

**N.D.A.G. Letter to Wilhlem (Sep. 30, 1987)**

September 30, 1987

Mr. Timothy C. Wilhelm  
Assistant State's Attorney  
Ward County Courthouse  
Minot, ND 58701

Dear Mr. Wilhelm:

Thank you for your letter dated August 4, 1987, requesting an Attorney General's opinion on Supreme Court Administrative Rule 13(5)(e).

It is the policy of this office to refrain from rendering formal legal opinions where the questions presented concern the internal operation or management of the judicial branch of government. As illustrated below, your questions involve the operation and management of the district courts. Thus, it is not appropriate to render a formal opinion. Furthermore, an Attorney General's opinion is not binding on the judiciary. See State v. Baker, 21 N.W.2d 355 (N.D. 1945). However, we do offer the following general discussion for your assistance which should not be considered as a formal legal position of this office.

Your questions relate to the authority and supervisory powers of juvenile supervisors and referees. The powers and duties of these individuals are governed by statute, Supreme Court Administrative Rule, and district court order.

The Uniform Juvenile Court Act, N.D.C.C. ch. 27-20, provides that the district court may appoint one or more juvenile supervisors to serve at the pleasure of the district court. N.D.C.C. § 27-20-05(1). The court may also provide for the employment of other personnel who serve under the direction and supervision of the juvenile court judge. N.D.C.C. § 27-20-05(3). The judges of the district courts may also appoint one or more judicial referees to serve at the pleasure of the court. N.D.C.C. § 27-05-30. A judicial referee may preside in cases specified in N.D.C.C. § 27-05-30(2). The powers and duties of juvenile supervisors are prescribed at N.D.C.C. § 27-20-06.

The Supreme Court, pursuant to N.D.C.C. § 27-05-30(3), may promulgate rules regarding the qualifications of referees, the authority of the district court to assign cases to the referees, and the extent of that authority. The applicable rule is North Dakota Supreme Court Administrative Rule 13, § 5. This section requires that the district judge issue an order appointing the referees and identify the scope of the duties delegated to the referee.

On March 24, 1987, Presiding District Judge Wallace D. Berning issued an order appointing the referees for the Northwest Judicial District. Pursuant to that order, the

referees may preside in any proceeding under N.D.C.C. ch. 14-12.1, the Uniform Reciprocal Enforcement of Support Act, pretrial proceedings under N.D.C.C. ch. 14-17, the Uniform Parentage Act, proceedings authorized by N.D.C.C. § 27-05-29, and, proceedings initiated under N.D.C.C. ch. 27-20, the Uniform Juvenile Court Act.

In addition to the limitations provided for in Judge Berning's order, Administrative Rule 13(5)(e) limits the powers of a referee. "After July 1, 1987, a judicial referee who hears matters pursuant to Chapter 27-20, NDCC, shall not exercise supervisor of personnel who supervise juveniles." Section (5)(e) of Rule 13 was drafted by the Family Caselaw Referee Study Subcommittee (subcommittee) of the Court Services Administration Committee (committee). The minutes of the subcommittee and committee provide the rulemaking history for Administrative Rule 13. See generally Court Services Administration Committee Meeting Minutes of May 17, 1985, at 2-4; Family Caselaw Referee Study Subcommittee of Court Services Administration Committee Meeting Minutes of April 19, 1985, at 3-8; March 15, 1985, at 1-6; February 22, 1985, at 1-9; January 11, 1985, at 2-8; and December 17, 1984 at 5.

The committee minutes reflect that Administrative Rule 13 and House Bill No. 1586 (1985 N.D. Sess. Laws ch. 334, § 1, now N.D.C.C. § 27-05-29) were proposed and enacted, respectively, in response to R.W.T. v. Dalton, 712 F.2d 1225 (8th Cir. 1983), cert. denied, 464 U.S. 1009 (1983). Committee meeting minutes of May 17, 1985, at 4. The subcommittee sought to clearly separate the decisionmaking functions of the referees from the supervision of personnel who supervise juveniles. Subcommittee Minutes, March 15, 1985, at 2. The delayed effective date of July 1, 1987, was provided to lessen the fiscal impact of implementing this rule and to provide for an orderly transition to compliance with Dalton. Subcommittee Minutes, January 11, 1985, at 4; Committee Minutes, May 17, 1985, at 2.

In Dalton, the plaintiffs, a class of juveniles, alleged that their constitutional right to be free from unreasonable seizures of the person was violated when they were detained in Missouri County jails without having been afforded a probable cause hearing by a neutral and detached judicial officer. The Eighth Circuit Court of Appeals agreed and held "that juveniles are entitled to a probable-cause hearing before a neutral and detached magistrate . . . ." Dalton, at 1227. Although probable cause determinations were often made by a juvenile judge, the court noted that "this is mainly the product of the juvenile court judge's reliance on the representation of the juvenile officer. As such, even though a reasonable determination as to probable cause is made in some cases, no hearing is held before a neutral and detached judicial officer." Dalton, at 1229. Administrative Rule 13 seeks to ensure that the referees who hear proceedings under N.D.C.C. ch. 27-20 are neutral and detached judicial decisionmakers.

Although Dalton addressed only delinquency and status offenders, North Dakota Supreme Court Administrative Rule 13(5)(e) is very broad in its scope and includes all

matters that arise under N.D.C.C. ch. 27-20.<sup>1</sup> Thus, a judicial referee who hears proceedings involving delinquency, unruly children, termination of parental rights, or deprivation matters may not provide supervision to personnel who supervise juveniles. Furthermore, N.D.C.C. § 27-20-05(3) provides that the other court personnel shall serve under the direction and supervision of the judge of the district (juvenile) court. Referees who hear N.D.C.C. ch. 27-20 proceedings are to be decisionmakers only; the supervision of other court personnel is the responsibility of the district court judge.

The scope of the Administrative Rule 13(5)(e) is very broad. A referee who hears matters arising under ch. 27-20; i.e., cases involving deprived, delinquent, or unruly children, and terminations of parental rights, is prohibited from exercising supervision over other personnel who supervise children. Reports of indicated child abuse or neglect made to the juvenile court pursuant to ch. 50-25.1 may result in ch. 27-20 proceedings; if so, a referee who hears those proceedings may not supervise staff who supervise children.

Although a juvenile supervisor may also be a referee pursuant to N.D.C.C. § 27-20-06(1)(i) and (j), the juvenile supervisor will not be able to act as a referee for any proceeding brought within N.D.C.C. ch. 27-20. In other words, a juvenile supervisor could also wear the referee hat in proceedings under N.D.C.C. title 14 and ch. 28-25. See N.D.C.C. § 27-05-30. In addition, the juvenile supervisor may be assigned additional duties, as a juvenile supervisor, to handle some domestic relations matters. N.D.C.C. §§ 27-05-29 and 27-20-06(1)(j).

Administrative Rule 13(5)(e) does limit the juvenile supervisor's authority in that such supervisor could not act as a referee in proceedings under N.D.C.C. ch. 27-20 if that supervisor does supervise personnel who supervise juveniles. The juvenile supervisor is also limited by the provision of N.D.C.C. § 27-20-06(1)(e) in which the supervisor may not conduct "accusatory proceedings" under N.D.C.C. ch. 27-20 against a child "who is or may be under his care or supervision."

I hope this discussion is of assistance to you in resolving your questions about the scope of authority of juvenile referees and supervisors. I would encourage the supervisors and referees in your judicial district to consult with their appointing judges to resolve any questions regarding their authority.

Sincerely,

Nicholas J. Spaeth

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cc: William G. Bohn, State Court Administrator, North Dakota Supreme Court

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<sup>1</sup> Dalton dealt only with juveniles who were status offenders or delinquents. The court did not address the class of juveniles who are without proper parental care, custody, or control. Dalton, at 1231, n. 7.