

La. Atty. Gen. Op. No. 85-659 (La.A.G.), 1985 WL 203138

Office of the Attorney General

State of Louisiana

Opinion No. 85-659

September 4, 1985

*1 10 ... CLERKS OF COURT—Compensation & Fees; Powers & Duties; General

15 ... COURTS

46-A .. FEES & COSTS

56 ... JUDGES

Relative to Act 63 of 1985 concerning collection of \$10 fee by clerks of court for Judges' Supplemental Compensation Fund: (1) "Every civil filing" means filing of civil claims or causes of action; (2) Judges Supplemental Compensation Board has legal authority to administratively identify sources of the Fund; (3) \$10 fee applies to claims filed in small claims division despite \$25 limit supplied by [R.S. 13:5202](#); (4) Where claim is filed by pauper or by state, state agencies or political subdivisions, no \$10 fee is collected.

[R.S. 13:10.3](#)

[R.S. 13:5202\(A\)](#)

Act 63 of 1985

[R.S. 13:4521](#)

[CCP Art. 5181](#)

Act 312 of 1985

Honorable Robert L. Stewart
Clerk of Court
Parish of Rapides
Post Office Box 952
Alexandria, Louisiana 71301

Dear Mr. Stewart:

This is to acknowledge your letter of August 22, 1985, in which you requested an opinion of the Attorney General's Office relative to Act 63 of 1985 on the following issues:

1. When is the \$10 fee for the Judges compensation to be charged as a cost? Upon filing charged to the plaintiff? At some other time charged to some other party?
2. In the event of a pauper case being filed, does the charge go against the pauper or some eventual party in the suit?
3. What is meant by "every civil filing"?

You have also referred to an undated letter from the Honorable Stephen A. Duczer, Judge, Chairman of the Judges' Supplemental Compensation Board (Board), addressed to all clerks of court, and you ask whether it is permissible for the Board to formulate policy concerning the collection of the \$10 fee.

Act 63, which will become [R.S. 13:10.3](#) when the laws become effective on September 6, 1985, provides for the collection of a \$10 fee by the clerks of court on “every civil filing”.

The original letter of Judge Duczer is to be supplemented by the issuance of another letter which is dated September 3, 1985. That latter communication concludes as follows:

“The words ‘every civil filing in the offices of each clerk’ as used in Act 63 should be construed to mean ‘every civil claim filed in the office of each clerk of court’, and the word ‘claim’ should be construed to mean ‘cause or causes of action asserted in any one pleading filed by any party involved in a case’.

Accordingly, any litigant would be required to pay the additional filing fee for any new and additional claims filed by him in the case. The additional fee would apply to petitions, reconventional demands, cross-claims, interventions and third party demands. Also, the additional fee would be due in those cases sometimes docketed under the same number wherein a litigant subsequently seeks: (a) deficiency judgment following seizure and sale under executory process, (b) partitions of community property following rendition of a judgment of separation or divorce, or (c) divorce after a judgment of separation.”

*2 The fact of your inquiry as to the meaning of the term “every civil filing” is evidence that there is an ambiguity present, as to the meaning of those words, and what the Legislature intended by enacting those words. In order to discern legislative intent, we have consulted with the Honorable Ralph Miller, State Representative and prime sponsor of the bill that became Act 63, and with Judge Duczer who represented the Louisiana Judiciary in their efforts to secure passage of the bill. Representative Miller has indicated to this office that he is in agreement that the Board's statement, as quoted above, is in substantial compliance with legislative intent.

Basically, the judiciary had indicated to the Legislature that between \$2 million and \$2.5 million would be required to provide a 10% increase in supplemental compensation to judges. Statistics gathered by the Judicial Administrator's Office reflect that approximately 200,000 civil suits are filed each year. If the strict letter of Act 63 were followed, and the clerks of court would collect the \$10 fee on every document filed in each civil action, such would result in revenues far in excess of the amounts required to fund the 10% compensation supplement.

It would be a harsh construction of the terms of the Act to require the payment of the fee on each and every civil document that was filed. Accordingly, we adopt the Board's statement that the \$10 fee is collectible for “every civil claim filed in the office of each clerk of court”. We also adopt the Board's above quoted conclusions as to the breadth of claims which are subject to the fee.

It is our further belief that the Board's authority to administer the Fund is inclusive of authority to reasonably identify the sources of the Fund.

Although the question was not posed in your letter, we note that there is an additional issue concerning a potential conflict between Act 63 and Act 312. Act 312 specifically prohibits the charging of more than \$25 for the costs in a small claims matter, where the amount of the demand does not exceed \$1,500.00. The possible conflict is whether the \$10 fee is charged despite the apparent Act 312 \$25 limit, where both acts were adopted during the same session.

As to the question regarding whether Act 312 is in conflict with Act 63, i.e., is the \$10 filing fee applicable to filings in small claims actions, there is a problem, as the \$25 limit imposed by [R.S. 13:5202\(A\)](#) was first adopted in 1983 by Act 211, and

the substance of the 1985 amendment to Section 5202(A) was only to make it clear that in a small claims case, no additional fee would be paid to the Secretary of State where pleadings are required to be served on that office. There was no change in the \$25 limit. Thus, the latest expression of legislative will is Act 63. This reasoning results in a conclusion that the \$10 fee is chargeable on the filing of claims in a small claims division.

To summarize our conclusions:

- *3 1. “Every civil filing” means the filing of civil claims or causes of action.
- 2. The Judges' Supplemental Compensation Board has the legal authority to administratively identify the source of the Fund.
- 3. The \$10 fee applies to claims filed in a small claims division despite the apparent \$25 limit supplied by [R.S. 13:5202](#).
- 4. Where a claim is filed in forma pauperis and where claims are filed by the state, state agencies and political subdivisions, no \$10 fee may be collected from those claimants, although a non-exempt claimant would be subject to paying the fee. ([R.S. 13:4521](#), C.C.Pro. [Article 5181](#)).

We trust that the above will sufficiently answer your inquiry.

Very truly yours,

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