

VOLUME NO. 35**Opinion No. 94**

COUNTY CLERKS OF COURT—Filing fees, multiple parties; FEES—Clerk of district court, multiple parties; OFFICES AND OFFICERS—County clerk of court, filing fees, multiple parties. Sections 25-232 and 25-233, R.C.M. 1947.

HELD: Section 25-232, R.C.M. 1947, permits the clerk of the district court to collect only one filing fee when multiple plaintiffs or defendants file a single complaint or answer or motion to dismiss respectively, and section 25-233, R.C.M. 1947, allows the clerk of court to collect only one filing fee when multiple petitioners file a single petition for letters testamentary, or

letters of administration or guardianship, or when multiple parties file a single petition to contest a will.

August 6, 1974

Mr. Arthur W. Ayers, Jr.
Carbon County Attorney
County Attorney's Office
Red Lodge, Montana 59068

Dear Mr. Ayers:

You have requested my opinion on the following questions:

1. Whether the clerk of the district court must collect \$10.00 from each plaintiff when there are multiple plaintiffs filing a single complaint under the provisions of section 25-232, R.C.M. 1947, and whether each defendant under said section must pay \$5.00 when there are multiple defendants filing a single answer or motion to dismiss.
2. Whether each petitioner for letters testamentary, or letters of administration or guardianship, and each contestant of a will must pay the \$10.00 fee when there are multiple petitioners or contestants filing a single petition pursuant to section 25-233, R.C.M. 1947.

Section 25-232, Revised Codes of Montana, 1947, requires the clerk of the district court to collect a \$10.00 filing fee from a plaintiff at the commencement of each action, and a defendant must pay a \$5.00 filing fee upon his initial appearance in the lawsuit. Section 25-233, *supra*, requires the clerk of the district court to collect a \$10.00 filing fee from a petitioner seeking letters testamentary or letters of administration or guardianship. This section also requires the contestant of a will to pay the clerk of court a \$10.00 fee at the time of filing his petition against the will.

These filing fees are administrative in nature and are intended to reimburse the county for expenses incurred in filing the above-mentioned pleadings. The fact that multiple parties may be entered on a single pleading is irrelevant to the administrative costs of filing such pleadings because multiple parties do not impose any substantially increased burdens on the clerk of court.

As a general rule a clerk of court may not charge a fee for particular services rendered in the absence of specific statutory authority. **State ex rel. Atlantic Peninsular Holding Co. v. Butler**, 121 Fla. 417, 164 So. 128 (1935). The Supreme Court of Montana has also held that "no officer may demand a fee for any official service unless clearly authorized to do so." **State ex rel. Baker v. District Court**, 24 Mont. 425, 62 P. 688 (1900). Since sections 25-232 and 25-233, *supra*, fail to expressly provide for additional filing fees for multiple party pleadings, I conclude that the clerk of court is not authorized to assess an additional fee for each party named in the pleading.

THEREFORE, IT IS MY OPINION:

Section 25-232, R.C.M 1947, permits the clerk of the district court to collect only one filing fee when multiple plaintiffs or defendants file a

single complaint or answer or motion to dismiss respectively, and section 25-233, R.C.M. 1947, allows the clerk of court to collect only one filing fee when multiple petitioners file a single petition for letters testamentary, or letters of administration or guardianship, or when multiple parties file a single petition to contest a will.

Very truly yours,

ROBERT L. WOODAHL
Attorney General