

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 56

COUNTY OFFICERS AND EMPLOYEES - Fees charged by district court clerk for petitions for legal separation and dissolution;

COUNTY OFFICERS AND EMPLOYEES - Fee charged by district court clerk when decree of legal separation is converted to decree of dissolution;

FEES - Fees charged by district court clerk for petitions for legal separation and dissolution;

MARRIAGE AND DIVORCE - Fees charged by district court clerk for petitions for legal separation and dissolution;

MARRIAGE AND DIVORCE - Fee charged by district court clerk when decree of legal separation is converted to decree of dissolution;

MONTANA CODE ANNOTATED - Sections 1-2-101, 25-1-201, 25-1-201(1)(a), 40-4-103, 40-4-103(2) and (3), 40-4-105, 40-4-105(1) and (3), 40-4-108.

HELD: The district court clerk may not charge a fee for filing a petition for dissolution under section 25-1-201(1)(a), MCA, when a motion is made under section 40-4-108(2), MCA, to convert a decree of legal separation to a decree of dissolution.

13 January 1988

Larry J. Nistler
Lake County Attorney
Lake County Courthouse
Polson MT 59860

Dear Mr. Nistler:

You requested my opinion on the following question:

When a decree of legal separation is converted to a decree of dissolution under section 40-4-108, MCA, is the district court clerk required to charge a fee of 100 for filing a petition for dissolution of marriage?

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Section 25-1-201, MCA, sets forth the various fees of the clerk of the district court. It provides in pertinent part:

(1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$60; for filing a complaint in intervention, from the intervenor, \$60; and for filing a petition for dissolution of marriage, a fee of \$100[.] [Emphasis added.]

Under this statute, a fee of \$60 must be collected for filing a petition for legal separation, and a fee of \$100 for a petition for dissolution of marriage.

Section 40-4-108, MCA, provides a method for obtaining a decree of dissolution of marriage after a decree of legal separation has been issued. Under this section, at least six months after a decree of legal separation has been entered, the court, on motion of either party, shall convert the decree of separation to a decree of dissolution of marriage. The question is whether the motion is a "petition for dissolution" filed at the "commencement" of an action or proceeding under section 25-1-201(1)(a), MCA.

Under sections 40-4-103(2) and (3), MCA, the petition is the initial pleading for a dissolution or legal separation and is followed by a "response." Under section 40-4-105, MCA, the petition must be verified and must contain specific information enumerated in that section. The petition must be served according to the rules of civil procedure. § 40-4-105(3), MCA. These statutes provide the exclusive method for commencing an action for a legal separation or dissolution.

The procedure in section 40-4-108(2), MCA, does not entail commencement of a new action. The motion for converting the decree is a continuation of the initial cause of action for legal separation. The motion certainly cannot be equated with a verified petition in sections 40-4-103 and 40-4-105, MCA. None of the enumerated information in section 40-4-105(1), MCA, is included in the motion because the information is already contained in the petition for legal separation. Moreover, no time for a responsive pleading to the motion is provided for in the statute because the court has no discretion to deny the motion. See Commissioner's Note to section 40-4-108(2), MCA.

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It is evident, therefore, that the Legislature intended to provide a simple procedure for converting a legal separation into a dissolution without the necessity of proceeding through a separate action.

Section 25-1-201(1)(a), MCA, requires payment of filing fees "for filing a petition for dissolution of marriage." As I have already concluded, a motion under section 40-4-108, MCA, is not a petition for dissolution. I cannot construe the section to require payment of a filing fee for a motion for conversion, where the Legislature did not so provide. § 1-2-101, MCA.

THEREFORE, IT IS MY OPINION:

The district court clerk may not charge a fee for filing a petition for dissolution under section 25-1-201(1)(a), MCA, when a motion is made under section 40-4-108(2), MCA, to convert a decree of legal separation to a decree of dissolution.

Very truly yours,

MIKE GREELY
Attorney General