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August 28 2014

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Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

AUG 28 2014

NO. AF 07-0157

IN THE MATTER OF THE MONTANA  
RULES OF CIVIL PROCEDURE

COMMENT  
OF THE  
CASCADE COUNTY LAW CLINIC

The Board of Directors of the Cascade County Law Clinic ("CCLC") disagrees with the Proposed Amendment to Rule 23, M.R.Civ.P., as it is presented in the Court's Order of July 1, 2014. Instead, we request the Court adopt a modified version of the Proposed Amendment as follows:

**(i) Disposition of Residual Funds**

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorney's fees and other court-approved disbursements. This rule does not prohibit the trial court from approving a settlement that does not create residual funds.

(2) "Access to Justice Organization" includes any Montana non-profit entity whose purpose is to support activities and programs that promote access to the Montana civil justice system.

(3) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, no less than fifty percent (50%) of the residual funds shall be disbursed to an Access to Justice Organization to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage to the Access to Justice Organization or to another non-profit entity for purposes that have a direct or indirect relationship to the objectives to the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

(Emphasis added noting the proposed Amendments).

We recognize and respect the role the Montana Justice Foundation ("MJF") has played, and continues to play, in promoting access to justice in Montana. However, many non-profit organizations in Montana exist to serve a similar and related purpose of supporting activities and programs that promote access to the Montana civil justice system whose funding needs are great, but

1 are not met by the MJF. Local district court judges, as finders of fact, should retain discretion to  
2 determine the appropriate recipients of such funds as opposed to displacing that discretion with an  
3 absolute rule in sole favor of the MJF.

4 Although the MJF provides funding to several worthy non-profit organizations in Montana,  
5 they do not fund all organizations whose purpose is to promote access to the civil justice system. The  
6 CCLC is one such example. In the interest of full disclosure, the Court is advised that the MJF  
7 completely defunded the CCLC for this fiscal year. The previous year we received \$6,000.00. The  
8 MJF did not believe our program model was sustainable despite the CCLC having sustained itself for  
9 over two decades using the same model and despite the MJF's acknowledgment of a demonstrated  
10 need for legal services in Cascade County.

11 The CCLC works hard to provide legal services to those who need help, and it has done so  
12 for over two decades. The CCLC is the 'boots on the ground' for the provision of legal services to  
13 low income families in Cascade County. It leverages a very small amount of money into legal services  
14 with a market value to the community approaching, if not exceeding, \$500,000.00 per year.

15 The CCLC protects vulnerable members of our community including spouses and children  
16 who are victims or potential victims of domestic abuse or unresolved family discord. Our clients are  
17 connected with local attorneys who represent them *pro bono* throughout the legal process of child  
18 custody and marriage dissolutions to ensure their access to the Montana civil justice system is  
19 guaranteed and their rights and safety are protected. There is no other organization in Cascade County  
20 with a similar purpose. The CCLC fills a large gap in such advocacy because Montana Legal Services  
21 has no branch office in Great Falls and Cascade County. Low income residents of Cascade County  
22 who would otherwise be forced to represent themselves *pro se*, oftentimes when the opposing party  
23 is represented by counsel, rely on the CCLC's services. The CCLC fills a vital role allowing access  
24  
25

1 to the courts for Montana's low income families. However, without the ability to seek funding from  
2 sources such as residual funds, and without funding from the MJF, organizations like the CCLC are  
3 at risk of disappearing.

4 The CCLC has benefitted greatly from residual funds on more than one occasion. Most  
5 recently in October 2013, the CCLC received \$226,984.58 from residual funds because it provides  
6 *pro bono* legal services to those who cannot otherwise afford legal services in Cascade County. Those  
7 residual funds were ordered dispersed into an endowment set up to perpetually fund the CCLC's  
8 work. The remaining half of the residual funds were dispersed to the Montana Labor Management  
9 Alliance. In that case<sup>1</sup>, the district court was allowed to use its discretion to benefit a worthy  
10 organization which it recognized as providing access to justice for low income persons in its district.  
11 However, had the original Proposed Amendment to Rule 23 been in place, it would have likely  
12 foreclosed the possibility of the CCLC receiving these essential funds and removed the discretion  
13 from the district court to distribute them as it determined was proper in that case.

14  
15 The CCLC is grateful to have recently received the residual funds discussed above. However,  
16 the interest earned annually from the endowment cannot alone support the CCLC's annual operating  
17 costs. As with other non-profits, the CCLC must seek other funding sources to continue providing  
18 its valuable and needed services to Cascade County low income residents, including residual funds.  
19 These, combined with other generous donations and funding, allow the CCLC to continue its  
20 important mission. A broader definition of Access to Justice Organizations to allow other entities,  
21 such as the CCLC, to receive residual funds is necessary. This will still further the important purpose  
22 of the Proposed Amendment to Rule 23 without foreclosing the receipt of such funds from those  
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25 <sup>1</sup> *Henderson v. St. Paul Fire & Marine Ins. Co.*, Cause No. CDV-05-192, in the Montana Eighth Judicial District Court, Cascade County.

1 Access to Justice Organizations which do not receive funding from the MJF.

2 The CCLC strongly believes district courts should retain their discretion to make  
3 determinations about which Access to Justice Organizations should receive residual funds to serve  
4 the best interests of our low income citizens. Despite the MJF's good work, there is no reason to  
5 displace the district court's discretion in sole favor of the MJF when so many other worthy  
6 organizations exist. Therefore, a more broad definition of an "Access to Justice Organization" should  
7 be allowed to give courts discretion to distribute residual funds to other worthy non-profit  
8 organizations whose purpose is to promote access to the Montana civil justice system.

9 Whether a particular sum should be given to the MJF, the CCLC, or some other worthy  
10 organization should rest within the calm exercise of a district court judge's discretion. Times and  
11 organizations change. This Court should not now permanently alter the Montana Rules of Civil  
12 Procedure to require residual funds be disbursed in a way which prevents our trial courts from  
13 attempting to best meet community needs and which forecloses disbursement of these funds to other  
14 worthy Access to Justice Organizations.  
15

16 Accordingly, the CCLC requests that the Court adopt its version of the Proposed Amendment  
17 to Rule 23 of the Montana Rules of Civil Procedure.

18 DATED this 24<sup>th</sup> day of August, 2014.

19 CASCADE COUNTY LAW CLINIC  
20 Board of Directors

21 *Sharon M. Anderson* \_\_\_\_\_  
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