

estate, one for the probate of the estate under normal probate procedures, and one petition filed for the termination of joint tenancy?"

The applicable section of the Revised Codes of Montana, 1947, providing for fees chargeable by the Clerk of Court is herein set forth:

"25-233. Fees of Clerk in Probate Proceedings. At the time of filing the petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.

* * * On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of five dollars * * *."

There are no decisions in Montana concerning this precise question, and the problem has been litigated on very few occasions in other jurisdictions. The general rule is that, where compensation to clerks of courts is made by fees for certain designated services, prescribed fees are allowed, the aggregate of which is deemed sufficient for the discharge of all the duties of the office. Separating a single order into separate parts will not justify the clerks increasing the charge, but for each separate step or proceeding in a case in connection with which the clerk performed any service and for which services compensation is provided by law, he is entitled to charge a separate fee except when a gross fee is provided by statute. *Marsh vs. U.S.*, 109 Fed. 236.

In the case cited above, the clerk was allowed to charge for filing the return and the verdict in a criminal case and to charge separately for each filing.

Section 25-233, *supra*, provides that at the time of filing the letters testamentary, of administration, or guardianship, the clerk must collect a filing fee.

The section further provides that a fee must be paid the clerk on the filing of a petition to determine heirship or title to an estate.

It must then be determined whether a petition filed for the termination of joint tenancy is a petition to determine heirship or title to an estate. Section

Opinion No. 48.

Clerks of Court—Filing Fees—Separate Petitions—Letters of Administration or Testamentary—Termination of Joint Tenancies.

HELD: The clerks of court must charge separate fees for the filing of Letters of Administration or Testamentary, and for the filing of a petition to terminate a joint tenancy even though both petitions arise in the same estate.

November 13, 1953.

Mr. Henry I. Grant, Jr.
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

You have requested my opinion on the following matter:

"Does the Clerk of the District Court have the authority to collect two separate and distinct fees for the filing of two petitions in the same

91-4321, R.C.M., 1947, plainly states that a termination of a joint tenancy determines the title to property held in joint tenancy.

The words, heirship or title, are sufficiently broad to include not only the petition to determine heirship and interest in accordance with Section 91-3801, R.C.M., 1947, but also the petition to determine title in accordance with Section 91-4321, supra.

It is, therefore, my opinion that the Clerk of the Court must charge separate fees for the filing of letters of administration or testamentary and for the filing of a petition to terminate joint tenancy, even though both petitions are filed in the same estate.