

Circuit Court



Branch 29
Courthouse
901 North Ninth Street
Milwaukee, Wisconsin 53233
(414) 278-4490

RICHARD J. SANKOVITZ
JUDGE

April 6, 2016

Wisconsin Supreme Court
16 East State Capitol
P.O. Box 1688
Madison, WI 53701-1688

Re: Petition No. 15-06
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 (“*Cy Pres*”)

Dear Justices:

I write in support of the petition filed by the Wisconsin Access to Justice Commission. One of the biggest challenges to expanding access to justice is to find adequate funding, and tapping unclaimed funds is a creative way to try to fill the gap. Applying funds like these to a public interest pursuit such as access to justice is perfectly consistent with the approach traditionally taken to unclaimed funds. I urge you to grant the petition.

Some have expressed a concern that the particular proposal before the Court unduly limits a trial judge’s discretion, particularly in a case in which the trial judge would rather direct the funds to a local nonprofit, whose mission may have some nexus to the issues presented by the litigation. In such a case, under the proposal before the court, the trial judge is authorized to direct 50% of the unclaimed funds to the local organization, but the remaining funds would be directed by the Wisconsin Trust Account Foundation. The concern is that trial judges might object if they didn’t retain control over the whole enchilada, so to speak.

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As a trial judge, and as a trial judge with some experience in presiding over class actions and administering settlements, *see, e.g., Bettendorf v. Microsoft Corporation*, 2010 WI App 13, 323 Wis. 2d 137, as well as considerable experience in the mechanics of devising infrastructure to ensure access to justice, I hope these observations will be helpful to you:

- The issues that predominate in class actions in which any sizeable amount of funds is unclaimed tend to involve interests that are more private than public. Class action disputes tend to involve consumer products or services or financial investments or real estate. Individual damage awards are made, but are often so small (relatively speaking), or awarded so long after those who administer the class action have lost touch with the claimants, that the funds go unclaimed.
- Class actions that involve broader public interests, such as the interests that fall within the missions of local nonprofit organizations, tend not to involve unclaimed funds. The relief sought in such cases often consists of injunctive relief, or monetary relief awarded to government units or to nonprofit organizations themselves, not individual damage awards that can go unclaimed.
- Hence, it seems to me that it will be the unusual class action in which a local nonprofit will be able to identify any real nexus to the issues that have been litigated, and in which a trial judge will be presented with a compelling opportunity to direct unclaimed funds to the work of a local nonprofit.
- And if presented with such an unusual case, the trial judge simply can suggest to WisTAF how the 50% of the unclaimed funds the judge doesn't already control should be spent. In my experience, WisTAF is amenable to suggestions like these. It is experienced in directing funds to particular purposes that meet both the goal of ensuring access to justice and also meeting interests important to those at the source of the funding.
- Finally, in my experience, many trial judges prefer not to have such discretion in the first place. You might recall our experience with using funds seized from defendants in criminal cases and directing them to crime prevention organizations. If you do recall that experience, you may recall judges being lobbied by local nonprofits to direct some of the largesse their way. In Milwaukee the lobbying got intense enough that we decided to

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organize trusts through which all the funds were distributed, sparing our colleagues the individual lobbying and the disappointments and conflicts that arise from having to pick the winners and losers. I think most judges will consider it a relief to put these kinds of choices in the hands of WisTAF, with its carefully crafted, impartial and time-honored protocols for distributing public interest funds according to who can put them to the best use.

I hope this information is helpful to you. Thank you for your consideration, and your dedication to expanding access to justice.

Sincerely,

A handwritten signature in black ink that reads "Richard J. Sankovitz". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Richard J. Sankovitz
Circuit Court Judge