

# **Cy Pres Awards in Tennessee**

## **Legal Aid in Tennessee**

The federally funded legal aid providers in Tennessee offer civil legal assistance to people whose gross household income is below federal poverty limits (with some exceptions including the elderly and victims of domestic violence). The clients that legal aid programs serve have a wide range of legal problems including, but not limited to, substantive law surrounding family, landlord/tenant, consumer protection, senior, special education, and health care issues. These clients effectively have nowhere else to seek legal assistance other than a legal aid program.

There are more than one million Tennesseans living in poverty (most recent Census data). According to the most recent legal needs study conducted in our state, approximately 68% of low-income Tennesseans had at least one civil legal need in the past year. That means as many as 680,000 people require the services of legal aid in Tennessee annually. Civil legal service programs assist many of our most vulnerable citizens, but they cannot serve everyone due primarily to budget restrictions impacting provision of direct civil legal interventions.

## **The Legal Aid Funding Crisis**

Tennessee legal aid programs are grossly underfunded and therefore are only able to serve a fraction of the people eligible for and in need of civil legal services. Additionally, recently federal funding was reduced 4% for the Legal Services Corporation (LSC), which provides the bulk of Tennessee legal aid programs' budgets. These cuts directly affected our state by resulting in layoffs at local legal aid programs and therefore a reduction in services.

Now, an additional \$104 million in funding cuts are proposed by Congress, which would bring funding down to 1999 levels that are disproportionate with both the national increase in unemployment and poverty rates. At a time when the unmet

legal needs of American citizens are greater than ever and continue to grow, our federal funding of legal aid is not there to answer the call to service. Preventing instability in legal aid funding in the future is essential. Meeting the civil legal needs of vulnerable citizens has a clear public interest and is key to fulfilling our national promise of equal justice for all.

## **The Tennessee Voluntary Fund for Indigent Civil Representation**

The Tennessee Voluntary Fund for Indigent Civil Representation (the “Cy Pres Fund”) was created in 2006 (Public Chapter 589, 2006; TN Rules of Civil Procedure Rule 23, Amendment 23.08) to support legal aid programs. The Cy Pre Fund is a central repository for voluntary donations, contributions of residual funds from class action settlements or judgments, and grants from across the state.

Once the Fund reaches a \$1 Million balance, interest will be distributed to established legal aid programs. This interest will be distributed by the Administrative Office of the Courts to the legal aid programs pursuant to an established poverty ratio found in §67-4-806 (2). Any overhead/cost created by the Fund shall be paid for out of the proceeds of the Fund.

This approach is important for many reasons. Primarily, it ensures that resources are gathered for legal aid and will go to providing direct services to low-income Tennesseans rather than administrative costs to banks or private investment groups. Additionally, it establishes a solid, centralized mechanism for distributing donations to legal aid programs fairly across the state.

### **Cy Pres Nexus**

There are cases that provide a remainder or penalty that is appropriate for allocation to a public purpose under a Cy Pres award to the Cy Pres Fund. The nexus may be direct and as apparent as a judgment or penalty against a company whose behavior negatively affected a particular group of low-income, elderly, or vulnerable Tennesseans. Alternatively, the nexus might be a more general case in which actions are patently unfair or outrageous and therefore funding equal justice for the poor is a reasonable counter to injustice.

Whether the Cy Pres Fund succeeds to reduce the funding gap for Tennessee’s civil legal services will ultimately depend upon lawyers and judges. Without directing contributions of residual funds from class action settlements or judgments to this Fund, this cannot become the self-sustaining funding mechanism it was intended to be.

## **How to Support Cy Pres**

Whether the Cy Pres Fund succeeds in reducing the funding gap for Tennessee’s civil legal services will ultimately depend upon lawyers and judges. Without directing contributions of residual funds from class action settlements or judgments to the Cy Pres Fund, this Fund cannot become the self-sustaining funding source it’s intended to be.

### ***To support the Cy Pres Fund in Tennessee we ask that you:***

1. Include in any class action settlement agreement, class action settlement order, or class action judgment, a provision which directs that residual class action funds be paid to the Cy Pres Fund.
2. Share with colleagues information about Cy Pres and let them know that the Tennessee courts have the authority to award residual class action funds to the Cy Pres Fund.
3. Contact the Tennessee Alliance for Legal Services (TALS) if you require assistance drafting language directing residual funds to the Cy Pres Fund or know about class action cases that will go to trial in the next year. We will connect you with the appropriate services to assist you in supporting Cy Pres.

For questions, [email TALS' Executive Director Laura Brown](#).

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[Print](#)

[Table of Contents](#)

[NEWS](#)

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[More News](#)

2 Aug 2024

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