

**2019 HOUSE JUDICIARY**

**HB 1069**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1069  
1/7/2019  
30480

- Subcommittee  
 Conference Committee

Committee Clerk: Delores D. Shimek
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## **Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents.

## **Minutes:**

1
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**Chairman K. Koppelman:** Opened the hearing on HB 1069.

**Travis Finck: Deputy Director ND Comm. N D. Legal Counsel Indigents:** (Attachment 1) Discussed the testimony and reason for this bill. The bill provides direction in which way we can disclose confidential records. We do provide counsel to indigent persons. We also provide related expenses such as expert witnesses fees and things like that. Under our operating statute which is the Century Code 54-61 those records are confidential. We have a problem if a new attorney is assigned we are not allowed to provide the information that occurred under the old attorney to the new attorney because they are related attorney product they are confidential by our statute. This bill would allow us a little more discursion in providing those documents to the client. This is helping us transition if there is a change in counsel.

**Rep. Rick Becker:** The records may be provided to the new attorney if granted permission by the person represented.

**Travis Finck:** Under the rules of professional conduct that file belongs to the client. If those records are requested by the client Attorney A are only available to Attorney A and the client while Attorney A is representing the client. If Attorney A has to withdraw for some reason and a new counsel is appointed Attorney B. If Attorney B calls our office; we are currently not able to provide the information between the two. Discussed the attorney client provisions.

**Rep. Rick Becker:** The new text of the bill does not first require permission of the person represented to give to Attorney B. This doesn't indicate this so are you saying that the Code of Conduct applies to statute? This seems to supersede the Code of Conduct. I Rep. McWilliams disagreeing that the text in this statute actually requires permission, but I do not know of Code of Conduct in the court room system of if that supersedes let me know.

**Travis Finck:** It is not included in the text. That information if it is 6 months down the road, if Attorney A is not representing the client 6 months down the road, if this bill is passed it would allow Attorney A to get that information from us again or the client can. Within the rules of professional conduct for attorneys that file belongs to the client.

**Chairman K. Koppelman:** Would there be any harm stating that in the bill to make it clear? In the latter part of the new language would cover this. If the language says any attorney it does not say the client has to grant the clarification.

**Travis Finck:** That would be fine. I don't see why the commission would oppose that. I can prepare an amendment to make this clearer and get it to the committee.

**Chairman K. Koppelman:** In the later part of the bill it says it would apply to both Attorney A and B.

**Representative Jones:** We are trying to provide clarification if someone dies so all of this stuff can be provided to the new Attorney unless it went through a court order or through the discovery rules? We are trying to provide an easier way to do this.

**Rep. McWilliams:** Can you give prior blanket approval within an attorney client document at the beginning of representation?

**Travis Finck:** Are you asking if the client could authorize a waiver right away? I would want to be sure that would be the true intent of the client.

**Rep. McWilliams:** At the beginning of that litigation I could sign a document that all my information could be given over to someone else?

**Travis Finck:** It would be a case by case instance. We would have under this statute we would not share it with anyone.

Opposition: None

Hearing closed

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1069  
1/9/2019  
30603

- Subcommittee  
 Conference Committee

Committee Clerk: Delores D. Shimek by Nicole Klamon

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents.

## Minutes:

1

**Chairman K. Koppelman:** Opened the meeting on HB 1069. We aren't going to reopen the hearing but I see Mr. Finck is here. I will ask him to come forward to explain the Amendment and why he thinks this might solve the problem or answer the questions that were brought up yesterday.

**Mr. Travis Finck-** Thank you Mr. Chairman. The Amendment is at the suggestion of the questions from the committee yesterday regarding the consent of the represented party to the transfer of any information that the committee would be in possession of to a newly appointed attorney, so to Simply try to clarify the language to make sure it's clear that the information that we have in our possession that would be deemed attorney client information could go to the client and could go to the former attorney because they were parties to the matter and it could go to the new attorney with the consent of the client. I know that was a question that came up to make sure there was a consent. So to just clarify, I thought this amendment achieves that.

**Chairman K. Koppelman:** Very good. Mr. Finck and I visited about this when he brought it forward, and I think that it was drafted by someone else. He could see the concerns of the committee in the discussion and has come back to us with this. Any questions about the opposed amendment for Mr. Finck? Alright, seeing none, Thank you. We have the proposed amendment before us (See Attachment 1). What are the wishes of the committee?

**Representative Becker:** Moved the amendments.

**Representative Satrom:** Seconded. Voice vote: Motion carried.

**Chairman K. Koppelman:** We have the amended bill before us.

**Representative McWilliams:** Made a Do Pass as amended motion.

**Representative Satrom:** Second the motion.

**Roll call vote:** Yes 14 No 0 Absent 0. Motion carried.

**Carrier:** Representative Vetter

**Chairman K. Koppelman:** Closes the meeting on HB1069

DA 1/8/19

19.8011.01001  
Title.02000

Adopted by the Judiciary Committee

January 8, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1069

Page 1, line 13, remove "and to the attorney who provided"

Page 1, line 14, replace "representation under this chapter" with ", the attorney who provided the representation, and newly assigned counsel with consent of the represented party"

Renumber accordingly

Date: 11/9/19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 HB**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.8011.01001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Becker    Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Void Vote*  
*Motion Carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_  
 Absent \_\_\_\_\_  
 Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion Carried*

Date: 11/9/2019  
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
HB

House Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. McWilliams Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Vetter

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1069: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1069 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "and to the attorney who provided"

Page 1, line 14, replace "representation under this chapter" with ", the attorney who provided the representation, and newly assigned counsel with consent of the represented party"

Renumber accordingly

**2019 SENATE JUDICIARY COMMITTEE**

**HB 1069**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1069  
2/5/2019  
Job #32151 (00:46)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents

## Minutes:

No Attachments
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**Chair Larson** opens the hearing on HB 1069.

**Chair Larson:** The testifier is absent. We will open this again tomorrow.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1069  
2/6/2019  
Job #32250 (8:54)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents.

## Minutes:

1 Attachment
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**Chair Larson** opens the discussion on HB 1069.

## **Travis Fink, Deputy Director of the ND Commission on Legal Counsel for Indigents, testifies in favor (see attachment #1)**

**Fink:** The amendment that was put on in the House Judiciary committee was to clear up that the client would have to consent when sending that to the new attorney. It would also allow us to send it to the former attorney because they were the ones that initially had the information. If they were to lose it for some reason and they needed it. Also to send it to the client. Arguably we could probably do those things now, but it's not real clear. We want to clear it up in that part of the code and our operating statutes.

**(4:40) Vice Chairman Dwyer:** Do you have many situations where attorney 1 is not able to continue or decides not to and the indigent client gets referred to a new attorney?

**Fink:** Yes, there are quite a few situations where there is an ethical conflict. Under the rules, the file ethically belongs to the client anyways so that's why we've always been able to give that information to the client. But because it's confidential under our statute, we've not been able to give that to the new attorney. An example would be if there is a request for an expert or private investigator to look into a specific matter. When the new attorney is assigned, that new attorney is starting from scratch right now. They're having to go through and request an expert and everything else whereas it would be nice if we could, with the client's consent, send it to them and let them know that we've already approved this amount of funds and this amount of work has already been done.

**Vice Chairman Dwyer:** Are all of the attorneys for the indigent clients under contract with the county or state?

**Fink:** We have three different ways in which we provide counsel. We have our full time public defenders which are state employees; we have contract counsel who agree to take x number of cases per month for x amount of compensation; we have conflict contractors who take cases on an hourly basis. All of them are administered through our state agency which is the administrative offices in Valley City.

**Senator Luick:** I can see what we're doing here and I have respect for the process, but can you see the possibility of this mushrooming into something more- to lose that confidentiality of other clients in other areas of law?

**Fink:** On line 12, it says "otherwise subject to any attorney-client privilege may be disclosed" and the reason we did "may be" is the people that would be disclosing that information is myself as Deputy Director or our Director Ms. Delany. Both of us are licensed attorneys. We do not be in the practice of sending out more information than is absolutely necessary because it would also be our licenses on the line. We take great pain in making sure only the amount of information that is necessary shall be disclosed. I don't view that as a problem; That's permissible language, not mandatory.

**Chair Larson ends the discussion on HB 1069.**

**Senator Luick: Moves a Do Pass.**

**Vice Chairman Dwyer: Seconds.**

**A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent. Motion passes.**

**Vice Chairman Dwyer will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1069**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Luick Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Vice Chairman Dwyer

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1069, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1069 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1069**

#1 HB1069  
1-7-19

HB 1069  
House Judiciary Committee

Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
January 7, 2019

Good Morning, Mr. Chairman, and members of the Committee my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. This bill provides clarification to the Commission on Legal Counsel and its' employees regarding disclosure of certain information. Currently, a strict reading of NDCC § 54-61-04 would prohibit disclosure of any file, record or information which is attorney work product or subject to attorney-client privilege, to the client to whom the information pertains and the attorney that provided the representation.

Furthermore, the statutory change would allow for a smoother transition when a new attorney is appointed to represent a client. The statutory change would allow the Commission to send information submitted by an earlier assigned attorney to the Client and if agreed to by the client, to the new attorney representing the client.

We respectfully request this committee give a do pass recommendation to the House. I will stand for any questions.

Respectfully Submitted:



Travis W. Finck, Deputy Director  
N.D. Comm. On Legal Counsel  
[tfinck@nd.gov](mailto:tfinck@nd.gov)  
(701) 845-8632

#1  
HB 1069  
1/9/19

Prepared by the North Dakota  
Commission on Legal Counsel for Indigents

01/2019

*DRAFTED AT THE REQUEST OF TRAVIS FINCK*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1069

Page 1, line 13, immediately after "provided" replace "and to the attorney who provided representation under this chapter." with "; the attorney who provided the representation; and to newly assigned counsel with consent of the represented party."

Renumber Accordingly

DRAFT

#1  
HB 1069  
2-6-19

Engrossed House Bill 1069  
Senate Judiciary Committee

Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
February 6, 2019

Good Morning, Madam Chair, and members of the Committee my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. This bill provides clarification to the Commission on Legal Counsel and its' employees regarding disclosure of certain information. Currently, a strict reading of NDCC § 54-61-04 would prohibit disclosure of any file, record or information which is attorney work product or subject to attorney-client privilege, to the client to whom the information pertains and the attorney that provided the representation.

Furthermore, the statutory change would allow for a smoother transition when a new attorney is appointed to represent a client. The statutory change would allow the Commission to send information submitted by an earlier assigned attorney to the Client and if agreed to by the client, to the new attorney representing the client.

We respectfully request this committee give a do pass recommendation to the Senate. I will stand for any questions.

Respectfully Submitted:



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