

47 Op. Att'y Gen. No. 14

CLERKS - Authority to collect \$120 fee for filing petition for modification of child support;
COUNTY OFFICERS AND EMPLOYEES - Authority of clerk of district court to collect \$120 fee for filing petition for modification of child support;
FEES - Authority of clerk of district court to collect \$120 fee for filing petition for modification of child support;
MONTANA CODE ANNOTATED - Title 40, chapter 4; sections 25-1-201, 40-4-204, -208, -219, -233, -234.

HELD:

Montana Code Annotated § 25-1-201(1)(a) (1997) does not authorize the clerk of the district court to collect a \$120 fee, as the statutory fee for filing a "petition for a contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208.

May 4, 1998

Mr. Brant Light
Cascade County Attorney
Cascade County Courthouse
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

You have requested my opinion on the following question:

Does Mont. Code Ann. § 25-1-201(1)(a) (1997) authorize the clerk of the district court to collect a \$120 fee, as the statutory fee for filing a "contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208?

The fees to be collected by the clerk of the district court are set forth in Mont. Code Ann. § 25-1-201(1) (1997). Subsection (1)(a) of that statute authorizes a fee of \$120 for filing a petition for a contested amendment of a final parenting plan. There is no authorization for collecting a fee upon the filing of a petition to modify child support in an existing cause.

Your question is whether the clerk may collect \$120 for filing a petition to modify child support in an existing cause under the authority of subsection (1)(a). The answer to this question depends on whether a petition to modify child support is, in fact, a "petition for a contested amendment of a final parenting plan." For the reasons discussed below, I conclude that it is not.

In 1997, the Montana Legislature mandated the use of a parenting plan in all proceedings initiated under Mont. Code Ann. title 40, chapter 4, involving a child. The plan is intended to address the respective parenting responsibilities of the parties, including provision for the child's daily needs, education, and contact with siblings and other persons, as well as other criteria as set forth in Mont. Code Ann. § 40-4-234(1) and (2). The function of the plan is to provide for the child's best interests and anticipate his or her long-term needs in a way that minimizes the need for future amendment. Mont. Code Ann. § 40-4-233(4). Pursuant to Mont. Code Ann. § 40-4-234(1) (1997), a final parenting plan must be incorporated into any final decree.

The parenting plan may or may not address the issue of child support. In accordance with Mont. Code Ann. § 40-4-234(2)(d), the parties may include in the plan provisions for "finances to provide for the child's needs," however there is no requirement that the parties specify their respective child support obligations therein. Those obligations are imposed by the district court based on a number of factors. The parenting plan is just one of the factors the district court considers when deciding the respective child support obligations of the parties. Mont. Code Ann. § 40-4-204(2)(g) .

There are separate procedures for modifying a child support obligation and amending a final parenting plan. Modification of the decree pertaining to child support is governed by Mont. Code Ann. § 40-4-208. Amendment of a final plan, on the other hand, is governed by Mont. Code Ann. § 40-4-219. The clerk of the district court in Cascade County has proceeded under the assumption that modification of child support is accomplished under Mont. Code Ann. § 40-4-219 or -234; however, that is not the case.

It is clear from these statutes that child support is an issue apart from the parenting plan, and that modification of child support is a separate procedure which does not necessarily entail amendment of the plan. While the plan may contemplate child support or provide information relevant to a determination of child support, the obligation to pay child support arises from the decree, which is subject to modification under Mont. Code Ann. § 40-4-208. In this respect, a petition to modify child support is not a petition for contested amendment of the parenting plan. It is therefore inappropriate for the clerk of court to charge a \$120 filing fee on the basis that a petition for modification is a "petition for a contested amendment of a final parenting plan."

It is notable that Mont. Code Ann. § 40-4-219 expressly provides for the amendment of a parenting plan and does not mention the modification of child support. The two petitions are statutorily distinct, and the standards and guidelines for modification are different. If the legislature had wanted the clerks to collect an extra fee for child support modification proceedings, it could have expressly provided for such a fee. The fact that it did not is evidence of the legislature's intent not to impose the fee on the filing of a petition to modify child support.

This result is consistent with legislative policy reflected in Mont. Code Ann. § 40-4-233(4), which contemplates that a parenting plan will anticipate the child's changing needs to minimize the need for future amendment of the final plan. The legislature reinforced this policy when it imposed a \$120 filing fee on such action, thereby deterring court involvement in every dispute over parenting responsibilities. See Mont. Code Ann. § 40-4-233(6). Child support, however, is another matter. The fee was not intended to deter legitimate requests for modification when the circumstances set forth in Mont. Code Ann. § 40-4-208 are present.

THEREFORE, IT IS MY OPINION:

Montana Code Annotated § 25-1-201(1)(a)(1997) does not authorize the clerk of the district court to collect a \$120 fee, as the statutory fee for filing a "petition for a contested amendment of a final parenting plan," upon the filing of a petition to modify child support in an existing cause pursuant to §§ 40-4-204 and -208.

Sincerely,

JOSEPH P. MAZUREK

Attorney General

jpm/ja/mlr