

N.D.A.G. Letter to Freed (April 26, 1991)

April 26, 1991

Mr. Robert A. Freed
Assistant State's Attorney
Stutsman County Courthouse
511 2nd Avenue SE
Jamestown, ND 58401

Dear Mr. Freed:

Thank you for your February 25, 1991, letter concerning the duty of a state's attorney to enforce a court order requiring a child support obligor to pay a portion of a child's medical expenses.

You ask if a state's attorney may seek an order to show cause why the obligor should not be found in contempt based upon evidence that the obligor has not made payment of the child's medical expenses.

"'Child support' means payments for the support of children . . . however denominated, if the payment is required by an order of the court" N.D.C.C. § 14-09-09.10(1) (emphasis supplied).

The concept of support is broad enough to encompass a child's medical expenses if those expenses are required to be paid by a court order. An obligor, or a person owing a duty of support, N.D.C.C. § 14-09-09.10(9), may be required to provide medical insurance coverage or to pay for necessary medical expenses of a child. N.D.C.C. § 14-09-08.10; see Smith v. Smith 326 N.W.2d 697 (N.D. 1982) (support not taking into account children's special medical expenses was found insufficient and increased); Fraase v. Fraase, 315 N.W.2d 271 (N.D. 1982) (mode of furnishing medical insurance coverage for children considered in setting child support payments).

Failure to comply with a child support order may be punished as a civil contempt. N.D.C.C. §§ 14-08.1-05(2); 14-09-08.1(1); 14-12.1-09. A clerk of court may request a district judge to issue a citation for contempt of court against a person who has failed to make child support payments. N.D.C.C. 14-09-08.1(1).

The duties of a state's attorney in connection with child support orders are set forth in N.D.C.C. § 11-16-01 which provides in part that a state's attorney shall:

15. Assist 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.

Where an obligor fails to make court-ordered payments of a child's medical expenses, the clerk of court may institute a contempt proceeding or a proceeding to issue an income withholding order, or both. In each case a state's attorney is duty-bound to assist the court on behalf of the recipient of payments for child support.

Sincerely,

Nicholas J. Spaeth

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