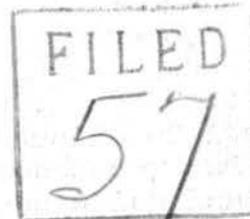


CIRCUIT CLERKS-CIRCUIT COURTS: Rule of Circuit Court receiving \$10.00 filing fee in advance must not be arbitrarily enforced.

March 9, 1936.



Mr. George E. Masters
Clerk of the Circuit Court
Jasper County
Carthage, Missouri

Dear Sir:

We acknowledge your request for an opinion dated February 29, 1936, which reads as follows:

"Section 1241 of the Revised Statutes of Mo., 1929, quotes as follows, to-wit:

" 'If any person file, before any clerk in vacation, an affidavit that he has a just and subsisting cause of action on which he proposes to bring a suit, and that he is unable to pay the costs, the clerk shall issue an original writ, without fees for the same. But the Court may, in its discretion, refuse or permit the further prosecution of the suit.'

"On January 1st, 1932, the Court (both Judges) made a ruling requiring a deposit of \$10.00 with each civil case filed in our Courts, as a guarantee of Court Costs, if they wish to prosecute as a poor person, the attorney would take up the matter with one of the Judges and if he permitted them to file said case without the filing fee, said permission was indicated to the Clerk by a written permission to do so.

"All lawyers comply with this ruling with the exception of one young fellow, who recently located in Joplin from Kansas City. He says that such a ruling is in conflict with Section #1241. I shall be pleased to have your opinion in the matter at your earliest convenience, for which I thank you."

Article II, Section 10, of the Missouri Constitution provides:

"The courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice should be administered without sale, denial or delay."

In the case of State ex rel. v. Johnson, 182 S. W. 969; 266 Mo. 662, l. c. 670, our Supreme Court said in construing a trial court rule against the above constitutional provision.

"It has been uniformly held that this provision does not deprive the courts of general jurisdiction of their power to make reasonable rules governing the order of trial of cases and regulating their proceedings in their administration of the law. That the exercise of such inherent and necessary power on the part of the courts does not violate the above quoted clause of the organic law."

Pursuant to the above constitutional provision the Legislature enacted section 1241 R. S. Mo. 1929, which provides:

"If any person file, before any clerk in vacation, an affidavit that he has a just and subsisting cause of action on which he proposes to bring a suit, and that he is unable to pay the costs, the clerk shall issue an original writ, without fees for the same. But the court may, in its discretion, refuse or permit the further prosecution of the suit."

CONCLUSION.

- - - - -

Any rule, act, or conduct of the Circuit Court of Jasper County, which presupposes an arbitrary closing of the doors of courts of this State to any person who

Mr. George E. Masters

-3-

March 9, 1936.

files an affidavit before a Circuit Clerk, stating that he has a just and subsisting cause of action on which he proposes to bring suit, and that he is unable to pay the costs, is not only in violation of Section 1241, supra, but the same is against the fundamental law of this State. Such a rule cannot meet the test of reasonableness.

When such an affidavit is filed in vacation with the Circuit Clerk, it is the clerk's duty to issue an original writ without first collecting the \$10.00 filing fee in advance, as provided in the general rule of the Circuit Court of Jasper County.

The fact that process be issued by the Circuit Clerk, pursuant to Section 1241, supra, does not mean that the Circuit Court must proceed to try the cause without requiring such an affiant to give security for costs, for the Circuit Court, on motion and hearing, may, in its sound discretion, dismiss the suit. See sections 1237 and 1238, R. S. Mo. 1929.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN
(Acting) Attorney General.