

Clerk of the Court, Fees for Filing Answer. Fees for Filing Separate Answer.

Where defendants make separate appearances in a civil action they must pay \$2.50 for each appearance. Where all the defendants make appearance in the same demurrer or answer one fee \$2.50 covers the appearance of all.

Helena, Montana, Sept. 9, 1907.

Hon. T. E. Collins,
State Examiner,
Helena, Montana.

Your request received for an opinion upon the following question submitted to you by the Clerk of the District Court of Glendive:

“Where there are more than one defendant in an action, and each defendant appears separately, should a fee of \$2.50 be

charged for each separate appearance, or does the fee of \$2.50 cover the appearance of all the defendants?"

Section 4636, Pol. Code, so far as it relates to the above question, reads as follows: "and the defendant, on his appearance, must pay the sum of \$2.50 (which includes all the fees to be paid up to the entry of judgment.)"

Whenever several defendants make appearance at the same time by joining in a demurrer or answer, the fee of \$2.50 covers the appearance of all, for in such case they jointly constitute the defendant as "singular number includes the plural" (See Section 16 Political Code). Where they jointly appear by demurrer they may afterwards file separate answers without paying an additional fee, for by joining in the demurrer they have already made an appearance, and paid the fee which includes all fees to be paid up to the entry of judgment. But where separate demurrer or answer is filed by one or more defendants it is an appearance for him or them alone for which a fee of \$2.50 must be paid, and this separate demurrer or answer does not constitute an appearance for the other defendants who did not join in such demurrer or answer, and default could be taken against them if they relied upon the appearance made in such separate demurrer or answer. Therefore, when the defendants who did not join in the first demurrer or answer file either their demurrer or answer they are in the same position as if no demurrer or answer had been filed by any of the defendant, for they have not as yet made an appearance in the case, and the law says that "the defendant on his appearance must pay the sum of \$2.50" Section 16 of the Political Code provides that "the singular number includes the plural." Applying, in a case where there are more than one defendant, the rule of construction laid down by said Section 16, the phrase quoted above would read "The defendants on their appearance must pay the sum of \$2.50" Thus it is clear that the appearance of one or more of the defendants, and payment of the fee, would not relieve the other defendants of the necessity of making their appearance and of paying a fee for so doing.

You are therefore advised that when all the defendants make their appearance in one demurrer that the fee is \$2.50 for all of them even though they file separate answers afterwards, but if they do not demur and all join in one answer the fee is only \$2.50, but where the appearance of one or more defendants is made in a separate demurrer or answer from the appearance made by other defendants in the case, then for such separate appearance so made an additional fee of \$2.50 must be charged.

In an opinion given by Attorney General Nolan to Mr. T. A. Williams on Dec. 21st. 1897, the same conclusion was reached as that stated above, while in an opinion given by Attorney General Donovan to Mr. Hudnall on October 14, 1902, it was held that but one fee could be charged where separate answers were filed. For the reasons cited above we are of the opinion that the construction given to said Section 4636

by Attorney General Nolan is correct and that fees should be collected in the manner stated above.

Yours very truly,

ALBERT J. GALEN,

Attorney General.