

December 10, 1956

Mr. John C. Harrison
 County Attorney
 Lewis and Clark County
 Helena, Montana

Dear Mr. Harrison:

You have requested my opinion as to whether it is the duty of the clerk of the district court to record the inventory and appraisement in probate proceedings.

The clerk is required to record the inventory and appraisement in the "Probate Record Book" by virtue of Section 16-3001(7), R.C.M., 1947, which provides that the clerk of the district court must:

"Keep a book called the 'Probate record book,' in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed elsewhere in this code, which record must be indexed in like manner as the 'Record of probate proceedings';" (Emphasis Supplied.)

The statutory demand of Section 91-2201, R.C.M., 1947, for the inventory and appraisement justifies inclusion of that paper within the definition of the phrase of subsection (7) "and other papers as prescribed elsewhere in this code."

The book referred to in subsection (6) of the same section is labeled "record of probate proceedings" and its comprehension include only "orders and proceedings of the district court sitting in probate matters". An inventory and appraisement is obviously not an order of the district court, and is probably not a "proceeding". That latter term is of general meaning but usually relates to the action or steps taken by the court which, of course, the preparation and filing of the inventory and appraisement is not.

You have further requested my opinion as to whether a clerk of the district court may charge the defendant a \$2.50 appearance fee in an action transferred from another district.

Opinion No. 99

Clerks of Courts — Duties — Recording — Inventory and Appraisement Fees— Appearance — Transfer

HELD: 1. An inventory and appraisement in a probate matter is a paper prescribed by law and must be recorded by the clerk of the district court in the probate record book.

2. A defendant may be charged only one appearance fee in any case, but he is liable for transfer fees where there has been a transfer at his instance.

That section of the law, 25-232, R.C.M., 1947, relating to the fees collectable by the clerk of the district court from the defendant entitles him up to entry of judgment to charge for only the appearance fee.

“* * *

And the defendant, on his appearance, must pay the sum of two dollars and fifty cents (which includes all the fees to be paid up to the entry of judgment).

* * *”

However, Section 93-2908, R.C.M., 1947, assesses the cost of the fees in actions transferred to the party at whose instance the order was made for the transfer. That section reads in part as follows:

“Papers To Be Transmitted—Costs and Fees — Jurisdiction. When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made . . .”

That party, by reason of the preceding section, must pay a \$2.50 fee to the clerk of court where the action was originally brought for the transfer to the other court. Section 25-232, supra, provides in part, as follows:

“For transmission of records of files or transfer of cases to other courts, two dollars and fifty cents.”

And that same party must pay to the clerk of the court where the action has been transferred the \$5.00 fee required by Section 25-232, supra:

“* * *

For filing and entering papers on transfer from other courts, five dollars.

* * *”

It is obvious that there is only one appearance fee due from the defendant and if he is the party at whose insistence an order was se-

cured for a transfer, he is then chargeable with a \$2.50 transfer fee by the forwarding clerk of court and a \$5.00 transfer fee by the receiving clerk of court.

It is therefore my opinion that an inventory and appraisal in a probate matter is a paper prescribed by law and must be recorded by the clerk of the district court in the probate record book.

It is also my opinion that a defendant may be charged only one appearance fee in any case, but he is liable for transfer fees where there has been a transfer at his instance.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.