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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

CHS, Inc.,

Plaintiff-Appellee,

vs.

Roland Riemers,

Defendant-Appellant.

Supreme Court No. 20170331

District Court No. 18-2015-CV-01950

BRIEF OF APPELLANT and ADDENDUM

APPEAL FROM THE DISTRICT COURT'S ORDER DENYING DEFENDANT'S MOTION TO REOPEN CASE AND CLOSE JUDGMENT DATED JULY 5, 2017, [DISTRICT COURT DOCKET ENTRY #182] AND FROM THE JUDGMENT OF JULY 7, 2017 [DISTRICT COURT DOCKET # 183]

GRAND FORKS COUNTY DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
HONORABLE JOHN A. THELEN

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[¶1] **ISSUES ON APPEAL**

[¶2] 1. Did the District Court abuse its discretion when it awarded CHS, Inc., post-judgment attorney fees in order to sanction Roland Riemers for bringing his post-judgment motion that questioned whether the monetary judgment against him may have been paid in full [or even overpaid] through CHS, Inc.'s garnishment efforts?

[¶3] 2. Was Roland Riemers' March 17, 2017, post-judgment motion supported by the Grand Forks Clerk of District Court's own records, un-controverted factual exhibits, and North Dakota law, and therefore not frivolous, nor sanctionable?

[¶4] 3. Was Roland Riemers' March 17, 2017, post-judgment motion a "claim for relief" within the meaning of N.D.C.C. § 28-26-01(2)?

[¶5] 4. Is there any statutory basis to award untaxed costs, incurred in an unfiled garnishment action, against a judgment debtor?

[¶6] 5. May a judgment debtor rely upon a Clerk of Court's application – as set forth in the Clerk's public records – of a judgment creditor's acknowledged receipt of funds [as actually expressed in two (2) Partial Satisfaction(s) of Judgment] duly applied to the judgment's principal [and the $10.00 execution fee]?

[¶7] 6. Are a judgment creditor's garnishment costs, and also, accruing post-judgment interest, waived when the judgment creditor returns an execution to the District Clerk of Court without mentioning either item, yet providing for a partial satisfaction to all monies it received by a garnishment execution?

[¶8] 7. Are a judgment creditor's garnishment costs cumulative so that a judgment creditor can add, or tack, the costs of a failed garnishment proceeding to a successful

garnishment proceeding?

[¶9] 8. Does judgment interest accrue upon post-judgment costs?

[¶10] 9. Can pre-judgment and/or post-judgment interest accrue after May 3, 2016, when Riemers, a judgment debtor taking advantage of N.D.C.C. § 9-12-25 by that date: (1) had transferred $41,100.00 into a bank account so that his creditor could fully accomplish an existing garnishment; (2) informed his judgment creditor of such transfer; and (3) informed his bank to not resist the garnishment?

[¶11] 10. Under the provisions of N.D.C.C. § 41-03-36, did Alerus Financial's ["Alerus"] June 2, 2016, check of $39,644.58, issued to CHS, Inc.'s attorneys, discharge Riemers' judgment obligation in that amount, and the accrual of post-judgment interest upon that amount, as of June 7, 2017 – the date of CHS, Inc.'s acceptance of the check, even though two (2) weeks later CHS, Inc., returned $1,842.61 of the cashed check proceeds to Riemers' account in Alerus?

[¶12] 11. Was Roland Riemers correct that CHS, Inc., was garnishing amounts that were in excess of what he owed on the judgment in February and March of 2017?

[¶13] **STATEMENT OF THE CASE**

[¶14] Roland Riemers [hereafter "Riemers"] appeals from: (1) the District Court's Order Denying Defendant's Motion to Reopen Case and Close Judgment, and (2) a July 7, 2017, monetary judgment of $1,625.55 awarded to Appellee CHS, Inc., for the attorney fees it incurred defending a post-judgment motion brought by Riemers. Appendix, pages 97-99. The issues in this appeal relate to post-judgment collection efforts made by CHS, Inc., while Riemers' prior appeal to this Court from a prior monetary judgment of March 21, 2016, was

pending, and its collection efforts made after the date of the North Dakota Supreme Court's December 8, 2016, mandate. App., p. 23. Riemers' former appeal to this Court resulted in this Court's decision of CHS, Inc., v. Riemers, 2016 ND 223, 888 N.W.2d 205. App., ps.21-22. The effect of this Court's decision was to reduce the principal balance of an amended monetary judgment from $41,793.72 to $41,723.65 as of date the amended judgment was entered on May 24, 2016 – a principal reduction of $70.07. App., ps. 14, 24-25.

[¶15] Riemers, in this appeal, asserts that the lower court abused its discretion in sanctioning him for making a post-judgment motion of March 17, 2017, questioning whether the monetary judgment against Riemers may have been paid in full [or even overpaid] through CHS, Inc.'s never-filed garnishment efforts. In this appeal, Riemers asserts the lower court abused its discretion in shifting CHS, Inc.'s attorney fees to him, as a sanction, without affording him the procedural protections found within N.D.R.Civ.P. 11. Riemers furthers asserts he should never have been subjected to a sanction for his post-judgment motion of March 17, 2017, for the bases of his motion had support in fact, law, and the Clerk of the District Court's public records. To fully understand why Riemers believes the lower court has abused its discretion, one must trace the procedural history of CHS, Inc.'s collection efforts made before and after Riemers' March 17, 2017, motion, as reflected in the records of the Clerk of the District Court, and traced through filed affidavits, exhibits to affidavits, or briefs.

[¶16] **A. Pertinent events concerning CHS, Inc's collection efforts through May 3, 2017**.

[¶17] On March 21, 2016, a monetary judgment was entered in favor of CHS, Inc., and

against Riemers, in the amount of $38,889.00. App., p. 7. On March 10, 2016, CHS, Inc., brought its motion seeking pre-judgment interest to be added to the judgment. App., p. 8. On April 12, 2016, Riemers appealed to this Court from the prior monetary judgment of March 21, 2016. District Court Docket Entry # 60; App., p. 3.

[¶18] On April 19, 2016, Riemers moved for a stay of the judgment, claiming "harassing discovery requests". App., p. 9. Within his motion, Riemers identified an Alerus account that would be available to CHS, Inc., to collect its judgment. Through his April 29, 2016, affidavit, Riemers informed the lower court, in part: (1) CHS, Inc., had initiated garnishment proceedings against Alerus; (2) his mistake in identifying a corporate account as a personal account within his previous motion; (3) and the transfer of $41,100.00 into an Alerus account, identified by account number to CHS, Inc., with an attached exhibit A establishing the $41.100.00 transfer; and (4) Riemers' statement he had no objection to the $41,100.00 be paid to CHS, Inc. App., ps. 10-13. On March 17, 2017, Riemers filed his Garnishment Verification of April 25, 2016, as Exhibit B to his brief that supported his March 17, 2017, motion. App., p. 29. Within the Garnishment Verification, Riemers stated the intent of his transfer into one (1) account in Alerus:

> While I fully maintain the legal fiction that I am not volunteering to pay this judgment, I have by mere coincidence placed enough funds in my Alerus accounts to pay the judgment if CHS forces it to be paid. If Alerus is forced to pay this judgment, it is my desire that Alerus fully pay this judgment completely regardless of the dates served on Alerus or the date I transferred full funds into my accounts.

App., p. 29.

[¶19] On May 23, 2016, the District Court Clerk of Court issued an Execution of Judgment,

directing the Sheriff of Grand Forks County to satisfy the monetary judgment of March 21, 2016, in the amount of $38,889.00, interest of 6.5%, and a $10.00 execution fee "out of the personal property of the judgment debtor within your County." App., p. 13.

[¶20] On May 24, 2016 [a mere one day after the Clerk of Court issued her first Execution of Judgment], an Amended Judgment was entered to reflect CHS, Inc.'s award of pre-judgment interest. The principal amount owing on the Amended Judgment, due to the addition of pre-judgment interest, was $41,793.72 as of May 24, 2016. App., p. 14.

[¶21] On May 25, 2016, the lower court denied Riemers' motion to stay enforcement of judgment, noting in part, "Additionally, the stay itself would be unnecessary if the Defendant's contention is accurate; if the judgment has been satisfied no further collection would be initiated." App., p. 15.

[¶22] On June 22, 2016, the first-issued Execution of Judgment was returned to the Clerk the District Court by the mere re-filing of the same by CHS, Inc's attorney. District Court Docket Entry #103; App., ps. 4, 16. There is nothing in the lower court's record that suggests the first-issued Execution of Judgment was ever placed in the hands of the Sheriff of Grand Forks County.

[¶23] On June 23, 2016, CHS, Inc., filed a Partial Satisfaction of Judgment acknowledging partial satisfaction of the judgment in the amount of $39,726.89. Docket Entry #105; App., p. 17.

[¶24] On July 14, 2016, the Clerk of District Court issued its second Execution of Judgment [Docket Entry #109; App., p. 18] directing the Sheriff of Grand Forks County to satisfy the monetary judgment of **$2,076.83**, interest of 6.5%, and a 7/14/16 execution fee of $10.00

"out of the personal property of the judgment debtor within your County." [It is apparent from this July 14, 2016, Execution of Judgment that the Clerk of the District Court believed the principal balance owing on the amended monetary judgment was **$2,076.83** as of June 23, 2016, when the Partial Satisfaction of Judgment was filed. The mathematics that lead to the Clerk of Court's conclusion that the judgment amount remaining unpaid {**$2,076.83**} is as follows: $41,793.72 (Amended Judgment; App., p. 14) plus $10.00 (execution fee; App., p. 13) minus $39,736.89 (Partial Satisfaction of Judgment; App., p. 17) equals **$2,076.83**].

[¶25] On August 10, 2016, CHS, Inc., filed a second Partial Satisfaction of Judgment acknowledging partial satisfaction of judgment in the amount of $1,957.61. App., p. 19. Because of this Partial Satisfaction of Judgment, the Clerk of Court's public record's then reflect **$129.22** owing on the Amended Judgment as of August 10, 2016. [The mathematics that lead to the principal amount of **$129.22** is as follows: $2,076.83 (remaining judgment amount; App., p. 20) plus $10.00 (second execution fee; App., p. 20) minus $1,957.61 (Partial Satisfaction of Judgment; p. 19) equals **$129.22**.]

[¶26] On August 11,2016, the second-issued Execution of Judgment was returned to the Clerk the District Court by the mere re-filing of the same by CHS, Inc's attorney. District Court Docket Entry #114; App., p. 20. There is nothing in the lower court's record that suggests the second-issued Execution of Judgment was ever placed in the hands of the Sheriff of Grand Forks County.

[¶27] On January 5, 2017, this Court's opinion and judgment in CHS, Inc., v. Riemers, *supra*., was filed in the offices of Clerk of the District Court. App., ps. 21-23. The effect of

this Court's mandate was to reduce the amount of the May 24, 2016, amended monetary judgment from $41,793.72 to **$41,723.65** - a $70.07 reduction in the amount owed by Riemers as of May 24, 2017. [$38,763.00 check + $126.00 costs + $2,834.65 prejudgment interest = $41,723.65.] Because of this Court's judgment, and CHS, Inc.'s prior two (2) Partial Satisfaction of Judgments, a review of the Clerk of District Court's public files would lead one to reasonably believe that Riemers only owed the principal amount of **$59.15** on the original amended monetary judgment as of August 10, 2016 – the date of CHS, Inc.'s Second Partial Satisfaction of Judgment. App., ps. 19, 22.

[¶28] On January 6, 2017, CHS, Inc.'s attorney informed Riemers that he still owed $788.84 on the monetary judgment as of January 5, 2017. CHS, Inc.'s attached "spreadsheet" accounting then sent Riemers varied from its two (2) earlier-filed Partial Satisfaction of Judgments by including (a) post-judgment interest and (b) claimed post-judgment costs that exceeded the two (2) $10.00 execution fees previously taxed **[and importantly, the only post-judgment costs ever taxed**] considered paid in the Clerk of the District Court's records. App., ps. 51-53, 17, and 19.

[¶29] On or about January 30, 2017, CHS, Inc., began again its never-filed garnishment proceedings against an account held by Alerus, claiming Riemers owes it the judgment amount of *$816.85,* and the need to disclose an amount up to $979.65. App., ps. 53, and 69. On March 14, 2017, CHS, Inc., seeking additional Reimers' funds, sent Alerus a photocopy of the second issued Execution of Judgment dated July 14, 2016 (*by its terms, only valid for sixty days*), as an attachment to its letter to collect the retained amount of $130.00. App., ps. 75-76; 77-79. Within its letter, CHS, Inc.'s attorney informed the bank, "Please remit of the

amount of $130.00 withheld pursuant to the garnishment served upon Alerus Financial N.A. on February 8, 2017." App., ps. 75-76.

[¶30] In March, 2017, CHS, Inc., initiated another never-filed garnishment proceeding against Citizens Community Credit Union of Grand Forks, ND, stating Riemers owed the judgment amount of *$751.47* and the need to disclose an amount up $911.57. App., ps 54. This second garnishment notice resulted in a March 6, 2017, Garnishment Disclosure and retention of $911.57 of Riemers' funds. App., ps. 70-73; and paragraph 3 of the Plaintiff's Supplemental Brief in Opposition to Defendant's Motion to Reopen Case and to Close Judgment; App., ps. 65-66.

[¶31] By letter dated March 14, 2017 [served by Certified Mail/Return Receipt Requested on March 16, 2017], CHS, Inc.'s attorney attached a photocopy of the second-issued Execution of Judgment dated July 14, 2016, to recover $130.00 held by Alerus, pursuant to CHS, Inc.'s never-filed garnishment proceeding. App., p. 59-62. On March 28, 2017, and as the result of being mailed the previously returned July 14, 2016, Execution of Judgment, Alerus remitted its check to CHS, Inc.'s attorneys in the amount of $130.00. App., p. 80-81. Over one month later – on May 3, 2017 – CHS, Inc.'s attorney filed a third Partial Satisfaction of Judgment for $130.00 received on March 30, 2017. App., p. 63.

[¶32] Upon receipt of CHS, Inc.'s third Partial Satisfaction of Judgment, the Clerk of the District Court changed her records to reflect the May 24, 2016, money judgment against Riemers is fully "Satisfied". App., p. 1. The act by the Clerk of Court to show the amended monetary judgment was fully satisfied is fully consistent with the Clerk of Court's public records that give full credence to CHS, Inc.'s three (3) duly filed Partial Satisfactions of

Judgment. Giving full credence to the three (3) partial satisfactions and this Court's prior judgment, the Clerk of Court's records would reflect that CHS, Inc.. was *overpai*d when it received the $130.00 from Alerus on March 28, 2017. $59.22 - $130.00 = overpayment by $70.78.

[¶33] Out of respect for Riemers' son, then on active military duty, the lower court ordered CHS, Inc., to return $130.00 to the Alerus account from which it was taken. App., ps. 85-88. On July 7, 2017, CHS, Inc., informed the lower court of its return of the $130.00 when it filed its Withdrawal of Plaintiff's Partial Satisfaction of Judgment. App., p. 96. Despite this "Withdrawal," the Clerk of Court's records still reflects the amended monetary judgment of May 24, 2016, is fully "Satisfied". App., p. 1.

[¶34] **B. Riemers' March 17, 2017, motion and CHS, Inc.'s response.**

[¶35] On March 17, 2017, Riemers brought a "Motion to Reopen Case to Close Judgment" seeking the following relief from the District Court: (1) an order determining that the monetary judgment against Riemers "be ruled as satisfied"; (2) a court order requiring CHS, Inc., to "refund already overly paid funds" calculated by Riemers to be $95.00, and also, "repay any and all bank charges that their un-necessary garnishments has caused Riemers"; (3) an order forbidding CHS, Inc., from garnishing Riemers' son's bank account; (4) if the judgment was not found satisfied, then an order requiring CHS, Inc., to file state laws and procedural rules when garnishing bank accounts; (5) an award of Riemers' motion costs and disbursements; (6) that CHS, Inc., be denied its fees, interest and costs of collection after April 20, 2016, due to Riemers' disclosure that he placed $41,100.00 in an Alerus account for its collection; and (7) such other relief that the Court may grant Riemers. App., p. 24.

[¶36] Riemers supported his motion by his affidavit. In his affidavit, Riemers informed the lower court of his April 20, 2016, deposit with Alerus of $41,100. Riemers informed the lower court the Clerk of the District Court records reflected only $129.00 was owed on the monetary judgment [which amount did not take into account a reduction due to this Court's judgment in the prior appeal] as of March 16, 2017, yet CHS, Inc., was garnishing $130.00 from Alerus *and* $911.57 from Citizens Community Credit Union. App., ps 31-33.

[¶37] On April 3, 2017, CHS, Inc., responded to Riemers' motion, showing CHS, Inc., received the following amounts on its 2016 monetary judgment against Riemers: (1) collection of $1,924.92 from a never-filed "garnishment initiated against Citizens Community Credit Union;" (2) collection of $37,801.97 [$39,644.58 check minus $1,842.61 return amount equals $37,801.75] through a never-filed "garnishment initated against Alerus Bank"; and (3) $1,957.61 through a never-filed "garnishment issued against Alerus." App., ps. 34-42. In its response, CHS, Inc., ignored its two (2) prior Partial Satisfactions of Judgment [App., p. 17, 19], and claimed the payments it received had paid post-judgment interest of $133.43 [$78.43 + $28.58 +26.42 = $133.43] and post-judgment costs of $380.50 [$184.50 + $196.00 = $380.50]. CHS, Inc., claimed, after applying the $70.07 credit due Riemers, there remained $562.42 on the May 24, 2015, monetary judgment. App. P. 35. In its responsive brief, CHS, Inc., claimed Riemers' motion was frivolous entitling it to its attorney fees under N.D.C.C.§ 28-26-01(2).

[¶38] Riemers responded to CHS, Inc.'s return [to his March 17, 2017, motion] by pointing out that, other than the two (2) ten dollar ($10.00) fees for the two (2) Execution of Judgment(s), no post-judgment costs have been taxed in the lower court. App., ps. 45-50.

In his response, Riemers further informed the lower court that CHS, Inc., had obtained $130.00 from Alerus. Riemers calculated, after receiving payment of $130.00 from Alerus, CHS, Inc., had been overpaid by $71.00 "without post judgment interest or pre judgment credits". App., p. 50.

[¶39] On May 4, 2017, CHS, Inc., supplemented its reply to Riemers' motion, claiming it was "not required by law to seek the [lower] Court's approval for taxation of post-judgment costs incurred in recovering on a judgment." App., p. 65, ¶ 2. CHS, Inc., informed the lower court it had incurred $502.50 in post-judgment costs through March 10, 2017. CHS, Inc., further informed the lower court that, after applying the $130.00 received payment issued against Alerus, there remained $565.63 owing on the May 24, 2016, monetary judgment as of March 30, 2017. App., p. 65-68; ¶5.

[¶40] **C. The lower court's ruling concerning Riemers' March 17, 2017, motion.**

[¶41] The lower court expressly determined that CHS, Inc., "is not required by law to seek the court's approval for taxation of post-judgment costs incurred in recovering a judgment." By such determination the lower court accepted CHS, Inc.'s legal argument, "There is no obligation to tax post judgment costs and no obligation to file the same with the Court." Tr. of May 6, 2017, page 17.

[¶42] Based upon the lower court's determination that CHS, Inc., could add untaxed garnishment costs [in separate garnishment proceedings never filed with the lower court], and a glaring mathematical error relating to the returned $130.00 [explained below], the lower court determined Riemers still owed $679.09 on the amended monetary judgment, additional post-judgment interest [presumably from August 9, 2016], and additional post-

judgment costs. App. p. 92.

[¶43] The lower court determined the "claims" presented by Riemers in support of his Motion of March 17, 2017, "are without factual or legal basis." App., p. 91. Based upon such finding(s), the lower court awarded CHS, Inc.'s attorney fees of $1,628.55 incurred in the defense of Riemers' motion. App., p. 91. A monetary judgment of $1,628.55 for the attorney fees was entered on July 7, 2017. App., p. 95. There is nothing in the record, below, that establishes that Riemers was ever afforded the procedural protections found within N.D.R.Civ.P. 11 before the lower court shifted CHS, Inc.'s attorney fees to him as a sanction.

[¶44] **D. Riemers appeal to this Court.**

[¶45] On August 28, 2017, Riemers timely appealed to this Court from: (1) the District Court's Order Denying Defendant's Motion to Reopen Case and Close Judgment, and (2) a July 7, 2017, monetary judgment of $1,625.55 awarded to Appellee CHS, Inc., for the attorney fees it incurred defending a post-judgment motion brought by Riemers. App., ps. 97-99.

[¶46] **STATEMENT OF FACTS**

[¶47] On April 20, 2016, after separate never-filed garnishment proceedings were initiated by CHS, Inc., to collect a monetary judgment [in the original amount of $38,889.00], Riemers transferred $41,100.00 into an account in Alerus. App., p. 12. By April 20, 2016, Riemers informed CHS, Inc., of this transfer [or deposit] of monies, the name of the bank, the account number, and Riemers' statement that CHS, Inc., could use the transferred funds to fully pay the monetary judgment. App., ps. 28-29.

[¶48] Under an Amended Judgment of May 24, 2016, Riemers, as judgment debtor, owed CHS, Inc., as judgment creditor, the principal amount of $41,793.73. App., p. 14. Due to this Court's Judgment, in CHS, Inc., v. Riemers, *supra.,* this amount was reduced by $70.07 - to $41,723.65 as of May 24, 2016. App., ps. 14, 24-25. [Because of CHS, Inc.'s post-judgment efforts that precede this Court's prior appellate Judgment, both numbers are important to understand the Clerk of District Court's public records or actions.]

[¶49] Through its post-judgment collection efforts, in never-filed garnishment proceedings, CHS, Inc., received payment on the monetary judgment of $1,924.92 though a June 1, 2016, Cashier's Check issued by Citizens Community Credit Union. App., p. 38.

[¶50] Through its post-judgment collection efforts, in another never-filed garnishment proceedings, CHS, Inc., received payment on the monetary judgment in the amount of $39,644.58 through a June 2, 2016, check issued by Alerus. App., p. 39. On June 21, 2016, CHS, Inc., returned $1,842.61 to Alerus to be deposited in Riemers account. App., ps., 36, 40-41. Before returning the amount of $1,842.61 to Alerus, CHS, Inc., started two (2) new never-filed garnishment proceedings against Alerus as evidenced by CHS, Inc.'s two (2) new garnishment disclosure fee payments to Alerus for June 10 and June 21, 2016. App., p. 69. The payment of two (2) more garnishment fees indicated they were the fourth (4^{th}) and fifth (5^{th}) garnishment disclosure fees paid by CHS, Inc. *Id.* Ultimately, seven (7) garnishment disclosure fees were paid by CHS, Inc., and none of the seven (7) known garnishment proceedings were ever filed by CHS, Inc., in the District Court of Grand Forks County, or elsewhere. *Id.*

[¶51] Because of the net amount of the checks it received through its two (2) successful

June, 2016, collection efforts, CHS, Inc., filed its Partial Satisfaction of Judgment for the amount of $39,726.89 [$1,924.92 +$39,644.58 - $1,842.61 = $39,726.89]. Honoring CHS, Inc.'s partial satisfaction, the Clerk of Court applied the sum of $39,726.89 to the $10.00 execution fee, and applied the rest of said amount to reduce the principal balance of the judgment. Because of CHS, Inc.'s Partial Satisfaction of Judgment, the Clerk of District Court's records reflected the $41,793.72 [original amount] Amended Judgment had a remaining principal balance, as of June 23, 2016, of $2,076.83. App., p. 18.

[¶52] Through its post-judgment collection efforts, in never-filed garnishment proceedings, CHS, Inc., received payment on the monetary judgment in the amount of $1,957.61 through an August 8, 2016, check issued by Alerus. App., p. 42. Because of this payment, CHS, Inc., filed its second Partial Satisfaction of Judgment for the amount of $1,957.61. App., p. 19. Honoring CHS, Inc.'s partial satisfaction, the Clerk of Court applied the sum of $1,957.61 to the $10.00 execution fee, and the rest of said amount was used to reduce the principal balance of the judgment. Because of CHS, Inc.'s Partial Satisfaction of Judgment, the Clerk of District Court's records reflected the $41,793.72 [original amount] Amended Judgment had a remaining principal balance, as of August 10, 2016, of $129.22, **at the most** [$2,076.83 + 10.00 -$1,957.61 = $129.22]. This Court's Judgment in CHS, Inc., v. Riemers, *supra.,* actually reduced the principal balance owing of $129.22 by $70.07 – down to **$59.15** [$129.22 - $70.07 = $59.15] as of August 10, 2016. App., ps. 22-23, 35. The Clerk's public files never reflected the reduction of $70.07.

[¶53] When making its Findings of Fact, the District Judge did not honor CHS, Inc.'s two (2) Partial Satisfaction of Judgments. The District Judge determined, with this Court's

reduction of the judgment amount by $70.07, the balance owing on the Amended Judgment as of August 10, 2016, would be $549.08. App., p. 92. The difference between the District Judge's erroneous findings, and the Clerk of Court's public records, are due to garnishment costs incurred in the never-filed garnishment proceedings and post-judgment interest, not taken into account by CHS, Inc., when it filed its two (2) Partial Satisfactions of the Judgment. Through August 10, 2016, the District Judge determined CHS, Inc., had incurred the total of $380.50 [$184.50 + $196.00 = $380.50] in costs which is $360.50 [$380.50 - $10.00 - $10.00 = $360.50] more than the Clerk of District Court's records revealed as incurred costs as of that date. The District Judge's determinations also included post-judgment interest on the original Amended Judgment balance of $41,793.72 totaling $129.43 [$74.43 + $28.58 + $26.42 = $129.43] as of August 9, 2016. App., ps. 82, 92.

[¶54] The glaring mathematical mistake in the District Court's calculations involves the $130.00 that was ordered to be refunded to Alerus. After ordering CHS, Inc., to refund Alerus $130.00 it had received in March 2017, the lower court then determined the Amended Judgment amount becomes $679.08. The glaring mistake is, under the District Court's calculations, the Amended Judgment had never been originally reduced by the March 2017 payment of $130.00 – by adding $130.00 to the determined amount only overstates what would be due CHS, Inc. App., p. 92.

[¶55] **LAW AND ARGUMENT**

[¶56] **1. Standard of Review.**

[¶57] This appeal involves an award of attorney fees to CHS, Inc., as a sanction against Riemers for bringing his post-judgment motion questioning CHS, Inc.'s multiple **never-filed**

garnishment proceedings. As stated in Heinle v. Heinle , 2010 ND 5, ¶ 27, 777 N.W.2d 590:

> The determination whether to impose sanctions for a violation of N.D.R.Civ.P. 11(b) lies within the sound discretion of the district court. Strand v. Cass County, 2008 ND 149, ¶ 16, 753 N.W.2d 872. This Court will not disturb a district court's sanctions under N.D.R.Civ.P. 11(c) unless the district court abused its discretion. *Id.* at ¶ 17. If the district court made any factual determinations relevant to the issue of sanctions, we review the district court's findings under a clearly erroneous standard. *Id.*

In this appeal, Riemers respectfully asserts that the lower court abused its discretion in sanctioning him, largely due to the lower court's misunderstanding or misinterpretation of garnishment procedures, or the taxing of costs and disbursements incurred in garnishment proceedings post-judgment. To help establish why Riemers believed CHS, Inc.'s garnishment proceedings did not comply with the law, pertinent statutory authority concerning both garnishment and execution upon a monetary judgment are set forth in the addendum to this Brief.

[¶58] **2. The lower court abused its discretion in shifting CHS, Inc's incurred attorney fees to Riemers as a sanction against him.**

[¶59] **A. The language used by the lower court, in its flawed reasoning for sanctioning Riemers, can be traced to N.D.R.Civ.P. 11.**

[¶60] Riemers first notes that CHS, Inc., did not rely upon N.D.R.Civ.P. 11 for its belief that it should be awarded its attorney fees from Riemers. In its return to Riemers' post-judgment motion, CHS, Inc., suggested Riemers' "claim in this motion is frivolous, pursuant to N.D.C.C. § 28-26-01(2), (and) the appropriate sanction for Defendant's abusive behavior is to assess against the Defendant the costs and attorneys' fees incurred by Plaintiff in connection with this motion" [App., ps. 36-37], in the process confusing "claim" with

"behavior".

[¶61] Riemers respectfully submits the lower court would abuse its discretion if it used N.D.C.C. § 28-26-01(2) as statutory authority to shift CHS, Inc.'s incurred attorney fees to him. First, a motion is not a "claim for relief" as used in said statute, and CHS, Inc.'s "Return" to Riemers' post-judgment motion cannot be classified as a "responsive pleading". Under N.D.R.Civ.P. 7 and N.D.R.Civ.P. 8, "claims for relief" are by pleading [seven different types involving complaints, or answers; Rule 7(a)] and a "responsive pleading" is limited to pleadings involving an "original claim, a counterclaim, a crossclaim, or a third-party claim". N.D.R.Civ.P. 8(a). Under N.D.R.Civ.P. 7(b), a motion does not present a "claim for relief", but rather, a "request for a court order". Further [as will be explained in greater depth below], nothing within Riemers' motion, his supporting affidavits, exhibits, or briefs, are "frivolous" within the meaning of N.D.C.C. § 28-26-01(2), or N.D.R.Civ.P. 11.

[¶62] The District Court did not shift attorney fees to Riemers because of a finding that Riemers' motion was "frivolous" within the meaning of N.D.C.C. §28-26-01(2). Instead, the District Court awarded CHS, Inc., its incurred attorney fees based upon the following reasoning: "Upon the court's review of the file, the court finds that defendant's pending motion and arguments made therein fall short of being able to justify his contentions. Such supports plaintiff's claim that this most recent motion filed by the defendant was designed solely for the purpose of delay and to increase costs and attorney fees for the plaintiff." App., p. 94.

[¶63] The language used by the lower court, showing its reasoning to shift attorney fees to Riemers, can be traced to language found within N.D.R.Civ.P. 11(b). Under N.D.R.Civ.P.

11, sanctions are appropriate if a party brings a motion for the purposes of "unnecessary delay" or to "needlessly increase the costs of litigation." Under N.D.R.Civ.P. 11, sanctions may be appropriate if a party's "factual contentions" are not "warranted on the evidence." It appears from the lower court's choice of words ["purpose of delay," "increase costs", or "contentions"], the lower court attempted to justify its sanctioning of Riemers based upon N.D.R.Civ.P. 11, rather than N.D.C.C. § 28-26-01(2).

[¶64] **B. The lower court abused its discretion when sanctioning Riemers without affording him the procedural protections of N.D.R.Civ. P. 11**.

[¶65] Riemers respectfully submits the lower court abused its discretion in sanctioning him, under N.D.R.Civ.P. 11, without affording him the procedural protections of N.D.R.Civ.P. 11. A party moving for sanctions must give the other party an opportunity of 21 days to withdraw or correct the challenged "paper, claim, defense, contention, or denial". N.D.R.Civ.P. 11(c)(2). CHS, Inc., did not bring a motion under N.D.R.Civ.P. 11 and Riemers was not afforded the 21 day *safe harbor* to withdraw or correct his alleged offending court document.

[¶66] Taking into account the provisions of N.D.R.Civ.P. 11(c), it would be inappropriate to order monetary sanctions against Riemers by the lower court's own initiative. Before imposing sanctions, the lower court must "first" issue an order to Riemers "to show cause why conduct specifically described in the order has not violated Rule 11(b)" as required by N.D.R.Civ.P. 11(c)(3). As stated in Clark v. United Parcel Serv., Inc., 460 F.3d 1004 (8th Cir. 2006), on page 1008:

> Rule 11 provides a specific procedure to be followed when sanctions are considered. A district court may impose Rule 11 sanctions on its own initiative, but it must first enter an order describing the specific conduct that appears to violate Rule 11(b), and direct the attorney to show cause why he has not violated the rule. Fed.R.Civ.P. 11(c)(1)(B); see also Fuqua Homes, Inc. v. Beattie, 388 F.3d 618, 623 (8th Cir.2004). Then, when imposing sanctions, the court is required to describe the conduct determined to constitute a violation of Rule 11, and explain the basis for the sanction chosen. Fed.R.Civ.P. 11(c)(3).

Not only did the lower court fail to "first" issue an order to show cause to Riemers describing the specific offending conduct, the lower court failed to explain how its sanction was "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated" as required by N.D.R.Civ.P. 11(c)(4). The failure of a District Court Judge to explain his rationale for his chosen sanction "preclude[s] this Court from affirming the award of attorney fees under N.D.R.Civ.P. 11(c)." Heinle v. Heinle, *supr*a., ¶ 29.

[¶67] **C. Riemers' legal contentions were not frivolous, but warranted by existing statutory law.**

[¶68] **I. CHS, Inc., did not follow statutes relating to the garnishment remedy.**

[¶69] Riemers first notes that a garnishment proceeding is a statutory remedy, unknown to the common law. See, Park, Grant & Morris v. Nordale, 170 N.W. 555, 556 (N.D. 1918); and Imperial Elevator Co. V. Warren, 217 N.W. 523, 525 (N.D. 1928). The purpose of a garnishment proceeding is to subject a judgment debtor's property to the payment of the judgment against him. Hatcher v. Plumley, 164 N.W. 698, 670 (N.D. 1917). In North Dakota, a creditor may pursue his debtor's property in garnishment proceedings "after securing a judgment against the debtor". N.D.C.C. § 32-09.1-02.

[¶70] After obtaining a monetary judgment against his debtor, the judgment creditor may pursue the garnishment remedy by serving a garnishment summons upon a designated garnishee and serving certain statutory notices to the judgment debtor. N.D.C.C. § 32-09.1-06; N.D.C.C. § 32-09.1-07. Both the garnishment summons issued to the designated garnishee and the notice must be substantially in the statutory form, found within N.D.C.C. § 32-09.1-07. *Id.* Under N.D.C.C. § 32-09.1-07(1)(b), the garnishee summons must state the "retention amount." As defined by N.D.C.C. § 32-09.1-07, "[t]he retention amount is the sum of the amount of the judgment which remains unpaid, one hundred twenty-five dollars, and an amount equal to nine months interest on the amount of the judgment which remains unpaid."

[¶71] On January 27, 2017, CHS, Inc., issued a garnishment summons to Alerus requiring the retention amount of $979.65. App., ps. 53; 48. On February 23, 2017, CHS, Inc., issued a garnishment summons to Citizens Community Credit Union requiring the retention amount of $911.59. App., ps. 54; 48. When issuing these two (2) garnishment summons, CHS, Inc., deviated from its statutory authority by stating a retention amount that is higher than allowed by statute. Because of this Court's ruling in the prior appeal, and CHS, Inc's own two (2) partial satisfactions of judgments, the amount of judgment still subject to garnishment was not more than **$59.22** as of August 10, 2016. There is no statutory authority to garnish based upon an *alleged* judgment amount that is greater than the judgment amount actually reflected in the Clerk of the District Court's public records. The retention amount in January or February, 2017, could not be higher than $187.10 [$59.22 judgment amount per Clerk's records + $125.00 + $2.89 interest (3/4 of $3.85 of one year's interest on $59.22 at 6.5% =

$2.89)].

[¶72] A garnishing creditor cannot recover his incurred costs or disbursements unless he obtains a judgment against the garnishee. As stated, in pertinent part, in N.D.C.C. § 32-09.1-15 [*emphasis* added]: "Judgment against a garnishee must be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, *with costs taxed and allowed in the proceeding against the garnishee* but not to exceed the retention amount defined under section 32-09.1-07." There is no provision in North Dakota law that allows garnishment costs, incurred by the garnishing creditor, to be taxed in the main action, or be recovered from the judgment debtor. For an apt discussion of garnishment laws and this legal principle, see Watkins v. Peterson Enterprises, Inc., 137 Wash 2d 632, 973 P.2d 1037 (1999). If a garnishing creditor fails to obtain a garnishment judgment, or is unsuccessful in garnishment, there is no statutory method for the garnishing creditor to recover his costs or disbursements pursuing garnishment. Watkins, *supra*., page 1047. Costs incurred in unsuccessful garnishments cannot be recovered in a successful garnishment proceeding. *Id*., page 1048.

[¶73] CHS, Inc.'s garnishments deviate wildly from the statutory scheme relating to garnishment costs. CHS, Inc., never obtained a garnishment judgment against any *garnishee*, and cannot pass those costs unto another. CHS, Inc., also deviates from garnishment laws when it seeks to recover its incurred garnishment costs against the judgment debtor rather than through the retained amount. Without statutory authority, CHS, Inc., also attempts to recover costs incurred in unsuccessful garnishments never-filed. To date, CHS, Inc., has not been successful in any garnishment proceedings because none of its collection efforts have

resulted in a garnishment judgment. To date, CHS, Inc., has issued seven (7) garnishment notices without a single garnishment judgment, resulting in at least six (6) unsuccessful garnishments. [The unsuccessful garnishments are established by comparing CHS, Inc.'s listed costs with its accounting as to the amount due; App., ps. 69; 82.] CHS, Inc., fails to follow garnishment procedures in all of its efforts to collect its incurred garnishment costs.

[¶74] Once a garnishing creditor has obtained a judgment [in the garnishment proceeding] against the garnishee for the retained property [money], the creditor may obtain an execution, under N.D.C.C.§ 28-21-04.2. This form of execution is issued in the garnishment action after a garnishment judgment has been entered. This execution may be served upon the garnishee by any North Dakota sheriff or by a North Dakota licensed attorney, but the execution is limited to what is retained by the garnishee. N.D.C.C. § 28-21-04.2. Because a judgment debtor must claim his exemption within twenty days of service of the garnishment notice, it is generally too late for a judgment debtor to claim the retained amount is exempt property when this execution is issued in the garnishment action. See, N.D.C.C. § 32-09.1-22 and N.D.C.C.§ 28-21-04.2. This execution must be returned to the Clerk within sixty days of its receipt by the sheriff, or licensed attorney, serving the execution. N.D.C.C. § 28-21-07. All acts done by the sheriff, or licensed attorney, upon the execution including all costs incurred, must be endorsed or appended to the returned execution. N.D.C.C. § 28-21-10.

[¶75] Because CHS, Inc., did not ever obtain a judgment in any garnishment action, it cannot obtain an execution issued in the garnishment action pursuant to authority of N.D.C.C.§ 28-21-04.2. It appears that CHS, Inc., abandoned its never-filed garnishment

proceeding(s), and obtained an Execution in the main action under the provisions of N.D.C.C. § 28-21-05. The execution(s) obtained by CHS, Inc., are directed solely to the Sheriff of Grand Forks County who, under the issued execution(s), is not limited to the property retained by the garnishee. When levying under an execution issued under N.D.C.C. § 28-21-05, the levying sheriff must give a judgment debtor notice of levy so as to provide the judgment debtor ten days time to claim exemptions. See, N.D.C.C. § 28-21-12 and N.D.C.C. § 28-22-06.

[¶76] CHS, Inc., bastardizes the process by not placing the execution, issued in the main action, in the hands of the County Sheriff. Rather, it serves the execution upon the garnishee who is expected to pay the retained amount to CHS, Inc.'s attorney based upon the execution issued in the main action. The process was so bastardized by CHS, Inc., that it had Alerus remit $130.00 to it in March, 2017, based upon a *returned* Execution of Judgment issued on July 14, 2016. App., ps. 59-62. Executions, issued under authority of N.D.C.C. § 28-21-05, must be returned by the sheriff within sixty days. See, N.D.C.C. § 28-21-12 and N.D.C.C. § 28-22-06. Because the execution was never placed in the hands of the County Sheriff, CHS, Inc., merely refiled the two (2) issued executions with the Clerk of the District Court.

[¶77] The lower court abused its discretion when it sanctioned Riemers for bringing a motion wherein he seeks appropriate relief from CHS, Inc.'s bastardized garnishment proceedings and collection efforts.

[¶78] **ii. CHS, Inc., did not follow statutory procedure to obtain its incurred costs and disbursements in the garnishment proceedings.**

[¶79] Riemers, again, respectfully submits that before CHS, Inc., can recover its costs incurred in the never-filed garnishment proceedings, it must obtain a judgment against the *garnishee* in the garnishment action. However, obtaining a garnishment judgment is not the only procedural step that CHS, Inc., must take before it can recover its incurred garnishment costs and disbursements. Before it can be reimbursed its garnishment costs and disbursements, CHS, Inc., must also follow the procedures specified in N.D.R.Civ.P. 54. CHS, Inc., first "must submit a detailed, verified statement" of its costs and disbursements to the clerk of the court, so that the costs and disbursements are "taxed and entered on (the) record separately". N.D.R.Civ. P. 54 (e)(1); N.D.C.C. § 28-26-06; and N.D.C.C. § 28-26-19. By court rule, a party has 14 days after judgment to object to the taxed costs. N.D.R.Civ.P. 54(e)(2). Taxed costs may be reviewed by the court by motion.

[¶80] The lower court abuses its discretion when it sanctions Riemers for challenging CHS, Inc.'s right to recover its garnishment costs when it never obtained a garnishment judgment, nor did it follow court rule(s) to recover the same.

[¶81] **iii. Riemers' contentions concerning post-judgment amounts due on principal and interest has support in law.**

[¶82] It is first noted that since CHS, Inc., filed three (3) partial satisfactions of judgment, without mentioning interest, the Clerk of Court public records reflect the Amended Judgment of 2016 is fully paid ["Satisfied"] as of May 5, 2017. App., p. 1. The amounts listed as received in the three (3) partial satisfactions totaled $41,814.50 [$39,726.89 + $1,957.61 + $130.00 = $41,814.50], which exceeds the monetary judgment of $41,723.65 and the two (2) execution costs [$10.00 each] by **$70.85** [$41,814.50 -$41,723.65 - $20.00 = $70.85]. CHS,

Inc.'s three (3) signed partial satisfactions, themselves, provide a legal basis for Riemers' contention CHS, Inc., is miscalculating the amount due, *and it has been overpaid*. App., ps. 45-50. See, N.D.C.C. § 28-20-26, stating in part, "... the judgment and all liens thereby created must be taken and deemed to be canceled and discharged to the extent of the entries so made upon the judgment docket." It is to be remembered Riemers contended CHS, Inc., was overpaid before the sum of $130.00 was ordered to be returned to his son.

[¶83] Riemers' contention that CHS, Inc., should be denied post-judgment interest because of his deposit of $41,100.00 with Alerus has support in law. The deposited sum of $41,100.00 exceeded the garnishment retention amount for the original March 21, 2016, judgment of $38,889. App., p. 7. At the time Riemers deposited $41,100.00 with Alerus, the garnishment retention amount was only $40,909.84 [$38,889.00 judgment amount + $1,895.84 interest for nine months + $125.00 = $40,904.84]. Riemers' act to deposit sufficient funds to cover the retention amount then due, while informing his judgment creditor of the deposit and account, and informing the garnishee to "fully pay the judgment", appears to be a tender of the full performance of what CHS, Inc., was due out of Riemers' property in garnishment proceedings. It appears such tender of full performance should have *extinguished* any further obligation Riemers [or his property] had in the garnishment proceedings as of the date of the offer. See, N.D.C.C. § 9-12-08, N.D.C.C. § 9-12-19, N.D.C.C.§ 9-12-24, and N.D.C.C. § 9-12-25. Certainly, it was not frivolous, nor sanctionable, for Riemers to bring an issue before the lower court as to whether CHS, Inc., would be entitled to costs and interest after Riemers' extinguishing deposit of $41,100.

[¶84] If post-judgment interest still accrues despite the three (3) partial satisfactions of

judgment, or Riemers' May 3, 2016, tender of full performance; then CHS, Inc.'s acceptance of Alerus's June 2, 2016, check for $39,644.58, is the next significant event concerning the amount due on the May 24, 2016, monetary judgment of $41,723.65 [after prior appeal]. CHS, Inc., collected $1,924.92 on June 3, 2016, which arguably could be applied to the $10.00 execution fee, $74.30 interest to date of payment, and the balance on the principal leaving a principal judgment balance of $39,883.03. On June 7, 2016, [four (4) days later], CHS, Inc., cashed Alerus's check for $39,644.58. Under the provisions of N.D.C.C. § 41-03-36(2)(a), this payment "results in discharge of the obligation to the extent of the amount of the check." If post-judgment interest accrues on the June 2, 2016, judgment balance of $39,883.03, the paid check should be applied to four (4) days interest of $28.40, and the balance to reduce the principal of the judgment to only $266.85 as of June 7, 2016. On August 9, 2016 [sixty-three (63) days later], CHS, Inc., cashed Alerus's check for $1,957.61. App., p. 42. It appears equitable to deduct the returned amount of $1,842.61 from this check leaving $115.00 to be applied to the $10.00 execution fee, $2.99 [judgment interest for 63 days on $266.85] and the balance on the principal. After the August 9, 2016, payment, the monetary judgment can be no greater than $164.84 [if one cannot rely on partial satisfactions of judgment of public record]. The lower court abused its discretion when it sanctioned Riemers for merely bringing a motion questioning the garnishment process used against him, and the amount due under the judgment.

[¶85] **D. Riemers' factual contentions were not frivolous, but were warranted on the evidence below.**

[¶86] As revealed in this Brief's Statement of Facts, Riemers' factual assertions concerning

CHS, Inc.'s collection efforts, and the amount due on the judgment, have support in the record below. Even Riemers' claim that CHS, Inc.'s figures were based upon the compounding of interest is supported in CHS, Inc.'s own spreadsheet. In the spreadsheet, the required deduction of $70.07[1] was not applied to reduce the principal balance due as of May 24, 2016, but partially applied to interest accruing after that date. By CHS, Inc.'s application of said $70.07, there would be interest accruing upon interest [*i.e.*, compounded interest]. The lower court abused its discretion in sanctioning Riemers when the record below establishes that CHS, Inc., cannot justify its position for its collection procedures, nor can it justify the amount it claims due on the monetary judgment.

[¶87] **3. This Court should reject the lower court's position concerning the taxation of post-judgment costs.**

[¶88] Riemers appealed from the Order dated June 5, 2017, to ensure this Court addresses the lower court's pronouncement that the "plaintiff is not required by law to seek the court's approval for taxation of post-judgment costs incurred in recovering a judgment." App., p. 94. Again, Riemers respectfully submits that all post-judgment costs must be taxed through the clerk of district court's office. See, ¶79 above. If judgment creditors do not need to appropriately tax their incurred collection costs through a process involving the clerk of the district court, courts will lose control over their own judgment(s) and the collection process of its judgment(s). No one could rely upon the clerk of court's public records as to what is due. Each attorney representing a judgment creditor would be his own separate court [or clerk of court] as to what the collection costs are, without any meaningful opportunity for a

[1] Required by this Court's prior appellate judgment.

judgment debtor to attack the reasonableness of the same. The lower court's position should be rejected.

[¶89] **CONCLUSION**

[¶90] The monetary judgment requiring Riemers to pay CHS, Inc.'s attorney fees should be reversed and vacated. This Court should determine CHS, Inc., is not entitled to post-judgment interest due to its signed and filed partial satisfactions of judgment. If this Court concludes CHS, Inc., is entitled to post-judgment interest despite such partial satisfactions, this Court should determine the legal effect of Riemers' tender of his obligations and/or the acceptance of the garnishee's check by CHS, Inc. This Court should deny CHS, Inc., any right to recover its post-judgment costs and disbursements incurred in any never-filed garnishment proceeding(s).

Respectfully submitted this 6th day of December, 2017.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

CHS, Inc.,

Plaintiff-Appellee,

vs.

Roland Riemers,

Defendant-Appellant.

Supreme Court No. 20170331

District Court No. 18-2015-CV-01950

AFFIDAVIT OF MAILING

State of North Dakota
County of Cass

[¶1] Pat Doty, being first duly sworn on oath, deposes and says: Affiant is a resident of the City of Fargo, North Dakota, and over the age of eighteen years, and not a party to the above entitled matter.

[¶2] On the 6th day of December, 2017, Affiant deposited in the United States Post Office at Fargo, North Dakota, a true and correct copy of the following documents in the above entitled action: BRIEF OF APPELLANT and APPENDIX TO BRIEF OF APPELLANT.

[¶3] The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Jon Brakke
Vogel Law Firm
P.O. Box 1389
Fargo, ND 58107-1389

[¶4] To the best of Affiant's knowledge, the address above given was the actual post office address of the party intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Pat Doty
Pat Doty

Subscribed and sworn to before me this 6th day of December, 2017.

Dave Garaas
Notary Public

DAVID GARAAS
Notary Public
State of North Dakota
My Commission Expires July 19, 2023

ADDENDUM OF STATUTES OR RULES

CITED IN THE BRIEF OF THE APPELLANT

[¶91] **North Dakota Rules of Procedure** (cite or pertinent to this appeal):

RULE 7. PLEADINGS ALLOWED—FORM OF MOTIONS AND OTHER PAPERS

(**a) Pleadings.** Only these pleadings are allowed:

(1) a complaint:
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party; and
(7) if the court orders one, a reply to an answer or a third-party answer.

(**b) Motions and Other Papers**.

(1) In General. A request for a court order must be made by motion. The motion must:

(A) be in writing, unless made during a hearing or trial;
(B) state with particularity the grounds for seeking the order,
(C) state the relief sought.

The writing requirement is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading that states a claim for relief—whether an original claim, a counterclaim, a crossclaim, or a third-party claim—must contain:

(1) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(2) a demand for the relief sought, which may include relief in the alternative or different types of relief.

* * *

RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is self-represented. The paper must state the signer's address, electronic mail address for electronic service, and telephone number. If the signer is an attorney, the paper must contain the attorney's State Board of Law Examiners identification number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly

responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file an answer brief and other supporting papers. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(e) Limited Representation.

(1) Preparation of Pleadings. An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may prepare pleadings, briefs, and other documents to be filed with the court by a self-represented party. The attorney's preparation of pleadings, briefs, or other documents does not constitute an appearance by the attorney in the case and no notice under Rule 11(e)(2) is required. Any filing prepared under this paragraph must be signed by the party designated as "self-represented."

(2) Limited Appearance.

(A) In General. An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may make a "limited appearance" on behalf of an otherwise self-represented party involved in a proceeding to which these rules apply.

(B) Notice. An attorney who makes a limited appearance on behalf of an otherwise self-represented party must serve a notice of limited appearance on each party involved in the matter. The notice must state precisely the scope of the limited appearance. An attorney who seeks to act beyond the stated scope of the limited appearance must serve an amended notice of limited appearance. Upon completion of the limited appearance, the attorney must file and serve a "Certificate of Completion of Limited Appearance" as required by N.D.R.Ct. 11.2(d).

(C) Filing. If the action is filed, the party who received assistance of an attorney on a limited basis must file the notice of limited appearance with the court.

(3) Scope of Rule. The requirements of this rule apply to every pleading, written motion and other paper signed by an attorney acting within the scope of a limited representation.

RULE 54. JUDGMENT; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. If an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Death Before Judgment. If a party dies after a verdict or decision on any issue of fact

and before judgment, the court may still render judgment. That judgment is not a lien on the real property of the deceased party, but is payable as provided in N.D.C.C. ch. 30.1-19.

(e) Costs; Objections; Attorneys' Fees.

(1) Costs Other than Attorneys' Fees. Costs and disbursements must be allowed as provided by statute. A party awarded costs and disbursements must submit a detailed, verified statement to the clerk. Upon receipt of the statement, the clerk must allow those costs and disbursements and insert them in the judgment. A copy of the statement must accompany the notice of entry of judgment.

(2) Objections to Costs. Objections must be served and filed with the clerk within 14 days after notice of entry of judgment or within a longer time fixed by court order within the 14 days. The grounds for objections must be specified. If objections are filed, the clerk must promptly submit them to the judge who ordered the judgment. The court by ex parte order must fix a time for hearing the objections. Unless otherwise directed by the court, the parties may waive the right to a hearing and submit written argument instead within a time specified by the court.

(3) Attorneys' Fees. A claim for attorneys' fees and related nontaxable expenses not determined by the judgment must be made by motion. The motion must be served and filed within 21 days after notice of entry of judgment. The trial court may decide the motion even after an appeal is filed.

[¶92] **North Dakota Century Code** (provisions cited or pertinent to the appeal):

9-12-08. Extinction by offer - Exception.

An obligation is extinguished by an offer of performance made in conformity to the provisions set out in this chapter and with intent to extinguish the obligation. An offer of partial performance, however, is of no effect.

9-12-19. Offer of performance - When title passes.

The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor, at the time the offer is made, signifies the debtor's intention to that effect.

9-12-24. Deposit extinguishes obligation.

An obligation for the payment of money is extinguished by a due offer of payment if the amount immediately is deposited in the name of the creditor with some bank of deposit of good repute within this state, and notice thereof is given to the creditor.

9-12-25. Offer and deposit - Results.

An obligation for the delivery of money or property or for the conveyance of property is not discharged by an offer of performance, nor are any of its incidents affected thereby,

unless:

1. If the thing offered is money, the same is deposited according to the provisions of section 9-12-24 and notice of such deposit is given to the creditor.
2. If the thing offered is something other than money, the same is deposited for the creditor with some depositary of good repute at the place of performance and notice of such deposit is given to the creditor.

After such deposit and notice, the thing deposited is at the risk and expense of the creditor.

28-20-24. Satisfaction of judgment.

Any judgment rendered or docketed in any district court of this state may be canceled and discharged by the clerk thereof, upon the filing with the clerk of an acknowledgment of the satisfaction thereof signed by the party in whose favor the judgment was obtained, or by that party's attorney of record, executor or administrator, or assignee, and duly acknowledged in the manner required to admit a deed of real property to record.

28-20-25. Discharge of record.

Upon the return of an execution issued upon a judgment that has been satisfied, or the presentation of a satisfaction duly executed, to the clerk of any district court, the clerk shall immediately note upon the judgment docket the date and manner of the cancellation.

28-20-26. Partial satisfaction.

A partial satisfaction of a judgment may be made and noted upon the records in like manner as a full satisfaction, and thereupon the judgment and all liens thereby created must be taken and deemed to be canceled and discharged to the extent of the entries so made upon the judgment docket.

28-20-34. Interest rate on judgments.

Interest is payable on judgments entered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum through December 31, 2005. Beginning January 1, 2006, the interest is payable at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded in any manner or form. On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest on all judgments entered in the courts of this state before January 1, 2006, must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or

form. Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid.

28-20-36. Application of partial payments on judgments.

A partial payment made on a judgment must be applied first to post judgment costs. If the payment exceeds the costs, the excess amount must be applied toward satisfying the interest due. If the payment exceeds the costs and interest, the excess amount must be applied toward discharging the judgment amount, and the subsequent interest is to be computed on the balance of the judgment amount remaining due. If the payment falls short of satisfying the costs and interest, interest continues to accrue on the former judgment amount until a payment is made that exceeds the sum of the costs and interest due at the time of payment, and then the excess amount must be applied toward discharging the judgment amount, and interest accrues thereafter on the balance of the judgment amount remaining due. This section does not apply to the collection of any debt owed to the state or a political subdivision.

28-21-04.2. Summary execution on moneys retained pursuant to garnishment.

If a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by personal service or by certified mail upon the third party by a sheriff or by an attorney licensed to practice law in this state. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 within twenty days after service of the garnishment summons, an execution may not be made against moneys claimed as exempt and retained under the garnishment summons until the court determines that the moneys being garnished are not exempt.

28-21-05. Execution issued to sheriff of counties where judgment docketed.

An execution may be issued by the clerk of court in which the judgment was entered to the sheriff of any county where the judgment is docketed. If the execution requires the delivery of real or personal property, the execution may be issued to the sheriff of any county where the property or portion of the property is situated. More than one execution may be issued at the same time to the sheriffs of different counties.

28-21-06. Issuance and contents of execution.

An execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff. The execution

must describe the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor. A special execution must state the amount of money due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to the judgment, the amount of the costs accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a different county, the date and time the judgment was docketed in that county. If the execution is for the delivery of the possession of property, the execution must also particularly describe the property to be delivered, identify the party entitled to possession of the property, and if the same judgment orders the judgment debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts due as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. Satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the judgment debtor, and if sufficient personal property cannot be found, out of the real property belonging to the debtor on the date when the judgment was docketed in the county or at any time after that date. If property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or

2. If the execution is for the delivery of the possession of property, deliver the property to the party entitled to the property and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the judgment debtor and if sufficient personal property cannot be found, out of the real property of the judgment debtor on the date when the judgment was docketed in the county or at any time after that date. If the property cannot be delivered, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the judgment debtor as if an execution had been issued.

28-21-07. Time of return.

The execution must be returned to the clerk within sixty days after the receipt by the officer. If a sheriff's levy has been made within the sixty days, the execution must be returned within a reasonable time following the completion of the sale of the property or ninety days after receipt by the officer. If a levy has been made and the issue of ownership of the property or interest in the property is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

28-21-10. Officer's proceedings on execution.

When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received the execution and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, the execution must be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in the case must be stated in the return.

28-21-11. Levy and sale.

The officer shall execute the writ by levying on the property of the judgment debtor, or by selling the same, selling the other property, and paying to the judgment creditor the proceeds, or so much thereof as will satisfy the execution.

28-21-12. Notice of levy - Service - Contents.

In all cases of levy upon personal property, the sheriff or other officer must serve the notice of levy in the same manner as a summons is served in accordance with the North Dakota Rules of Civil Procedure. Such notice must have written or printed upon its face the further notice to the debtor, that if exemptions are claimed or demanded, such claim must be made within ten days after service of notice.

28-22-06. Claim to be made within ten days.

Any claim for exemptions must be made by or on behalf of the debtor within ten days after service of notice of levy.

28-26-01. Attorney's fees by agreement - Exceptions - Awarding of costs and attorney's fees to prevailing party.

1. Except as provided in subsection 2, the amount of fees of attorneys in civil actions must be left to the agreement, express or implied, of the parties.
2. In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of the good faith of the attorney or party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in that person's favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good-faith argument for an extension, modification, or reversal of the existing law.

28-26-02. Amount of costs in specific cases.

Costs in the district courts and in the supreme court must be as follows:

1. To the plaintiff for all proceedings before trial, ten dollars, and for each additional defendant served with process not exceeding ten, one dollar.
2. To the defendant, for all proceedings before trial, five dollars.
3. For every trial of an issue of fact, five dollars.
4. Superseded by N.D.R.App.P., Rule 38.
5. To either party for every term not exceeding five, at which the cause is necessarily on the calendar of the district court and is not tried or is postponed by order of the court, three dollars, and for every term not exceeding five, excluding the term at which the cause is argued in the supreme court, five dollars. Term fees are not taxable as costs when a cause, properly on the calendar, is not reached for trial during the term, nor in case a continuance is had upon the application of, or stipulation with, the party in whose favor costs are to be taxed.

28-26-06. Disbursements taxed in judgment.

In all actions and special proceedings, the clerk of district court shall tax as a part of the judgment in favor of the prevailing party the following necessary disbursements:

1. The legal fees of witnesses; sheriffs; clerks of district court; the clerk of the supreme curt, if ordered by the supreme court; process servers; and of referees and other officers;
2. The necessary expenses of taking depositions and of procuring evidence necessarily used or obtained for use on the trial;
3. The legal fees for publication, when publication is made pursuant to law;
4. The legal fees of the court reporter for a transcript of the testimony when such transcript is used on motion for a new trial or in preparing a statement of the case; and
5. The fees of expert witnesses. The fees must be reasonable fees as determined by the court, plus actual expenses. The following are nevertheless in the sole discretion of the trial court:
   a. The number of expert witnesses who are allowed fees or expenses;
   b. The amount of fees to be paid such allowed expert witnesses, including an amount for time expended in preparation for trial; and
   c. The amount of costs for actual expenses to be paid the allowed expert witnesses.

28-26-16. Taxation reviewed on motion.

A taxation or a retaxation of costs may be reviewed by the court upon motion. The order made upon such motion may allow or disallow any item objected to before the taxing officer, in which case it has the effect of a new taxation.

28-26-18. Costs on motion.

Upon a motion in an action or proceeding, costs may be awarded, not to exceed

twenty-five dollars, either absolutely or to abide the event of the action, to any party, in the discretion of the court.

28-26-19. Taxing costs.

In all actions, motions, and proceedings in the supreme and district courts, the costs of the parties must be taxed and entered on record separately.

32-09.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Defendant" means every judgment debtor.
2. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by other law to be withheld.
3. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay.
4. "Person" includes an individual, an individual's personal representative or other fiduciary, any two or more persons having a joint or common interest, a partnership, an association, a corporation, a limited liability company, and any other legal or commercial entity.
5. "Plaintiff" means every judgment creditor.

32-09.1-02. Creditors may proceed by garnishment.

Any creditor is entitled to proceed by garnishment in any court having jurisdiction of the subject of the action against any person, any public corporation, the United States, the state of North Dakota, or any institution, department, or agency of the state, indebted to or having any property in possession or under control, belonging to the creditor's debtor after securing a judgment against the debtor in a court of competent jurisdiction, in the cases, upon the conditions, and in the manner prescribed in this chapter. A garnishment action brought pursuant to this chapter is the exclusive procedure which may be used to execute on earnings of a debtor while those earnings are held by a third-party employer.

32-09.1-06. Garnishee summons.

In any action in a court of record for the recovery of money, at any time after judgment, a garnishee summons may be issued against any third person as provided in this chapter. The plaintiff and defendant shall be designated. The person against whom the summons is issued shall be designated garnishee.

32-09.1-07. Form of summons and notice.

1. The garnishee summons must state:
   a. That the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons:
      (1) A written disclosure, under oath, of indebtedness to the defendant; and
      (2) Answers, under oath, to all written interrogatories that are served with the garnishee summons.
   b. The full name of the defendant, the defendant's place of residence, the date of the entry of judgment against the defendant, the total amount of the judgment which remains unpaid, and the retention amount. The retention amount is the sum of the amount of the judgment which remains unpaid, one hundred twenty-five dollars, and an amount equal to nine months of interest on the amount of the judgment which remains unpaid.
   c. That the garnishee shall retain property, earnings, or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff.
   d. That after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall release all retained property, earnings, and money to the defendant and is discharged and relieved of all liability on the garnishee summons.
   e. That an employer may not discharge an employee because the employee's property, earnings, or money are subject to garnishment.
   f. That any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void.
g. That the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section
   h. That failure of the defendant to provide a list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.
2. Under subdivision a of subsection 1, the plaintiff may not require the garnishee to disclose indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds the retention amount.
3. The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota) In _____ Court

) ss.
County of _____) _____

_____
Plaintiff

against Garnishee Summons and
Notice to Defendant
_____
Defendant

and

_____
Garnishee

The State of North Dakota to the above-named Garnishee:

You shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed $_____. (Enter retention amount.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is $_____.

The defendant shall provide you with a list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of $_____. (Enter the retention amount.)

You shall retain the defendant's nonexempt property, money, earnings, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 360 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within 360 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated _____, ____.

By: _____

NOTICE TO DEFENDANT

To:_____

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon_____, the garnishee.

_____
(Attorneys for Plaintiff)

_____
(Address)

_____
(Telephone)

32-09.1-08. Service.

1. The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal.
2. Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.
3. A plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant in accordance with the North Dakota Rules of Civil Procedure for personal service or served by first-class mail not later than ten days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

32-09.1-09. Disclosure.

1. Within the time as limited in the garnishee summons, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed the retention amount. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by an officer, a manager, or an agent having knowledge of the facts.

2. Disclosure must state:

a. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.

b . Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.

c. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.

d. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.

e. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

3. A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form, subject to subsection 3 of section 32-09.1-03:

State of North Dakota) In _____ Court
) ss.
County of _____) _____
_____
Plaintiff
vs.
_____
Defendant
and Garnishment Disclosure
_____
Garnishee

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On _____, _____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means

compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.

2. Money. Any amounts due and owing to defendant from the garnishee, except for earnings. (amount and facts)
3. Property. Any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee. (description, estimated value, and facts)
4. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
5. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed after receipt of the garnishee summons.)
6. Earnings worksheet:
   a. Total earnings in pay period _____
   b. Federal tax _____
   c. State tax _____
   d. FICA (social security/Medicare) _____
   e. Total deductions (lines b+c+d) _____
   f. Disposable earnings (line a less line e) _____
   g. Twenty-five percent of line f _____
   h. Minimum wage exemption (minimum wage times forty hours times number of weeks in pay period) _____
   i. Line f less line h _____
   j. Line g or line i (whichever is less) _____
   k. Dependent exemption (twenty dollars per dependent per week, if claimed) _____

l. Adverse interest or setoff _____
m. Total of lines k and l _____
n. Line j less line m (the amount of earnings subject to garnishment) _____

7. Total of property, earnings, and money. The garnishee shall add the total of property, earnings, and money and if this sum is ten dollars or more, the garnishee shall retain this amount, not to exceed the retention amount identified by the plaintiff in the garnishee summons.

Signature _____
Garnishee or Authorized Representative of Garnishee

_____
Title

Subscribed and sworn to before me on _____, _____.

_____
Notary Public

32-09.1-10. Disclosure fees.

In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of twenty-five dollars as the fee for making an affidavit of disclosure.

32-09.1-11. Effect of disclosure.

Subject to the provisions of sections 32-09.1-12 and 32-09.1-13, the disclosure is conclusive as to all property of the defendant. If the garnishee denies having any indebtedness to the defendant or having any property of the defendant in possession, the filing in court of a copy of the disclosure operates as a full discharge of the garnishee at the end of twenty days from the date of service of the disclosure, in the absence of further proceedings as provided for in sections 32-09.1-12 and 32-09.1-13. The filing of objections to the disclosure or the filing of any motion or other proceedings operates as a stay of the discharge. The court may, upon proper showing, relieve the plaintiff from the operation of the discharge after the expiration of twenty days. The garnishee may be discharged where the value of the property of the defendant held or indebtedness owing to the defendant is less than ten dollars, and the garnishee may apply to the court to be discharged as to any property or indebtedness in excess of the amount which may be required to satisfy the plaintiff's judgment.

32-09.1-13. Third party may intervene.

If it appears that any person not a party to the action has or claims an interest in any of the garnished property antedating the garnishment, the court may permit that person to appear and maintain that person's rights. If the person does not appear, the court may direct that the person be notified to appear or be barred of the claim. The notice may be served in

a manner as the court directs, and the person appearing or notified shall be joined as a party and is bound by judgment against the garnishee.

32-09.1-15. Judgment against garnishee.

Judgment against a garnishee must be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed in the proceeding against the garnishee but not to exceed the retention amount defined under section 32-09.1-07. The judgment must discharge the garnishee from all claims of all the parties named in the process to the property, earnings, or money paid, delivered, or accounted for by the garnishee by force of the judgment. When a person is charged as garnishee by reason of any property in possession other than an indebtedness payable in money, that person shall deliver the property, or so much of the property as may be necessary, to the officer holding execution, and the property must be sold and the proceeds accounted for in the same manner as if the property had been taken on execution against the defendant. The garnishee may not be compelled to deliver any specific articles at any time or place other than as stipulated in the contract with the defendant.

32-09.1-16. Minimum judgment.

No judgment may be rendered against a garnishee if the judgment against the defendant is less than twenty-five dollars, exclusive of costs, rather, the garnishee shall be discharged.

32-09.1-19. Garnishments - Minimal amount - Disclosure.

If the amount required to be retained by the garnishee is less than ten dollars, the garnishee may not retain the sum but shall make the disclosures otherwise required, except as provided in section 32-09.1-21.

32-09.1-20. Termination of garnishment.

A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of three hundred sixty days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects that the garnishee has been retaining pursuant to the garnishment must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

32-09.1-22. Claim of exemptions - How made.

When the defendant claims that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution, the defendant, at or before twenty days after the service of the garnishee summons, shall file a schedule of all personal property subscribed and sworn to as provided in section 28-22-07.

32-09.1-23. Claim of exemptions - When heard.

In all cases when the defendant claims the debt or property garnished to be exempt, the claim of exemptions may be heard and determined by the court at any time after the claim is made, on three days' notice to the plaintiff.

41-03-36. (3-310) Effect of instrument on obligation for which taken.

1. Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.
2. Unless otherwise agreed and except as provided in subsection 1, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.
    a. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.
    b. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to he extent of the payment.
    c. Except as provided in subdivision d, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.
    d. If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.
3. If an instrument other than one described in subsection 1 or 2 is taken for an obligation, the effect is that stated in subsection 1 if the instrument is one on which a bank is liable as maker or acceptor or that stated in subsection 2 in any other case.