

Opinion No. 24-3785

September 13, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

What Fees Are Chargeable for Docketing J. P. Judgments in District Court.

OPINION

{*169} Your question is based upon the inquiry of Mr. Safford as follows:

"I have had sent me a certified copy of the Justice of the Peace records under Sec. 3084 of the 1915 code and from reading the section I do not know how much should be charged. I would thank you for a ruling as to what the fee should be."

To begin with, we offer the prediction that, under the present state of the law, no opinion will ever be offered in response to this question which may not be open to seemingly just criticism.

The County Clerk is required to keep a Civil Docket, a Judgment Docket. -- Secs. 1405, 3079, 3081, Code 1915.

Sec. 3084 Code 1915 provides for the County Clerk's "docketing" Justice of Peace judgments "in the same manner" that they are docketed in the District Court. To comply with this requirement, it becomes necessary to docket such judgments on the Civil Docket in conformity with Sec. 1405 Code 1915. For this service, the County Clerk is entitled to charge \$ 7.50, conformable to the requirements of the second paragraph of Sec. 1 Chap. 149, S. L. 1919. The Civil Docket, as provided by said Sec. 1405 shall "show in convenient form the names of the parties in each case, the names of their attorneys or solicitors, the nature of the case, the filing of {*170} each paper, the appearance of parties, a brief statement of every return, motion, rule, order, judgment, or other proceeding, with references to pages of the journal or record where each entry made can be found, the costs taxed for each item, all costs received, with columns for clerk's and sheriff's costs and for witnesses' fees, so that said docket will show in brief, an outline of the whole case from its beginning, and serve as an index to the journal, and as a fee book. Such dockets are records of the court." The particularly essential features of the Civil Docket showing in connection with Justice of the Peace judgments are: The names of the parties, attorneys, the nature of the case, the filing of each paper (the judgment and execution under the provisions of said Section 3084), a brief statement of every return, the judgment, or other proceeding, and all costs received.

The next step in connection with such judgments is the entry on the Judgment Docket in conformity with said Section 3079. This entry is made without charge as shown by

Section 4 of said Chap. 149. The Judgment Docket, according to said Section 3081, shall show "the names of the parties, the number and nature of the case, the court in which judgment was rendered, the date of judgment, amount of damages, amount of costs, total amount of judgment, date of docket, attorney for creditor, issuance and return of executions if any, and satisfaction of judgment when paid."

We assume such judgment creditor may proceed further, under the provisions of said Section 3079, and procure "a transcript of the docket." No fees appear to be allowable for the making and certifying of this transcript, the first clause of Sec. 3082 Code 1915 being impliedly repealed by said Sec. 4 Chap. 149.

The judgment creditor, however, under the provisions of Secs. 3079 and 3080 Code 1915, may proceed further still and procure the filing and recording of the "transcript of docket." Apparently this latter filing and recordation has no connection with the Court records and the fee of fifty cents, fixed by the latter clause of said Section 3082 is, therefore, chargeable.

Then, the total fee collectible, in such cases, is \$ 8.00. This presupposes the fact that the County Clerk is required to record the transcript of docket. If the judgment be only docketed, the fee is \$ 7.50 only.

The question naturally arises as to whether or not this procedure involves the docketing of a "cause." We have considered this question and have examined the case of *Bittencourt v. Gordon*, 36 Pac. 498, with the dissenting opinion of Justice Hoyt. However, we see no other reasonable conclusion. The question may serve as a subject for a rather interesting test case.