

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL POLICY REGARDING SPECIAL ASSISTANT ATTORNEY GENERAL APPOINTMENTS

REQUESTS FOR APPOINTMENT AND TERMINATION OF APPOINTMENT

1. A request submitted by a state agency, board, or commission for the appointment of an assistant attorney general shall address the following factors:
 - a. the case or scope of work for which the appointment is being requested;
 - b. whether the attorney is licensed to practice in the appropriate jurisdictions;
 - c. the specialized knowledge and experience which the attorney has to perform the legal work required;
 - d. the sufficiency of the malpractice insurance the attorney carries;
 - e. whether the attorney has any conflicts, as defined below, either directly or through a member of the attorney's law firm, that could affect the attorney's representation;
 - f. any cases or matters in which the attorney (or a member of the attorney's firm) represents a party whose interest may be adverse to the state;
 - g. any other factors which make this appointment particularly appropriate.
2. In addition to the factors listed in number 1. above, before appointing an attorney, the Attorney General will consider the attorney's competence, honesty, reliability, timeliness, courtesy, reputation in the legal community, and whether the attorney has received any public discipline. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities.
3. The attorney general may revoke an appointment for good cause, or upon the request of the entity or the special assistant attorney general.

LIMITATIONS ON REPRESENTATION OF CLIENTS WHOSE INTERESTS MAY BE ADVERSE TO THE STATE

1. It is within the Attorney General's sole discretion whether an appointment will be given or continued for a special assistant attorney general who represents, either directly or through another member of the firm, a client in a matter in which the client's interests are or may be adverse to the state.
2. Before making such a determination, the Attorney General may request the views of the agency which the special assistant is appointed to represent, and will consider:
 - a. whether the situation involves a conflict under the Rules of Professional Conduct;
 - b. whether such conflicts are waivable by the client;
 - c. the appearance of impropriety;
 - d. the impact on the state entity, and
 - e. the best interest of the state.
3. No special assistant attorney general or member of the firm of a special assistant attorney general may accept or continue representation of a client in a matter in which the client's interests are adverse to any board, commission, or agency of the state

which the special assistant is appointed to represent without first receiving authorization from the Attorney General.

4. Situations will be considered on a case-by-case basis; however, the following are examples of cases where authorization will not be granted:
 - a. representing an agency in contract matters and representing a contractor in a bid action;
 - b. representing Workforce Safety & Insurance and representing either an employer or a claimant in a benefits case before the agency;
 - c. representing Workforce Safety & Insurance and representing an employer in a premium dispute with the agency;
 - d. representing a client bringing a Section 1983 action against the agency represented or its staff;
 - e. representing a party in a personnel action against the agency represented;
 - f. representing the Department of Human Services and bringing an action against a county social service board;
 - g. representing the Department of Human Services and representing a client in a licensure action before the Department of Human Services.

In some situations representing a client in an action against the state may pose a conflict for the special assistant attorney general. If any of the following factors are involved, the special assistant must notify the Office of Attorney General before beginning or continuing representation:

- The relief or remedy sought for the client would have an adverse effect on the state generally;
- Representing the client involves pursuing legal theories which are significantly adverse to the state;
- Lay persons would consider the action as disloyal to the state or the entity the special assistant has been appointed to represent;
- Representing the client involves action against the division or individuals the special assistant works with in representing the agency.

If the special assistant attorney general is considering representing a client against the state, the attorney first must contact the Office of Attorney General to determine whether the considered representation would affect that attorney's special assistant attorney general appointment.

MONTHLY REPORTS OF FEES AND EXPENSES

Section 54-12-13, N.D.C.C., requires all departments that pay salaries or expenses of special assistant attorneys general to report all such expenditures monthly to the office of attorney general. The monthly reports must include an itemization of each individual attorney's salary/fees, a separate itemization of paralegal, support staff and other expenses, and should be filed even if there are no expenses to report. The special assistant attorney general shall cooperate with the client agency to ensure timely filing of reports of expenditures.