

LETTER OPINION
93-L-49

February 17, 1993

Mr. Michel W. Stefonowicz
Divide County States Attorney
115 Main St. S., P.O. Box 289
Crosby, ND 58730-0289

Dear Mr. Stefonowicz:

Thank you for your January 26, 1993 letter requesting an opinion on when a small claims court judgment expires.

N.D.C.C. ? 27-08.1-06 addresses the docketing of unsatisfied judgments in small claims court. It provides in relevant part:

If the defendant fails to pay the judgment rendered by the court within twenty days after notice of entry has been filed, . . . upon application of the prevailing party, the judge of the court shall certify an abstract of the judgment to the county court, along with an affidavit of identity signed by the judgment creditor. The abstract may be filed with the clerk of the county court of the county in which the judgment was rendered without payment of a filing fee, and the clerk shall enter the judgment upon the judgment docket. From the time of the docketing, it becomes a judgment of the county 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 county court.

The above language provides that when a judgment is unsatisfied the judge of the court shall certify an abstract of the judgment to the county court upon application of the prevailing party. It further provides that the abstract may be filed with the clerk of the county court, and that the clerk shall enter the judgment upon the judgment docket. The statute plainly provides that the judgment becomes a judgment of the county court from the time of the docketing, which occurs when the abstract is filed with the clerk of the county court and entered upon the judgment

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docket.

N.D.C.C. ? 27-07.1-24 provides that "[a]ll provisions of law applicable to the district courts pertaining to the filing, docketing, or renewal of a judgment apply to county courts." Thus N.D.C.C. ? 28-20-21, which addresses renewal of judgments in the district courts, applies to county courts.

N.D.C.C. ? 28-20-21 provides that any judgment which in whole or in part directs the payment of money may be renewed "at any time within ninety days preceding the expiration of ten years from the first docketing of such judgment." With regard to small claims judgments, the first docketing of the judgment occurs in the county court when the abstract of judgment is filed with the clerk of a county court and entered upon the judgment docket.

Based upon the above statutes, it is my opinion that a small claims judgment expires ten years after the abstract of judgment is docketed in the county court.

I recognize that the above opinion permits a prevailing party to extend the period of time that the judgment is valid by delaying docketing of the small claims judgment in county court. If this is perceived as a problem you may want to raise the issue with the Legislature and seek an amendment of N.D.C.C. ? 27-08.1-06. The problem could be easily remedied by requiring that the abstract of judgment be filed with the county court within a specified time after the judgment has been rendered or after notice of entry has been filed.

Your letter points out that N.D.C.C. ? 27-08.1-06 may have read differently in 1982. Attached is a copy of N.D.C.C. ? 27-08.1-06 as found in the 1981 pocket supplement. You will note that the only substantive difference with regard to this issue is that the earlier version required the abstract of judgment be filed with the district court rather than the county court. See 1985 N.D. Sess. Laws ch. 337, ? 8 (amending N.D.C.C. ? 27-08.1-06 to require abstract of judgment be filed in county court). Your letter indicates that the abstract of judgment was filed with the clerk of the district court in the present case.

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Please contact us if we can be of further assistance.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dab/jjt

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