

**SMALL CLAIMS COURT
INFORMATION**

IMPORTANT: To Protect Your Rights read carefully this information, and any instructions to which you are referred.

Small Claims Court is a division of district court where cases may be heard that involve recovery of money or cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise. The Small Claims Court was established so citizens could present their own cases to the court without the assistance of an attorney.

Claims may be filed in Small Claims Court if:

1. The amount claimed does not exceed \$15,000, and
2. No more than six years has elapsed since the date of the debt or date of the last payment. (This time period may vary under certain circumstances.)

In Small Claims Court you:

1. Need NOT hire an attorney. (The judge will assist both parties in presenting their case.)
2. Do not have the right to trial by jury.
3. Do not have the right to appeal the decision of the judge.

You may elect to have your case heard in district court in which case you:

1. May find it necessary to hire an attorney.
2. May have the right to a trial by jury.
3. Have the right to appeal the decision of the judge.

If a claim is filed in Small Claims Court:

1. The Plaintiff may not change his or her mind and have the case moved to District Court.
2. The Defendant may have the case heard in Small Claims Court, or have the case moved to District Court by filing the REMOVAL TO DISTRICT COURT (Form 3) within 20 days of receipt of the Claim Affidavit and serving a copy of Form 3 on the Plaintiff. See Instructions for Form 3 for additional filing and fee requirements. ***NOTE:*** If the Defendant elects to remove the action to district court, the district court must award attorney's fees to a prevailing plaintiff.

WHERE A CLAIM IS FILED:

- a. If the defendant is a corporation or a partnership, a claim must be filed in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
- b. If the claim is for collection of a check written without sufficient funds or without an account, a claim must be filed in the county where the check was passed or in the county of the defendant's residence or place of business.
- c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
 - (1) The claim must be filed in the county of the defendant's residence or place of business; OR
 - (2) If the amount of the claim is less than one thousand dollars and is not from a telephone or mail order transaction, the claim must be filed in the county where the transaction occurred or in the county of the defendant's residence or place of business.
- d. If the defendant is an individual and the claim is not made under b or c (above) the claim must be filed in the defendant's county of residence.
- e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property or as the result of a dispute over disposition of earnest money or other money deposit arising from a contract to purchase real property, in the county where the real property is located unless the plaintiff and the defendant consent in writing to a proceeding in a different county.
- f. If the plaintiff is a political subdivision and the claim is for a public utility debt, the claim must be filed in the county in which the political subdivision is located.

Generally, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. However, if the claims involves a matter under c, e, or f above, the defendant **CANNOT REMOVE** the action to the county of residence.

IMPORTANT INFORMATION

1. Only the Court can change the time of the hearing.
Request for a change must be made to the Small Claims Division of the District Court.
2. Even if you get a judgement in your favor (you win), you might not get your money!
(If a person is unemployed, does not have any property of sufficient value, or is on some type of assistance, it may be impossible to collect.)
3. Take to the hearing all receipts and evidence related to the case and any witnesses that you wish to have testify on your behalf.
Keep track of all your costs related to the case (such as cost of serving papers).
If you win, the judge may order the losing party to pay your costs.
4. The judgment debtor (the losing party) has 30 days from the date of Notice of Entry of Judgment in which to pay the judgment sum. Failure to do so means the judgment creditor (the winning party) may start collection proceedings through the Sheriff.

PLAINTIFF - (The person initiating this action)

See important Instructions on the back of Form 2 – Claim Affidavit.

DEFENDANT - (The person being sued)

See important Instructions on the back of Form 4 – Defendant's Answer and Counterclaim

FORM 2 – INSTRUCTIONS TO THE PERSON WISHING TO FILE A CLAIM

STEP ONE: First complete the "CLAIM AFFIDAVIT" (on the reverse side of this page).

You must have the full name and address of each person you sue. After you have completed your CLAIM AFFIDAVIT you must sign it.

Fill out and sign an "Affidavit of Identification" (FORM 8) for each Defendant in the case.

STEP TWO: Return the Claim Affidavit and an Affidavit of Identification for each Defendant to the Clerk of District Court. You must file the Claim Affidavit and pay the \$10.00 filing fee BEFORE serving the Defendant.

Ask the Clerk of District Court to make 1 copy of the Claim Affidavit with the case number. You may be asked to pay a fee for the copy.

STEP THREE: You must now SERVE the Defendant with the following forms:

FORM 1 - Small Claims Court Information (*keep 1 copy for yourself*).

FORM 2 - Claim Affidavit (*serve 1 copy of completed & signed Form 2*).

FORM 3 - Request for Hearing/Removal to District Court (*blank - don't fill out Form 3*).

FORM 4 – Defendant's Answer and Counterclaim (*blank - don't fill out Form 4*).

FORM 5 - Affidavit of Mailing for Counterclaim (*blank - don't fill out Form 5*).

FORM 7 - North Dakota Small Claims Court Act (*keep 1 copy for yourself*).

NOTE: If you are filing a claim against more than one Defendant, you must serve each Defendant with the above copies.

The back of FORM 6 has your instructions on how to serve the Defendant.

STEP FOUR: You must next complete the "AFFIDAVIT OF SERVICE" (FORM 6). Fill out the appropriate section of FORM 6 and have the person mailing to or serving the Defendant sign the form. If you mail the forms to the defendant by certified mail - restricted delivery, YOU MUST file the Affidavit of Service and the signed, green return receipt card with the Clerk of District Court AS SOON as you receive the green card from the post office.

If the sheriff serves the papers, the sheriff will provide you with a completed Affidavit of Service and Form 6 may be discarded. You must file the sheriff's affidavit with the Clerk of District Court as soon as you receive it from the sheriff's department.

STEP FIVE: If the defendant requests a hearing in small claims court on this claim, the court will schedule the hearing not less than 10 days nor more than 30 days after receiving the defendant's request. The court will send notice to you of the hearing date. At the time set for the hearing you MUST COME TO COURT. If you fail to appear your claim may be dismissed, and you may be prohibited from bringing it up again.

FORM 3 – INSTRUCTIONS FOR HEARING IN SMALL CLAIMS COURT OR REMOVAL TO DISTRICT COURT

TO THE DEFENDANT:

If you intend to contest the claim filed against you, you must request a hearing in small claims court on the reverse side of this form (**Form 3**) and file your request with the Clerk of District Court within twenty (20) days of receipt of the Claim Affidavit and this form.

If within twenty (20) days of receipt of the affidavit and forms, the court has not received a request for a hearing, a hearing will not be scheduled and judgment may be entered against you by default.

If you elect to remove the case from Small Claims Court to District Court, you must file the following with the Clerk of District Court within twenty (20) days of receipt of the Claim Affidavit and this form:

1. REMOVAL TO DISTRICT COURT - reverse side of this form (Form 3)
2. A copy of the claim affidavit (Form 2)
3. Your answer to the claim (Form 4)
4. The \$80.000 filing fee, unless waived by the court.

You must also serve the plaintiff with a copy of this Form 3, which will notify the plaintiff of your removal of the matter to district court.

NOTE: If you elect to remove the action to district court, the district court must award attorney's fees to a prevailing plaintiff.

(See the advantages and disadvantages of Small Claims Court on **Form 1**.)

NOTICE OF HEARING:

If the Defendant requests a hearing in small claims court and files the request within twenty (20) days of receipt of the Affidavit and Request Form, the Clerk of District Court will schedule a hearing to be held not less than ten (10) days and not more than thirty (30) days after receipt of the Defendant's request.

Bring all receipts and evidence related to the case and any witnesses that you wish to have testify on your behalf.

IMPORTANT: IF YOU DO NOT REQUEST A HEARING, OR IF YOU REQUEST A HEARING AND DO NOT COME TO COURT AT THE PLACE, TIME, AND DATE SPECIFIED, THE COURT MAY ORDER A JUDGMENT AGAINST YOU.

DEFENDANT'S ANSWER/COUNTER CLAIM
(See Instructions on Reverse Side)

_____, Plaintiff(s) CASE NO. _____

vs.

_____, Defendant(s) _____ County, North Dakota

DEFENDANT'S ANSWER

This form is to be used to notify the Small Claims Court THAT YOU INTEND TO CONTEST the Plaintiff's Claim. Initial the statement below that applies to you:

- 1. _____ I do not owe the Plaintiff any part of what is claimed, for reasons stated below.
- 2. _____ I owe the Plaintiff only part of what is claimed, as explained below.
- 3. _____ I owe the Plaintiff what is claimed.

(Attach additional sheet if necessary.)

COUNTERCLAIM
(May not exceed \$15,000)

If you think you have a claim of your own against the Plaintiff, you may present your claim as part of this case and have it decided at the same time. If that is the situation, fill in the following:

PLAINTIFF OWES ME (briefly describe your claim and state your reasons): _____

A COUNTERCLAIM must be filed and delivered, or mailed by Restricted Delivery, Return Receipt, to the Plaintiff not later than 48 hours before the hearing.

I declare under penalty of perjury that the foregoing is true and correct. Dated this _____ day of _____ 20_____.

_____ County, North Dakota

Defendant's Signature

RETURN TO CLERK OF DISTRICT COURT FOR FILING
A counterclaim must be filed and served upon the plaintiff not later than 48 hours before the hearing.

FORM 4 – INSTRUCTIONS TO THE PERSON BEING SUED IN SMALL CLAIMS COURT

YOU HAVE THE FOLLOWING FIVE OPTIONS:

1. You may pay this claim by contacting the Plaintiff immediately and making arrangements for payment.
2. You may defend yourself in Small Claims Court by indicating on the Defendant's REQUEST FOR HEARING (FORM 3) that you are requesting a hearing. You must return the form to the Clerk of District Court within 20 days of receipt of the CLAIM AFFIDAVIT. You may appear on the date set for hearing without a written answer.
3. You may have the case moved to District Court.
(See the advantages and disadvantages of Small Claims Court on FORM 1.)

If the claim is not filed in your county of residence, you may have the case moved to the Small Claims Court in your county of residence. **NOTE: The case CANNOT be moved to your county of residence if certain matters are involved. See Form 1 - "Where a claim is filed".**

To move a case to district court, you must file the "Removal to District Court" (FORM 3) and serve a copy of Form 3 on the Plaintiff. You must also file a copy of the "CLAIM AFFIDAVIT" and your answer to the claim (this FORM 4) with the Clerk of Court to which the case is removed, and you must pay an \$80 filing fee unless the fee is waived by the court.

4. You may also defend yourself in Small Claims Court in writing by filing the "DEFENDANT'S ANSWER" (on the reverse side of this form) with the Clerk of the Small Claims Court and serving it on the Plaintiff at least 48 hours before the hearing.

Instructions for serving the Plaintiff are on the back of FORM 5.

5. You may file a COUNTERCLAIM (on the reverse side of this form) against the Plaintiff if you believe he/she owes you money arising out of the same transaction for which you are being sued.

To file a Counterclaim, fill out the appropriate section of this form, file it with the Clerk of the Small Claims Court and serve it on the Plaintiff at least 48 hours before the date set for hearing.

Instructions for serving the Plaintiff are on the back of FORM 5.

NOTE: The Counterclaim may not exceed \$15,000 in Small Claims Court. A Counterclaim for more money must be filed in District Court.

IMPORTANT: IF YOU DO NOT REQUEST A HEARING, OR IF YOU REQUEST A HEARING AND DO NOT COME TO COURT AT THE PLACE, TIME, AND DATE SPECIFIED, THE COURT MAY ORDER A JUDGMENT AGAINST YOU.

AFFIDAVIT OF MAILING/PERSONAL SERVICE - ANSWER/COUNTERCLAIM
 (See Instructions on Reverse Side)

AFFIDAVIT OF MAILING OF ANSWER/COUNTERCLAIM TO PLAINTIFF:

Name of Person who Mailed Papers	Time Mailed <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Mailed
Plaintiff(s) To Whom Papers Were Mailed	Where addressed (list each Plaintiff's name and address separately)	
	Certified mail receipt No.:	
Mailed at United States Post Office in City of	In the State of	

I declare under penalty of perjury that I am at least 18 years of age, and that at the time and on the date shown above, I deposited a true copy of the Defendant's Answer/Counterclaim in this case, securely enclosed in an envelope with certified mail postage duly prepaid, for each Plaintiff listed, at the above named United States Post Office.

Dated this ____ day of

Signature of person who mailed papers

_____, 20____.

_____ County, North Dakota

AFFIDAVIT OF PERSONAL SERVICE OF ANSWER/COUNTERCLAIM ON PLAINTIFF:

NOTE: In cases with more than one Plaintiff, each Plaintiff must be served and a separate Affidavit of Personal Service must be filed with the court on each service.

Name of Person who Served Papers	Time Served <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Served
Plaintiff(s) On Whom Papers Were Served	Address where served	

I declare under penalty of perjury that I am at least 18 years of age, not a party to or interested in the above action, and that on the time and date shown above, I personally served a true copy of the Defendant's Answer/Counterclaim in this case, on the Plaintiff whose name and address are shown above.

Dated this ____ day of

Signature of person who served papers

_____ 20____.

_____ County, North Dakota

SMALL CLAIMS COURT _____ COUNTY, North Dakota. CASE NO. _____

PLAINTIFF _____ vs. DEFENDANT _____

INSTRUCTIONS
FOR SERVING PAPERS ON A PLAINTIFF

A copy of the Answer/Counterclaim must be served on each Plaintiff. You must serve the Answer/Counterclaim on the Plaintiff at least 48 hours before the scheduled hearing.

SERVICE MAY BE DONE IN TWO WAYS:

BY MAIL

A. If you elect to serve papers by mail you must:

1. Send to the Plaintiff by Certified Mail with Return Receipt Requested a copy of the "Answer/Counterclaim" (Form 4).
2. Complete the "Affidavit of Mailing" section on the reverse side of this form and have the person who mailed the forms sign in the appropriate section.

Take the "Affidavit of Service" and the receipt from the post office with you to court.

Assistance in serving papers by mail will be given to you at the post office.

OR

PERSONAL SERVICE

B. You may serve the Plaintiff personally by:

1. Giving the forms to the sheriff to be served. (The sheriff will charge you a fee, which might be assessed against the Plaintiff if you win.)
2. You may have another person who is of legal age and who is not a party to or interested in the case give the papers to the Plaintiff. If this is done, the person giving the papers to the Plaintiff must fill out the reverse side of this form and sign it.

Take this form with you to court.

AFFIDAVIT OF MAILING/PERSONAL SERVICE - PLAINTIFF'S CLAIM
(See Instructions on Reverse Side)

AFFIDAVIT OF MAILING OF Plaintiff's Claim and Defendant's Forms:

Name of Person who Mailed Papers		Time Mailed <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Mailed
Defendant(s) To Whom Papers Were Mailed	Where addressed (list each Defendant's name and address separately)		
	Certified mail receipt no.:		
Mailed at United States Post Office in City of		In the State of	

I declare under penalty of perjury that I am at least 18 years of age, and that at the time and on the date shown above, I deposited a true copy of the PLAINTIFF'S CLAIM and DEFENDANT'S FORMS in this case, securely enclosed in an envelope with certified mail - restricted delivery, postage duly prepaid, for each Defendant listed, at the above named United States Post Office.

Dated this ____ day of _____ Signature of person who mailed papers _____

_____ 20 ____.

_____ County, North Dakota

AFFIDAVIT OF PERSONAL SERVICE OF Plaintiff's Claim and Defendant's Forms:

Name of Person who Served Papers		Time Served <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Served
Defendant(s) on Whom Papers Were Served	Address where served		

I declare under penalty of perjury that I am at least 18 years of age, not a party to or interested in the above action, and that on the time and date shown above, I personally served a true copy of the Plaintiff's Claim and the Defendant's Forms in this case, on the Defendant and at the address shown above.

Dated this ____ day of _____ Signature of person who served papers _____

_____ 20 ____.

_____ County, North Dakota

SMALL CLAIMS COURT _____ COUNTY, North Dakota. CASE NO. _____

PLAINTIFF _____ vs. DEFENDANT _____

INSTRUCTIONS

FOR SERVING PAPERS ON A DEFENDANT

Copies of the "Claim Affidavit" and the Defendant's Forms must be served on each defendant if there is more than one defendant.

SERVICE MAY BE DONE IN TWO WAYS:

BY MAIL

A. If you elect to serve papers by mail you must:

1. Send to the Defendant by Certified Mail - Restricted Delivery with Return Receipt Requested the following:
 - a. FORM 1 - Small Claims Court Information (*keep 1 copy for yourself*).
 - b. FORM 2 - Claim Affidavit (*serve 1 copy of completed & signed Form 2*).
 - c. FORM 3 - Request for Hearing/Removal to District Court (*blank - don't fill out Form 3*).
 - d. FORM 4 - Defendant's Answer and Counterclaim (*blank - don't fill out Form 4*).
 - e. FORM 5 - Affidavit of Mailing for Counterclaim (*blank - don't fill out Form 5*).
 - f. FORM 7 - North Dakota Small Claims Court Act (*keep 1 copy for yourself*).
2. Complete the "Affidavit of Mailing" section on the reverse side of this form and have the person who mailed the forms sign in the appropriate section.
You MUST FILE the completed "Affidavit of Service" and the signed return receipt with the clerk AS SOON as you receive the card from the post office.

Assistance in serving papers by mail will be given to you at the post office.

OR

PERSONAL SERVICE

B. You may serve the Defendant personally by:

1. Giving the forms to the sheriff to be served. (The sheriff will charge you a fee, which might be assessed against the Defendant if you win.)
2. You may have another person who is of legal age and who is not a party to or interested in the case give the papers to the Defendant. If this is done, the person giving the papers to the Defendant must fill out the reverse side of this form and sign it.

The Defendant must be served with:

- a. FORM 1 - Small Claims Court Information (*keep 1 copy for yourself*).
- b. FORM 2 - Claim Affidavit (*1 copy of completed & signed Form 2*).
- c. FORM 3 - Request for Hearing/Removal to District Court (*blank - don't fill out Form 3*).
- d. FORM 4 - Defendant's Answer and Counterclaim (*blank - don't fill out Form 4*).
- e. FORM 5 - Affidavit of Mailing for Counterclaim (*blank - don't fill out Form 5*).
- f. FORM 7 - North Dakota Small Claims Court Act (*keep 1 copy for yourself*).

After service is completed, you MUST FILE the completed "Affidavit of Service" with the clerk AS SOON as you receive the affidavit.

(NOTE: All parties to an action in Small Claims Court are urged to read the following law.)

NORTH DAKOTA SMALL CLAIMS COURT ACT **N.D. CENTURY CODE 27-08.1-01 through 27-08.1-08**

27-08.1-01. Small claims court - Jurisdictional limits - Venue.

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed fifteen thousand dollars.
2. The proceedings in this court must be commenced:
 - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
 - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
 - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
 - (1) In the county of the defendant's residence or place of business; or
 - (2) If the amount of the claim is less than one thousand dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.
 - d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
 - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property or as the result of a dispute over disposition of earnest money or other money deposit arising from a contract to purchase real property, in the county where the real property is located unless the plaintiff and the defendant consent in writing to a proceeding in a different county.
 - f. If the plaintiff is a political subdivision and the claim is for a public utility debt, in the county in which the political subdivision is located.
3. Except for an action under subdivision c, e, or f of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. A claim may not be filed by an assignee of that claim. A garnishment or attachment may not issue from this court until after judgment is entered.

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court are commenced whenever any person executes and files with the court a claim affidavit, and causes the affidavit to be served by a person of legal age, not a party to or interested in the action, on the defendant or mails it to the defendant by certified mail with restricted delivery along with a form upon which the defendant must indicate whether a hearing is requested and whether the defendant elects to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing or an election to remove to district court, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing in small claims court, the hearing must be not less than ten days and not more than thirty days after receipt of the request. Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing or personal service may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court or in electronic form from the supreme court.

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance may be required, and the hearing and disposition of actions must be informal. A court reporter is not required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed fifteen thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to the plaintiff by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of fifteen thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor

concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section 27-05.2-03 must be charged for filing the claim affidavit.

27-08.1-04. Election to proceed in small claims court irrevocable. Election by the plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and unless otherwise provided in the order the dismissal must be deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives the right to appeal to any other court from the decision of the small claims court. The defendant waives the right to appeal from the decision of the small claims court upon receiving the order for appearance as required herein, unless the defendant elects to remove the action from the small claims court to district court. If the defendant elects to remove the action to district court, the defendant must serve upon the plaintiff a notice of the removal and file with the clerk of the court to which the action is removed a copy of the claim affidavit and the defendant's answer along with the filing fee, except for an answer fee, required for civil actions. If the defendant elects to remove the action from small claims court to district court, the district court shall award attorney's fees to a prevailing plaintiff.

27-08.1-04.1. Dismissal without prejudice. If the judge determines at any stage of the proceedings that the case may not be fairly disposed of in small claims court, the judge may dismiss the case without prejudice. A determination that a case may not be fairly disposed of in small claims court must be based on complexity of factual or legal issues or a determination that relief other than money damages or cancellation of an agreement is necessary to dispose of the case. If a case is dismissed under this section, the filing fee must be refunded to the plaintiff.

27-08.1-05. Judgment. The court shall enter a written judgment indicating its decision on all cases filed with the court on the basis of the evidence presented. A judgment must be entered even if either party fails to appear at the hearing. The court may award the costs of the action to the prevailing party. For purposes of enforcement and execution, a judgment of the small claims court has the same force, effects, and attributes of a judgment of the district court.

27-08.1-06. Judgment unsatisfied - Docketing - Execution. Repealed by S.L. 1997, ch. 263, § 5.

27-08.1-07. Records and destruction of records. Unless otherwise authorized by rules of the supreme court, records of the small claims court consist of all documents filed in each action and an index for plaintiffs and defendants. Unless otherwise directed by rules of the supreme court, after the judgment is satisfied or becomes ten years old, the court may destroy all papers filed in the case, except the judgment. At the time of destroying the papers, the clerk of court shall make a record upon the judgment identifying the papers destroyed and the dates the papers were filed.

27-08.1-08. Referees of small claims court - Appointment - Term - Method of qualifying - Powers and duties - Compensation. The presiding judge of the judicial district may appoint a referee of the small claims court who shall hold office at the pleasure of the judge. The referee shall qualify in the same manner as other civil officers, except that the referee need not be a qualified elector of the county, and the duties and powers of the referee in the conduct of trials in the small claims court are governed by the provisions of rule 53(c), North Dakota Rules of Civil Procedure, insofar as those provisions are not in conflict with the provisions of this chapter. The referee appointed must be a person versed in the law. The presiding judge shall determine the salary or fee of the referee, within the limits of legislative appropriations.

AFFIDAVIT OF IDENTIFICATION

_____ COUNTY, NORTH DAKOTA, SMALL CLAIMS COURT CASE NO. _____

Plaintiff

vs.

AFFIDAVIT OF IDENTIFICATION

Defendant

I, _____, declare, under penalty of perjury under the law of North Dakota, that the following information is true and correct; that I am the Affiant, or an authorized representative thereof, in the above entitled action, and that to the best of my knowledge that the name, address, and occupation of the Defendant are as follows (list each Defendant):

Defendant Name: _____
Address: _____
Occupation: _____

Defendant Name: _____
Address: _____
Occupation: _____

To the best of my knowledge (*choose one.*)

The Defendant is **NOT** in active military service. I know this because (*select all that apply*):

I have contacted the military services of the United States at the Servicemembers Civil Relief Act website, scra.dmdc.osd.mil/scra, and obtained documentation showing the Defendant is not on active duty status. The documentation is attached.

I have personal knowledge of the Defendant's military status (*explain*): _____

Other (*explain*): _____

The Defendant **IS** in active military service, **BUT** the Defendant is represented by a lawyer in this Small Claims Court case, has not responded to the Claim Affidavit, **AND** the Small Claims Court has not granted a stay.

I DO NOT KNOW whether the Defendant is in active military service. I did the following to try to find out (*explain*):

Signed on this _____ day
of _____ 20_____.

Signature of Affiant

County, North Dakota, USA

**FORM 8 – INSTRUCTIONS FOR AFFIDAVIT OF IDENTIFICATION
AND MILITARY STATUS**

TO THE PLAINTIFF:

1. Fill in the Caption (Top) of **Form 8** using your completed **Form 2: Claim Affidavit**:
 - a. County = enter the North Dakota County from the Caption of Form 2.
 - b. Plaintiff = enter the same Plaintiff name(s) from the Caption of Form 2.
 - c. Defendant = enter the same Defendant name(s) from the Caption of Form 2.
 - d. Case No. = Leave blank. If your Small Claims Court Form 2 and Form 8 are accepted for filing, the Clerk of Court will assign a case number.
2. Fill in your full name.
3. List the name, address, and occupation of each Defendant you listed on **Form 2**.
4. Under the federal Servicemembers Civil Relief Act (SCRA), active duty service members have protections against default judgments.

Small Claims Court cases may be decided by default judgment. **You must attempt to find out whether each Defendant is on active duty with the military.** Keep track of the steps you take to find out.

The Servicemembers Civil Relief Act (SCRA) Website, scra.dmdc.osd.mil/scra, is a website affiliated with the United States Department of Defense. The SCRA Website allows people to search for active duty service members. The SCRA Website is free to use, however, website users are required to create a user account.

If the Small Claims Court is unable to determine from your affidavit whether the Defendant is in active military service, the Court, before granting a default judgment, may require you to file a bond in an amount approved by the Court. If the Defendant is later found to be in active military service, the bond is used to compensate the Defendant against loss or damage resulting from the default judgment.

Select the appropriate option for the Defendant. If you select an option that requires you to provide an explanation, write or type your explanation in detail.

5. Sign and date **Form 8**.
6. For filing, see the **STEP ONE** instructions for **Form 2**.

_____ COUNTY, NORTH DAKOTA, SMALL CLAIMS COURT

CASE NO. _____

NOTE: When the Judgment Debtor has fully paid the judgment sum, the Judgment Creditor must sign a Satisfaction of Judgment. The Satisfaction of Judgment should then be filed with the court

_____, Plaintiff

vs.

_____, Defendant

SATISFACTION OF JUDGMENT

The judgment, in the above designated case, is hereby satisfied, and I direct the Clerk of Court to enter satisfaction of the judgment in my favor, such judgment having been fully paid and satisfied.

Signature of Judgment Creditor

Subscribed and sworn to before me
on _____ 20____.

Clerk or Notary Public

If notary, my commission expires: _____.

County, North Dakota

SATISFACTION OF JUDGMENT PROCESS

For the Winning Party: Any winning party in a Small Claims Court case can file a Satisfaction of Judgment (Form 9) and proof of service on each losing party with the Small Claims Court that ordered the judgment.

Information and requirements about satisfaction of judgment are found in North Dakota Century Code Section 28-20-24 at www.legis.nd.gov/cencode/t28c20.html.

1. When the Small Claims Court judgment is satisfied, the winning party fills out the Satisfaction of Judgment (Form 9). (The judgment may be settled for less than the amount ordered in the Small Claims Court's judgment.)
 - Fill out the top of the Satisfaction of Judgment (Form 9) the same as the top of the Claim Affidavit; and
 - The winning party signs in front of a notary public or clerk of court.
2. The winning party must serve a copy of the completed Satisfaction of Judgment (Form 9) on each losing party in the Small Claims Court case.
 - Make a copy for yourself and one copy for each losing party.
 - Put the copy for each losing party in a separate envelope addressed to the losing party.
 - An individual who is 18 years or older takes each envelope to a U.S. Post Office, pays first class postage, and hands the envelope(s) to the postal employee.
 - The individual who handed the envelope(s) to the postal employee fills out, signs and dates the Declaration of Service by Mail form(s).
3. After mailing a copy of the Satisfaction of Judgment (Form 9) to each losing party and getting a completed, dated and signed Declaration of Service by Mail form that shows each losing party was served, **file the following with the Clerk of Small Claims Court:**
 - The original, completed Satisfaction of Judgment (Form 9); and
 - The original of each completed, dated, and signed Declaration of Service by Mail form that shows each losing party was served with a copy of the Satisfaction of Judgment (Form 9).

For information about how the court accepts documents for filing, contact the clerk of court of the Small Claims Court that ordered the judgment.

Contact information for clerks of court by North Dakota county is available at www.ndcourts.gov/court-locations.

NOTICE OF ENTRY OF JUDGMENT

STATE OF NORTH DAKOTA

IN SMALL CLAIMS COURT

COUNTY OF _____

CASE No. _____

Plaintiff,

v.

Defendant.

TO: _____
(Name(s) of losing party or parties)

1. Please take notice that on _____, 20____, a Small Claims Court judgment was entered against you, **the Plaintiff / Defendant** (circle the losing party). The Docket (Index) Number is _____. A copy of the Small Claims Court judgment is attached.

2. You may pay the winning party directly. If you pay the winning party directly, they will prepare a written satisfaction of judgment and file the same with this court.

3. If you do not pay the judgment to the winning party within 30 days of service of the Notice of Entry of Judgment, the winning party may begin using the judgment collection processes allowed by North Dakota law.

Dated: _____, 20_____

(Signature of winning party)

(Typed or printed name)

(Address)

(City, State, Zip Code)

(Telephone number)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA

IN SMALL CLAIMS COURT

COUNTY OF _____

CASE No. _____

Plaintiff,

v.

Defendant.

1. I, _____ (name of person mailing documents), state that I am at least 18 years of age, and on _____, 20____, I served the Notice of Entry of Judgment and a copy of the judgment in the above entitled Small Claims Court case by placing a true and correct copy of each in an envelope addressed to the last known address of each party as follows: (party name and address)

(1) _____	(2) _____
_____	_____
_____	_____
_____	_____

and depositing the envelope, with sufficient postage, in the United States mail at the Post Office located in _____ (City), _____ (State).

2. I state, under penalty of perjury of the law of North Dakota, that the information contained in this Affidavit of Mailing is true and correct.

Signed on the _____ day of _____, 20____ at _____

(city), _____ (state), _____ (country).

(Signature of Person who Mailed Envelope)

(Printed Name)

(Address) (City, State, Zip Code) (Telephone Number)

INSTRUCTIONS FOR NOTICE OF ENTRY OF JUDGMENT FORM AND AFFIDAVIT OF SERVICE BY MAIL FORM

When a judgment is entered in a Small Claims Court case, [Rule 58 of the North Dakota Rules of Civil Procedure](#) requires the winning party to serve a Notice of Entry of Judgment on the losing party or parties.

The winning party must serve a Notice of Entry of Judgment on the losing party or parties within 30 days after the judgment is entered. A copy of the signed and dated judgment must be served with the Notice of Entry of Judgment.

STEP 1: FILL OUT THE NOTICE OF ENTRY OF JUDGMENT FORM

Top of Form (Caption): Fill in the county, small claims court case number, and names of the parties exactly as they appear on your Form 2: Claim Affidavit.

To: Fill in the full, legal name of the losing party or parties who will be served Notice of Entry of Judgment.

Paragraph 1: Fill in the date the Judicial Officer or the Clerk of Court signed the judgment. Circle either Plaintiff or Defendant for the losing party. Fill in the Docket (Index) Number of the judgment.

To find the Docket (Index) Number of the judgment:

- Go to www.ndcourts.gov.
- Click on the "Search Records & Pay Fines" link.
- Read the information, then click on the "Click Here to Proceed" link.
- Select the county where your Small Claims Court case was decided, or select State of North Dakota from the drop down menu.
- Click on the "Civil, Family & Probate Case Records" link.
- Select "Case" in the "Search By:" field.
- Enter your Small Claims Court case number in the "Case Number" field.
- Click on the "Search" box.
- Click on the link for your case number.
- Scroll through the list of documents until you find the judgment.
- The Docket (Index) Number will be shown as "Index # ____"

You may also call the Clerk of Court for the Docket (Index) Number of the judgment.

Date and Signature: Complete the date and signature block.

- Fill in the date you sign this document.
- Sign the signature line.
- Fill in the address and telephone number lines. If you have a physical address and a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.

STEP 2: SERVE THE NOTICE OF ENTRY OF JUDGMENT AND THE JUDGMENT

Make at least two copies of the completed Notice of Entry of Judgment form. Keep one copy for your records. You will serve the other copy or copies on the losing party or parties. You will file the original with the Clerk of Court in Step 3.

Make copies of the Judgment with the signature and date of the Judicial Officer or the Clerk of Court. Make one copy for each losing party you will serve. Keep one copy for your records. You will serve the other copy or copies on the losing party or parties in the case.

Arrange to serve the following on each losing party by mail:

- A copy of the completed Notice of Entry of Judgment form; and
- A copy of the Small Claims Court Judgment signed and dated by the Judicial Officer or the Clerk of Court.

*****You do not serve yourself.*****

The person who mails the envelope(s) fills out the Affidavit of Service by Mail Form:

- **Top of Form (Caption):** Fill in exactly as it appears in the completed Notice of Entry of Judgment form.
- **Name & Mailing Date:** Fill in the full, legal name of the person serving the documents. Fill in the date copies of the documents were mailed.
- **Address Block:** Fill in the full, legal name of the losing party or parties. Fill in the address where the copies of the documents were mailed.
- **Post Office City/State:** Fill in the city and state of the U.S. Post Office from which the copies of the documents were mailed.
- **Date and Signature:** Date and sign the Affidavit of Service by Mail form. Fill in the printed name, address, telephone number, and the county and state where the affidavit was signed.

Service is complete upon mailing.

STEP 3: FILE THE NOTICE OF ENTRY OF JUDGMENT AND AFFIDAVIT(S) OF SERVICE WITH THE CLERK OF COURT

The winning party must file proof of service of the Notice of Entry of Judgment and a copy of the judgment on each losing party in the Small Claims Court case with the Clerk of Court. You do not provide proof of service on yourself.

A completed and signed affidavit of service showing service on each party is your proof of service.

File the following with the Clerk of Court:

- The original, completed Notice of Entry of Judgment form; and
- A completed and signed affidavit of service by mail that shows each losing party was served a copy of the completed Notice of Entry of Judgment form and a copy of the signed and dated Judgment.

STEP 4: COLLECT THE JUDGMENT

Wait 30 days from the date of service of the Notice of Entry of Judgment:

You must wait 30 days from the date of service of the Notice of Entry of Judgment before you can begin using the judgment collection options allowed by North Dakota law. This allows time for the losing party to pay the judgment voluntarily.

If the judgment is not paid voluntarily:

You may need to take additional steps to get your money. If the losing party does not pay the judgment voluntarily, North Dakota law provides a number of judgment collection options. Following are some of the judgment collection options allowed by North Dakota law:

- Writ of Execution: A court order to a sheriff to seize non-exempt property of the losing party in order to satisfy the judgment.
- Judgment Lien Against Real Property: the judgment is a lien against all North Dakota real property (real estate), except the homestead, of the losing party.
- Garnishment: The act of taking the wages of the losing party in order to satisfy the judgment.

For information on judgment collection, go to www.ndcourts.gov/legal-self-help/small-claims.

****The Small Claims Court cannot collect the judgment for you.****