

Office of the Attorney General
State of North Dakota

Opinion No. 86-34

Date Issued: October 29, 1986

Requested by: Kent Reiersen
Williams County State's Attorney

--QUESTION PRESENTED--

Whether the court in a criminal proceeding against a person for abuse of a child is required by N.D.C.C. § 50-25.1-08 to appoint a guardian ad litem for the child.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the court in a criminal proceeding against a person for abuse of a child is not required by N.D.C.C. § 50-25.1-08 to appoint a guardian ad litem for the child.

--ANALYSIS--

N.D.C.C. § 50-25.1-08 states:

50-25.1-08. GUARDIAN AD LITEM. The court, in every case involving an abused or neglected child which results in a judicial proceeding shall appoint a guardian ad litem for the child in those proceedings.

A guardian ad litem is a representative who speaks for the interests of a minor in specific litigation. *Shuck v. Shuck*, 44 N.W.2d 767 (N.D. 1950). The appointment of a guardian ad litem contemplates counsel for the child in the litigation. *McGurren v. S.T.*, 241 N.W.2d 690 (N.D. 1976).

N.D.C.C. § 50-25.1-08 requires appointment of a guardian ad litem in any judicial proceeding involving an abused or neglected child in which the interests of the child are being litigated or determined. N.D.C.C. Ch. 50-25.1 contemplates proceeding through the juvenile court system as a method of protecting children. N.D.C.C. §§ 50-25.1-05.2; 50-25.1-07. In juvenile court proceedings, the guardian ad litem has a clear role to advocate for the child.

The legislative history is silent on whether guardians ad litem were required to be appointed in criminal actions. N.D.C.C. § 1-02-39 states the consequences of a particular construction may be considered in determining the intent of legislation. Thus, it is relevant to consider whether the purposes of N.D.C.C. Ch. 50-25.1

would be accomplished by the appointment of guardians ad litem in criminal actions.

The purpose of N.D.C.C. Ch. 50-25.1 is to protect children by encouraging the reporting of abuse and neglect and encouraging the protection and treatment of such children. N.D.C.C. § 50-25.1-1. In criminal proceedings against a person for abuse of a child, the child is a potential witness. The child's future care, custody, or welfare is not being litigated in the proceeding. Under current laws, a witness in a criminal matter does not have a voice in the manner the action proceeds. A guardian ad litem representing a child witness would have no role in the criminal action nor any opportunity to speak for the child. The consequences of construing N.D.C.C. § 50-25.1-08 to require the court in a criminal proceeding to appoint a guardian ad litem would be that the court would appoint a person without a role or authority in the proceeding.

It may be useful to have advocates for witnesses and victims in criminal proceedings. However, it is not the clear intent of N.D.C.C. § 50-25.1-08 to require appointment of guardians ad litem in criminal proceedings.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Judith Cummings
Assistant Attorney General