

N.D.A.G. Letter to Hall (Oct. 11, 1985)

October 11, 1985

Mr. Nicholas B. Hall
Walsh County State's Attorney
Walsh County Courthouse
Grafton, North Dakota 58237

Dear Mr. Hall:

Thank you for your letter of August 27, 1985. The question you have raised in your letter has required consultation with staff members of this office as well as other agency attorneys.

You have inquired as to the responsibility of a state's attorney to pursue paternity actions in a matter initiated by an out-of-state request under the Uniform Reciprocal Enforcement of Support Act as found in N.D.C.C. Ch. 1412.1. You have also inquired as to whether or not the costs of such a paternity action, specifically blood specimen examinations, must be paid by the responding county in the reciprocal support action.

N.D.C.C. § 11-16-01 sets forth the duties of a state's attorney. N.D.C.C. § 11-16-01(15) requires the state's attorney to assist the district court in behalf of a 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."

Since the general duties of a state's attorney do not include a specific requirement that the state's attorney initiate and prosecute a paternity action, it is necessary to explore other statutory provisions to determine whether or not a state's attorney does possess such a responsibility.

N.D.C.C. § 14-12.1-18 requires the prosecuting attorney in a responding state to prosecute the case diligently and to take all action necessary to enable the court to obtain jurisdiction over the obligor or his property. You have inquired as to whether or not this section of North Dakota state law imposes a responsibility upon the state's attorney to initiate and prosecute an action for paternity in an interstate support proceeding under the Uniform Reciprocal Enforcement of Support Act (URESA). This section places primary responsibility upon the state's attorney to "obtain jurisdiction over the obligor or his property" once the petition from the initiating court has been received by the responding court. Jurisdiction over the obligor may be obtained in several ways, including the service of an order for appearance upon the obligor or the arrest of the obligor pursuant to N.D.C.C. § 14-12.116(2).

It is clear from the wording of N.D.C.C. § 14-12.1-18 that the prosecuting attorney is required to take all action necessary to bring the obligor before the court. Once this is

done, the state's attorney has fulfilled his statutory responsibility under this section. He will, naturally, be required to represent the obligee in the responding court at the subsequent hearing. However, N.D.C.C. § 14-12.1-27 permits the obligor to assert as a defense that he is not the father of the child for whom support is sought. When this defense is asserted, the court must first determine that it is not frivolous. Once this determination has been made and if both of the parties are present at the hearing or if the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate paternity. Otherwise, it may adjourn the hearing until the paternity issue has been adjudicated. Although not specifically mandated by statute, it would appear that the requirements of N.D.C.C. § 14-12.1-18(2) requiring the prosecuting attorney to prosecute the case "diligently" would, at least by implication, require the state's attorney to assert, under appropriate circumstances, that the defense of non-paternity is made frivolously or that other circumstances are present as enumerated in N.D.C.C. § 14-12.1-27 which would permit the court to adjudicate the paternity issue.

This assertion of non-paternity by the obligor does not affect the jurisdiction of the court over the obligor. Should the court elect not to adjudicate the paternity issue in the URESA proceeding, upon adjournment, the URESA proceeding will then be held in abeyance until the obligor's paternity has been established. This adjournment provision of N.D.C.C. § 14-12.1-27 necessarily requires the conclusion that the paternity issue will be adjudicated in a proceeding separate from the URESA action.

This separate paternity action could be initiated in the originating jurisdiction or in North Dakota. A North Dakota paternity action would be prosecuted pursuant to the Uniform Parentage Act as found in N.D.C.C. Ch. 14-17. In a May 17, 1976, opinion to Dickey County State's Attorney James N. Purdy, a copy of which is attached, this office advised that a state's attorney is not obligated to initiate paternity actions. However, the state's attorney may be required to adjudicate the paternity issue in a URESA proceeding should the court not adjourn that proceeding pursuant to N.D.C.C. § 14-12.1-27.

It is my understanding that some state's attorneys' offices have contracted to provide services including the initiation and prosecution of paternity actions. Absent such a contract, a state's attorney has no statutory responsibility to initiate or prosecute a paternity action as a representative of the responding state except in cases where that issue can be adjudicated during the URESA hearing and the court has not adjourned the proceeding pursuant to N.D.C.C. § 14-12.1-27.

I have also been informed that it has been the practice and procedure of the Burleigh County State's Attorney's office to return the URESA request to the initiating state if an obligor asserts the non-paternity defense and the court, upon compliance with N.D.C.C. § 14-12.1-27, has adjourned the hearing. In such cases, the initiating court is notified of the assertion of the paternity defense with a request that the obligee initiate a paternity action to determine the parent-child relationship. The obligee and the initiating court would then assume the responsibility to adjudicate the paternity issue.

As to your second question concerning the payment of the costs of the paternity proceeding, I would refer you to N.D.C.C. § 14-17-15 in which the court may order all reasonable fees to be paid by the parties in proportion, and at such times, as determined by the court or may order that the proportion of any indigent party be paid by the county social service board of the county in which the child resides or is found, if the paternity proceeding is brought under the Uniform Parentage Act. There is no corresponding provision in N.D.C.C. Ch. 14-12.1 with respect to paternity determinations made by a responding state as part of a URESA action. Although N.D.C.C. § 14-12.1-15 does authorize the court to direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state be paid in whole or in part by the obligor, the state, or county, these costs or fees do not have priority over amounts due the obligee. A listing of fees is set forth in that provision but it does not appear that such listing is mutually exclusive of other costs or fees which may be incurred in the URESA proceeding or in a proceeding brought under N.D.C.C. Ch. 14-17.

I trust that this letter has adequately responded to your inquiries.

Sincerely,

Nicholas J. Spaeth

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Enclosure