

N.D.A.G. Letter to Tracy (June 26, 1990)

June 26, 1990

Ms. Helen Tracy
Executive Director
Workers Compensation Bureau
Russel Building
Hwy. 83 North
Bismarck, ND 58501

Dear Ms. Tracy:

Thank you for your June 6, 1990, letter questioning the validity of a contingent fee agreement between a private attorney and a Worker's Compensation claimant. In your letter you ask whether such agreements are valid when the attorney also seeks legal costs from the Bureau pursuant to N.D.C.C. § 65-02-08.

The following sentence from N.D.C.C. § 65-02-08 responds to your questions: "[n]othing provided herein may be construed to prevent a claimant or employer from hiring or paying his or her own attorney; however, the claimant's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant relative to the same services.

A claimant may hire an attorney on any mutually agreeable basis including a contingent fee basis. However, in such a case the legislature refuses to allow the claimant's attorney to receive costs or attorneys fees from both the Bureau and claimant for similar legal services rendered.

In the example outlined in your letter, a Workers' Compensation claimant has agreed to a contingent fee arrangement with the claimant's attorney. The claimant's attorney receives a percentage of the additional benefits awarded from the claimant. However, the claimant's attorney also obtains costs and attorney's fees from the Bureau pursuant to N.D.C.C. § 65-02-08. Money received from the Bureau is given to the client and is not retained by the attorney.

In your example, the claimant's attorney has received costs or attorney's fees from both the Bureau and the claimant for providing the same legal services. When a contingent fee agreement exists, the claimant's attorney is prohibited from seeking costs or attorney's fees from the Bureau for the same legal services paid for by the claimant under the contingent fee agreement. Thus, in the situation you describe, N.D.C.C. § 65-02-08 has been violated. The fact that the moneys received from the Workers Compensation Bureau are forwarded to the claimant does not alter this conclusion.

Your second question concerns the authority of the Bureau to prevent an attorney from representing a client before the Bureau where a contingent fee agreement in violation of

N.D.C.C. § 65-02-08 exists. I cannot locate any statute in title 65 which authorizes the Bureau to determine those attorneys who may practice before it. Without such legislative authority the Bureau is unable to prevent an attorney from representing a client before the Bureau.

In closing, I note N.D.C.C. § 65-02-08 authorizes the Bureau to establish rules governing the payment of fees, and the payment for legal services provided for by statute. The Bureau may wish to consider an administrative rule which prevents the payment of a claimant's attorney's fees where that claimant and attorney have entered into a contingent fee agreement and where the claimant's attorney seeks or receives costs or attorney's fees from the Bureau and the claimant for the same legal services.

I hope my discussion of these issues is helpful to you.

Sincerely,

Nicholas J. Spaeth

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