

**OPINION  
73-195**

April 23, 1973 (OPINION)

Mr. James N. Purdy  
State's Attorney  
Dickey County  
Ellendale, ND 58436

Dear Mr. Purdy:

This is in reply to your letter of 12 April 1973 asking our advice or opinion regarding fees for filing an Abstract of the Judgment of a Small Claims Court with the clerk of the District Court.

You call to our attention that section 11-17-04 of the North Dakota Century Code and subsection 18 thereof states that the Clerk of the District Court shall charge and collect for filing and docketing a Transcript of a Judgment from a Justice's Court or from any other County, \$1.00.

You further point out that section 27-08.1-06 of the North Dakota Century Code provides in part that:

"The judge of the court, upon application of the prevailing party, shall certify an abstract of the judgment to the district court, along with an affidavit of identity signed by the judgment creditor. The abstract may be filed with the clerk of the district court of the county in which the judgment was rendered, and the clerk, thereupon, must enter the judgment in the judgment book and upon the judgment docket."

You indicate that there is no mention made in section 27-08.1-06 or elsewhere, as far as you can determine, about paying or collection of a \$1.00 fee or any fee for the filing and docketing of the Transcript of the Judgment.

Your question is then stated as:

"Whether any fee is to be paid to the Clerk of District Court when the Judgment from the Small Claims Court is abstracted over to the District Court?"

Chapter 27-08.1 governs the Small Claims Court activities of the County Justice or County Court of Increased Jurisdiction. Chapter 11-17 governs the activities of the Clerk of the District Court. We find no conflict in the provisions of said chapter 27-08.1 authorizing the certification of an Abstract of the Small Claims Court Judgment to the District Court, and the provisions of said chapter 11-17 requiring the Clerk of the District Court to charge and collect \$1.00 for filing and docketing a Transcript of a Judgment from a Justice's Court or from any other County. Where either party either by appealing to the district court or by applying to have the Abstract of Judgment certified to the District Court makes such choice, the proceeding after such transfer is no longer governed by chapter 27-08.1 but by the statutes governing that court. The

legislature has not chosen to enact an exemption for small claims court proceedings when in higher courts from the usual processes, rules and fees in such higher courts.

On such basis we must conclude that the One Dollar fee specified in subsection 18 of section 11-17-04 for filing and docketing a Transcript of Judgment in the district court does apply to the filing and docketing of transcripts of judgments from small claims courts. We are enclosing herewith a xerox copy of prior correspondence of this office on this subject.

We hope the foregoing and enclosed will be sufficient for your purposes.

Very truly yours,

ALLEN I. OLSON

Attorney General