

N.D.A.G. Letter to Stadter (May 16, 1990)

May 16, 1990

Ms. Winnie Stadter
Chair
Committee on Protection and Advocacy
Protection and Advocacy Project
State Capitol
Judicial Wing
600 East Boulevard Avenue
Bismarck, ND 58505-0430

Dear Ms. Stadter:

Thank you for your April 23, 1990, letter requesting my opinion regarding conflict of interest situations encountered by the Protection and Advocacy Project.

N.D.C.C. § 25-01.3-09 is the conflict of interest statute and provides as follows:

Conflict of interest. In any situation in which the project is representing, or has been requested to represent, two or more persons with developmental disabilities or mental illnesses, if those persons have conflicting interests in the matter for which the project is requested to act, the project may provide services to the first person making application for services for that purpose. Any additional person, with conflicting interests, may be referred to another agency or individuals for assistance.

The first question you raised was whether a conflict of interest truly exists when the Project represents both clients adversarially involved in situations such as client-to-client abuse. I am only authorized to resolve legal questions. This question is a factual question which I am not authorized to resolve. However, I will try to provide you with some guidance.

The determination of whether a conflict truly exists should be decided by the Project. In determining whether a conflict exists, the Project should consider whether the representation of one client would be adverse to the interest of another client. If the Project determines that the clients have conflicting interests, the Project may provide services to the first person requesting the services. N.D.C.C. § 25-01.3-09.

If it is determined by the Project that a conflict exists, the Project may refer the person to another agency or individual for assistance. Although the Project may refer the person to another agency or individual, the agency or individual is not required to accept the referral. The Protection and Advocacy Project may not require other agencies or individuals to accept referrals from the Project.

In conclusion, if the Protection and Advocacy Project determines that a conflict exists because the potential clients have adverse interests, the Project may refer one of the clients to another agency. However, the Protection and Advocacy Project cannot require the agency or individual to accept the referral.

I trust that this has satisfactorily answered your inquiry.

Sincerely,

Nicholas J. Spaeth

dfm