

LETTER OPINION
96-L-91

May 9, 1996

Honorable Tim Mathern
State Senator
406 Elmwood
Fargo, ND 58103

Dear Senator Mathern:

Thank you for your April 22, 1996, letter asking whether a petition for guardianship could be brought in district court by a non-attorney. Guardianships for incapacitated persons are brought pursuant to N.D.C.C. ch. 30.1-28. N.D.C.C. § 30.1-28-03(1) provides, in part: "Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian." Certainly, non-attorneys have represented themselves in guardianship proceedings. See, e.g., In re Guardianship and Conservatorship of Norman, 524 N.W.2d 358 (N.D. 1994); In re Guardianship and Conservatorship of Norman, 521 N.W.2d 395 (N.D. 1994).

For purposes of this letter, I am assuming that the non-attorney seeking to petition the court has a direct personal or professional interest in the guardianship and is not attempting to represent some other party or interest. Any attempt by a person other than a licensed attorney to represent the interests of another would probably constitute the unauthorized practice of law which is a class A misdemeanor. See N.D.C.C. § 27-11-01. ("[A] person may not practice law, act as an attorney or counselor of law in this state, or commence, conduct, or defend in any court of record in this state, any action or proceeding in which he is not a party concerned. . . .")

While a non-attorney may be able to represent himself or herself in a guardianship proceeding, doing so is fraught with pitfalls. N.D.C.C. chs. 30.1-28 and 30.1-29 (dealing with guardianship or conservatorship proceedings) involve somewhat complex procedures. The courts generally do not give non-attorneys representing themselves any more latitude than they would give a licensed attorney.

"[I]t is a well established principle of law in this state that our statutes or rules on procedure will not be modified or applied differently merely because a party not learned in the law is acting pro se." Greenwood, Greenwood & Greenwood, P.C. v. Klem, 450 N.W.2d

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745, 747 (N.D. 1990) (citations omitted). "[W]e have consistently held that a person acting as his own attorney is equally bound by applicable rules of procedure, even if that person lacks understanding of those rules or the correct procedures. Sandbeck v. Rockwell, 524 N.W.2d 846, 851 (N.D. 1994). The court in State v. Neigum, 369 N.W.2d 375, 377 (N.D. 1985), explained: 'A defendant's pro se status does not relieve him of the requirement of strict compliance with procedural rules'. . . ." State v. DuPaul, 527 N.W.2d 238, 243-44 (N.D. 1995).

Thus, a person who is not an attorney who files a petition for guardianship or otherwise represents himself or herself in a guardianship matter would be held to the same standards as an attorney and probably would not be afforded any special allowance or consideration by a court. Further, a pro se petitioner might be at a disadvantage because the court is required to appoint an attorney guardian ad litem to represent the interests of the proposed ward. N.D.C.C. § 30.1-28-03(3), (4).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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