

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1083

2007 HOUSE APPROPRIATIONS

HB 1083

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1083

House Appropriations Committee  
Government Operations Division

Check here for Conference Committee

Hearing Date: 1/16/07

Recorder Job Number: 1161

Committee Clerk Signature

Minutes:

Chairman Carlson opened the meeting on House Bill 1083. This is a bill for an Act to amend and reenact section 27-03-05 of the North Dakota Century Code, relating to fees charged and collected by the clerk of the Supreme Court.

Sally Holewa, State Court Administrator, spoke in support of the bill. She stated that the bill is a result of a hearing that was held over the summer in one of the interim committees that was looking at continuing appropriations. The interim committee had asked that the Supreme Court bring a bill to eliminate the continuing appropriations for the electronic filing fees.

**Chairman Carlson:** And that all it does?

**Sally Holewa:** That's all this bill does. We are keeping the fees but they are going to general revenue. What we have done is appropriated approximately \$3,500 into the printing costs in the general budget.

**Representative Thoreson:** This is just getting rid of the funds?

**Sally Holewa:** Yes

**Chairman Carlson:** The money goes where then?

**Sally Holewa:** The fees collected will go into the general revenue.

**Chairman Carlson:** The general revenue of your budget?

**Sally Holewa:** No the state general fund.

**Representative Skarphol:** When was the \$125 amount established? Is the number logical in this day and age?

**Sally Holewa:** The actual filing fee? I would have to refer that question to Penny.

**Penny Miller:** I have been with the court for 18 years and during that time it went from \$50 to \$125.

**Representative Skarphol:** Do you feel the fee is sufficient to cover the costs associated with what you do?

**Penny Miller:** Frankly, No but we are not perfect. The \$125 is just the filing fee. The e-filing surcharge was only \$25. The district court filing fees are much higher.

**Representative Skarphol:** Who makes the recommendation on when these fees need to be changed?

**Penny Miller:** We would but that is only a fee charged to civil cases not criminal cases.

**Vice Chairman Carlisle:** How did we end up with the bill?

**Chairman Carlson:** Eventually if a bill says appropriations in it there is a good chance especially in continuing appropriations when we take that authority away or give that authority that is probably going to end up with us. Procedurally when we deal with a bill like this our recommendation goes to the full committee.

**Representative Kroeber:** From the \$125 what is the number of dollars we take in?

**Sally Holewa:** It is not the \$125 fee we are eliminating it is the \$25 fee for the e-filing.

**Chairman Carlson:** closed the hearing.

The committee then took action on the bill. There was a motion by Representative Kempenich and seconded by Vice Chairman Carlisle to DO PASS the bill. The roll call votes were eight votes of yes to pass the bill. The bill will be carried by Representative Thoreson.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1083

House Appropriations Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1533

Committee Clerk Signature

Minutes:

**Rep. Svedjan, Chairman** opened the hearing on HB 1083, A Bill for an Act to amend and reenact section 27-03-05 of the North Dakota Century Code, relating to fees charged and collected by the clerk of the Supreme Court.

**Rep. Thoreson** explains the bill. It eliminates the continuing appropriations for the electronic filing fees. The money will go into the general fund. The Government Operations section gave this bill a "Do Pass" recommendation of 8-0.

**Rep. Thoreson** makes a "Do Pass" motion before the Full Committee. **Rep. Klein** seconds the motion.

Hearing no discussion, **Chm. Svedjan** calls for a vote.

The motion carries on a roll call vote of **23 ayes, 0 nays, and 1 absent**. **Rep. Thoreson** will carry the bill.

# FISCAL NOTE

Requested by Legislative Council

12/27/2006

Bill/Resolution No.: HB 1083

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    |             |                    |             |
| <b>Expenditures</b>   |                    |             |                    |             |                    |             |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill eliminates the electronic filing administration fund continuing appropriation. Any electronic filing processing fees collected by the supreme court will be deposited to the general fund. Associated expenses of \$3,500 have been included in the judicial branch budget request.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

|                      |            |                       |               |
|----------------------|------------|-----------------------|---------------|
| <b>Name:</b>         | Susan Sisk | <b>Agency:</b>        | Supreme Court |
| <b>Phone Number:</b> | 328-3509   | <b>Date Prepared:</b> | 01/03/2007    |



Date: January 22, 2007  
Roll Call Vote #: \_\_\_\_\_

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1083**

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Thoreson Seconded By Rep. Klein

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Svedjan         | X   |    |                          |     |    |
| Vice Chairman Kempenich  | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
| Representative Wald      | X   |    | Representative Aarsvold  |     |    |
| Representative Monson    | X   |    | Representative Gulleason | X   |    |
| Representative Hawken    | X   |    |                          |     |    |
| Representative Klein     | X   |    |                          |     |    |
| Representative Martinson | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
| Representative Carlson   | X   |    | Representative Glassheim | X   |    |
| Representative Carlisle  | X   |    | Representative Kroeber   | X   |    |
| Representative Skarphol  | X   |    | Representative Williams  | X   |    |
| Representative Thoreson  | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
| Representative Pollert   | X   |    | Representative Ekstrom   | X   |    |
| Representative Bellew    | X   |    | Representative Kerzman   | X   |    |
| Representative Kreidt    | X   |    | Representative Metcalf   | X   |    |
| Representative Nelson    | X   |    |                          |     |    |
| Representative Wieland   | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

Total (Yes) 23 No 0

Absent 1

Floor Assignment Rep. Thoreson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 24, 2007 11:11 a.m.

**Module No: HR-14-1111**  
**Carrier: Thoreson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1083: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS**  
**(23 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1083 was placed on the**  
**Eleventh order on the calendar.**

2007 SENATE JUDICIARY

HB 1083

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1083

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3675 & 3679

Committee Clerk Signature *Maria Sallens*

**Minutes:** Relating to fees charged and collected by the clerk of the Supreme Court.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

#### Testimony in Favor of the Bill:

**Saly Holewa**, State Court Administrator, introduced the bill. This bill was proposed by us as an easier way to do our electronic fees. We do not need the appropriations from this and could do the cost in our budget. She reviewed the process with Sen. Nething. The copy fee of \$25, adds up to approximately \$4,000. It is easier from an accounting stand point to budget this out of the general fund and having the incomes also go into the general fund. We will still collect the fee, it is where it is held that will change.

**Gary Ramsey**, Greenwood and Ramsey Law Firm, Dickenson Attorney (meter 5:60) gave his testimony – Att. #1a, and apologized for submitting a late amendment – Att. #1C. He also gave the committee a brochure – Att. #1b. He spoke of the Chief Justices approval of the amendment.

**Sen. Nething** questioned (meter 9:00) the removal of the cap he and why he could not give a "project" budget of a forecasted budget. Mr. Ramsey stated that since 1995 the funding coming from legal serves have had cuts continuously. How in the past 12 years, every year is a struggle. He did not understand why the budget had a cap to begin with. In general the fund will not help ND, but it will help the poor. This fund needs more money.

**Sen. Nething** asked if this request (amendment) was heard in the house? No. You want me to not increase the cap, say to \$500,000- but remove the cap completely. I could not predict what the house would do with this type of an amendment. I would be more comfortable if I had a dollar amount from you.

**Sen. Nelson** asked if the organization worked with the indigent defense services. No our services can only do civil services, not criminal services. We also do Juvenile Services.

**Mr. Jim Fitzsimons**, Board of Director-volunteer (meter 18:03) Gave additional background of the organization. Five offices that handle approximately 5,000 cases a year. In 2003 we became a state wide organization. He stated that he could accept a cap. 11% of our funds come from the filing fees, since 1989. This years budget was \$1.88 million and gave a breakdown of the budget (meter 20:02) and were current funds come from.

**Sen. Fiebiger** asked of the caseload (meter 22:31) This year we had 5,000 cases and 4 wend to the supreme court.

**Sen. Olafson** reviewed the screening process of who would qualify for these services, referring to page 7 of the news letter.

Sen. Nething spoke of the amendment would have to go to appropriations, if the amendment would pass. In that committee they will ask for a very detailed budget.

**Testimony Against the bill:**

None

**Testimony Neutral to the bill:**

None

**Senator David Nething**, Chairman closed the hearing.

**Recorder Job Number: 3679**

**Senator David Nething**, Chairman reopened the hearing.

The committee spoke of the organizations past appropriations having been eliminated and the \$1.88 million budget. The committee thought the work of the organization was worth its while.

They discussed that they would be more comfortable if they had had a new "cap" amount.

**Sen. Nething** will research what appropriations in the houses opinion might be on the amendment.

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1083

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3999

Committee Clerk Signature *Maria L. Solberg*

**Minutes:** Relating to fees charged and collected by the clerk of the Supreme Court.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Fiebiger** spoke of Amendment Att. 1c from 2/21. They discussed that the house has not heard any of the new testimony (the amendment) and spoke to where the removal of the cap would be.

**Sen. Olafson** stated that if we amend the bill, it will go back to the house. **Sen. Nething** spoke that it would more then likely be a conference committee. They did not like the fact that the amendment had not been posted for opposing party's to have there opportunity. **Sen. Nelson** remembered them stating that they had plans to come back to this in the 2009 legislature.

**Sen. Nelson** made the motion to Do Pass HB 1083 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nething**

**Senator David Nething**, Chairman closed the hearing.



**REPORT OF STANDING COMMITTEE (410)**  
February 27, 2007 1:17 p.m.

**Module No: SR-37-4007**  
**Carrier: Nething**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1083: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1083 was placed on the**  
**Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1083

Att #1a  
1-21-07

Testimony of Gary Ramsey in Support of H.B. 1083  
Before the Senate Judiciary Committee, February 21, 2007

Senator Nething and Committee members: My name is Gary Ramsey. I am a partner in the Greenwood and Ramsey law firm located in Dickinson, ND. I am here today in my capacity as an attorney member of the Board of Directors of Legal Services of North Dakota and a past president of that organization. Our current Board President, Wade Enget of Stanley, ND, could not be here today as he is recovering from surgery.

I am here in support of H.B. 1083 and also to offer an amendment which I hope you will favorably consider. I have provided you with a written copy of the proposed amendment. I have also received the consent of the Chief Justice of the North Dakota Supreme Court to offer this amendment to H.B. 1083. I understand that this is late in the process and will very shortly explain why.

My amendment addresses N.D.C.C. 27-05-03 which establishes the fees charged by the Clerk of District Court in a civil case. My amendment does not seek to raise or increase that fee in any way, shape or form.

Since 1997 \$15.00 of each civil court filing fee goes to the Indigent Civil Legal Services fund established under N.D.C.C. 54-06-02. The money is then distributed to Legal Services of North Dakota (LSND) and the other civil legal assistance programs in North Dakota by the OMB, the State Court Administrator, and the Lieutenant Governor's three person committee. The distribution is capped at \$400,000 per biennium. The money collected in fees over and above that amount goes into the general fund.

Based on the information I have from the State Treasurer's Office; back in 2001, the amount over the cap was roughly \$17,000. In 2005 it was about \$80,000 and the State Treasurer's Office tells us that the amount will be close to \$90,000 for the biennium ending in June 2007.

The amendment that I am proposing to H.B. 1083 would remove the cap and allow funds over \$400,000 per biennium to be distributed to the civil legal services programs. It has become increasingly difficult for civil legal assistance programs to provide the same level of services to the rural areas over the past ten years with the huge increases in gas prices. Despite that, as you can see by the attached outreach schedule, they are somehow doing so. This small amount of funding would make a very significant impact on LSND's continued services as we strive to provide civil legal help in all 53 counties in North Dakota.

In closing, I would like to thank you, Senator Nething and Committee members, for your time and patience today. We had originally planned to make this request in the 2009 session. However, shortly after the first of the year, we learned from the State Treasurer's Office that after this biennium ending June 30, 2007, there will be no practical way to calculate the amount of funds over the cap going into the general fund. Each county will start combining these funds with other revenues they obtain and forward the same to the State Treasurer.

I will be more than happy to try to answer any questions the Committee has at this time.

HH # 1C  
2-21-07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1083

Page 1, line 1, after "27-03-05" insert "and subsection 1(a)(1) of section 27-05.2-03"

Page 1, line 2, after "court" insert "and fees charged and collected by the clerk of district court for the civil legal services fund"

Page 1, after line 14, insert:

SECTION 2. AMENDMENT. Subsection 1(a)(1) of 27-05.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A clerk of the district court shall charge and collect the following fees in civil cases:

a. For filing a case for decision that is not a small claims action, eighty dollars.

(1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. ~~Any fees collected under this paragraph which exceed four hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.~~

Renumber accordingly

# Legal Services of NORTH DAKOTA Outreach Calendar of Events

| <u>LOCATION</u>                              | <u>TIME</u>           | <u>DAY</u>                        |
|--|-----------------------|-----------------------------------|
| Belcourt, Belcourt Retirement Home           | 10:00a.m.-11:00a.m.   | Every Wednesday of Each Month     |
| Bismarck, Bismarck Senior Center             | 3:00p.m.-4:30p.m.CT   | 2nd Wednesday of Each Month       |
| Bowman, Pleasant Manor Community Room        | 8:30a.m.-10:30a.m.MT  | Second Tuesday of Each Month      |
| Dickinson, Sunset Senior Center              | 1:00p.m.-3:00p.m.MT   | Last Wednesday of Each Month      |
| Devils Lake, Senior Center                   | 10:00a.m.-2:00p.m.CT  | 2nd & 4th Thursday of Each Month  |
| Fargo, Bethany Homes                         | 1:00p.m.-2:00p.m.CT   | 2nd Tuesday of Each Month         |
| Fargo, YMCA Shelter                          | 2:00p.m.-4:00p.m.CT   | 2nd & 4th Wednesday of Each Month |
| Fort Totten, Spirit Lake Tribal Courthouse   | 10:00a.m.-2:00p.m.CT  | Each Friday of Each Month         |
| Grand Ullin, City Hall                       | 9:00a.m.-11:00a.m.CT  | Last Wednesday of Each Month      |
| Grand Forks, Red River Community Action      | 11:00a.m.-2:00p.m.CT  | Each Thursday of Each Month       |
| Hamstead, James River Senior Citizen Center  | 10:30p.m.-2:30p.m.CT  | 3rd Thursday of Each Month        |
| Hebron, Emmons County Courthouse             | 1:30p.m.-4:00p.m.CT   | Last Tuesday of Each Month        |
| Mandan, Golden Age Senior Center             | 2:00p.m.-4:00p.m.CT   | 3rd Tuesday of Each Month         |
| Minot, All Saints Episcopal Church           | 11:30a.m.-12:30p.m.CT | 3rd Thursday of Each Month        |
| Minot, Christ Lutheran Church                | 11:30a.m.-12:30p.m.CT | 3rd Tuesday of Each Month         |
| Minot, Commission on Aging                   | 1:00p.m.-2:00p.m.CT   | 3rd Thursday of Each Month        |
| Minot, Faith United Methodist Church         | 11:30a.m.-12:30p.m.CT | 1st Monday of Each Month          |
| Minot, First Lutheran Church                 | 11:30a.m.-12:30p.m.CT | 1st Friday of Each Month          |
| Minot, Immanuel Baptist Church               | 11:30a.m.-12:30p.m.CT | 1st Wednesday of Each Month       |
| Minot, Manor Care                            | 2:30p.m.-4:30p.m.CT   | 2nd Wednesday of Each Month       |
| Minot, Milton Young Towers                   | 1:00p.m.-2:00p.m.CT   | 4th Wednesday of Each Month       |
| Mott, Cannonball Senior Center               | 12:30p.m.-2:30p.m.MT  | Second Tuesday of Each Month      |
| Washburn, McLean County Courthouse           | 9:00a.m.-12:00p.m.CT  | 1st Tuesday of Each Month         |
| Watford City, McKenzie County Social Service | 11:15a.m.-12:00p.m.CT | 2nd Monday of Each Month          |
| Watford City, Good Shepherd Home             | 1:00p.m.-1:30p.m.CT   | 2nd Monday of Each Month          |
| White Shield, White Shield Complex Building  | 10:00a.m.-11:30a.m.CT | 1st & 3rd Wednesday of Each Month |
| Williston, Heritage Center                   | 1:00p.m.-2:30p.m.CT   | 1st Thursday of Each Month        |
| Williston, Williams County Courthouse        | 10:00a.m.-12:00p.m.CT | 1st Thursday of Each Month        |
| Wishek, Wishek Senior Center                 | 9:30a.m.-12:00p.m.CT  | Last Tuesday of Each Month        |

*"To do more for the world than the world does for you - that is success." —Henry Ford*

## How to Contact LSND

1. Call our general toll-free number 1-800-634-5263. Monday through Friday from 9:00 a.m. to 3:00 p.m. If you must wait, please be patient, you will be helped. People 60 or over call 1-866-621-9886. Website applications may be made by going to <http://www.legalassist.org>
2. When you call on legal matters, an intake worker will ask you a few questions to find out if you are eligible for LSND's help. Everything you say is strictly confidential.
3. If you are eligible, a staff member will ask you a few more questions. These questions are to find out if you are eligible for LSND's help.
4. Eligible clients may receive advice right away.
5. If you need more than advice, LSND may also work on your case.
6. If LSND cannot assist you, a referral may be made to another organization that might be able to help you.

LSND also *prepares, distributes and presents* information about the legal rights of disadvantaged elderly and low-income people. Please contact LSND to request a presentation on topics of interest.

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The services are free, however you may have to pay all or part of costs such as required filing fees and service fees. Many times there are no such charges. Donations to LSND are always welcome.

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Individuals applying for legal services will not be subjected to discrimination.

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Legal Services of North Dakota, (LSND) is a non-profit organization which provides legal help to disadvantaged elderly or low-income North Dakotans.

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Bismarck Regional Office  
1025 Third St North, PO Box 2419  
Bismarck, ND 58502-2419

Minot Regional Office  
20 1st St SW Suite 201, PO Box 1666  
Minot, ND 58702

Fargo Regional Office  
118 Broadway #704, PO Box 1327  
Fargo, ND 58107

New Town Regional Office  
PO Box 217  
New Town, ND 58763

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Welcome to the Legal Services of North Dakota (LSND) homepage. LSND offers free civil legal services for people who meet our eligibility guidelines. We provide services in the following areas.

**Priorities:**



Public Benefits



Family and Children



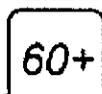
Domestic Violence



Housing, Landlord/Tenant, and Eviction



Consumer



Elderly



Indian Law



Health



Immigration



Civil Rights



Taxes



Apply For Our Services Online!

## Legal Services of North Dakota Brochure List

**Use Adobe Acrobat Reader to View Printable  
Brochures**

**Download Adobe Reader - Free!**

**Brochures - Click On Titles To Open      Brochure #**

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| <b>Help! Someone is Trying To Garnish My Wages!</b>                     | <b>021</b> |
| <b>Trouble with Collection Agencies Harassing You?</b>                  | <b>022</b> |
| <b>Help! I'm Being Sued On A Debt</b>                                   | <b>023</b> |
| <b>What Can I Do About Medical Bills?</b>                               | <b>024</b> |
| <b>How Can a Claim for Exemptions Help Me?</b>                          | <b>025</b> |
|   | <b>026</b> |
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|   |            |
|---|------------|
| <b>Medicare Part A and Part B Appeals</b>   | <b>523</b> |
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| <b>Medicare Benefit Summary for 2006</b>  | <b>525</b> |
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| <b>Need Financial Help? General Assistance</b>  | <b>711</b> |
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| <b>What is Supplemental Security Income?</b>  | <b>751</b> |
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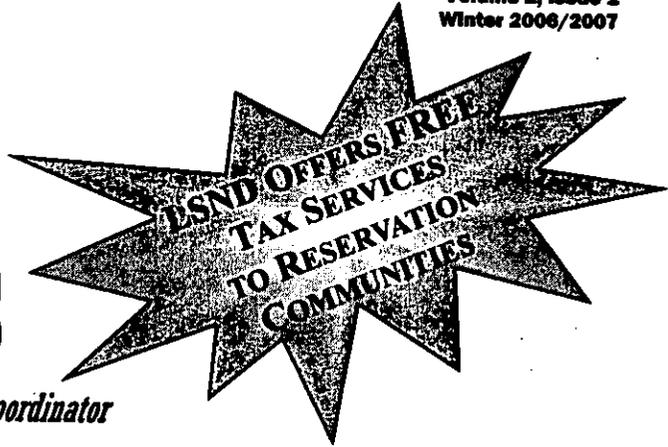
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# THE LEGAL SERVICES SENTINEL

Volume 2, Issue 1  
Winter 2006/2007

## Free Tax Services



*By: Vickie D. Fox, LSND VITA Coordinator*

Legal Services of North Dakota (LSND) will be providing free income tax preparation services to the three northern North Dakota Indian Reservations beginning in late January 2007. Legal Services is partnering with the Internal Revenue Services, to Provide Volunteer Income Tax Assistance (VITA) sites on the Ft. Berthold, Turtle Mountain and Spirit Lake reservations during the upcoming tax season.

*(Continued on page 3)*

## LONG DISTANCE TELEPHONE REFUND

YOU MAY BE ENTITLED TO A REFUND ON YOUR 2006 TAX RETURN

*Information Provided By: IRS, Taxpayer Advocate Service*



The telephone tax refund is a one-time payment available on your 2006 federal income tax return, designed to refund previously collected long-distance federal excise taxes. It is available to anyone who paid long distance taxes on landline, cell phone or Voice over Internet Protocol (VoIP) service.



### Frequently Asked Questions and Answers

#### **WHY IS THE GOVERNMENT REFUNDING THESE TAXES?**

Several recent federal court decisions have held that the tax does not apply to long-distance service as it is billed today. The IRS is following these decisions and refunding the portion of the tax charged on long-distance calls. The IRS is also refunding taxes collected on telephone service under plans that do not differentiate between long distance and local calls.

The telephone tax continues to apply to local-only service, and the IRS is not refunding taxes charged on local-only service.

The IRS will refund to you the taxes on long-distance service billed to you for the period of February 28, 2003 and before August 1, 2006. Taxpayers should request this refund when they file their 2006 tax returns.

*(Continued on page 4)*

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# A View From the Top

By: Jim Fitzsimmons, Executive Director

In early December I attended an IRS Conference for organizations that provide help to low-income tax payers. The conference was held in New Orleans – the same New Orleans that sixteen months ago was the site of one of the worst natural disasters in the history of our nation. We all have memories etched in our minds of the television coverage of Hurricane Katrina and the subsequent heartache of hundreds of thousands of New Orleans residents and others along the Gulf Coast.

On the shuttle ride from the airport, I asked the driver about the rebuilding effort. He replied, "Some positive, some negative; kind of depends on what part of New Orleans you lived or your business was located." Throughout the first couple of days I was in New Orleans, I asked anyone who would talk with me about the rebuilding effort. I got a wide spectrum of responses – some positive, some negative and many others mixed.

I also walked around the downtown area whenever the opportunity presented itself. I actually was able to walk on the sidewalks along Bourbon Street. In the old days you had no choice but to walk in the street as the sidewalks were so full of tourists. While I did not see much flood related damage in the French Quarter or market areas, the number of empty buildings and shops jumped out at me. I also noticed how few people were in the whole area. I was told that before Katrina there were roughly 750,000 people living in New Orleans, now there are about 192,000.

The day before I was to head back to North Dakota, I was visiting with a bellman at the hotel. He told me his cousin was a local cab driver and if I wanted to get the real picture of

New Orleans, he could arrange a tour. That afternoon a few of us had the unique opportunity to spend 2 ½ hours in Aaron Blue's taxicab and truly see New Orleans in 2006. The visual tour clearly supported what I had heard for the past few days. There was a lot of positive mixed in with a lot of negative. It all depended on where you lived in New Orleans. Every time you saw progress with rebuilt or repaired stores or homes, a few minutes later you would see areas without power or houses with the death count still painted on the walls. Mr. Blue showed us his home, the pile of rubble that used to be his grandmother's church, and Fats Domino's house where Fats was rescued from the roof during Katrina. He took us past a home where a fellow cab driver lost her life when the dike broke. We saw the FEMA trailers that are supposed to accommodate six people. In reality they were like the small ones we pull behind a pickup to take to the lake fishing for the weekend.

At the end of the tour, one could not help but be overwhelmed by mixed emotions: Hope for the future; Confidence that this country is carefully rebuilding one of its most beautiful and historic cities; Fear that by the time the effort is completed most of the surviving businesses will have closed up shop due to lack of customers and revenue; Sorrow for the thousands of Americans who have lost loved ones, homes and their way of life; Concern that our federal, state and local governments have not learned enough from this terrible disaster.

As we begin the new year – 2007 – remember that there are Americans who still need your thoughts and prayers. There is a lot of work that still needs to be done in New Orleans.

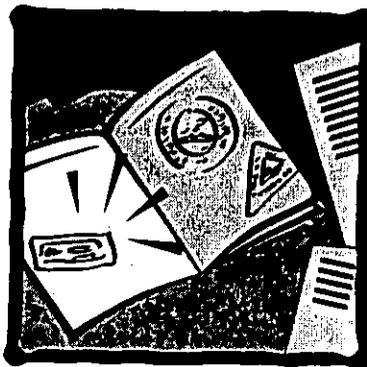
*"The peoples' good is the highest law."—Cicero*

# LSND Immigration Law Project

By: Sheree Weisz, LSND Immigration Attorney

The Immigration Law Project is a new program arising from a joint effort between Legal Services of North Dakota (LSND), Legal Services of Northwest Minnesota (LSNM), and Mid-Minnesota Legal Assistance (MMLA). We provide immigration services to the low-income immigrants in our area. Since the Red River Valley is a designated Refugee Resettlement Area, these services were desperately needed and the program has quickly expanded.

LSND has an attorney in the Fargo office and MMLA has an attorney in the Moorhead office of LSND. They are working together to provide immigration services to the low-income population in North Dakota and Northwest Minnesota. Both attorneys can represent clients residing in either state, but due to different funding sources, the attorney in Moorhead can represent undocumented immigrants where the attorney in Fargo is restricted to representing only documented immigrants. The ILP is working in conjunction with the existing local agencies in order to provide services for client needs that are not being met, rather than duplicate any present services.



We prepare naturalization applications for those in an urgent situation due to loss of social security income after hitting the seven-year bar, for example, or those who need a medical waiver to be excused from the English, civics, and history tests. We also do appeals for naturalization denials or simply consult with clients and advise whether they should file for naturalization, wait for a few years, or not file because of criminal or other charges that will surface on the background check.

We prepare various other immigration documents as well, including adjustment of status to lawful permanent resident, self-petitions for victims of domestic violence, employment authorization applications, travel documents, and any petitions or applications that lead to family unity.

We also focus on community education. We do presentations and prepare educational materials for the immigrant community and service providers. We are working with existing agencies to determine where the greatest educational needs are in the immigrant community and we target those topics.

The ILP has a Walk-In Day in the Moorhead office of LSND on the fourth (4<sup>th</sup>) Tuesday of every month.

**VITA tax return preparation services are FREE for low-income taxpayers.**

In sponsoring these sites, Legal Services is attempting to promote the Earned Income Tax Credit and make free e-filing services available in Indian country. By e-filing state and federal tax returns, taxpayers can sometimes receive their refunds in as little as 7 to 10 days and they don't have to pay the fees associated with refund anticipation loans.

LSND staff from the New Town, Belcourt and Minot offices will receive training, technical assistance and e-filing software directly from the IRS. Legal Services will not only help low-income taxpayers file their tax returns, they will also answer questions to help them understand their tax obligations.

For more information about the VITA sites, times and locations or to see if you qualify for these free tax services, please contact the office listed below that is located nearest to you:

**Minot Regional Office**

Carrie  
(701) 852-4369  
or  
1-877-838-5263

**Belcourt Satellite Office**

Rhonda  
(701) 477-3710

**New Town Office**

Vickie or Clarine  
(701) 627-4719  
or  
1-877-639-8695

(Telephone Tax Continued from page 1)

### How do I get the telephone tax refund?

In general, anyone who paid the long-distance telephone tax will get the refund on their 2006 federal income tax return. This includes individuals, businesses and nonprofit organizations. The 2006 return is usually filed during 2007.

The IRS is making it easier for taxpayers by offering a standard refund amount between \$30 and \$60, so they don't need to gather old phone bills. Taxpayers who choose the standard amount will only need to fill out one line on their tax returns. The standard amount is based on actual telephone usage data and the amount applicable to a family or other household reflects the long-distance phone tax paid by similarly sized families or households. Using this amount is the easiest way for taxpayers to get their refunds and avoid gathering 41 months of old phone records.

Businesses and nonprofits must fill out the new Form 8913 and base their refund requests on the actual amount of tax they paid. The IRS is considering an estimation method that businesses and nonprofits could use for figuring the tax paid and is asking for public suggestions on potential methodologies that are both accurate and relatively easy for taxpayers to use.

### Who is eligible to request the telephone tax refund?

In general, any individual, business or nonprofit organization that paid long-distance tax for service billed after February 28, 2003 and before August 1, 2006 is eligible to request the refund.

### What is the standard amount?

Individual taxpayers can take a standard amount from \$30 to \$60 based on the number of exemptions claimed on their tax return. For those claiming:

- one exemption, the standard refund amount is: \$30
- two exemptions, the standard refund amount is: \$40
- three exemptions, the standard refund amount is: \$50

-four exemptions or more, the standard refund amount is: \$60

The instructions to the 2006 1040 tax forms will provide more information on how to determine the correct number of exemptions. (Because the term, "exemptions" does not appear on Form 1040EZ, people who fill out this form should follow the instructions carefully.)

The standard amount is based on actual telephone usage data, and the amount applicable to a family or other household reflects the long-distance phone tax paid by similarly sized families or households. Using this amount is the easiest way for taxpayers to get their refund and avoid gathering 41 months of old phone records.

### What forms do I file to request the refund?

For many individual taxpayers who want to take the standard amount, there are no additional forms to file, and they only need to fill out one additional line on their regular income tax return.

Individuals who decide not to use the standard amount must figure their refund using the actual amount of tax they paid. To choose this option, taxpayers can fill out Form 8913 and attach it to their regular income tax returns (Forms 1040, 1040A, 1040NR or 1040EZ, or the new simple Form 1040EZ-T for people who don't need to file a regular income tax return).

### Can I e-file to get this refund?

Yes.

### I don't have to file an income tax return. How do I get the telephone tax refund?

For those people who do not otherwise have to file a tax return, there is a new simple form (1040EZ-T) that can be used to get this refund. If you choose the standard amount, all you need to do is fill out this simple form using the number exemptions you are eligible to claim. For ex-



(Telephone Tax Continued on page 5)

(Telephone Tax Continued from page 4)

ample, a married couple with two dependant children (for a total of four exemptions) will be eligible for the maximum standard amount of \$60. If you decide not to use the standard amount, you must figure your refund using the actual amount of tax paid. To choose this option, you must fill out an additional form (Form 8913) and attach it to Form 1040EZ-T.

**How do I determine how much federal excise tax I have paid on my long-distance service?**

Taxpayers who choose to base their refund requests on the actual amount of tax paid should review their phone bills since February 28, 2003. Taxes paid on local-only service are not eligible for the refund. In general, federal excise taxes paid on other types of service qualify. Federal access charges and state or local taxes and charges are not eligible for the refund.

On the other hand, taxpayers who choose the standard amount need not determine the amount of tax they paid. The standard amount is based on actual telephone usage data, and the amount applicable to a family or other household reflects the long-distance phone tax paid by similarly sized families or households. Using this amount is the easiest way for taxpayers to get their refund and avoid gathering 41 months of old phone records.

**What if I don't know whether I paid this long-distance tax and I don't have my phone bills?**

To get the telephone tax refund, you must have paid the tax. If you don't have your telephone bills, the only way to be sure if you paid the tax for long distance is to check with your service provider.

Instructions for requesting this refund will be included with your tax forms and at [irs.gov](http://irs.gov). Therefore, most people will not need to call the IRS. If you decide to figure the actual amount and need to obtain copies of your phone bills, you should contact your phone service provider. Telephone companies may charge for copies of past bills.

**What do I have to do now?**

In most cases, nothing. Taxpayers will request this

refund on their 2006 return. Accordingly, the IRS will begin accepting refund requests in January 2007.

The only decision you have to make is whether to use the standard amount or the amount of tax you actually paid. To take the standard amount, you don't need to do anything now. You can figure it when you fill out your 2006 return.

If you are considering using the actual expense method, you may want to start gathering your phone bills since February 28, 2003. As with any other line item on your return, starting early and keeping good records always makes the tax-preparation process easier.

**How do I decide if it's better for me to use the actual or take the standard amount?**

You can use whichever method gives you the larger refund. The standard amount is based on actual telephone usage data and the amount applicable to a family or other household reflects the long-distance phone tax paid by similarly sized families or households. Using this amount is the easiest way for taxpayers to get their refund and avoid gathering 41 months of old phone records.

**Do I have to itemize to claim this refund?**

No.

**Will I get a separate check?**

No. The telephone tax refund will be treated as a one-time payment on your 2006 return. Accordingly, it will reduce the amount you owe on your return or increase the amount of your refund.



# 10 PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Information From:  
ABA 2002 Standing  
Committee on Indigent Defense

Notes Provided By:  
Robin Huseby  
Director, ND Commission  
on Legal Counsel for Indigents

1. The Public Defense function, including the selection, funding, and payment of defense counsel, is independent. *(Note: we have achieved this by removing indigent defense from the judiciary in North Dakota)*

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. *(Note: that is the system our agency uses in public defender locations).*

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. *(Note: counsel should be furnished as soon as possible, usually within 24 hours after arrest or detention or request made by client for an attorney).*

4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

5. Defense counsel's workload is controlled to permit the rendering of quality representation. *(Note: the note to this one states that 'national caseload standards should not be exceeded, and we will talk about those national standards'. This note is particularly troubling in North Dakota)*

6. Defense counsel's ability, training, and experience match the complexity of the case.



7. The same attorney continuously represents the client until the completion of the cases. *(Note: our agency is in the process of adopting a standard as to when a case 'ends', and counsel and judges will be weighing in on this in the near future)*

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

9. Defense counsel is provided with and required to attend continuing legal education.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

More information may be found on the ABA website:

[www.abanet.org](http://www.abanet.org)

# Legal Services of North Dakota (LSND)

## Case Acceptance and Financial Guidelines

### Services Available

LSND Accepts Cases in the areas of Government Benefits, Family, Health, Consumer, Housing, Elderly Law and Indian Law. Some specific types of cases include:

- ▼ TANF
- ▼ SSI
- ▼ Food Stamps
- ▼ General Assistance
- ▼ LIHEAP
- ▼ Unemployment Compensation
- ▼ Medicaid
- ▼ Contested Domestic Violence Protection Orders on Behalf of the Victim
- ▼ Public Housing Problems
- ▼ Tenant Evictions
- ▼ Problems with Debts
- ▼ Access to Justice Issues
- ▼ Earned Income Tax Credit

### Elderly

Additional legal help for the elderly in:

- ▼ Nursing Home Transfer and Discharge
- ▼ Social Security and Medicare
- ▼ Home Health Care
- ▼ Durable Power of Attorney
- ▼ Health Care Directives
- ▼ Challenging/Revoking Guardianships
- ▼ Mortgage Retention Advice

### Eligibility Requirements

Eligibility for many of the legal services we provide is based on financial requirements. The most common limitation is 125% of poverty.

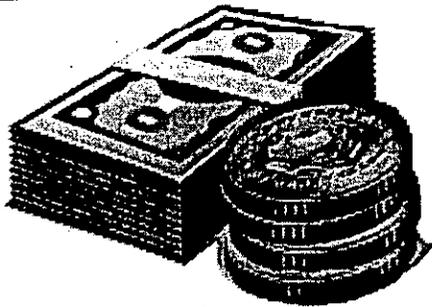
### Income Limitations

-Standard Gross Income Level = 125% of poverty

| Household Size | 1      | 2      | 3      | 4      | 5      | 6      | 7      |
|----------------|--------|--------|--------|--------|--------|--------|--------|
| Annual Income  | 12,250 | 16,500 | 20,750 | 25,000 | 29,250 | 33,500 | 37,750 |
| Monthly Income | 1,021  | 1,327  | 1,729  | 2,083  | 2,438  | 2,792  | 3,146  |
| Weekly Income  | 236    | 317    | 399    | 481    | 563    | 644    | 726    |

### How to Determine Income for Eligibility Purposes

Income means total cash receipts before taxes of all persons who are resident members and who contribute to the support of a household.



By: *Karen L. Werner*

## Fair Lending Payday Lenders Collect \$4.2 Billion

Predatory lending by "payday" lenders costs American borrowers \$4.2 billions each year in excessive fees, the Center for Responsible Lending reported November 30<sup>th</sup>.

"Payday loans sink borrowers into quicksand-like debt," Michael D. Calhoun, president of the Center for Responsible Lending said.

"Borrowers end up paying more in interest - - at rates of 400 percent - - then the amount they originally borrowed. But by addressing payday lending squarely with a 36 percent (annual percentage rate) cap, state lawmakers can get working Americans back on solid financial ground."

The loans are marketed as short-term cash advances on the borrower's next paycheck, the center said.

By contrast, the industry depends on repeat business or "flipped" loans, with 90 cents of every dollar payday lenders make coming from Americans caught in the "debt trap," which occurs when

*(Fair Lending Continued on page 13)*



# Questions and Answers About Immigration



By: *Sheree Weisz, LSND Immigration Attorney*

**Q:** How long does an immigrant have to reside in the United States before he or she can apply for citizenship?

**A:** If the immigrant obtained his or her residence status based on marriage to a U.S. citizen or Lawful Permanent Resident, he or she may file for naturalization (citizenship) after three years of residence in the U.S.

If resident status was obtained through another method, such as sponsorship or refugee/asylee relocation, the immigrant must reside in the U.S. for five (5) years before applying for naturalization.

**Q:** How long does the process of naturalization (becoming a U.S. citizen) take?

**A:** If an applicant does not have any negative history or does not apply for any waivers when they file, it takes about a year from the time the application is filed until the immigrant is sworn in as a U.S. citizen at the oath ceremony. If there are any complications, including medical waivers, negative civil or criminal history, or if an applicant is denied on his or her naturalization application and wants to appeal that decision, several months can be added on to the total amount of time for the process.

**Q:** Do immigrants have to be citizens to collect Social Security or other Public Benefits?

**A:** If the immigrant arrived in the United States after 1996, he or she must become a U.S. citizen within seven years of arrival in order to collect benefits. If the immigrant arrived before 1996, there are no restrictions.

**Q:** If someone passed the citizenship test several months ago but still has not been notified of when to attend the oath ceremony, is there anything that can be done to speed up the process?

**A:** Yes. If the immigrant has already taken and passed the citizenship tests, federal law states the Immigration Service must make a decision on the application for naturalization within 120 days (4 months) of when he or she passed the tests. The immigrant can consult an attorney to file a motion in federal court. The court will take over the application and make a decision itself or it will order the Service to make a decision right away.

**Q:** Is there any way a victim of domestic violence can become a legal resident? What if the victim is here without documents or inspection at the border?

**A:** Yes. Congress has made a special exception for victims of domestic violence. If an immigrant is married to an abuser or is the child of an abuser, she may file a self-petition to become a legal resident. She does not have to depend on a sponsor, nor does her current immigration status have to be legal or documented.

**Q:** How does a history of committing acts of domestic violence affect the abuser's immigration status?

**A:** Domestic violence and other acts of violence are frowned upon by the Immigration Service. Immigrants with a history of violence are not allowed to become U.S. citizens. One of the standards applicants for naturalization must meet is the

*(Immigration Continued on page 9)*

*(Immigration Continued from page 8)*

ability to prove their "good moral character." Violent acts and some other non-violent crimes preclude applicants from meeting this standard. All applicants with any type of violence in their history will be screened very closely and the circumstances surrounding the events will be examined. If applicants have been restrained by a Domestic Violence Protection Order (DVPO) in the past, it is not a deportable offense if the order was never violated. However, if the domestic violence protection order was violated while it was in effect, under federal law it is automatically a deportable offense. Anyone with this type of history should contact an attorney before filing any applications with Immigration.

**Q:** If an applicant for naturalization has been arrested for Driving Under the Influence in the past, will it affect his or her naturalization application?

**A:** Yes. Immigration can look back as many years as they want at a person's history, but if there is not much in the record, they will only look at the last five years. If it is possible for the applicant to wait until five years have passed since the offense, it would be better to hold off on the application for naturalization until then. Not always, but sometimes a conviction for DUI is viewed as a failure to meet the "good moral character" standard. If that is the only offense, and it has been more than five years since it occurred, it should not be a problem. However, if the applicant is asked about it during the interview, tell the truth. An immigrant attending an immigration interview should NEVER lie or try to hide something because it is likely Immigration will find out about the offense anyway, and will view the lying as just as bad as - or even worse than - the offense the immigrant is trying to hide. If there

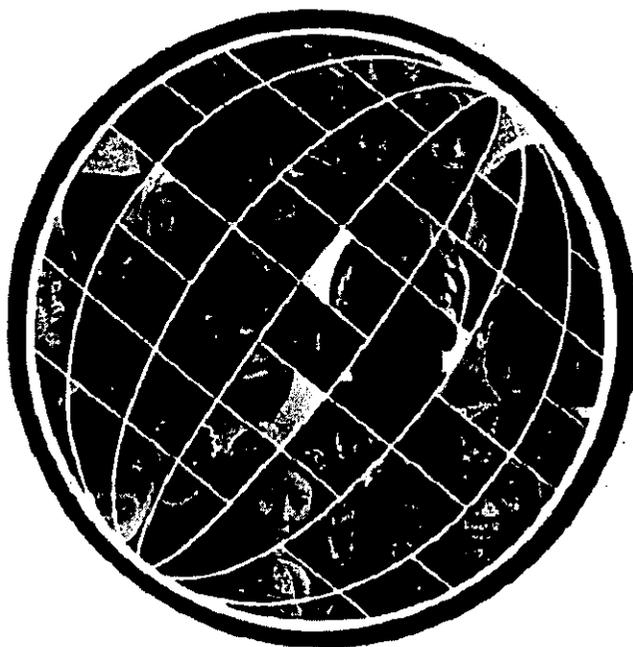
is anything on an immigrant's record, it is a good idea to consult an attorney before applying for naturalization.

**Q:** What if an immigrant is arrested for a different type of crime?

**A:** If an immigrant is arrested for anything other than a minor traffic violation, it is a good idea to consult an immigration attorney about the consequences the offense will have on his or her immigration status. This should be done before going to court, even when a public defender has been appointed.

**Q:** What other behaviors should an immigrant try to avoid because it could reflect poorly on the good moral character standard?

**A:** Immigration will look at anything that may indicate an applicant does not have good moral character. A few examples of behaviors that Immigration would view negatively are writing bad checks, theft, problems with social services, drinking excessively, or using drugs.



# Case Review

By: Edward B. Reinhardt, Jr.

This is a North Dakota Supreme Court case decided in 2006.  
It was successfully argued by Carrie Francis of our Minot office.

Frisk v. Frisk, 2006 ND 165, 719 N.W.2d 332, decided July 21, 2006

## FACTS

Krista Frisk separated from Daniel Frisk in May of 2004 and obtained a temporary domestic violence protection order. A hearing was held in June 2004. Krista and Daniel agreed to extend the order until December 2004, but there would be no finding of domestic violence. In November 2004, Krista asked to get the protection order extended. The district court extended the protection order until December 2006. However, the court did not actually grant the extension until after the first order had expired. Daniel appealed, and in 2005, the North Dakota Supreme Court sent the case back to the district court to decide whether Krista had shown there was domestic violence when she asked for an extension. The district court found there was domestic violence, and Daniel appealed a second time. Below is a summary of the decision.

## ANALYSIS

In its second Frisk opinion, the North Dakota Supreme Court said that protection orders could be extended, even though the protection order statute (North Dakota Century Code Section 14-07.1-02) does not specifically mention extensions. The Court also said that protection orders could be extended after they expire, as long as the extension is requested before expiration.

Based on the evidence presented in June and December of 2004, the district court decided there was enough evidence of domestic violence to extend the protection order. The Supreme Court said that whether to have a new hearing was within the district court's decision. The Supreme Court also held the district court's findings about domestic violence were supported by evidence that had been introduced at the June 2004 and December 2004 hearings.

Finally, the Court said that incidents of domestic violence that occurred between May 2004 and November 2004 did not happen too long ago. The district court properly considered those incidents when it extended the protection order.

The second Frisk decision, when considered with other North Dakota Supreme Court decisions, helps clarify some procedural questions in protection order cases. The parties had agreed to a 6 month protection order, but they also agreed there would be no findings of domestic violence. Krista could seek to extend the protection order beyond the 6 month limit. However, she had to request her extension before the 6 months expired. Since there had been no finding of domestic violence at first, Krista had to provide there was domestic violence to get the protection order extended. Incidents occurring since May 2004 were not too long ago to establish the existence of domestic violence.

## SUMMARY

Krista asked for an extension before the protection order expired. She was also able to establish the existence of domestic violence. As a result, the North Dakota Supreme Court affirmed the district court decision extending the protection order until December 14, 2006.

# PRAIRIE PERSPECTIVE

"It is the spirit and not the form of law that keeps justice alive." -Earl Warren.

From the Mind of Bradley Peterson:

## In This Issue Brad Discusses Reflections on In re Gault

Though the United States Supreme Court has issued thousands of decisions there are a handful of cases that are easily recognizable and the mentioning of the case draws a response. On May 15, 2007 one case will be celebrating its 40<sup>th</sup> birthday- In Re Gault, 387 US 1.

For those of you who have tried your best to forget constitutional law or just need a quick refresher course, In Re Gault involved a 15 year old child from Arizona who was committed to the Arizona State Industrial School until he turned 21 for making a long distance phone call. The parents of the child filed a petition for habeas corpus and it was dismissed by the Courts of Arizona. The case went to the United States Supreme Court on whether the boy received his right of due process. The United States Supreme Court reversed the conviction finding the child was denied due process of law because he did not receive fair treatment including the right to written notice of the charges in advance of the hearing so as to prepare; right to counsel including court appointed; right against self-incrimination and absent a valid confession, a determination of delinquency; the order of commitment based only on sworn testimony subject to the opportunity for cross-examination in accordance with requirements.

In October of last year I was invited to attend the National Juvenile Justice Defender's Conference, in Washington D.C. The absolute highlight of the conference was the opportunity to listen to Norman Dorsen, the attorney who argued on behalf of Mr. Gault. Even though it was forty years ago it was amazing how Mr. Dorsen was able to talk about the Gault case like it was yesterday. Mr. Dorsen discussed how he 'accidentally' fell into it the case when he received a call from an attorney in Arizona asking for assistance. Mr. Dorsen very humbly recited the journey of Gault and disclosed that the

United Supreme Court had initially had a case ahead of Gault that the Court was going to use to determine the rights of juveniles. Mr. Dorsen speculated that the Gault case should have only been a minor footnote but for some unknown twist of fate the Gault case leapt the front of the line. Mr. Dorsen indicated this was one of the easiest arguments he was ever involved in as the Court asked very few questions and a decision was issued in only five months, yet it became one of the foundations of our legal system. Mr. Dorsen at the end of his address challenged the participants of the conference to take the 'spirit of Gault' back home.

After listening to Mr. Dorsen I started wondering how North Dakota has treated the 'spirit of Gault'. After some very quick research I found North Dakota adopted the essential elements of Gault with the passage of the Uniform Juvenile Court Act in 1969 (Chapter 27 of the North Dakota Century Code).

There are a large number of North Dakota Supreme Court cases that directly cite In Re Gault and as well as cases that follow the 'spirit of Gault'.

As directly citing to In Re Gault, in 1971 the North Dakota Supreme Court decided In the Matter of R.Y. Jr., where the Court was asked to extend the holding of Gault to include a juvenile's right to a jury trial. The North Dakota Supreme Court chose not to extend Gault to include right to a jury trial to a in a juvenile setting. However, former Chief Justice Erickstad in a concurrence stated:

*(Prairie Continued on page 12)*

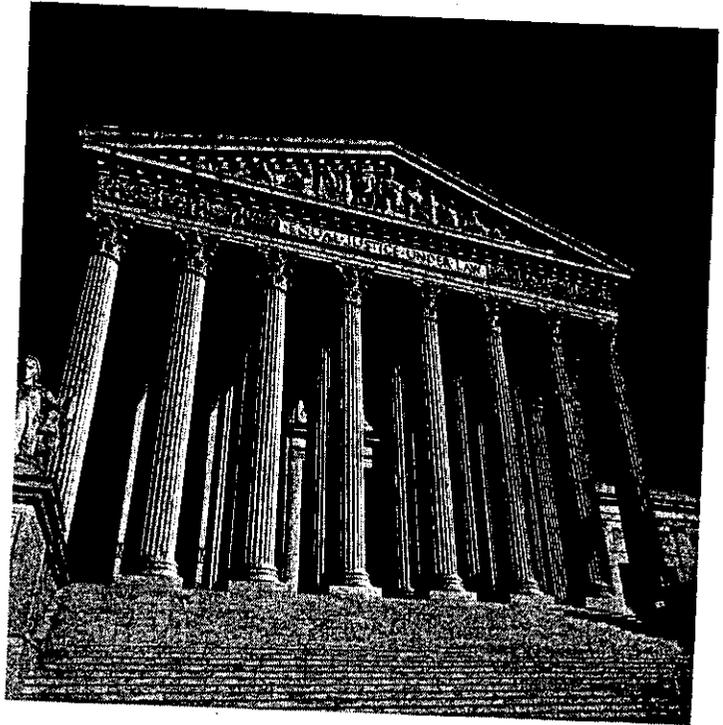
(Prairie Continued from page 11)

“It is my hope that the new Act can be administered in such a way through the support of the Legislature in its funding capacity that the rehabilitation goals may be achieved. Should time and experience prove to the contrary and the Act become merely a punitive tool, a jury trial might then be justified under our State Constitution.”

Perhaps if future changes in the juvenile process are deemed to be more punitive this will open the door for a juvenile to receive a jury trial under the ‘spirit of Gault’.

Another direct reference to *In Re Gault* was *In Interest of K.G.*, 295 N.W.2d 323 (ND 1980) where the North Dakota Supreme Court went beyond *Gault* and *Kent* and interpreted Chapter 27-20 to ‘require a due process hearing before a child could be waived into adult court and if the matter is contested a hearing must be held and the State must provide evidence to support reasonable grounds to believe that the child committed the delinquent act must be produced by witnesses available for cross-examination.’

A couple of more current examples of a ‘spirit of Gault’ were the *Interest of RDB* 1998 ND 15, with the court finding the right to counsel for a juvenile can be waived by the juvenile as well as the parent in *Interest of LBB* 2005 ND 220 the Court held there was insufficient evidence to prove allegations against a juvenile beyond a reasonable doubt and that double jeopardy attached to any further prosecution. In a concurring opinion Justice Standstrom also found the rules of evidence should apply.



In conclusion, on January 3, 2007 Chief Justice Vande Walle in his State of the Judiciary Message discussed the work of the Judiciary’s Juvenile Policy Board and the Juvenile Policy Board Initiatives that included proposed legislation for changes to the North Dakota Juvenile Court Act. The initial proposed legislation is HB 1092. From an initial reading of HB 1092 it appears the way juvenile proceedings are to be conducted in North Dakota will undergo change. In celebrating the 40<sup>th</sup> Anniversary of *In Re Gault* let’s hope the Sixth Legislative Assembly of North Dakota and the Judiciary’s Juvenile Policy Board continue to be guided by the ‘spirit of Gault’.

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James Fitzsimmons, Publisher      Ed Reinhardt, Consultant      Stacey Fetzer, Editor      Lauren Schaaf, Co-Editor

(Fair Lending Continued from page 7)

loans are flipped into loan renewals five or more times per year, the center found.

Specifically, payday loans charge consumers triple-digit interest rates, require full payment in short period of time, and involve use of high pressure collection tactics of allowing the lender to hold the borrower's signed, personal check, the center said.

A borrower taking out four loans per year typically pays \$200 in interest on a \$300 revolving loan, the center reported. Additionally, the report found that a typical borrower pays back \$793 for a \$325 loan.

### REVENUE SOURCES UNCHANGED SINCE 2003

About 90 percent of payday lending revenues are based "on fees stripped from trapped borrowers, (and those findings are) virtually unchanged from" the center's 2003 report. The payday loan industry continues to rely on the practice of loan flipping, the repeated refinancing of an existing loan, the report said.

The 11 states that ban payday lending saw a decline in annual interest on predatory payday lending fees each year, the report said. States that ban repeated loans include Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont and West Virginia, the center said.

According to the report, state policymakers that want to prevent predatory payday loan flipping should consider capping annual interest rates on small consumer loans at an all-inclusive 36 percent.

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## NOTE OF APPRECIATION

The Board of Directors and management of Legal Services of North Dakota would like to thank the following private attorneys who completed cases in 2006 as part of LSND's Private Attorney Involvement (PAI) Project:

*Robert Ackre  
Christopher Carlson  
Theresa Cole  
Gene Doeling  
Edwin Dyer III  
Lee Finstad  
Neil Gillund  
James Gion  
Rebecca Graves  
Valeska Hermanson  
Timothy Hill  
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Phyllis Ratcliffe  
Jace Richards  
Craig Richie  
Susan Schmidt  
John Steinberger, Jr.  
Anne Summers  
Rudolph Tollefson  
Wyatt Voll  
Melvin Webster*

If you have any questions about our Private Attorney Involvement Project, please contact PAI Coordinator, Willa Rhoads at 701-222-2110.

# Years of Service Recognized

By: Audrey Solheim, LSND Administrative Secretary



On December 16, 2006, three retiring Legal Services of North Dakota (LSND) board members were recognized for many years of service. Plaques were presented to Richard Hagar, Sharon Martens, and Judge William McLees at the LSND Board meeting in Mandan.

**Richard Hagar**, a past president of the Legal Assistance of North Dakota, Inc. (LAND) board and active member on the LSND board started his tenure on the board on October 1997. Hagar was recently elected as a District Judge in Minot and because of these new responsibilities decided to retire from the LSND board.

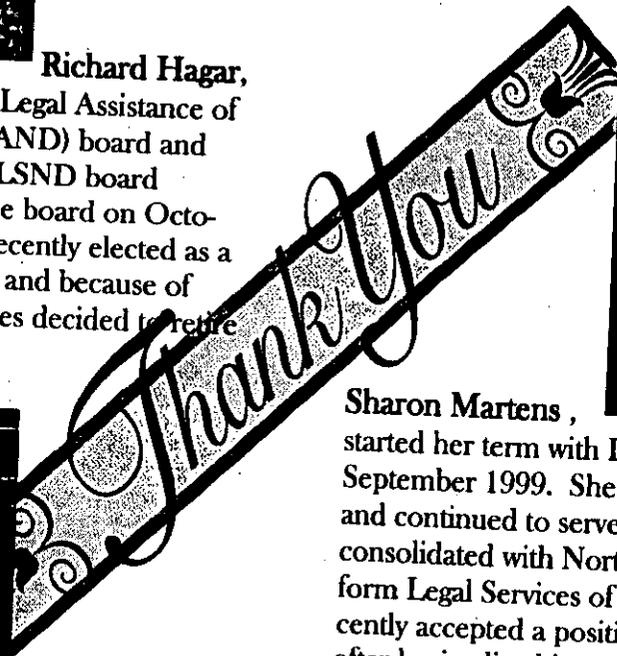


**Sharon Martens**, started her term with LAND as a board member in September 1999. She was an active board member and continued to serve on the board after LAND consolidated with North Dakota Legal Services to form Legal Services of North Dakota. Sharon recently accepted a position in Bemidji, Minnesota after having lived in northeastern North Dakota for many years. Because of this change in residency she is leaving the LSND board directors.



**Judge William W. McLees** started his tenure on the North Dakota Legal Services board of directors back in June of 1985. He was a very active part of that board, and continued serving on the consolidated program board of Legal Services of North Dakota.

These members will be sorely missed, and their contributions of service to the program and clients are very much appreciated.



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# Legal Services of NORTH DAKOTA Outreach Calendar of Events

| <u>LOCATION</u>                              | <u>TIME</u>           | <u>DAY</u>                        |
|--|-----------------------|-----------------------------------|
| Belcourt, Belcourt Retirement Home           | 10:00a.m.-11:00a.m.   | Every Wednesday of Each Month     |
| Bismarck, Bismarck Senior Center             | 3:00p.m.-4:30p.m.CT   | 2nd Wednesday of Each Month       |
| Bowman, Pleasant Manor Community Room        | 8:30a.m.-10:30a.m.MT  | Second Tuesday of Each Month      |
| Dickinson, Sunset Senior Center              | 1:00p.m.-3:00p.m.MT   | Last Wednesday of Each Month      |
| Devils Lake, Senior Center                   | 10:00a.m.-2:00p.m.CT  | 2nd & 4th Thursday of Each Month  |
| Fargo, Bethany Homes                         | 1:00p.m.-2:00p.m.CT   | 2nd Tuesday of Each Month         |
| Fargo, YMCA Shelter                          | 2:00p.m.-4:00p.m.CT   | 2nd & 4th Wednesday of Each Month |
| Fort Totten, Spirit Lake Tribal Courthouse   | 10:00a.m.-2:00p.m.CT  | Each Friday of Each Month         |
| Glen Ullin, City Hall                        | 9:00a.m.-11:00a.m.CT  | Last Wednesday of Each Month      |
| Grand Forks, Red River Community Action      | 11:00a.m.-2:00p.m.CT  | Each Thursday of Each Month       |
| Hamestown, James River Senior Citizen Center | 10:30p.m.-2:30p.m.CT  | 3rd Thursday of Each Month        |
| Linton, Emmons County Courthouse             | 1:30p.m.-4:00p.m.CT   | Last Tuesday of Each Month        |
| Mandan, Golden Age Senior Center             | 2:00p.m.-4:00p.m.CT   | 3rd Tuesday of Each Month         |
| Minot, All Saints Episcopal Church           | 11:30a.m.-12:30p.m.CT | 3rd Thursday of Each Month        |
| Minot, Christ Lutheran Church                | 11:30a.m.-12:30p.m.CT | 3rd Tuesday of Each Month         |
| Minot, Commission on Aging                   | 1:00p.m.-2:00p.m.CT   | 3rd Thursday of Each Month        |
| Minot, Faith United Methodist Church         | 11:30a.m.-12:30p.m.CT | 1st Monday of Each Month          |
| Minot, First Lutheran Church                 | 11:30a.m.-12:30p.m.CT | 1st Friday of Each Month          |
| Minot, Immanuel Baptist Church               | 11:30a.m.-12:30p.m.CT | 1st Wednesday of Each Month       |
| Minot, Manor Care                            | 2:30p.m.-4:30p.m.CT   | 2nd Wednesday of Each Month       |
| Minot, Milton Young Towers                   | 1:00p.m.-2:00p.m.CT   | 4th Wednesday of Each Month       |
| Mott, Cannonball Senior Center               | 12:30p.m.-2:30p.m.MT  | Second Tuesday of Each Month      |
| Washburn, McLean County Courthouse           | 9:00a.m.-12:00p.m.CT  | 1st Tuesday of Each Month         |
| Watford City, McKenzie County Social Service | 11:15a.m.-12:00p.m.CT | 2nd Monday of Each Month          |
| Watford City, Good Shepherd Home             | 1:00p.m.-1:30p.m.CT   | 2nd Monday of Each Month          |
| White Shield, White Shield Complex Building  | 10:00a.m.-11:30a.m.CT | 1st & 3rd Wednesday of Each Month |
| Williston, Heritage Center                   | 1:00p.m.-2:30p.m.CT   | 1st Thursday of Each Month        |
| Williston, Williams County Courthouse        | 10:00a.m.-12:00p.m.CT | 1st Thursday of Each Month        |
| Wishek, Wishek Senior Center                 | 9:30a.m.-12:00p.m.CT  | Last Tuesday of Each Month        |

*"To do more for the world than the world does for you - that is success." —Henry Ford*

**LSND Secretaries:**

Kiley Hart, Fargo  
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Jennifer Jones, Minot  
Audrey Wingerter, Bismarck  
Hanna Asovic, Fargo

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Berta Anstrom, Fargo  
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Sheree Weisz, Fargo  
Kelsee Macintosh, Fargo/RACC

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**Senior Hotline**

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**Administrative Office**

(701) 258-1110

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Stacey Fetzer, Bismarck  
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Vickie Fox, New Town  
Debbie Kraft, Minot  
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