

N.D.A.G. Letter to Freed (Feb. 16, 1990)

February 16, 1990

Mr. Robert A. Freed
Assistant State's Attorney
Stutsman County
511 Second Avenue SE
Jamestown, ND 58401

Dear Mr. Freed:

Thank you for your January 15, 1990, letter in which you request my opinion concerning the respective duties of the regional child support enforcement office and the office of the Stutsman County State's Attorney. You ask whether the state's attorney's office or the regional child support enforcement office is responsible for providing the legal services associated with order to show cause hearings and hearings on incoming Uniform Reciprocal Enforcement of Support Act matters in cases arising under Title IV-D of the Social Security Act when the regional child support enforcement office is represented by a person appointed as an assistant state's attorney.

The functions and duties of the regional child support enforcement offices arise out of North Dakota's efforts to provide child support operations consistent with the requirements of Title IV-D of the Social Security Act, 42 U.S.C. § 651, et seq. In order to comply with federal requirements, North Dakota child support enforcement officials must assist applicants for IV-D services in North Dakota as well as applicants for IV-D services in other states who request assistance through the Uniform Reciprocal Enforcement of Support Act, or otherwise.

Under federal law, a state must designate "a single and separate organizational unit . . . to administer the [IV-D state] plan." 42 U.S.C. § 654(3). North Dakota has designated the Department of Human Services to act as that agency, and to direct and supervise county administration of the IV-D program. N.D.C.C. § 50-09-02. The county social service boards are responsible for administering the child support enforcement program under the direction and supervision of the Department of Human Services. The county social service boards have the authority to contract with any public or private agency or person to discharge those duties. N.D.C.C. § 50-09-03(5).

The Stutsman County Social Service Board has exercised its authority under that statute, or the authority found under N.D.C.C. ch. 54-40, Joint Exercise of Governmental Powers, to form a regional child support enforcement unit, together with the counties of Barnes, Dickey, Foster, Griggs, LaMoure, Logan, and McIntosh. That regional child support enforcement office has contracted with a private attorney to pursue the judicial remedies necessary to carry out IV-D related child support activities. I understand that this attorney has received an appointment as an assistant state's attorney. The regional child support

enforcement office is responsible for assuring that adequate representation is available for the IV-D proceedings.

In those child support cases involving orders to show cause or incoming URESAs which are not IV-D cases, the state's attorney's office has a statutory responsibility to provide legal services. N.D.C.C. § 11-16-02(15) requires the state's attorney to "[a]ssist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." This statute applies to all orders to show cause in child support matters, but the state's attorney's duty is discharged, with respect to IV-D cases, when those matters are handled by the assistant state's attorney under contract with the regional child support enforcement office. N.D.C.C. § 14-12.1-12 requires the state's attorney, upon request, to represent the obligee in any proceeding under the Uniform Reciprocal Enforcement of Support Act. This statute also applies to all incoming URESA cases, but the state's attorney's duty is discharged in IV-D cases by the actions of the assistant state's attorney under contract with the regional child support enforcement office. Thus, the answer to your inquiry is that the regional child support enforcement office is responsible for providing legal services associated with order to show cause hearings and incoming URESA matters in cases arising under Title IV-D of the Social Security Act.

A case is a IV-D case if there has been assignment of child support benefits (pursuant to 42 U.S.C. 654(4)) or an application for IV-D services has been made (pursuant to 42 U.S.C. § 654(6)). That determination can be made in cases originating locally by consulting the records of the regional child support enforcement office. In URESA cases, the determination can be made by reviewing the transmittal documents. The transmittal documents indicate the URESA materials are sent on behalf of a person who has made application for IV-D services, or who has made an assignment. Incoming IV-D URESA cases are the responsibility of the regional child support enforcement office (under 42 U.S.C. § 654(8)). Either type of case remains the responsibility of the regional child support enforcement office until the case is closed (pursuant to criteria set forth in 45 CFR § 303.11) or transferred to another IV-D office.

The duties of the state's attorney and the duties of the regional child support enforcement office are most effectively discharged in a spirit of cooperation which recognizes the interdependence of the two offices. Nothing precludes the assistant state's attorney under contract to the regional child support enforcement office from attending to the state's attorney's duties with respect to orders to show cause and incoming URESA matters in non-IV-D cases. Thus, attorney time can be most reasonably and effectively used, and the responsibilities of the two offices can be quickly and efficiently discharged to the advantage of the public. Of course, the costs of activities in non-IV-D cases may not be borne by the regional child support enforcement office.

I hope this discussion will be helpful to your understanding of the responsibilities of the regional child support enforcement unit and the state's attorney's office.

Sincerely,

Nicholas J. Spaeth

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