

tana, 1935, defines a judgment as follows:

"A judgment is the final determination of the rights of the parties in an action or proceeding."
In Section 5769, Revised Codes of Montana, 1935, pertaining to divorce, it is provided in part:

"The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered or revoked at the discretion of the court."

Section 5770, Revised Codes of Montana, 1935, provides as follows:

"Orders respecting custody of children. In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same."

Orders of the court are defined in Section 9772, Revised Codes of Montana, 1935, as follows:

"Every direction of a court or judge, made or entered in writing and not included in a judgment, is denominated an order."

From the above, it is clear the court has continuing jurisdiction of a divorce matter, and exercises this power through orders. By statute, orders are differentiated from judgments. As indicated above, statutory provision is made for fees upon entry of plaintiff's judgment by the clerk, but no provision is made for fees upon entry of an order.

In State ex rel. Baker v. District Court, 24 Mont. 425, 427, the Court states generally:

"Under the familiar rule that no officer may demand a fee for any official service unless clearly authorized to do so, the Clerk of the District Court could not lawfully collect the fee charged in the bill."

It is therefore my opinion the clerk

Opinion No. 4

Clerk of District Court—
FEES—Decree of Divorce—
Divorce Decree.

Held: The clerk of the district court cannot collect a fee on the entry of an order modifying a decree of divorce previously entered after payment of fee.

January 3, 1947.

Mr. Milton G. Anderson
County Attorney
Richland County
Sidney, Montana

Dear Mr. Anderson:

You have submitted the following question to me for an opinion:

"May the Clerk of the District Court collect \$2.50 for the entry of an order . . . of the district court, modifying a decree of divorce previously entered and for which he has already collected the \$2.50 required for the entry of judgment in favor of a plaintiff?"

You state it is your conclusion an additional fee cannot be collected. I am in agreement with you. Fees which may be collected by the clerk of the district court are enumerated in Section 4918, Revised Codes of Montana, 1935. This section provides in part:

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

Section 9313, Revised Codes of Mon-

of the district court cannot collect a fee on the entry of an order modifying a decree of divorce previously entered after payment of fee.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.