

Opinion No. 63-168

December 16, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Nils T. Kellstrom Judge Small Claims Court Bernalillo County Court House
Albuquerque, New Mexico

QUESTION

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1. In cases wherein the Small Claims Court Judge disqualified himself for cause does the District Court docket the cause without fee?
2. If the District Court in such case requires the payment of a docket fee, who pays it?
3. In such case, does the matter become a District Court case or is it remanded to the Small Claims Court after hearing in the District Court?

CONCLUSIONS

1. No.
2. The party bringing the suit or causing it to be docketed in small claims court.
3. The case is not remanded.

OPINION

{*390} ANALYSIS

The small claims court was created as a court of inferior jurisdiction, by statute, in 1953 (Laws of 1953, Chapter 137, Section 16-5-1, N.M.S.A., 1953 Compilation). Section 16-5-7 provides as follows:

{*391} "Whenever any small claims court judge shall, for any reason be interested in any cause or disqualified from acting in any cause or proceedings coming under the jurisdiction of his court, he shall, upon his own motion or that of any interested party, forthwith enter an order **transferring such proceeding or case to the district court** having jurisdiction in that county and directing the clerk of his court to deposit forthwith with the office of the clerk of the district court a certified copy of said order together with all original papers, pleadings and records in such small claims court relating to the proceedings." (Emphasis added).

No provision is made in the act creating the small claims court for the payment of District Court docket fees on transfer of a cause. The act does, apparently, provide for a district court judge to act as small claims court judge in the absence of or disability of a small claims court judge without a docket transfer.

The act likewise calls for the payment of all receipts of small claims court to the county treasurer. The sections referred to concerning disqualification and disability are somewhat confusing. However, it seems fairly clear that, when the disability to act is caused by a disqualification, the cause is docketed in the district court upon order of the small claims court. It also seems fairly clear that in such case it is a transfer of the cause from the small claims court to the district court.

Section 16-3-53, N.M.S.A., 1953 Compilation, (P.S.) provides as follows:

"Clerks of the district courts shall be entitled to receive the following fees in civil matters; For docketing each cause, whether original, **by appeal or transfer from any inferior court, to be paid by the party bringing** the suit or docketing the same . . ." (Emphasis added).

Under this section, the party instituting the action or causing it to be docketed in the small claims court would have to pay the district court docket fee on transfer to the district court under the circumstances mentioned.

Section 16-5-9, N.M.S.A., 1953 Compilation, would seem to answer the last question. In substance it provides that the district court shall proceed the same as the small claims court insofar as transferred causes are concerned. Although the district court also has appellate jurisdiction over the small claims court, this would not involve the appellate jurisdiction of the district court at this stage of the proceedings. The district court would, therefore, retain jurisdiction to the same extent as if originally filed in the district court.

By: James V. Noble

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