

Opinion No. 566**Courts—Court Stenographer—Fees
—Parties—Judgments, Entry of
—Clerk of District Court.**

HELD: The term "each party to the action," in Section 8932, R. C. M., 1921, has reference to the different sides of the controversy rather than to the individuals named as plaintiffs and defendants, and when their interests are so united as to be a unit, but one stenographer's fee can be charged to each side of the controversy; but where separate issues are raised, the defendant or defendants so raising them should pay a separate fee.

Although there are two or more defendants in an action, only one fee of \$5.00 can be charged for entry of judgment for defendants.

July 7, 1934.

You have submitted the following questions: 1. In an action where there is more than one defendant, should each defendant pay the stenographer's fee of \$3.00, provided by Section 8932, R. C. M., 1921? 2. Must each defendant who appears separately pay a judgment fee?

Attorney General Galen in Volume 1, Opinions of the Attorney General, page 156, on the authorities cited therein, held:

"The term 'each party to the action' as used in said section 374, code of civil procedure, has reference to the different sides of the controversy rather than to the individuals named as plaintiffs or as defendants, and where their interests are so united in their relations to each other as plaintiffs or as defendants as to be a unit with respect to the issue or issues presented by their respective sides, then but one stenographer's fee can be charged to each side of the case. But where separate issues of fact are raised by separate pleadings, or otherwise, (if they can be otherwise raised) that require a 'trial by the court or jury', then the party presenting such issue is liable to the payment of a separate stenographer's fee. This latter condition may frequently arise, especially in actions to foreclose liens or to establish claims to water rights, where each answering defendant may set up a separate lien or claim which

requires separate evidence and separate adjudication."

With this opinion we agree. Such construction would seem to be consistent with the object of charging a stenographer's fee. This opinion has not been challenged for over twenty-five years and since the legislature has not seen fit to amend the law, we must accept it as correct and as meeting the intention of the legislature.

Your second question, in my opinion, must be answered in the negative. Since there is only one judgment, regardless of the number of defendants, and since the fee is for "entry of judgment," only one fee of \$5.00 should be charged on entry of judgment in favor of defendants. This, likewise, I am advised, has been the practice of clerks of district courts for many years.