

**Fee, for Appearance. Appearance, Fee for.**

Where a defendant has once appeared and paid his appearance fee he cannot be again charged for making a subsequent appearance. Where two or more defendants combine in the same appearance but one fee can be charged.

January 22nd, 1913.

Hon. Fred E. Hoss,  
State Examiner,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 18th inst., submitting the question:

"As to whether in a case several defendants have made appearance by stipulation and paid a fee of \$2.50 therefor, such defendants can afterwards be charged for filing of demurrer or answer or other pleading in the case?"

Subdivision 2 of Section 3169, R. C., provides that:

"The defendant on his appearance must pay the sum of \$2.50, and appearing by stipulation, is an appearance within the meaning of this statute." State ex rel. Mackey v. District Court (Mont.) 106 Pac. 1068; State ex rel. Beadle v. Justice Court (Mont.) 113 Pac. 294.

The statute in this case, it will be noticed, has reference to "appearance," rather than filing of pleadings, and where a defendant has once appeared and paid his appearance fee, he cannot be again charged for making a subsequent appearance, for the one fee "includes all the fees to be paid up to the entry of judgment," and where two or more defendants combine in the same appearance but one fee can be charged, for in such case, all of the defendants who unite constitute one defendant, for the purpose of such appearance, and no default could therefore be taken against any of the defendants for lack of appearance. This matter was once discussed by this office in an opinion rendered to the Hon. T. E. Collins, state examiner, on September 9th, 1907, and reported in Opinions of Attorney General for 1906-08, page 161-162.

It therefore follows that where the defendants have made a joint appearance and have paid the fee of \$2.50, they cannot thereafter be charged an additional fee, although they may appear separately in the pleadings filed. For, as stated above, the law relates to the appearance, not to the filings of pleadings.

Very truly yours,

D. M. KELLY,  
Attorney General.