

reference to payment of fee for entry of judgment under the following facts: In an action for the annulment of a marriage wherein the defendant did not appear, the court after hearing the evidence on behalf of the plaintiff, denied relief and ordered the complaint dismissed. The court, you advise, "drew up and filed in the clerk's office a decree as follows:

"IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the petition to annul the marriage, be, and the same is hereby denied and the complaint is dismissed."

This order, or judgment, was, by the judge signed and filed in the records of the clerk. The question presented is, who, if anyone, must pay the cost of the filing of the decree and entry of the judgment above mentioned.

It is your opinion no fee need be paid under the above facts. With this conclusion, I agree.

Section 4918, Revised Codes of Montana, 1935, provides the fees to be collected by the clerk of the court for services and, among others, for the entry of judgment provides:

"On the entry of judgment in favor of the plaintiff, he must pay the additional sum of two dollars and fifty cents;

"And if in favor of the 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." (Emphasis mine.)

Under the facts the judgment was one dismissing the action. The defendant did not request or desire the judgment be filed. The language of the statute is plain and unambiguous and it would seem needs no interpretation under the facts here presented.

It is therefore my opinion no fee may be charged for entry of judgment dismissing an action or proceeding unless the defendant requests such entry.

Opinion No. 71.

**Clerk of Court—Judgment, entry of—
Dismissal—Fee.**

Held: No fee may be charged for entry of judgment dismissing an action or proceeding unless the defendant requests such entry.

June 19, 1943.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Stafford:

I have your opinion rendered to your clerk of the district court with

Sincerely yours,
R. V. BOTTOMLY
Attorney General