

Opinion No. 20.

**Fees—Clerk of Supreme Court—
Remittitur.**

Held: It is the duty of the Clerk of the Supreme Court to transmit a decision to the trial court, without charge, a remittitur, and a

copy of such decision in those cases where it is required to accompany the remittitur. The clerk is not authorized to collect a fee for a copy of decision required to be furnished the attorneys with notice of such decision. The clerk is authorized to charge a fee of fifteen cents per folio for copy of remittitur, if requested by an attorney, and in addition, the sum of one dollar for certificate, if the same be certified.

March 14, 1945.

Mr. Frank Murray
Clerk of Supreme Court
State Capitol
Helena, Montana

Dear Mr. Murray:

You have requested my opinion whether it is the duty of the Clerk of the Supreme Court to transmit the remittitur of a decided case direct to the lower court, and if so, what is the charge to be made and from whom collected.

A public official may not collect any fee for services rendered unless authorized to do so by statute. (State ex rel. Baker v. District Court, 24 Mont. 425, 427, 62 Pac. 688.)

Section 372, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1939, provides for fees the Clerk of the Supreme Court is authorized to collect for services rendered. There is no provision in this section for fees for remittitur, unless it may be said to come within the provision ". . . for making transcripts, copies of papers or record, fifteen cents per folio." However, a remittitur is not a copy of a record, but is an original record.

Section 9753, Revised Codes of Montana, 1935, provides:

"When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk with whom the judgment-roll is filed, or the order appealed from is entered."

Section 373, Revised Codes of Montana, 1935, provides the duties of the Clerk of the Supreme Court, and among others is the following:

". . . and to perform such other duties as may be required of him by the supreme court."

Rule XXI of the Supreme Court provides:

"Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing.

"A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court."

It thus appears it is the duty of the clerk to transmit the remittitur to the lower court, and when the judgment appealed from is reversed or modified and the case remanded for further proceedings other than an entry of a final judgment or order terminating the proceedings in the trial court, the remittitur is to be accompanied by a copy of the decision.

Rule XIV provides that "upon the decision of a cause, notice thereof, together with a copy of the Court's written decision, will immediately be mailed to counsel for each party."

From a reading of these statutes and rules, it cannot be said any authority exists for the clerk to charge a fee for remittitur to the lower court, or a copy of the decision in those cases where such copy is required to accompany the remittitur. Nor does any authority exist for charging a fee for a copy of the decision required to be furnished counsel for both parties. However, it is not required of the clerk to furnish a remittitur to the attorneys, and therefore, if one is requested, the clerk may charge a fee under the provisions of Section 372, which reads ". . . copies of papers or records, fifteen cents per folio." If certified, the Clerk of the Supreme Court may also charge one dollar for such certificate.

It is therefore my opinion it is the duty of the Clerk of the Supreme Court

to transmit to the trial court, without charge, a remittitur, and a copy of such decision in those cases where a copy of the decision is required to accompany the remittitur. It is also my opinion the clerk is not authorized to collect a fee for copy of decision required to be furnished the attorneys with notice of such decision.

The clerk is, however, authorized to charge a fee of fifteen cents per folio for copy of remittitur if requested by an attorney, and in addition, the sum of one dollar for certificate if the same be certified.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General