

48 Op. Att'y Gen. No. 1

CLERKS - Authority to collect \$20 fee to be applied to payment of salary of court reporter;
COUNTY OFFICERS AND EMPLOYEES - Authority of clerk of district court to collect \$20 fee to be applied to payment of salary of court reporter;
FEES - Authority of clerk of district court to collect \$20 fee to be applied to payment of salary of court reporter;
MONTANA CODE ANNOTATED - Title 25, chapter 1; sections 7-4-2511, 25-1-202;
MONTANA CONSTITUTION - Article VII, section 4(2);
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 72 (1990), 42 Op. Att'y Gen. No. 56 (1988), 40 Op. Att'y Gen. No. 62 (1984), 37 Op. Att'y Gen. No. 128 (1978).

HELD:

A district court clerk must charge and collect the court reporter filing fee provided under Mont. Code Ann. § 25-1-202 when a civil appeal has been filed from a city or justice court.

February 18, 1999

Mr. Thomas R. Scott
Beaverhead County Attorney
2 South Pacific, CL #2
Dillon, MT 59725-2713

Dear Mr. Scott:

You have asked my opinion on the following question:

Must a district court clerk charge and collect the court reporter filing fee provided for under Mont. Code Ann. § 25-1-202 (1997) when an appeal has been filed from a city or justice court?

In answering your question, I look first to the plain language of the statute. Stratemeyer v. Lincoln County, 276 Mont. 67, 915 P.2d 175 (1996) (a statute is to be construed according to its plain meaning). The statute reads in whole:

Fee for court reporter. In addition to other filing fees, a fee of \$20 must be paid to the clerk of the district court at the time of filing a civil action in the district court. The fee must be paid by the clerk into the treasury of the county where the action is filed, to be applied to the payment of the salary of the reporter. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements.

Mont. Code Ann. § 25-1-202 (1997). In my prior opinions on fee collection provisions, I applied a narrow construction. See 43 Op. Att'y Gen. No. 72 at 276 (1990); 42 Op. Att'y Gen. No. 56 at 215 (1988); 40 Op. Att'y Gen. No. 62 at 248 (1984); 37 Op. Att'y Gen. No. 128 at 546 (1978). Statutes authorizing a clerk to collect fees for services are strictly construed and will not be extended beyond their letter. 43 Op. Att'y Gen. No. 72 at 278 (quoting 14 C.J.S. Clerk of Court § 10).

Your question centers on whether the filing of a civil action in district court includes the filing of an appeal from a justice's or city court. A "civil action" is an action one party prosecutes against another to enforce or protect a right, or to redress or prevent a wrong. Mont. Code Ann. § 27-1-103(2) (1997); see also Black's Law Dictionary 245 (6th ed. 1990) (a "civil action" is any action brought to enforce, redress, or protect private rights). The actions that city and justices' courts have limited jurisdiction to hear include civil actions. Mont. Code Ann. § 3-10-111 (1997) (incorporating the definition of civil action at Mont. Code Ann. § 27-1-103(2) (1997) by stating that provisions of title 27 of the code are applicable to justices' courts and their proceedings); see also Mont. Code Ann. § 3-10-301 (1997) (enumerating the types of civil actions falling under the jurisdiction of justices' courts); Mont. Code Ann. § 3-11-102 (1997) (stating that city court jurisdiction is concurrent with that of justices' courts). The statute governing appeals from

city and justices' courts expressly identifies "civil actions" as the types of cases that an aggrieved party may appeal to seek redress from a judgment rendered by a city or justice's court. Mont. Code Ann. § 25-33-102 (1997) ("Any party dissatisfied with the judgment rendered in a civil action in a city or justice's court may appeal therefrom to the district court of the county at any time within 30 days after the rendition of the judgment."). Generally, an appeal is a resort to an upper court or tribunal. State ex rel. School Dist. No. 8 v. Lensman, 108 Mont. 118, 124, 88 P.2d 63, 65 (1939). It follows that parties aggrieved by the judgment of a justice's or city court continue to seek to enforce, redress, or protect their rights by obtaining a more favorable ruling by the district court. See, e.g., State v. Morales, 284 Mont. 237, 244, 943 P.2d 1286, 1291 (1997) (Nelson, J., specially concurring, stating that in criminal proceedings, limited jurisdiction court and district court trials are simply different phases of one systematic process). In sum, the plain meaning of "civil action" includes appeals from a justice's or city court filed in district court.

The plain intent of Mont. Code Ann. § 25-1-202 supports the treatment of civil appeals as other civil actions filed in the district court. The statute requires persons wishing to file a civil action in district court to pay \$20 to the clerk to be applied to the court reporter's salary. With few exceptions, litigants who appeal from justices' or city courts try their cases anew in the district court. Mont. Code Ann. § 25-33-301(1) (1997). Because a justice's or city court appeal results in a new trial and because the district court is a court of record, the necessity of a court reporter is obvious. Thus, the treatment of an appeal from city or justice's court as any other civil action filed in a district court serves the legislature's plain intent under § 25-1-202 that the \$20 charge at the time of a filing go toward paying a court reporter's salary.

Additional support for treating appeals as other civil actions comes from the former version of the statute. The former version of Mont. Code Ann. § 25-1-202 required payment of a fee that applied to the reporter's salary "in every issue of fact in civil actions tried before the court or jury." Rev. Codes Mont. (1947) § 93-1905. Historically, it appears that the statute's intent was to require a fee for any civil proceeding tried in district court, whether the case started in district court or began as an appeal from a justice's or city court.

The remaining question is whether Mont. Code Ann. § 25-1-202 mandates that clerks charge and collect the court reporter filing fee. Because of the use of the term "must," Mont. Code Ann. § 25-1-202 establishes that the fee a litigant pays to a district court clerk is mandatory. See Montco v. Simonich, 285 Mont. 280, 287, 947 P.2d 1047, 1051 (1997) (stating the statutory term "must" is mandatory rather than permissive). While Mont. Code Ann. § 25-1-202 does not expressly authorize that clerks charge and collect the \$20 court reporter fee, the statutory duty of clerks clearly requires them to do so. See Mont. Code Ann. § 7-4-2511(1) (requiring each salaried county officer to charge and collect all fees allowed by law, paid or chargeable in all cases, except as provided in § 25-10-403 which governs prepayment of fees). Reading the first two sentences of Mont. Code Ann. § 25-1-202 leads to the same conclusion. The \$20 fee that a clerk must pay into the county treasury is the same \$20 fee paid by persons wishing to file a civil action in district court. Both sentences employ the mandatory term "must." It follows that the statute not only authorizes, but mandates, a clerk to charge and collect the \$20 fee toward a court reporter's salary.

THEREFORE, IT IS MY OPINION:

A district court clerk must charge and collect the court reporter filing fee provided under Mont. Code Ann. § 25-1-202 when a civil appeal has been filed from a city or justice court.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/cmfdm