

N.D.A.G. Letter to Burke (Feb. 4, 1988)

February 4, 1988

Ms. Patricia L. Burke
Burleigh County State's Attorney
514 East Thayer
Bismarck. ND 58501

Dear Ms. Burke:

Thank you for your letter of January 15, 1988, concerning the responsibilities and duties of a state's attorney in involuntary commitment hearings brought pursuant to N.D.C.C. § 25-03.1-19.

I have had an opportunity to examine the provisions of N.D.C.C. ch. 25-03.1. It appears that N.D.C.C. § 25-03.1-14 is the relevant section pertaining to the responsibility and duty of a state's attorney. That section provides:

25-03.1-14. Duty of state's attorney. The state's attorney for the county in which proceedings under this chapter are initiated shall represent the state in court proceedings and hearings conducted under section 25-03.1-19. The county of residence of the respondent shall bear the cost of the state's attorney in such proceeding in a reasonable amount based upon time and expenses.

This section imposes this duty to represent the state upon the state's attorney only in involuntary commitment hearings and proceedings conducted pursuant to N.D.C.C. § 25-03.1-19. No corresponding statutory duty is imposed under N.D.C.C. ch. 25-03.1. In addition, no additional duties in N.D.C.C. ch. 25-03.1 proceedings are set forth in N.D.C.C. § 11-16-01.

I have enclosed three letter responses to Clinton Ottmar, Charles Gilje, and James Vukelic concerning the scope and effect of N.D.C.C. § 25-03.1-14. Although these responses are primarily concerned with payment for services involved in the involuntary commitment proceedings, they do reaffirm the statutory requirement that a state's attorney of the county in which involuntary commitment proceedings are initiated to represent the state in any proceedings or hearings conducted under N.D.C.C. § 25-03.1-19.

I do not believe, however, that N.D.C.C. § 25-03.1-14 would prohibit you or any other state's attorney from providing additional assistance to the courts if you so desire.

Sincerely,

Nicholas J. Spaeth

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Enclosure