

**LETTER OPINION
2005-L-42**

December 5, 2005

Mr. Jeffrey K. Leadbetter
Ransom County State's Attorney
PO Box 511
Lisbon, ND 58054-0511

Dear Mr. Leadbetter:

Thank you for requesting my opinion concerning the proper procedure for a recorder to follow when a court has ordered a recorded instrument to be expunged. It is my opinion that an order to expunge a record in the recorder's office requires the recorder to remove and destroy the record, and to note the date when it was destroyed on the margin of the index opposite the record of each instrument ordered to be expunged.

ANALYSIS

A district court order directed that a recorded instrument "be completely and wholly expunged and removed" from a county recorder's office.¹ County recorders are requesting advice concerning the proper procedure to follow when expunging a record that has been duly filed and indexed.

It is somewhat unusual that a court should order a record duly filed with the county recorder to be expunged. The usual course of practice in a recorder's office is to record an additional document that amends or supersedes a previously recorded document.² This includes recording court judgments and orders.³ Further, recorders do not have an inherent authority to remove or "unfile" a document once it has been filed.⁴ A person who

¹ Barnes County File Number 05-C-015. The case involved an instrument with an incorrect property description. The court also ordered that a new instrument with a correct property description be recorded.

² N.D.A.G. 93-L-1.

³ N.D.C.C. §§ 11-18-01(1), 11-18-03(3), and 11-18-21.

⁴ N.D.A.G. Letter to Duppler (Sept. 27, 1983).

disobeys a lawful order from a court in this state however, commits a class A misdemeanor.⁵ The recorder must follow the court's order even if it is unusual.

"If the language of a judgment is clear and unambiguous, it must be construed to give effect to that unambiguous language."⁶ Interpreting a judgment or court order presents a question of law.⁷ The plain meaning of expunge is to destroy, blot out, obliterate, erase, efface designedly, or strikeout wholly.⁸ Expunge also means the act of physically destroying information in files, computers, or other depositories.⁹ Therefore, the plain meaning of an order to expunge and remove a record in the recorder's office is that the order requires the record to be removed and destroyed.

Generally speaking, county recorders are required to preserve all records filed with their office.¹⁰ The Legislature, however, has at least in one instance required county recorders to remove and destroy certain documents.¹¹ This statute requires each recorder to remove and destroy certain files from the recorder's office, and also to note the date when the instrument was destroyed on the margin of the index opposite the record.¹²

This would appear to be a reasonable procedure for a recorder to follow when a court orders the recorder to expunge certain records. It would also be reasonable for the recorder to note the authority for this action in the index opposite the record, specifically the case name and docket number, and to retain a copy of the order.

If a county recorder is uncertain how to interpret and apply a judgment or order, it would be appropriate to bring a motion requesting the court to clarify its order.¹³ The North Dakota Supreme Court has recognized that a motion for clarification does not need to reference a particular rule of procedure if there is an ambiguous provision in the judgment that creates an actual controversy between the parties.¹⁴ If a county recorder receives a court order that is ambiguous or of uncertain meaning, it would be appropriate for the recorder to request the county state's attorney's aid to bring a motion for clarification to the court which issued the order.

⁵ N.D.C.C. § 12.1-10-05(1).

⁶ Knoop v. Knoop, 542 N.W.2d 114, 117 (N.D. 1996) (citation omitted).

⁷ Id. (citation omitted).

⁸ Black's Law Dictionary 621 (8th ed. 2004).

⁹ Id.

¹⁰ See generally N.D.C.C. ch. 11-18.

¹¹ N.D.C.C. § 11-18-14.

¹² Id. Noting in the index that the record was destroyed provides an explanation why the indexed record will not be found.

¹³ Kostelecky v. Kostelecky, 537 N.W.2d 551, 552 (N.D. 1995).

¹⁴ Neubauer v. Neubauer, 524 N.W.2d 593, 595 (N.D. 1994).

LETTER OPINION 2005-L-42
December 5, 2005
Page 3

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).