Richard LeMay is the new Executive Director of Legal Services of North Dakota. He was appointed Executive Director by the LSND Board of Directors on November 17, 2015. He succeeds Jim Fitzsimmons, who passed away in March, 2015. Rich had been the Interim Executive Director since April, 2015.

Rich is a native of Antler, North Dakota. He enlisted in the U.S. Army after high school. After his military service, he returned to Mohall, North Dakota, and operated an auto parts store with his father-in-law. After several years in the parts business, he enrolled in Minot State University. He graduated with a Bachelor of Arts in history in 1985. He attended law school at the University of North Dakota, graduating in 1988. While in law school, he was active in the Legal Aid Association.

After law school, he went to work for Legal Assistance of North Dakota in 1989 as a staff attorney in the Minot office. In 1991, he became the Managing Attorney of the Minot office.

When Legal Assistance of North Dakota combined with North Dakota Legal Services to form Legal Services of North Dakota in 2004, Rich was appointed as Litigation Director of the new program. He held that post until being appointed Interim Executive Director in 2015.

During his years at Legal Assistance and Legal Services, he has represented clients in family law, landlord-tenant, public benefits, consumer, and Social Security disability cases. He has also argued 25 cases before the North Dakota Supreme Court, and has appeared as co-counsel in 5 others. In 1998, Rich established the centralized telephone intake system used by Legal Assistance and Legal Services. In conjunction with centralized telephone intake, he also supervised development of the internet-based application for services. He helped establish the first Legal Assistance website. He has supervised, advised, and mentored numerous young attorneys, paralegals, and law students. Rich has served for many years on the Board of Directors of the Minot Area Homeless Coalition.

Rich married his wife Jeanne while he was in the Army. They have three grown children and two grandchildren.

**LSND Christmas CLE**

LSND will be presenting its 11th Christmas CLE on Friday, December 11, 2015 beginning with registration at 8 a.m. at the Radisson Hotel in downtown Bismarck. Topics of interest covered will include Section 504 of the Rehabilitation Act of 1973, with Protections for Students of All Ages; An Update on the American Indian Probate Reform Act of 2004 (APIRA); Domestic Violence in Housing: State and Federal Protections, and Revised Child Support Guidelines. To find out more about this CLE, go to our website www:legalassist.org.
Jim Fitzsimmons Receives the 2015 SBAND Distinguished Service Award

The Distinguished Service Award is SBAND’s most prestigious award. It honors a member of the profession who has provided outstanding service to the state and legal community over an extended career.

The Distinguished Service Award plaque, which hangs outside the courtroom of the North Dakota Supreme Court is intended to permanently honor recipients and remind lawyers and the public of their dedication and work.

This year’s award was presented to the family of the late Jim Fitzsimmons, the long time director of Legal Services of North Dakota, who passed away on March 30. In presenting the award, Mary Kae Kelsch, a board member for LSND, said with Fitzsimmons’ passing North Dakota lost its strongest voice for justice. “He worked tirelessly to bring justice to those in need,” said Kelsch. “There is nobody more deserving of this award.”

Present to accept the award were Fitzsimmons’ two daughters, Kylene and Carlyn and granddaughter Cedar. Also present were staff and board members of Legal Services of North Dakota.

The LSND Board of Directors has established a memorial fund in Jim’s name. To date $2500 has been donated to this fund. To add your contribution in memory of Jim, send your memorial to:

LSND
418 E Broadway #7
Bismarck, ND 58501
West Central Vulnerable Adult Coalition (WVAC) recently presented our agency with a plaque in honor of Jim’s work with vulnerable adults.

“The goal of WVAC is to collaborate and to educate people in our region so that we can prevent and effectively address abuse, neglect, and financial exploitation of vulnerable adults” said coalition co-chair Katie Schafer of the ND Department of Human Services’ West Central Human Service Center.

Schafer said coalition partners include representatives from state agencies, financial institutions, social service providers, legal services, law enforcement, medical and public health providers, veteran’s organizations, and direct service providers.

The West Central Vulnerable Adult Coalition was created in 2009 under the leadership of West Central Human Services Center with grant funding from the National Center on Elder Abuse. The coalition works closely with law enforcement and other agencies to address challenging issues facing many vulnerable adults, has established a speakers bureau, and continues to identify ways to prevent and address abuse, neglect and financial exploitation of vulnerable adults.

To report suspected abuse or neglect of vulnerable adults go online to https://fw2harmonyis.net/NDLiveIntake/ or call 701-328-8868, toll free 888-328-2662 or ND Relay TTY 800-366-6888.
Telemarketers
prepared by Consumer Protection Division of the ND AG’s Office

- Telemarketers may only call between the hours of 8 a.m. and 9 p.m. It is a red flag if you get a call from a company outside of those hours.

- BE WARY of telephone calls and postcards with offers “TOO GOOD TO BE TRUE.” They usually are!

- Ask a lot of questions and listen carefully to the answers. Take notes during the call. If the caller does not answer your questions, hang up.

- Refuse to be pressured into making a hasty decision. Legitimate callers will allow time for consideration. Take your time!

- You should not be asked to pay in advance for services. Pay for services only after they are delivered. Don’t believe that you have to give the company money for taxes on your prize. Taxes will be deducted from your winnings or you will pay them directly to the government.

- Be skeptical if you are told you have won a prize but have to pay something to receive it. NEVER pay for a “free” prize. Free is free.

- NEVER wire money—that is a sure sign it is a scam. DO NOT send a certified check or money order to a telemarketer. Once the money is sent, you cannot get it back!

- NEVER give out your credit card or checking account number over the telephone unless you initiated the call with the intention of ordering or reserving something.

- If the telemarketer offers to send a messenger to pick up your payment, that’s a sure sign it is a scam.

- It is illegal for a telemarketer to call you if you have asked not to be called. You have the right to ask the telemarketer to be placed on their companies specific do not call list.

- Check out the telemarketer or the company they represent with the Consumer Protection Division before making a decision.

- Do not be embarrassed if you think you have fallen victim to a telemarketing fraud. Anyone can be a victim of a scam artist. Report it to Consumer Protection (1-800-472-2600)

- Remember that con artists lie. It is hard to imagine there are people who are so cruel that they will tell you that you’ve won something when you haven’t, but it is true!
BISMARCK, N.D. (Heather Steffl) – On July 1, the North Dakota Department of Human Services is launching a centralized phone number for people to call to report suspected abuse, neglect, or exploitation of vulnerable adults. Department staff will answer calls during the weekday to the Aging and Disability Resource Link - Vulnerable Adult Protective Services intake line at 1-855-462-5465.

Staff will review concerns and provide information to the regional human service centers and partnering agencies if a home visit is needed to assess a situation. People can leave a message if they are calling after hours.

“Our goal is to make it easy to report concerns. Because vulnerable adult protective services are provided by the department and contracted partner agencies, having one phone number benefits the professionals who are required by law to report concerns,” said Michelle Gayette, the department’s vulnerable adult protective services administrator.

Gayette stressed that if a vulnerable adult is in immediate danger of serious injury or death, people should still call 911. After emergency responders are contacted, people should still call the central intake number to report the concern.

“It is important for people to report both urgent and non-urgent concerns so that professionals can follow up and make sure that health, welfare and safety issues are addressed,” Gayette said.

People can also make a report online at https://fw2.harmonyis.net/NDLiveIntake/. A reporter can remain anonymous.

According to Gayette, the department received about 1,500 reports of possible abuse, neglect, or exploitation of vulnerable adults in 2014.

The Vulnerable Adult Protective Services Program serves vulnerable adults age 18 and older or minors who are married and who have mental or functional impairments. More information about the service and mandated reporting is online at www.nd.gov/dhs/services/adultsaging/reporting.html
North Dakota State law provides specific protections for victims of domestic violence. North Dakota law defines domestic violence as a physical harm, bodily injury, sexual activity by physical force, assault, or the infliction of fear of imminent harm not in self defense on the complaining family or household members.

A victim of domestic violence may terminate a lease agreement without penalty or liability if the victim is a tenant to a residential lease agreement who is a victim of domestic violence or who fears imminent domestic violence against the tenant or the tenant’s minor children if the tenant or the tenant’s minor children remain in the leased premises. Despite a victim’s termination of the lease, the tenancy will continue unaffected for other tenants on the lease, if any.

To invoke the right to terminate a lease without penalty or liability, a victim must follow specific requirements. The victim must provide advance written notice to the landlord. The notice must state the victim fears imminent domestic violence from a person named in a protection order, the victim needs to terminate the tenancy, and the date the tenancy will terminate. The victim must deliver the notice to the landlord before the tenancy terminates. The victim must deliver the notice to the landlord by mail, fax, or in person.

Previously, North Dakota law required a victim to provide the landlord a copy of the protection order with the notice. In 2015, the North Dakota Legislature slightly amended the law. Now, it appears a victim is no longer required to provide the landlord a copy of the protection order with the notice. However, a protection order must exist.

Under this law, a landlord may not disclose information documenting domestic violence provided by a victim. Although, if an eviction proceeding should arise, a landlord may use the information if it relates to a claim for unpaid rent or damages arising out of the tenancy.

A victim is responsible to pay rent for the full month in which the tenancy terminates. A victim is also responsible to pay an additional one month’s rent. The rent must be paid on or before the date the lease terminates. For example, if a victim provides the landlord proper notice that she is terminating her lease effective November 3, 2015 due to domestic violence, she must pay rent for all of November and December on or before November 3, 2015.

Despite this requirement, a landlord has a duty to mitigate the victim’s damages. For example, a landlord must attempt to re-rent the unit as quickly as possible or collect the amount of rent owed from other tenants who remain living on the premises.

A victim is relieved from all other contractual obligations for payment of rent or other charges after termination of the lease. However, it is important to understand that a victim may continue to be liable for late, unpaid rent or other amounts owed to the landlord before the lease was terminated.

Under this law, a landlord may not retaliate or discriminate against a victim of domestic violence. A landlord who violates this section may be liable for statutory damages up to $1,000, actual damages, attorney fees, and costs and disbursements.

Domestic violence is a very serious issue in North Dakota. In 2014, protection/restraining order filings increased by 9.1%, while other civil filings and domestic filings decreased.
LSND’s Christmas CLE will feature a session covering how women and families are discriminated against, denied access to, and even evicted from housing because of their status as victims of domestic violence. This session will discuss Federal and State law protections for victims of domestic violence. It will examine VAWA 2013 in depth, including key changes, who is protected, what types of housing are covered, admissions, terminations, evictions, and necessary documentation of abuse. Next, this session will fully explain North Dakota state law protections for victims of domestic violence regarding lease terminations. Lastly, it will briefly cover the gap in protection for victims of domestic violence in the Fair Housing Act, and introduce the newly enacted North Dakota State law protection for victims of domestic violence against discrimination.

**Community Benefits - GAPS**
*(Guardian and Protective Services, Inc.)*

- Keeping individuals in their home longer saves dollars. Home care or basic care rather than nursing home care can save up to $3,000 per month.

- Alternatives to Guardianship, such as Power-of-Attorney or Social Security appointments are significantly less costly than court appointments.

- Assisting with financial affairs prevents exploitation of needed assets, legal difficulties, and unnecessary shutoff actions from utility companies.

- Improved mental and physical capabilities resulting from proper nutrition and medical services helps keep individuals in their homes longer.

- Identification and sale of assets to purchase needed services saves tax dollars.

- Accessing family members to assist with costs of medical, social, and legal services saves tax dollars.

- Improved living conditions and home repair and maintenance prevents rodent and insect infestation, fire danger and helps maintain value.

- Avoidance of unnecessary medical procedures results in financial savings.
Is North Dakota Falling Behind on SSI Child Benefits?
By Jesse Liebe, 3rd Year Law Student at UND School of Law

National Study

The Social Security Administration (SSA) has paid benefits to poor children with disabilities since 1975 through the Supplemental Security Income (SSI) program. The program provides cash payments on behalf of 1.3 million children suffering with either a physical or mental disorder. The last twenty years have seen a drastic rise in the number of recipients with a mental disorder, comprising roughly 50 percent of children in the program today.

Due to continued growth in the program, the SSA asked the Institute of Medicine to compare the rates of mentally disabled children in the United States with the rates of children deemed eligible for SSI benefits. The study released on September 9, 2015, shows significant variation between states in both the rates of application for SSI benefits and the rates of acceptance. The full text of the study can be found at http://www.nap.edu/read/21780/.

Impact on North Dakota

Not surprisingly, North Dakota had the third least determinations (decisions regarding whether a particular child is disabled) of any state behind only Alaska and Wyoming. However, North Dakota’s rate of determinations per poor child was low as well. The state had 158 allowances and 193 denials per 100,000 poor children for the 10 most common mental impairments. This means that only 351 determinations occurred per 100,000 poor children compared with a state such as Pennsylvania which had 1441. North Dakota is not alone in this regard, as children in many Western states are less likely to apply for SSI benefits than children in Eastern states.

Additionally, the allowance rate, the percentage of determinations in which the applicant was found to be disabled, varied significantly across states. Although the allowance rate averaged 37 percent across the United States, North Dakota’s allowance rate for 2013 was roughly 45 percent. North Dakota’s relatively low determination rate but high allowance rate likely implies that the state is failing to encourage enough families with children to apply for SSI benefits, and is instead only focusing on the more apparent cases. The numbers provide support for this suggestion as less than 1 percent of North Dakotan children are recipients of benefits while states such as Pennsylvania (with 5 percent recipients) draw the national average up to 2 percent. Furthermore, the percentage of poor children applying for SSI benefits based on mental impairment in North Dakota has dropped by more than a third between 2004 and 2013.

To explain this state-by-state variance, the report looked to a 2015 study which found that while no single factor explained all of the variances between the states, possible significant factors include: the level of outreach of advocacy groups; differences in state economies and policy and program environments; demographics and youth income characteristics; and flexibility inherent in the determination process including the hiring of disability examiners and the use of outside contractors. The report specifically noted that, “state-to-state variation cannot be solely or substantially attributed to variation in the rates of mental disorders among states.” This means that North Dakota’s low number of children...
accessing SSI benefits is not likely caused by a low number of North Dakotan children with mental disabilities.

In response, members of the North Dakota bar should look for opportunities to inform friends and clients of the benefits available to them if their child has a mental disability. Often families with disabled children struggle to make ends meet, and the SSI benefit has historically succeeded in lifting many out of poverty. Without changing the recent significant drop in applications, North Dakota is unlikely to even be aware that these families need help.

Additionally, the state should evaluate whether applicants are failing to apply due to misconceptions about the process. Patricia Wen from the Boston Globe has been covering the issue for at least five years, and she notes that many applicants mistakenly believe that their children must be on psychotropic drugs to qualify. Members of the bar should be careful not to discourage applications for SSI benefits simply because the children are not being medicated for the condition.

**Critiques of Children’s SSI Benefits**

Recently, SSI benefits for children with mental impairments have come under fire from those arguing that the program has become the new welfare. Since 1996, the SSI benefits have been provided to children with a mental or physical impairment which results in “marked and severe functional limitations” which are expected to last at least twelve months or result in death. While one would expect children to leave the program when their mental impairment subsides, this has rarely been the case.

Instead teenagers are often faced with the prospect of either accepting part-time employment and preparing for the future or the loss of their SSI check. Critics of the program suggest that it creates incentives for the families of disabled children to keep them on psychotropic drugs and prevent them from working. Often the family can come to rely on the monthly SSI check for necessities.

Due to its cautious use of the program, North Dakota has largely avoided the negative side-effects above. Lawyers should take care when advising a client who is considering applying for the benefits so as to not influence them toward unnecessary medication. Furthermore, employers should recognize the disincentives which may exist for teenagers to accept gainful employment, recognizing they may need to adjust their compensation upward.

With these considerations in mind, hopefully a child with a mental disability born in North Dakota will have an equal chance at success with a child in any other state.

(Charts continued on next page)
Is North Dakota Falling Behind on SSI Child Benefits?

Charts

FIGURE 4-6: Percentages of poor children in each state who are recipients of SSI benefits for the 10 selected mental disorders. SOURCE: Unpublished data set provided by the SSA.
LSND Staff Pictures

Mikayla

Steve

Ed

Rich

Brad

LSND
Senior Legal Helpline
Number
1-866-621-9886
**Client Success Story**

A client contacted Legal Services for help with survivor’s benefits for her newborn child. The alleged father had passed on several months before the child was born. The applicant and the father of the child were not married. The Social Security Administration would not accept the allegations of fatherhood even though there was an additional older child who had been granted survivor’s benefits and the father was named in the medical records. The difference here was that the father had signed the birth certificate in the case of the older child.

Without our services the child would have gone without survivor’s benefits. Legal Services was able to obtain an order from the District Court to use blood samples taken from the father of the child and to obtain a DNA test showing the alleged father was 99.9% positive. This DNA test was then taken in front of an Administrative Law Judge at the Social Security Administration during a hearing and survivor’s benefits were granted back to the date of application for the benefits.

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**Speakers/Brochures**

Legal Services of North Dakota will provide speakers for your agency/organization on specific topics affecting low-income and/or elderly people or on civil legal services in general.

We also have a number of brochures that are available on various topics relating to problems our clients are faced with.

To obtain these public awareness materials or to have someone come and address your group, please contact our Administrative Office—Phone 701-222-2110.

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**You Can Donate to Legal Services of North Dakota**

As a nonprofit organization, Legal Services of North Dakota (LSND) relies on contributions to continue providing free legal services to low-income and elderly North Dakotans. Any donation, large or small, supports the vital role we play in the struggle for equal justice. LSND is a 501 (c)(3) organization, meaning that all contributions are fully tax deductible. You can either make your check payable to Legal Services of North Dakota which can be sent to us at:

Legal Services of North Dakota  
418 E Broadway #7, Bismarck, ND 58501  
or  
You can go to our Donate Button on the home page of our website www.legalassist.org
Disability Discrimination in Schools
By Gini Martin-Hansen, Staff Attorney

At its core, Section 504 of the Rehabilitation Act of 1973, as amended, provides protections for students with disabilities. Specifically, Section 504 prohibits discrimination based on disability in all elementary, secondary and post-secondary educational programs that receive Federal financial assistance.

**Who does Section 504 Protect?**

There is no precise list of qualifying disabilities. For purposes of Section 504, a disabled person is defined as “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.”

**What is Prohibited Under Section 504?**

34 CFR §104.4 (a) states that “no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.” In other words, Section 504 prohibits harassment and different treatment based on disability.

**Beyond General Prohibitions on Discrimination, What Other Requirements Are There Under Section 504?**

Additional protections for qualified students with disabilities are required at both the elementary/secondary level and the post-secondary level.

**Elementary and Secondary Schools**

Specifically, elementary and secondary schools are required to provide a free appropriate public education or FAPE to all qualified disabled persons within their jurisdiction regardless of the type of disability. Under Section 504, “the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met.” In order to provide FAPE, schools are responsible for identifying and evaluating students who need or are believed to need services under Section 504. Schools then have the obligation to provide any required regular or special education and related aids and services. The evaluation, placement, and education of students with disabilities is to be conducted at no cost to the student or the student’s family.

Having an IEP or Individualized Education Program under the Individuals with Disabilities Education Act (IDEA), is one way to satisfy the requirements of Section 504. However, there are additional students who will qualify for services under Section 504 who do not qualify under the IDEA. The IDEA specifically funds special education and sets requirements for those services. Some students, such as one with diabetes who needs help administering insulin at school, would not qualify for special education under the IDEA but would qualify for protections under Section 504. Finally, Section 504’s protections extend outside the classroom to extracurricular activities as well.

**Post-secondary Schools**

At the post-secondary level, more burden is placed on the individual student to advocate for his or her needs. The post-secondary institution is not required to provide FAPE, nor is it required to identify students with disabilities. The post-secondary institution also cannot make a pre-admission inquiry as to an applicant’s disability status. However,
Disability Discrimination continued

the post-secondary institution must provide students with disabilities with “appropriate academic adjustments as necessary to ensure that it does not discriminate on the basis of disability.” Academic adjustments include modifications to academic requirements as well as the provision of auxiliary aids and services as long as they do not result in a fundamental alteration of the program or place an undue burden on the institution. In order to receive academic adjustments, the student must request them from the college or university. In turn, the school may require the student to provide documentation of the disability at personal expense and follow other reasonable procedures. The student, however, cannot be charged for the cost of the academic adjustments.

For students with disabilities transitioning from high school to a post-secondary program, understanding the different requirements under Section 504 is essential to a successful experience. However, post-secondary students with disabilities also include another growing demographic, the newly disabled student. For example, veterans from Operation Iraqi Freedom and Operation Enduring Freedom are leaving the service and taking advantage of service-related educational benefits. However, some of these individuals have newly acquired, service-related disabilities such as post traumatic stress disorder, traumatic brain injury, or limb amputations. Because some veterans are newly disabled, they may be unaware of what their rights are and what resources are available to assist them in their post-secondary education. Nevertheless, post-secondary institutions have the same obligations under Section 504 towards disabled veterans as they do towards graduating disabled high school seniors.

Where Can I Get More Information on My Rights Under Section 504?

The U.S. Department of Education’s Office for Civil Rights is responsible for the enforcement of Section 504 and its implementing regulation. The state of North Dakota is served by the Chicago Regional Office.

Additionally, LSND will be hosting a CLE entitled “Section 504 of the Rehabilitation Act of 1973: Protections for Students of All Ages” as part of its December CLE Program.

Author of this article Virginia Martin-Hansen is a staff attorney in the Minot Office of Legal Services of North Dakota where she focuses on providing civil legal services to victims of domestic violence in the Bakken region. Gini is a 2009 graduate of Duke University School of Law and is admitted to practice in Virginia and North Dakota.
 Listed below are the cities and locations where Legal Services of ND conducts legal outreach. The dates and times vary; however, if you check our web site at www.legalassist.org, under the Legal Outreach Calendar you will find a current schedule complete with dates and times.

*Outreach involves our attorneys and paralegals going into the rural areas of our state to provide needed legal help and community education.

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