

LETTER OPINION
97-L-151

September 26, 1997

Ms. Sonja Clapp
Assistant State's Attorney
Grand Forks County
PO Box 5607
Grand Forks, ND 58206-5607

Dear Ms. Clapp:

Thank you for your letter asking whether state's attorneys are required to assist the district court on behalf of spousal support recipients. You also ask, if the state's attorney does not have such a duty, what action the clerk of district court should take in regard to nonpayment of spousal support obligations which are to be paid through the clerk of district court's office.

The duties of the state's attorneys include the duty to "[a]ssist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." N.D.C.C. § 11-16-01(15). In 1993, the Legislature enacted N.D.C.C. §§ 14-05-25.2 and 14-06-03.2, which provide that spousal support orders under divorce or under separation may be enforced by any means permitted under certain sections of the Social Security Act or in the manner provided for the enforcement of an order for child support under chapter 14-09. N.D.C.C. §§ 14-05-25.2 and 14-06-03.2 were enacted to provide certain legal remedies to enforce orders for spousal support, including subjecting an obligor's social security benefits to income withholding. Hearing on H. 1427 before the House Judiciary Comm., 53rd N.D. Leg. (January 26, 1993) (Statement of Assistant Attorney General Nordwall); Hearing on H. 1427 Before the Senate Judiciary Comm., 53rd N.D. Leg. (March 2, 1993) (statement of Assistant Attorney General Nordwall).

I have previously determined

that N.D.C.C. § 14-05-25.2 [and by extension N.D.C.C. § 14-06-03.2] was enacted to permit spousal support orders

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to be enforced by the same means that child support orders are enforced under N.D.C.C. ch. 14-09. This legislation did not create any duty upon a state's attorney to assist the district court in enforcing such an order under N.D.C.C. § 11-16-01(15).

1994 N.D. Op. Att'y Gen. L-203 (August 11 letter to Mattson). Neither ameliorating legislation nor judicial decisions have subsequently suggested any further expansion of the state's attorney's duty to assist the district court to include a duty to represent persons owed spousal support alone. Therefore, I adhere to my 1994 opinion.

Your second question concerns the duties of the clerk of district court regarding income withholding for child support, and by extension income withholding for spousal support under N.D.C.C. §§ 14-05-25.2 and 14-06-03.2. Those duties are found in N.D.C.C. § 14-09-08.1 and are effective through June 30, 1999; thereafter payments are to be made to the state disbursement unit operated by the Department of Human Services. 1997 N.D. Sess. Laws ch. 404, §§ 12, 13, and 87. When a person required to make the payments fails to do so, the clerk of district court is to send the person notice of the arrears or is to request a district judge to issue a citation for contempt of court on a form provided by the court. N.D.C.C. § 14-09-08.1(3). The person required to make payments may be either the obligor or an income payor such as the obligor's employer.

The clerk of court has no authority or obligation to represent either the state or an obligee of an order for child support, child support combined with spousal support, or spousal support, even when the order provides for income withholding through the clerk of court's office. In my opinion, it does not necessarily follow from the clerk's obligation under N.D.C.C. § 14-09-08.1 that a state's attorney must appear on behalf of the state, the clerk, or the obligee when an order to show cause is scheduled. However, nothing prohibits the clerk of court from notifying the obligee that payments have not been received and advising the obligee to obtain an attorney or to consult the local child support enforcement unit, if appropriate, in addition to providing the person required to make payments with the statutorily required notice.

Sincerely,

Heidi Heitkamp

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ATTORNEY GENERAL

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