

**LETTER OPINION
2003-L-03**

January 30, 2003

Ms. Linda L. Hickman
Williams County State's Attorney
PO Box 2047
Williston, ND 58802-2047

Dear Ms. Hickman:

Thank you for your letter asking if there is a time limitation within which a person entitled to restitution must act to utilize that portion of N.D.C.C. § 12.1-32-08(1) that authorizes a restitution order to be filed, transcribed, and enforced in the same manner as civil judgments.

A court has the authority to issue a judgment or order requiring a criminal defendant to make restitution or reparation for damages resulting from the commission of an offense as a sentence or as a condition of probation. N.D.C.C. §§ 12.1-32-02(1)(e) and 12.1-32-07(4)(e). Prior to the judgment or order requiring the payment of restitution or reparation, the court must hold a hearing with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution or reparation. N.D.C.C. § 12.1-32-08(1). After the hearing, the court will fix the amount of the restitution or reparation as a part of the criminal judgment imposing sentence or as a condition of a defendant's probation.

A portion of N.D.C.C. § 12.1-32-08(1) relevant to your inquiry provides:

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise,

be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

(Emphasis added.)

Section 12.1-32-08, N.D.C.C., does not establish any specific time limitation or requirements as to when a restitution order must be filed, transcribed, or enforced by the person entitled to the restitution or reparation.

Permitting the person or entity who has suffered financial loss to file, transcribe, and enforce the restitution or reparation order as the equivalent of a civil judgment indicates a clear intent by the Legislature that the restitution or reparation order entered after notice and hearing has the same legal status as though the beneficiary of the order had initiated and obtained a separate civil judgment. Like any other judgment, the beneficiary of a restitution or reparation order may choose not to enforce it. Since this restitution or reparation order is equivalent to a civil judgment in favor of the beneficiary of that order, if the beneficiary chooses to enforce it in that manner, the order will be subject to the same time, filing, transcribing, and enforcement requirements as a civil judgment. The beneficiary of the restitution or reparation order in order to enforce it must file and docket the order with the clerk of the court. N.D.C.C. §§ 28-20-11, 28-20-13, and 28-20-16; N.D.R.Civ.P. 58(a). The beneficiary of the order also must file an affidavit of identification with the clerk of court. N.D.C.C. § 28-20-15. Although there is no specific requirement that the beneficiary of the restitution or reparation order file the order with the clerk of court within a certain time, the order imposing restitution or reparation is not effective or final until it is filed, docketed, and entered in the judgment book. Monson v. Nelson, 145 N.W.2d 892 (N.D. 1966).

Once the order has been filed and docketed, there may be certain time limitations imposed upon the beneficiary of the restitution or reparation order to permit its enforcement. A notice of entry of order will be served by the beneficiary of the order upon the defendant against whom the restitution or reparation was imposed. N.D.R.Civ.P. 58(b). The docketed order may not be executed upon or enforced until ten days after the notice of entry of the order. N.D.R.Civ.P. 62(a). The beneficiary of the order may enforce the order by execution within ten years of its entry. N.D.C.C. § 28-21-01. Additional time periods that relate to the docketed order include renewal of the order after ten years from its first docketing. N.D.C.C. §§ 28-20-21, 28-20-22, 28-20-23.

In summary, although N.D.C.C. §12.1-32-08(1) generally does permit the person in whose favor the restitution or reparation order was granted the authority to file,

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transcribe, and enforce that order in the same manner as civil judgments in this state, the statute identifies no time requirement as to when that process must begin. However, as I have noted, upon filing and docketing the order, there are certain time requirements that may impact enforcement of that order.

Sincerely,

Wayne Stenehjem
Attorney General

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