



Indiana Pro Bono Commission
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New class action residual fund rule can help provide legal assistance to low-income Hoosiers

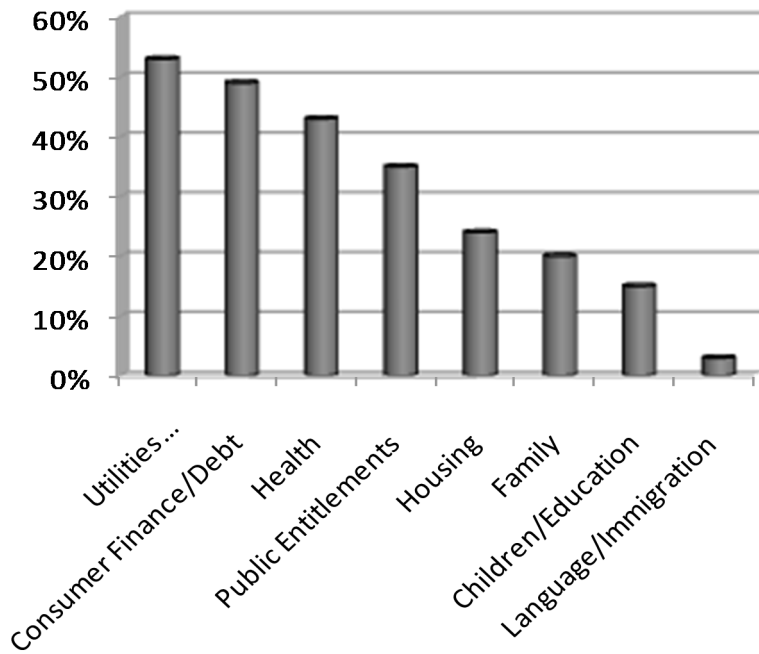
The Indiana Supreme Court has amended Indiana’s rule regarding class action residual funds, Rule 23(F) of the Indiana Rules of Trial Procedure. Rule 23 now requires that at least 25% of class action residual funds be disbursed to the Indiana Pro Bono Commission to promote access to justice for low-income Hoosiers.

Next best use of unclaimed funds

Under Rule 23 “residual funds” are funds that remain after the payment of all class member claims, expenses, litigation costs, attorneys’ fees, and other court-approved disbursements. Under the doctrine of *cy pres*, judges and counsel can recommend that residual funds be put to their “next best” use for the aggregate, indirect, or prospective benefit of the class members.

This amendment to Rule 23 creates a source of funding to assist low-income Hoosiers with critical legal needs. Pro bono programs are often the next best use of unclaimed funds because of their ability to directly benefit the members of a class for whom funds have been set aside and then not distributed. The underlying mission of these programs is consistent with the purpose of Rule 23, which recognizes the need to protect the legal rights of those who, because of their economic position, would otherwise be unrepresented.

Graph 1: Telephone Survey Respondents Reporting a Legal Problem by Problem Type



The need

There is a huge unmet need for the assistance that the Indiana Pro Bono Commission and the pro bono district programs provide. The 2009 Indiana study of the legal needs of the poor, “Unequal Access to Justice: A Comprehensive Study of the Civil Legal Needs of the Poor in Indiana,” found that the greatest needs were in the area of consumer finance, family law, housing, public entitlements, and health. On average, 62% of those who sought legal representation from the pro bono districts were unable to obtain it, and 75% of those who applied for assistance from Indiana Legal Services were unable to obtain it.