



ISSUES e-newsletter

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How To Make \$2.5 Million With One Phone Call

By Jerry Lane, Executive Director, Mid-Minnesota Legal Assistance

On July 1, counsel submitted a proposed settlement to the Hennepin County District Court in a statewide class action brought on behalf of Minnesota consumers against Microsoft. This settlement included payment of \$2.5 million by the defendant to Legal Aid in Minnesota. The Court granted preliminary approval. Barring the unforeseen, that money should be paid out early in 2005. While this settlement provision was triggered by a single phone call, there is more to it than that.

Legal Services program leaders have worked with the MSBA for several years on developing *cy pres* funds as a source of money for Legal Aid. We have put together an educational resource manual on *cy pres* for Legal Aid. It includes general information about *cy pres* awards, information about the legal services programs in Minnesota, an explanation of the appropriateness of using *cy pres* funds to support Legal Aid, examples of prior *cy pres* awards to Legal Aid programs in Minnesota, and examples of the kinds of nexus which can be found between various types of class actions and Legal Aid programs. This manual has been distributed to lawyers and judges in Minnesota so that they have a visual aid at their fingertips when they are facing decisions about possible *cy pres* funds. Meetings have been held with plaintiff and defense lawyers likely to litigate such cases to educate them about Legal Aid as an appropriate recipient of *cy pres* funds.

Several years ago at the request of Robins, Kaplan, Miller & Ciresi, which represented plaintiffs in one of the major multi-state tobacco lawsuits, MLSC created a donor-advised endowment fund at the Minnesota Community Foundation for the purpose of receiving "windfall" contributions such as *cy pres* funds. The intention of this endowment fund is primarily to benefit Legal Aid throughout Minnesota, while allowing for the possibility of sub-funds with a specific geographic or substantive focus, if requested by a donor. The long-term goal is to create an endowment which will benefit Legal Aid in Minnesota without regard to the shifting economic or political winds. Before July 1, 2004, this fund had just over a million dollars in it, resulting from a Robins, Kaplan contribution and a charitable contribution from an automobile manufacturer (made as part of a settlement in product liability litigation).

By decision of the MLSC program directors, the revenue from the statewide endowment fund is distributed through the Minnesota Lawyer Trust Account Board annually. This results in the benefit of this endowment fund being felt by all IOLTA grantees in Minnesota, not just the MLSC programs (although the Coalition programs receive a substantial majority of IOLTA funds).

I have made a habit of scanning the legal newspapers in Minnesota for word of litigation that might produce major settlements or *cy pres* funds. Nancy Kleeman, then MSBA Access to Justice Director, did the same thing. About six months ago, Nancy and I both spotted an article about the filing of the Microsoft litigation by a Minneapolis law firm, Zelle Hoffman. The firm has been a financial supporter of Legal Aid in Minneapolis, although I did not personally know Rick Hagstrom, the lawyer who is lead counsel. The same morning that we spotted the article, I called Rick, introduced myself, and encouraged him to stick a note in his litigation file about the possibility of Legal Aid as a recipient of *cy pres* or other settlement funds at the appropriate time. I provided the *cy pres* background information. He agreed that he would keep us in mind if and when it became appropriate to pursue the issue further. Some months later, I got a call from him. I provided further information about Legal Aid and the statewide fund. Because the class action was statewide, I felt it was appropriate to steer him in the direction of the statewide fund rather than a contribution just to my program, although his prior familiarity had been primarily with Minneapolis Legal Aid. I explained the Coalition directors' long history of working together to benefit Legal Aid on a statewide basis with both public and private funding.

Rick set up a conference call with lead counsel for Microsoft and I provided her with the prepared information about the use of *cy pres* to support Legal Aid in Minnesota. She seemed favorably impressed by the cooperative approach to this type of fundraising among the Minnesota programs.

These conversations had to be completely confidential, on Rick's explicit instructions. Although he said several times over the months that he thought I would be happy with the outcome, he would not give me a clue as to what financial ballpark we were in. This was not easy for me, since waiting for delayed gratification is not one of my strong suits.

I received the phone call with the information about the \$2.5 million award immediately following the conclusion of the preliminary settlement hearing. Although much of the conversation had been in the general context of *cy pres* funds, the \$2.5 million award is not a *cy pres* fund; it is an integral, non-contingent part of the settlement.

Because this money, if all goes well, is headed for the endowment fund, it is not an immediate solution to Legal Aid's funding constraints. But it will be part of a long-term strategy to anchor and stabilize funding. This donation should generate \$125,000 (or more) per year forever.

As I have said repeatedly to MMLA staff when reporting good funding news, such successes are rooted in the excellent reputation Legal Aid in Minnesota enjoys in the legal community. That reputation has been earned by the excellent work of staff at every level. So everyone should take pride in this, which I am told is the largest such one-time contribution ever made to Legal Aid in the United States.