

**OPINION**  
**57-80**

February 5, 1957 (OPINION)

COURTS

RE: Civil Procedure - Affidavit of Identification Required  
Before Filing Judgments

Have your letter of February 1, 1957 in which you refer to section 28-2015 of the N.D.R.C. of 1943 and in which you specifically inquire as follows: "Is the statute applicable insofar as an affidavit of identification being required in the filing of a transcript of judgment in a county different from that where the original action and judgment has been filed."

Section 28-2013 concerning the docketing of a judgment in other counties provides in part: "Such judgment may be docketed in any other county upon filing with the clerk of the district court of such county a transcript of the original judgment docket."

The word "docket" is defined in Black's Law Dictionary as "A minute, abstract, or brief entry; or the book containing such entires. A small piece of paper of parchment having the effect of a larger. Blount."

A study of the North Dakota statutes including particularly section 28-2011 of the N.D.R.C. of 1943 would indicate that the words "entered and docketed" when referring to judgments in North Dakota are synonymous.

A judgment docket in the State of North Dakota is the record or list of judgments entered in any given court with the record being kept by the clerk of court. It is to be noted that section 28-2013 specifically refers to the word "docketed."

The instant statute, section 28-2015, states:

"No judgment for the recovery of money against any person shall docketed or entered until the judgment creditor, his agent, or attorney shall have filed with the clerk of the district court an affidavit stating the full name, occupation, place of residence, and post office address of the judgment debtor, to the best of affiant's information and belief, and if the debtor has a known street address, or residence number, or both, it shall be given. This section shall not apply to any case where judgment is taken against a corporation, copartnership, public official, or party sued in a representative capacity. Failure to file such affidavit, or the filing of a defective or insufficient affidavit, shall not invalidate the judgment docketed or entered, but the clerk of the district court entering or docketing a judgment without such affidavit of identification, shall be liable to any person damaged thereby in the sum of five dollars."

It is not the customary or ordinary practice of the clerk of court to include the information required in the affidavit of identification under section 28-2013 as a part of the transcript of the judgment.

Therefore, the strong mandatory language of section 28-2015 coupled with the definition of "docketed" provides the basis for the opinion of this office that an affidavit of identification is required on the filing of the transcript of the judgment just as it was on the filing and docketing of the original judgment. It is to be noted, however, that before the penalty provision would be good against any clerk of court a person would have to prove that he was damaged by the failure of the clerk to require the affidavit of identification.

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