ANISHINABE LEGAL SERVICES

Anishinabe Legal Services Newsletter

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

Cass Lake, Minnesota • June 2014

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

Office Updates:

ALS recently added an attorney on staff, hiring Sarah Stahelin in January 2014 to assume a majority of the program's attorney caseload on the Leech Lake reservation. Sarah is a graduate of the University of Colorado School of Law and previously worked as a Tribal Prosecutor for the Red Lake Band. We are pleased to welcome Ms. Stahelin to our team! ALS currently has 9 staff members: 2 support staff positions, 4 attorneys (two of which also serve as program Co-Directors along with providing direct client services), and 3 paralegals.

Staff attorney Daniel Morris has been named Tribal Coordinator for a collaborative statewide project serving victims of crime in Minnesota with their corresponding civil legal needs. ALS is overseeing the project's Tribal Component as a subgrantee of the Minnesota Council on Crime and Justice, and the United States Department of Justice, Office for Victims of Crime. ALS is excited to commence work later this year under this new collaborative project helping Native American crime victims on reservations throughout Minnesota.

ALS will be working with a law school student legal clerk provided by the Minnesota Justice Foundation over the summer of 2014. We will also be participating in community education booths at various events. We are hopeful that throughout the summer we can provide broadened services for the reservation communities.

ALS extends sincere gratitude to the Fredrikson & Byron Foundation, and the WCA Foundation for their generous contributions to our program in 2014!

Case Priorities

As you may know, the amount of requests for assistance with legal matters far exceeds ALS resources. In order to ensure that the program is providing services to the most at-risk individuals in our communities, case priorities are established and reviewed yearly by ALS' Board of Directors. In 2014, ALS priorities include the following:

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Legal Services Office Updates

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- Children In Need of Protection or Services (CHIPS) cases
- Traffic cases
- Juvenile and commitment cases when referred by White Earth Tribal Court only
- Divorce cases, if there is an OFP in place, and/or cases with physical Domestic Violence involved.
- Order For Protection (OFP) hearings, when the opposing party has an attorney or when working with an advocacy program.
- Evictions from tribal or public housing,
- Garnishment of bank funds, if client is collection-proof.
- Wills, Durable Powers of Attorney, Health Care Directives – where there is a terminal illness or life-threatening medical procedure pending, client is a recipient of disability benefits, or age 60 or older.
- Civil Forfeiture claims for cars under $2000 value– case must arise from client's reservation of enrollment and client must have received forfeiture notice. Drug forfeitures if on their same reservation.
- Indian Law Issues regarding sovereignty and jurisdiction
- Social Security claims: assistance with initial applications, with the appeals process, and overpayments. Call office for details or other requirements.
- Juvenile cases in tribal court
- Forms assistance
- Cases/Services that ALS is contractually obligated for.

Medical Benefits Lien

"Protect your family home"

Homes owned in fee, meaning nonTrust property, by Tribal members who receive medical benefits thru the Minnesota Department of Human Services (DHS) may be eligible for a Hardship Waiver. A waiver would remove a lien recorded against the property or stop estate recovery thru probate.

A provision in the DHS Health Care Program Manual provides for an exemption of a home located within the present day boundary of a federally recognized reservation or within the Contract Health Service delivery areas. This is significant for a couple of reasons.

One is that the exemption is for health care benefits paid thru DHS under the following programs: MA, QMB, SLMB, QI, QWD and AC. The other is that the home can be transferred, free of any public assistance health care debt, to the heir(s).

The DHS health care manual states the following regarding exemption from a lien or estate recovery: "The federal agency has established standards for hardship that exempt certain assets and resources of American Indians from estate recovery…Protection of nontrust property described as on or near a "federally recognized" reservation is limited to real property that passes from an Indian to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a Tribe and non-Indians, such as spouses and stepchildren, that their culture would protect as family members; to a Tribe or Tribal organization and/or to one or more Indians".

It may be possible to prevent the filing of a lien or a probate claim by notifying the appropriate office. Therefore, it is advisable to provide the office responsible for determining eligibility for any of the health care programs mentioned above, with documentation in the form of a copy of proof of enrollment such as the person's tribal I.D or statement from an enrollment office.

NOTE: this article only discusses health care program exemptions that are specific to Tribal members. However, there may be other exceptions that apply to nontribal members that result in a Hardship Waiver. For further information on Tribal member and nontribal member hardship waivers based on receiving health care program benefits, contact a private attorney or Anishinabe Legal Services at 800-422-1335.



ANISHINABE LEGAL SERVICES

OVERVIEW OF GRANDPARENT CUSTODY AND VISITATION RIGHTS IN INDIAN COUNTRY

By Daniel Morris

A common legal issue in Indian Country arises when grandparents end up raising their grandchildren, or are denied visitation with their grandchildren, contrary to traditional and cultural beliefs. Fortunately, there are many venues for grandparents to access in establishing contact with their grandchildren.

Physical custody is a determination of where, and with whom, the children shall live. Visitation is a right to spend time with and have contact with minor children. It is important to understand that courts are very hesitant to take custody away from a biological parent involuntarily, including Tribal Courts. This hesitancy to override a parent's ability to make decisions in how to raise their children is often extended to visitation decisions. The easiest way to see grandchildren is to work it out and get along with the biological parents. If that doesn't work, a court may award you visitation with grandchildren under certain circumstances. It bears repeating that it is very unlikely that a court will award grandparents full custody of their grandchildren over the objections of a biological parent, but it is possible in limited circumstances.

One way to obtain the ability to make important decisions about the care and custody of the children is to have a Delegation of Parental Authority in place. This is a short, one page form available at most legal offices and courthouses, in which the parents delegate those rights to whomever they choose, including grandparents. It is only temporary, for up to one year, and can be revoked at any time. A Delegation of Parental Authority is NOT custody; only a judge can order a transfer of custody. A Delegation of Parental Authority is recognized by the state and tribal communities.

Minnesota state law is clearer on the issue of grandparents' rights in obtaining visitation with their grandchildren than tribal laws. After a divorce or separation of biological parents, grandparents typically see their grandchild during their own child's parenting time. Sometimes, the grandparents' own child is deceased or absent or has their own parenting time restricted or supervised. The grandparents' child might also be estranged from the grandparents and unwilling to allow visitation. The relevant statute is Minnesota Statute 257C.08 (2013).

Minnesota law provides for grandparents to seek their own court-ordered parenting time if their own child (and parent of the grandchild) is deceased, the grandchild has lived with the grandparents for 12 months or more and is subsequently removed from the home by the parents, or the grandchildren's parents are, or in the past have been, involved in dissolution, child custody, legal separation, annulment, or paternity proceedings (including a Recognition of Parentage) involving the grandchildren.

If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried minor child. Grandparents need to show the court that the grandparent visitation rights would be in the best interests of the grandchildren, and would not interfere with the grandchildren's relationship with their living parent. Therefore, if a grandparent does not get along with the living parent, it may result in a limitation or outright denial of visitation to the grandchild. The court will consider the amount of contact between the grandchild and the grandparents prior to the petition before the court. Typically, the longer and more positive the past and ongoing contact between the grandchildren and grandparents will result in the court more likely to award grandparent visitation. Be prepared to present evidence showing this relationship, such as the number and type of outings you have taken with the child, times you babysat the child, or even times you assisted with attending medical, dental, and school appointments.

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Grandparents Rights Continued from page 3

There might be letters or pictures that the grandchild has drawn and given you.

Minnesota statute allows grandparents to file a petition for visitation in all proceedings for divorce, custody, legal separation, annulment, or parentage, if it finds that visitation rights are in the best interest of the child and the visitation will not interfere with the parent-child relationship. It is important as grandparents to be aware of the court proceedings of the family and file any request for visitation in a timely manner. If a grandparent petitions for visitation and is denied, the court will not hear the issue again for six months.

Another way for grandparents to file for reasonable visitation is if the minor child has lived with the grandparents for a year or more. If that occurs, and the parent subsequently decides to remove the child from that grandparents' home, the grandparents may petition the district court for an order granting them reasonable visitation rights to the child. The court will again look to the best interests of the child and whether the visitation would interfere with the parent-child relationship.

In Minnesota, adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent or another grandparent. This includes any visitation previously granted to the grandparents prior to the adoption. However, if a child is adopted by a stepparent, similar rules apply; the court will determine whether the grandparent's request for visitation is in the best interests of a child and would not interfere with the parent and child relationship.

If the grandparents are the parents of the father of the grandchild, and he is not married to the mother of the grandchild, it may interfere with a grandparent's ability to file for visitation rights. Under Minnesota state law, and reflected in a majority of the tribal codes in Minnesota, an unmarried mother of a child has sole physical and legal custody of the child. It is important for fathers to establish paternity over their children by completing a Recognition of Parentage or by other recognized methods, and possibly following up with a custody action in an appropriate court.

If you choose to file in Tribal Court, Full Faith and Credit indicates that those orders for visitation will be recognized by other jurisdictions and states. In addition, if the grandchildren reside in another state or jurisdiction, you will most likely have to petition for visitation where they live. Additionally, if there are previous court orders for custody and visitation in other jurisdictions, you may have to file in that jurisdiction even if you or the grandchildren don't reside there. It is important to file in the correct jurisdiction if one wishes to have the resulting court order recognized.

A lot of tribal codes are silent on the issue of grandparents' rights to visitation and/or custody. However, it is an important historical and cultural issue to tribal members and the strength of the tribe itself. Most tribal courts have general provisions at the outset of the codes that recognize there will be limitations in how the codes are drafted, and give the tribal court judges deference in applying tribal customs and traditions in resolving disputes. Often, this is how grandparents reach standing to bring claims for visitation or custody in Indian Country. Some jurisdictions, Leech Lake and White Earth, for example, allow for the adoption of state or federal law if the tribal code is silent on the issue. Therefore, it is important to be aware of Minnesota state law and procedure as outlined above. Because tribal law is largely silent on the issue, it does not explicitly prohibit the ability of grandparents to file for visitation or custody in tribal courts.

Most tribal courts, including White Earth and Leech Lake, allow for Stand by Custodians. These are individuals authorized by the parents to take custody of the children after a triggering event – usually the death of the parents. This is another way for grandparents to ensure that they remain in contact with their grandchildren, but it is at the discretion of the parents and must be provided for prior to the triggering event, and often found in a will.

In conclusion, there are instances in which grandparents may petition the proper court to order visitation over the objections of the parents. While grandparents have these rights, they are often more limited in scope and results than most grandparents believe to be

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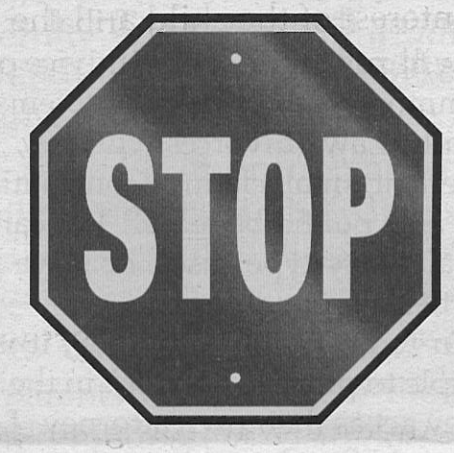
Grandparents Rights Continued from page 4

fair. That is why it will always be in the best interest of the grandchildren for all parties to put any differences aside and work out any issues of visitation and custody between them, without the court's involvement.

Disclaimer: Not Legal Advice. This article has been prepared for general information purposes only, and is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. For legal advice about the specifics of your situation, please consult competent licensed legal counsel.

TOP TEN TIPS
TO AVOID CONSUMERS SCAMS

From the Office of Attorney General Lori Swanson



1. Never disclose your credit card number, check routing information, or other banking information to telemarketers or other solicitors.

2. Do not believe claims that you need to pay in order to "collect your winnings" from a contest or to obtain a line of credit.

3. If you receive correspondence claiming that your financial institution, or account has been jeopardized, do not immediately disclose your account or other information. Contact the comany at a telephone number or address that is listed in the telephone book, or that you know to be an accurate contact for the company.

4. Be wary of solicitations asking you to wire money or send payment to a foreign country. It may be difficult for law enforcement officials to pursue lost funds outside of the jurisdiction of the United States.

5. Do not send payment or wire money to a third party in response to a cashier's check or persoal check "overpayment" in connection with your sale of a vehicle, product or service. Remember, just because the bank may make funds from a cashier's check available quickly does not mean the check is good. Financial institutions can take up to a week or longer to verify that a given cashier's check or personal check is legitimate.

6. Never respond to correspondence regarding a foreign lottery. These lotteries are illegal!

7. Do not open spam email, or "click" or on attachments, images, or links in e-mail messages, instant messages, or pop-up messages.

8. When shopping online, always use a secure website (preferably one that offers encryption) or a well-known payment service. Do not disclose your PIN numbers or other sensitive information in connection with a purchase unless you are absolutely positive that you are dealing with a reputable company.

9. Don't be rushed. People often make poor decisions when they are hurried. Most victims of scams later realize that if they had taken their time and thought it through, they would not have agreed to disclose their information or send money to a given scam operator.

10. If it sounds "too good to be true," it is.

Self-Represented? Forms and Advice Clinics Held Monthly

By Sarah Stahelin

In an attempt to broaden the range of services that Anishinabe Legal Services offers to our client-community, we have been offering monthly advice and forms days at both our Cass Lake and White Earth Offices. Our Advice and Forms days are designed to help qualifying individuals with many civil legal issues that they may have questions about. These "Forms and Advice" days are especially designed to help people who are representing themselves in Tribal or State Court and need help drafting forms for filing and advice on how to proceed. Some of the common types of legal problems we can assist with would be Family Law (divorces, custody, and child support), Landlord/Tenant, small claims (Conciliation) court issues, Consumer issues, and public benefits. We cannot help with criminal or personal injury-type cases, or if we have a conflict with one of the parties in your case.

In today's tight economy, it is becoming more common for people to proceed "pro se" in the court system, which means that they act as their own attorney. Legal Services organizations -- such as ALS -- do not have the funding and resources to keep up with the growing need that people have for free legal representation, and thus must limit the number and types of cases that they handle. While many private attorneys offer affordable options, ranging from pro bono representation to reduced fee rates, many people and families still too often find that the costs of obtaining legal counsel are not affordable within their budgets. Courts and legal profession are aware of this growing challenge, and with the advent of the internet, have developed more and more resources that help the average person access the information and forms that they need to access the legal system on their own behalf.

In the State Court system you may find "do it yourself" a.k.a. "pro se" resources on the Minnesota Judicial Website at "http://www.mncourts.gov", or at the Minnesota Legal Services website at "http://www.lawhelpMN.org". The Leech Lake Band of Ojibwe Tribal Court also has many of its most common forms available online as well as copies of the Tribal Code at "http://www.llojibwe.com". The Red Lake Nation Tribal Court and the White Earth Tribal Court also have their own pro se forms available at the Court, but they are not posted online at this time, although that is sure to change in the near future!

If you have a legal problem which ALS is unable to fully represent you on, and you cannot find legal counsel elsewhere, you can call our office to make an appointment for one of our upcoming Advice and Forms days. At the appointment, you will have an hour to talk to one of our Staff Attorneys about your legal issue, and they can advise you on your rights and the procedures under the law. We can help you fill out or draft pro se forms, provide you with legal information and resources to better help you represent yourself in court and answer any questions you may have.

However, in order to best make use of that hour with one of our attorneys, it is best if you come prepared. Being organized and prepared will also help you present a clear and concise case to the Court if and when you appear. Bring copies of all prior court documents with which you have been served, prior court orders and complete information of the full names, addresses and birth dates of all involved parties. If you already have forms from the Court that you need to fill out, bring those with you. Try to write down a timeline of the events that you want to describe for the Court and bring any supporting documentation that supports your case (financial information, leases, contracts, etc.). If you have any questions about what information you should bring to your appointment, feel free to call us and we can steer you in the right direction.

Keep an eye out for our flyers with the dates of upcoming forms and advice clinics! **However, if you have a legal problem that seems pressing, have been served with legal documents or a fast approaching court deadline, you should contact ALS or another attorney immediately to discuss your options.** Sometimes if your issue is pressing, the staff can find time to talk to you outside of our Forms and Advice Days. However, it is not best to wait until the week before a deadline to ask for help, as often times there is little time for anything to be done in your case at that point, and courts won't often grant continuances. Contacting an attorney sooner rather than later is the best way to handle your legal concerns and will leave you with more legal options, even if it is a problem that you would rather not think about.

While appearing in Court on your own behalf is often times stressful, with a little guidance and research, you can appear in Court prepared to present the best case you can. In the end it is your story to tell, your life that is directly impacted and you can feel confident that you can advocate on your own behalf. If you come to Court prepared, educated about the law and procedures that apply to your case, and are respectful of the Court processes, you can feel more confident that your case will be fully considered by the Court. ALS's Forms and Advice Days are one tool of many that can assist you in advocating for yourself.

FREE LEGAL CLINIC HELD on MARCH 21, 2014

ALS staff and volunteers from the Law School and Minnesota Justice Foundation got together for a walk-in legal clinic held at the ALS Main Office in Cass Lake. A number of community members participated in the free clinic, and received advice, information or forms completion.

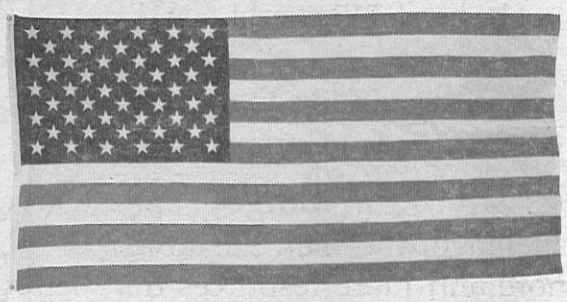
ALS hold a numbers of free clinics throughout the year. Please like us on facebook or subscribe to our newsletter to receive updates about future events!

A big thanks to our volunteers, staff, and funders. A special thank you to the Leech Lake Band of Ojibwe, Pepsi/NEI Bottling, and Teal's Market.



In back: (L to R) Mary S, Rita, Chris, Mary R, Law School Volunteers, MJF Attorney Megan, Daniel, Cody. In front: Sarah, Tina

Social Security Launches New Expedited Disability Process for Veterans: Fast-tracking Disability Decisions for Vets with 100% Permanent and Total Rating



On March 18, 2014, Carolyn W. Colvin, Acting Commissioner of Social Security, announced the launch of a new disability process to expedite disability claims filed by veterans with a Department of Veterans Affairs (VA) disability compensation rating of 100% Permanent & Total (P&T). Under the new process, Social Security will treat these veterans' applications as high priority and issue expedited decisions, similar to the way the agency currently handles disability claims from Wounded Warriors.

In order to receive the expedited service, veterans must tell Social Security they have a VA disability compensation rating of 100% P&T and show proof of their disability rating with their VA Notification Letter.

The VA rating only expedites Social Security disability claims processing and does not guarantee an approval for Social Security disability benefits. These veterans must still meet the strict eligibility requirements for a disability allowance.

This information was obtained from the Social Security website: http://www.ssa.gov/news.htm

Thank You!

TO OUR GRANTORS AND DONORS!

ALS receives support each year to continue providing valuable services to low income community members within our case priority guidelines. We wish to provide sincere gratitude to all our funders, including those that make monetary donations, approve grants to program, and especially the individuals that volunteer their time and services. Without you ALS would not be here! Miigwech!

If you would like to donate your time or funds to support our program, please visit our website for more information: www.alslegal.org. Or contact Chari LaDuke-Clark, Office Manager for more details.

Important Information for Same-Sex Couples

On June 26, 2013, the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. Therefore, Social Security no longer is prevented from recognizing same-sex marriages for purposes of determining entitlement to or eligibility for benefits. Social Security is now processing some retirement, surviving spouse and lump-sum death payment claims for same-sex couples and paying benefits where they are due. If you are in, or are a surviving spouse of a same-sex marriage or other legal same-sex relationship, you are encouraged to apply right away for benefits.

The Social Security Administration are also considering same-sex marriages when processing some claims for Supplemental Security Income (SSI). Marriage may affect your SSI eligibility or payment amount. Please call 1-800-772-1213 (TTY 1-800-325-0778) or contact your local Social Security office to tell us if you are married, separated, or divorced.

The Social Security Administration is continuing to work closely with the Department of Justice. In the coming weeks and months, we will develop and implement additional policy and processing instructions.

If you have questions about how a same-sex marriage may affect your claim, please call 1-800-772-1213 (TTY 1-800-325-0778) or contact your local Social Security office.

This information was obtained from the Social Security website, http://www.ssa.gov/people/same-sexcouples/

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 Jeannie at 1-800-422-1335

www.alslegal.org

Find us on

www.facebook.com/anishinabelegalservices

www.alslegal.blogspot.com

LSC

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!