

Date Issued: March 28, 1983 (AGO 83-13)

Requested by: Gail Hagerty, Burleigh County State's Attorney

- QUESTION PRESENTED -

Whether the clerk of county court may docket small claims court judgments under section 27-07.1-24 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a clerk of county court may not docket a small claims court judgment under section 27-07.1-24, N.D.C.C.

- ANALYSIS -

The docketing of small claims court judgments is governed by section 27-08.1-06 of the North Dakota Century Code, which states:

27-08.1-06. JUDGMENT UNSATISFIED - DOCKETING - EXECUTION. If the defendant fails to pay the judgment rendered by the court within twenty days after notice of entry has been filed, the judge of the court may issue an execution to the county sheriff as if issued by the clerk of the district court under the provisions of chapter 28-21, and the execution shall invoke all the powers of the sheriff in the same manner as an execution of the judgment under chapter 28-21, or 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 without payment of a filing fee, and the clerk, thereupon, must enter the judgment in the judgment book and upon the judgment docket. From the time of the docketing, it becomes a judgment of the district court for the purpose of execution and a lien upon real property owned by the debtor in the same manner as an original judgment of the district court. A certified transcript of the docket of the judgment may be filed and the judgment docketed accordingly in any other county with the same effect in every respect as if the judgment had been rendered in the district court where the judgment is filed.

Section 27-07.1-24, N.D.C.C., which provides for the docketing of county court judgments within the county court rather than transcribing the judgment to district court does not apply to small claims court judgments. Section 27-07.1-24, N.D.C.C., states, in part:

. . . On filing a judgment roll upon a judgment which, in whole or in part, directs the payment of money, the clerk of the county court in which such judgment was rendered shall docket the same in a book to be known as the "judgment docket". . . . (Emphasis supplied).

It is clear that this statute only applies to judgments rendered in county court. Small claims court is a separate court from that of the county court. The mere fact that the county court judge also sits for the small claims court pursuant to 27-08.1-01, N.D.C.C., does not combine said court with the county court.

Therefore, small claims court judgments must be transcribed to the district court pursuant to section 27-08.1-06, N.D.C.C.

- EFFECT -

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

ROBERT O. WEFALD  
Attorney General

Prepared by: DeNae H. M. Kautzmann  
Assistant Attorney General