

N.D.A.G. Letter to Odegard (Jan. 16, 1992)

January 16, 1992

Mr. James T. Odegard
Grand Forks County State's Attorney
P.O. Box 607
Grand Forks, ND 58206-0607

Dear Mr. Odegard:

On January 2, 1992, Ms. Wanda Vetter, senior legal officer for the Grand Forks Regional Child Support Unit, and senior law student supervised by your office, made inquiry regarding the proper procedures under which clerks issue income withholding orders in certain cases. I understand Ms. Vetter's inquiry to be an inquiry from your office, and am responding accordingly.

Ms. Vetter advises that the clerk of court asks whether the clerk is required to give notice to an obligor, prior to implementing an income withholding order to satisfy a money judgment for child support, in the case of delinquent money judgments taken prior to January 1, 1990.

The controlling law is N.D.C.C. § 14-09-09.13. That section describes the contents of a notice of income withholding which must be sent to child support obligors in certain circumstances. Under that statute, the duty to serve the notice arises "[i]f immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding." In cases where money judgments have been taken prior to January 1, 1990, immediate income withholding under section 14-09-09.24 would not have been implemented inasmuch as that section applies only to judgments or orders requiring the payment of child support which are issued or modified on or after January 1, 1990. A delinquent obligor whose obligation arises out of an order or judgment which has not been subjected to immediate income withholding is entitled to the statutory notice provided for under N.D.C.C. § 14-09-09.13.

I hope this responds sufficiently to Ms. Vetter's inquiry.

Sincerely,

Nicholas J. Spaeth

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cc: Wanda Vetter, Senior Legal Officer