

## **Opinion No. 61-105**

October 13, 1961

**BY:** OPINION OF, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** Mrs. Mary E. Steinberger, District Court Clerk, Sixth Judicial District, Silver City, New Mexico

### **QUESTION**

#### QUESTIONS

1. What is the fee for docketing appeals from justice of the peace courts in civil matters?
2. Since Sec. 16-3-53, N.M.S.A., 1953 Comp., as amended, specifically refers to "civil matters", what charges are proper in docketing in the district court criminal appeals from justice of the peace courts?

#### CONCLUSIONS

1. \$ 6.25
2. \$ 2.50

### **OPINION**

#### ANALYSIS

Attorney General's Opinion No. 61-74, recently issued by this office, August 11, 1961, dealt with your first question set out above and concluded that the correct fee to be paid to the clerks of the district court upon docketing civil cases appealed from a justice of the peace court is Six Dollars and Twenty-five Cents, (\$ 6.25). We are enclosing a copy of that opinion for your use.

In respect to your second question, it should be noted initially that Sec. 16-3-53, N.M.S.A., 1953 Comp., as amended, refers specifically to the fees allowable to clerks of the district courts in "civil matters". An examination of the provisions of such section and the title to such legislation as originally enacted and as subsequently amended, indicates that this section has application to fees of the district court collectible in civil cases only.

A close study of other applicable statutes in New Mexico indicates that four other statutory provisions allude to the amount chargeable in the district court as docket fees upon taking an appeal from a justice of the peace court. Thus, your second question necessitates a determination as to which specific statutory section is controlling in

respect to the amount of docket fees payable to the district court clerk in justice of the peace criminal appeals.

Section 41-21-3, N.M.S.A., 1953 Comp., also refers to the fees which clerks of the district court are entitled to receive for docketing costs filed therein and such section also enumerates other specific fees. This section was originally enacted in 1889 and insofar as it relates to the fees chargeable in civil matters, it is superseded by the provisions of Sec. 16-3-53 and 16-3-54, N.M.S.A., 1953 Comp. With the exception of the amount specified therein payable as a docket fee, this section is still in effect with respect to such fees that may be charged in criminal cases. The amount specified in this latter referred to section for docketing justice of the peace appeals in criminal cases, has, however, been superseded by later legislation.

Three other sections of the New Mexico statutes specifically relate to the fees of district court clerks for docketing appeals taken from justice of the peace courts. These sections are Sec. 36-18-5, 36-18-9, and 36-18-24, N.M.S.A., 1953 Comp.

Section 36-18-5, supra, refers to the clerk's fees for docketing appeals in the district court in instances "as provided for in Sections 79-503 and 79-504 of the 1929 New Mexico Statutes Annotated". (36-18-3, 36-18-4, N.M.S.A., 1953 Comp.) In our prior Attorney General's Opinion No. 315, dated November 19, 1931, however, we previously held this section to be inapplicable in determining the amount payable as docket fee for criminal cases appealed from justice of the peace courts, since under **Territory v. Lowitski**, 6 N.M. 235, 27 P. 496, the sections referred to therein were construed to apply to civil cases only.

Section 36-18-24, N.M.S.A., 1953 Comp., is limited in its application to cases wherein an appeal is taken in a district court and wherein the justice of the peace has wrongfully refused to grant an appeal to the district court. Insofar as this section may have application to civil cases such is superseded by virtue of the provisions of Sec. 16-3-53 and 16-3-55, N.M.S.A., 1953 Comp., as amended. Section 16-3-55, N.M.S.A., 1953 Comp., enacted subsequently in 1919, provides that:

"No other or different fees than those above provided shall be made or received in civil matters by clerks of district courts, and only services required by them in civil actions, other than those for which fees are herein provided, shall be without compensation."

Under the above section the earlier enacted statute, Sec. 36-18-24, N.M.S.A., 1953 Comp., as it applies to the docket fee payable to district court clerks in appeals from justice of the peace courts is repealed by implication. Section 16-3-53, N.M.S.A., 1953 Comp., would therefore govern as to fees allowable to clerks of the district court in civil matters, but in criminal matters the provisions of Sec. 41-21-3, N.M.S.A., 1953 Comp., and Sec. 36-18-9, N.M.S.A., 1953 Comp., would apply.

Section 36-18-9, N.M.S.A., 1953 Comp., sets out in part as follows:

"The clerks of the district courts shall demand and collect in advance . . . Two Dollars and Fifty Cents (\$ 2.50) for docketing any case appealed from the justice of the peace court . . . and shall collect such fees from the plaintiff or appellant, as the case may be, when he docketes the appeal in the case. . ."

The above section by virtue of its later enactment (Ch. 89, Sec. 19, Laws 1907), superseded both Sec. 41-21-3 and 36-18-24, N.M.S.A., 1953 Comp., enacted previously, and the amount specified in the later enacted statute as payable to district court clerks for the docketing of appeals in justice of the peace cases is controlling. Under the provisions of the above section the amount payable as the docket fee in appeals from justices of the peace in criminal cases is \$ 2.50.

Under our previous Attorney General's Opinion No. 315, dated November 19, 1931, referred to above, it was held that the docket fee for a criminal appeal was \$ 2.50. In **Poldervaart's Manual of New Mexico Justice Court Practices**, Sec. 390 at pages 219-220, such authority similarly concluded that the docket fee in district courts for appeals in criminal cases is \$ 2.50.

Thus, as we construe the above sections, and particularly Sec. 36-18-9, N.M.S.A., 1953 Comp., we hold that the correct amount of the fee in district courts for docketing a criminal appeal from a justice of the peace court still remains at Two Dollars and Fifty Cents, (\$ 2.50).