

LETTER OPINION
99-L-126

December 9, 1999

Mr. James T. Odegard
Grand Forks County State's Attorney
PO Box 5607
Grand Forks, ND 58206-5607

Dear Mr. Odegard:

Thank you for your letter questioning whether the Uniform Juvenile Court Act, N.D.C.C. ch. 27-20, permits the sharing of information between juvenile and adult prosecutors in your office.

The state's attorney is required to present evidence in support of any allegations of a juvenile petition and to "otherwise conduct the proceedings on behalf of the state." N.D.C.C. § 27-20-24(3). An assistant state's attorney has the same powers as the state's attorney, and performs any and all duties required of the state's attorney. N.D.C.C. § 11-16-02. While under N.D.C.C. ch. 27-20 the files and records of the juvenile court and law enforcement files and records on delinquent, unruly, and deprived children are not open to the public, both are available to counsel to parties to the proceedings, such as the state's attorney who is acting as counsel on behalf of the state. See N.D.C.C. §§ 27-20-51(1)(b), 27-20-52(2), and 27-20-24(3). These provisions, and the basic tenor of the North Dakota Rules of Professional Conduct,¹ support the position that when one of your assistants is a participant in a proceeding as counsel, then all of your office is as well.

I find nothing in the language or legislative history of N.D.C.C. ch. 27-20 which supports a specific intent to keep information confidential between prosecutors in the same office. Although some offices such as yours are organized into discrete divisions by function, many are not and it certainly is permissible for one prosecutor's duties and responsibilities to be interchangeable with another's in the same office. North Dakota law does not mandate compartmentalizing the general responsibilities of a prosecutor's office, and indeed job overlap and sharing of information is not

¹ See, e.g., Comment to Rule 1.10, N.D.R. Prof. Cond. "[A] firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated."

Mr. James T. Odegard
December 9, 1999
Page 2

uncommon. See, e.g., In re F.N.D., 554 N.W.2d 456, 457 (N.D. 1996) (assistant state's attorney prosecuting child abuse defendant appeared in juvenile court proceeding in support of order of no-contact between child and defendant and defendant's mother). In many part-time state's attorney's offices, the same prosecutor would be handling juvenile matters and adult court proceedings. The North Dakota Supreme Court construes statutes to avoid absurd and ludicrous results. State v. Erickson, 534 N.W.2d 804, 807 (N.D. 1995).

Based on the foregoing, it is my opinion that North Dakota law does not prohibit the sharing of information about juvenile offenders by attorneys within a state's attorney's office. Your use of the information would be governed by N.D.C.C. ch. 27-20, the North Dakota Rules of Evidence, and the fair treatment standards for victims and witnesses contained in N.D.C.C. ch. 12.1-34.

Sincerely,

Heidi Heitkamp
Attorney General

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