



NW CONSUMER LAW CENTER

A Non-Profit Law Firm Advocating for Rights of the Consumer

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The Advisory Committee on Rules of Civil Procedure

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SENT BY
E-MAIL

**RE: Comment on the Proposed Amendments to Rule 23
Concerning *Cy Pres* Treatment**

Dear Committee Members:

The large corporate interests have emerged from the financial and foreclosure crises of the past seven years not merely unscathed but richer than ever, while the middle and lower classes struggle to pick up the pieces. Income inequality in the U.S.A. has reached historic highs as the wealth continues to be syphoned up to the select few at the top of the economic pyramid. The 2010 *Citizens United* decision all but handed over elected officials to big business on a silver platter.

Notwithstanding the adulteration of our judicial system by the plutocracy's push for so-called "tort reform," our courts of law are still a venue where any citizen has chance at justice. Our court system is difficult and often impossible to navigate, however, without the

assistance of legal professionals, and unlike our criminal system, our civil legal system offers no right to an attorney. State and national studies have found that 80% of serious civil legal needs – including mortgage foreclosure, domestic abuse, child custody, and consumer fraud – go unmet. Meanwhile, in recent decades, as more families sink below the poverty line, the Federal Reserve System’s desperate diminution of interest rates has caused a reduction in legal aid funding of almost 60%.

Cy pres awards are a crucial source of funding for organizations like the Northwest Consumer Law Center (NWCLC), which strengthens our economy by empowering and protecting the consumers who contribute to it every day. And now, sadly but not surprisingly, the moneyed and misinformed seek to take that from us as well.

NWCLC recently received a *cy pres* award of about \$10,000 in the case of *Morgan v. U.S. Bank National Association*, Case No. 12-2-35531-2 (Sup. Ct. King County). In *Morgan*, as in many class actions, it was simply not feasible to get all of the settlement money to every single member of the class. This happens because people move without documenting their new address, errors occur in the postal service, people mistrust the check and refuse to cash it, the defendant does not keep updated business records, or numerous other valid reasons. The allocation of such funds to *cy pres* awards in the *Morgan* settlement, as in any class action, was appropriate. In no way did it cause class members who could have been reached to be denied the relief to which they were entitled.

Our organization was an appropriate recipient of a *cy pres* award in *Morgan*, which involved allegations that U.S. Bank National Association violated the Washington Consumer Protection Act. NWCLC’s mission is to zealously advocate, litigate, and promote access to justice for low and moderate income clients, and through our education programs, empower consumers with the knowledge and resources to protect their rights. We focus exclusively on consumer issues, such as mortgage foreclosure, Chapter 7 and 13 bankruptcy, debt collection defense, and fraud.

It was furthermore appropriate that NWCLC receive a *cy pres* award from the *Morgan* settlement because we were immediately able to put this money to good use. The additional sums allowed us to rescue five families from over \$230,000 in crushing debt, save one family’s

home from foreclosure through a Chapter 13 Bankruptcy repayment plan, save two families' homes from foreclosure by making their mortgages affordable through a loan modification, and provide information and referral services to 50 callers.

We urge the Federal Rules Advisory Committee not to bend to the small minority of radicals crying out for the abolishment of *cy pres* awards. Inequality of wealth and power in our nation is already at a terrifying level. Please do not push it that much further by depriving hundreds of thousands of low- and moderate-income citizens of their rightful access to justice.

Sincerely,



Sheila O'Sullivan
Executive Director



Noah C. Samuels
Deputy Director