

N.D.A.G. Letter to McBeth (Sep. 15, 1992)

September 15, 1992

Mr. Ronald W. McBeth
Richland County
Assistant State's Attorney
Law Enforcement Center
413 Third Avenue N
Wahpeton, ND 58075

Dear Mr. McBeth:

Thank you for your June 8, 1992, letter. You advise of cases where a person paying child support is not kept informed of changes in the address or telephone number of the children for whom support is paid. You indicate that the clerk's office usually has the new address and telephone number. You ask if the clerk or the state's attorney may properly release the address or telephone number upon the request of the child support payor. You further ask whether the clerk of court or the state's attorney may properly withhold that information, from the child support payor, at the request of the custodial parent.

The clerk of court is required to receive and disburse child support payments pursuant to N.D.C.C. § 14-09-08.1. The clerk is specifically required, by subsection 1 of that section, to "maintain records listing . . . the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order." Subsection 1 also provides: "The parties subject to the order shall immediately inform the clerk . . . of any change of address or change of any other condition which may affect the proper administration of . . . [chapter 14-09]." While the maintenance of a current telephone number is not directly required by the statute, I assume that it has been determined to be information necessary to the proper administration of the order or chapter 14-09.

Judicial records, generally, are accessible to the public. State v. O'Connell, 151 N.W.2d 758, 762 (N.D. 1967). Accord, Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978); see, Letter from Attorney General Nicholas J. Spaeth to Michael S. McIntee (May 5, 1986); Letter from Attorney General Robert O. Wefald to Robert E. Manly (Dec. 27, 1984). "[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files." Nixon v. Warner Communications, Inc., 435 U.S. at 598. Accord, State v. O'Connell, 151 N.W.2d at 763. "Indeed, the [North Dakota] Supreme Court noted that courts have authority to provide rules and regulations concerning the inspection of such records." Letter from Attorney General Nicholas J. Spaeth to Michael S. McIntee (May 5, 1986).

N.D.C.C. § 27-02-05.1(2)(b) authorizes the supreme court to establish standards and procedures for the management of court records. Clerks of court are required to comply

with supreme court rules with respect to court records. N.D.C.C. §§ 27-02-05.1(2)(b), 11-17-01(1). N.D. Sup. Ct. Administrative Rules, Rule 26, authorizes the state court administrator to establish a uniform current procedures manual for clerks of court and to prescribe the clerk of court policies and procedures for the management of court records. The resulting North Dakota Clerk of Court Manual gives detailed directions on the handling of confidential records. The manual does not designate records pertaining to support proceedings as confidential except for those that arise in paternity actions.

Any request by a custodial parent that the custodial parent's address or telephone number not be disclosed should be addressed to the district court with jurisdiction in the matter. The court may then determine if the circumstances furnish a lawful basis for the issuance of an order restricting access to that portion of the court's file which contains the custodial parent's current address and telephone number.

A court has discretion to restrict access to its records. State v. O'Connell, 151 N.W.2d at 763; Letter from Attorney General Nicholas J. Spaeth to Michael S. McIntee (May 5, 1986). "[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." Nixon v. Warner Communications, Inc., 435 U.S. at 599.

The court is in the best position to determine if the custodial parent's request is made for an inappropriate reason, such as the defeat of lawful visitation by the noncustodial parent, or is made for a legitimate reason, such as a fear of domestic violence. State v. Cribbs, 469 N.W.2d 108, 111 (Neb. 1991).

In my opinion, the clerk of court and the state's attorney do not have authority to limit access to public information in court records with respect to child support proceedings. It should be noted, however, that child support orders may arise out of parentage proceedings pursuant to N.D.C.C. ch. 14-17. N.D.C.C. § 14-17-14. The court files and records of proceedings under chapter 14-17 are confidential except for the final judgment. N.D.C.C. § 14-17-19.

Some child support orders may also arise out of juvenile court proceedings pursuant to N.D.C.C. ch. 27-20. The court files and records of proceedings under chapter 27-20 are confidential. N.D.C.C. § 27-20-51. But even these confidential records may be released to "[t]he parties to the proceeding." N.D.C.C. § 27-20-51(1)(b). Thus, because a person required to pay child support by a juvenile court order must necessarily be a party in the proceeding out of which the order arises, even these confidential records are available to persons paying child support, absent a court determination that the information should be restricted.

Sincerely,

Nicholas J. Spaeth

tam/krb