

Opinion No. 70-65

July 16, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Louie Lujan Court Administrator Supreme Court Building Santa Fe, New Mexico
87501

QUESTIONS

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What are the proper fees to be collected by district court clerks upon the docketing of the following types of inferior court appeals?

1. Appeal from municipal court?
2. Civil appeal from magistrate court?
3. Criminal appeal from magistrate court?
4. Civil appeal from small claims court?
5. Criminal appeal from small claims court?

CONCLUSIONS

1. \$ 16.25
2. 7.75
3. 2.50
4. 20.00
5. 2.00

OPINION

{*110} ANALYSIS

1. The docket fees that are to be collected by district court clerks on appeals from municipal courts are the same for all appeals. Attorney General Opinion Nos. 62-10, issued January 19, 1962 and 64-50, issued April 10, 1964 interpret appeals taken from municipal courts as "civil matters". "Criminal" or "quasi-criminal" no longer apply so far

as docket fees are concerned since {*111} Section 38-1-8, N.M.S.A., 1953 Compilation (1969 P.S.), as amended, refers to appeals from municipal courts involving an ordinance violation (which is the only jurisdiction municipal courts have at present) as a "civil matter". Section 38-1-8(B), supra, provides:

"The clerk of the district court shall docket the appeal on the **civil** docket upon payment of a docket fee of ten dollars (\$ 10.00) and shall transmit a copy of the notice of appeal to the municipal court from which the action is appealed and to the municipal attorney." (Emphasis added.)

A complete reading of the above quoted statutes makes it quite clear that the \$ 10.00 docket fee is to apply to any type of municipal court appeal and that, as far as treatment in the district court is concerned, all appeals are to be considered "civil actions". Subsection C states in part:

"The appeal shall be governed by the Rules of Civil Procedure for the District Courts, except that the municipality has the burden of proving violation of an ordinance beyond a reasonable doubt."

Since all municipal court appeals are to be docketed on the civil docket in District Court, they are subject to additional fees.

Section 1-1-8, N.M.S.A., 1953 Comp. (1969 P.S.) requires that an additional fee of \$ 2.75 be paid on each civil action filed in District Court upon which a docket fee is now required to be paid. Such fees are credited to the New Mexico Compilation Fund.

Chapter 20, Section 2 of the Laws of 1964 (1st S.S.) makes provision for an additional fee, in the amount of \$ 3.50, upon each civil action, except appeals from **justice of the peace** courts, which is filed in the district court clerk's office. Such fees are to be credited to the "Supreme Court Building Addition Fund" for the purpose of paying principal and interest on the debentures issued and sold for such addition.

The total fee to be collected by the district court clerk upon docketing any appeal from municipal court is, therefore, \$ 16.25.

The confusion regarding fees on inferior court appeals docketed in district court arises from Section 16-3-28, N.M.S.A., 1953 Comp. (1969 P.S.) dealing with fees to be collected by district court clerks in civil matters. That section, which became effective July 1, 1970, states in pertinent part:

"Docketing any other cause, (other than magistrate appeals), whether original or by appeal or transfer from any inferior court. . . \$ 11.25."

This section appears to be in direct conflict with Section 38-1-8(B), supra. There is a problem of whether Section 16-3-28, effective July 1, 1970 repeals by implication Section 38-1-8(B), (Ch. 35, N.M. Laws 1969). Repeals of statutes by implication are not

avored in New Mexico. See **State ex rel. Sanchez v. Reese**, 447 P. 2d 504, 79 N.M. 624 (1969); **State v. Tipton**, 73 N.M. 24 385 P.2d 355 (1963). As stated in **Waltom v. City of Portales**, 42 N.M. 433, 437, 81 P.2d 58 (1938):

"No citation of authority is necessary to support the principle that repeals by implication are not favored. * * * Also, it is equally well settled that a general statute will not be regarded as repealing by implication a statute dealing **with a particular matter and of limited scope.**"

In **Levers v. Houston**, 49 N.M. 169, 173, 159 P.2d 169 (1945), an heir and the administratrix of an estate took an appeal from an order allowing a claim against an estate, the appeal being taken under a general law fixing the time for appeals from probate court, when an antecedent special statute dealing specifically with appeals from allowance of claims prescribed a shorter time. In holding that the appeal had not been timely taken, the Supreme Court of New Mexico said:

"Thus it is seen that we have a general statute regulating appeals at large from the probate court to the district court and fixing the time within which such appeals may be taken and also, a special statute prescribing a different time where the judgment is one allowing or rejecting a claim against the estate of a decedent. Which is to control {**112*} where the appeal is timely under the general one but too late under the special one? Obviously the latter."

Section 38-1-8(B), supra, deals specifically with docket fees from municipal courts to district courts, while Section 16-3-28, supra, concerns docket fees from "any other cause whether original or by appeal or transfer from any inferior court." The former is the more specific of the two sections and it therefore follows that that section should govern. Section 16-3-28, supra, does not repeal Section 38-1-8(B), supra, by implication and the docket fees for such appeals remains at \$ 10.00. It should be remembered that there is no appeal fee charged for appeals by the municipality.

2. The docket fee to be collected upon docketing a civil appeal from a magistrate court is specifically set at \$ 5.00 by Section 16-3-28, N.M.S.A., 1953 Comp. (1969 P.S.), as amended by Ch. 193, Section 3, New Mexico Laws of 1969. These courts are subject neither to the \$ 11.25 docket fee fixed in the district court by Section 16-3-28, N.M.S.A., 1953 Comp. (1968 Int. Supp.), nor to the fee of \$ 3.50 levied by CH. 20, Section 2 of New Mexico Laws of 1934 (Vol. 2, App. 2.2, N.M.S.A., 1953 Comp.). Magistrate court civil appeals are not subject to the additional fee for the "Supreme Court Building Addition Fund" because the magistrate courts are made the statutory successor to the justice of the peace courts by Section 36-1-38, N.M.S.A., 1953 Comp. (1969 P.S.) and are therefore exempt from such fees.

Since this is a civil action it is also subject to the additional fee of \$ 2.75 for the New Mexico Compilation Fund required by Section 1-1-8, supra.

The total fee to be collected by the district court clerk upon docketing a civil appeal from a magistrate court is, therefore, \$ 7.75.

3. The total fee to be collected by the district court clerk upon docketing a criminal appeal from a magistrate court is set by Section 36-15-2(B), N.M.S.A., 1953 Comp. (1969 P.S.) at "\$ 2.50." Criminal appeals are not subject to any of the additional fees discussed elsewhere in this opinion.

4. The docket fee to be collected by the district court clerk upon docketing a civil appeal from a small claims court is set by Section 16-3-28, supra, as amended, effective July 1, 1970, at \$ 13.75. Since this is a civil action it is also subject to the additional fee for the New Mexico Compilation Fund in the amount of \$ 2.75 and the fee for the "Supreme Court Building Addition Fund" in the amount of \$ 3.50.

The total fee to be collected by the district court clerk upon docketing a civil appeal from the small claims court is \$ 20.00.

5. The total fee to be collected by the district court clerk in docketing a criminal appeal from a small claims court is set by Section 41-21-3, N.M.S.A., 1953 Comp. at "\$ 2.00." Criminal appeals are not subject to any of the additional fees discussed elsewhere in this opinion.

By: Gary O'Dowd

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