

Clerk of the Court, Fees Of, Complaint in Intervention. Fees, Clerk of the Court, Intervention. Intervenor, Liability Of for Fees. Order of Sale, Foreclosure of Mortgage, Fees. Foreclosure Fees of Clerk.

1. A party who files a complaint in intervention is liable for the payment of a fee as for the commencement of an action.
2. The Clerk of the Court should charge a fee of one dollar for issuing order of sale on foreclosure of mortgage.

Helena, Montana, Oct. 9, 1907.

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

Dear Sir:—

I beg to acknowledge receipt of letter addressed to you by the clerk of the district court of Carbon County submitting certain questions to you, and upon which you ask the opinion of this office. The questions submitted being

1. "Whether or not a fee of five dollars is to be charged a party who has been allowed to file a complaint in intervention?"
2. "Whether a charge of one dollar is to be made for an

order of sale on foreclosure of mortgage?"

Section 4636, Political Code, provides that the clerk must collect from the plaintiff at the commencement of the action the sum of five dollars. Section 589, Code of Civil Procedure, deals with the subject of intervention, but does not specify what fees, if any, must be paid by the intervenor. Where one is made a party to the original action he must then answer or a default judgment can be taken against him and he is forever thereafter barred from contesting any judgment which may be obtained by any party to the action. And the same result is reached where he is subsequently brought into the case as a party defendant by order of the court; for in either event he must answer and is bound by any judgment obtained by the other parties. But where he is not made a party to the action in invitum he is not bound by any judgment obtained or proceedings had in the action and is free to start an independent action. Where then by his own voluntary act he comes into the case and sets up his cause of action by separate pleadings he is in effect a plaintiff. The general principle appears to be that an intervenor "assumes the position of plaintiff against those who are called upon to answer his complaint in intervention and is subject to all the rules which regulate pleadings and practice between the plaintiffs and defendants in similar cases."

17. Am. & Eng. Enc. Law, 180.

Braithwaite vs. Akin, 3 N. D. 365.

You are therefore advised that the clerk of the court should collect a fee of five dollars from the party who files a complaint in intervention.

The subdivision of said section 4636, Political Code, which requires the clerk to collect a fee of one dollar for issuing order of sale on foreclosure of liens does not limit that portion of the section to any particular class of liens. A mortgage is as much of a lien as is a mechanics lien, hence the fee should be collected by the clerk.

Very truly yours,

ALBERT J. GALEN,

Attorney General.