

Helping Close the Justice Gap in Montana *through Cy Pres* And Other Court Awards



A Guide for Montana Lawyers



Helping Close the Justice Gap in Montana *through Cy Pres*

And Other Court Awards

– A Toolkit for Lawyers –

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INTRODUCTION

Court Awards are typically settlement funds that the court has chosen to direct to an organization or a cause. When class action lawsuits result in an award for the plaintiffs, there are nearly always funds that go unclaimed by the injured class. These funds are often not distributed as additional funds to the members of the class who filed the claims. Instead, they become a residual fund that is available for another use. Broadly speaking, *cy pres* is the term for finding another “next best” use for the funds that will serve the interests of missing class members. The decision to use *cy pres* is usually arrived at by the both parties’ counsel and the court, most typically in the context of a settlement agreement. **Class action residual awards are an ideal way to advance the goal of ensuring access to justice** and serve the interests that the class action was brought to address. Under the *cy pres* doctrine and Montana law, courts may distribute these residual funds to appropriate charitable causes.



Cy Pres is one fundraising strategy for ensuring access to justice. It involves collecting funds from a class action lawsuit where the court has ruled in favor of the class and some class members cannot be reached. The remaining funds are then awarded to an organization or cause that comes as near as possible to meeting the needs of the class.

WHO WE ARE

Established in 1979 as the charitable arm of the Montana legal community, the Montana Justice Foundation improves access to justice for people in our state who are impacted by poverty, abuse, and discrimination.

Our mission recognizes that access to justice is central to our democratic society, that the legal community has a special obligation to be a leader in making the justice system accessible to the less fortunate, and that the concerted efforts of a few can make a real positive difference in the lives of many.

Through our support of local and statewide legal aid and public interest law organizations and related initiatives, the MJF's comprehensive efforts help thousands of the most vulnerable members of our communities by enabling them to obtain critical legal information, advice, and assistance.

Those served by MJF's work include:

- Abused, neglected, and otherwise disadvantaged children
- Women and children victimized by domestic violence
- Elderly victims of consumer fraud and other abuse
- Disabled people fighting for inclusion and independence
- Lower-income families struggling to protect their right to safe housing and to fight unlawful evictions
- Working poor striving for economic self-sufficiency
- Immigrant adults and children seeking protection of their human and civil rights

WHAT WE DO

The Montana Justice Foundation funds and supports organizations committed to ensuring that all Montanans, especially the vulnerable and underserved, have meaningful access to the justice system. The MJF provides a convenient and effective means for attorneys to give back to their profession and better the world around them.

By providing financial and other important leadership and assistance; the MJF improves access to justice through a comprehensive program that actively promotes innovative approaches to make our justice system more accessible and user-friendly, and strategically invests in the organizations and initiatives that have proven to be effective in providing high quality legal assistance to the less fortunate in our communities.

The MJF carries out its mission by:

- Supporting legal aid;
- Encouraging pro bono work and financial support from the legal community;
- Making the court system more accessible to the public; and
- Promoting broader community knowledge and support for the access to justice cause.

THE MJF IS A DESERVING AND UNIQUELY APPROPRIATE BENEFICIARY FOR *CY PRES* AWARDS

The MJF's Mission: The MJF's mission of improving access to justice for the less fortunate makes it a perfect match for class action *cy pres* awards; as one underlying premise for class actions is to make access to justice a reality for those who otherwise would not be able to obtain the protections of our court system.

The MJF's Service to the Courts: The MJF provides a valuable service to the courts through its leadership role in the access to justice movement and its steady support of pro bono legal services and mediation programs that are critical to the fair and efficient administration of justice.

The MJF's Comprehensive Focus: Through its comprehensive grants program, the MJF strategically and objectively allocates its resources to dozens of outstanding legal aid organizations and access to justice initiatives, making it an effective charitable investment.

The MJF's Flexibility: The MJF has the flexibility of using a *cy pres* award to expand its comprehensive grants program or to target the funds towards a specific access to justice project.

The MJF is Free of Potential Conflicts: The MJF does not file lawsuits or represent parties in court, and thus is free of any potential conflict that otherwise might arise for the court or the defendant(s) in a case.

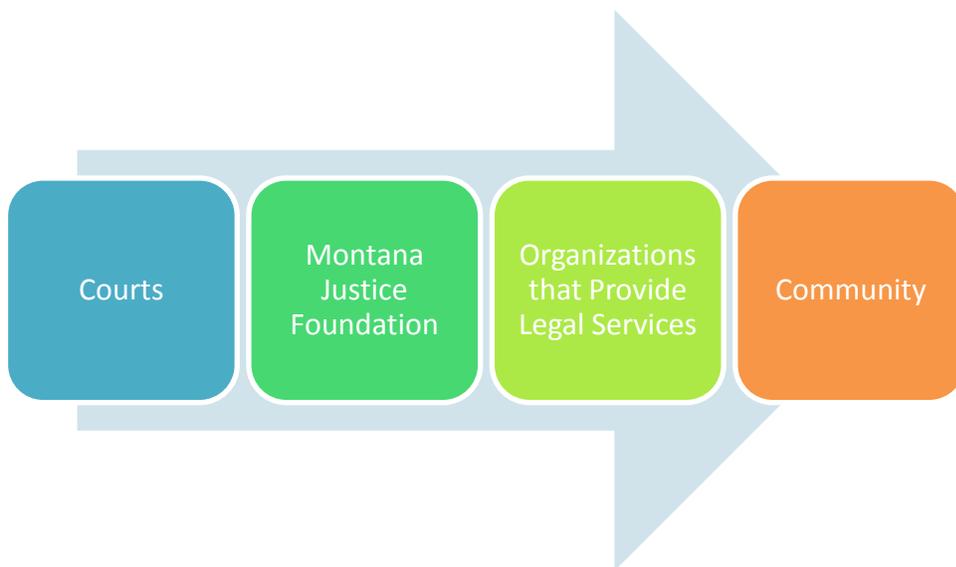
The MJF is a Convening Force that Fosters Innovation and Systemic Solutions: With our strong ties to Montana's bar membership, our solid relationship with the court system, and our important place in the public interest law and philanthropic communities, the MJF has a unique ability to bring together diverse stakeholders to innovatively address the common needs and collective challenges facing the access to justice cause.

EXAMPLES OF THE IMPACT OF *CY PRES* AWARDS TO THE MJF

THE MONTANA JUSTICE FOUNDATION has been fortunate to receive several generous *cy pres* awards over the past several years. These awards have been a key component of the MJF's overall growth during this time, helping the MJF to increase its overall number of grantees and grants, expand the MJF Loan Repayment Assistance Program (LRAP), fund the creation of a statewide Pro Bono Coordinator through the Montana Supreme Court, and adopt Montana's We the People civic education program.

HOW YOU CAN MAKE AN IMPACT

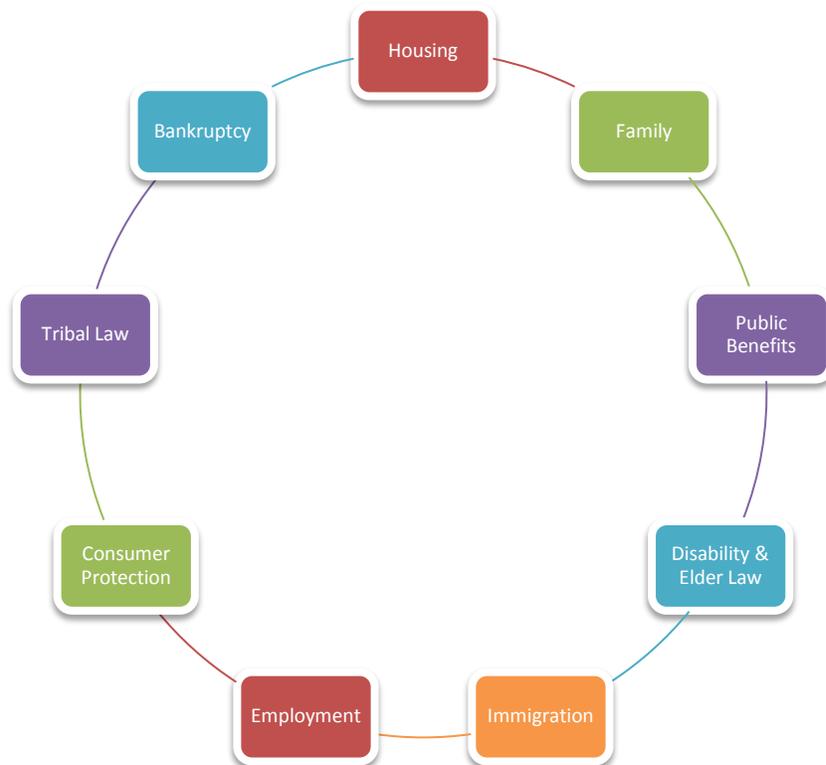
THE MONTANA JUSTICE FOUNDATION'S important work is made possible by hundreds of generous attorneys, law firms and community members in Montana who are committed to fulfilling our nation's promise of equal justice for all. We are making a real positive impact in Montana's communities through your support. Despite our successes we are a long way from fulfilling our mission to make access to justice a reality to all those in Montana. According to the 2010 Montana Legal Needs Study, "about half of all Montana households at or below 125% of poverty experienced at least one type of civil legal problem in the last year. Nearly one-third of low income households experienced two or more types of civil legal problems, and about 6,610 low income households experienced five or more separate types of civil legal problems over the last year." Legal assistance is often critical to one's safety and independence, and *cy pres* awards are one of the best means available to help Montanans achieve their basic rights.



RANGE OF SERVICES

Many Montanans find themselves in the middle of a variety of civil legal issues, ranging from domestic violence to landlord/tenant disputes to problems receiving public benefits. At the MJF we support programs that provide a broad range of services.

LEGAL AID ADDRESSES SOCIETAL ISSUES



Public Benefits: Includes veterans' benefits, social security for the elderly, insurance and health coverage, energy assistance, unemployment benefits, food stamps, and the TANF program.

Employment: Includes unfair hiring and firing, employment contracts, non-compete agreements, and labor law.

Disability & Elder Law: Includes discrimination, and the full range of civil legal services in regards to the disabled and elderly.

Family and Domestic Violence: Includes Parenting Plans, Court Appointed Special Advocates (CASA), Orders of Protection, enforcing Orders of Protection, marriage dissolution, No Contact Order, and letters of no trespass.

Immigration: Includes immigrant rights, and the full range of civil legal services in regards to immigrants.

Housing: Includes housing discrimination, landlord/tenant disputes, Section 8, building code violations, and other unfair housing practices.

Tribal Law: Includes ICWA, and the full range of civil legal issues practiced in Tribal Courts.

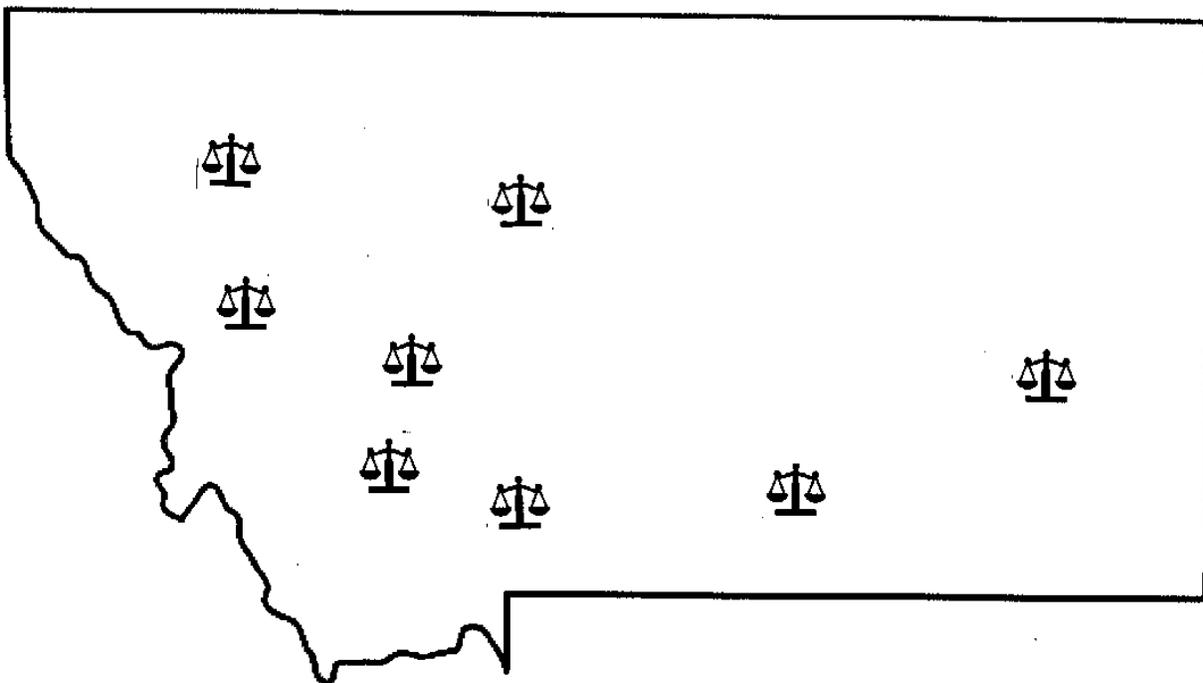
Consumer Protection: Includes debt collector harassment, loans, collection lawsuits, and other debt disputes.

Geographic Range

As we have seen in the past ten years, a poor economy leads to a dramatic increase in legal problems, especially for low-income residents. Unfortunately, legal aid programs are often subject to dramatic funding cuts in tough times, lessening the number of people these programs can help, even as the number of people experiencing legal problems rises.

Montana has just over a million people spread over the fourth largest state in the country. It can be difficult to find legal service providers in much of the state, especially for those who cannot afford an attorney. The MJF helps bridge this gap through effective funding and leadership, and will continue to work hard to ensure equal access to justice in non-criminal matters for all Montanans, regardless of their income.

Every demographic group and geographic region is touched by the need for legal services. To meet these needs, *cy pres* awards can be structured to impact a desired group or locale. There are a number of ways to use *cy pres* funds to have a regional or statewide impact if that is deemed appropriate. The MJF awards and administers grants designated for specific legal aid programs in regions throughout the state. On the map below, each Scales of Justice icon represents an MJF grantee or city where more than one MJF grantees are located. A few of MJF's grantees are organizations that offer services statewide, so please keep in mind that these are just the locations of the main offices.



LEGAL AID PROGRAMS FUNDED BY THE MONTANA JUSTICE FOUNDATION

CASA-CAN of Cascade County provides highly trained volunteer guardians ad litem to speak on behalf of abused and neglected children involved in youth-in-need-of-care cases in the Eighth Judicial District Court.

CASA of Missoula, Inc. provides consistent, long-term advocacy, through independent, trained volunteers, for children who are at risk or have experienced abuse and neglect in Missoula and Mineral counties.

Cascade County Law Clinic serves low-income clients in Cascade County through the efforts of a small in-house staff and a roster of local attorneys handling cases on a pro-bono basis. The Clinic accepts family law and guardianship cases, provides limited pro se assistance, and makes referrals for services not available through the Clinic.

Community Dispute Resolution Center of Missoula County educates, empowers, and supports low-income Missoula County community members in creating peaceful and collaborative solutions by providing low and no-cost mediations. Services are provided through the efforts of a part-time coordinator and volunteer board and mediators.

Community Mediation Center provides quality, affordable dispute resolution services and education using trained, volunteer mediators. The CMC's Low-income Family Mediation Program serves clients in the Eighteenth and Sixth judicial district courts.

Disability Rights Montana works to protect and advocate for the human, legal, and civil rights of Montanans with disabilities by providing education and training, information and referral, advocacy and legal representation, and system advocacy to people with disabilities and their families.

Domestic Violence Education & Services (DOVES) provides assistance to victims of domestic abuse in Lake County and on the Flathead Indian Reservation with a variety of civil legal needs, ranging from representation at Order of Protection hearings to complex family law, housing, and immigration issues.

Eastern Montana CASA/GAL Inc. serves twelve counties in Eastern Montana by providing the Seventh and Sixteenth judicial district courts with trained volunteers to represent the best interest of a child or children in neglect and abuse court proceedings.

HAVEN assists victims of domestic or sexual violence in seeking Orders of Protection and provides information, education, and referrals for other civil law matters.

Montana Fair Housing offers a broad range of services to identify and combat discrimination in housing across Montana, including the state's most rural areas. MFH works to further fair housing through outreach, providing educational opportunities for housing providers and consumers, and pursuing meritorious claims to address discriminatory housing practices.

Montana Innocence Project provides legal assistance to indigent Montanans who claim to be wrongfully convicted. Legal assistance is provided through the Innocence Clinic, affiliated with the University of Montana Schools of Law and Journalism. Client services for post-conviction, civil legal matters are provided through a small staff assisted by pro-bono attorneys and student interns.

Montana Legal Services Association provides statewide free legal services to low-income Montanans in the areas of family, housing, and consumer law and public benefits. In addition to direct representation, MLSA provides community legal education, coordination and support of pro bono resources, and legal advice and referrals.

State Bar of Montana provides services to Montana courts, attorneys, and the public in pursuit of its mission to lead the legal profession and serve the public interest.

Yellowstone CASA, Inc. trains volunteers to provide a voice for abused and neglected children in the Yellowstone County court system. CASA volunteers promote children's best interests and advocate for safe, permanent homes.

EXAMPLES OF COURT AWARDS

Montana's Insurance Commissioner and a Billings law firm were instrumental in a multi-state class-action lawsuit that resulted in the Montana Justice Foundation receiving \$1.37 million in December of 2012. In addition, MJF has received a variety of smaller *cy pres* and court awards over the years.

In Other States

- **Texas:** The Texas Access to Justice Foundation and five of its grantees received \$2.6 million in court awards in to help persons with disabilities.
- **Minnesota:** The Minnesota Legal Aid Foundation received \$3,250,000 in two court awards.
- **Georgia:** Georgia Legal Services Program and Atlanta Legal Aid Society have collectively received more than \$3 million from court awards in three lawsuits.
- **Washington, D.C.:** One legal aid program and three law school clinical programs received more than \$10 million from court awards resulting from a single lawsuit.
- **Massachusetts:** In a class-action settlement, more than \$3 million was awarded to 18 different non-profit organizations, including Greater Boston Legal Services and Suffolk University Law School.
- **Maryland:** Maryland's only LSC-funded program has received three *cy pres* awards totaling more than \$280,000.
- **Illinois:** Legal Aid Foundation of Metro Chicago and Land of Lincoln Legal Assistance Foundation collectively received \$824,000 from 19 *cy pres* awards.



Jesse Laslovich and Monica Lindeen

After agreeing to the terms of a *cy pres* award in a class action, the parties must obtain the approval of the court. A motion to approve a settlement that includes a *cy pres* award should include information responsive to the following questions:

- What makes a *cy pres* award appropriate in this case?
- How does the *cy pres* award further the interest of the class in this case?
- How much will remain for *cy pres* after distribution to the class?
- How much will be set aside for *cy pres* out of settlement funds?
- Who are the potential awardees of a *cy pres* award in this case?
- How will a *cy pres* award further the mission, purposes, and goals of the proposed awardees?
- How will the awardees of a *cy pres* grant be chosen- will they be chosen by the parties, the court or an independent party? Have the parties already agreed on a particular awardee?
- What are the procedures for potential recipients to request proposal for *cy pres* awards? What are the criteria for selection, and what is the process for judicial approval of the selection?
- Are there any conflicts of interest between or among the parties, counsel, and potential awardees?
- Will there be post-settlement reporting requirements and oversight of the awardees?

SAMPLE SETTLEMENT AGREEMENT LANGUAGE

Excerpts from a Sample Cy Pres Settlement Agreement

1. Class Notice. Class notice will be sent to each Class Member advising him or her as to the terms of this Settlement. This notice will state the amount of the total settlement, the amount payable to each Class Member or category of Class Members, the date and specific form it will be distributed in, and will explain that this Settlement was the result of this litigation. The language of the letter shall be agreed to by the Parties with Court approval.
2. Distribution Schedule. Subject to Court approval, distribution of the settlement funds shall be made on or around [insert date], or in as short a period as possible. Any un-cashed or undistributed funds shall be paid to the Montana Justice Foundation within 14 days after the void date.
3. Undistributed Funds. The Parties agree that in the event Defendant is unable to locate a Class Member, and with Court approval, any additional funds determined to be owed to such Class Member (“*cy pres* funds”) shall be paid by Defendant to the Montana Justice Foundation, and any such Class Member shall be barred by Court order from asserting any claim against Defendant for additional funds which are the subject of the Settlement. The *cy pres* funds shall be paid by check within 14 days of the Effective Date of the Court’s Final Approval Order.

SAMPLE FEDERAL ORDER

Sample cy pres Order language

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, _____ DIVISION

PLAINTIFFS

VS.

CASE NO. _____

DEFENDANT

ORDER

The parties having filed a joint motion and Class Settlement Agreement, and the Court having considered the motion, and finding good cause, the Court hereby Orders:

1. The Court finds that the provisions for notice to the class satisfy the requirements of Fed. R. Civ. P. 23 and due process.

2. The Court finds that the settlement is fair and reasonable, and hereby approves the Class Settlement Agreement submitted by the parties.

a. Defendant shall pay \$_____ to each class member who does not opt out. The checks shall be void 60 days after issuance. Any un-cashed or unclaimed funds shall be distributed to the Montana Justice Foundation within 14 days after the void date;

b. Defendant shall pay a *cy pres* distribution of \$_____ to the Montana Justice Foundation for use in access to justice efforts;

c. [Include other terms of the Settlement Agreement, such as attorneys' fees, etc.]

3. The above funds shall be paid by check within 14 days of the Effective Date of this Order. Any undistributed funds shall be distributed to Class Counsel for distribution to the Montana Justice Foundation.

4. [Include any release language agreed upon in the Settlement Agreement.]

5. The Court finds the Class Settlement Agreement reasonable, fair, adequate, and made in good faith.

6. The Court dismisses the claims of Plaintiffs and the class against Defendant with prejudice and without costs, other than what has been provided for in the Class Settlement Agreement.

7. The Court awards aggregate attorney's fees and costs of \$_____ to Class Counsel.

8. The Court retains jurisdiction over the interpretation, enforcement, and implementation of the Class Settlement Agreement and of this Order.

Dated this _____ day of _____, 20__.

U.S. Court Judge

For more information about Helping Close the Justice Gap in Montana through Court Awards contact:

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