What is Legal Services of North Dakota (LSND)?

Many people think LSND is an agency of the state of North Dakota. No, LSND is not a state agency. In fact, LSND receives no general funds (tax dollars) from the state of North Dakota. Currently, LSND receives funding from fourteen separate funding sources. The largest funding source (40%) is the Legal Services Corporation (LSC). The Legal Services Act places many restrictions and limitations on how LSND can use it’s funding in providing assistance to applicants for services. See 45 C.F.R. Part 1600.

Many who apply for services are under the mistaken impression that LSND must help them. To the contrary; the Legal Services Act requires that applicants must be financially eligible, have a requisite alien status and have a civil legal problem that is allowed by the Act. LSND’s purpose is to help as many people as possible obtain, maintain, or retain the necessities of life. LSND is not required to help anyone with any specific problem. It is simply managing a very limited resource to help as many people as possible.

It is possible that an applicant could meet all of the eligibility requirements but still not receive help from LSND. LSND serves an area of 70,000 square miles and a potential eligible applicant population of 192,000 people (120,000 seniors + 72,000 low-income). LSND is tasked with serving this population with 10 attorneys, 4 paralegals and 4 intake specialists.

How do I get help from LSND? First you must apply. If you have internet access the quickest way to make an application is to go to www.legalassist.org. You can apply online 24/7. The first step of the online application is to read the disclaimer and click on the circle indicating you have read the disclaimer. Then continue to the application, complete all of the boxes and then click submit. The disclaimer cautions that it may take up to seven days to respond to your application; however, most online applicants are contacted the very next day.

If you do not have access to the internet or would rather speak to an intake specialist, you have two options. If you are under the age of 60, call 1-800-634-5263. This number is available Monday through Thursday from 9 a.m. until 3 p.m. If you are 60 years of age or older call 1-866-621-9886. This number is available to seniors Monday through Thursday from 8 a.m. until 5 p.m. and 8 a.m. until 2 p.m. on Fridays.

LSND takes on the average, 6700 applications per year. LSND also takes applications for the State Bar Assn of North Dakota’s Volunteer Lawyer’s Program and the Reduced Fee Program.
In our Spring 2020 Newsletter, LSND unveiled our “outside the box” thinking and discussed how we are doing more to assist victims of crime throughout our state by obtaining funds from the VOCA grant to dedicate an attorney to this work.

Throughout that grant, LSND was able to assist additional victims of crime with family law matters, protection order matters, housing matters, and other various legal issues that had arose as a result of being a victim of crime. The attorney was based out of LSND’s Bismarck office and outreach locations were also set up in rural communities around the Bismarck area, including Washburn, Beulah, and Dickinson.

As with so many things in 2020, COVID-19 put a hold on some of our proposed projects and changed the course of our VOCA grant. However, with additional creativity, LSND found ways to continue to serve victims of crime and provide additional resources for these clients. The outreach sessions were switched to virtual sessions. Client meetings and court appearances became possible through the use of technology. Videos to assist victims understand the law and process were also produced and made available to the public. Throughout the grant cycle, LSND was able to continue to advise, assist, and represent individuals who identified as a victim of crime, despite the challenges that COVID-19 presented.

With the groundwork being laid within our last VOCA grant, LSND again applied for and was granted VOCA funds for the current grant cycle, with the main goal to be able to assist victims around the entire state, not just the Bismarck area and surrounding communities.

With the additional funds that were awarded to LSND, LSND has been able to create a Victims of Crime Team, which includes an additional attorney and a client support position. We were also able to allocate some funds to our current staff to have an attorney in each of our
regional offices assist victims of crime with their legal needs and to have support staff and intake workers dedicate some of their time to the project. Additionally, LSND’s tribal attorney will also be a part of the Victims of Crime Team. The Team will meet regularly to discuss current cases and how to better serve these clients.

The VOCA attorney was hired in our Bismarck office and she will be dedicating most of her time to working with victims regarding their legal needs. You can read more about her within this issue of the newsletter.

The client support position will also be based out of Bismarck but will be available to serve the entire LSND organization, again through the use of technology. This newly created client support position will be the key to keeping clients engaged in services, providing the clients with additional resources, and assisting clients in meeting their social needs, while the attorney is assisting with meeting their legal needs. The client support person and the attorney will work hand-in-hand to support the client in all aspects of their life in hopes that the client can have a fresh start away from any abuse or other victimization.

As mentioned in the previous article regarding the VOCA grant, the need for civil legal services for victims of crime is greater than we can currently assist with, as a result of a lack of resources being provided to LSND. However, the funds from this VOCA grant and the creation of the Victims of Crime Team is a great start for LSND to assist additional victims throughout the entire State of North Dakota. The goal is to continue to expand this project throughout the years to come so victims of crime in North Dakota continue to have options available to them when they are faced with civil legal issues.
had been a year of change. Apart from the physical and social effects of the COVID pandemic many people have also suffered involuntary reductions in incomes which have impaired their abilities to meet their monthly expenses. For many, one such expense that has been impacted, has been their ability to make student loan payments.

It has been said that student loans cannot be discharged in bankruptcy. That statement is not necessarily true, but the process is more complex than the mere filing of a bankruptcy petition. Additionally, there is no guarantee that a discharge of student loans will even be issued; but it is possible.

In 2020 the US Court of Appeals, 10th Circuit, entered a ruling in the case In re McDaniel (973 F.3d 1083). In McDaniel, the issue of the discharge of certain educational loans was before the court. The local bankruptcy court determined the educational loans were subject to discharge and the matter was thereafter appealed by the educational loan creditor. In its final decision the appellate court ruled that Section 523(a)(8)(A)(ii) of the US Bankruptcy Code did not except student loans from discharge. Although that statement rather simplifies the actual facts and ruling in McDaniel, the case has brought to the attention of bankruptcy practitioners a new focus on the dischargeability of student loans in bankruptcy.

A discharge of student loans is not an automatic result in bankruptcy. A debtor in bankruptcy would need to additionally file an adversarial action with the bankruptcy court to have the court consider the student loans for an order of discharge. An adversarial proceeding is basically a separate civil lawsuit filed in conjunction with an open bankruptcy case, where the debtor would sue the student loan creditor for an order declaring the student loan debt

“It has been said that student loans cannot be discharged in bankruptcy. That statement is not necessarily true …”
discharged. Closed bankruptcy cases could also be reopened for the filing of an adversarial action to address student loans.

The Bankruptcy Code requires the debtor to show that paying on the student loan debts would cause the debtor an “undue hardship” before a discharge could be considered by the court. As well, each case will be determined upon its own unique facts and subjective opinion of the judge hearing the case. Thus, the better the facts, the better the chances of a discharge.

“Undue Hardship” can be a tough burden to meet. There are several tests used by the courts (Brunner Test, Totality of Circumstances Test) but, essentially, the bottom line of each test is that the debtor must show that the payment of student loans, over the course of the loan period, would seriously impair the debtor’s ability to meet the necessary living expenses of the debtor and debtor’s dependents. To meet this end it would be best for a debtor to develop a history of good faith efforts to pay on the student loan debt, work with student loan creditors to modify the repayment terms, lower the interest rate, request deferments, manage an actual budget, and seek better or additional employment, etc. In the end the court must be convinced that options, other than the discharge of student loans, have been tried, exhausted and that the financial well-being of the debtor would remain impaired by the student loan obligations.

If student loan pressure is an issue, it would be wise to seek the advice and assistance of a bankruptcy attorney. Adversarial actions can be rather complex, possibly beyond the ability of a pro se petitioner. As well, there is some prior planning and good faith effort that a debtor should do before bringing their student loans before the court. An experienced bankruptcy attorney can provide insight and guidance on laying out the necessary groundwork with the hope of eventually securing a successful result.
Being a victim of crime can be a stressful situation for any individual but can also be burdensome when you have unreimbursed expenses as a result of the crime committed against you. So where do you turn to help alleviate that stress?

The Crime Victims Compensation is a grant program available through the North Dakota Department of Corrections and Rehabilitation. Innocent victims who have been physically or emotionally harmed by violent crime in North Dakota may be eligible for medical bill reimbursement and/or wage reimbursement. This program also extends to any person who pays for the funeral expenses of a homicide victim.

The application process is quite simple and can be done completely online. There are some requirements for the individual applying for compensation through this program, such as reporting the crime within a certain period and cooperating with law enforcement. There are also time and reimbursement limits for the program, and the individual applying must not have been involved in assisting or committing the criminal act for which the reimbursement is requested.

More information can be found on the North Dakota Department of Corrections and Rehabilitation website at https://www.docr.nd.gov/crime-victims-compensation.

If you believe that you or someone you know may benefit from this program, Legal Services of North Dakota may be able to assist with gathering the necessary documents and filling out the application. If you need assistance in this area, please apply for services at www.legalassist.org and we will be happy to review your application.
Did someone give you a gift card for your birthday … three years ago? Don’t worry, the card is still probably good. North Dakota Law prohibits gift cards from expiring before six years from the date of issuance. Better yet, the same law prohibits companies from charging a monthly fee for the gift card. Please remember, there are exceptions to the law (they can charge a fee or put an expiration date). The most common exceptions are general-use prepaid cards (VISA/ MasterCard prepaid card) and loyalty promotion programs.

The North Dakota Attorney General’s Office is designated by Chapter 51-29 to be in charge of enforcing this law.

If you have a gift card and a business is saying it expired or they are taking out a fee for inactivity, save the gift card and any documentation about the denial of services or fees, then give the Attorney General’s Office a call at 701-328-2210 or Legal Services of North Dakota at 1-800-634-5263 or legalassist.org.

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**Pro Bono Family Law Clinical Practicum**

Ariana D. Meyers, Assistant Professor, UND School of Law has launched a Pro Bono Family Law Clinical Practicum January 11, 2021. Legal Services of North Dakota is collaborating with UND School of Law in making referrals for family cases, including divorce, custody, guardianship, domestic violence protection order and restraining orders.

We appreciate UND School of Law’s Practicum faculty and students for contacting LSND and lessening our caseload.
Q: Does LSND provide help with Social Security and Supplemental Security Income?

YES! LSND provides advice through representation to individuals with issues with their Social Security and/or Supplemental Security Income benefits after they have been applied for and have then been denied the benefits.

Q: What is the difference between Social Security and Supplemental Security Income benefits?

Social Security replaces a percentage of a worker's pre-retirement income based on your lifetime earnings. The amount of your average wages that Social Security retirement benefits replaces varies depending on your earnings and when you choose to start benefits. These benefits are paid out through the Old-Age and Survivors Insurance Trust Fund or the Disability Insurance Trust Fund, depending on the benefit applied for.

The Disability Insurance Trust Fund and the Old-Age and Survivors Insurance Trust Fund is a separate account in the United States Treasury. A fixed proportion (dependent on the allocation of tax rates by trust fund) of the payroll taxes received under the Federal Insurance Contributions Act and the Self-Employment Contributions Act are deposited in the fund to the extent that such taxes are not needed immediately to pay expenses.

Supplemental Security Income (SSI) is a Federal income supplement program funded by general tax revenues (not Social Security taxes). It is designed to help aged, blind, and disabled people, who have little or no income; and it provides cash to meet basic needs for food, clothing, and shelter. Although this program is paid out of the general tax revenues, the Social Security Administration (SSA) administers the program.

There are several different Social Security benefits:

**Retirement Benefits**

Payment for these benefits is made from the Old-Age and Survivors Insurance Trust Fund. Beneficiaries of this benefit include: Retired worker, spouse of retired worker and child of retired worker (minor child, adult disabled child or high school student under age 19.)
**Survivor Benefits**

Payment for these benefits is also made from the Old-Age and Survivors Insurance Trust Fund. Beneficiaries of this benefit include: Child of deceased worker, aged widower, young widower, disabled widower or parent of deceased worker.

**Disabled Worker Benefits**

Benefits are paid from the Disability Insurance Trust Fund. Beneficiaries of this benefit include the disabled worker, spouse of disabled worker or child of disabled worker.

To find if you’re eligible for the above benefits, you first need to apply for them through the Social Security Administration’s website at SSA.gov, or by filling out the proper forms and mailing them to the SSA office nearest you. After receiving the application for benefits, and then the appeals if denied, the SSA will issue you a decision. This decision could be favorable or unfavorable to you. If you do not agree with the decision rendered by the SSA office, you have the right to appeal that decision within 60 days of the date of receipt of the decision. Appeals are always done formally on paper or through the SSA’s website if the benefit you are appealing allows for it. SSI benefits are all required to be done on paper.

There are several tiers of appeals that can be made if denied benefits:

- Reconsideration
- Hearing by an administrative law judge
- Review by the Appeals Council
- Federal Court review.

*Source: SSA.gov*

LSND may be able to help with all levels of appeals for the above-mentioned benefits. Please first apply for our services by completing one of the following options:

- Online—[www.legalassist.org](http://www.legalassist.org) (select Apply Online)
- Through our intake office — 1-800-634-5263;
- You may also apply through our outreach efforts (pre or post pandemic).
New Employees

Jess Roscoe began working as a Victims of Crime attorney out of the Bismarck office in November. A New Rockford native, Jess is a recent graduate of Boston University School of Law. Her time in law school was spent working with the Public Interest Project, and also, directing BU Law’s Legal Follies, a sketch comedy troupe. During law school, Jess clerked for LSND in the Bismarck office, along with Harvard Legal Aid Bureau. She also worked in Massachusetts State Senate Majority Leader Cynthia Creem’s office as a legal research assistant for the Emerging Adults in the Criminal Justice System Task Force. Before attending law school, Jess attended Concordia College in Moorhead, MN. After completing her undergraduate degree, Jess worked as a National Program Coordinator for SADD (Students Against Destructive Decisions) in Massachusetts. When she’s not at work, Jess is most likely experimenting with a new kitchen creation or planning a getaway to a state or national park.

April Mogard was born and raised in a small rural town of Deering, North Dakota. She graduated from Surrey High School in 2017 and moved to Bismarck in the fall to begin her college career. In the beginning, she was in the nursing program, however she later changed her major to Social Work and Criminal Justice where she would be able to advance her career as an advocate for people in need. In the summer of 2021, she moved back home to Deering to finish her schooling online. Over the summer she worked as an intern with the Minot Area Homeless Coalition. From there she learned about the many different career paths that were available to her based on her degree, one of which being Legal Services of North Dakota. With this new opportunity, April is excited to be on her way to advancing her professional career and learning more about law and helping those in need. When she is not at work, April spends her time playing with her animals, hanging out with family, or spending time out at the lake (weather permitting of course).
Jordan T. Moe is the returning hire at Legal Services of North Dakota in the Fargo office. He is a descendant of North Dakota homesteaders and a child of University of North Dakota alums. A UND alum himself and a graduate of the UND Law School, Jordan interned at LSND in Minot during his time at law school. He practiced as a solo attorney in Jamestown, North Dakota, as a private oil and gas title examiner, and as a decision writer for Social Security Hearings Office in Fargo, North Dakota. Jordan is also married to a fourth generation Fargo/Moorhead native and has a Fargo-born toddler son keeping him active. After 10 years away from LSND, Jordan is delighted to return to work towards equal access to justice, which was a professional value he internalized when he first worked for the attorneys and staff at Legal Services of North Dakota.

Wambo M. Kimba was born and educated in Liberia. She is a graduate of the Louis Arthur Grimes School of Law where she obtained a Bachelor of Law Degree in 2015. She has also received external training and certificates in Kenya, Gambia and Senegal on humanitarian intervention and security. Wambo has worked in various capacities with several international humanitarian organizations for approximately 14 years including Norwegian Refugee Council, Save the Children, National Educators Lawyers of Liberia and New American Consortium for Wellness & Empowerment. Wambo is passionate about advocating for the rights of everyone while ensuring they receive justice regardless of their status.

“I am glad to join the team at Legal Services of North Dakota as MLP/LAH Paralegal. I am very optimistic my skills will be fully utilized in achieving the mission and vision of the organization. I enjoy helping people reach their full potential for this reason during my leisure I work with women and youth assisting them to access resources that will provide empowerment and stability.”
Melissa Jorgenson was hired in March 2021. LSND created the Client Support position after it became apparent that many individuals needed assistance beyond the legal help for which they were applying.

Often times, clients are unable to focus on their legal needs because their social needs have yet to be met, which also creates additional legal issues and these clients are more likely to return to LSND in the future. Without proper housing, food, transportation, and assistance with young children, clients are unable to dedicate the time needed to work with an attorney to resolve any legal issues that have looming deadlines and need attention. Therefore, an addition of a social worker within the LSND organization will provide a more holistic approach and assist clients in resolving issues in more areas of their lives.

Melissa is located in the Bismarck office, but is able to help clients statewide. Her role will be to act as a liaison between attorneys and clients mainly to help clients with non-legal issues. Within this position, she will be able to answer questions about and apply for public assistance programs; facilitate meetings between clients and the LSND attorneys; refer clients to outside agencies for additional help; and provide resources and give the client extra incite on how to move forward. Melissa is primarily working with victims of crime to start but will be expanding to more of LSND’s clients in the near future.

In addition to the roles listed above, Melissa will also be the agency-wide contact for assisting clients with the Crime Victims Compensation (CVC) program, which is described in more detail within this newsletter. She will also assist with outreach services to our rural communities, provide community education, and create informational brochures on the services LSND offers and other resources available for LSND’s clients.

Melissa is a Licensed Baccalaureate Social Worker with a degree from Minot State University. She has spent the past 15 years working with adults with developmental disabilities. She has always had a passion for law and helping others. In her free time she enjoys relaxing with family, reading, or spending time with her pets.
On December 1\textsuperscript{st} and 3\textsuperscript{rd} Legal Services of North Dakota held it’s first ever all live video CLE. Richard LeMay, Executive Director, is pleased to report the CLE was a success! More than 140 participants logged in for the Wednesday session and 115 participants logged in for the Friday session. The sessions were attended by SBAND members from Florida to Alaska and from Arizona to Manitoba.

When creating CLEs events, LSND first looks at the training benefit to existing staff. Second, we look to material that would benefit those attorneys willing to accept contract cases with LSND. Lastly, LSND considers the value for the bar in general. Of course LSND”s ability to offer the CLE free doesn’t hurt either.

All of the speakers provided great information with an occasional technical glitch (but who hasn’t attended an in-person CLE where there wasn’t at least one glitch) . LSND is very grateful to Cheryl Kary and Les Lafountain for providing critical cultural awareness to the practice of law in North Dakota and to Tribal Court Judges Mary Seaworth and BJ Jones for providing insight to tribal court. LSND is also grateful to managing attorneys Mikayla Jablonski Jahner and Steve Simonson for providing nuts and bolts guidance on the collision of family law with bankruptcy.

Finally, thank you to all who attended the CLE making all of the work by presenters and staff worth their effort. Please continue to support LSND. Together we can provide justice for all.
North Dakota Century Code Section 30.1-26-04. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

Understanding the Power of Attorney

A Power of Attorney appoints a person called the Attorney-in-Fact to act as a parent and make decisions for the minor child (an individual who is under eighteen years of age). The person appointed as Attorney-in-Fact must be a responsible adult, but does not have to be related to the parent or the minor child.

A Power of Attorney is not a guardianship

The Power of Attorney takes effect when the form is completed by the parent, and is signed under oath in front of a notary public or clerk of court. This does not require a court order. It remains in effect until the date stated on the form, but that date cannot be more than 6 months into the future.

The parent that delegated their authority with a Power of Attorney may revoke the Power of Attorney at any time before the expiration date. The revocation needs to be in writing, and given to the Attorney-in-Fact along with anyone else who may have a copy of the Power of Attorney. If possible, the original document and all copies should be collected and destroyed. This also applies if the document has expired.

Determine if a Power of Attorney will be sufficient

Contact the minor’s school, medical provider, day care provider, etc. to determine if they will accept a Power of Attorney. Some entities require a court order. If a court order is required, go to www.ndcourts.gov/legal-self-help for information about establishing guardianship of a minor child in North Dakota state court. Scroll to the “Guardianships and Conservatorships” section and click on “Guardianship of Minor Children”.

Sources:

https://www.ndcourts.gov/legal-self-help/power-of-attorney
Legal Services of North Dakota
Mission Statement Adopted 2004

In achieving the purpose of delivering civil legal services to socially and economically disadvantaged persons in North Dakota, the goals of LSND shall be:

1. To effectively utilize its resources and priority setting process to provide access to the justice system in North Dakota to eligible clients through the provision of high quality legal services.

2. To respond to the critical legal needs of eligible clients throughout the state in a timely and professional manner through dedicated and creative staff, client, board and private attorney teamwork.

3. To wisely and effectively utilize both the individual and group approach in the delivery of legal services providing a wide range of legal services including casework, community education, legislative and administrative advocacy, special projects and technical assistance to others.

4. To utilize legal skills to lessen the effects of poverty on North Dakotans.

5. To provide legal services in a manner that respects the dignity and individuality of each client.
Legal Services of North Dakota continues to work on expanding ways to provide education and legal information to the public.

We now have available to our callers and visitors to our website, our published legal information brochures in recorded format.

Callers can choose to access the information through the touch of a button on their telephone when they call our office at 1-800-634-5263;

or they can visit our website at www.legalassist.org and listen to the recorded version of the brochure.

Outreach has been indefinitely suspended due to Covid; however, due to the heightened sense of safety at the following locations, we have resumed outreach at the following locations:

- Family Healthcare, Downtown Fargo (also coming soon to Fargo South location)
- Fargo VA Hospital Medical Center
- Grand Forks Senior Center

If you need legal assistance, please call

Central Intake
1-800-634-5263

or

Senior Legal Hotline
(for individuals 60+)
1-866-621-9886
If you’re in the valley (Valley City area, that is) tune in to KOVC radio (1490 AM and 96.3 FM) and listen to Richard LeMay, Executive Director from Legal Services of North Dakota speak on legal issues with host Steve Urness. The show airs twice a month on Thursdays at 11:05 a.m.

The Bismarck Annual Marathon was held September 18, 2021. Congratulations to Ed Reinhardt, Supervising Attorney, Minot, for a first place finish in his age category. Overall Ed finished 91/145. (Despite the time showing on the picture below, Ed’s official time was 4:22:02).
Contributions to LSND are Tax Deductible

We sincerely appreciate individuals, organizations and businesses that support Legal Services of North Dakota so we can continue to provide legal services to those in need.

LSND is a 501(c)(3) organization, so your donation is tax deductible

Regulations from Legal Services Corporation requires us to notify fund sources, including private donors, that we will not expend any funds for activities prohibited by the Legal Services Corporate Act, 42 U.SC.2996 et seq. or by Public Law 104-134(HR3019).

*(If you wish to remain anonymous, we will honor your wishes and won’t publish.)*
Bradley Beehler, Morley Law Firm, Ltd. - $1,000
Attorney Beehler was involved in a case with Attorney Pat
Weir, Vogel Law Firm, Fargo. Client was sanctioned $1000 for
a discovery issue and Mr. Weir requested the sanctions be paid
to LSND as a donation.

Maring Williams Law Office - $5,000
Donated 1,000 every year for 5 years in honor of their firms
30th Anniversary!

Allen Erickson - $12,500
Estate of Armond and Nancy Erickson

Phillip Kunkel, Plan Administrator - $5,829.47
Vanity Shop of Grand Forks, Inc. Chapter 11 case

Dulce J. Foster, President
Fredrikson & Byron Foundation - $10,000
Representing gift for the Foundation’s 2021 fiscal year.

Michael and Priscilla Sturdevant - $2,500

Thank You For Your Donation!
Legal Services of North Dakota

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We’re on the Web!
legalassist.org

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