

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 8th day of March, 2017, the following order was made and entered:

IN RE: ADOPTION OF AMENDMENT TO RULE 23, CLASS ACTIONS, OF
 THE WEST VIRGINIA RULES OF CIVIL PROCEDURE, Docket No.
 16-RULES-18

On a former day, October 25, 2016, the Court published for comment proposed amendments to Rule 23, Class Actions, of the West Virginia Rules of Civil Procedure. Comments were filed by Michael J. Farrell, Esq., David J. Romano, Esq., Jill Cranston Rice, President of Defense Trial Counsel of West Virginia, Adrienne Worthy, Executive Director of Legal Aid of West Virginia, and West Virginia Association for Justice.

On this day came the Court on its own motion and proceeded to consider the proposed amendments, together with the comments filed thereto. Upon Consideration whereof, the Court is of the opinion to and does hereby adopt the following rule amendments, effective immediately. Insertions to the rule are indicated by underscoring to read 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 nonprofit organizations, schools within West Virginia universities or colleges, or foundations, which support programs that will benefit the class consistent with the objectives and purposes of the underlying causes of action upon which relief was based.

* * *

Chief Justice Loughry and Justice Walker would not fix a percentage of funds for distribution to any single entity, but would instead rely upon the discretion of the trial judge to distribute the funds in a manner that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action upon which the relief was granted.

A True Copy

Attest: //s// Edythe Gaiser
Deputy Clerk of Court

