

No. 427

**CLERKS OF DISTRICT COURT, fees of—JUDGMENT, fee
for entering—FEES, clerk of court for entering judgment**

Held: When a general verdict is returned by a jury, it is the ministerial duty of the clerk to enter judgment and the recording of the verdict is the rendition of judgment. A defendant in whose favor judgment is thus entered may not avoid the payment of the fee specified in Section 4918 of the Revised Codes of Montana of 1935 by failing to present a formal judgment to the judge for signing and having such formal judgment filed.

June 20, 1942.

Mr. H. O. Vralsted
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Vralsted:

You have asked this office whether the clerk of the district court must charge the defendant in an action a fee of five dollars under the following facts:

"An action was brought by X against Y to recover on a promissory note. Issues were joined upon the answer without counterclaim. Jury trial was had and the jury returned a verdict in favor of the defendant. The defendant did not have a judgment entered to avoid paying a fee for recording the judgment because the plaintiff is not financially responsible."

Section 4918 of the Revised Codes of Montana, 1935, relating to fees to be charged by clerks of the district courts, provides the following with respect to fees for entry of judgment:

“And if in favor of defendant, the defendant must pay the sum of five dollars If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment.”

In event of a dismissal, the desire of the defendant to have judgment entered is considered; and the inference is, except when the action is dismissed, the required fee shall be paid.

Section 9403 of the Revised Codes of Montana of 1935, provides:

“When trial by jury has been had, judgment must be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.”

Although this statute is merely directory and failure to enter the judgment within the time stated does not affect the validity of a judgment (*Coover v. Davis*, 112 Mont. 605, 608, 121 Pac. (2nd) 985), the recording of the verdict by the clerk under the direction of the court is the rendition of a judgment. In the case of *McIntyre v. Northern Pacific Ry. Co. et al.*, 58 Mont. 256, 265, 191 Pac. 1065, the Montana Supreme Court, construing this section, said:

“Under this provision, the return and recording of a general verdict makes it the ministerial duty of the clerk to enter judgment. In other words, the recording of the verdict under the direction of the court is the rendition of judgment. Thereafter the court has no other function to perform with reference to it, unless it has ordered the case to be reserved for argument or further consideration, or granted a stay of proceedings. The custom of drawing a formal judgment and having the judge sign it is usually observed; but this is not required by the statute. The signature of the judge is not essential to its validity.”

It is my opinion that, when a general verdict is returned by a jury, it is the ministerial duty of the clerk to enter a judgment and the recording of the verdict is the rendition of judgment. The party defendant—in whose favor judgment is thus entered—may not avoid the payment of the fee specified in Section 4918 of the Revised Codes of Montana, 1935, by failing to present a formal judgment to the judge for signing and having such formal judgment filed. The defendant to whom you refer and in whose favor the jury returned a general verdict must pay the \$5.00 fee as prescribed in Section 4918 of the Revised Codes of Montana, 1935.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General