



Minnesota  
State Bar  
Association

# MINNESOTA CY PRES MANUAL

**Improving Civil Justice for Low-Income and Vulnerable Minnesotans**

**Minnesota Cy Pres Manual:  
Improving Civil Justice for Low-Income and Vulnerable Minnesotans**

*The fundamental purpose of every class action is to offer access to justice for a group of people who on their own would not realistically be able to obtain the protections of the justice system. This purpose is closely aligned with the mission of every civil legal aid and access to justice initiative across the nation. – American Bar Association (2016)*

*It is no secret that covid-19 has exacerbated the hardships faced by the roughly 700,000 Minnesotans living below the federal poverty guidelines. Their distress is palpable. – Lilo Schluender, BENCH & BAR OF MINNESOTA, April 2021.*

**The Minnesota State Bar Association**

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## **Acknowledgements**

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## 1. Introduction

In Minnesota and elsewhere, legal aid programs are forced to turn away people who otherwise qualify for their services because of inadequate resources to meet community needs. Cy pres awards offer an important vehicle to leverage legal aid resources and expand legal aid's ability to help low-income and vulnerable Minnesotans with legal problems affecting their basic human needs.

Courts throughout the country have applied the cy pres doctrine to award residual class action funds to programs that provide free legal services to people of low income. Cy pres (from the French "*cy pres comme possible*", meaning "as near as possible") was first used as a method of distributing trust funds when the trust's original purpose could not be achieved. Under cy pres, the funds are distributed to the "next best" use.

Courts have found legal aid programs to be appropriate recipients of cy pres funds for two basic reasons: funding legal services programs directly or indirectly benefits the members of a particular class; or, more generally, that the underlying mission of legal services programs for people of low income is consistent with the courts' overall mission and the purpose of class action lawsuits.

Recognizing the persistent lack of resources to provide adequate legal help for people of low income, a national movement has grown to codify the practice of awarding unclaimed class action residuals to legal aid programs. Twenty-five jurisdictions have adopted court rules or legislation allowing for, or in some cases mandating, cy pres distributions to civil legal aid programs or legal foundations that support such programs.<sup>1</sup> Minnesota joined the national movement in 2018 when the Minnesota Supreme Court amended Rule 23 of the Minnesota Rules of Civil Procedure to *require* notice to legal services providers of a possible distribution of cy pres funds in a class action.

While the amendment to Rule 23 applies only to state court class actions, the Minnesota State Bar Association urges consideration of Minnesota legal aid as a worthy recipient of residual funds in class actions brought in federal court as well. This manual addresses both state and federal law and procedure regarding such awards.

The Minnesota State Bar Foundation provides a vehicle for receiving cy pres funds and distributing them to civil legal service programs statewide. Its mission is to support access to justice for all Minnesotans, and one of its primary strategies is to provide financial support for legal aid to the disadvantaged. Cy pres awards may also be directed to the Hennepin County Bar Foundation or Ramsey County Bar Foundation, respectively, for distribution to legal aid programs in those counties. Finally, awards may be made directly to legal aid programs where appropriate. An appendix to this manual provides a list of such programs in Minnesota.

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<sup>1</sup> A.B.A. Resource Center for Access to Justice Initiatives, *Legislation and Court Rules Providing for Legal Aid to Receive Class Action Residuals*, A.B.A. (2020), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/lsc-laid-atj-cypres.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/lsc-laid-atj-cypres.pdf).

## 2. Cy Pres Procedure

- Federal Court

Due to the large number of class action suits that take place in federal court, many cy pres awards originate in federal proceedings. While many states have enacted court rules or legislation governing cy pres awards, federal procedure gives no explicit guidance on how or where cy pres funds should be distributed. Typically, the plaintiff moves for a cy pres award after the defendant has already settled. This request often comes as part of a plan of allocation, which governs the distribution of settlement funds.

- Minnesota State Court

In 2018, Minnesota enacted a court rule stating that, when residual funds are to be distributed, the court must direct notice to qualified legal service programs through the Legal Services Advisory Committee.<sup>2</sup> In 2021 this rule was amended to require a deadline established by the court, as well as the use of a form approved by State Court Administration. This notice does not create a right for programs to receive cy pres funds; rather, the purpose of the notice is to “allow interested providers to request to be considered.”<sup>3</sup> In creating the notice requirement, the Minnesota Supreme Court consciously diverged from other states that require an actual percentage of undistributed funds automatically be given to legal aid programs.<sup>4</sup> As of the date of publication of this manual, the rule as modified has not been used in any state court class action.

As stated above, Rule 23.05(e) requires use of the court approved form to provide notice of residual funds to any potential recipient of residual funds and to the Legal Services Advisory Committee.<sup>5</sup> The court form should be completed in a way that provides sufficient information about the subject matter of the pleadings to allow recipients to assess whether the subject matter bears a relationship to their program. Qualified legal service programs should be allowed at least 30 days to respond to the notice.

## 3. The Cy Pres Doctrine

Courts apply the cy pres doctrine to distribute residual damages when not all plaintiffs in a class action collect their portion of the awards, it is not possible to determine each plaintiff’s actual damages, or the cost of distributing residual funds would exceed the amount individual class members would receive.<sup>6</sup>

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<sup>2</sup> Minn. R. Civ. P. 23.05(e).

<sup>3</sup> Roger S. Haydock, David F. Herr & Sonja Dunnwald Peterson, *Rule 23. Class Actions, Authors’ Comments, in 1 MINN. PRAC., CIVIL RULES ANNOTATED R 23, § 23:02* (6th ed.).

<sup>4</sup> *Id.*

<sup>5</sup> The Legal Services Advisory Committee (LSAC) receives notice via Minn Court form OTH801 Notice of Residual Funds (see Appendix A) emailed as an attachment to [lsac@courts.state.mn.us](mailto:lsac@courts.state.mn.us). Following the rule, this will trigger distribution of the form to all LSAC grant recipients to determine whether to respond by the given deadline.

<sup>6</sup> Principles Law Agg. Lit. § 3.07 (2010); *See also, e.g., Jones v. Nat’l Distillers*, 56 F.Supp.2d 355, 357 (S.D.N.Y.

Cy pres dictates that residual funds should be put to their next best use for the aggregate, indirect, or prospective benefit of class members. The awards are thus based on an analysis of class characteristics, followed by designation of a third party that will use the funds in a way that indirectly benefits class members. *Newberg on Class Actions* notes that, “While the use of a *cy pres* distribution remains somewhat controversial, it is also likely the most prevalent method for disposing of unclaimed funds.”<sup>7</sup> In 2016, the American Bar Association adopted a resolution and report advocating for the adoption of court rules or statutes “authorizing the award of class action residual funds to non-profit organizations that improve access to civil justice for persons living in poverty” when payment is not feasible to the class members.<sup>8</sup> Several states, including Minnesota, have enacted statutes or court rules explicitly connecting *cy pres* awards to legal services programs.<sup>9</sup>

In determining the “next best use” of residual funds, courts have broad discretionary powers. In *Van Gemert v. Boeing*, the Court noted that “...trial courts are given broad discretionary powers in shaping equitable decrees. ‘[E]quitable remedies are a special blend of what is necessary, what is fair, and what is workable.’”<sup>10</sup> Courts look at the specific circumstances of a case when exercising their discretion.<sup>11</sup> In Minnesota, the court “must consider all relevant factors, including the recommendations of the parties, the nexus between the nature, purpose, and objectives of the class action and the interests of the class members, and the interests of potential recipients of the residual funds.”<sup>12</sup>

The *cy pres* doctrine has been used to distribute residual funds to Minnesota legal services programs in several cases. In 2013, the federal district court approved distribution of class action residual funds to the Minnesota Justice Foundation, totaling roughly \$74,500 over two cases.<sup>13</sup> In 2020, Volunteer Lawyers Network received over \$65,000 from a single case.<sup>14</sup> Courts in a number of other states have awarded residual class action funds to programs providing free legal services to low-income clients—

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1999) (“With 17,198 class members, the postage and administrative costs of distributing \$18,400.80 to all qualified claimants would be prohibitive and the amount per recipient would be negligible. Where distribution of class funds to class members is infeasible, courts often use *cy pres* principles to determine an appropriate use for the funds.”)

<sup>7</sup> William Rubenstein, Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §12:32 (5th ed. 2011).

<sup>8</sup> A.B.A. Standing Comm. on Legal Aid & Indigent Defendants, Comm’n on Homelessness & Poverty, Comm’n on Interest on Lawyers’ Trust Accounts & Nat. Legal Aid Defender Association, *Report to the House of Delegates, Resolution 104* (2016), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ls\\_atj\\_cypres.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_atj_cypres.pdf).

<sup>9</sup> The ABA’s Resource Center for Access to Justice Initiatives has compiled all recent legislation and court rules regarding *cy pres* at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/resources--information-on-civil-legal-aid-funding/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/resources--information-on-civil-legal-aid-funding/).

<sup>10</sup> 739 F.2d 730 (2d Cir. N.Y. 1984) (quoting *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973)).

<sup>11</sup> *Panhandle E. Pipe Line Co. v. Fed. Power Com.*, 179 F.2d 896, 902 (8th Cir. 1949).

<sup>12</sup> Minn. R. Civ. P. 23.05(e).

<sup>13</sup> *Burch v. Qwest Communs. Int'l, Inc.*, No. 06-CV-3523-MJD/AJB, 2012 U.S. Dist. LEXIS 198654 (D. Minn. Sep. 14, 2012).

<sup>14</sup> *Busch v. Bluestem Brands, Inc.*, No. 16-cv-0644 (WMW/HB), 2019 U.S. Dist. LEXIS 177161 (D. Minn. Oct. 11, 2019).

including programs based in Minnesota. For example, from 2010–2020, Mid-Minnesota Legal Aid received roughly \$230,000 in cy pres awards from class action suits venued outside of Minnesota (relying on a specific nexus of consumer protection and taxpayer advocacy work).<sup>15</sup> In 2016, a Florida federal district court awarded complete residual funds (totaling over \$14,400) to Jacksonville Area Legal Aid.<sup>16</sup> In 2017, An Iowa court granted a partial cy pres award of about \$150,000 to Iowa Legal Aid to provide legal services for the residents of Dubuque, Iowa.<sup>17</sup>

#### 4. Nexus: Appropriate recipients for cy pres funds

A critical issue with regard to seeking and obtaining cy pres awards is the need for a well-defined nexus between the underlying litigation and the recipient and use of a cy pres award.

Cy pres awards should direct money to a charitable purpose closely related to the underlying purpose of the litigation that created the award.<sup>18</sup> While in many cases there is no controversy regarding the recipient of a cy pres award, the court must thoroughly investigate whether there is a nexus between the litigation and the award to a specific charitable organization.<sup>19</sup> While courts have broad discretion in making cy pres awards, that discretion is not unfettered, and appellate courts have reversed such orders for lack of adequate nexus. In *Oetting v. Green Jacobson*, the Eighth Circuit overturned the district court’s selection of a legal aid organization as a cy pres recipient.<sup>20</sup> The Court of Appeals found that a non-profit organization devoted to preventing securities fraud—a subject more closely related to the specific injuries the plaintiffs suffered—would be a better suited cy pres recipient. In another case, the Ninth Circuit held that there was insufficient nexus when a nationwide class of plaintiffs settled, and a cy pres award was made to a local legal aid organization; the problem was that the award did not “account for the broad geographic distribution of the class.”<sup>21</sup>

A nexus can be articulated in very broad, general terms, in terms of specific populations served, or in terms of particular subject areas addressed. Legal services organizations have received cy pres distributions because of their efforts to make the justice system generally more available to disenfranchised citizens, because of the specific populations they represent, because of a particular area of law they work in, or due to some combination of the above. Because all class action lawsuits rely on seeking justice for a group of people who would not be able to access it on their own, legal service organizations that promote this access are likely to share the “broadest nexus” with any

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<sup>15</sup> See, e.g., *Williams v. Bluestem Brands, Inc.*, No. 8:17-CV-01971-T-27AAS, 2019 U.S. Dist. LEXIS 145631 (M.D. Fla. Aug. 27, 2019); *Farnham v. Caribou Coffee Co.*, No. ORDER 16-cv-295-wmc, 2017 U.S. Dist. LEXIS 214930 (W.D. Wis. Nov. 27, 2017).

<sup>16</sup> *In re Charter Sec. Litig.*, No. 3:84-cv-448-J-34PDB, 2016 U.S. Dist. LEXIS 35362 (M.D. Fla. Mar. 17, 2016).

<sup>17</sup> *Zaber v. City of Dubuque*, 902 N.W.2d 282 (Iowa Ct. App. 2017).

<sup>18</sup> See, e.g., *Am. Soc’y of Travel Agents v. United Airlines (In re Airline Ticket Comm’n Antitrust Litig.)*, 268 F.3d 619 (8th Cir. 2001).

<sup>19</sup> *Oetting v. Green Jacobson, P.C. (In re BankAmerica Corp. Sec. Litig.)*, 775 F.3d 1060, 1067 (8th Cir. 2015).

<sup>20</sup> *Id.*

<sup>21</sup> *Nachshin v. AOL, Ltd. Liab. Co.*, 663 F.3d 1034, 1040 (9th Cir. 2011).

class action.<sup>22</sup>

- **The broadest nexus: access to justice.**

All cy pres funds are created through use of the judicial system, which promises all people equal justice under the law. The judicial system is a core government function that offers access to a peaceful method of resolving disputes. However, reality falls far short of the ideal. Thousands of Minnesotans are denied effective access to civil justice because they are unable to obtain legal counsel.

National and state studies have consistently found that legal needs of most low-income people go unmet because of lack of access to a lawyer. The Minnesota Legal Services Coalition reported in 2021 that civil legal services programs in Minnesota are forced to turn away more than one-half of eligible clients seeking its services due to lack of resources.

A 2017 report from the Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Needs of Low-income Americans*,<sup>23</sup> found that:

- 86 percent of the civil legal problems reported by low-income Americans in the prior year received inadequate or no legal help;
- 71 percent of low-income households experienced at least one civil legal problem in the prior year; and
- In 2017, low-income Americans who sought help from legal aid organizations funded by the federal Legal Services Corporation would receive only limited or no legal help for more than half of their problems due to lack of resources.

The bench and the bar recognize their obligation to eliminate barriers and increase access to civil justice.<sup>24</sup> Cases in which cy pres funds are available tend to use disproportionately large amounts of judicial resources. It is therefore particularly appropriate that funds created through the use of the tax-subsidized judicial system be distributed in part for the purpose of providing access to that system to all Minnesotans, not just those with the means to pay counsel.

- **Nexus to a particular client population**

A cy pres fund might be available in a lawsuit based on gender, race, disability or age discrimination. There would be a clear nexus between legal aid and the class of plaintiffs in such a lawsuit.

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<sup>22</sup> See Bob Glaves & Meredith McBurney, *Cy Pres Awards, Legal Aid and Access to Justice*, AMERICAN BAR ASSOCIATION: DIALOGUE MAGAZINE (May 19, 2017).

<sup>23</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Needs of Low-income Americans* (2017) (Prepared by NORC at the University of Chicago for Legal Services Corporation), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report#:~:text=The%20Justice%20Gap%3A%20Measuring%20the,meet%20those%20needs%20in%202017.>

<sup>24</sup> See, e.g., A.B.A. Conf. of Chief Justices & Conf. of State Ct. Administrators, *Resolution 5, Reaffirming the Commitment to Meaningful Access to Justice for All* (2016), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/18\\_JFA\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/18_JFA_authcheckdam.pdf).

The number of women and people of color served by legal aid is disproportionate to their population in Minnesota. From July 1, 2019 to June 30, 2020, for example, sixty-two percent of Minnesota's legal aid clients were women.<sup>25</sup> Sixty percent were Black, Indigenous, or People of Color, and 15 percent were people with disabilities.<sup>26</sup> Eleven percent were seniors and seven percent had limited English proficiency.<sup>27</sup>

Many legal aid programs have special projects serving persons over 60 years of age. Services are also provided to many other identifiable populations including: low-income persons in general; children; abuse victims; persons with disabilities; LGBTQ persons; public assistance recipients; low-income taxpayers; immigrants and refugees; vulnerable adults; senior citizens; farmers; migrant workers; low-wage workers; and children with special educational needs.

- **Scope of substantive services or area of law**

Legal aid programs provide a broad range of services. Among their priority substantive areas are:

- housing (homelessness, evictions, mortgage foreclosure, housing discrimination, access to public and subsidized housing, predatory lending, repairs, etc.);
- family law (domestic violence, child abuse and neglect, divorce, child custody, child snatching, child support enforcement, etc.);
- financial security (consumer protection, protection from financial exploitation, unemployment benefits, wage theft, government benefits)
- maximizing the ability of people who are elderly or have disabilities to live safely and independently in their community;
- mistreatment of vulnerable senior citizens;
- access to health care;
- Indigenous people's rights and the relationship between tribal, state and federal law;
- special education and discrimination in education;
- immigration law and the intersection of immigrant/refugee status and other civil legal matters;
- legal problems of financially distressed family farmers;
- legal issues of migrant workers; and
- tax and employments rights of low-wage workers

A cy pres award would be appropriate for cases related to any of these legal issues.

- **Geographic scope and special projects:**

Cy Pres funds can be directed either statewide or to specific geographic regions, and can

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<sup>25</sup> Minn. Supreme Ct. Legal Servs. Advisory Comm, *FY20 Annual Report (2020)*, [https://www.mncourts.gov/mncourtsgov/media/scao\\_library/documents/LSAC-Annual-Report-FY20.pdf](https://www.mncourts.gov/mncourtsgov/media/scao_library/documents/LSAC-Annual-Report-FY20.pdf)

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

also be directed to special projects within legal aid programs or to programs that serve particular needs.

The Minnesota State Bar Foundation (MSBF), the charitable arm of the Minnesota State Bar Association, can distribute funds statewide and for special projects. The foundation's mission is to support access to justice for all Minnesotans, and one of its primary strategies is to provide financial support for legal aid. The MSBF administered a special project during the COVID-19 pandemic in 2020, when it received funds from the Minnesota Disaster Recovery Fund for Coronavirus and, in two special grant cycles, distributed those funds to civil legal service providers for needs related to the pandemic. Funds secured by the foundation through a cy pres or other settlement award can be directed to protecting the legal rights of people of low income or those who are otherwise vulnerable.

Regional cy pres distributions may be made through the Hennepin County Bar Foundation and Ramsey County Bar Foundation, which serve, respectively, Hennepin and Ramsey Counties in the Twin Cities metropolitan area.

Grants to all three bar foundations can be allocated specifically for direct service to clients. The sample order in Appendix B provides language for final approval orders for class action settlements (residual funds) to the Minnesota State Bar Foundation.

Awards can also be distributed to special projects within legal aid programs that serve the entire state. These include the Minnesota Disability Law Center (housed within Mid-Minnesota Legal Aid), the protection and advocacy system that serves people with mental, physical, and developmental disabilities throughout Minnesota. Southern Minnesota Regional Legal Services hosts the Agricultural Workers Project which serves low-income agricultural workers in any county in Minnesota and North Dakota. The Minnesota Legal Services Coalition State Support Center serves programs and their clients statewide, providing community legal education and statewide technology support, including extensive websites for clients and advocates ([www.lawhelpmn.org](http://www.lawhelpmn.org), [www.projusticemn.org](http://www.projusticemn.org)), as well as poverty law training.

## **5. Other Settlement Awards**

In addition to cy pres awards, legal services providers can receive awards directly as part of a class action settlement. Class action defendants may be willing to include a noncontingent payment to legal services programs in settlement agreements to show good faith in remedying the cause of the litigation, and to improve the public's opinion of the defendant. For example, a federal class action filed in Tennessee over discriminatory lending practices produced \$150,000 for the Minneapolis Legal Aid Society to fund two years of client education on consumer credit financing.<sup>28</sup> In 2002, the settlement of an Iowa antitrust litigation against Microsoft Corporation produced a payment of \$1 million to Iowa Legal Aid.<sup>29</sup>

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<sup>28</sup> Logan v. Firststar, No. 3-02-0681(Tenn. Mid. Dist. Ct.).

<sup>29</sup> Comes v. Microsoft Corp., 646 N.W.2d 440 (Iowa 2002).

Plaintiffs in litigation other than class actions have also negotiated settlements which include substantial donations to charitable organizations, in addition to damage awards to the injured parties.<sup>30</sup> Similarly, Minnesota's criminal courts have ordered convicted defendants to pay restitution to charitable organizations that are not necessarily related to the crimes at issue.<sup>31</sup> All of these examples offer inspiration for creativity in securing additional funding for providers of legal services to the poor.

## **6. Suggested Award Recipients**

As discussed above, the Minnesota State Bar Foundation, Hennepin County Bar Foundation and the Ramsey County Bar Foundation, are appropriate recipients of cy pres awards and other awards of residual funds. Additional information regarding the foundations is provided in Appendix C.

Cy pres awards and other awards of residual funds may also be made to legal aid programs or special projects within legal aid programs. See the list of programs in Appendix C.

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<sup>30</sup> Peter Geier, *A Creative Flair Rising in Lawsuit Settlements*, NAT. L.J. (Dec. 12, 2006 at 12:00 AM), <https://www.law.com/nationallawjournal/almID/900005469277/>.

<sup>31</sup> Henry J. Shea, *A Worthy New Wrinkle in Restitution*, MINNEAPOLIS STAR TRIBUNE, March 20, 2005; Terry Fiedler, *Surprise Source Aids Red Lake* MINNEAPOLIS STAR TRIBUNE, April 8, 2005.

# Appendix

<b>A. Notice of Residual Funds (Sample) .....</b>	<b>2</b>
<b>B. Final Approval Order for Class Action Settlement (Sample) .....</b>	<b>3</b>
<b>C. Suggested Recipients of Cy Pres Awards in Minnesota .....</b>	<b>4</b>
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**A. Notice of Residual Funds (Sample)**

**State of Minnesota**

County \_\_\_\_\_

**District Court**

Judicial District: \_\_\_\_\_  
Court File Number: \_\_\_\_\_  
Case Type: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs

\_\_\_\_\_  
Defendant

**Notice of Residual Funds**

Minn. R. Civ. Pro. 23.05(e)

You are advised that this case has been resolved and there may be residual funds after the following are paid:

1. Approved class member claims (including any supplemental claims);
2. Expenses;
3. Litigation costs;
4. Attorney’s fees;
5. Other any court-approved disbursements, including the costs of administration of the distribution of funds and the giving of this notice.

The Court will approve the distribution of any residual funds. If you wish to be considered as a recipient of these funds, you must submit a statement of interest to the attorneys listed below no later than \_\_\_\_\_. The statement must describe the mission of your organization, assert a basis to designate your organization as a recipient of the residual funds and name a contact person.

Receiving this notice does not create any right of any party to receive any residual funds. Submission of a statement of interest for these funds does not mean that you have a right to them. The Court will decide the distribution of these funds.

Counsel for the parties to this action are:

Attorney: \_\_\_\_\_

Party Represented: \_\_\_\_\_

**Attorney's Contact Information**

Firm Name: \_\_\_\_\_

License #: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Attorney: \_\_\_\_\_

Party Represented: \_\_\_\_\_

**Attorney's Contact Information**

Firm Name: \_\_\_\_\_

License #: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

This form has been created for attorneys in class action cases to comply with Minnesota Rules of Civil Procedure 23.05(e). After completing the form and attaching relevant documents describing the case and the funds available, this notice should be sent to all potential recipients of residual funds including the Legal Services Advisory Committee (LSAC).

Under the rule, LSAC staff will forward the notice to qualified legal services programs as potential recipients of these funds. The Legal Services Advisory Committee accepts delivery under Rule 23.05(e) via email sent to [lsac@courts.state.mn.us](mailto:lsac@courts.state.mn.us).

## **B. Final Approval Order for Class Action Settlement (Sample)**

[Note: Include highlighted portion if part of original settlement agreement.]

### **Option 1: The Minnesota State Bar Foundation as Sole Recipient of Residual Funds**

[X]. Distribution of Residual Funds. Pursuant to the parties' Settlement Agreement, t(T)he Court directs that all unclaimed class settlement funds remaining after distribution of the settlement proceeds, including uncashed checks and other unclaimed payments, shall be distributed to The Minnesota State Bar Foundation in a timely manner [and no later than \_\_\_\_ calendar days from the date of this Order] and without further Order of Court.

### **Option 2: The Minnesota State Bar Foundation as One of Multiple Recipients of Residual Funds**

[X]. Distribution of Residual Funds. Pursuant to the parties' Settlement Agreement, t(T)he Court directs that all unclaimed class settlement funds remaining after distribution of the settlement proceeds, including uncashed checks and other unclaimed payments, shall be distributed as follows:

- a. The Court directs that [insert a percentage or fixed amount] of the unclaimed class settlement funds shall be distributed to The Minnesota State Bar Foundation.
- b. The Court directs that [insert a percentage or fixed amount] of the unclaimed class settlement funds shall be distributed to [insert name of entity].
- c. These distributions shall be made in a timely manner [no later than \_\_\_\_ calendar days from the date of this Order] and without further Order of Court.

### **C. Suggested Recipients of Cy Pres Awards in Minnesota**

*Recommended recipients of cy pres awards include bar foundations and civil legal services programs in Minnesota.*

#### **Bar Foundations in Minnesota**

**Hennepin County Bar Foundation** - <https://www.mnbar.org/hennepin-county-bar-association/foundation>

Contact: Cheryl Dalby, 612-278-6334, [cdalby@mnbars.org](mailto:cdalby@mnbars.org)

Provides a vehicle for receiving cy pres funds and distributing them as grants to civil legal service programs in Hennepin County, which includes the City of Minneapolis and suburbs.

**Minnesota State Bar Foundation** – <https://www.mnbar.org/about-msba/related-organizations/minnesota-state-bar-foundation>

Contact: Cheryl Dalby, 612-278-6334, [cdalby@mnbars.org](mailto:cdalby@mnbars.org)

Provides a vehicle for receiving cy pres funds and distributing them as grants to civil legal service programs statewide.

**Ramsey County Bar Foundation** - <https://www.mnbar.org/ramsey-county-bar-association/public/foundation>

Contact: Cheryl Dalby, 612-278-6334, [cdalby@mnbars.org](mailto:cdalby@mnbars.org)

Provides a vehicle for receiving cy pres funds and distributing them as grants to civil legal service programs in Ramsey County, which includes the City of St. Paul and suburbs.

#### **Minnesota Civil Legal Service Programs**

*The following list provides a general description of the programs, their clients, services, and geographic scope. Please contact the program for detailed information.*

**Anishinabe Legal Services** - <https://alslegal.org/> - (218) 335-2223

Client population served: Income-eligible clients who live on or near White Earth, Leech Lake, and Red Lake Reservations.

Areas of law covered: Family, housing, consumer/debt, elder, disability and benefits.

Geographic scope: Becker, Beltrami, Cass, Clearwater, Hubbard, Itasca, Mahnomon, and Red Lake Counties.

**Band Member Legal Aid** - <https://millelacsband.com/services/legal-aid> - (320) 532-7798

Client population served: Mille Lacs band of Ojibwe.

Areas of law covered: Family, child protection, Indian Child Welfare Act, domestic abuse, housing, public benefits, consumer law, estate planning, probate, elder.

Geographic scope: Tribal Court and Aitkin, Crow Wing, Mille Lacs, and Pine Counties.

**Cancer Legal Care** – [www.cancerlegalcare.org](http://www.cancerlegalcare.org) – (651) 917-9000

Client population served: Minnesotans affected by cancer.

Areas of law covered: Estate planning, employment, health insurance issues, Social Security Disability Insurance

Geographic scope: Statewide.

**Central Minnesota Legal Services** - <https://www.centralmnlegal.org> - (612) 332-8151

Client population served: People of low income.

Areas of law covered: Family, housing, government benefits, criminal expungement, employment, consumer/debt.

Geographic scope: Anoka, Benton, Big Stone, Chippewa, Chisago, Hennepin, Isanti, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, Mille Lacs, Morrison, Renville, Sherburne, Stearns, Swift, Todd, Wright, and Yellow Medicine Counties.

**Children's Law Center of Minnesota** – [www.clcmn.org](http://www.clcmn.org) – (651) 644-4438

Client population served: Children who are wards of the state, have been removed from their homes or are in foster care.

Areas of law covered: Child protection, foster care.

Geographic scope: Contact the program for information.

**Community Mediation Minnesota** - <https://communitymediationmn.org> - (763) 561-0033

Client population served: Individuals are served at low cost or no cost, based on income and ability to pay.

Areas of law covered: A broad range of disputes including disputes in these areas: community, consumer, small claims court matters, family, housing, school, workplace.

Geographic scope: Statewide.

**Estate and Elder Law Services** - <https://www.voamnwi.org/estate-and-elder-law> - 612-676-6300

Client population served: Serves any individual at private pay rates. Individuals may qualify to receive some services at subsidized rates based on monthly income and asset levels.

Areas of law covered: Wills, trusts, estate planning, probate, powers of attorney, health care directives, guardianship, conservatorship, special needs trusts, Medical Assistance planning, and real estate matters.

Geographic scope: Emphasis on seven-county Twin Cities metropolitan area.

**Farmers Legal Action Group, Inc.** - <http://www.flaginc.org/> - 1-877-860-4349

Client population served: Family farmers. Contact program for additional guidelines.

Areas of law covered: Agricultural matters, consumer/debt, housing.

Geographic scope: Statewide.

**HOME Line** - <https://homelinemn.org/> - 1-866-866-3546

Client population served: Any Minnesota renter.

Areas of law covered: Landlord/tenant; Mobile homes.

Geographic scope: Statewide.

**Immigrant Law Center of Minnesota** – [www.ilcm.org](http://www.ilcm.org) – 651-641-1011

Client population served: Low-income immigrants and refugees living in Minnesota.

Areas of law covered: Immigration.

Geographic scope: Statewide.

**Indian Child Welfare Act Law Center** - <https://www.nicwa.org/about-icwa/> - 612-879-9165

Client population served: Indian parents, family members, Indian custodians, and children.

Areas of law covered: Indian Child Welfare Act.

Geographic scope: Statewide.

**Indian Legal Assistance Program** - <http://www.ilap-duluth.com/> - 218-727-2881

Client population served: Low-income individuals, regardless of race.

Areas of law covered: Family, child protection, orders for protection, consumer/debt, housing, government benefits, other civil legal areas.

Geographic scope: Serves St. Louis County in civil legal matters.

**Judicare of Anoka County** - <http://www.anokajudicare.org> - (763) 783-4970

Client population served: People of low income, seniors.

Areas of law covered: Family, government benefits, employment, health, housing, youth law, consumer/debt.

Geographic scope: Anoka County.

**Justus Health** – [www.justhealth.org](http://www.justhealth.org) – 612-373-9160

Client population served: People living with HIV and LGBTQ communities.

Areas of law covered: Disability, discrimination, government benefits, consumer/debt, estate planning, health insurance.

Geographic scope: Statewide.

**Legal Aid Service of Northeastern Minnesota** - <https://lasnem.org> - (218) 623-8100

Client population served: People of low income.

Areas of law covered: Family, housing, government benefits, senior law services, consumer/debt.

Geographic scope: Aitkin, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Pine, and St. Louis Counties.

**Legal Assistance of Dakota County, LTD** – [www.dakotalegal.org](http://www.dakotalegal.org) – 952-431-3200

Client population served: People of low income.

Areas of law covered: Family.

Geographic scope: Dakota County.

**Legal Assistance of Olmsted County** - <https://laocmn.org/> - 507-287-2036

Client population served: People of low income.

Areas of law covered: Family, housing, consumer/debt, bankruptcy.

Geographic scope: Dakota County.

**Legal Rights Center, Inc.** - <https://www.legalrightscenter.org/> - 612-337-0030

Client population served: People of low income.

Areas of law covered: Civil matters include criminal expungement and youth education.

Geographic scope: Hennepin County.

**Legal Services of Northwest Minnesota, Inc.** - <https://lsnmlaw.org> - 1-800-450-8585

Client population served: People of low income.

Areas of law covered: Government benefits, housing, education and youth law, health law, family, domestic violence, consumer/debt, criminal expungement, disability.

Geographic scope: Becker, Beltrami, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Traverse, Wadena, and Wilkin Counties.

**Legal Services State Support** - [www.mnlegalservices.org](http://www.mnlegalservices.org) - (651) 228-9105

State Support provides legal information, connections, and tools for the public and for advocates, leveraging technology to provide this support throughout the state. State Support educates the public about legal issues through [LawHelpMN.org](http://LawHelpMN.org). It improves client referrals to providers through online intake, the [LawHelpMN.org](http://LawHelpMN.org) legal provider directory, and LiveChat navigation assistance. State Support hosts poverty law continuing legal education trainings and a biennial statewide conference, coordinates listservs and practice groups, and manages a library of online practice resources.

Client population served: Primarily people of low income.

Geographic scope: Statewide.

**LegalCORPS** – [www.legalcorps.org](http://www.legalcorps.org) – 612-206-0780

Client population served: Low-income owners of small businesses, small nonprofit organizations, and low-income inventors.

Areas of law covered: Non-litigation business law.

Geographic scope: Statewide.

**Loan Repayment Assistance Program of Minnesota** - [www.lrapmn.org](http://www.lrapmn.org) - 612-278-6315

LRAP helps reduce the education debt burden experienced by public interest lawyers who represent low-income clients needing legal services.

Geographic scope: Statewide.

**Mid-Minnesota Legal Aid** - <https://mylegalaid.org> – (612) 332-1441

Client population served: People of low income.

Areas of law covered: Consumer/debt, family, housing, health care, government benefits, immigration, youth law, senior law, tax.

Geographic scope: Anoka, Benton, Big Stone, Chippewa, Chisago, Hennepin, Isanti, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, Mille Lacs, Morrison, Renville, Sherburne, Stearns, Swift, Todd, Wright, and Yellow Medicine Counties. Some services are available statewide.

**Minnesota Assistance Council for Veterans** - [www.mac-v.org](http://www.mac-v.org) – 651-200-4750

Client population served: Veterans.

Areas of law covered: Employment, housing.

Geographic scope: Statewide.

**Minnesota Disability Law Center** - <https://mylegalaid.org/our-work/disability-law> - (612) 332-1441

Client population served: People with disabilities. No income limit.

Areas of law covered: Disability, government benefits, housing.

Geographic scope: Statewide.

**Minnesota Justice Foundation** – <https://mnjustice.org> – 612-625-1584

MJF helps meet the legal needs of low-income Minnesotans by promoting an ethic of public service in law students, providing law student assistance to public interest and pro bono attorneys, and operating its Street Law program.

Geographic scope: Statewide.

**Southern Minnesota Regional Legal Services** - <https://www.smrls.org> –1-888-575-2954

Client population served: People of low income.

Areas of law covered: Family, housing, government benefits, consumer/debt, bankruptcy, education, immigration, health care, employment.

Geographic scope: Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Jackson, Le Sueur, Martin, McLeod, Mower, Murray, Nicollet, Nobles, Olmsted, Pipestone, Ramsey, Redwood, Rice, Rock, Scott, Sibley, Steele, Wabasha, Waseca,

Washington, Watonwan, and Winona Counties.

**Southern Minnesota Regional Legal Services Agricultural Worker Project -**

<https://www.smrls.org/get-help/legal-services/agricultural-worker-projectel-proyecto-para-trabajadores-agricolas> - 1-888-575-2954

Client population served: Agricultural workers of low income.

Areas of law covered: Employment.

Geographic scope: Minnesota and North Dakota.

**Standpoint** – [www.standpointmn.org](http://www.standpointmn.org) – 612-343-9842

Client population served: Domestic violence, sexual violence, and trafficking survivors.

Areas of law covered: Legal issues affecting victims/survivors of domestic and sexual violence, housing, immigration.

Geographic scope: Statewide.

**The Advocates for Human Rights** - <https://www.theadvocatesforhumanrights.org> – 612-341-3302

Client population served: Asylum-seekers and detained immigrants of low income. Unaccompanied children.

Areas of law covered: Immigration.

Geographic scope: Statewide.

**Tubman** – [www.tubman.org](http://www.tubman.org) – 612-871-0118

Client population served: People of low income, survivors of domestic violence, sexual assault, and stalking.

Areas of law covered: Family, domestic abuse, child protection, LGBT issues.

Geographic scope: Primarily Hennepin, Ramsey, and Washington Counties, some Statewide services.

**Upper Midwest Pension Rights Project** – [www.midwestpensions.org](http://www.midwestpensions.org) – 651-251-5765

Client population served: Residents of Minnesota.

Areas of law covered: Pension and retirement benefits.

Geographic scope: Statewide.

**Volunteer Lawyers Network, LTD.** – [www.vlnmn.org](http://www.vlnmn.org) - 612-752-6655

Client population served: People of low income.

Areas of law covered: Family, housing, consumer/debt, bankruptcy, employment, expungement, immigration.

Geographic scope: Depends on area of law. Contact program.

## D. Resources

### 1. Background Materials on Legal Aid and Client Needs

- Minnesota Judicial Branch Legal Services Advisory Committee. Annual reports are available at <https://www.mncourts.gov/SupremeCourt/Legal-Services-Advisory-Committee.aspx>.
- Sherri Knuth & Drew Schaffer, *Where Does Legal Aid Funding Come From?*, BENCH & BAR OF MINNESOTA (Nov. 2019).
- Lilo Schluender, *Legal Aid in a Pandemic: Notes from the Front Lines*, BENCH & BAR OF MINNESOTA (Apr. 2021).
- Penn-Stageberg Committee, *Report of the Joint Legal Services Access and Funding Committee* (1995), <https://www.mncourts.gov/Documents/0/Public/administration/penn-stageberg.pdf>.
- Peter B. Knapp, *Recommendations of the Minnesota Legal Services Planning Commission on the Configuration of the LSC-Funded Programs*, 26 HAMLINE J. PUB. L. & POL'Y 265 (2005), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2114595](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2114595).
- Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Needs of Low-income Americans* (2017) (Prepared by NORC at the University of Chicago for Legal Services Corporation), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report#:~:text=The%20Justice%20Gap%3A%20Measuring%20the,meet%20those%20needs%20in%202017>.

### 2. Cy Pres Resources

#### Secondary Authority

- A.B.A. Standing Comm. on Legal Aid & Indigent Defendants, Comm'n on Homelessness & Poverty, Comm'n on Interest on Lawyers' Trust Accounts & Nat. Legal Aid Defender Association, *Report to the House of Delegates, Resolution 104* (2016), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/lis\\_atj\\_cypres.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/lis_atj_cypres.pdf).
- Principles Law Agg. Lit. § 3.07 (2010).
- William Rubenstein, Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §12:32 (5th ed. 2011).

#### Articles

- Bob Glaves & Meredith McBurney, *Cy Pres Awards, Legal Aid and Access to Justice*, AMERICAN BAR ASSOCIATION: DIALOGUE MAGAZINE (May 19, 2017),

[https://www.americanbar.org/groups/legal\\_services/publications/dialogue/volume/20/spring-2017/cy-pres-awards--legal-aid-and-access-to-justice/](https://www.americanbar.org/groups/legal_services/publications/dialogue/volume/20/spring-2017/cy-pres-awards--legal-aid-and-access-to-justice/).

- Gerson H. Smoger, *The Importance of Cy Pres in Modern Class Action Jurisprudence and Myths Concerning its Use*, 24 LEWIS & CLARK L. REV. 595 (2020).
- William H. Boies & Latonia Haney Keith, *Class Action Settlement Residue and Cy Pres Awards: Emerging Problems and Practical*, 21 VA. J. SOC. POL'Y & L. 267 (2014).

### Cases

- Minnesota State Courts
  - Gordon v. Microsoft Corp., Nos. MC 00-5994, 03-4162 (2004).
- U.S. District Court of Minnesota
  - Burch v. Qwest Communs. Int'l, Inc., No. 06-CV-3523-MJD/AJB, 2012 U.S. Dist. LEXIS 198654 (D. Minn. Sep. 14, 2012).
  - Busch v. Bluestem Brands, Inc., No. 16-cv-0644 (WMW/HB), 2019 U.S. Dist. LEXIS 177161 (D. Minn. Oct. 11, 2019).
- Eighth Circuit Court of Appeals
  - Oetting v. Green Jacobson, P.C. (*In re BankAmerica Corp. Sec. Litig.*), 775 F.3d 1060 (8th Cir. 2015).
  - Marshall v. NFL, 787 F.3d 502 (8th Cir. 2015).
  - Am. Soc'y of Travel Agents v. United Airlines (*In re Airline Ticket Comm'n Antitrust Litig.*) (I), 268 F.3d 619 (8th Cir. 2001).
  - Airline Ticket Comm'n Antitrust Litig. Travel Network v. United Air Lines (II), 307 F.3d 679 (8th Cir. 2002).
- Other Jurisdictions
  - Marek v. Lane, 571 U.S. 1003 (2013).
  - Nachshin v. AOL, Ltd. Liab. Co., 663 F.3d 1034 (9th Cir. 2011).
  - Dennis v. Kellogg Co., 697 F.3d 858 (9th Cir. 2012).
  - In re Baby Prods. Antitrust Litig., 708 F.3d 163 (3d Cir. 2013).
  - Rohn v. Tap Pharm. Prods. (*In re Lupron Mktg. & Sales Practices Litig.*), 677 F.3d 21 (1st Cir. 2012).
  - Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301 (9th Cir. 1990).
  - Jones v. National Distillers, 56 F.Supp.2d, 355 (S.D.N.Y. 1999).