

Non-Profit
Bulk Permit No. 2
Cass Lake, MN 56633

Anishinabe Legal Services Newsletter

Cass Lake, Minnesota • December 2009

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

WE ARE BUSY!

Funding cutbacks have resulted in downsizing at ALS. At the present time, we have only 3 attorneys to cover the Leech Lake, White Earth and Red Lake reservations. Each attorney has over 100 case files pending. We have had to limit the kinds of cases we can handle. Please be patient as we develop new funding sources so we can serve you better. —Paul W. Day

LEGAL INFO

Self-Help Center: Are you handling your own court case or need court forms on:

- Criminal Expungement
- Car Title Problem
- Divorce, Custody/Child Support
- Landlord/Tenant
- Conciliation Court Claim
- or other legal issue?

Visit the MN District Court Self-Help Center on the Internet: www.mncourts.gov/selfhelp.

I-Can: Online help with do-it-yourself divorce forms in Minnesota. If you have questions you can email or call the MN Courts Self-Help Center Tuesday - Friday, 10:00 a.m. - 3:00 p.m. at 651-259-3888. To find a lawyer in your area or to complete the forms go to: www.LAWHELPMN.org.

Child Support Modifications in Minnesota State Courts

Oftentimes, due to a variety of circumstances, a party to a child support order will want to have their existing support amount modified to reflect changed circumstances on behalf of one of the parents, both parents, or the child. This article will provide a broad overview to Minnesota state laws regarding child support modification (note that for the purposes of this article and Minnesota State law, "obligor" refers to the parent who is ordered to pay child support, and "obligee" refers to the parent who receives the child support).

Under Minnesota law, there are essentially 8 factors that create legal grounds for a child support modification. In order to convince the court that modification is appropriate, they must show to the court that at least one of the following 8 factors is present:

1) Substantially increased

or decreased gross income of an obligor or obligee;

2) substantially increased or decreased needs of an obligor, obligee, or child;

3) one of the parents begins receiving public assistance;

4) a change in one of the parent's cost of living;

5) extraordinary medical expenses for the child;

6) a change in availability of appropriate health care coverage or a substantial increase or decrease in health care costs;

7) substantial increase or decrease in child care costs; or,

8) emancipation of a child. Furthermore, under Minnesota law, a prior order is presumed unfair, and modification is presumed appropriate if,

1) applying the guidelines would change the current order by at least 20% and at least \$75 per month, or if the

current order is less than \$75 per month, it results in an order at least 20% higher or lower;

2) the medical support provisions are currently unenforceable;

3) the health care coverage ordered is no longer available to the child;

4) the existing support obligation is expressed in terms of a percentage only, as opposed to a specific dollar amount;

5) the gross income of one of the parents has increased or decreased by at least 20% through no fault of that parent; or,

6) a deviation in the prior child support amount was ordered because the child lived in a foreign country, and that child no longer lives in that foreign country. If one of the parents can show one of the 6 factors listed above, the

Child Support
Continued on page 8

Extra Help Paying for Medicare Part D Prescription Drug Coverage

The time to complete a redetermination form or a first time application for financial assistance to pay the Part D premium for your prescription drugs is until Dec. 31, 2009 (some exceptions).

NOTE: If you are not eligible for financial assistance to pay the Medicare Part D Prescription Drug premiums you can make an application for a drug plan or if you are on a drug plan you can switch to a new drug plan until December 31, 2009.

If you received Extra Help (also called Low Income Subsidy) last year and you have not received an application form it is time to contact the Social Security Administration at the national number at 1-800-772-1213 (TTY 1-800-325-0778); online at www.socialsecurity.gov; or your local District Office of Social Security (Bemidji: 1-218-751-2904. The Bemidji office can give you the phone number of the office for the county where you live) and ask that they help you complete the redetermination form. OR ask that another form is mailed to you. **FOR HELP:** See resources below.

If you received Extra Help in 2009 or are first time applicants for Extra Help, complete and return the application form ASAP. **If the form is not returned, eligibility for Extra Help may be terminated as of 1-1-10. In addition, most (some exceptions) people can only change Medicare**

drug plans during the Annual Coordinated Election Period (ACEP) once the enrollment period is missed they will be required to wait until the next Part D enrollment period (Nov. 15, 2010 thru Dec 31, 2010) to make an application for Extra Help and enroll in a drug plan.

Even if you are satisfied with your current plan, you should use the ACEP (Nov. 15, 2009 thru Dec. 31, 2009) to check if there is another plan in your area that offers better coverage.

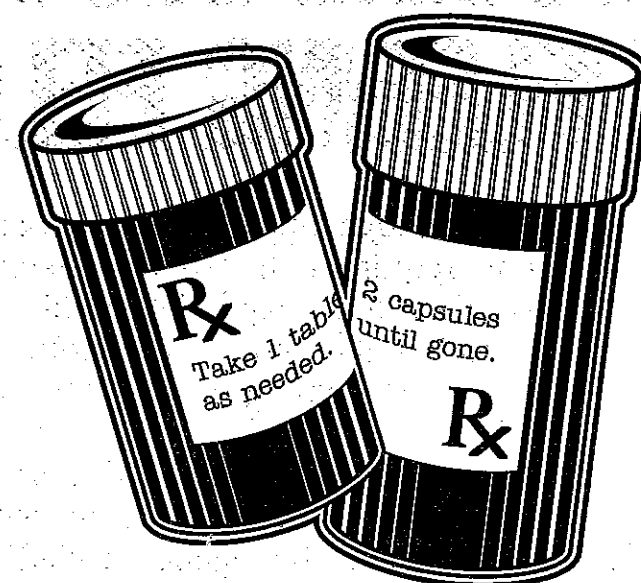
RESOURCES to assist you in completing your application for Extra Help and/or choosing a prescription drug plan (even if you have missed the deadline) include:

IHS Patient Benefits Coordinator:
 Leech Lake: 1-218-335-3200, 335-3319
 Red Lake: 1-218-679-0181
 White Earth: 1-218-983-6200, 983-4300
 Leech Lake Tribal Health Patient Benefit Coordinators: 1-218-335-4500.
 The State Health Insurance Assistance Program (SHIP) at the Senior Linkage Line: 1-800-333-2433

INCOME AND ASSET guidelines for the Extra Help application.

<i>Family Size</i>	1
<i>Annual Income</i>	Less than \$16,245
<i>Assets</i>	Less than \$12,510

<i>Family Size</i>	2
<i>Annual Income</i>	Less than \$21,855
<i>Assets</i>	Less than \$25,010



New Law goes into affect Jan. 1, 2010, more people to qualify for EXTRA HELP!

NOTE: The above income and asset guidelines apply to the following New Law changes.

No longer count as a resource any life insurance policy; and No longer count as income the help received regularly from someone else to pay your household expenses such as, rent., mortgage, heat, food, electricity, water and property taxes.

If you would be eligible for Extra Help beginning Jan. 1, 2010, wait to apply. For help: See above resources.

NOTE: The Extra Help program is one program that assists with medical costs there are other programs such as QMB and M.A. When you contact the above resources about Extra Help be sure to ask about other medical programs you may be eligible for.

SOCIAL SECURITY OWES "FLEEING FELONS" MILLIONS

A federal judge approved a civil-court settlement requiring the Social Security Administration to repay \$500 million to 80,000 recipients whose benefits it suspended after deeming them fugitives.

At least 200,000 elderly and disabled people who lost their benefits in recent years under what the agency called the "Fugitive Felon" program. Launched in 1996 and extended to Social Security disability and old-age benefits in 2005, the program aimed to save taxpayers money by barring the payment of Social Security benefits to people "fleeing to avoid prosecution."

But some federal courts in recent years have concluded that most people the agency identified as fleeing felons were neither fleeing nor felons. The problem: Social Security employees relied on an operations manual stating that anyone with a warrant outstanding is a fugitive felon, whether the person is actually fleeing or attempting to avoid being captured.

The National Senior Citizens Law Center, an advocacy group for the elderly and disabled, sued the Social Security Administration in an Oakland, Calif., Federal court last year on behalf of people denied benefits, and asserted that most warrants some decades old were for minor offenses and most people were unaware they existed.

Even if people succeeded in clearing their warrants, the SSA had maintained

they shouldn't have been paid benefits while the warrant was outstanding, and pursued them for the "overpayment."

As part of the settlement, the Social Security Administration agreed to drop its claims for "overpayments."

After the National Senior Citizens Law Center sued the Social Security Administration (SSA), the SSA agreed in April to a proposed settlement to suspend benefits only for people who are charged with escape or flight to avoid prosecution. Under the pact, SSA stopped suspending benefits and agreed to repay benefits suspended between January 2007 and April 2009.

Most repayments will begin to go out late this year.

People whose benefits were cut off before 2007 could reapply for benefits, but would receive retroactive payments only to April 2009. An estimated 120,000 people fall into this category.

For further information contact your local Social Security office:

Bemidji	218-751-2904
Grand Forks	877-772-2467 or 218-772-5518
Fergus Falls	218-739-1025
Hibbing	218-263-4668

Anishinabe Legal Services
800-422-1335 or 218-335-222.

This information from an article written by the National Senior Citizens Law Center.



STUDENT DISCIPLINE

Education for Justice FACT SHEET Y-6 Fall 2009

When a student gets into trouble at school, the school must follow the law. All districts must have a discipline policy. A student can be kept out of class for a class period, the day or many days. If the bad behavior continues, the student could be expelled. Ask your child's school for a copy of their discipline policy. Know what legal rights your child has.

WHAT DISCIPLINE CAN THE SCHOOL USE?

Removal: A student is kept out of a certain class or activity.

Suspension: A student is not allowed to go to their school for 1-10 days.

Expulsion: A student is not allowed to go to their school, or any other school in the district, for up to 12 months. **Exclusion:** A student is not allowed to enroll or re-enroll in a school for the rest of the school year.

WHAT BEHAVIOR CAN A STUDENT BE DISCIPLINED FOR?

Fighting - Students are disciplined for fighting, pushing or shoving. Two students who get into a fist fight could be suspended. It may not matter who started the fight. A child who attacks another child can be expelled.

Disrespect - Students can be suspended for disrespecting their teacher. A student who does not do what a teacher asks or talks back to the teacher using bad language can be removed or suspended. There are many other reasons that students can

be disciplined by the school. But the child's actions have to be on purpose and the child had to know about the rules.

WHAT MUST THE SCHOOL DO BEFORE THEY SUSPEND MY CHILD?

1. Informal Administrative Conference

The school must:

- Have your child meet with a school administrator,
- Tell your child the reason for suspension, and
- Let your child explain his/her side of the story. The school does not have to have a conference if there is an "immediate and substantial danger" to other students or to your child.

Parents do **not** have a right to attend this conference. Some schools want parents at the conference. Or they may set another meeting with parents to talk about the child's behavior.

Parents can have others who are involved in the child's life attend the meeting if they make a request in writing.

If your child has a disability, additional rules apply to the school. School staff should figure out how to deal with the behavior taking the disability into account.

2. Alternative Educational Services

The school has to give alternative educational services for any suspension that is longer than 5 days. For any suspension, the school should give your child homework so your child does not fall behind in classes.

3. Written Notice to Parent

The school must give your child a written notice that tells:

- The reason for the suspension,
- What happened,
- What your child and any witnesses said about it,
- A plan to re-admit your child to school, and
- A statement of your child's legal rights.

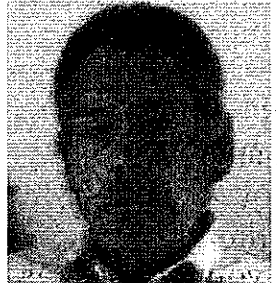
Your child must get this notice before or at the time of suspension. The school must also mail you a copy within 48 hours of the conference. They must also try to phone you as soon as possible following suspension. If your child is disciplined or removed from school, call your legal aid office for help or referrals.

This information was obtained from www.LawHelp.MN.org and the Legal Aid Education Law Project in Minneapolis.





Paul Day, Executive Director:



Paul Day was hired as Executive Director one year ago. He graduated at U of M Law School in 1978 and has been a licensed attorney in the State of Minnesota since that time. Paul has served as the District Court Judge for the Mille Lacs Band of Ojibwe, Senior Counsel for Honeywell Inc., Assistant U.S. Attorney for the District of Minnesota, and was in private practice for several years. He is an enrolled member of the Leech Lake Band of Ojibwe. Paul is the keeper of the family pipe, ceremonial drum, and sweat lodge. Paul plans to spend the rest of his life teaching and learning Anishinabemowin and the traditional ceremonies that can only be done in the native language. Paul is married and has three grown children.

Chris Allery, Litigation Director:



Chris is a staff attorney who graduated from University of North Dakota School of Law in 1999. He is a licensed attorney in the State of Minnesota, as well as the tribal courts of Mille Lacs, White Earth, Leech Lake, Red Lake, and Bois Forte. Chris has provided 4 years of service for ALS. Chris is a former a law

OFFICE BIOS

Anishinabe Legal Services began over 41 years ago as the Leech Lake Reservation Legal Services Project. Today, Anishinabe Legal Services provides civil legal assistance to qualifying Red Lake, White Earth, and Leech Lake reservation residents throughout several counties. ALS employs 11 people in their three offices. Here is a little more information about the employees that continue to make ALS a successful organization:

clerk. He is married, and his hobbies include watching baseball and playing video games.

Irene Horton, Office Manager:



Irene has her AAS, Paralegal Degree, and is currently working on her BA in criminal justice at Bemidji State University. As office manager, Irene has several duties including grant reporting and technology troubleshooting. Irene is a former police officer/dispatcher. She has provided 7 years of service for ALS. Irene is married, has two children and loves to read.

Shari Bellcourt, Legal Secretary:

Shari functions as the office secretary and receptionist for the White Earth branch of ALS. She is the proud parent to four children and lives with her partner. Shari went to Detroit Lakes Vocational Technical College and received her General Secretary Certificate. Shari has provided 5 years of service for ALS. She loves to read books, tend to her flower gardens, outdoor activities, having fun with friends, and playing cards or board games.

Margaret Kinder, Staff Attorney:

Margaret graduated from Hamline School of Law. Margaret is a licensed attorney in the state of Minnesota as well as the tribal courts of Red Lake, White Earth, and Leech Lake. She specializes in child welfare cases. Margaret is a former juvenile

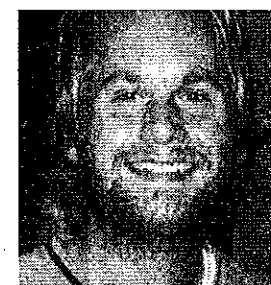
prosecutor and law clerk. Margaret has provided 4 years of service for ALS. In her spare time, Margaret likes to bake for friends and family.

Mary Shequen-Smith, Paralegal:



Mary grew up in Cass County, Minnesota and attended Bemidji State University. Mary's legal services career began with Legal Services of Northwest Minnesota, and for the last 30 years she has been employed with Anishinabe Legal Services as a paralegal. Mary is married and in her spare time enjoys spending time with family, as well as, cooking, gardening and being outside as much as possible. She considers it an honor to be part of this organization and looks forward to working with old and new friends.

Cody Nelson, Staff Attorney:



Cody is a 2006 graduate from St. Thomas School of Law. Cody is a licensed attorney in the State of Minnesota as well as the tribal courts of Red Lake, White Earth, and Leech Lake. Cody handles a majority of the traffic and conservation cases in our office. He has provided 3 years of service to ALS. Cody is married, and he likes to watch movies in his spare time.

Office Bios

Continued from page 5

Tina Harville, Paralegal:

Tina has her AA and AS and is currently pursuing a BA in criminal justice at Bemidji State University. Tina has provided 3 years of service for ALS as a paralegal, specializing in Social Security administration hearings. Tina has three children, and her hobbies are music, movies, theatre, enjoying the outdoors, hiking, and swimming with friends and family.

Chari LaDuke, Tribal Court Advocate/Legal Secretary:

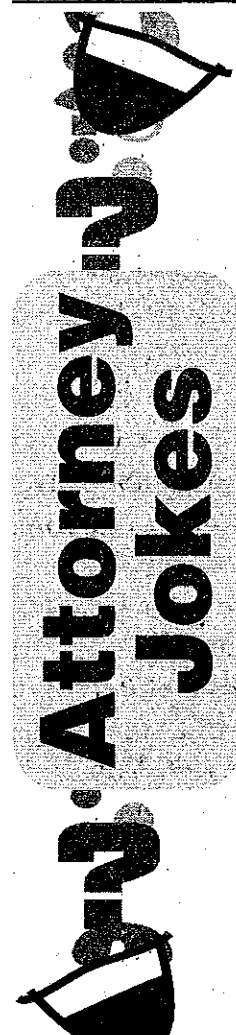
Chari is a licensed court advocate Chari is a licensed court advocate for the Red Lake branch office. Chari has provided service for ALS for 3 years. Her areas of practice are working with people in domestic violence cases and issues involving vulnerable adults. Chari is the proud parent to two young children. She grew up in northern Minnesota, the oldest of 9 siblings. She enjoys visiting friends and family, and spending time with her children.

Natasha Jenkins, Secretary/Receptionist:

Natasha is our newest addition to ALS. Natasha handles most of the incoming inquiries and does all of the intakes at the Main Office. Natasha has her AAS in criminal justice from Bemidji State University and wants to pursue her BA. Natasha has a four year old daughter who always makes her laugh. Together they enjoy playing board games and watching movies. Natasha's hobbies include reading, golfing, and spending time with family and friends.

Gregg Trautwein, Financial Administrator:

Gregg Trautwein has been on contract with ALS since 2003 providing accounting services. Gregg is a graduate of Moorhead State University and a CPA. Gregg is also the Administrator for Legal Services of Northwest Minnesota, and currently sits on the Legal Services Corp. Fiscal Advisory Committee. In his spare time, he participates in Triathlons and plays drums and sings at Hope Lutheran Church. Gregg lives with his wife in Fargo, ND.



There's an interesting new novel about two ex-convicts. One of them studies to become a lawyer, the other decides to go straight.

What are the three questions most commonly asked by lawyers?

1. How much money do you have?
2. Where can you get more?
3. Do you have anything you can sell?

A lawyer was on his cell phone, calling a locksmith.

"I locked my keys in my sports car!" said the nervous lawyer.

"No problem, I should be there in about an hour," replied the locksmith.

"Do you think you can make it a little sooner?" pleaded the lawyer.

"My top is down and it's starting to rain."

Q: How many lawyers does it take to change a light bulb?

A: Fifty four. Eight to argue, one to get a

continuance, one to object, one to demur, two to research precedents, one to dictate a letter, one to stipulate, five to turn in their time cards, one to depose, one to write interrogatories, two to settle, one to order a secretary to change the bulb, and twenty-eight to bill for professional services.

Q: What do you call a judge gone bad?

A: Senator.

Q: What's the difference between a good lawyer and a great lawyer?

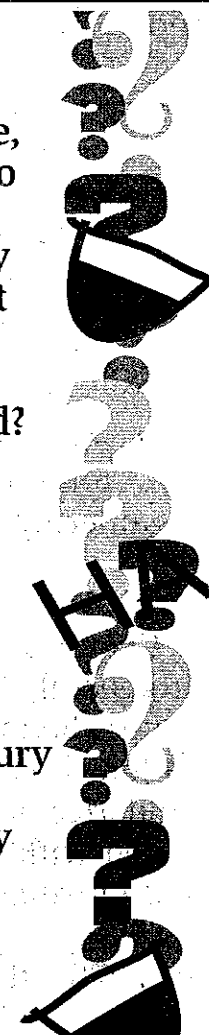
A: A good lawyer knows the law. A great lawyer knows the judge.

Q: When attorneys die, why do they bury them 600 feet underground?

A: Because deep down, they're really nice guys.

Obtained from:

<http://www.ahajokes.com/law055.html>



Minnesota Indians and Jurisdiction: A brief discussion

For most Minnesotans, the local county court is the place to resolve legal disputes. For Indians it is not so simple. Indians may end up in tribal court, state court or federal court – depending on the legal issue, the parties involved and the location where the action occurred.¹

Jurisdiction as used in this article refers to a court's power to decide a case and issue a decree. (Black's Law Dictionary, Ninth Edition.)

Tribal Courts:

A. Civil Jurisdiction:

In general, tribal courts assert civil jurisdiction over all Indian residents of the reservation and non-Indians who live or conduct business² on the reservation.

Cases often heard in tribal court include: Indian Child Welfare Act (ICWA) cases, Children in Need of Protection or Services (CHIPS) cases, landlord-tenant disputes, including tribal housing, contract disputes, traffic code violations, divorce, child custody, child support, civil commitments, personal injury and property damage, harassment, domestic violence, hunting-fishing-gathering violations, to name a few.

B. Criminal Jurisdiction:

In general, Indian tribes have criminal jurisdiction over their own members for offenses committed within the boundaries of the reservation;³ Indians charged with tribal offenses are prosecuted in tribal court.

In 1978, the U.S. Supreme Court

determined, in the case of *Oliphant v. Suquamish Indian Tribe*,⁴ that Indian tribes lack criminal jurisdiction over non-Indians who violate tribal laws on the reservation. Criminal violations that occur outside the boundaries of a reservation are prosecuted in state courts – even the perpetrator or victim is an Indian.

As explained below, Congress gave the State of Minnesota authority to enforce its criminal laws on Indian reservations in 1953. The Red Lake and Bois Forte reservations are exempt from Public Law 280.

State Courts:

A. Civil Jurisdiction:

In general, Indians can go to the local county court to resolve general legal disputes – just like any other citizens.⁵ Reservation Indians, however, often have the option to go to tribal court to resolve civil disputes.

There are good reasons for going to tribal court. For example, the judges are usually Indian and familiar with the tribal culture and traditions. The tribal courts are more accessible to Indians who lack transportation. Further, the filing fees at tribal court are generally less than for state court matters. Some Indians believe they are treated better in tribal court.

B. Criminal Jurisdiction:

Minnesota Indians charged with state crimes committed outside the boundaries of a reservation are prosecuted in state court.⁶ But until 1953, the state lacked jurisdiction to enforce its crimi-

nal laws *within the boundaries* of a reservation.

In 1953, Congress enacted Public Law 280⁷ and gave the state of Minnesota authority to enforce its criminal laws within the boundaries of the Indian reservations, except for the Red Lake reservation (and later, the Bois Forte reservation). With the above exception, Indians charged with committing state law violations within the boundaries of a reservation are prosecuted in state court. Indians convicted in state court may be sentenced to a Minnesota prison.

1. The exemptions.

The Red Lake and Bois Forte reservations are exempt from Public Law 280, so crimes committed by Indians on those reservations are prosecuted in either federal court or tribal court, depending on the crime. Pursuant to the Major Crimes Act⁸ (Act), Indians charged with any of the crimes listed in the Act will be prosecuted in federal court. The Act includes murder, rape, kidnapping and other "major" crimes. Most other crimes committed by Indians on the Red Lake and Bois Forte reservations are prosecuted in tribal court.

2. Concurrent jurisdiction.

P.L. 280 does not prohibit the tribal governments from exercising criminal jurisdiction over its own members for crimes committed on the reservation⁹ and most Minnesota Bands have a criminal code enforced in tribal court.

Minnesota Indians & Jurisdiction

Continued from page 7

As a result of Public Law 280, it is possible for an Indian in Minnesota to be prosecuted in both state court and tribal court for the same behavioral incident. For example, a reservation Indian gets involved in a fight and is charged in state court with Assault and Battery. He is later prosecuted in tribal court for violating the tribe's Disorderly Conduct statute. In that situation, the Double Jeopardy Rule does not apply. Why? In the above scenario, it would be single jeopardy twice, once by each sovereign, not double jeopardy.¹⁰

Federal Courts:**A. Civil Jurisdiction:**

Indians and tribes can go to federal court like any other citizens or business entities. Typical claims brought in federal court include such things as treaty rights, hunting-fishing-gathering claims, challenges to state taxation and regulation, trespasses on Indian lands, claims involving a violation of federal civil rights and tort claims.

B. Criminal Jurisdiction:

Federal courts have exclusive jurisdiction over certain matters that occur on Minnesota Indian reservations. For example, at the Red Lake and Bois Forte reservations, violations of the Major Crimes Act can only be heard in federal court.¹¹ Indians convicted in federal court may be sentenced to federal prison. Most other crimes are prosecuted in tribal court.

**Available Online
to help you.**

DeafMD.org LawHelpMN.org

Child Support

Continued on page 8

burden will shift to the other parent to rebut the presumption that the prior order is unfair.

If you believe one or more of the above factors exists within your prior child support order, and would like a new order to reflect that change (with the support amount altered to reflect the change), it is in your best interest to petition the court for a child support modification as soon as possible. Under Minnesota law, a modification to a support obligation may not be retroactive except for the time period while a modification motion is pending before the court. That means that you cannot have a current child support amount altered without petitioning the court first, and the court is not likely to look back to circumstances before you file the motion with the court. Therefore, a parent who meets one of the above listed criteria should not delay in obtaining court forms and filing the modification with the court.

An obligor who is not been able to keep up with their court ordered payments will develop child support arrearages. The obligor will be responsi-

ble for these arrearages until they are ultimately paid off to the obligee or to the county (if the obligee receives public assistance). The State will also hold an obligor liable for interest on these arrearages.

If an obligor is going deep into child support debt/arrearages due to inability to pay, they should strongly consider modification. If an obligor has amassed child support arrearages, they may have a couple ways to mitigate their debt. For instance, if the obligee receives public assistance and the obligor is incarcerated, it is possible that they may reduce their arrearages for the period of time they were incarcerated. If this situation occurs, the obligor should contact their child support worker and request this reduction in arrearages. Oftentimes the County will agree to do this provided that the obligee was receiving public assistance when the obligor was incarcerated, and provided that the obligor was incarcerated for a significant period of time (at least a few months in a row).

Also, an obligor who has made 12 straight months of child support payments in full may

have the right to have the interest forgiven on their arrearages. An obligor who is paying off arrearages who has made full payments for a period of one year straight or more should contact their child support worker and ask them to forgive the interest on their arrearages. Counties will generally do this, but only if the obligor asks their child support worker for it be forgiven (the County does NOT do this automatically).

This article is only a basic overview of some significant child support laws in Minnesota. There is a lot of helpful information available on the Minnesota State Attorney General's Website located at <http://www.ag.state.mn.us/Office/ChildSupport-Custody.asp>.

If you believe that your existing child support obligation is currently unreasonable and unfair, it is in your best interest to seek modification as soon as possible. While it is preferable to obtain an attorney when seeking a modification, pro se forms are also available online or at your local county courthouse (court administrator's office). Your child support worker may also assist you in obtaining these forms.