

N.D.A.G. Letter to Britton (May 30, 1985)

May 30, 1985

Mr. James Britton
Williams County State's Attorney
P. O. Box 1246
Williston, ND 58801

Dear Mr. Britton:

Thank you for your March 11, 1985 letter in which you asked several questions regarding child support enforcement cases. I will deal with your questions individually.

Your first question is whether an obligor can be found in contempt for failure to make child support payments in a case where children have reached adulthood so that only child support arrearages remain owing. The court may find an obligor in contempt for violations of a court order which occurred in the past. One who is accused of contempt must purge himself of the contempt or show that it was legally justified. Thorlakson v. Wells, 207 N.W.2d 326 (N.D. 1973). The mere passage of time during which the children reach adulthood would not purge the obligor of contempt nor make past violations of the court order less subject to sanction. The obligor violated a court order by failing to make timely child support payments. The court may find the obligor in contempt without regard to whether the obligor has a current on-going child support obligation.

You have also questioned whether a money judgment can be entered for the amount of arrearages in a situation as described in your first question. Where an amount certain of child support arrearages has been established to the court, a money judgment can be entered and docketed. Such judgment is subject to the same execution procedure as any other money judgment. The entering of a money judgment will not, however, purge the obligor of contempt for failure to make child support payments. Kitchen v. Kitchen, 304 N.W.2d 694 (N.D. 1981). The existence of an ongoing obligation for child support does not preclude the entering of a money judgment for arrearages.

Your final question is whether it is the duty of the state's attorney's office to undertake proceedings for judgments and whether the duty is dependent upon sections of the Century Code under which proceedings have been initiated. The state's attorney's duties regarding child support enforcement all appear to contemplate enforcement of the child support obligation including the seeking and execution of a judgment.

The state's attorney of a county furnishing assistance is required to commence proceedings to establish and enforce liability for child support which has been furnished by a county social service board. N.D.C.C. § 14-01.1-03. This includes the enforcement of the obligation by attachment, garnishment, or by any other means including those available under Chapter 14-08 of the North Dakota Century

Code.

The state's attorney is further required to represent the obligee in actions under the Uniform Reciprocal Enforcement of Support Act. N.D.C.C. §§ 14-12.1-18, 14-12.1-19, 14-12.1-38. In doing so the state's attorney is to take all action necessary in accordance with the law of North Dakota to enable the court to obtain jurisdiction over the obligor or his property.

N.D.C.C. § 14-08-07 provides for payment of child support to the court. It also describes contempt procedures for failure to make timely payments. N.D.C.C. § 11-16-01(15) requires the state's attorney to "assist the district court in behalf of the recipient of payments for child support or alimony combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments."

The duties of the state's attorney in the described child support actions are not dependent upon which of the several statutes the action is brought.

Sincerely,

Nicholas J. Spaeth

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