

VOLUME NO. 43

OPINION NO. 3

CLERKS - Collection of appearance fee by clerk of court in URESA action;
COUNTY OFFICERS AND EMPLOYEES - Collection of appearance fee by clerk
of court in URESA action;
FEES - Collection of appearance fee by clerk of court in URESA action;
MONTANA CODE ANNOTATED - Title 40, chapter 5, part 1; sections 25-1-
201, 25-10-404, 40-4-124, 40-5-110, 40-5-116;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 136
(1978).

HELD: The respondent in a URESA action is required to pay a \$40
appearance fee. He or she may be excused from such payment
upon filing an affidavit in accordance with section 25-10-404,
MCA.

February 10, 1989

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Robinson:

You have requested my opinion on the following question:

Is the respondent in a URESA action required to pay the \$40 appearance fee?

The payment of clerical fees for civil actions is governed by section 25-1-201, MCA, and states in pertinent part:

The clerk of the district court shall collect the following fees:

....

(b) from each defendant or respondent, on his appearance, \$40[.]

The rules of statutory construction require me to interpret the statute by the clear meaning of the language. See *State v. Austin*, 42 St. Rptr. 1186, 704 P.2d 55, 57 (1985). This statute clearly requires a fee of every respondent or defendant in any civil action. See 37 Op. Att'y Gen. No. 136 at 577 (1978) ("[t]he clerk of the district court must collect from each and every defendant or respondent a \$10 fee on their initial appearance").

The Uniform Reciprocal Enforcement of Support Act (1968) (URESAs), Tit. 40, ch. 5, pt. 1, MCA, provides interstate and intrastate remedies for enforcement of court-ordered support of dependants. These proceedings are remedial, and civil in nature. §§ 40-5-110 (duties of support enforceable by proceeding for civil contempt), 40-4-124 ("[i]n any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court"), MCA; *Childers v. Childers*, 198 S.E.2d 485, 488 (N.C. Ct. App. 1973); *Burney v. Vance*, 246 N.E.2d 371, 373 (Ohio 1969).

URESAs itself contemplates that the obligor (the respondent) may be required to pay clerical fees. Section 40-5-116, MCA, provides:

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of

pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee. [Emphasis added.]

It is also significant that URESA was enacted in Montana in 1969. Section 25-1-201(1)(b), MCA, was enacted long before. See 1917 Mont. Laws, ch. 88, § 1. When enacting URESA, the Legislature presumably was aware of the fee requirements in section 25-1-201, MCA. See Thiel v. Taurus Drilling Ltd., 42 St. Rptr. 1520, 710 P.2d 33, 36 (1985). Thus, if the Legislature had intended to exclude respondents in a URESA proceeding from the appearance fee requirement it would have done so.

You should be aware that even though the respondent is required to pay the appearance fee, he or she may be excused from such payment if he or she is financially unable to pay. Section 25-10-404, MCA, provides that any person shall be excused from advance payment of court fees upon the filing of an affidavit stating that he or she has a good cause of action or defense, and is unable to pay the costs.

Lastly, I wish to stress that the individual clerk of court's procedure in obtaining appearance fees and affidavits to excuse the respondent from such fees in a URESA action should not be so complicated or time-consuming that it frustrates the URESA proceeding itself. The primary purpose of a URESA proceeding is to enforce the obligor's duty to support his or her dependants. Often the obligor is an unwilling party, is difficult to locate, and appears at the courthouse minutes before the URESA hearing is scheduled to begin. The departments within the courthouse should be encouraged to cooperatively establish a routine for parties to URESA actions to be quickly processed and made available for the court proceedings. Such cooperative effort will facilitate speedy resolutions to those actions.

THEREFORE, IT IS MY OPINION:

The respondent in a URESA action is required to pay a \$40 appearance fee. He or she may be excused from such payment upon filing an affidavit in accordance with section 25-10-404, MCA.

Sincerely,

MARC RACICOT
Attorney General