

LETTER OPINION
99-L-52

June 22, 1999

Honorable Rae Ann Kelsch
State Representative
611 Craig Drive
Mandan, ND 58554-2353

Dear Representative Kelsch:

Thank you for your letter asking three questions concerning tort claims against the state of North Dakota. Your questions relate to the identity of the individual signing the written notice of claim presented to the Office of Management and Budget under N.D.C.C. § 32-12.2-04(1) and whether the specific claimant must also sign the summons and complaint if legal action is pursued against the state under N.D.C.C. § 32-12.2-04(5).

It is the long-standing policy of this office not to issue opinions on issues under consideration in pending litigation. See 1995 N.D. Op. Att'y Gen. L-53; 1993 N.D. Op. Att'y Gen. L-62; Letter from Attorney General Nicholas J. Spaeth to Joseph H. Kubik (June 1, 1989). The first two questions you raise are currently the subject of issues being litigated in the case of Paula Cooke v. The University of North Dakota (Grand Forks Civil No. 99C713). This office is representing the defendant in that case. Consequently, I must decline to issue an opinion on your first two questions. If requested, I would be happy to provide you a copy of the Cooke decision once it is received.

Your third question asks whether N.D.C.C. § 32-12.2-04(5) requires that the summons and complaint in a lawsuit against the state be signed by the actual claimant. N.D.C.C. § 32-12.2-04(5) provides:

A person bringing a legal action against the state or a state employee for a claim shall deliver a copy of the summons, complaint, or other legal pleading in which the claim is first asserted in the action to the director of the office of management and budget at the time the summons, complaint, or other legal pleading is served in the action. This provision is in addition to any applicable rule of civil procedure.

The above-quoted subsection requires only that a person bringing a lawsuit against the state, in addition to compliance with any applicable rule of civil procedure, also deliver a copy of the

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summons, complaint, or other pleading to the Office of Management and Budget at the time the pleading is served in the action. The subsection does not relate to nor require signatures on pleadings by the claimant.

Rule 11(a) of the North Dakota Rules of Civil Procedure (N.D.R. Civ. P.) requires that pleadings and motions be signed by at least one attorney of record or, if the party is not represented by an attorney, by the party. The rule also provides:

Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

To verify a pleading means to swear to it before a person authorized to administer oaths. N.D.C.C. § 1-01-42.

I find no statute or rule that relates to tort claims against the state of North Dakota brought under N.D.C.C. ch. 32-12.2 that requires the signing of pleadings in any manner other than that required by Rule 11(a), N.D.R. Civ. P. As noted above, that rule requires pleadings to be signed by at least one attorney of record or, if the party is not represented by an attorney, by the party.

Sincerely,

Heidi Heitkamp
Attorney General

rel/pg