

Opinion No. 71-110

October 1, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

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QUESTIONS

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1. Does the State of New Mexico or its agencies or commissions, pay costs in actions filed in magistrate court?
2. If the answer to the above question is in the negative, should the magistrate court collect costs from the defendant if a civil judgment is entered in favor of the plaintiff and if so to whom are the costs paid, the state agency or commission, or the Office of the Court Administrator or State Treasurer?

FACTS PRECEDENT TO QUESTIONS 3

Certain magistrate courts have instituted the practice of dismissing plaintiff's complaints, after a defendant fails to file an answer if the plaintiff himself is not present on the return date.

QUESTIONS

3. If the defendant fails to file a written answer after proper service of process, may the civil complaint of the plaintiff be dismissed with prejudice because the plaintiff is not present in court on the return date of the complaint?

CONCLUSION

1. No.
2. No.
3. No.

OPINION

{*165} **ANALYSIS**

1. Pursuant to Section 36-9-12, N.M.S.A., 1953 Comp. (1969 P.S.) the Supreme Court of New Mexico has the power to promulgate rules regulating pleading, practice and procedure in judicial proceedings in the magistrate court. In accordance with said authority, Rule 16 [Section 36-21-16, Rule 16, N.M.S.A., 1953 Comp. (1971 P.S.)] of the magistrate courts was adopted November 5, 1968 with an effective date of January 1, 1969. Rule 16, **supra**, states in relevant part at paragraph B that "costs shall be taxed in the judgment of the prevailing party against the losing party in the amount of cost paid by the prevailing party to the magistrate, and any fees actually paid by him for service of the complaint and summons and subpoenas and for attendance of witness, **except that no costs shall be taxed against the state.**" (Emphasis added).

Thus, in our opinion the State of New Mexico, and that of course includes its agencies, does not have to pay costs for actions filed in the magistrate courts.