ANISHINABE LEGAL SERVICES

Anishinabe Legal Services Newsletter

Serving the Leech Lake, Red Lake, & White Earth Reservations

Cass Lake, Minnesota • January 2022

P.O. Box 157, Cass Lake, MN 56633 • Phone 218-335-2223 or 1-800-422-1335

From the Director:

By: Chari LaDuke-Clark
Admin Director

The year has flown by! In 2021, ALS moved into it's brand new building and continued to deliver civil legal services with little changes in our daily operations despite the continued pandemic. We have had to recently close down the office and apply extra precautions for client and staff safety. We appreciate it when individuals wear a mask while meeting their advocates.

The new year brings us new projects. In 2022, ALS staff will undertake a comprehensive civil legal needs assessment process which will involve community members, former clients, potential future clients, and tribal or state agencies alike. We are hoping to partner with a consultant to ensure all avenues for surveying are considered. Watch for updates about this process on the ALS website or facebook page. Once data is compiled, the organization uses this information in planning staff activities for services and outreach for years to come!

Currently the program is fully staffed with 12 fulltime staff members—including 8 casehandlers for direct client services! The board of directors recently approved the program's annual case priorities but the list hasn't changed much from previous years. New issues added include advice and referral for expungements, and overall legal assistance in housing matters now including advice on issues with private landlord housing.

In the next year, the program hopes to provide more outreach services and participate in community events. If you have any upcoming items you want our staff to consider participation in, please feel free to contact Chari at claduke-clark@alslegal.org.

Finally, **ALS is seeking a**

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Texas and Big Oil treating Native Family Law as a backdoor to undermine rights of sovereignty

By: Faith Bickner
Staff Attorney

The State governments of Texas, Indiana, and Louisiana, along with the corporate law firm that represents Shell, Chevron, Enbridge, and Amazon, are arguing that the Indian Child Welfare Act ("ICWA") is unconstitutional, because it "discriminates against non-Indians" in child welfare cases involving Native children. (For context on what ICWA does and how it works, ALS attorney Ellen Weinberg wrote an excellent piece in the ALS newsletters' last edition.) This winter, the Supreme Court will hear arguments from critics of the law who say they are interested in protecting the best interests of children and the families that want to adopt them, but many Native activists and Federal Indian Law scholars are skeptical of the motive, and fearful that the battle has potential to do harm to Native people and nations across the country. The federal lawsuit, *Brackeen v. Haaland*, **threatens not only the constitutionality of ICWA, but potentially "the heart of tribal sovereignty,"** according to acclaimed journalist Rebecca Nagle (member of the Cherokee Nation and host of the podcast "This Land"). If the Supreme Court agrees with Texas and its allies, she says it could "threaten the entire structure of law defending the rights of tribes."

This case started in 2017, when a white family living in the suburbs of Fort Worth, Texas (the Brackeens) felt a religious calling to adopt a baby. They had previously hosted foster children but struggled with the challenges and had asked the child protection agency to find another placement. In 2017, they again registered as foster parents and were chosen to be the host parents of a Native baby boy. If state child protection officials had followed the appropriate rules under ICWA, this wouldn't have happened; the child's tribe (Navajo Nation) had identified a Native home for the baby, and according to ICWA that's where he should've gone. But, after mistakenly having the baby placed in their home for what ought to have been a temporary stay, the Brackeens sued in family

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From the Director

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Volunteer Board member to represent individuals from the Red Lake Nation. Eligible volunteers should be enrolled or descendants of the tribe and knowledgeable on civil legal issues affecting individuals on the reservation, and are low income. Please contact Chari at the Main Office for more details. There is an incentive for board member in-person participation at quarterly meetings, however throughout the pandemic ALS has been flexible scheduling Zoom meetings to ensure everyone's confirmed Health and safety. Chari can be reached at: 218-339-1012 or by email: claduke-clark@alslegal.org.

Texas and Big Oil

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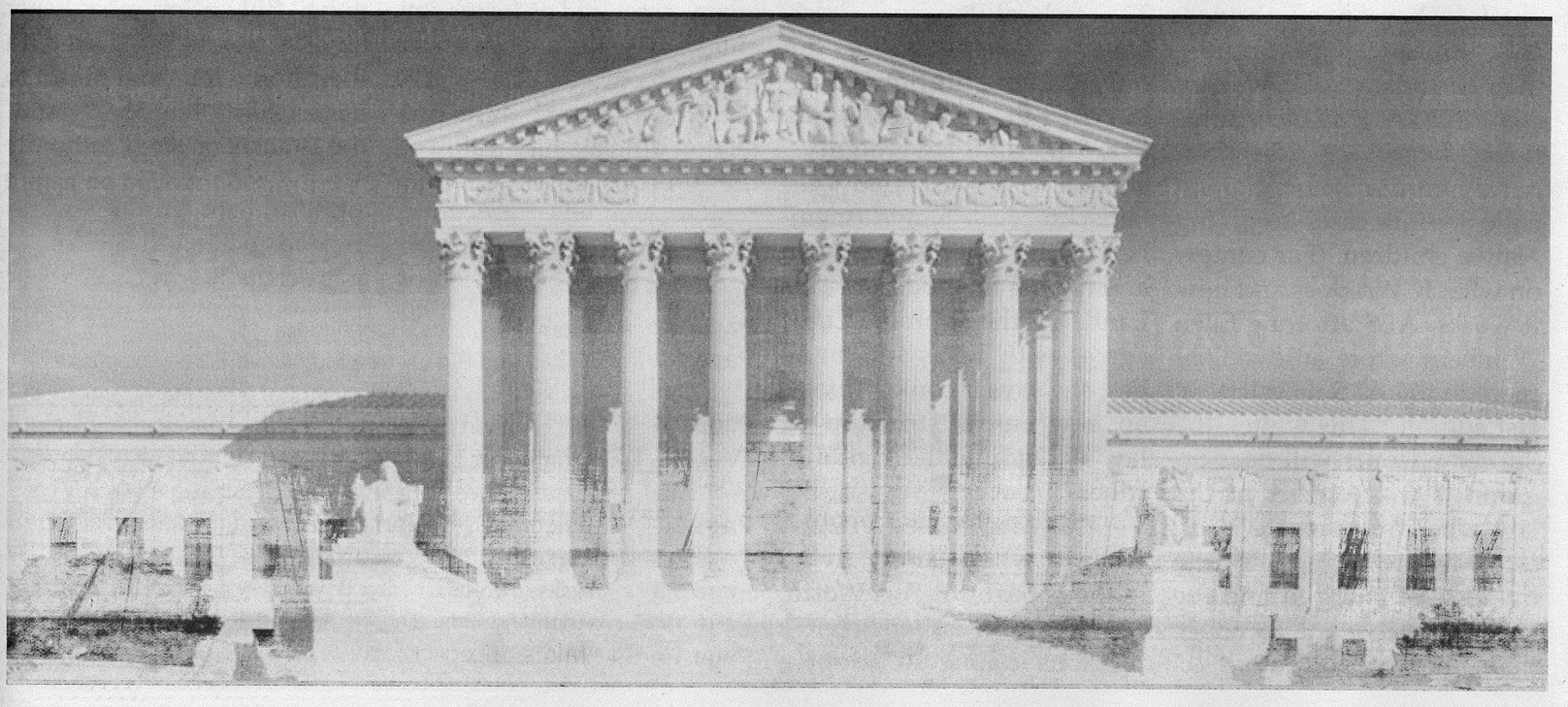
court (which is handled by state and tribal courts). They got some surprisingly powerful help - the Attorney General of Texas and a corporate law firm (Gibson Dunn, which represents Walmart, Disney, and Shell) both stepped in, and the Brackeens won. Even after winning custody of the child, the Brackeens started a separate, federal lawsuit, which sought to strike ICWA down, on the grounds that it is unconstitutionally "based on race," and discriminates against both families wanting to adopt and Native children who are up for adoption. That federal lawsuit was heard by the Fifth Circuit which is one step below the Supreme Court.

Again in this lawsuit, powerful corporate lawyers stepped in to help the Brackeens, and two other Non-native, adoptive families were joined as Plaintiffs. Gibson Dunn has big, non-Native clients who are heavily invested in betting and gaming (like Caesars, the casino in Las Vegas). The two lawyers central to Gibson Dunn's representation (Mattew D. McGill and Lochlan F. Shelfer) have focussed much of their careers on helping such clients, including Mr. McGill's work pursuing the Supreme Court's decision in *Murphy v. NCAA* which struck down the federal law which had prohibited states other than Nevada from legalizing sports betting. This is all to say, they have devoted a great deal of resources to opening the gaming market to non-Indian investors. Sixteen judges in the Fifth Circuit took more than a year to issue their 325-page decision, which was split eight to eight on important questions of Indian and Constitutional law. So, the case now sits on the steps of the Supreme Court. These lawyers want the court to say that ICWA is unconstitutional under the equal protection clause of the United States Constitution, because they say it discriminates on the basis of race. They want the Court to say status as an enrolled member of a tribe (or a child eligible for enrollment in the future) is a racial status, rather than a political one, to undermine privileges secured by treaties, like gaming and mineral rights.

At the heart of the case, beyond questions of whether ICWA's classification of "Indian" children is either racial or political, are four Native American children: A Pueblo (Tiqua) child, an Ojibwe child, a Navajo (Dine) child and a child who is Navajo and Cherokee. Three of these four children are currently growing up in white homes. The Supreme Court will hear arguments in the case in the coming weeks and then issue a decision, likely months later.

Thankfully, there are powerful players defending ICWA before the Supreme Court, too. In addition to the United States Department of the Interior (led by Deb Haaland, member of Pueblo of Laguna), the Bureau of Indian Affairs, and the United States Department of Health and Human Services, powerful tribes have also intervened in the case: the Navajo Nation, the Cherokee Nation, the Oneida Nation, the Morongo Band of Missions Indians and the Quinault Indian Nation have all joined to protect the law. Fawn Sharp, vice president of the Quinault Indian Nation and the President of the National Congress of American Indians, says that ICWA is "incredibly important for the health and well-being" of Native families, "because it serves as a foundational piece to our society to ensure that we'll continue for generations." The federal government and tribes defending ICWA emphasize its necessity, say the Brackeens don't have the right to bring the case in the first place and argue that ICWA does not violate the equal protection clause of the US Constitution, because a child having citizenship/membership in a tribal nation is a political, rather than racial, status.

Regardless of ICWA's standing (as a federal law), Minnesota state itself has a law instituting many of the same protections to Native families, as do the Leech Lake, White Earth and Red Lake tribal courts. The Minnesota Indian Family Preservation Act (MIFPA) strengthens and expands ICWA, calling for greater involvement of the tribes in custody determinations involving Native children.



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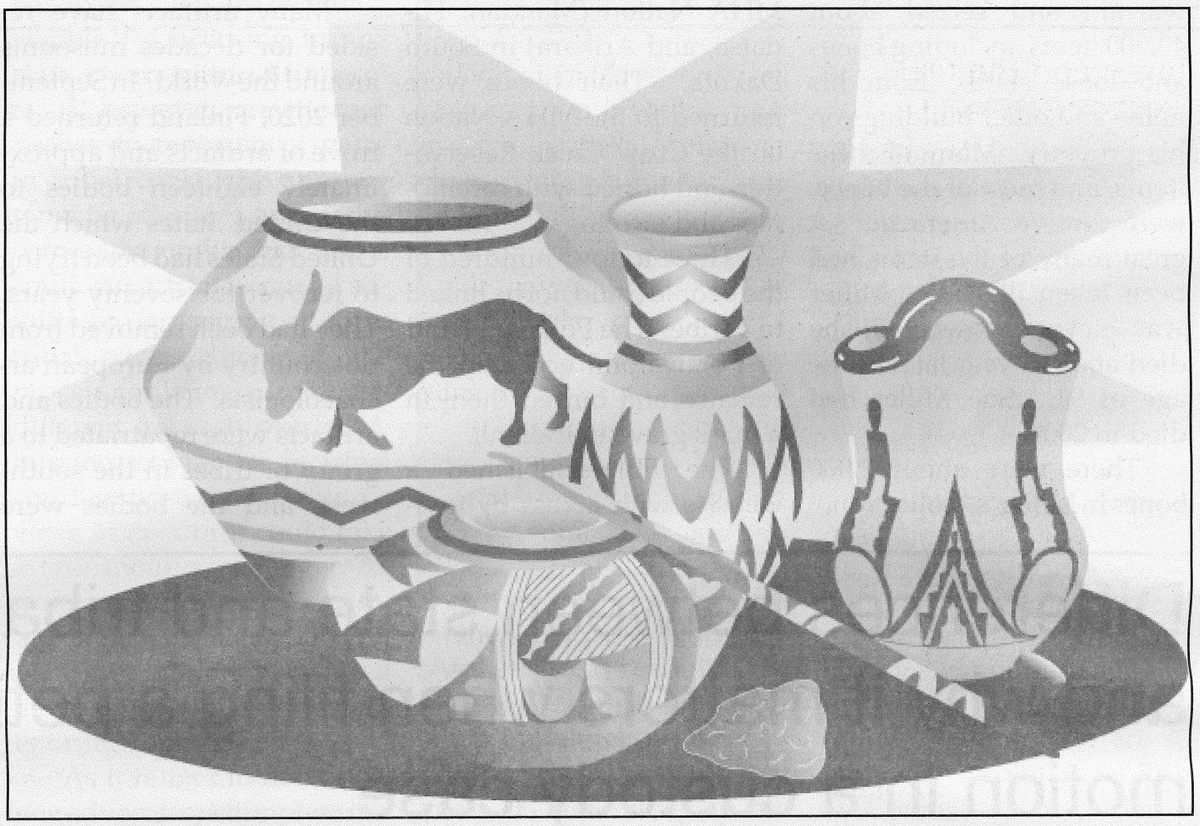
Repatriation of Native American artifacts

By: Ellen Weinberg
Staff Attorney



In this article, the term "Native American" is used when the author is writing in her own words. "Indian" is used only when it is part of a title.

Repatriation means the return of objects to the people or nation where they originated. Theft of artifacts, which are objects of historical, cultural, artistic, scientific, or religious significance, from their countries of origin, has occurred for centuries. It has occurred all over the world. Collectors are attracted to old and beautiful or interesting objects, and often have been willing to buy them on the black market or to steal them outright from archaeological sites.

The systematic looting of Native American artifacts began in the nineteenth and early twentieth centuries, a period when there were no laws to forbid it. Private individuals helped themselves to bodies and artifacts for their collections, and museums collected them in order to study and preserve them in the belief that the cultures were disappearing.

Fortunately, governments and institutions such as museums have become more sensitive to the problem than in the past. Today, many countries have laws against removing artifacts; archaeological sites are guarded or hidden from public view; and some museums are reviewing their collections and returning illegally-obtained artifacts to the countries or Native American sovereign nations from whom they were stolen.

The United States now has laws aimed at protecting Native American artifacts. These laws required national museums to cooperate with Native American tribes to return bodies and artifacts.

The first such law was the Antiquities Act of 1906. It prohibited vandalization and unauthorized excavation of historic ruins on public lands. But it would be many decades before any other laws were passed.

The Archaeological Resources and Protection Act of 1979 prohibits unauthorized sale, exchange, or transportation of archaeological items on government or Native American land. The National Museum of the American Indian Act, passed in 1989, covers the Smithsonian Institution.

The Native American Graves Protection and Repatriation Act, passed in 1990, requires all museums and agencies that receive federal funding to offer lists of their Native American artifacts to federally-recognized tribes in this country, and to return bodies and artifacts to the tribes where they originated on the request of the tribes. A tribe demanding the return of a body or artifact must prove that the body or artifact belongs to it. Once the tribe has proven ownership, the museum must return the body or artifact.

These laws also provide for grants for researching the repatriation requests and for transport of the bodies and objects. Tens of thousands of bodies and hundreds of thousands of artifacts have been repatriated under these laws.

Additionally, the National Stolen Property Act provides for a fine and/or a prison sentence of up to ten years for anyone convicted of transporting stolen property worth $5,000 or more across state lines or international boundaries.

Repatriation becomes trickier when the tribe or culture to which the bodies or artifacts belonged no longer exists. Some early Native American cultures died out long before Europeans arrived. Those tribes have no connection to modern tribes. In that case, the bodies or artifacts are kept by the museum or agency.

It is clear that the U.S. government takes theft of bodies and artifacts seriously. However, it still occurs. Looters take advantage of the fact that Native American archaeological sites tend to be small and widely dispersed; therefore, many sites cannot be guarded.

There have been a few notable cases of looting and repatriation in the past decade.

In June 2021, Jeffrey Alan Vance was sentenced to two years in federal prison for illegally excavating the site of a 500- to 800-year-old Antelope Creek Culture homestead in Texas. Looted human bodies and about 1,500 looted objects, including petrified wood and burial beads, were found in his home. Cleverly, he had posted his exploits on Facebook, which enabled law enforcement to identify and arrest him.

Don Miller was a more successful looter. He was an electrical engineer and missionary who, along with his wife Sue, traveled the country and the world for seventy years, digging up artifacts of all kinds. He brought his

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Repatriation of Native American Artifacts

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finds back to his home in rural Indiana, and proudly displayed them to visitors. In 2013, on a tip, the FBI's Art Theft Unit obtained a search warrant and seized about 42,000 items, including bones and loose skulls, from his home and other buildings on his property. Many of these items, and most of the bones, were Native American. A great many of the items had been taken illegally. Miller was never prosecuted; he died about a year later at the age of 91. Sue Miller had died in 2000.

There were about 2,000 bones in Miller's "collection," and anthropologists determined that they came from about 500 people. About 30 of the people were identified as having come from the MHA Nation (Mandan, Hidatsa, and Arikara) in South Dakota. Their bones were returned to the MHA Nation on the Crow Creek Reservation and buried with ceremonies and offerings.

Three to four hundred of the people could not be linked to a tribe. The Pokagon Band of Potawatomi accepted the remains and buried them in a mass grave in Indiana.

The FBI established a website with access by invitation only to help with repatriation of the Miller artifacts both to Native American tribes and to foreign countries.

Many artifacts have resided for decades museums around the world. In September 2020, Finland returned a trove of artifacts and approximately eighteen bodies to the United States which the United States had been trying to recover for seventy years. They had been removed from this country by European archaeologists. The bodies and artifacts were repatriated to a group of tribes in the southwest, and the bodies were given proper burial.

Conclusion

The United States now takes its responsibility to guard Native Americans' cultural heritage and sacred objects far more seriously than in the past. It is to be hoped that the United States will continue to be proactive in this area.

Differences between state and tribal courts: and why it matters when filing a petition or motion in a custody case

By: Heather Labat
Staff Attorney

Clients sometimes call our office and want to know where they should bring their court action. Sometimes clients have not considered where they should file their petitions or motions and they do not understand the differences between filing in Minnesota state court versus tribal court. This article will provide an overview of the differences between bringing a custody action in state court and tribal court. It will also discuss factors that determine whether a custody case must be filed in state court or tribal court. This article only discusses the three tribal courts in the area—Leech Lake Band of Ojibwe Tribal Court, White Earth Band of Chippewa Tribal Court, and Red Lake Nation Tribal Court.

Our office handles questions from many clients who want to bring a custody action in court. One of the first questions an attorney may ask the client is whether there is a previous custody order. If there is a previous custody order, then the attorney will ask which court issued the previous order. If no previous custody order exists, and let's say a father is calling for help, then the attorney generally asks whether either party lives on a reservation or whether either party is enrolled or eligible for enrollment. This question determines whether tribal courts have jurisdiction; in other words, whether they have the legal authority to hear a case. If the father tells the attorney that neither party is enrolled or eligible for enrollment nor neither party lives on the reservation, then the father should establish custody in state court. Where the child resides determines which county the father needs to file his action. For example, if the father lives in Cass County, but the child lives with the child's mother in Minneapolis, then the father would have to file a petition to establish custody in Hennepin County, not Cass County.

When filing in state courts, it is important to understand that paternity must first be established before a father can file a custody petition. In Minnesota, paternity is established by a Recognition of Parentage (ROP) form or by a court order. If a father was not married to the child's mother when the child was born, then the father must obtain a certified copy of the ROP before he files his petition to establish custody in state court. **A copy of a birth certificate is not sufficient when filing a custody petition in state court**. The process to obtain a ROP requires an application to be sent to the Department of Health Office of Vital Records along with a $9 fee to receive the certified copy. Generally, a ROP is signed by both parents at the hospital following the birth of the child. Sometimes, fathers are not present or did not have an opportunity to sign the ROP when the child was born. If this occurs, then the father needs to ask the mother if she would be willing to sign the ROP now. If the mother refuses to sign the ROP, then the father cannot file a petition to establish custody. Instead, the father must bring a motion to establish paternity. Sometimes, the county brings a paternity action when initiating a child support action. There would be a court order acknowledging father's paternity when establishing paternity this way.

If a father and his child live on a reservation and/or the parties are enrolled, then father can file a custody petition in tribal court. All three tribal courts have tribal codes related to paternity and custody. Tribal courts may presume paternity in more ways than the state does. For example, Leech Lake Tribal Codes acknowledge a "man is presumed to be the biological father of a child if: while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child." Leech Lake Band of Ojibwe Judicial Code Title 6 – Family Relations Code Chapter 10A – Leech Lake Parentage Act, Section 6-10A-13. Red Lake Nation Tribal Court Codes also presume paternity when

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State and Tribal Courts

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a "child is under the age of majority and the man receives the child into his home and openly holds out the child as his natural child." Title VIII, Family Code, Chapter 805 Parentage Act, Section 805.06. Finally, White Earth Tribal Court Codes also indicate that a "man is presumed to be the father of a child if: He openly held out the child as his own and the community accepted him as the child's father." White Earth Band of Ojibwe Trial Code, Title 6 – Family Relations Code, Chapter 10A -White Earth Parentage Act, Section 10A-15. Therefore, in tribal courts, a father would not necessarily need a certified copy of a ROP to file a custody petition.

What if a tribal court has jurisdiction to hear a matter, but a prior order was filed in state court?

Sometimes clients want advice on establishing custody of a relative; or maybe a parent wants to modify a prior custody order. In cases where a previous court order established custody, the party who wants to modify custody must file their petition in the same court where custody was originally established. A party cannot file a petition in tribal court to modify a state court's custody order, or vice versa.

If, however, a grandparent or other relative wants to establish third-party custody and there have been no prior court orders related to the child, then the grandparent can file a custody petition in the court that has jurisdiction. If both state and tribal courts have jurisdiction, then the petitioner can choose which court to file their action.

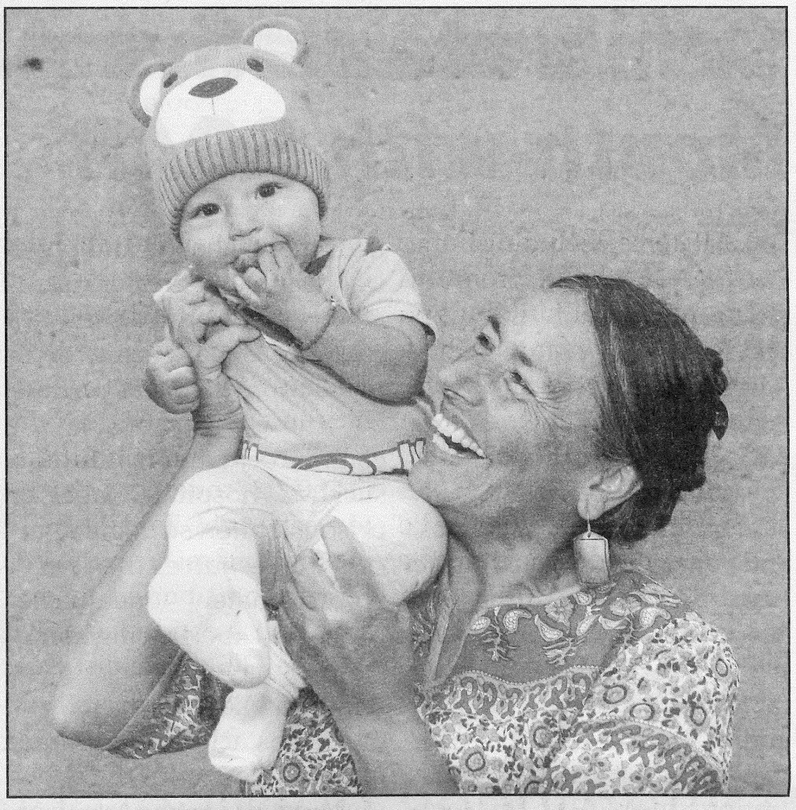
It is extremely important when an attorney is giving legal advice to a client to know whether a previous custody order exists. Not only does it determine how the attorney will advise a client, but it also determines whether the attorney can represent a client in a court action.

What are the other differences between state and tribal courts?

In Minnesota, once an attorney passes the Minnesota Bar Exam, they are generally eligible for licensing in any state court within Minnesota. If, however, an attorney wishes to represent a party in tribal court, the attorney must be admitted to practice before the individual tribal court. An attorney can be admitted to practice in all three tribal courts; however, the process for being admitted is different for each court. Admission to practice in tribal court could happen within a week or two, or it could take a few months or longer. As a party, you need to ensure any attorney or advocate you want to represent is admitted in the court where you want to bring your case.

As it relates to non-attorney advocates, Minnesota has implemented a pilot project that allows approved Minnesota legal paraprofessionals to represent and advise clients in select housing and family state court matters with oversight by a licensed attorney. This program runs from March 1, 2021 through March 2023. All three tribal courts also admit non-attorney advocates for licensing and have their own rules and procedures related to licensing non-attorney advocates. The non-attorney advocates are generally required to be enrolled members of the tribe where they seek admission.

Another difference between state court and tribal court is the filing fees. Filing fees in state court are significantly higher than the filing fees in the tribal courts. Both state court and tribal court have a process to allow a party to file an application for a fee waiver, otherwise known as an Application to Proceed In Forma Pauperis. If granted, the court allows a party to file their petition or motion without paying filing fees and it allows for assistance with service of process



on the other party when personal service is required.

In state courts, judges are either appointed by the governor or elected to fill a seat. Even if appointed by the governor, a judge needs to run for reelection to remain on the bench. Judges' terms last for six (6) years once re-elected. Judges in state court must retire when they reach the age of 70. Mandatory retirement applies to district court and appellate court judges, including the Minnesota Supreme Court justices. A person who wants to be a judge must be at least 21 years old; eligible to vote in the state; and must have maintained residence in their district for at least 30 days before the general election. Other than losing an election or reaching mandatory retirement, it is difficult for a judge to be removed from their position. The Minnesota Constitution addresses removal (Article 6, § 9) and impeachment (Article 9, § 2). Minnesota Statutes Chapter 490A establishes statutes related to the Board on Judicial Standards, which allows the Minnesota Supreme Court to retire, censure or remove a judge. Minn. Stat. § 490A.02, subd. 3.

In Leech Lake Tribal Court, Judicial Code Title 1, Part III describes the qualifications, appointment, and removal of judges. The Code indicates that judges are selected by resolution of Tribal Council or by order of the Chief Judge. There is no mandatory retirement age, but the person appointed must be at least 25 years old and licensed to practice in the highest court of any state. A prospective judge cannot be a member of Tribal Council, the Court Administrator, or the Assistant Clerks, and have no felony conviction or gross misdemeanor conviction within a year of the appointment. Judges can be terminated for cause by Council, or if their appointment has either concluded or the term of their contract expires. Judges in Leech Lake Tribal Court, once appointed, serve a three (3) year term. Council decides whether to renew a judge's contract.

In White Earth Tribal Court, Judicial Code Title 1, Chapter III describes the selection process of a judge, their qualifications, and removal from office. The Code indicates that a majority vote of Tribal Council determines the selection of judges. There is no mandatory retirement age, but the person appointed must be at least 25 years

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Celebrate Native American Heritage Month with SOAR

By: Rita Ostman
Certified Disability Advocate

SOAR ENHANCES INCOME STABILITY IN AMERICAN INDIAN AND ALASKA NATIVE COMMUNITIES.

What is SOAR? SOAR stands for Outreach, Access, and Recovery. Anishinabe Legal Services has used this Model for applying for Supplemental Security Income (SSI) and Social Security Disability Income (SSDI), with the Social Security Administration since 2015. This process of the SOAR model has critical steps that can or may increase the approval rates on SSI/SSDI application process.

Anishinabe Legal Services has two certified SOAR representatives that work with homeless or/at risk of homelessness individuals within our communities. We work in collaboration with other agencies in the communities to ensure that our clients have the best opportunity for maintaining financial independence, basic living conditions, and sobriety, for long term.

Homelessness in Native Communities and Social Security:

The facts:

- **1 in 1,000 people in the United States are Native American**
- **1 in 200 individuals experience homelessness (however, in terms of overall population, Native individuals represent only 1 in 1,000 individuals)**
- **1 in 3 Native individuals live in Poverty**

Homelessness is a hidden, but critical, problem in the United States. As a Representative in our community. I see the economic struggles the Native Community has with providing just the basic living needs. This puts their mental health and physical health at a greater risk.

People with disabilities who are experiencing or at risk of homelessness (including those returning to the community from institutions such as hospitals, jails, or prisons), often struggle to access the resources they need. Approximately one-quarter of people experiencing homelessness have physical, mental, or intellectual disability . Other obstacles for our community along with the above mentioned are the rural areas to which they live. The Native communities do not have easy access to technology, transportation, or easy availability to the critical information needed when applying for these services.

Critical first steps: People experiencing or at risk of homelessness, who are eligible for SSI/SSDI may also be eligible for other mainstream benefit programs such as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), housing assistance programs, and Medicaid. Our trained SOAR representatives can collaborate with these programs to help ensure the success of our clients for the steps in resiliency, stability, and recovery.

Community Collaboration is key to success. It is important when doing a SOAR application that we tell the person's (personal) story. A big part of this process is meeting with our client, usually that will take place in their community. Our staff will take approximately, 20 hours to complete the initial application, for Social Security Disability. This can be difficult since their living conditions are not stable, no phone access or transportation for the clients. Once the client have been found disabled, and receives SSI/RSDI, we then work to assist with providing resources for stable housing, food, clothing, payee services, and treatment centers.

It is by understanding the diversity, the language barriers, the hardships from day to day living, and the trauma from the past that will help us as advocates, to serve the Native Communities, with services that fit their needs.

RESOURCES

- SOAR for American Indians and Alaska Native Communities
- SSI/SSDI Eligibility for American Indians and Alaska Natives
- Getting Involved with SOAR in Tribal Communities
- Implementing State and Local SOAR Initiatives in American Indian and Alaska Native Communities
- Identifying American Indian and Alaska Native SOAR Applicants
- Medical Summary Report (MSR) Interview Guide and Template and American Indian and Alaska Native Communities • Sample SOAR Referral Tool for American Indian and Alaska Native Communities



Missing and Murdered Indigenous Relatives

By: Heather Labat
Staff Attorney

In October 2021, the Bemidji Police Department posted about six different missing teens on its Facebook page.[1] Their ages range from 14 to 17 years old. The Bemidji Police Department did not identify the race or gender of the missing teens; however, the Facebook posts include their names and a picture, if available. The Facebook posts indicate the teens either left the area voluntarily or reported as runaways. As of early December 2021, the Facebook posts do not indicate whether the teens were located.

The National Center for Missing & Exploited Children[2] (NCMEC) would define these youth as "endangered runaways." An endangered runaway is a child under 18 years old who is missing on their own accord and whose whereabouts are unknown to their parents or legal guardians.[3]



NCMEC identified risk factors for children who run away or voluntarily leave home or a placement.[4] There is no "typical" runaway; however, these factors may place youth at an increased risk of running away or becoming homeless.[5] The risks include:

- Physical or sexual abuse
- Family conflict
- Lack of acceptance of gender identity or sexual orientation
- Struggling to manage mental health
- Substance abuse
- Medical issue/development or physical disability
- Pregnancy
- Online enticement
- To be with a friend, romantic partner, or biological family
- Gang activity
- Child sex trafficking
- Social rejection or bullying.[6]

Of the nearly 30,000 reports received by NCMEC of missing children in 2020, 91% were endangered runaways[7] and 77% of those reports involved teens age 15 to 17.[8]

Is there a way to raise awareness about the issue of missing teens in the community? How does the community ensure these missing teens stay safe and protected to prevent them from leaving or running away? One possible way to raise awareness on this issue and ensure the youth in the community are safe and protected is through the establishment of the Office of Missing and Murdered Indigenous Relatives (MMIR). Effective August 1, 2021, the state's commissioner of public safety received direction to establish and maintain the MMIR Office.[9] The Office is "dedicated to preventing and ending the targeting of Indigenous women, children, and two-spirited people with the Minnesota Office of Justice Programs."[10]

In December 2020, the Missing and Murdered Indigenous Women (MMIW) Task Force prepared a legislative report and recommended the creation of the MMIR Office.[11] The MMIW Report notes that American Indian women and girls make up 1% of the state's population, however this group accounts for 9% of all murdered women and girls in the state from 2010 through 2019.[12] Additionally, from 2012 to 2020, between 27 to 54 American Indian women and girls are missing in Minnesota any given month.[13]

The MMIW Report notes the root causes of missing and murdered Indigenous relatives include colonization and historical trauma, racism, and sexual objectification of Indigenous women and girls.[14] These root causes have led to systemic risk factors for experiencing violence and abuse, including poverty and lack of housing, involvement in the child welfare system and criminal justice system, being a domestic violence victim, and being involved in prostitution and trafficking.[15] "[T]he system does not offer adequate culturally responsive healing resources for Indigenous victims/survivors, families and communities."[16]

As noted above, systemic risk factors for experiencing violence and abuse, which result in missing and murdered Indigenous relatives, include involvement in the child welfare system. What is not clear from the Bemidji Police Department Facebook posts about the missing teens is whether any, all, or some of those youth were involved in the child welfare system. In Minnesota, American Indian children were 16.8 times more likely than white children to be placed in out-of-home care in 2019.[17] Compared to other racial and ethnic groups, American Indian children have one of the highest rates of children who are placed out of their homes for two years or longer.[18]

In Beltrami County, 948 children and young adults were placed out of their homes.[19] Of those 948 children and young adults, 836 are American Indian, in other words about 88% of the out-of-home placements involve American Indian children or young adults.[20] American Indian children comprised about 33% of out-of-home placements in Cass County.[21] Overall, in Minnesota, American Indian children comprised about 20% of all out-of-home placements in 2019.[22] These numbers do not reflect children who are two or more races, including those who are American Indian and another race.[23]

The goal of the MMIR Office is to collaborate with state agencies to build accountability in collecting data related to MMIR issues; enhance intergovernmental communication and collaboration; and facilitate resources and services to reduce and prevent violence in Indigenous communities.[24]The MMIR Office will also raise awareness and address the systemic causes leading to MMIW injustices.[25]

There is no evidence or reason to believe the missing teens reported on the Bemidji Police Department's Facebook page in October 2021 are still missing or endangered. The harsh and sad

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Missing and Murdered

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reality is that there are many missing teens in the community on any given day. Raising awareness of missing children and teens in the community and the risk factors behind endangered runaways helps create an informed community. If you want to learn more about MMIW issues, please consider reading the legislative report.

1. https://www.facebook.com/profile.php?id=100064334485552

2. The National Center for Missing & Exploited Children is a private, non-profit 501(c)(3) corporation whose mission is to help find missing children, reduce child sexual exploitation, and prevent child victimization. https://www.missingkids.org/home.

3. https://www.missingkids.org/theissues/runaways.

4. Id.

5. Id.

6. Id.

7. Id.

8. Id.

9. Minn. Stat. 299A.85, subd. 2.

10 Id. At the time of writing this article, there is no information available about how the public can contact the MMIR Office. Minnesota Statutes section 299A.85, subd.3 provides information related to appointing a director and staff for the Office. The MMIR Office is a separate division within the Department of Public Safety.

11. Missing and Murdered Indigenous Women Task Force: A Report to the Minnesota Legislature, Nicole MartinRogers and Virginia Pendleton. Wilder Research, December 2020. Report found online at https://www.wilder.org/sites/default/files/imports/MMIW_TaskForceReport_12-20.pdf.

12. Id. p. 6 (November 9, 2020 letter to Governor Walz from Commissioner of Public Safety).

13. Id. p. 10 (Executive Summary).

14. Id.

15. Id.

16 Id.

17. Legislative Report: Minnesota's Out-of-home Care and Permanency Report, 2019 (October 2020) p. 5. Report found online at https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5408LA-ENG.

18. Id. p. 28-29 (Figure 17)

19. Id. p. 41 (Table 6)..

20. Id. p. 47 (Table 8).

21. Id. p. 47 (Table 8).

22. Id. p. 49 (Table 8).

23. Id. p.13, 49 (Table 8).

24. The effort to end violence against Indigenous women and girls – one year later. Mary Kunesh, Nicole MartinRogers, and Nicole Matthews. Star Tribune Opinion Exchange, November 15, 2021.

25. Id.

National policy updates on Tribal Sovereignty in Food and Public Lands

By: Andrea Szabo
Staff Attorney

Self-determination is no novel concept for Indian Country. All tribes are familiar with the principle underlying the government to government relationship with the federal government and the federal government's trust responsibility born from entering into treaties with tribes. Self-determination is the right to tribal self-governance and self-development.[1] Recently the United States Department of Agriculture (USDA) has taken some positive steps towards furthering self-determination in accordance with the agency's trust responsibility towards tribes.

Historically, the USDA had a poor track record with minority groups and indigenous peoples for implementing USDA programs.[2] These old ways are shifting, the USDA announced some new initiatives for Indian Country on November 15, 2021.[3] One initiative deals with self-determination[4] of tribes to work collectively with the Forest Service (FS), an agency under the USDA, for co-management of public lands near reservations. There are a few other initiatives but another notable one relates to the Food and Nutrition Service under the USDA and other collaborators under USDA's Indigenous Food Sovereignty Initiative[5]. As the North American Traditional Indigenous Food Systems puts it, "Reclamation of ancestral education is a critical part of reversing the damage of colonialism and forced assimilation, and food is at the heart of this reclamation." Indeed, diet is critical for native peoples, unfortunately Native Americans have the highest rates of Type 2 diabetes in the United States.[6] It is an epidemic. As the old adage goes, "you are what you eat," food security for native communities and restoring native foodways will improve native communities' health and well-being. Restoring native foodways may help to improve nutritional content in processing some foods, reinvigorate culture and language by harvesting traditional foods, and support local economies. The Food Sovereignty Initiative by the USDA is a step in the right direction towards these goals.

For some context, recall the 2018 Farm Bill where Congress authorized some important self-determination initiatives for how the USDA relates to Indian Country.[7] Farm Bills deal with a wide variety of topics the USDA is tasked with overseeing such as national forests and grasslands, food nutrition programs, rural development, farming, ranching, funding for tribal colleges and universities, and more.[8] The 2018 Farm Bill provided authorization for the furtherance of self-determination in the FS and USDA. The FS's Forest Protection Act was amended to allow for more co-management opportunities with lands managed by FS near tribal lands among other changes advocated for by the Intertribal Agriculture Council, National Congress of American Indians, and the Indigenous Food and Agriculture Initiative out of University of Arkansas.[9]

The 2018 Farm Bill also provided for self-determination through the USDA's Food and Nutrition Service which offers programs like SNAP (Supplemental Nutrition Assistance Program) and FDPIR. Specifically, the 2018 Farm Bill provided for changes in the Food Distribution Program on Indian Reservations (FDPIR). This Program provides for tribal agencies to carry out the programs by providing meals[10] each month to individuals that meet the eligibility requirements set by the tribal entity. Applying self-determination principles, FNS started entering contracts with federally recognized tribes so the tribes may select and purchase some of their foods, rather than have the FNS determine all the foods from a central office.[11] This allows for greater opportunities for tribes to select foods appropriate for their communities – be it in choosing more traditional foods or supporting locally grown or raised foods. But the November 15, 2021 Announcement by the USDA takes things a little further with the Indigenous Food Sovereignty Initiative.

As part of the Indigenous Food Sovereignty Initiative, the USDA announced that it will endeavor to create a national seed bank and work with collaborators from Indian Country to carry out this seminal project with the Native American Food Sovereignty Alliance and its Indigenous Seed Keepers Network to collect, preserve and grow heirloom varieties of foods. Other collaborators for the USDA's Indigenous Food Sovereignty Initiative include the North American Traditional Indigenous Food Systems[1] (which runs the Indigenous Food Lab in Minneapolis, MN and has a host of traditional cooking videos by Chef Sherman and others), the Intertribal Agriculture Council, and Intertribal

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ANISHINABE LEGAL SERVICES

Updates on Tribal Sovereignty

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Bison Council among others to carry out the Indigenous Food Sovereignty Initiative.[2] All collaborators will work with the USDA to empower Indigenous agricultural economies, and Indigenous foodways.

Furthermore, on November 15, the Secretary announced that USDA will dig deeper into applying self-determination when interacting with federally recognized tribes than before. It will review all statutory authorities that apply to USDA programs with an eye for finding ways to empower tribal nations and identify areas for change in these programs.[3] So, stay tuned for the results of this comprehensive agency review and its potential impacts in Indian Country.

Also, on November 15, the Department of Interior[4] and USDA issued a joint order, Order Number 3403, detailing principles of implementation for both agencies to apply when fulfilling their trust responsibility for working with federally recognized tribes. They pledged to the greatest extent practicable under the law that both agencies will work towards co-stewardship of public lands and waters that affect tribal communities. Both agencies are to consider Indigenous Knowledge[5] concerning management of resources (especially those resources reserved by treaty rights for tribal use), and in cases of disputes about collaborative agreements either department enters into with tribes, the departments will seek dispute resolution solutions before turning to litigation if possible, among other principles.6 While Indigenous Knowledge about resources and food is not news for tribes, that the Federal Government's Department of Interior and Department of Agriculture will incorporate that knowledge into public land management is a step in the right direction.

It's too early to tell yet how this joint order and the USDA's new initiatives will play out in local communities but in a world of news dominated by a global pandemic, racism, and the historic crimes on native communities, it is comforting to know the Capitol is making effort to take practical steps in a positive direction for tribal sovereignty.

1. American Indian Law in a Nutshell, William Canby Jr. 6th Edt. Pages 30-34
2. See Pigford v Glickman, 185 F.R.D. 82 (1999) for discrimination claims in a class action law suit by black farmers against the USDA and Keepseagle v Vilsack, (2010) for a class action law suit for discrimination claims by Native famers against the USDA.
3. USDA protecting, empowering Indigenous foodways. Nov. 16, 2021. Carina Dominquez. https://indiancountrytoday.com/news/usda-protecting-empowering-indigenous-foodways
4. In Historic Announcement by Agriculture Secretary Vilsack, USDA Commits to Expanding Tribal Self-Determination. https://www.usda.gov/sites/default/files/documents/otr-self-determination-stakeholder-notification.pdf
5. USDA Launches Indigenous Food Sovereignty Initiative, Nov. 15, 2021. https://www.usda.gov/sites/default/files/documents/usda-food-sov-initiative-stakeholder-notification.pdf
6. Indian Health Service Special Diabetes Program for Indians. https://www.ihs.gov/newsroom/factsheets/diabetes/
7. Regaining Our Future- An Assessment of Risks and Opportunities for Native Communities in the 2018 Farm Bill. Janie Simms Hipp and Colby D. Duren of the Indigenous Food and Agriculture Initiative. https://secure-servercdn.net/104.238.69.81/jm4.e6c.myftpupload.com/wp-content/uploads/2019/12/Farm-Bill-Report_WEB.pdf
8. Regaining Our Future- An Assessment of Risks and Opportunities for Native Communities in the 2018 Farm Bill. Janie Simms Hipp and Colby D. Duren of the Indigenous Food and Agriculture Initiative; at pages 12-14. https://secureservercdn.net/104.238.69.81/jm4.e6c.myftpupload.com/wp-content/uploads/2019/12/Farm-Bill-Report_WEB.pdf
9. Id.
10. USDA Food and Nutrition Service, Programs, Food Distribution Program on Indian Reservations. https://www.fns.usda.gov/fdpir/applicant-recipient
11. In Historic Announcement by Agriculture Secretary Vilsack, USDA Commits to Expanding Tribal Self-Determination. https://www.usda.gov/sites/default/files/documents/joint-so-3403-stewardship-tribal-nations.pdf
12. North American Traditional Indigenous Food Systems. https://www.natifs.org
13. USDA Indigenous Food Sovereignty Initiative at https://www.usda.gov/tribalrelations/usda-programs-and-services/usda-indigenous-food-sovereignty-initiative
14. In Historic Announcement by Agriculture Secretary Vilsack, USDA Commits to Expanding Tribal Self-Determination. https://www.usda.gov/sites/default/files/documents/otr-self-determination-stakeholder-notification.pdf
15. Department of Interior manages many public lands, national parks, and the federal government's trust responsibility to tribes as well as overseeing the Bureau of Land Management among other divisions. The USDA is responsible for overseeing the Forest Service's national forests, national grasslands and many other divisions responsible for rural economic development, as well as carrying out federal laws related to agriculture and food.
16. Indigenous Knowledge also called Traditional Knowledge is defined by UNESCO (United Nations Educational, Scientific and Cultural Organization) as the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. See https://en.unesco.org/links
17. In Historic Announcement by Agriculture Secretary Vilsack, USDA Commits to Expanding Tribal Self-Determination. https://www.usda.gov/sites/default/files/documents/joint-so-3403-stewardship-tribal-nations.pdf



Reporting Elder and Vulnerable Adult Abuse and Exploitation

By: David Eischens
Certified Disability Advocate

Many of us know an elder who is very generous with their money, time or home, especially when it comes to family members needing a place to sleep or a couple of dollars to get a pack of smokes or whatever it may be. Many elders are generous, and that often leads to someone (or people) taking advantage of that elder.

A Channel 5-Eyewitness News report from February 2020 digs into what many of us all suspect: Elders are taken advantage of by a family member more often than by strangers. An analysis of convictions between 2013 and 2018 provide the in-depth look at how senior citizens are exploited in Minnesota.

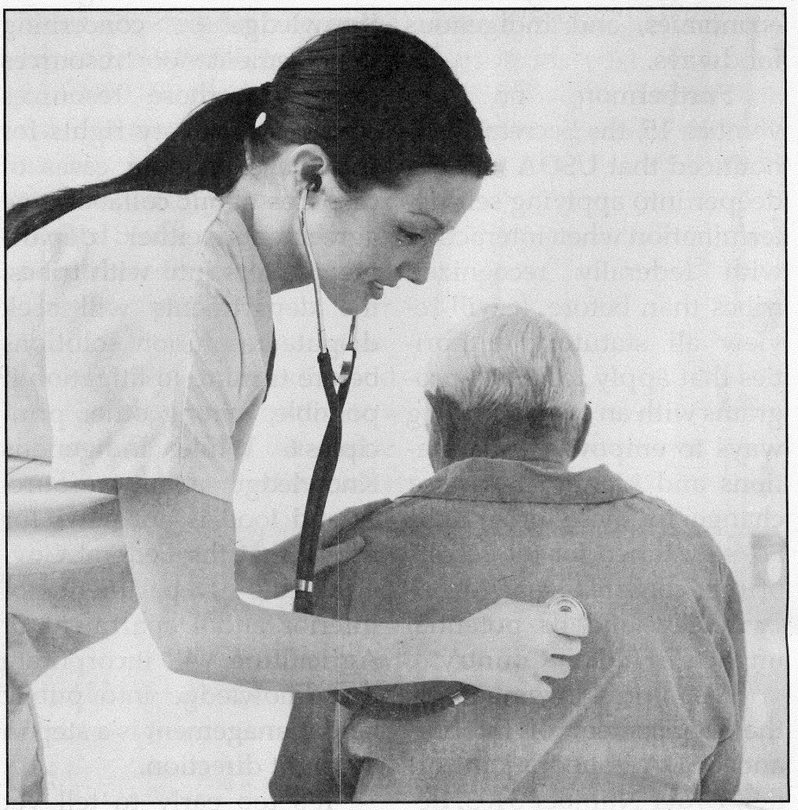
Advocates and legal experts who investigate elder abuse and crime say the true scope of the problem had previously been limited to national statistics, citing a lack of funding for that particular field of research.

Data gathered by the U.S Department of Justice states that **roughly 50% of all elder exploitation cases in the U.S, involve a family member. In Minnesota, that number is much higher, at a staggering 69%!**

The abusers include sons, daughters, grandchildren, nieces, nephews, as well as in-laws and other distant relatives. Former Minnesota attorney general Lori Swanson who has worked on elder abuse and exploitation cases says, "these numbers accurately portray what is going on nationwide". According to Swanson, "it's not that we have more of this crime, perhaps in other states, reporting is lagging behind and prosecutions are lagging behind. You can only discover it if reports are filed". Swanson also goes on to credit "Minnesota's anonymous tip line for encouraging more reporting", however abuse advocates still believe that financial exploitation of vulnerable adults and elders is one of the most underreported crimes in the state.

A lot of elder or vulnerable adult abuse goes unnoticed because those victims are afraid to speak out, possibly they're in fear for their lives, or don't want to see anyone get in trouble, so they stay silent and continue to accept the abuse and exploitation of their finances.

There are many warning signs that someone is taking advantage of elders or vulnerable adults. Most often is isolation from other family members, not allowing the elder or vulnerable adult to contact anyone. It could be someone who is always broke and suddenly has access to funds



they didn't have previously. Continuously asking for money, promising to pay them back but never do. Included in the abuse and exploitation is those who take Grandma's medication when she is not looking. Yes, that is abuse, it is also theft, and a crime that needs to be reported.

Do not let your loved one be neglected, by anyone, that includes their own children, grandchildren or other. Seek immediate legal help if you know someone is being abused or exploited for their money or other personal belongings.

It is our responsibility to ensure elders and vulnerable adults are protected at every opportunity. It is our responsibility to act on these crimes and report them. There are several ways to make a report: a call the police when you know the crime is happening, making a report to the local social services agency or vulnerable adult protection team, or you can use the state of Minnesota abuse, neglect and exploitation hotline to **make an anonymous report at 1-844-880-1574.**

For more information on this topic see 5-Eyewitness News.com. More information and definitions of abuses can be found at mn.gov/dhs/people-we-serve/seniors/services/adult-protection. Anishinabe Legal Services is available to help elders and vulnerable adults get legal protections from abuse and neglect, so please reach out to our office and ask how we can help you with your situation.

ANISHINABE LEGAL SERVICES

What is a Legal Kiosk?

Legal kiosks are computers located across the state of Minnesota that provide access to legal aid services to individuals without access to wifi or technology. These Legal Kiosks are stationed in a variety of community locations offering the public the ability to apply for civil legal aid services, access legal resources, and, in some cases, attend online meetings and remote court hearings in privacy.

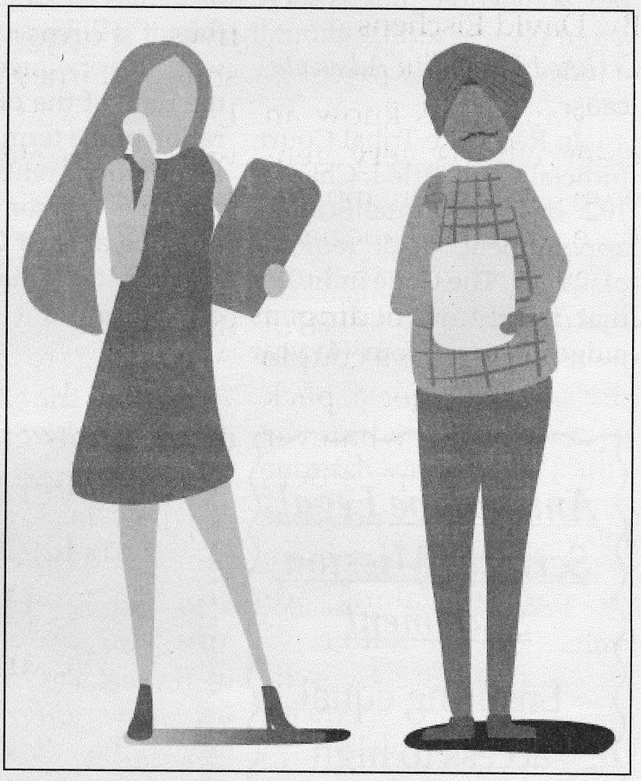
Who can use them?

Anyone can use this kiosk! You can use it to find out if you have any legal needs, access information and services, or contact a legal aid provider. We can help you fill out forms, apply for services, or point you in the right direction.

Why are they needed?

The COVID-19 pandemic and public health emergency have moved the legal system virtual, creating a digital divide that has disproportionately impacted the communities served by Minnesota Legal Aid. Access to the legal system and a chance at justice is only available to those with the means and resources to use technology. To address this digital divide, the Minnesota Legal Services Coalition requested CARES Act funds to give communities access to civil justice by creating a statewide network of legal kiosks to be stationed in a variety of court, agency, non-profit, and other community locations.

Information obtained from: www.legalkiosk.org. ALS is a member of the Minnesota Legal Services Coalition. A free legal kiosk is located in the Main Office at 411 1st Street NW, Cass Lake: we encourage you to call ahead to reserve your time and allow staff to socially distance! 218-335-2223



Meet ALS Casehandlers:



Rita Ostman and David Eischens, certified disability benefits representatives: providing disability benefits services to individuals and homelessness outreach.

Heather Labat, staff attorney: assisting individuals with harassment restraining orders, orders for protection, housing law, and Red Lake Court matters.

Andrea Szabo, staff attorney: providing child protection defense in Leech Lake Tribal Court and works with elder outreach.

Faith Bickner, staff attorney: assisting elders with their estate planning documents and other civil legal needs.

Joel Vorhes, staff attorney: providing child protection and civil commitment defense in White Earth Tribal Court, also assists in housing matters and other family law cases.

Valerie Field, Litigation Director: oversees the supervision of legal staff, and handles casework on behalf of victims of domestic abuse, stalking or sexual assault, also assists with a wide variety of advice only cases.

Cody Nelson, Executive Director: handles a caseload from the Leech Lake Tribal Wellness Court collaboration with Cass Co, he also oversees all program operations.



Meet the Support Staff:

Joni Tapio and Mary Goggleye, receptionists: handling initial intake inquiries, incoming client calls, and assistance to legal staff members.

Jaime Sipe, Financial Administrator: working behind the scenes to ensure grants and funding are spent and allocated accordingly.

Chari LaDuke Clark, Administrative Director: overseeing intake and office matters, Chari is also in charge of grant administration and human resources.

State and Tribal Courts

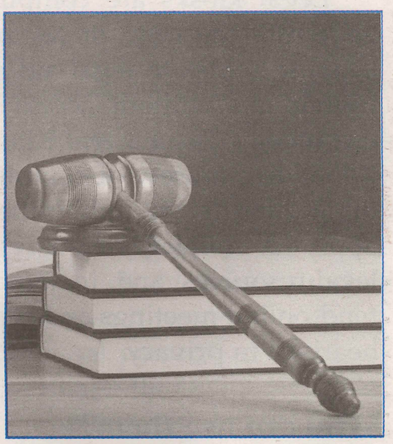
Continued from page 5

old and cannot be a member of Council, the Clerk of Court, or an Assistant Clerk. Additionally, the person appointed must not have a felony conviction. Judges serve a four (4) year term, although a judge may be removed for cause.

In Red Lake Tribal Court, Judicial Code Title I, Chapter 102 describes qualification, appointment, and removal of judges. The Code indicates that Tribal Council appoints judges to serve four (4) year terms. Judges may be reappointed or removed without cause at any time following the expiration of their term. If a judge is not reappointed or removed after one year, then it will be as if the judge was reappointed, effective the date of the original expiration of the term. There is no mandatory retirement age, but the person appointed must be at least 25 years old and must not have a felony conviction.

Conclusion

Deciding where to file a court action is something you may need to consider when you are dealing with a legal issue. Asking friends or family about their experiences in court may help you decide which court suits your needs, especially if both state and tribal court would have jurisdiction over the matter. Determining whether you must file in a certain court can save you time and hassle and it should help you to better understand the rules and customs of the court before you bring your case.



Anishinabe Legal Services Mission Statement

Ensuring equal access to high quality legal assistance for historically under-served people living on or near the Leech Lake, Red Lake, and White Earth Tribal Lands and to protect legal rights and Tribal Sovereignty.

On average, 2/3 of eligible individuals are turned away from legal services statewide due to resource limitations:

Have you considered a donation to ALS?

We are a private non-profit organization and your donation is tax deductible.

Please visit our website for secure online donation or make your check payable to: Anishinabe Legal Services, PO Box 157, Cass Lake, MN 56633.

Your support is greatly appreciated and will be used in accordance with the LSC Act.

Please find enclosed a check for donation in the amount of:

❑ $500 ❑ $250 ❑ $100 ❑ $50 ❑ $ _____

❑ I will need a contribution letter returned for tax purposes, my address is:

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LEGAL SERVICES CORPORATION

Helping Low-Income Minnesotans Solve Legal Problems

LawHelpMN.org

The new website is designed to make finding legal information even easier. Learn about your legal rights and responsibilities; fill out court forms; find free and low-cost legal help; and more!

Do You Want To Be On The ALS Mailing List?

YES! Please Add Me / My Family:

Name: _____

Address: _____

City: _____ State: ____ Zip: _____

Return to: P.O. Box 157, Cass Lake, MN or call Mary at 1-800-422-1335