

N.D.A.G. Letter to Braun (June 10, 1991)

June 10, 1991

Ms. Barbara C. Braun, Director
Protection and Advocacy Project
400 East Broadway, Suite 515
Bismarck, ND 58501

Dear Ms. Braun:

Thank you for your May 9, 1991, letter requesting my opinion on whether an advocate for the Project who is not licensed to practice law within North Dakota may contact a judge to request clarification of a court order. Your letter indicates that your concern is whether such an action would constitute the unauthorized practice of law.

The statutes providing legal proceedings for appointment of a guardian or conservator, for a protective order, or for commitment all have provisions for court appointment of counsel for the person in need of protection. North Dakota Century Code (N.D.C.C.) §§ 30.1-28-03, 30.1-29-07, 25-03.1-13.

The Project is authorized pursuant to N.D.C.C. § 25-01.3-06(5) to institute legal action with the consent of the Committee on Protection and Advocacy. However, it is also specifically authorized pursuant to N.D.C.C. § 25-01.3-06(4) to employ counsel to represent clients and, in certain circumstances, to represent the Project. Adequate provisions have been made by statute for legal representation in each of the proceedings to which you made reference in your letter.

None of the provisions of N.D.C.C. ch. 25-01.3 authorize any employee of the Project who is not licensed to practice law within the state of North Dakota to perform any acts which would constitute the practice of law.

Except as otherwise provided by state law or supreme court rule, a person may not practice law, act as an attorney or counselor at law in this state, or commence, conduct, or defend in any court of record of this state, any action or proceeding in which he is not a party concerned, nor may a person be qualified to serve on a court of record unless he has:

1. Secured from the supreme court a certificate of admission to the bar of this state; and
2. Secured an annual license therefor from the state bar board.

Any person who violates this section is guilty of a class A misdemeanor.

N.D.C.C. § 27-11-01.

Requesting a judicial interpretation or clarification of any document, including a court order, involves the practice of law. "Anyone who assumes the role of assisting the court in its process or who invokes the use of its mechanism is considered to be engaged in the practice of law." 7 C.J.S. Attorney & Client 29, at 860.

Consequently, in my opinion, any contact with a judge requesting clarification of an order must be conducted by an attorney licensed to practice law within the state or by a party to the action in which the order was entered who is capable of pro se representation.

Should the situation arise where a legal interpretation of a court order is needed, or desired, Project staff may seek the advice of the Project's attorney or contact the attorney who represented the individual with the disability or mental illness. If an attorney desires further clarification of a court order, the attorney will follow established procedures to accomplish that goal. These procedures assure that all parties are given the opportunity to be present when communications with the judge are had.

Sincerely,

Nicholas J. Spaeth

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