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¶ 1.

STATEMENT OF THE CASE

¶ 2. On or about the 28th day of September, 2011, the High Intensity Enforcement Unit ("HIEU") on behalf of claimant the State of North Dakota. Served a Notice of Lien ("Lien") on the North Dakota State Penitentiary ("NDSP") and Travis Darwin Nelson, ("Appellant"). That being established pursuant to NDCC 35-34. Appendix ("App.") 9,10.

¶ 3. On or about the 14th day of October, 2011, Appellant, served and filed by United States Mail "Request for review and answer to Notice of Lien Dated the 28th day of September, 2011," upon the HIEU, and the Cass County Clerk of Courts. App. 11,12.

¶ 4. On or about the 24th day of October, 2011, the State of North Dakota, by and through Special Assistant Attorney General Sarah E. Cannon ("Appellee"), served and filed by United States Mail a "Reply to Defendant's Request for Review and Answer to Notice of Lien; and Petitioner's Exhibits #1-2." App. 13-28.

¶ 5. On or about the 1st day of November, 2011, Appellant, Served and filed by United States Mail a "Motion to Dismiss" along with a Brief in Support, Notice of Motion Certificate of service, and request to be heard before District Court Judge, App. 29-37.

¶ 6. On the 23rd day of November, 2011, a hearing was held before Judicial Officer; Wickham Corwin, Judge of the District Court, Cass County, North Dakota. On the 12th day of December 2011, Judge Wickham Corwin issued his "Findings of Fact, Conclusions of Law and Order." Denying Appellant's "Motion to Dismiss Lien with Prejudice" and "Affirming the action taken by HIEU in placing an administrative lien on the Defendant's prisoner spending account." App. 38-40.

¶ 7. Appellant filed a timely "Notice of Appeal" to the North Dakota Supreme Court on or about the 30th day of December, 2011. App. 41.

¶ 8. Appellant and Defendant, Travis Darwin Nelson Appeals and Argues that the HIEU in a coordinated effort with the North Dakota Department of Corrections ("DOC") entered into negotiations to issue liens against funds from the spending accounts of inmates. Such a relationship is a violation of the provisions of the Administrative Agencies Practice's Act pursuant to NDCC 28-32-01 (2)(m) (North Dakota), and NDCC 28-32-01(11)(f) (North Dakota). And asks the Court to vacate the Order "Affirming the action taken by HIEU in placing an administrative lien on Defendant's prisoner spending accounts" dated the 12th day of December, 2011, and to vacate the Order "Denying Motion to Dismiss Lien with Prejudice", dated the 12 day of December, 2011.

And to return all funds to Appellant taken through the unlawful personal property lien dated the 28th day of September, 2011.

¶ 9. STATEMENT OF THE ISSUES

¶ 10. Whether the North Dakota Department of Corrections and Rehabilitations and the High Intensity Enforcement Unit violated State Law, when the two parties entered into a negotiated and coordinated agreement or relationship under the Administrative Agencies Practice Act NDCC 28-32 with the sole purpose or express intent of enforcement of an Administrative Action upon an inmate of a Correctional Facility.

¶ 11. Whether the District Court Err'd when it issued it's Order's (1) Denying, Appellant's "Motion to Dismiss Lien with Prejudice"; (2) Affirming an administrative lien on Appellant's prison spending account.

¶ 12. STATEMENT OF THE FACTS

¶ 13. Sometime before the 28th day of September, 2011, the HIEU and the DOC entered in to a negotiated and coordinated agreement or relationship ("coordinated effort") pursuant to the Administrative Agencies Practice Act NDCC Chapter 28-32, with the sole purpose, or express intent of enforcement of an Administrative Action upon an inmate of a correctional facility. On or about the 28th day of September," on behalf of claimant, the State of North Dakota", the HIEU served a "Notice of Lien" pursuant to NDCC Chapter 35-34. This lien requiring NDSP Administration to "Freeze any and all Funds or Accounts held by NDSP over the amount of \$50.00 and owned by or payable to Travis D. Nelson. App.9.

¶ 14. This Notice of Lien also stated Appellant had the legal right to review pursuant to NDCC 50-09-14. App. 10. Appellant served and filed a timely Request for Review pursuant to NDCC 50-09-14(2). App. 11,12.

¶ 15. The State served and filed it's "Reply to Defendant's Request for Review and Answer to Notice of Lien". App 13,14,14A. Stating that: "In a coordinated effort to obtain support for the minor child of incarcerated individuals, the North Dakota Child Support HIEU entered into negotiations with the DOC to issue liens against funds from the spending accounts of inmates" and also states: "In this case, HIEU issued administrative lien against funds in excess of \$50.00 in the spending account of Travis D. Nelson..." App. 14

¶ 16. Since the Lien was filed upon NDSP Administration, NDSP has monitored and forwarded funds from Appellant's account to the HIEU in the amounts of \$41.85 and

\$362.78 both amounts from the same James River Correctional Center ("JRCC") account. Since this time the DOC has issued a "memorandum" stating Appellants "account will be monitored accordingly and funds sent out when available and forwarded to the HIEU." App. 39.

¶ 17. LAW AND ARGUMENT

¶ 18. Issue (1). Whether the North Dakota Department of Corrections and Rehabilitations and the High Intensity Enforcement Unit violated State Law, when the two parties entered into a negotiated and coordinated agreement of relationship under the Administrative Agencies Practice Act NDCC 28-32 with the sole purpose or express intent of enforcement of an Administrative Action upon an inmate of a Correctional Facility.

¶ 19. The North Dakota Department of Corrections and Rehabilitations was created in the office of the Director of Institutions NDCC 28-23.3-01. The Director of Institutions is excluded from the definition of an "Administrative Agency" and therefore, is not subject to the provisions of the Administrative Agencies Practice Act NDCC 28-32-01(2)(m), thus DOC can not enter into a negotiated and coordinated agreement or relationship for the enforcement of an Administrative Action, and this Lien being an "Administrative Lien" would be an Administrative Action, and clearly is a violation of State and Federal Law. See Jensen v. Little, 459 N.W. 2d 237; 1990 N.D. LEXIS 157 (Director was excluded from definition of "Administrative Agency" and, therefore, was not subject to provisions of Administrative Agencies Practice Act pursuant to NDCC 28-32-01(2)(m)).

¶ 20. Furthermore, a rule concerning only inmates at a Correctional or Detention Facility is not a rule subject to procedures of the Act, NDCC 28-32-01(11)(f). See also Little, 459 N.W. 2d 237.

¶ 21. Issue (2). Whether the District Court Err'd when it issued it's Order (1) Denying, Appellant's "Motion to Dismiss Lien with Prejudice"; (2) Affirming an Administrative Action taken by HIEU, in placing a administrative lien on Appellant's prison spending account.

¶ 22. The District Court Err'd when it issued it's Order's (1) Denying, Appellant's "Motion to Dismiss Lien with Prejudice"; (2) Affirming an Administrative Action by HIEU, in placing a administrative lien on Appellant's prison spending account, for the afore reason's in paragraph 19, and 20.

¶ 23. CONCLUSION

¶ 24. The High Intensity Enforcement Unit and the North Dakota Department of Corrections and Rehabilitations violated Appellant's rights when the two entered into a negotiated and coordinated agreement or relationship pursuant to the Administrative Agencies Practice Act NDCC Chapter 28-32, for the sole purpose, or express intent of enforcement of an Administrative Action upon an inmate of a Correctional Facility.

¶ 25. Appellant would request this Court to Vacate the District Courts Order of the 12th day of December, 2011.

¶ 26. CERTIFICATE OF SERVICE

¶ 27. A copy of the forgoing document was mailed to the following on the 28th day of February, 2012.

Sarah E. Cannon
Special Assistant Attorney General
P.O. Box 5756
Grand Forks, ND. 58206-5756

Nicole Brien
626 4th Street
Thompson, ND. 58278

Dated this 28th day of February, 2012.



Travis Darwin Nelson
JRCC -35429
2521 Circle Dr.
Jamestown, ND. 58401

SUPREME COURT OF NORTH DAKOTA
CERTIFICATE OF NON-COMPLIANCE
Case No. 20110377

20110377

I hereby certify that I am the Appellant in the above-entitled matter. That I filed the Appellant's Brief and Appendix on the 2nd day of March, 2012. I was unable to file an electronic copy of this brief as I am incarcerated at the James River Correctional Center, at 2521 Circle Drive, Jamestown, North Dakota, 58401. This Correctional Center has no means for an inmate to file any documents electronically.

Dated this 6th day of March, 2012.



Travis D. Nelson
JRCC - 35429
2521 Circle Dr.
Jamestown, ND. 58401

Copies served by U.S. Mail upon:

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FILED
IN THE CLERK OF SUPREME COURT

MAR 06 2012

STATE OF NORTH DAKOTA