

VOLUME NO. 44

OPINION NO. 38

CLERKS - Collection and distribution of fees and authentication requirements for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;

FEES - Collection and distribution of fees for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;

JUDGMENTS - Authentication requirements for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;

MONTANA CODE ANNOTATED - Sections 3-5-501(4), 3-5-507, 3-5-508, 25-1-201(1), (2), 25-9-301 to 25-9-303, 25-9-501 to 25-9-508, 25-9-502, 25-9-503, 25-9-506;

MONTANA RULES OF CIVIL PROCEDURE - Rules 44, 58;

OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 15 (1991);

UNITED STATES CODE - 28 U.S.C. § 1738;

UNITED STATES CONSTITUTION - Article IV, section 1.

- HELD: 1. The clerk of court should collect a fee of \$60 at the time a foreign judgment is filed pursuant to the Uniform Enforcement of Foreign Judgments Act.
2. The clerk of court should distribute the fees collected at the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act in accordance with the requirements of section 25-1-201(2), MCA.
3. A foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act must be authenticated in accordance with the provisions of Rule 44(a)(1), Mont. R. Civ. P.

August 19, 1992

Mike McGrath  
Lewis and Clark County Attorney  
County Courthouse  
228 Broadway  
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion on three questions concerning foreign judgments:

1. What fees are required by statute to be collected by the clerk of court in connection with the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act?
2. How should the clerk of court distribute the fees collected in connection with the filing of a foreign judgment?
3. What authentication should the clerk of court require before accepting a foreign judgment for filing?

The Montana Legislature enacted the Montana Uniform Enforcement of Foreign Judgments Act in 1989, joining 40 other states in adopting the Revised Uniform Enforcement of Foreign Judgments Act which was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1964. The 1964 revision of the model act provides the enacting states with a speedy and economical method of meeting the federal constitutional requirement of giving full faith and credit to the judgments of courts of other states. U.S. Const. Art. IV, § 1. It is also intended to relieve creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of a foreign judgment. See Unif. Enforcement of Foreign Judgments Act 1964 Revised Act Prefatory Note, 13 U.L.A. 150 (1986).

Montana's version of the revised model act, which is codified at sections 25-9-501 to 508, MCA, provides a procedure for the filing of a foreign judgment with the clerk of the district court and requires the clerk to treat the foreign judgment in the same manner as a judgment of the district court. If a judgment creditor utilizes this procedure, the creditor need not bring a separate action or special proceeding under section 26-3-203, MCA, to enforce the judgment in Montana. See 44 Op. Att'y Gen. No. 15 (1991).

Section 25-9-506, MCA, establishes the fees for judgments filed under the Uniform Enforcement of Foreign Judgments Act:

Any person filing a foreign judgment shall pay to the clerk of court a fee of \$60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

The clerk of court is thus required to collect a fee of \$60 upon the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act. As indicated in your letter of inquiry, however, there remains a question as to what additional fees, if any, should be collected at the time the judgment is filed. Section 25-1-201(1)(c), MCA, requires the clerk of court to collect a \$35 fee from the prevailing party "on the entry of judgment." Section 25-1-201(1)(h), MCA, requires the clerk to collect a \$25 fee for "filing and docketing a transcript of judgment or abstract of judgment from all other courts." The clerk of court has asked whether either of these statutory provisions applies when a foreign judgment is filed under the Uniform Enforcement of Foreign Judgments Act.

The second sentence of section 25-9-506, MCA, adopts in relevant part the suggested language from the revised model act, requiring collection of fees "for docketing, transcription, or other enforcement proceedings ... as provided for judgments of the district court." Since section 25-1-201, MCA, does not specifically provide for the collection of fees for "docketing" and "transcription" of district court judgments, the question of additional fees turns on whether any of the acts for which the clerk of court is required by the statute to collect a fee comes within the meaning of "other enforcement proceedings."

The Montana Supreme Court has long accepted the rule of statutory construction known as *ejusdem generis*, which "requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by specific terms." County of Chouteau v. City of Fort Benton, 181 Mont. 123, 592 P.2d 504 (1979), quoting Dean v. McFarland, 500 P.2d 1244, 1248 (Wash. 1972); see also Burke v. Sullivan, 127 Mont. 374, 265 P.2d 203 (1954). Under this rule of construction, the term "other enforcement proceedings" in section 25-9-506, MCA, should be viewed as including those clerical acts, similar to the docketing and the transcription of a judgment, which are performed in furtherance of the enforcement of the judgment.

The clerk of the district court has a general duty to "enter all orders, judgments, and decrees proper to be entered." See § 3-5-501(4), MCA; Rule 58, Mont. R. Civ. P. The clerk is required to keep a judgment book in which judgments must be entered. § 3-5-507, MCA. The clerk is also required to maintain a docket in which information about judgments is entered and made available to the public for inspection. § 3-5-508, MCA. Immediately after the entry of a judgment in the judgment book, the clerk is required to make the proper entries of the judgment under appropriate heads in the docket; from the

time the judgment is thus docketed, it becomes a lien upon the nonexempt real property of the judgment debtor located in the county. § 25-9-301, MCA.

The mere rendition of a judgment by a district court creates no lien upon the judgment debtor's real property; rather, the judgment does not become a lien until it is entered on the judgment docket. See Wyman v. Jensen, 26 Mont. 227, 67 P. 114 (1902); Sklower v. Abbott, 19 Mont. 228, 47 P. 901 (1897). Once the judgment has been entered and docketed by the clerk of court, the judgment creditor may utilize the enforcement methods and procedures available under Title 25, chapters 13, 14, and 15, MCA.

Section 25-9-503, MCA, establishes the status of foreign judgments filed under the Uniform Enforcement of Foreign Judgments Act:

A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

The plain language of this statute, adopted from the revised model act, has been held to mean that a foreign judgment is to be treated as if it were rendered in the state of filing for purposes of enforcement. See First Denver Mortgage Investors v. Riggs, 692 P.2d 1358, 1359 (Okla. 1984). However, the filing of an authenticated copy of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act is not viewed as the institution of a separate action; rather, the filing of such a document is a step designed to convert the foreign judgment into a domestic judgment capable of being enforced through the judicial processes of the state and is "the equivalent of the entry of an original judgment by the domestic court." Griggs v. Gibson, 754 P.2d 783, 785 (Colo. Ct. App. 1988).

Thus the \$60 fee paid at the time of filing is not a "filing fee" in the same sense as is the fee paid at the commencement of an action or the appearance of a defendant. Cf. § 25-1-201(1)(a), (b), MCA. If the filing of a foreign judgment is the equivalent of the entry of a domestic judgment, then the \$60 fee may properly be viewed as replacing the \$35 fee collected on the entry of judgment from the prevailing party. § 25-1-201(1)(c), MCA. The clerk should not collect an additional \$35 at the time of filing. In addition, the clerk should not collect the \$25 fee required by section 25-1-201(1)(h), MCA, since the authenticated copy of the foreign judgment which must be filed to utilize the simplified procedures of the uniform act is not "a transcript of judgment or abstract of

judgment." See §§ 25-9-302, 25-9-303, MCA; Griggs v. Gibson, *supra*; Hull v. Buffalo Federal Savings & Loan, 661 P.2d 1049 (Wyo. 1983).

Once the foreign judgment has been properly filed pursuant to section 25-9-503, MCA, the clerk is required to treat the foreign judgment as a domestic judgment and should collect the \$5 fee for issuing an execution or order of sale on a foreclosure of a lien (§ 25-1-201(1)(i), MCA) as well as any other fees for services requested by the judgment creditor in the enforcement of the judgment.

Your second question concerns the distribution of the \$60 fee collected by the clerk at the time of filing. The question is answered by reference to section 25-1-201(2), MCA, which provides:

Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

I have reviewed the exceptions set forth in subsections (3) through (8) of section 25-1-201, MCA, including subsection (5)(a)(iii), and do not find any that would apply to the \$60 fee. Therefore, the fee should be distributed by the clerk in accordance with the provisions of subsection (2) of section 25-1-201, MCA.

The answer to your third question concerning the authentication necessary for filing a foreign judgment requires an interpretation of Rule 44(a) of the Montana Rules of Civil Procedure. I agree that this procedural rule, which governs the authentication necessary to prove an official record in court proceedings, is the proper guide for determining the sufficiency of the authentication of a foreign judgment filed pursuant to section 25-9-503, MCA.

Rule 44(a) is divided into two subsections, each with different requirements for authentication of official records. Although subsection (1) of Rule 44(a) is entitled "Domestic" and subsection (2) is entitled "Foreign," I find that subsection (1) applies and sets forth the appropriate requirements for authentication of a foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act.

A "foreign" judgment is defined by the uniform act as "a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." § 25-9-502, MCA. As I noted in 44 Op. Att'y Gen. No. 15 (1991), it is generally agreed that judgments of foreign countries are not entitled to full faith and credit and cannot be registered under the

Uniform Enforcement of Foreign Judgments Act. Subsection (2) of Rule 44(a) applies by its terms to official records of foreign countries, whereas subsection (1) includes within the heading "Domestic" all official records kept in other states and possessions of the United States. Such judgments from other states and possessions are given full faith and credit under the Constitution of the United States, Art. IV, § 1, and 28 U.S.C. § 1738. The term "foreign" thus has a different meaning as it is used in Rule 44(a), and subsection (1) rather than subsection (2) of the rule is the proper source of the authentication requirements in question here.

Rule 44(a)(1), Mont. R. Civ. P., provides in pertinent part:

An official record kept within the United States, or any state ... may be evidenced ... by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

This rule permits authentication of an attested copy of the judgment either by a judge of a court of record or by a qualified public officer.

THEREFORE, IT IS MY OPINION:

1. The clerk of court should collect a fee of \$60 at the time a foreign judgment is filed pursuant to the Uniform Enforcement of Foreign Judgments Act.
2. The clerk of court should distribute the fees collected at the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act in accordance with the requirements of section 25-1-201(2), MCA.
3. A foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act must be authenticated in accordance with the provisions of Rule 44(a)(1), Mont. R. Civ. P.

Sincerely,

MARC RACICOT  
Attorney General