

June 1990

GUARDIANSHIP AGREEMENTS FOR DEVELOPMENTALLY DISABLED CLIENTS -
EFFECT OF STATE AND TRIBAL COURTS RECIPROCAL AGREEMENT

The Budget Committee on Human Services during its tour of the developmental disability facility in Stanley on May 2, 1990, was informed by the facility's management of its concern that Fort Berthold tribal courts may not recognize guardianship agreements for developmentally disabled Indians residing on the Fort Berthold Reservation.

BACKGROUND

North Dakota Century Code (NDCC) Section 27-01-09 provides for the reciprocal recognition of certain state and tribal court judgments, decrees, and orders. A copy of Section 27-01-09 is attached.

Section 27-01-09 provides that district courts and county courts are to recognize any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in cases involving the following:

1. Dissolution of marriage;
2. Distribution of property upon divorce;
3. Child custody;
4. Adoption;
5. An adult abuse protection order; or
6. An adjudication of the delinquency, dependency, or neglect of Indian children.

All of these are to be recognized if the tribal court has jurisdiction over the subject matter of the judgment, decree, or order and if the judgment, decree, or order was rendered by a judge who is a graduate of an accredited law school and holds a current valid license to practice law in at least one state.

Section 27-01-09 includes a reciprocity provision that recognition and enforcement of tribal court judgments, decrees, and orders under the section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies.

North Dakota Century Code Chapter 25-01.2 provides for the rights and treatment of the developmentally disabled. Section 25-01.2-14

provides that an individual habitation or education plan must state whether a person needs a guardian. Section 25-01.3-11 allows the Protection and Advocacy Project to petition the court for appointment of a guardian if a person with a developmental disability refuses services and the person's life, safety, or health is seriously jeopardized.

CONCLUSION

It does not appear that North Dakota Century Code Section 27-01-09, which provides for reciprocal recognition of certain state and tribal court judgments, decrees, and orders, applies to guardianship agreements for developmentally disabled clients. To specifically provide for recognition of those agreements, Section 27-01-09 could be amended to include a specific reference to appointment of guardians for developmentally disabled individuals.

ATTACH:1

27-01-09. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders — Conditions. The district courts and county courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who is a graduate of an accredited law school and holds a current valid license to practice law in at least one state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order and personal jurisdiction over the parties to the action. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

Source: S.L. 1989, ch. 381, § 1.