the cy pres rule change would be disastrous on our ability to maintain a healthy and responsive legal aid.

I am so proud that LAWV now has 80 lawyers to serve those in need across West Virginia's 55 counties. However, for context, that pride is because West Virginia has not had 80 legal aid

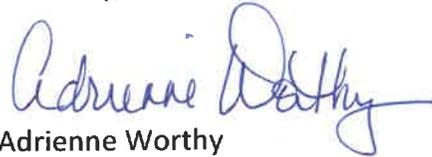
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lawyers since 1980, the high mark of federal funding. That benchmark is less impressive with the recognition that we are West Virginia's "law firm of last resort," with more than 330,000 income-eligible clients and thousands more who need our help because they are domestic violence victims, grandparents raising their grandchildren as the result of our drug epidemic, veterans at risk of homelessness and children in need of special education advocacy. So, it is not surprising that eighty lawyers means that we are able to fully help less than one out of two people who seek our services.

As the person responsible for annually making the LAWV funding puzzle work to support crucial statewide legal and advocacy services for low-income West Virginians, I respectfully request that the Court reject the proposed change to Rule 23(i), and instead maintain Rule 23 as it is currently written.

I hope you agree with me that a healthy Legal Aid is a key component of a healthy justice system. Thank you for your consideration.

Sincerely,



Adrienne Worthy
Executive Director

Cc: Clint Adams, LAWV Legal Director
LAWV Board of Directors