Anishinabe Legal Services Newsletter

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

Cass Lake, Minnesota • June 2017

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

ALS Celebrates 50th Anniversary with Keynote Speaker Justice Anne McKeig

ALS is celebrating 50 years of legal services to the Red Lake, Leech Lake, and White Earth Tribal communities.

In 1967, a concerned group of citizens formed the "Leech Lake Reservation Legal Services Project" in Cass Lake, MN on the Leech Lake Reservation to provide civil legal services targeted towards tribal members free of charge. The program transformed to "Anishinabe Legal Services" in 1974, as it became a Legal Services Corporation grantee, and expanded the service area to include the Red Lake and White Earth Reservations.

Fifty years later, ALS still provides much-needed civil legal services to low-income individuals living on or near the tri-Reservation service area. During the past fifty years, many different types of cases have been undertaken by program staff; some cases have far reaching impact—decisions that helped shape and solidify the tribal courts and tribal sovereignty.

On June 23, 2017, the program commemorates the 50 year milestone with a dinner program at the Red Lake Seven Clans Casino Event Center. Joining ALS staff, board members, and guests is keynote speaker Minnesota Supreme Court Justice Anne McKeig. ALS couldn't be happier that Justice McKeig is presenting at our big celebration event. See following biography for more information on Justice McKeig's accomplishments!



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ALS celebrates

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Program staff and board are undertaking several projects during the 50th year activities, including a community wide comprehensive needs assessment survey. Activities will include open houses or events on each of the three reservations throughout the year, scheduling focus group meetings of client-eligible members, and mailing (or emailing) a survey for completion by previous clients and agency providers.

Please join ALS on June 23rd at the Red Lake Seven Clans Casino Events Center for appetizers, networking, and a slideshow presentation at 5:00 pm. The dinner program is expected to begin around 6:00 pm with the keynote presentation by Justice McKeig. If you would like to donate to ALS's cause, your donation is tax deductible, and can be sent directly to: Anishinabe Legal Services, PO Box 157, Cass Lake, MN 56633 or visit our website: www.alslegal.org for a secure online donation link.

Thank you to the tribal communities and partners that have helped make Anishinabe Legal Services a success! Here's to 50 more!

Justice Anne K. McKeig, White Earth Nation

On June 28, 2016, Governor Mark Dayton appointed the Honorable Anne K. McKeig to the Minnesota Supreme Court as an Associate Justice. Justice McKeig joined the court on September 1, 2016. A descendant of the White Earth Nation, Anne is the first American Indian to sit on the state's highest court. Her appointment created a women's majority on the court.

Prior to her appointment to the Supreme Court, Anne was appointed to the bench as a District Court Judge in 2008. She served as Presiding Judge in Family Court in the Fourth Judicial District in Hennepin County located in Minneapolis, Minnesota. That court was recently chosen as one of four in the country to work on a three-year pilot program to examine how the court addresses domestic violence in contested custody and parenting time matters, including order for protection proceedings. Anne serves on a National Advisory Council, working with Futures Without Violence and the National Juvenile and Family Court Judges Association (NJFCJ) on child welfare involving children and families experiencing domestic violence, and sits on the Family Violence Domestic Relations Advisory Committee for NJFCJ

Anne is a former Assistant Hennepin County attorney, where she worked for over 16 years handling child protection cases and adoption matters with a specialty in cases that fall under the provisions of the Indian Child Welfare Act. Anne co-authored law school curriculum entitled Child Abuse and the Law, which she currently teaches at Mitchell Hamline School of Law as an Adjunct Professor.

Anne has spoken at many national conferences regarding child protection issues and working with tribal communities, as well as the intersection of family court and child protection and a multitude of other topics. She trained the Minnesota Department of Human Services for over 10 years on Child Protection procedures. Anne is currently a member of the Speakers Bureau for the National Child Protection Training Center, a past board member of the Minnesota Organization of Fetal Alcohol Syndrome, past member of the Governor's Task Force on Fetal Alcohol Syndrome, and past chair and current board member of the Division of Indian Work, located in Minneapolis, Minnesota. She is a past member of the Department of Human services foster care work group, a former board member of the Native American Children's Alliance, an inter-tribal membership organization whose mission is to promote excellence in child abuse prevention and intervention in native communities, and a current member of the State/Tribal Court forum.

Anne is a native of Northern Minnesota, where she grew up on the Leech Lake reservation. She is married and a proud mother of five children.

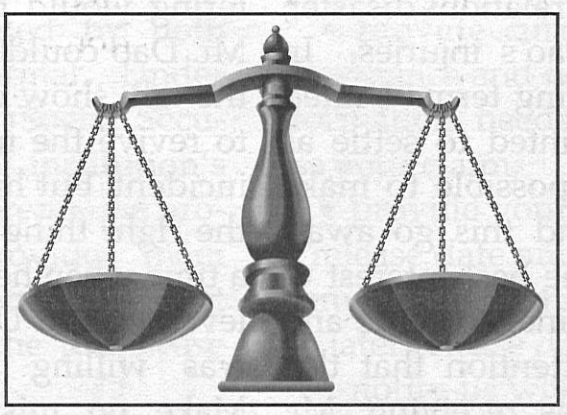
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Big Money for My Injuries?

by Jerome Song

On April 9, 2017, at O'Hare Airport in Chicago police forcibly removed David Dao from United Flight 3411 departing to Louisville, Kentucky. Mr. Dao had been chosen because United Airlines needed to remove four passengers to accommodate four staff members who had to cover an unstaffed flight at another location. Passengers were initially offered $400 in vouchers for future travel on United, a hotel stay, and a seat on a plane leaving more than 21 hours later if they voluntarily deplaned, the offer was later increased to $800 in vouchers.[1]

Mr. Dao refused to depart the airplane upon the demand of management as he was a physician and had patients to see that next morning. Video of this incident was posted to social media and soon spread across the world. Condemnation of United Airlines from various celebrities, rival airlines, and late night talk show hosts was swift, and the United Airlines brand was taking a hit publically.[2] Mr. Dao went to the hospital for his injuries and soon had a legal team to represent him. On April 27, 2017 Mr. Dao and United Airlines reached a confidential settlement.[3] That is the inspiration for topic of this article, namely how much could a similar person like David Dao expect to make in a case against a big corporation for the physical injuries, pain and suffering, and humiliation that was on video for the whole world to see.



The response from people who initially saw the video was pretty uniform, at least the ones that I had spoken to without any legal background. For example, my own mother thought that Mr. Dao would be getting several millions or tens of millions of dollars. So how much would Mr. Dao be likely to get in his settlement with Untied? First we have to look at the injuries that Mr. Dao suffered. His injuries included a broken nose, loss of two front teeth, sinus injuries, and a concussion.[4] These are all quantifiable injuries, and except perhaps for the concussion not injuries that are long term, which is usually the real motivation for high dollar amounts for injury cases.

Conducting a quick estimate of the type of injuries that Mr. Dao suffered can be as such; we can place a value between $,4,000 to $50,000 per teeth[5]; $2,000-8,000 dollars depending on if surgery is needed to repair a broken nose[6]; surgery to repair his sinus around $25,000 dollars[7]. The concussion that Mr. Dao suffered is the most difficult to estimate, and likely the injury that has the most potential for a damage award in his case. With a concussion are post-concussion injuries, and loss of mental capacity; loss of work and other long term injuries. For the sake of this article we will look at the amount for concussion with no Traumatic Brain Injury taken into consideration. I will place a value around $100,000 to $300,000 dollars for Mr. Dao's concussion.[8] Totaling up the physical injuries on the high side would be $300,000 + $50,000x2 teeth + $25,000 + $8,000 = $433,000. What about the pain, suffering, and humiliation that Mr. Dao suffered? Mr. Dao could likely gain compensation if a court would find what happened to him as an assault. According to Minn. Stat. § 611A.04 a request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services.[9] These types of damages are uncertain, and hard to value, and for purposes of this article I will estimate these damages to be around $1 million. This comes to a total of $1.43 million, a big amount of money but not nearly the millions upon tens of millions of dollars that some would think. This amount also does not

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Big Money

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take into account the money that would have gone to Mr. Dao's lawyers.

So why would United Airlines settle as the sum of around $1.5 million, according to our quick hypothetical estimate of Mr. Dao's injuries? For a huge corporation this is not a large amount. I suspect that the settlement amount was more than $1.5 million, and it was likely an amount that satisfied Mr. Dao was not too exorbitant for United Airlines. The reason is due to the public relations hit that this incident was causing them. This case was more about a United Airlines public relations disaster, than Mr. Dao's injuries. In plain-speaking terms United Airlines wanted to settle as quickly as possible to make Mr. Dao and this go away. It was in the best interest of United Airlines to settle and with the attention that this incident was receiving, Mr. Dao was in a position of leverage against United. However with each passing news cycle the memory of this incident would have faded, and the bad press United was suffering would be less. Sure, Mr. Dao could have gone on the talk show circuit and try to revive the memory of his incident, but his lawyers did the right thing by settling at a time when he had the most leverage and United Airlines was willing to negotiate. Make no mistake, though, that this incident is more the exception than the norm and most of the time a corporation like United Airlines will tell an injured party that they will see you in court instead of negotiating, which often will result in a litigation process that is lengthy and expensive. So how much will I be getting for my personal injury lawsuit? It is an amount that is probably lower than you would initially think.

Jerome Song is a Staff Attorney at Anishinabe Legal Services.

1 *Keonig, David; Rousseau, Caryn (April 12, 2017). "United passenger treated for injuries, Senate committee leaders ask for answers". 680 News. Retrieved May 2, 2017.*

2 *"United Airlines butt of late night comedians' jokes, Internet memes". Fox News. May 2, 2017.*

3 *"Passenger dragged off United Airlines plane wins settlement". BBC News. April 27, 2017. Retrieved May 2, 2017.*

4 *McLaughlin, Eliott C. "Man dragged off United flight was injured, will file suit, lawyer says". CNN. Retrieved May 2, 2017.*

5 *"Value of Broken Teeth-Accident Case Settlement Value". Retrieved from downtownlalaw.com/value-of-broken-teeth-lawsuit-accident-case-settlement-value on May 2, 2017.*

6 *"How much does a broken nose cost". Retrieved from health.costhelper.com/broken-nose.html on May 2, 2017.*

7 *"The costs involved in sinus surgery", Retrieved from www.youngadultmoney.com/2012/12/05/the-costs-involved-in-sinus-surgery on May 2, 2017.*

8 *Tikriti, Amir. "Settlement Value of a Head Injury" Retrieved on May 2, 2017.*

9 *Minn. Stat. § 611A.04 Retrieved from www.revisor.mn.gov/statutes/?id=611A.04 on May 2, 2017.*

Understanding Supplemental Security Income

Pre Release Procedure

Anishinabe Legal Services may be able to help you with your disability claim to the Social Security Administration (SSA), please contact the Main Office for more information or to see if you qualify for assistance. This article highlights discussion for individuals in an institution, and how you may be able to work with the SSA to get a headstart on applying for benefits:

IS THERE A WAY TO APPLY FOR SSI BEFORE MY ANTICIPATED RELEASE FROM AN INSTITUTION?

The prerelease procedure allows you to apply for Supplemental Security Income (SSI) and food stamps several months before your anticipated release from an institution so that benefits can begin quickly after your release. We do not pay you SSI benefits when you reside in a public institution.

WHO CAN BENEFIT FROM THE PRERELEASE PROCEDURE?

We will process an application for you under the prerelease procedure if you:

- are in an institution (for example, hospital, nursing home, prison, or jail) ; and

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Supplemental Security

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• appear likely to meet the criteria for SSI eligibility when you are released from the institution; and

• are scheduled to be released within several months of the date you file your application for SSI.

HOW DOES THE PRERELEASE PROCEDURE WORK?

There may be a prerelease agreement in effect between the institution and your local Social Security office. However, you may file an application for SSI benefits under the prerelease procedure even if there is no agreement in effect.

A prerelease agreement may be formal (a written agreement signed by both parties) or informal. Under the agreement, Social Security helps the institution's staff learn the prerelease procedure and provides them with a Social Security contact to assist with the prerelease procedure.

THE INSTITUTION AGREES TO:

• notify us if you appear likely to meet the criteria for SSI and you could be released within 30 days after notification of potential SSI eligibility;

• provide current medical evidence and nonmedical information needed to process your claim;

• provide your anticipated release date and notify us of any delays that may result in a later release date; and

• notify us when you are released.

SOCIAL SECURITY AGREES TO:

• process your claim or reinstatement as quickly as possible; and

• with your permission, notify the institution of the SSI determination promptly.

This information was obtained from Links to SSI Spotlights Home / Understanding Supplemental Security Income SSI Spotlight on Prerelease Procedure.

Health Insurance Assistance Available if You are Medicare Eligible

This statewide service is offered by the Minnesota Board on Aging thru a network of local volunteers located throughout Minnesota. Volunteers are trained and receive ongoing training and supervision. The service is called the Minnesota State Health Insurance Assistance Program (SHIP). Thru a network of local programs they provide information, counseling and assistance to all Medicare eligible persons.

The program is served primarily by volunteers who are certified by the Minnesota Board on Aging. These counselors receive extensive training, and provide objective, confidential assistance. They are not connected with any insurance company, and cannot give specific advice.

Counselors can work with you in your home, or you may visit them in their offices. Check with the Senior LinkAge Line to find the office closest to you.

At no-cost, the program will:

• explain Medicare,

• review Medical Assistance (MA),

• compare supplemental insurance options and public programs,

• explain long-term care insurance,

• outline public programs,

• help you complete billing and claims and appeals,

• help you understand and track medical bills and forms, and

• provide you with materials on related topics.

To find your nearest Health Insurance Counseling program contact the Senior LinkAge Line. You can reach the Senior LinkAge Line by calling 1-800-333-2433, by email or at www.MinnesotaHelp.info.

This information provided by the Minnesota Board on Aging Health Insurance Counseling Program.

After the Death of a Spouse

The following list may provide guidance.

1. If your spouse had a Will, it provides instruction for the distribution of his or her property and appoints someone the Personal Representative to be responsible for the distribution.

2. Notify Social Security of the death, if your spouse was receiving benefits.

3. Check with Social Security to see if you are eligible for benefits. If you have a minor child at home, you may be eligible to get Social Security benefits.

4. Notify insurance companies and pension/retirement companies.

5. Inform Social Services or other entitlement programs.

6. Notify banks and other institutions where you have loans, checking and savings accounts.

7. If your spouse was a member of the military, notify the military of the death and check for possible death benefits.

8. Change car or recreational vehicle titles by contacting the Motor Vehicle Registration office.

9. If a credit card charge account of your spouse was in both your names, you will be liable for the bills. Remove your spouse's name from the account if you want to continue using it. Close it if you do not want to use it.

If the account was in your spouse's name only, close it, or if you want to use it, put the account in your name. In any case, the creditors will probably contact you for payment. NOTE: If the account was in your spouse's name only, however, you may not be responsible for the bills. In Minnesota, spouse's are responsible ONLY for the "family necessary" bills, including medical bills, on the account of a deceased spouse.

10. If necessary, file health care claims to pay the expenses of the last illness.

11. If your spouse had interests in trust allotment land and/or an Indian money account a probate will be handled by the B.I.A. If your spouse had a will the B.I.A. probate office should be notified.

12. File an Affidavit of Identity and Survivorship with the County Recorder along with a copy of the Death Certificate, to remove your spouse's name from jointly owned real estate.

13. If your spouse had a bank account in his or her name only that did not have a POD (Payable on Death) designation, and you did not own real estate together or he did not own real estate in his name only, and the value of his or her estate is less than $70,000 the bank may release the funds once an Affidavit for Collection of Personal Property is presented. However, if your spouse owned $75,000 worth of property or more in his/her name alone, consult with a probate attorney.

14. Amend your Will if necessary, or possibly make out a Will.

Some content from the People's Rights & the Law newsletter is no longer published.

New Service for Elderly Waiver and Alternative Care

Individual Community Living Support (ICLS) allows participants to access a wide range of services and support in their own home, under a single service, without needing to move to a new setting to access those supports or use multiple providers. The ICLS service is available to any person who is an EW (Elderly Waiver) participant. ICLS is selected as a service by EW and AC (Alternative Care) participants and need is determined thru an application and interview process.

ICLS service is intended to meet the needs and preferences of older adults and their family members. Agreed upon services are delivered by a single provider as directed by a coordinated plan from the EW/AC case manager or care coordinator.

ICLS services must be provided by a licensed provider.

ICLS services must be delivered in a single-family home or apartment that the partici-

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New Service

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pant or their family owns or rents, as shown by a lease agreement, and maintains control over the individual unit. Providers of ICLS may not be the landlord of the participant or have any interest in the participant's housing. Providers may not be an arranged home care provider for housing with services facility where the participant resides.

Assistance and support to EW and AC participants who need reminders, cuing, intermittent or moderate supervision or physical assistance to remain in their home. A qualified worker will deliver a range of individualized supports which can include assistance with daily living (ADLs), instrumental activities of daily living (IADLs), active cognitive support, community living support and certain health-related services.

ICLS is made up of six service categories:

• Support with activities of daily living (ADL)
One example is: Cue and/or provide intermittent physical assistance with dressing, grooming, eating, toileting, mobility, transferring, and positioning.

• Household management assistance
One example is: Assist with cleaning, meal planning and preparation and shopping for household or personal needs; assist with budgeting and money management.

• Health, safety, and wellness oversight
One example is: Identify changes in health needs, with referrals to case manager and/or notification of informal caregivers.

• Community living engagement
One example is: Provide transportation when integral to ICLS community engagement goals and when community resources and/or informal supports are not available.

• Adaptive support service, and
One example is: Development and demonstration of cuing or reminder tools such as calendars and lists.

• Active cognitive support provided face to face or remotely using real-time two-way communication
One example is: Provide in-person and/or remote check-ins to identify problems and resolve concerns.

The specific services to be provided to an individual will be described in the individual ICLS plan.

ICLS case manager and participant develop the service delivery plan by identifying goals and service categories that will be provided to the participant.

The purpose of the ICLS form is to:

• Identify individual goals

• Describe the service categories

• Describe how often the service(s) will be provided

• Detail amount of time to provide the service(s)

• Calculate total number of units each week

• Calculate total cost each week

• Informs the provider of the service(s) needed

How do ICLS services coordinate with other EW and AC services?

A participant may have other services and supports in their CSSP. When case managers develop the ICLS plan they must assure there is **no duplication of services.** Some examples of services **not covered** by ICLS but may be authorized as a separate service:

• Specialized equipment and/or adaptive equipment

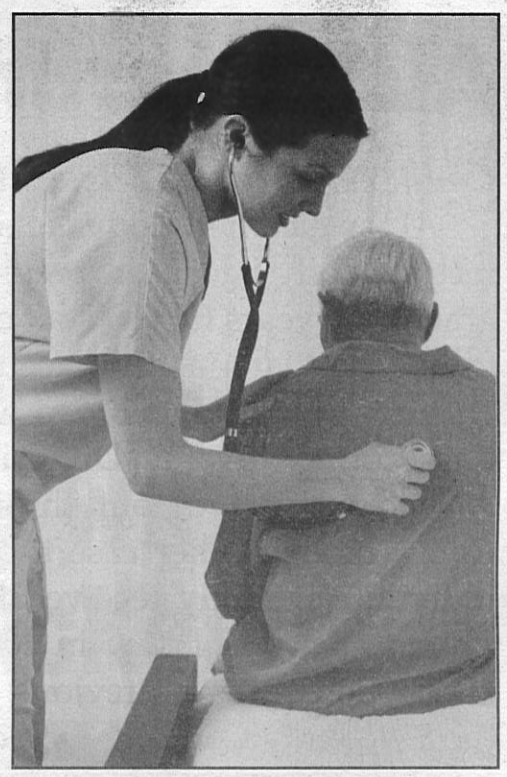
• Transportation. However, it may be provided when an ICLS provider enrolls as a waiver transportation provider

• Person receiving services may not receive ICLS services and Moving Home Minnesota services during the same service plan time-period

ICLS funds **may not** be authorized for the following EW and AC services:

• Customized living

• Foster Care



• Residential care and

• Consumer directed community support

The person applying for services or receiving services has numerous rights including participation in developing and evaluating services to receiving services from someone who is competent and trained. There is an appeal process if benefits are denied or reduced or terminated or issues develop concerning the services. Contact Anishinabe Legal Services at 1-800-422-1335 to see if you qualify for legal help.

For further information and to make an application contact Tribal Elderly Waiver and Alternative Care programs.

ALS Staffing Updates

Cody Nelson named Executive Director in 2017

ALS welcomed Cody Nelson this year as Executive Director. Cody had been previously employed by the program for 9 years first as staff attorney, then supervising attorney, and later as Co-Executive Director. Cody's prior experience at ALS included working with juveniles in the Cass County Juvenile Diversion project and the Baminem Anishinaabeg Program through the Leech Lake Tribal Court, among other case types on behalf of low-income individuals. Cody received his Juris Doctorate at the St. Thomas School of Law in 2006 and came to ALS shortly after. Cody was a previous volunteer board member of the Bi-County Community Action Program (Bi-CAP) for a number of years while he worked at ALS. In 2016, Cody took a short break from ALS to continue working with and on behalf of juveniles at the Children's Law Center in Minneapolis, before returning to the program.

ALS Hires new staff

New faces at ALS this year includes two attorneys: Todd Morman and Kristofer "Jake" Womack, as well as Receptionist Kristina LaDuke.

Todd will be working with individuals from the Leech Lake Reservation at our Main Office in Cass Lake, MN. Todd has a Ph. D from the University of Missouri in History, with a concentration on Native American Legal History. He received his Juris Doctorate in 2001 from the University of Montana where he studied Indian Law. Todd's experience includes work as public defense and with private civil matters.

Jake will be working with individuals from the White Earth Reservation at the White Earth Satellite office in the tribal headquarters building. Jake received his Juris Doctorate from the Hamline University School of Law in 2008. Jake's experience includes working for another civil legal services program doing estate planning, elder law, housing and business transactions

Volunteers & Summer Clerks

As always, ALS is fortunate to have individuals willing to volunteer services at the program for low-income clients in our surrounding communities. This summer ALS will work with volunteer law students to provide expanded services for the client communities.

If you are looking for volunteer opportunities please contact Chari at the Main Office: 218-335-2223 or by email: claduke-clark@alslegal.org. ALS thanks all past & future volunteers!

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!

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