Anishinabe Legal Services Newsletter

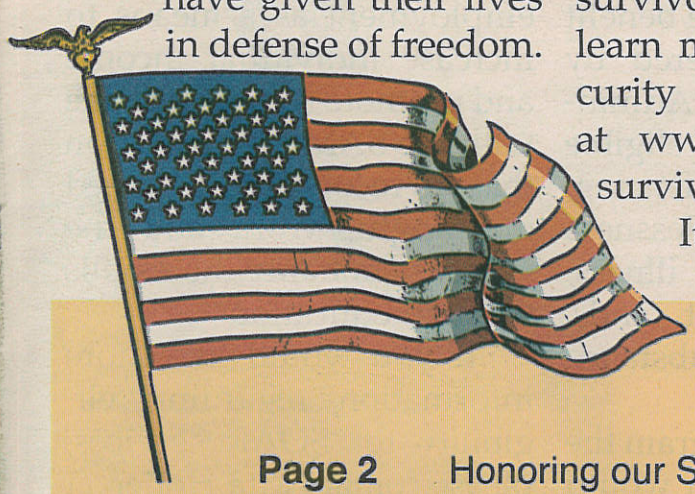
Serving the Leech Lake, Red Lake, & White Earth Reservations

Cass Lake, Minnesota • June 2016

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

Honoring our Service Members on Memorial Day

"Traditionally, on Memorial Day we honor those who have made the ultimate sacrifice for our nation. Social Security and Anishinabe Legal Services respects the heroism and courage of our military service members, and we remember those who have given their lives in defense of freedom.



The unexpected loss of a service member is a difficult experience for the family. Social Security helps by providing benefits to protect service members' dependents. Widows, widowers, and their dependent children may be eligible for Social Security survivors benefits. You can learn more about Social Security survivor's benefits at www.socialsecurity.gov/survivors.

It's also important

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From the Directors:

Boozhoo! Well, it has been a year for change at ALS. Recently Co-Executive Director, Cody Nelson, resigned to take a new position at the Children's Law Center in St. Paul. The board of directors then appointed Chris Allery, who had previously shared the Co-Director role with Cody, as the new Executive Director and promoted Chari LaDuke-Clark as Administrative Director. Both Chari and Chris have been employed by ALS in various roles for more than 9 years; Chari is an enrolled member of the Red Lake Nation and Chris is a descendant of the Turtle Mountain Band of Chippewa. In their new responsibilities at ALS, it is anticipated that the administrative structure will be very much the same as before Cody's resignation. All office inquiries should be addressed to Chari LaDuke-Clark, and any litigation inquiries directed to Chris Allery.

ALS would also like to

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Honoring Our Service

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to recognize those service members who are still with us, especially those who have been wounded. Just as they served us, we have the obligation to serve them. Social Security has benefits to protect veterans when an injury prevents them from returning to active duty.

Wounded military service members can also receive expedited processing of their disability claims. For example, Social Security will provide expedited processing of disability claims filed by veterans who have a U.S. Department of Veterans Affairs (VA) Compensation rating of 100 percent Permanent & Total (P&T). Depending on the situation, some family members of military personnel, including dependent children and, in some cases, spouses, may be eligible to receive benefits. You can get answers to commonly asked questions and find useful information about the application process at www.socialsecurity.gov/woundedwarriors.

Service members can also receive Social Security in addition to military retirement benefits. The good news is that your military retirement benefit does not reduce your Social Security retirement benefit. Learn more about Social Security retirement benefits at www.socialsecurity.gov/retirement. You may also want to visit the Military Service page of our Retirement Planner, available at www.socialsecurity.gov/retire2/veterans.htm."

If you need assistance or advice about applying for the above benefits, please contact our office at 218-335-2223. Provided you meet our eligibility guidelines, we will take a look at your case to determine if we can further assist you in this matter. You may also contact your local Social Security office for more information and/or to apply.

Service members are also eligible for Medicare at age 65. If you have health insurance from the VA or under the TRICARE or CHAMPVA programs, your health benefits may change, or end, when you become eligible for Medicare. Learn more about Medicare benefits at www.socialsecurity.gov/medicare."

In acknowledgment of those who died for our country, those who served, and those who serve today, we at Social Security and Anishinabe Legal Services, honor and Thank you.

This article is compliments of Tammy Fluto, Office Manager of the Bemidji Social Security office

SOAR Program assists homeless with SSI/SSDI access, applications

My name is Rita Holler a Paralegal, Non-Attorney Representative for Social Security Administration, and Red Lake Tribal Court Advocate working for Anishinabe Legal Services in Cass Lake. I am currently working with the homeless or about to be homeless in the Cass Lake, Red Lake and White Earth reservations. I was assigned to work with the SSI/SSDI Outreach, Access, and Recovery (SOAR) program to assist the homeless giving them the opportunity to be able to apply for Social Security Disability benefits. SOAR is a national program designed to increase access to the disability income benefit programs administered by the Social Security Administration (SSA) for eligible adults who are experiencing, or at risk of, homelessness and have a mental illness, medical impairment, and/or a co-occurring substance use disorder.

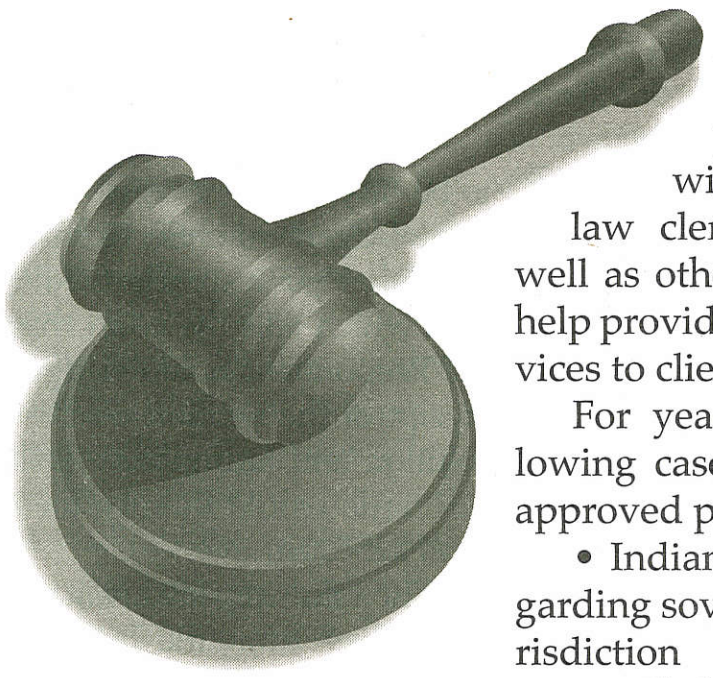
Without this program the homeless population would have limited resources to help them pay for housing, food, medical, and basic necessities to live.

The SOAR Technical Assistance Center is funded by the Substance Abuse and Mental Health Services Administration (SAMHSA). The goals of the SOAR program speak directly to one of SAMHSA's Strategic Initiatives - Recovery Supports. SOAR seeks to end homelessness through increased access to SSI/SSDI income supports, directly addressing SAMHSA's assertion; "To recover, people need a safe stable place to live." This is essential, and for many persons in recovery, accessing benefits is a first step. But SOAR extends beyond and also encourages employment as a means to increase individual income and promote recovery in line with the SAMHSA assertion that "to recover, people need meaningful work and the ability to enhance their skills through education."

If you would like more information regarding eligibility for SOAR services, please contact Rita Holler, at the Cass Lake office at 1-218-335-2223 or 1-800-422-1335

From the Director

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congratulate Jeannie Smith on her promotion to Office Manager. Jeannie will be managing client intakes and incoming vendor requests at the office.

Recently, ALS received a grant from the Otto Bremer Trust to staff the White Earth Satellite office. ALS selected Steve Campbell as the replacement attorney and he has started on May 16th. Steve brings to ALS 27 years of Indian Law Experience. ALS has a current staff of 9 employees, including four (4) attorneys, three (3) paralegals, an Office Manager and an Administrative Director. All other staff will be housed at the Cass Lake office for client services. The program is expecting to work with a summer law clerk this year as well as other volunteers to help provide additional services to clients.

For year 2016, the following cases are on ALS's approved priority list:

- Indian Law Issues regarding sovereignty and jurisdiction
- Children In Need of Protection or Services (CHIPS) cases when appointed by White Earth Tribal Court and the Leech Lake Tribal Court.
- Commitment cases when appointed by White Earth Tribal Court only
- Family Law cases for survivors of Domestic Violence including child support, child custody/visitation, divorce, orders for protection, etc.
- Evictions, collections, or other consumer law issues for survivors of Domestic Violence.
- Evictions from tribal or other public housing.
- Garnishment of bank funds and/or wages.
- Wills, Durable Powers of Attorney, and Health Care Directives for clients age 60 or older or disabled individuals.
- Civil Forfeiture claims for property or cars under $10,000 – case must arise from client's reservation of enrollment and client must have received forfeiture notice.
- Social Security claims: assistance with initial applications, the appeals process, and overpayments. Client should be actively treating with a medical provider, free from drug and alcohol use, and on public assistance.
- Juvenile delinquency cases in Leech Lake tribal court
- Forms assistance (Affidavits of Identity and Survivorship, Bill of Sale, Debt Collection forms, Affidavits for Collection of Personal Property, student loan discharge when on disability benefits, pro se divorce and custody forms, Conciliation Court forms, Civil Complaints within tribal court, Quit Claim deed, etc.)
- Cases funded with Tribal or non-LSC funds for the benefit of tribal members or their intended purposes.

If there are questions about any upcoming ALS events or services, please feel free to contact Chari at 218-335-2223 or cladukeclark@alslegal.org. Miigwech! (Thank you)

www.alslegal.org

Find us on

www.facebook.com/anishinabelegalservices

www.alslegal.blogspot.com

LSC

Helping Low-Income Minnesotans Solve Legal Problems

LawHelpMN.org

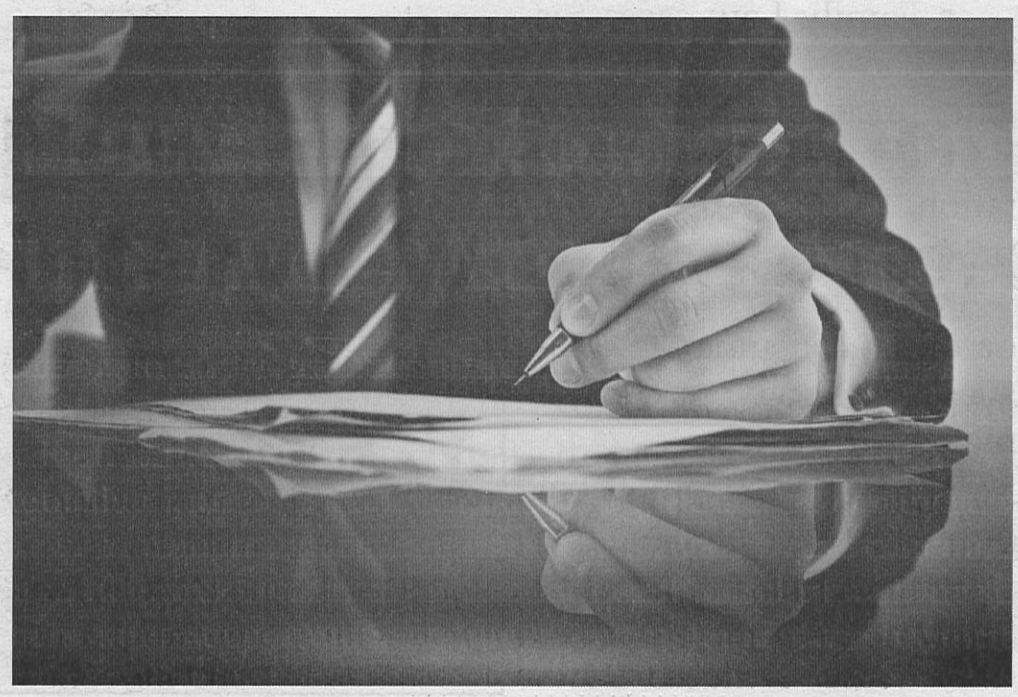
The new website is designed to make finding legal information even easier. Learn about your legal rights and responsibilities; fill out court forms; find free and low-cost legal help; and more!

Dissolution of Marriage in State Court: Default Process

When applying for a divorce in Minnesota State Court, there is a type of judgment that is termed "default." This article will provide guidance on obtaining a default hearing and what typically happens in the default hearing.

In Minnesota, the divorce process begins when a Petition for Dissolution and Summons are filed with the court. The Petitioner is the person who filed the divorce paperwork with the court. The Respondent is the person on whom that paperwork is served. A "default judgment" means if the Respondent does not appear in court after proper service was made and proved or does not provide an answer to the Petition and Summons, the court may hear the case and proceed without the Respondent. In Minnesota, a divorce defaults when one spouse refuses or neglects to become legally involved in the process. If he/she is served with a divorce petition and does nothing, the divorce will eventually default. This generally means that the court will give the spouse who filed for divorce everything he/she requested.

There are a few other forms that may be filed with the court that relate to confidential information such as Notice to County Support or Collections (if any public assistance from the State of Minnesota is being received); Financial Affidavit; and a Certificate of Representation so that the court knows where to send notices. However the only documents that need to be served upon your spouse are the Summons and Petition for Dissolution of Marriage. Thus the first step in the divorce process is to complete your Petition for Dissolution and Summons as well as the previously mentioned documents if applicable.



After completing this first step, the next step is to serve these documents upon your soon-to-be ex-spouse. For the purpose of this article, the two types of service that will apply are Personal Service and Admission/Acknowledgment of Service. There are two other methods of service that the Judge can order in Dissolution proceedings, which are Service by Mail or Service by Publication. Personal service of the summons requires delivering a copy to the individual personally by someone other than the Petitioner, who would then sign an Affidavit of Service to be filed with the court. Acknowledgement of Service is a form that your spouse would sign which tells the court that the Respondent acknowledges receipt of the Petition for Dissolution and Summons. This certificate would then be filed with the court.

The third step is to wait for an answer from the Respondent. The Respondent has 30 days from the time of proof of service of the Petition for Dissolution and Summons upon them has been filed with the court to answer the Petition. An answer is a legal document telling the court whether he/she agrees or disagrees with the information in his/her spouse's petition. It also tells the court what he/she wants from the divorce. For purposes of this article, it will be presumed that no answer has been filed after 30 days.

The fourth step is after 50 days of the service of the Summons and Petition for Dissolution is to complete and file the following documents which are: Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and De-

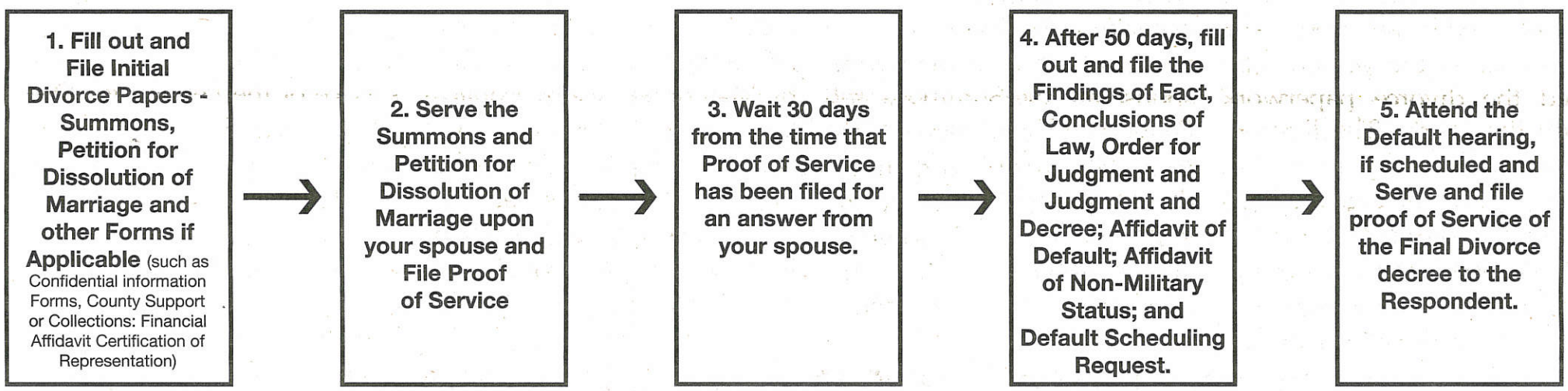
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Dissolution

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cree; Affidavit of Default; Affidavit of Non-Military Status; and Default Scheduling Request. The Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree is your divorce document. This document should be consistent to the Petition for Dissolution that was completed earlier. The Affidavit of Default is a sworn statement that outlines the process and steps that have been taken for obtaining your divorce. In this affidavit you will state the date that the spouse was served with the divorce papers; how no answer has been received within 30 days of service; and that you now intend to proceed by default. The Affidavit of Non-Military Status is a statement that saying that your spouse is not in the military. A Default Scheduling request is a document that requests a default hearing or order without a hearing depending on if there are minor children involved. If there are no minor children involved you can request that the court approve your divorce without a hearing. This does not guarantee that there will not be a hearing as the court can still require one in this case. If there are minor children involved then a hearing will be required.

The fifth step is the court hearing. During this hearing if the other party does not show up, the Judge will often have the Petitioner testify on the record as to the facts that were written into the Petition for Dissolution as well as the requested relief sought for judgment. After this, the Judge and court administrator will sign the divorce decree. A copy of this divorce decree shall be served upon the Respondent either personally or through the mail and a copy of the proof of service of the final divorce decree is filed with the court.



New Eviction Expungement Interactive Interview on LawHelpMN.org

Legal Services State Support is excited to announce a brand new Eviction Expungement interactive interview available online through LawHelpMN.org. The Eviction Expungement interview was created by Jenny Singleton, Legal/Technology Projects Manager at State Support, with substantial legal expertise contributed by Lindsey Hanson and Drew Schaffer of MidMinnesota Legal Aid, guidance from Central Minnesota Legal Services, and support from LSC's Technology Initiative Grant Program.

The free online interview is for those who want to ask the court to remove an eviction from their record, and who have either a Minnesota eviction case where the rent was not subsidized, or have a Minnesota eviction case where the renter received a Section 8 Voucher. (an excerpt from the April 2015 Just News newsletter)

Financial Power of Attorney

What is a Power of Attorney (POA)?

- Written, legal document

- The court is not involved, unless problems develop

- The Principal; the legal term for the person who gives permission to one or more persons to be responsible for managing financial and property interests owned by the Principal

- The person(s) appointed is called the attorney-in-fact. Note: the use of POA Agent in this Article

- The POA Agent takes care of financial business: Such as: banking, buying or selling property, paying bills, insurance

- The POA ends upon the death of the principal. A will directs distribution of property **not** in joint ownership; property that does **not** have a designated beneficiary. If no will, property is distributed according to tribal probate law or state probate law. Allotment trust land and Individual Indian money accounts are probated by the B.I.A. (See note at the end of this outline.)

Who can be my POA Agent?

- Someone who is trustworthy, responsible

- Oftentimes people choose the eldest child; however, choose the eldest child only if that person will do what is in your best interests

- No requirement for a background test

How much authority does my POA Agent have?

- As much as you give him or her

- You can give authority to handle all of your property and financial matters

- Or you can limit the power to paying bills and banking or to the sale of specific property such as a car or home

- Be very careful who you choose because that person is basically 'standing in your shoes' and without your knowledge or permission can make decisions about your money and property that are not in your best interests

- Once the money or property is gone it is very, very difficult to get it back. The typical scenario is that the Agent has spent all of the money or converted the assets to money that has been spent and likely does not have assets or income that are a source of repayment.

Creating a Power of Attorney:

- The Principal must be competent and 18 or older

- It must be in writing and signed in front of a Notary

- The POA Agent(s) must also sign but their signature need not be notarized

- Most people want a Power of Attorney to continue if they become incompetent; this requires that the POA be what is called "durable." This is a question on the document; once made your appointed Agent(s) will be able to continue taking care of your financial business if you become incompetent (unable to make good, reasonable decisions due to a decline in thinking and reasoning)

New Law as of Jan. 1, 2014:

- Changes to the form:

- The revised form is 2 pages longer and both pages list important rights and responsibilities. 1-page for the Principal (you) to read and initial. This must be done before signing your name. Failure to initial the page explaining how important it is to choose the best person to be your Agent will result in a POA that has no effect.

- Page 3, the third question begins with a more detailed explanation of your choice to authorize or NOT authorize your POA Agent to make a gift of your property to them

- Your Agent(s) must sign your POA twice; no requirement to sign in front of a notary

- The old POA form is still valid. All new or re-

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Financial Power of Attorney

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placement POAs, after Jan 1, 2014, must be on the revised form

The POA can be a useful tool for many people. Because of the potential for misuse, consider requiring some of the following protections:

- Require the POA Agent to provide an "accounting;" to explain and show receipts, bank statements, etc. to prove how the money and property were used. Do this on a schedule: monthly, quarterly, etc. It is advisable to state in a POA that if the Principal becomes incompetent, the report on how the money and property is used would be given to someone named in the POA

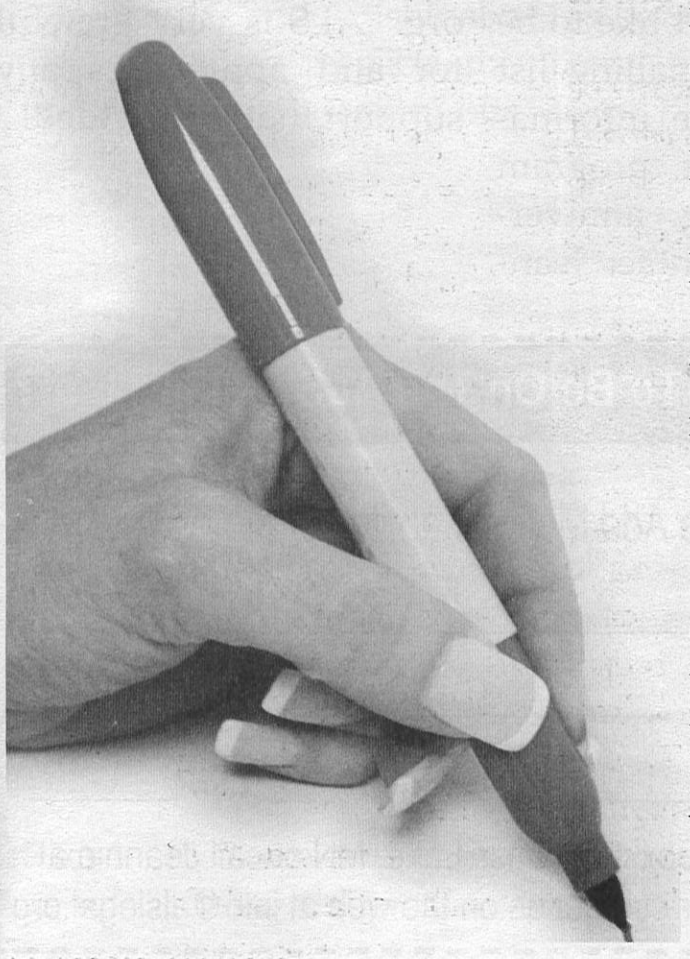
- Have co-agents so they can be the checks and balances on each other; co-agents make decisions together; both required to sign checks

- Name a successor Agent to take over the responsibility if the first Agent dies or becomes incompetent or chooses not to be the POA Agent

- Require the POA Agent to obtain a surety bond to cover the value of the property

- If the POA Agent is required to provide an accounting and does not, a request for an accounting can be filed with the court, can include in the court Petition that the POA Agent pay the fees and costs

- The limit on the amount the POA Agent can transfer to himself, providing that option was 'checked' on the POA form, is limited to the federal annual gift exclusion.



Other options:

- If the Principal's income is Social Security and/or VA, consider the services of a representative payee business. For a fee of about $50 per month the service will pay bills; the balance is the Principals. Contact Social Security or VA

- Some banks for a small fee will pay bills; there is some paperwork to get this 'authorized' as an auto deduct from an account. This is a good way to guarantee that the most important bills are paid. Also, many business can establish this payment method if you ask

Revoking a Power of Attorney:

- Change the Agent by "revoking" the POA Agent(s); if there is a need a new POA can be completed at the same time or later.

- If the Principal becomes incompetent, the only way to revoke a POA is thru court and most likely would require a petition to the court asking for a guardianship to be established.

NOTE: The POA form used by Anishinabe Legal Services has the following statement: "Any powers granted by this document are no longer effective upon the death of the Principal"

For further information contact Anishinabe Legal Services 1-800-422-1335 or 218-335-2223.

Law School Students Visit Anishinabe Legal Services

During the month of March, Anishinabe Legal Services ALS hosted students from Columbia Law School. The students met with Judges from Leech Lake, White Earth and Red Lake Tribal Courts. They also met with community members and directors from various programs throughout the three reservations. During the students stay, Anishinabe Legal Services held a free legal clinic in Leech Lake and Red Lake.

In addition to the Columbia Law Students, ALS also hosted students from the University of Minnesota Law School. The students from the U of M assisted our attorneys by researching legal subject that had to do with current cases. Both groups came to the area to get insight on Tribal Law and its history as well as be available for client services and attorney support.

Staff at Anishinabe Legal Services wants to thank the community members and programs who welcomed the studentsto the area. Also, a special thank you to the individuals who participated in the legal clinics; without you we wouldn't be here.



ALS Celebrating 50 Years in 2017!

Anishinabe Legal Services was established in 1967. Next year, ALS will be celebrating its 50th year of service to the Native American communities in northern MN. Staff and board members are planning a celebration to take place the summer of 2017, with other community activities and promotions throughout the year.

If you would like to be put on ALS's mailing list to receive more information about the program and upcoming anniversary, please contact Jeannie Smith at the Cass Lake office: 218-335-2223, or fill out the mailing request form at the bottom.

If you are interested in supporting ALS's anniversary celebration, either with a monetary donation, or with in-kind goods and services, please contact Chari LaDuke-Clark, at 218-335-2223 or by email: claduke-clark@alslegal.org. ALS is very grateful for and appreciates any support that is provided!

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 or contact us on the web at info@alslegal.org